# 1NC---R1---Harvard

## Off

### States CP---1NC

#### The fifty states and other relevant sub-national entities should adopt the principle of separating platforms from commerce for platforms in the private sector.

#### States solve.

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

### Notice and Comment---1NC

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

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

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

A. The Agency Solution

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

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

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

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

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

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

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

CONCLUSION

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

#### Democracy solves war

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

### FTC Trade Off---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**

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The FTC needs more **resources** to adequately address the nation’s growing privacy concerns. Currently, the FTC oversees both consumer protection—encompassing privacy—and antitrust,249 making the FTC the chief federal agency on privacy policy and enforcement250 and the nation’s de-facto privacy agency.251 The agency has long-standing experience in enforcing privacy statutes252 and also has special privacy assets, such as an internet lab capable of high-quality tech forensics to track invasions of privacy.253 The FTC, however, has failed to keep pace with the massive growth of privacy concerns—a phenomenon also driven by modern technology. Very few Americans feel conﬁdent in the privacy of their information in the digital age.254 According to a 2019 study, over 80% of Americans feel that they have little to no control over the data collected on them by companies and the government.255 To adequately address privacy concerns, the FTC needs more resources.256 The agency has been explicit that it needs more manpower to police tech companies. In requesting increased funding from Congress, FTC Director Joseph Simons said the money would allow the agency to hire additional staff and bring more privacy

cases.257 A former director of the FTC’s Bureau of Consumer Protection, which houses the

privacy unit, has called the FTC “woefully understaffed.”258

As of the spring of 2019, the FTC had only forty employees dedicated to privacy and data

security, compared to 500 and 110 employees at comparable agencies in the UK. and Ireland, respectively.259 Without more lawyers, investigators, and technologists, the FTC will be forced to conduct privacy investigations less thoroughly, and in some cases, **forgo them altogether**.260 Currently, the FT C’s resources are **spread thin across multiple missions**, to the **detriment of its privacy efforts**. Removing the agency’s antitrust responsibilities would reallocate resources from the antitrust department to its privacy unit and other areas of consumer protection. Further, it would free up the scarce time of the commissioners to oversee this essential effort.261

**Unchecked algorithmic bias risks massive inequality, suffering, and extinction**

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

Mike Thomas, THE FUTURE OF ARTIFICIAL INTELLIGENCE: 7 ways AI can change the world for better ... or worse, Updated: April 20, 2020, <https://builtin.com/artificial-intelligence/artificial-intelligence-future>

Klabjan also puts **little stock in extreme scenarios** — the type involving, say, murderous cyborgs that turn the earth into a smoldering hellscape. He’s **much** more concerned with machines — war robots, for instance — being **fed faulty “incentives**” by nefarious humans. As MIT physics professors and leading AI researcher Max Tegmark put it in a 2018 TED Talk, “The **real threat** from AI isn’t **malice**, like in silly Hollywood movies, but **competence** — AI accomplishing goals that just aren’t aligned with ours.” That’s Laird’s take, too.

“I definitely don’t see the scenario where something wakes up and decides it wants to take over the world,” he says. “I think that’s science fiction and not the way it’s going to play out.”

What Laird worries most about isn’t evil AI, per se, but “evil humans using AI as a sort of false force multiplier” for things like bank robbery and credit card fraud, among many other crimes. And so, while he’s often frustrated with the pace of progress, AI’s slow burn may actually be a blessing.

“Time to understand what we’re creating and how we’re going to incorporate it into society,” Laird says, “might be exactly what we need.”

But no one knows for sure.

“There are several major breakthroughs that have to occur, and those could come very quickly,” Russell said during his Westminster talk. Referencing the rapid transformational effect of nuclear fission (atom splitting) by British physicist Ernest Rutherford in 1917, he added, “It’s very, very hard to predict when these conceptual breakthroughs are going to happen.”

But whenever they do, if they do, he emphasized the importance of preparation. That means starting or continuing discussions about the ethical use of A.G.I. and whether it should be regulated. That means working to **eliminate data bias**, which has a **corrupting effect on algorithms** and is **currently a fat fly in the AI ointment**. That means working to invent and augment security measures capable of keeping the technology in check. And it means having the humility to realize that just because we can doesn’t mean we should.

“Our situation with technology is complicated, but the big picture is rather simple,” Tegmark said during his TED Talk. “Most AGI researchers expect AGI within decades, and **if we just bumble into this unprepared**, it will probably **be the biggest mistake in human history**. It could enable brutal global dictatorship with **unprecedented inequality**, surveillance, **suffering** and maybe **even human extinction**. **But if we steer carefully**, we could end up in a **fantastic future** where **everybody’s better off**—the poor are richer, the rich are richer, **everybody’s healthy and free** to live out their dreams.”

### Japan---1NC

#### New extraterritorial application of antitrust ends the Japan economic alliance---they respond with diplomatic protest to new extraterritorial antitrust.

Takaaki Kojima 02. Fellow, Weatherhead Center for International Affairs, 2001-2002. “International Conflicts over the Extraterritorial Application of Competition Law in a Borderless Economy”. https://datascience.iq.harvard.edu/files/fellows/files/kojima.pdf

We are witnessing increasingly **widespread** and penetrating economic **globalization** today. As a result of trade liberalization, import restrictions or regulations on trade and investment have decreased substantially, and trans-border business activities face less barrier. At the same time, the role of trans-border business activities, especially those by so-called **multinational** or **global enterprises**, have become increasingly important and even dominant in some sectors.

As far as the territorial scope of business activities are concerned, state borders are more or less **diminishing** to become almost borderless; as for legal regimes, **however**, sovereign states retain in principle exclusive jurisdiction over their territories and nationals under international law. Business activities are regulated by the domestic laws of sovereign states or by international agreements concluded among sovereign states. The pertinent question is how to coordinate “borderless” business activities within the existing legal regimes governed by sovereign states. In the field of trade law, the measures of each state are restricted by international agreements, in particular under the GATT/WTO regime. In the field of competition law, such **an international regime is lacking** and the domestic laws of each state regulate private restraints of trade in the relevant markets.

Serious **jurisdictional conflicts** have transpired in the last several decades between the United States and other states over the so-called extraterritorial **application of U.S. antitrust laws on anticompetitive conducts** abroad. This problem has also caused **diplomatic frictions** between the United States and other states, as it concerns state sovereignty. In this essay, the author will review the historical development of **international conflicts** caused by the extraterritorial application of competition law and attempt to examine the options available to circumvent or solve these conflicts. The main focus will be U.S. antitrust law and its relation with other jurisdictions, mainly the European Union and **Japan**, considering the **grave implications** to competition law and policy as well as to the world economy. 2

II. Extraterritorial Application of U.S. Antitrust Laws

Problems concerning the extraterritorial application of U.S. antitrust laws have been discussed in many publications. Of the U.S. antitrust laws, the Sherman Act applies to “commerce … with foreign nations ” (Section 1) without qualifying provisions concerning its territorial scope as “within the United States” (Section 2) or “in any section of the country” (Section 3) as specified in the Clayton Act. In the past, U.S. courts interpreting the Sherman Act of 1890 and other antitrust laws commonly followed the traditional territorial principle with regard to its jurisdictional reach. In the American Banana case (213 U.S. 347 (1909)), where all the acts complained of were committed outside the territory of the United States, including the defendant’s alleged inducements of the Costa Rican government to monopolize the banana trade, the U.S. Supreme Court dismissed the complaint on the ground, inter alia, that acts committed outside of the United States are not governed by the Sherman Act. In this case, the territorial principle in the classic sense was applied.

In later decisions such as the American Tobacco case (221 U.S. 106 (1911)) and the Sisal case (274 U.S. 268 (1927)), jurisdiction was exercised over the defendants on the ground that although the agreements in question were concluded by foreigners outside the United States, jurisdiction was limited to what was performed and intended to be performed within the territory of the United States. In these cases, the territorial principle was applied more flexibly, but it has been observed that this application cannot be argued other than as a sensible and reasonable deployment of the objective territorial theory. 3

An entirely different approach was taken in the Alcoa case (148 F.2d. 416 (1944)), in which foreign companies outside the United States had concluded the agreements. The Court of Appeal for the Second Circuit held it settled law that any State may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders. It went on further to state that the agreements, although made abroad, were unlawful if they were intended to affect imports and did affect them.

This theory of the intended effect (the effects doctrine) elaborated in the Alcoa case was criticized by many as an excess of jurisdiction under public international law. For instance, R.Y. Jennings noted that “in this new guise it apparently comprehends the exercise of jurisdiction over agreements made abroad, by foreigners with foreigners provided only that the agreement was intended to have repercussions upon American imports or exports,” 4 while F.A. Mann argued that “the type of effect within the meaning of the Alcoa ruling has nothing in common with the effect which by virtue of established principles of international jurisdiction confers that right of regulation.” 5 Neverthele ss, since the Alcoa case, U.S. courts have continued to follow the new jurisdictional formula of the effects doctrine.

In response to excessive application of U.S. antitrust laws, especially with respect to courts’ orders to produce documents such as subpoena duces tecum located abroad, a considerable number of states have issued **diplomatic protests**. Australia, France, the United Kingdom, the Netherlands, and New Zealand have even enacted blocking legislation. 6 The protesting states maintain that taking evidence abroad, including an order to produce documents, is an exercise of extraterritorial enforcement of jurisdiction that, under international law, requires the consent of the state where the evidence is located. The United Kingdom has been one of the strongest opponents to U.S. claims of extraterritorial jurisdiction. The U.K. government stated for instance that “HM Government considers that in the present state of international law there is no basis for the extension of one country’s antitrust jurisdiction to activities outside of that country of the foreign national.” 7 The Protection of Trading Interest law was enacted in 1980, which provides to extensively thwart the extraterritorial application of U.S. antitrust laws. The U.K. government invoked the provisions in the Laker Airways case (1983 W.L.R. 413) in 1983.

Having faced the antagonistic reactions of other states, U.S. courts began to show some restraint in assuming extraterritorial jurisdiction. In the Timberlane case (549 F.2d. 9 th Cir. (1976)), the court concluded that it had jurisdiction over alleged anticompetitive conducts in Honduras but refrained from asserting extraterritorial jurisdiction after having applied three tests: first, whether the challenged conduct had had some effect on the commerce of the United States; second, whether the conduct in question imposed a burden on U.S. commerce; and third, whether the complaint’s interests of and links to the United States were sufficiently strong vis-à-vis those of other nations to justify an assertion of extraterritorial authority. The Foreign Trade Antitrust Improvements Act enacted in 1976 applies to foreign conduct that has a direct, substantial and reasonably foreseeable effect on U.S. commerce, The U.S. enforcement agencies, the Department of Justice (DOJ) and the Federal Trade Commission (FTC), have adopted this jurisdictional rule of reason formula since the Enforcement Guidelines for International Operations of 1988. However, divergent views exist as to whether the third test of balancing the interests of other states is a rule of international law or just a comity. 8 Furthermore, not all U.S. courts have consistently applied the test of balancing interests. 9

In 1993, the Supreme Court decision in the Hartford Fire Insurance case (113 S. Ct. 2891 (1993)) reaffirmed the effects doctrine, stating that the Sherman Act **applies to foreign conduct** that was meant to produce and did in fact produce some substantial effect in the United States. The Court then **took a restrictive view on** the test of **balancing** interests, stating that the only substantial question is whether there is a true conflict between domestic and foreign law, and held that no such conflict seemed to exist because British law did not require defendants to act in a manner prohibited by U.S. law. 10

Japan maintains the territorial principle and **rejects the effects doctrine**, stating that the effects doctrine cannot be regarded as an established rule of international law. In the view of the Government of **Japan**, the extraterritorial application **of U.S.** domestic laws (including U.S. **antitrust laws**) based on the **effects doctrine is not allowed** under general international law. 11 In the Nippon Paper case, where a Japanese company was prosecuted under the Sherman Act, the Japanese government submitted a brief of amicus curiae where it stated, inter alia, that the extraterritorial application of the Sherman Act to a conduct of a Japanese company engaged in business in Japan is unlawful under international law. 12 Nonetheless, the U.S. Supreme Court **affirmed** the Court of Appeal decision, which assumed the extraterritorial application of the Sherman Act to a criminal case for the first time (118 S. Ct. 685 (1998)).

#### Economic alliance solves climate change---business cooperation key to consistency.

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Last week’s bilateral meeting between Biden and Japanese Prime Minister Suga Yoshihide laid the groundwork for the climate summit, with the U.S. and Japan announcing their global climate leadership. The governments seek to use energy cooperation to address climate change, geostrategic challenges raised by China, and other issues of mutual concern. However, the two countries’ track record of volatility and inconsistency makes some countries skeptical about their reliability as partners.

An urgent task for both countries is to institutionalize climate policy through domestic, bilateral, and multilateral mechanisms that outlast any single administration. This means building partnerships that emphasize business opportunities and irreversible investments in energy sector transformation. The institutionalization of initiatives and the creation of vested interests in green technologies and green growth will be critical in preventing future backsliding on climate commitments.

U.S.-Japan Climate Partnership

The U.S.-Japan Climate Partnership on Ambition, Decarbonization, and Clean Energy, announced on April 16 while Suga was in Washington, D.C., is a natural extension of existing bilateral initiatives, but it also signals a meaningful shift from the policies of the previous governments.

The Biden and Suga governments will continue ventures such as the Japan-U.S.-Mekong Power Partnership (JUMPP) and cooperation on nuclear energy technology. But, in keeping with Biden and Suga’s stated intentions to pursue carbon neutrality by 2050, the Japan-U.S. Strategic Energy Partnership (JUSEP) has been upgraded to the Japan-U.S. Clean Energy Partnership (JUCEP), which will move beyond past cooperative activities on technology research and development, in the context of the Paris Agreement and the Free and Open Indo-Pacific strategy.

Most importantly, their joint statements and accompanying rhetoric have emphasized the role of the United States and Japan as emerging leaders in a number of areas connected with climate change mitigation. To exert true leadership, it will be critical to develop concrete measures and policies to not only deepen cooperation but also accelerate domestic decarbonization.

Green Technologies and Green Growth

The COVID-19 pandemic presents a potentially transformative opportunity for governments to overcome entrenched resistance to climate policies. This starts with a green recovery from the pandemic as the first step to sustainable green growth. Emerging green industries can be promoted and entrenched by government investment, support, and international linkages. Green growth can also address energy security challenges, such as Japan’s longstanding dependence on fossil fuel imports. The pandemic further provides a window of opportunity to design multilateral frameworks to more effectively address global dimensions of climate change like taxation, green border adjustment, and asset revaluation.

The U.S.-Japan Climate Partnership expands on existing cooperation to include “renewable energy, energy storage (such as batteries and long-duration energy storage technologies), smart grid, energy efficiency, hydrogen, Carbon Capture, Utilization and Storage/Carbon Recycling, industrial decarbonization, and advanced nuclear power.” The partnership will target both domestic and foreign needs. For example, both the United States and Japan need to upgrade their own grids and integrate renewables into the grid. And, through advancements in and transfer of smart grid technology, they can contribute to the modernization and efficiency of other countries’ energy sectors as well.

Even though Japan is a leader in research and development in clean energy technologies, it has faced impediments in transforming that into profitable ventures in the marketplace. U.S. industry had early successes with clean energy technologies, but China has come to dominate much of the commercial landscape. In partnership, Japan and the United States may be able to compete more effectively with China and reassert their market share.

Offering an Alternative to China

Japan-U.S. energy cooperation is part of a larger geostrategic and geoeconomic strategy in the region and around the world. Their collaboration presents an alternative to China’s Belt and Road Initiative in the energy infrastructure sector. Clean energy is consistent with Japan’s promotion of quality infrastructure in the Indo-Pacific as an alternative to Chinese initiatives. For Japan, committing to a decisive shift away from coal will be critical in making this strategy credible.

Although China and the U.S. will need to cooperate on climate change, they are also likely to be competing in promoting their own visions for the future. The U.S.-Japan Joint Leaders Statement presented a vision of the world where the United States and Japan are on the side of “freedom, democracy, human rights, the rule of law, international law, multilateralism, and a free and fair economic order.” Climate leadership was the missing piece in Japan’s newfound leadership in support of the liberal international order. Multilateral cooperation on green technology, green recovery, green growth, and climate partnerships will be critical areas as the U.S. and Japan seek to re-exert their global leadership and present an alternative to China.

Leading Multilateral Cooperation

The joint statements by the U.S. and Japan have called not only for domestic efforts and bilateral cooperation, but also for promoting a global goal of net zero emissions by 2050. Although the UNFCCC process has important shortcomings and may be sabotaged by future administrations, the two countries should continue to work with global partners to push the agenda forward.

Aside from global multilateral cooperation, the United States and Japan can support Southeast Asian countries to address an expected 6 percent increase in annual electricity consumption without resorting to high-carbon technologies or an overreliance on Chinese debt diplomacy. Building on JUMPP, promoting green technology investments through bilateral and multilateral partnerships can perpetuate the U.S. and Japan as climate leaders and diplomatic partners in the region. It will have the added benefit of integrating U.S. and Japanese businesses and economic interests into the energy infrastructure of the region.

The Japan-U.S. bilateral commitment to climate is a meaningful development and encompasses national security, economic development, energy security, and environmental objectives. It also reflects the domestic and foreign policy interests of Biden and Suga. For Biden, it creates a clear break from the Trump administration and promotes key pillars of his domestic and foreign policy agenda, including a recommitment to allies and multilateralism, countering China’s expanding influence, and clean energy infrastructure. For Suga, it burnishes his bona fides as a steady hand managing the Japan-U.S. relationship and signals Japan’s continued willingness to play a global leadership role.

For both leaders, it will be crucial to move ambitiously and expeditiously in the direction of decarbonization. Future policy reversals can be made more costly through institutionalization, large-scale infrastructure investments, and the growth of successful green businesses that counter vested interests tied to the fossil fuel sector. For the United States and Japan to emerge as undisputed leaders in climate change, it will be critical to expand into new areas of cooperation and overcome potential sources of backsliding at home.

#### Unchecked climate change causes extinction.

Bill McKibben 19. Schumann Distinguished Scholar at Middlebury College; fellow of the American Academy of Arts and Sciences; holds honorary degrees from 18 colleges and universities; Foreign Policy named him to their inaugural list of the world’s 100 most important global thinkers. "This Is How Human Extinction Could Play Out." Rolling Stone. 4-9-2019. https://www.rollingstone.com/politics/politics-features/bill-mckibben-falter-climate-change-817310/

Oh, it could get very bad.

In 2015, a study in the Journal of Mathematical Biology pointed out that if the world’s oceans kept warming, by 2100 they might become hot enough to “stop oxygen production by phyto-plankton by disrupting the process of photosynthesis.” Given that two-thirds of the Earth’s oxygen comes from phytoplankton, that would “likely result in the mass mortality of animals and humans.”

A year later, above the Arctic Circle, in Siberia, a heat wave thawed a reindeer carcass that had been trapped in the permafrost. The exposed body released anthrax into nearby water and soil, infecting two thousand reindeer grazing nearby, and they in turn infected some humans; a twelve-year-old boy died. As it turns out, permafrost is a “very good preserver of microbes and viruses, because it is cold, there is no oxygen, and it is dark” — scientists have managed to revive an eight-million-year-old bacterium they found beneath the surface of a glacier. Researchers believe there are fragments of the Spanish flu virus, smallpox, and bubonic plague buried in Siberia and Alaska.

Or consider this: as ice sheets melt, they take weight off land, and that can trigger earthquakes — seismic activity is already increasing in Greenland and Alaska. Meanwhile, the added weight of the new seawater starts to bend the Earth’s crust. “That will give you a massive increase in volcanic activity. It’ll activate faults to create earthquakes, submarine landslides, tsunamis, the whole lot,” explained the director of University College London’s Hazard Centre. Such a landslide happened in Scandinavia about eight thousand years ago, as the last Ice Age retreated and a Kentucky-size section of Norway’s continental shelf gave way, “plummeting down to the abyssal plain and creating a series of titanic waves that roared forth with a vengeance,” wiping all signs of life from coastal Norway to Greenland and “drowning the Wales-sized landmass that once connected Britain to the Netherlands, Denmark, and Germany.” When the waves hit the Shetlands, they were sixty-five feet high.

There’s even this: if we keep raising carbon dioxide levels, we may not be able to think straight anymore. At a thousand parts per million (which is within the realm of possibility for 2100), human cognitive ability falls 21 percent. “The largest effects were seen for Crisis Response, Information Usage, and Strategy,” a Harvard study reported, which is too bad, as those skills are what we seem to need most.

I could, in other words, do my best to scare you silly. I’m not opposed on principle — changing something as fundamental as the composition of the atmosphere, and hence the heat balance of the planet, is certain to trigger all manner of horror, and we shouldn’t shy away from it. The dramatic uncertainty that lies ahead may be the most frightening development of all; the physical world is going from backdrop to foreground. (It’s like the contrast between politics in the old days, when you could forget about Washington for weeks at a time, and politics in the Trump era, when the president is always jumping out from behind a tree to yell at you.)

But let’s try to occupy ourselves with the most likely scenarios, because they are more than disturbing enough. Long before we get to tidal waves or smallpox, long before we choke to death or stop thinking clearly, we will need to concentrate on the most mundane and basic facts: everyone needs to eat every day, and an awful lot of us live near the ocean.

FOOD SUPPLY first. We’ve had an amazing run since the end of World War II, with crop yields growing fast enough to keep ahead of a fast-rising population. It’s come at great human cost — displaced peasant farmers fill many of the planet’s vast slums — but in terms of sheer volume, the Green Revolution’s fertilizers, pesticides, and machinery managed to push output sharply upward. That climb, however, now seems to be running into the brute facts of heat and drought. There are studies to demonstrate the dire effects of warming on coffee, cacao, chickpeas, and champagne, but it is cereals that we really need to worry about, given that they supply most of the planet’s calories: corn, wheat, and rice all evolved as crops in the climate of the last ten thousand years, and though plant breeders can change them, there are limits to those changes. You can move a person from Hanoi to Edmonton, and she might decide to open a Vietnamese restaurant. But if you move a rice plant, it will die.

A 2017 study in Australia, home to some of the world’s highest-tech farming, found that “wheat productivity has flatlined as a direct result of climate change.” After tripling between 1900 and 1990, wheat yields had stagnated since, as temperatures increased a degree and rainfall declined by nearly a third. “The chance of that just being variable climate without the underlying factor [of climate change] is less than one in a hundred billion,” the researchers said, and it meant that despite all the expensive new technology farmers kept introducing, “they have succeeded only in standing still, not in moving forward.” Assuming the same trends continued, yields would actually start to decline inside of two decades, they reported. In June 2018, researchers found that a two-degree Celsius rise in temperature — which, recall, is what the Paris accords are now aiming for — could cut U.S. corn yields by 18 percent. A four-degree increase — which is where our current trajectory will take us — would cut the crop almost in half. The United States is the world’s largest producer of corn, which in turn is the planet’s most widely grown crop.

Corn is vulnerable because even a week of high temperatures at the key moment can keep it from fertilizing. (“You only get one chance to pollinate a quadrillion kernels of corn,” the head of a commodity consulting firm explained.) But even the hardiest crops are susceptible. Sorghum, for instance, which is a staple for half a billion humans, is particularly hardy in dry conditions because it has big, fibrous roots that reach far down into the earth. Even it has limits, though, and they are being reached. Thirty years of data from the American Midwest show that heat waves affect the “vapor pressure deficit,” the difference between the water vapor in the sorghum leaf’s interior and that in the surrounding air. Hotter weather means the sorghum releases more moisture into the atmosphere. Warm the planet’s temperature by two degrees Celsius — which is, again, now the world’s goal — and sorghum yields drop 17 percent. Warm it five degrees Celsius (nine degrees Fahrenheit), and yields drop almost 60 percent.

It’s hard to imagine a topic duller than sorghum yields. It’s the precise opposite of clickbait. But people have to eat; in the human game, the single most important question is probably “What’s for dinner?” And when the answer is “Not much,” things deteriorate fast. In 2010 a severe heat wave hit Russia, and it wrecked the grain harvest, which led the Kremlin to ban exports. The global price of wheat spiked, and that helped trigger the Arab Spring — Egypt at the time was the largest wheat importer on the planet. That experience set academics and insurers to work gaming out what the next food shock might look like. In 2017 one team imagined a vigorous El Niño, with the attendant floods and droughts — for a season, in their scenario, corn and soy yields declined by 10 percent, and wheat and rice by 7 percent. The result was chaos: “quadrupled commodity prices, civil unrest, significant negative humanitarian consequences . . . Food riots break out in urban areas across the Middle East, North Africa, and Latin America. The euro weakens and the main European stock markets lose ten percent.”

At about the same time, a team of British researchers released a study demonstrating that even if you can grow plenty of food, the transportation system that distributes it runs through just fourteen major choke-points, and those are vulnerable to — you guessed it — massive disruption from climate change. For instance, U.S. rivers and canals carry a third of the world’s corn and soy, and they’ve been frequently shut down or crimped by flooding and drought in recent years. Brazil accounts for 17 percent of the world’s grain exports, but heavy rainfall in 2017 stranded three thousand trucks. “It’s the glide path to a perfect storm,” said one of the report’s authors.

Five weeks after that, another report raised an even deeper question. What if you can figure out how to grow plenty of food, and you can figure out how to guarantee its distribution, but the food itself has lost much of its value? The paper, in the journal Environmental Research, said that rising carbon dioxide levels, by speeding plant growth, seem to have reduced the amount of protein in basic staple crops, a finding so startling that, for many years, agronomists had overlooked hints that it was happening. But it seems to be true: when researchers grow grain at the carbon dioxide levels we expect for later this century, they find that minerals such as calcium and iron drop by 8 percent, and protein by about the same amount. In the developing world, where people rely on plants for their protein, that means huge reductions in nutrition: India alone could lose 5 percent of the protein in its total diet, putting 53 million people at new risk for protein deficiency. The loss of zinc, essential for maternal and infant health, could endanger 138 million people around the world. In 2018, rice researchers found “significantly less protein” when they grew eighteen varieties of rice in high–carbon dioxide test plots. “The idea that food became less nutritious was a surprise,” said one researcher. “It’s not intuitive. But I think we should continue to expect surprises. We are completely altering the biophysical conditions that underpin our food system.” And not just ours. People don’t depend on goldenrod, for instance, but bees do. When scientists looked at samples of goldenrod in the Smithsonian that dated back to 1842, they found that the protein content of its pollen had “declined by a third since the industrial revolution — and the change closely tracks with the rise in carbon dioxide.”

Bees help crops, obviously, so that’s scary news. But in August 2018, a massive new study found something just as frightening: crop pests were thriving in the new heat. “It gets better and better for them,” said one University of Colorado researcher. Even if we hit the UN target of limiting temperature rise to two degrees Celsius, pests should cut wheat yields by 46 percent, corn by 31 percent, and rice by 19 percent. “Warmer temperatures accelerate the metabolism of insect pests like aphids and corn borers at a predictable rate,” the researchers found. “That makes them hungrier[,] and warmer temperatures also speed up their reproduction.” Even fossilized plants from fifty million years ago make the point: “Plant damage from insects correlated with rising and falling temperatures, reaching a maximum during the warmest periods.”

### Regs CP---1NC

#### The United States federal government should create a non-antitrust Digital Authority responsible for regulating digital platform policy through the mechanisms outlined in the Stigler Committee evidence.

For reference, these include:

---imposing market standards

---mandating portability and accessibility of data

---monitor and correct negative market developments

---review mergers

---work with applicable agencies in other countries.

#### Solves the aff

Stigler Committee on Digital Platforms 19. The Steigler Committee is an independent committee of over 30 area experts and scholars tasked with creating a report on the regulation of digital platforms. What follows are the credentials of the report’s main organizers, but a full list of scholars and qualifications can be found at the link listed later in this cite. Luigi Zingales is the Robert C. McCormack Distinguished Service Professor of Entrepreneurship and Finance at the University of Chicago Booth School of Business. Guy Rolnik is a Clinical Associate Professor of Strategic Management at the University of Chicago Booth School of Business. Filippo Maria Lancieri is a fellow at the George J. Stigler Center for the Study of the Economy and the State. "Stigler Committee on Digital Platforms: Final Report." The University of Chicago Booth School of Business. 9-16-2019. https://www.chicagobooth.edu/research/stigler/news-and-media/committee-on-digital-platforms-final-report

Longer-term—the creation of a Digital Authority: The strongest indication emerging from the four reports is the importance of having a single powerful regulator capable of overseeing all aspects of DPs. DPs generate several concerns across different fields, all linked to the power of data. To address these concerns in a holistic way, there needs to be a single regulator able to impose open standards, to mandate portability of and accessibility to data, to monitor the use of dark patterns and the risks of addiction, and to complement the FTC and the DoJ in merger reviews. Countries like the UK are considering the set-up of a Digital Markets Unit. The United States and other nations should follow their example.[[1]](#footnote-1)

#### 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.

### K---1NC

#### Antitrust against Big Tech’s “anti-competitive” business practices builds legitimacy for capitalism “for the people” – it’s circumvented thru offshoring, unsustainable, ensures extinction thru eco crisis. Alt is an eco-socialist digital tech new deal

Kwet 20 [Michael Kwet is a Visiting Fellow of the Information Society Project at Yale Law School. “A Digital Tech New Deal to break up Big Tech.” Al Jazeera. 10-26-20. https://www.aljazeera.com/opinions/2020/10/26/a-digital-tech-new-deal-to-break-up-big-tech]

In July, the CEOs of Google, Apple, Facebook and Amazon appeared before Congress in an “historic” antitrust hearing. The event was met with great fanfare from the press. In early October, the United States House Judiciary Committee published a 450-page report criticising the anti-competitive business practices of the four giants and recommending new measures to “restore competition” to the market.

Mainstream “tech critics” across the political spectrum of the so-called “techlash” are celebrating this antitrust agenda led by the US Congress and the intellectuals informing the hearings. They see nothing wrong with the American legal system reshaping corporations that dominate markets outside US borders. After all, they accept the notion that the US “owns” the world and see capitalism as the only system imaginable.

For them, the reformist goal to “restore” a “capitalism for the people” is seen as the proper way to fix Big Tech. The Americans are joined by European power elites, who are seeking to curb the dominance of Big Tech as part of an effort to increase market share for European companies.

Yet the solution to American Big Tech corporations dominating markets across the world cannot come from the American or European pro-capital legal systems. Rather, it has to be a collective effort by the international community, focused on bottom-first redistribution for the Global South, as part of a global transformation towards a sustainable green economy.

The new progressives and neo-Brandeisian antitrust

To understand Big Tech antitrust in the US, we need to understand its origins. The movement was spearheaded by a group of US legal scholars, sometimes called the neo-Brandeisians, named after Supreme Court Justice Louis Brandeis (1856-1941).

As a young lawyer and legal scholar, Brandeis focused on social justice issues and financial power. As corporations restricted competition through “trusts”, he became concerned with how monopoly power could undermine democracy and harm society. His work inspired “antitrust” legislation banning unfair business practices in the US.

Decades later, in the 1970s, a conservative group of legal scholars sought to restrict the scope of antitrust in the US. These neoliberals of the Chicago School, led by legal scholar Robert Bork, argued that antitrust should be narrowly concerned with economic efficiency, largely measured by lower prices for consumers. Inspired by the likes of Bork, US courts began ruling that “consumer welfare”, rather than broad concerns about democracy and power, should be the focus of antitrust.

Over the past few years, neo-Brandeisian scholars dug into legal history and argued, correctly, that the neoliberal antitrust framework does not work for Big Tech. Its business model cannot always be measured by the price that consumers pay for a firm’s product (eg Facebook, Twitter, and YouTube are “free”), and broader concerns around democracy and equality should inform antitrust. In order to fix Big Tech, they insist, we need to think broadly about antitrust and antimonopoly, much like Louis Brandeis did a century ago.

While this all sounds great, a closer look at what neo-Brandesians offer reveals two significant problems with it: one, they want the US to legislate for a problem that concerns the whole world; two, they still insist on a capitalist solution which is incompatible with notions of global social justice and environmental protection.

Big Tech is global

Neo-Brandeisian scholars intend to restructure Big Tech within a framework of US law, spearheaded by US thinkers. However, the firms they want to regulate have a global reach that harms people outside of the US as well.

In fact, the central business model of Big Tech is digital colonialism. Google, Amazon, Facebook, Apple, Microsoft (GAFAM) are worth more than $5 trillion in total and much of it is profit coming from abroad.

For example, less than half of Facebook’s revenues come from the US and Canada, while nine of its top 10 user bases are from Global South countries, totalling 957 million users. The US, by comparison, has 190 million users.

Most revenue for Apple and Google comes from outside the US as well, and almost half of Microsoft’s revenue comes from abroad. A large majority of Amazon’s total revenue comes from its US operations, but it is expanding globally, and its Amazon Web Services dominate the global cloud market.

If we zoom in on individual countries, the scale of the problem becomes even clearer. A small country may provide a tiny fraction of GAFAM’s revenue, but the giants still capture a large share of various markets in that country. For example, in South Africa, Google controls 70 percent of local online advertising, and social media – led by Facebook – another 12 percent. South Africa’s largest media groups take just 8 percent of the pie.

Some 84 percent of smartphones in South Africa use Google Android operating systems, while 15 percent – Apple; 72 percent of desktop computers have Microsoft Windows, while 17 percent – Apple. Other products and services, such as e-hailing, streaming entertainment, search, cloud and office suites are also dominated by American firms. This dynamic repeats throughout the world.

US tech reformers have little to say about the global nature of US tech transnationals, or about why laws regulated by the US government should reshape the core structure of global behemoths. Most of them also no longer discuss how the partnership between the National Security Agency and Big Tech promotes American military imperial interests outside of the US.

The best neo-Brandeisian scholars can argue is that their proposals would weaken the stranglehold of the Silicon Valley beyond US borders. But this is not enough to resolve the problem and does nothing to address the looming environmental catastrophe we are facing.

‘Kinder capitalism’ does not work

US tech reformers assume that market competition – supplemented by new privacy laws, public utility regulation, and some publicly subsidised, non-profit alternatives – is the solution to the power of monopoly. However, they do not address the problem of how private property in a capitalist marketplace creates inequality in the first place. Would “competitive markets” really benefit the Global South?

Competition means beating other people out, and poorer people and nations are naturally disadvantaged in such a competition.

After “restoring competition” to the tech economy, those who will dominate as “new market entrants” on the “open” internet will still be companies from richer countries: the US, European powers, China, etc, not low-income countries like Zimbabwe, Bolivia or Cambodia. And within low-income countries, the well-resourced classes will capture any new market opportunities that an antitrust push in the US may open.

Indeed, reformers assume we can restore “competitive capitalism” while we are staring at the abyss of permanent environmental destruction. Proponents of capitalism maintain that we can grow our way to poverty alleviation and innovate to stop climate change and environmental degradation. But estimates show that under the growth model of the past few decades, the global economy would require a 175-fold increase in global consumption and production just to bring billions of poor people up to a meagre $5 per day. And in the process, we would most definitely destroy the environment.

Degrowth researchers have demonstrated that capitalism is fatally flawed. A capitalist economy focuses on profit and growth, which increases greenhouse gas emissions overheating the planet and leads to over-extraction of material resources, which results in ecological collapses.

The richest nations are dependent on material extraction from the poorest. High-income countries have the worst material footprint, with a consumption level of about 26 tonnes per person per year, when the sustainable level is about eight tonnes per person globally. Low-income countries consume about two tonnes per person per year.

The Big Tech industry contributes to environmental destruction in several ways. E-waste now accounts for five percent of all global waste, and it is growing, in large part because gadgets are built with short lifespans. Instead of designing products that can last a long time, Big Tech has lobbied to kill “right to repair” laws, which would allow consumers to get their devices repaired or buy spare parts from third parties.

What is more, Big Tech directly contributes to inequality by extracting wealth from the poor and concentrating in the hands of a few US-based executives, shareholders and highly paid professionals. At the same time, it exploits workers and often denies them safe and dignified working conditions.

Digital capitalists also encourage consumerism through ads and monetise surveillance, which is destroying privacy, with grave consequences for civil rights and liberties.

Private ownership of the means of computation – software code, infrastructure and the internet – is required to extract money for content, force ads on audiences and spy on users. If the people own and control the digital environment, they would opt to share knowledge freely, reject ads and protect their privacy.

Solutions: Tech for Extinction Rebellion

It goes without saying that any solution for the digital economy must be part and parcel of a sustainable green economy. This, in turn, requires rapid wealth and income redistribution and degrowth. It is a monumental task.

Fortunately, there are some reasonable ways forward.

First, we can phase out copyright paywalls and patents. Such a move would enjoy the support of activists in the Global South and Global North, and would make the world’s scientific and cultural knowledge available to all people, irrespective of their ability to pay. Of course, equitable information sharing and generation also requires resources to bridge the digital divide and make use of scientific knowledge.

Second, software can be placed under strong free and open-source licences, online services can be decentralised, interoperable and owned by communities, while internet infrastructure can be fully socialised as communal property. The global Free Software Movement and activist scholars have already built a preliminary foundation and framework for moving in this direction.

Third, an eco-socialist Digital Tech New Deal has to be implemented to reorient the tech economy away from profit and towards satisfying the needs of the people. This requires socialising financial, intellectual and physical property. As first steps, we could impose heavy taxes on the rich to fund a global digital commons, produce plans to phase out private ownership of information and the means of computation, support workers and mandate economic redistribution to the global poor, and build a privacy-by-design tech ecosystem. All of this must be done within the confines of a sustainable economy.

These solutions need to be part of the global movement for wealth redistribution, reparations, and democratisation. In South Africa, we are building a People’s Tech for People’s Power movement to drive this agenda forward, through popular education and the formation of solidarity networks to launch actions against Big Tech and digital capitalism.

There already is a good historical precedent for global action against Big Tech. During South Africa’s apartheid era, people around the world initiated boycotts, divestment and sanctions (BDS) against corporations like IBM and Hewlett-Packard, which aided and abetted the apartheid state and businesses.

US corporations, in response, pushed a reformist agenda called the Sullivan Principles said to improve racial equality for workers. But anti-apartheid activists rejected the move as corporate propaganda designed to manufacture consent while US corporations continued to profit from apartheid misery.

Today, the US resembles the South African apartheid state, but on a global scale. Its high-tech military projects power across the world, its diplomats impose strong intellectual property protections at the World Trade Organization, its imperialist anti-immigrant policies control the movement of people and capital, and its tech corporations dominate nearly every industry vertical outside of mainland China, all while creating a global police state.

We do not need 21st century Sullivan Principles to save digital capitalism. We need digital socialism, reparations and democratisation of tech for a global green economy. This is a matter of survival for the whole human race.

If the Americans cannot get on board with this, the rest of the world may have to unite behind targeted BDS actions centred on Silicon Valley and its supporters in the US.

## Dynamism

### 1NC---Innovation Turn

#### New consensus in CWS will be sufficient to solve the aff

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4.1.2 The Problems are Practical, Not Legal or Conceptual

The concern about CW’s supposed blind spots in platform markets is misplaced. Let us start with the first and second blind spots: The idea that CW-driven antitrust cannot address problems of platform innovation and monopsony power is wrong: both conceptually and as a matter of law.

Take innovation first. It is universally accepted that technological innovation improves both consumer and total welfare in many ways other than by increasing allocative efficiency and that the welfare benefits of innovation are in aggregate much greater than those from increasing allocative efficiency (Solow 1957). Conceptually—using the stylized supply and demand curves that are so common in antitrust analysis—the welfare improvements that result from technological innovation can be represented as rightward shifts in the demand (reflecting product improvements) and supply (refleting productive efficiencies) curves. The normative implications of such shifts are obvious: A firm that prevents rivals from effecting such shifts is able it to charge higher prices for existing products or services than otherwise, with a resulting reduction in output compared to the but-for world, and in that way can be said to have gained market power.

The cases recognize this, for they have long emphasized the very dynamic, nonprice harms with which CW critics are concerned. At least as early as Judge Hand’s seminal 1945 decision in United States v. Aluminum Co. of America, antitrust law has been keenly interested in dynamic competition, entrepreneurship, and entry. And cases that were decided after the triumph of the CW paradigm in the late 1970 s or early 1980 s are to the same effect. In U.S. v. Microsoft Corporation, for example, the court condemned practices—unrelated to price—that threatened to raise entry barriers and thus to reduce or delay innovation.

The same is true of monopsony power. As a conceptual matter, monopsony power is the mirror image of monopoly power (Lerner 1934). Deadweight loss, wealth transfer, and perverse incentives in seller markets are parallel to those in buyer markets. If CW is understood as total welfare or trading partner welfare, it encompasses buy-side or monopsony issues to the same extent as sell-side or monopoly issues (Hemphill and Rose 2018).

And the case law reflects the application of antitrust law in just that way (Werden 2007). In U.S. v. Adobe Systems, Inc., et al. for example, the Justice Department prosecuted a series of bilateral agreements amongst several large technology firms—including Google, Apple, Intel, Pixar, Intuit, and Adobe—that had allegedly agreed to refrain from soliciting, cold calling, recruiting, or otherwise competing for each other’s computer engineers and scientists. The Justice Department noted that in a “well-functioning labor market, employers compete to attract the most valuable talent for their needs”. And it regarded the agreement as facially anticompetitive because it “disrupted the normal price setting mechanisms that apply in the labor setting”. The Justice Department has also challenged mergers on the ground that they would injure competition in buy-side markets.

So, one might ask, why the controversy over CW? The answer is that successful challenges to pure innovation harms and monopsony power have been rare. The problem, however, is not legal or conceptual. It is practical. Like all decision-makers, antitrust agencies and courts are constrained in their ability to discover facts that are imperfectly observable (e.g., successful entry deterrence), measurable (e.g., product quality), or predictable (e.g., innovation and technological progress). Some data are easier to obtain, and some facts are easier to establish. So public and private antitrust enforcers have, for reason of prudence or pragmatism, focused on price and output effects.

Enforcers and courts do examine non-price effects and upstream markets, mindful that conduct can produce either injury or improvement, loss or benefit. Consider the FTC’s 2013 decision to terminate its investigation against Google. The Commission explained that the search platform’s “display of its own content could plausibly be viewed as an improvement in the overall quality of Google’s search product”.

And in Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.—which was not a platform case—the Supreme Court rejected a claim of anticompetitive buy-side conduct: not on the ground that such conduct was beyond the reach of the antitrust laws, but because the plaintiff had failed to show that the conduct in question was anticompetitive.

Similarly, the criticism that current antitrust enforcement has not prevented innovation harm caused by shootout mergers has nothing to do with the CW standard. For one thing, many of those acquisitions are too small to meet the requirement for pre-merger notification. More important, those acquisitions might be pro-competitive for a number of reasons. They often—or even usually—provide a profit-maximizing exit opportunity for early investors in new and unproven technologies and are thus likely to promote investments in innovation. They can both enable small units with organic constraints to scale through external growth and enhance opportunities for socially efficient combination of complementary assets and the ability and incentives of purchasing incumbent platforms to innovate.

The acquisitions might, on the other hand, be harmful if they “nip in the bud” nascent or potential competition that would otherwise take place. The enforcement problem is a practical one: In platform markets, it is difficult to distinguish startup acquisitions that seek to extinguish an incipient competitive threat “from a situation in which the dominant incumbent can and will greatly expand the reach and usage of the target firm’s products” (Shapiro 2017). Nothing about the CW standard prevents the law from incorporating different presumptions about the likely pro- and anti-competitive effects of such mergers based on different assessments of factual likelihoods or different attitudes about the relative risks of Type 1 and Type 2 errors.

The same can be said about the argument that antitrust law cannot adequately address anticompetitive conduct in “zero price” markets. The problems here are neither conceptual nor legal. For one thing, there is often less to “zero price” than meets the eye. First, the “zero price” is sometimes temporary, when the product or service is new or elementary (which is, incidentally, a common feature in intangible markets with beta and test versions). Antitrust law has ample experience with temporary low-price policies that are followed by price increases: such as loss leading, versioning, or two-part tariffs, some of which are ubiquitous on platform markets.

Second, there is less of a dichotomy between “zeroprice” services and others than the rhetoric suggests. “Zero price” refers to the nominal monetary price that is charged by the seller for services that the customer pays back with a non-monetary contribution, and a zero monetary price is not always the same as “free.” In platform markets, for example—such as search and social networking—the user transfers valuable resources to the platform: time, attention, and personal data (search queries, social graph, sentiment information). In principle, therefore, antitrust decision makers could estimate the total monetary and non-monetary price and analyze the market similar to any other. Estimating the non-money price is, however, likely to be very difficult as a practical matter.

Third, sustained zeroprice markets are typically one side of a multi-sided market or platform in which the seller generates revenue from other sides. Obvious examples include broadcast television, “free” shoppers or other newspapers, and a multitude of online services, such as those that are offered by Google or Facebook. And, as will be seen in the discussion below of the American Express case, no changes to the CW standard are required in order for antitrust law sensibly to address issues that are raised by multi-sided markets or platforms.

Still, zero price markets do sometimes present new challenges. Among other things, they can induce customer lock-in and distort competition in complementary markets, and they require decision makers to use tools other than analyses of pricing data to define markets and assess market power. These challenges are usually not insurmountable. The competitive harm that might be caused in zeroprice markets is almost always the result of more complex conduct that involves positive prices at some point, bundling or tying with positive-priced goods, or nonprice conduct and that can be assessed by traditional antitrust tools (Rubinfeld and Gal 2016a). And markets and market power are commonly assessed without reliance on pricing data. In the Microsoft case, for example, the government was able to define a market and demonstrate that Microsoft had monopoly power in that market without relying on price data and, in fact, over Microsoft’s argument that its low prices demonstrated that it lacked market power.

The CW standard, in short, presents no conceptual or legal obstacle to addressing issues that involve innovation, monopsony, and zeroprice markets. The “blind spot” criticisms of the CW standard thus need to be based on pragmatism rather than principle. The argument might be as follows: “Even if CW works in theory, as it has been applied, it requires factual and economic understanding that is often impractical. It should thus be replaced with a standard that is less difficult to apply.”

We do not quarrel with the first sentence, but the second is a non-sequitur. For one thing, the practical problems are likely to be less serious in the future. Antitrust academics—lawyers and economists—have, for example, developed various formal and empirical tools, such as those described in the agencies’ merger guidelines for defining markets as a proxy for measuring market power. They are now turning their attention to the new issues that are raised by dynamic markets characterized by winner-takes-all competition, multi-sided platforms, network effects, and often the utilization of big data and the provision of services for a zero nominal price—which are rapidly replacing yesterday’s static and slowly evolving markets (Katz and Sallet 2018; Rubinfeld and Gal 2016b). One can reasonably expect the development of new tools that will reduce the practical problems that are posed by antitrust enforcement in the information economy.

Moreover, critics complain that antitrust law is too humble and that it defaults to non-enforcement when faced with factual or economic uncertainty—often by concluding that the complainant has not proven that the alleged conduct was anticompetitive or harmed competition. Whether the substantive, default, and burdenof-proof rules are optimal in some or all cases is a fair subject for debate. The important point for present purposes is that nothing in the CW paradigm prevents revising those rules.

As we previously noted, antitrust doctrine evolves through a common law process “as circumstances change and learning grows” (Easterbrook 1982). Antitrust law can and does replace rules that do not reflect sound analysis, as it has done, for example, with safe harbors for exclusive dealing that covers less than a specified percentage of the market or that is not implemented in long-term contracts. And it can replace rules that require detailed factual assessment of individual cases with simpler, more categorical rules, such as: the per se prohibition of price fixing; the modified per se rule that is applicable to most tying arrangements under Jefferson Parish; presumptions such as those used in horizontal merger analysis; a greater willingness to find a violation on the basis of likely effects, especially where actual competitive effects are difficult to observe or measure; and abbreviated ruleof-reason standards that permit an inference of harm to competition under some circumstances without proof of actual harm to competition.

While antitrust law has moved away from such simplified rules in recent years, there is nothing about the CW paradigm that would preclude a movement of the pendulum in the other direction: either in response to new understandings about factual and economic issues, or in response to a revised assessment of the likelihood and costs of Type 1 and Type 2 errors in general or with respect to platforms or other specific matters.

#### Khan is wrong---the platform separation’s arbitrary and vague nature tubes innovation

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5 Competitive Process, “No Fault” Antitrust, and Conduct‑Based Rules

Many of the critics of CW have in mind an alternative to the CW standard for antitrust policy: “protection of competition” or the “competitive process” (Khan 2017; Wu 2018). The words themselves to do not necessarily imply a departure from the CW standard because, as was explained above, both of the key elements of existing US antitrust law—anticompetitive conduct, and increased market power—are focused on harm to the competitive process. The courts have recognized this connection as well.

The critics are often unclear about the concrete elements of antitrust liability that would operationalize a “protection of competition” policy in relation to platformbased firms, but their remedy proposals enable us to draw inferences about their preferred antitrust doctrine. The core idea seems to be the removal of one of the three elements of a violation of antitrust law: bad conduct, market power, and a causal link between them. There are two variants to this idea:

Some CW critics want to decrease the importance of the “bad conduct” element, so as to migrate towards a more “no fault” antitrust intervention on the basis of a showing of a situation of “structural dominance” (Khan 2017). Others would retain the conduct requirement and dispense with the market power screen. Both proposals are unsound.

5.1 No‑Fault Antitrust for Platforms

Some critics of CW display sympathy for a “no fault” antitrust or something very close to this (Khan 2017; Woodcock 2017). In this alternative framework, the bad conduct requirement that is necessary to establish antitrust liability—in Section 1 cases, concerted action; in Section 2 cases, exclusionary conduct—is either removed or marginalized (for example, through greater reliance on incipiency theories in antitrust doctrine or the concept of “special responsibility” of dominant firms that is used in the EU). Instead, a market power screen of some sort would be used to identify a position of “structural dominance” that provides the basis for antitrust intervention. In effect, these critics seem to be saying, the law should give less deference to efficiency and should focus more on rivalry.

The normative idea is that society is better off when more than one platform, and/or related upstream and downstream businesses, operate in a market. When this condition is not met, the concentrated structure of the platform market creates anticompetitive conflicts of interests and perverse behavioral incentives, such as discrimination and leveraging (Khan 2017). The promotion of inter- and intra-platform rivalry would require the imposition of positive obligations—e.g., must-carry requirements, mandatory API sharing, data portability measures—on platformbased firms. It might also require heightened M&A restrictions and possible divestitures that are aimed at eliminating structural dominance.

A no-fault antitrust law would almost certainly inflict static welfare losses on society. To start, breaking up platforms horizontally would likely reduce productive efficiencies, require replication of fixed costs not fully utilized and thereby increase average total costs, and reduce the benefits of network effects on the various sides of the platform. Moreover, when improperly executed—which is a non-trivial possibility—a platform break-up might give rise to negative network externalities, transaction costs, and excessive platform fragmentation.

To capture this intuition, we invite readers to travel back to the world of Internet search before 2000, when users searched web pages through multiple platforms and then had to compare search results. The upshot was lost time for users and costly campaigns for advertisers.

Breaking up vertically integrated companies or those providing complements could also reduce static efficiency.

Productive efficiency could be harmed by diseconomies of scope and lost spillovers. And allocative inefficiency might result from the increased potential for double marginalization, which would lead to increased prices and reduced output. Similar but perhaps less substantial welfare losses would result from conduct restrictions that limited the ability of platforms to take full advantage of whatever efficiencies are created by their size and scope.

A no-fault antitrust law would also have dynamic costs: By reducing the rewards to “skill, foresight and industry”, as the court put it in Alcoa, the law would reduce the incentives for and thus the likely investment in such productive endeavors. And by offering the prospect of antitrust intervention to assist rivals and complementors, no-fault antitrust law could reduce their incentives to innovate and otherwise compete vigorously in order to flourish without such aid. Such a law would also require on-going industry monitoring. If, for example, there are strong network effects in a market, there are likely to be recurring monopolies as markets tip to one rival or another.

On the other hand, no-fault antitrust law could promote economic welfare by reducing the deadweight loss that results from enduring market power and by facilitating the entry of rivals and complementors and thus inducing investment in such rivals. Whether no-fault antitrust law would on balance increase or decrease welfare is an empirical question, and the answer might differ depending on the industry or even the specific company. In the platform world, for example, Amazon seems to have large fixed costs (for example, those related to its fulfillment infrastructure), while platforms such as Facebook and Google have relatively lower fixed costs and higher variable costs (for example, those that are related to labor-intensive content moderation); but the latter probably provide greater network efficiencies.

U.S. antitrust law takes a clear stand on this issue: No antitrust violation is found, and no antitrust remedy is warranted, unless the defendant has engaged in anticompetitive conduct: conduct that does not increase efficiency but does tend to increase market power by coordinating the conduct of competitors or weakening or excluding competitors. The stand seems to reflect both a normative judgment—if you play by the rules, you can enjoy the fruits of success—and a crude empirical judgment that the welfare costs of no-fault intervention exceed the benefits as a general matter and trying to carve out the exceptional case would be too difficult or costly.

The CW standard does not require antitrust law to be based on either that normative judgment or that empirical judgment. Certainly, those have not been the premises of EU competition law, at least until recently. Several leading EU cases declared that dominant firms are under a “special responsibility” that was often understood, for example, to imply access and nondiscrimination obligations. Even today, EU competition law guidelines make clear that stricter standards apply where inaction would leave only a single firm in the relevant market. The idea is that preserving access by outsiders, small firms, and less efficient upstarts, and ensuring that some competitors remain in the market, would promote welfare over the long run (Fox 2008a, b).

The EU seems to be moving away from this kind of no-fault competition law, not because the CW standard compels such a move but for other, more pragmatic reasons that arise from the difficulty of determining when and how to intervene in a nofault system. How should the law define threshold levels of platform monopoly that warrant antitrust intervention? How should it account for the welfare costs of intervention? Are some markets or firms too valuable or too innovative for government intervention, even if concentrated or powerful? Are some remedies too disruptive and costly? The CW critics that sympathize with a migration of antitrust towards a no-fault approach have not addressed these questions. Absent satisfactory answers to them, no-fault antitrust—or anything close to it—would likely be a recipe for arbitrary and welfare-reducing government regulation.

There is another problem with no-fault antitrust law that suggests that it would have—at best—an uneasy relationship with U.S. antitrust law, although the unease has little to do with the CW standard itself: U.S. antitrust law proscribes certain kinds of conduct and otherwise leaves parties free to compete in the marketplace. In effect, it punishes and seeks to deter what it regards as bad conduct. If one imagines a continuum with proscriptive law enforcement at one end and prescriptive regulation on the other, antitrust law is on the law enforcement side. The law enforcement approach reflects both a normative judgment about the limited role of the State and specific, antitrust judgments: that competition is better than regulation; that markets (policed by rules of fair play) know better than central planners; and that proscriptive rules promote business compliance, legal certainty, and economic activity. If antitrust intervention is based on market conditions rather than specific bad conduct, it becomes a kind of regulation and to that extent departs from a core premise of U.S. antitrust law.

### 1NC---Rulemaking

#### Rulemaking fails:

#### Uncertainty over the scope and extent of deference.

Alexander Paul Okuliar et al. 21. Morrison & Foerster LLP. "FTC Lays Groundwork For Rulemakings: Are New Substantive Competition Rules Coming?". No Publication. 3-25-2021. https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1067906/ftc-lays-groundwork-for-rulemakings-are-new-substantive-competition-rules-coming

The FTC's foray into rulemaking could lead to a period of uncertainty and legal challenges in those areas touched by a new agency rule. There is likely to be significant debate over the scope of the FTC's authority, the particulars of the rulemaking process, the substance of any proposed rules, and, when tested in court, the extent of Chevron deference to which the agency is entitled. Substantive FTC competition rules could also create potential divergence in enforcement policy or activity between the DOJ and FTC brought about by the new rules.

### 1NC---AT: Slow Growth

#### No slow growth impact---it induces restraint.

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Conclusion Political economy theory would lead us to expect rising trade protection during hard times. Yet empirical evidence on this count has been mixed. Some studies find a correlation between poor macroeconomic conditions and protection, but the worst recession since the Great Depression has generated surprisingly moderate levels of protection. We explain this apparent contradiction. Our statistical findings show that under conditions of pervasive economic crisis at the international level, states exercise more restraint than they would when facing crisis alone. These results throw light on behavior not only during the crisis, but throughout the WTO period, from 1995 to the present. One concern may be that the restraint we observe during widespread crises is actually the result of a decrease in aggregate demand and that domestic pressure for import relief is lessened by the decline of world trade. By controlling for product-level imports, we show that the restraint on remedy use is not a byproduct of declining imports. We also take into account the ability of some countries to manipulate their currency and demonstrate that the relationship between crisis and trade protection holds independent of exchange rate policies. Government decisions to impose costs on their trade partners by taking advantage of their legal right to use flexibility measures are driven not only by the domestic situation but also by circumstances abroad. This can give rise to an individual incentive for strategic self-restraint toward trade partners in similar economic trouble. Under conditions of widespread crisis, government leaders fear the repercussions that their own use of trade protection may have on the behavior of trade partners at a time when they cannot afford the economic cost of a trade war. Institutions provide monitoring and a venue for leader interaction that facilitates coordination among states. Here the key function is to reinforce expectations that any move to protect industries will trigger similar moves in other countries. Such coordination often draws on shared historical analogies, such as the Smoot–Hawley lesson, which form a focal point to shape beliefs about appropriate state behavior. Much of the literature has focused on the more visible action of legal enforcement through dispute settlement, but this only captures part of the story. Our research suggests that tools of informal governance such as leader pledges, guidance from the Director General, trade policy reviews, and plenary meetings play a real role within the trade regime. In the absence of sufficiently stringent rules over flexibility measures, compliance alone is insufficient during a global economic crisis. These circumstances trigger informal mechanisms that complement legal rules to support cooperation. During widespread crisis, legal enforcement would be inadequate, and informal governance helps to bolster the system. Informal coordination is by nature difficult to observe, and we are unable to directly measure this process. Instead, we examine the variation in responses across crises of varying severity, within the context of the same formal setting of the WTO. Yet by focusing on discretionary tools of protection—trade remedies and tariff hikes within the bound rate—we can offer conclusions about how systemic crises shape country restraint independent of formal institutional constraints. Insofar as institutions are generating such restraint, we offer that it is by facilitating informal coordination, since all these instruments of trade protection fall within the letter of the law. Future research should explore trade policy at the micro level to identify which pathway is the most important for coordination. Research at a more macro-historical scope could compare how countries respond to crises under fundamentally different institutional contexts. In sum, the determinants of protection include economic downturns not only at home but also abroad. Rather than reinforcing pressure for protection, pervasive crisis in the global economy is shown to generate countervailing pressure for restraint in response to domestic crisis. In some cases, hard times bring more, not less, international cooperation.

### 1NC---AT: Digital Authoritarianism

#### Plan doesn’t solve digital authoritarianism.

Casey Newton 18, Silicon Valley Editor, 11-1-2018, "Internet freedom continues to decline around the world, a new report says," Verge, https://www.theverge.com/2018/11/1/18050394/internet-freedom-report-2018-freedom-house-chertoff

Digital authoritarianism is on the rise, according to a new report from a group that monitors internet freedoms. Freedom House, a pro-democracy think tank, said today that governments are seeking more control over users’ data while also using laws nominally intended to address “fake news” to suppress dissent. It marked the eighth consecutive year that Freedom House found a decline in online freedoms around the world. “The clear emergent theme in this report is the growing recognition that the internet, once seen as a liberating technology, is increasingly being used to disrupt democracies as opposed to destabilizing dictatorships,” said Mike Abramowitz, president of Freedom House, in a call with reporters. “Propaganda and disinformation are increasingly poisoning the digital sphere, and authoritarians and populists are using the fight against fake news as a pretext to jail prominent journalists and social media critics, often through laws that criminalize the spread of false information.” In the United States, internet freedom declined in 2018 due to the Federal Communications Commission’s repeal of net neutrality rules. Other countries fared much worse — 17 out of 65 surveyed had adopted laws restricting online media. Of those, 13 prosecuted citizens for allegedly spreading false information. And more countries are accepting training and technology from China, which Freedom House describes as an effort to export a system of censorship and surveillance around the world. “PROPAGANDA AND DISINFORMATION ARE INCREASINGLY POISONING THE DIGITAL SPHERE, AND AUTHORITARIANS AND POPULISTS ARE USING THE FIGHT AGAINST FAKE NEWS AS A PRETEXT TO JAIL PROMINENT JOURNALISTS.” Of course, there are tradeoffs between freedom and security. The report is critical of Sri Lanka and India, which have periodically shut down or limited access to the internet in response to the outbreak of ethnic and religious conflict.

In both cases, citizens were being murdered by mobs that had encountered misinformation spread through social media. “Cutting off internet service is a draconian response, particularly at a time when citizens may need it the most, whether to dispel rumors, check in with loved ones, or avoid dangerous areas,” said Adrian Shahbaz, research director for technology and democracy. “While deliberately falsified content is a genuine problem, some governments are increasingly using ‘fake news’ as a pretense to consolidate their control over information and suppress dissent.” The report also found: Governments in 18 countries increased state surveillance between June 2017 and now, with 15 considering new “data protection” laws, which can require companies to store user data locally and potentially make it easier for governments to access. Governments in 32 countries used paid commentators, bots, and trolls in an effort to manipulate online conversations. WhatsApp and other closed messaging apps are becoming more popular targets for manipulation, the authors write.

## Dependency Trap

### 1NC---AT: Krauspof/Buthelezi & Hodge

#### Internet access outweighs the aff

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In developing countries, reducing market concentration, whether in the old economy or new digital economy is directly linked to economic inclusion.41 This applies to individual, firm and national inclusion. In a developing country context, poor households lacking Internet access may be excluded from the benefits of a digital world and local firms may lack the skills and finance to compete in the digital markets and create back-end jobs domestically. In South Africa this would limit the ability of SMEs and firms owned by historically disadvantaged persons to participate in the economy.

One of the ways to foster inclusion in South Africa is universal access to broadband. While mobile broadband coverage may be pervasive in a country like South Africa, there is a demand gap as low-income individuals are unable to afford devices and data costs to access digital services. This lack of access is highly problematic as economic, social and political life shifts online, threatening to exclude even those currently included. For instance, many job or university applications are made online. Participation in democracy requires accessing the political debates, which have increasingly shifted from print to online media. There is thus a real threat of not just economic exclusion, but also exclusion from full participation in society.

Responding to these challenges requires a domestic focus on the development of broadband infrastructure and a reduction in data costs. South Africa has a highly concentrated mobile sector and the CCSA’s completed market inquiry covered this and the high data costs.42 Unfortunately, even if data costs are reduced, it is apparent that there will always be those who are too poor to participate extensively in the digital age if private paid access is the only means of access. Therefore, part of the recommendations in the data market inquiry is the development of free public Wi-Fi in lower-income areas to ensure greater inclusion. However, as free WiFi is not something that can easily be provided, given the inevitable budget constraints of national and local governments in developing economies, a range of funding models are being explored.

### 1NC---AT: Inequality Collapses LIO

### 1NC---Impact D

#### Liberal order resilient---institutional factors matter more than individuals---all states have a vested economic interest in the squo.

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But the existing order is more resilient than this assessment suggests. There is no doubt that Trump represents a meaningful threat to the health of both American democracy and the international system. And there is a nonnegligible risk that he could drag the country into a constitutional crisis, or the world into a crippling trade war or even an all-out nuclear war. Yet despite these risks, rumors of the international order’s demise have been greatly exaggerated. The system is built to last through significant shifts in global politics and economics and strong enough to survive a term of President Trump. This more optimistic view is offered not as comfort but as a call to action. The present moment demands resolve and affirmative thinking from the foreign policy community about how to sustain and reinforce the international order, not just lamentations about Trump's destructiveness or resignation about the order's fate. No one knows for certain how things will turn out. But fatalism will become a self-fulfilling prophecy. The order can endure only if its defenders step up. It may be durable, but it also needs an update to account for new realities and new challenges. Between fatalism and complacency lies urgency. Champions of the order must start working now to protect its key elements, to build a new consensus at home and abroad about needed adjustments, and to set the stage for a better approach, before it's too late. A RESILIENT ORDER In a world where the major trends seem to spell chaos, it is fair to place the burden of proof on those who claim that the current order can continue. Yet well before Trump, it had already demonstrated its capacity to adapt to changes in the nature and distribution of power. Three basic factors account for such resilience-and demonstrate why the emphasis now should be on protecting and improving the order rather than planning for the aftermath of its demise. First, most of the world remains invested in major aspects of the order and still counts on the United States to operate at its center. The passing of U.S. dominance need not mean the end of U.S. leadership. That is, the United States may not be able to direct outcomes from a position of preeminent economic, political, and military influence, but it can still mobilize cooperation on shared challenges and shape consensus on key rules. In the years ahead, although Washington will not be the only destination for countries seeking capital, resources, or influence, it will remain the most important agenda-setter. Some context is important. The U.S.- led order was built at a unique moment, at the end of World War II. Europe's and Asia's erstwhile great powers were reduced to rubble, and a combination of dominance abroad and shared economic prosperity at home allowed the United States to serve as the architect and guarantor of a new order fashioned in its own image. It had not just the material power to shape rules and drive outcomes but also a model many other countries wanted to emulate. It used the opportunity to build an order that benefited itself as well as others, with clear advantages for populations at home and abroad. As the international relations scholar G. John Ikenberry has put it in this magazine, the resulting system was "hard to overturn and easy to join.' The end of the Cold War and the fall of the Soviet Union served to reinforce and extend American preeminence. This precise state of affairs was never going to last forever. Other powers would eventually rise, and the basic bargain would one day need to be revisited. That day has arrived, and the question now is, do other countries want a fundamentally different bargain or simply some adjustments? A comprehensive 2016 RND analysis found that few powers display an appetite for dismantling the international order or transforming it into something unrecognizable. And while Trump's election has forced countries to contemplate a world without a central role for the United States, many still view the president as an aberration and not a new American normal, especially given that the United States has bounced back before. Even China has concluded that it largely benefits from the order's continued operation. Around the time of Trump's inauguration, breathless reports interpreted Chinese President Xi Jinping's comments on an open international economy and climate change as indicators that China planned to somehow take over for the United States. But what Xi was really signaling was that China does not want near-term radical change in the global system, even as it seeks to gain more influence by taking advantage of the vacuum left by Trump. And to the extent that Beijing has set out to construct its own parallel institutions, particularly when it comes to trade and investment, thus far these institutions largely supplement the existing order rather than threatening to supplant it. Other emerging powers chafe at certain features of the order, and some seek a more prominent place in institutions such as the UN Security Council. Yet rhetorical flourishes aside, they, like China, talk in terms of reform rather than replacement—and their continued participation sends a similar message. For example, leaders of the major emerging powers eagerly accepted U.S. President Barack Obama's invitation to join the first Nuclear Security Summit, in 2010; less eagerly but still willingly, they joined the global sanctions regime against Iran's nuclear program. Richard Fontaine and Daniel Kliman of the Center for a New American Security quote a Brazilian official who captured a broader sentiment among emerging powers: "Brazil wants to expand its room in the house, not tear the house down." And indeed, Brazil has taken on a leading role in defending important aspects of the order, such as the multistakeholder system for Internet governance. Emerging powers' quest for a greater voice in regional and global institutions is not a repudiation of the order but evidence that they see increasing their participation as preferable

to going a different way. FROM DOMINANCE TO LEADERSHIP The second factor accounting for the order's resilience is that the United States has managed the transition from dominance to leadership more effectively than most appreciate. Over the past decade, U.S. diplomacy has facilitated a shift from formal, legal, top-down institutions to more practical, functional, and regional approaches to managing transnational issues-"coalitions of the willing" (in the real, non-Iraq-war sense of the term). This shift has not only expanded the prospects for shared problem solving; it has also made the rules-based order less rigid, and therefore more lasting. Consider climate change. Formal legal structures, such as the Kyoto Protocol, which failed largely because the United States refused to participate and emerging powers were exempt, have given way to less formal structures, such as the Paris climate accord. Unlike Kyoto, Paris achieved broadbased participation because its substantive commitments are voluntary and states have flexibility in how to meet them. It can survive a temporary U.S. withdrawal because other countries had already factored their targets into their national energy plans and because the United States can meet or exceed its own targets even without the help of Washington (points Brian Deese, a former climate adviser to Obama, has made in this magazine). On nuclear proliferation, formal Nuclear Nonproliferation Treaty review conferences have not advanced the ball on new legal norms. But during the negotiations that led to the Iran nuclear deal, the P5+1 (the five permanent members of the UN Security Council plus Germany) joined together to develop a rules-based plan to address a major global proliferation problem. The resulting agreement, the Joint Comprehensive Plan of Action, involved practical commitments from the negotiating parties but also incorporated key international institutions-the International Atomic Energy Agency and the Security Council-for oversight and enforcement. And although Trump may eventually withdraw from the agreement, the broad participation and buy-in that it achieved, and the fact that it is working as intended, have thus far constrained him from doing so, despite his claim that it is "the worst deal ever." On trade and economics, although universal rule-making in the World Trade Organization has stalled, "plurilateral" and regional initiatives of various shapes and sizes have proliferated, from the East African Community to Latin America's Pacific Alliance. The United States is not party to some of these platforms, but it has helped promote them with technical and diplomatic support. Viewed from this perspective, Beijing's establishment of the Asian Infrastructure Investment Bank is largely in line with the "variable geometry" that the United States has encouraged. (Washington erred in resisting the AIU3 rather than working to shape its standards.) And on global health, the World Health Organization has recognized the need for more flexible arrangements to deal with major health crises, including publicprivate partnerships, such as the Global Fund to Fight AIDS, Tuberculosis and Malaria and Gavi, the Vaccine Alliance. Meanwhile, various emerging regional and subregional arrangements are playing larger roles in local problem solving. One could add other examples to the list, but the point is this: the overall trend toward practicality and flexibility, encouraged by the United States, has generated more resilience in the rules-based order. For one thing, more practical and flexible approaches are better suited to handle the diffuse and complex nature of transnational challenges today. For another, the rest of the world can continue to participate even when the United States pulls back. The new structures are designed to extract greater participation and contributions from a greater number of actors in a greater number of places-even when the most important of those actors temporarily relinquishes its leadership role. There is a concern about whether this trend will water down rules. But the record so far suggests this is not the case. For example, the 11 nations currently pursuing the Trans-Pacific Partnership without U.S. participation might produce a trade agreement with weaker labor or environmental provisions than those in the U.S.-brokered version, which the Trump administration withdrew from last year. But those provisions would still represent an improvement over existing rules, and a new baseline against which future rules would be measured. Nor is this broader trend mutually exclusive with action in the UN system. The rise of informal mechanisms of cooperation has not detracted from basic global standardsetting on issues such as civil aviation. To the contrary, the informal and the formal can be mutually reinforcing. Progress conceived in smaller formats outside the UN system can help catalyze universal action. BINDING TRUMP Finally, although Trump has created a temporary vacuum of global leadership and keeps raising questions about his basic fitness for office, he has thus far been unable to do the level of systemic damage in foreign affairs that he threatened on the campaign trail. He has again, thus far-been constrained by Congress, by his own national security team, and by reality. Consider the U.S. alliance system, a central feature of the U.S.-led order. Trump continues to deride U.S. allies as free riders. But Washington's policy toward its alliances in both Europe and Asia has been marked more by continuity than change. Trump's advisers have helped ensure that, as have outside advocacy and congressional oversight. And European leaders have sought to sustain the alliance, despite their misgivings about Trump, by working around him. Similarly, whatever the administration's desire to ease pressure on Russia for violations of Ukraine's territorial integrity-a foundational norm of the rules-based order-Congress overwhelmingly approved new sanctions, tying Trump's hands. (The administration subsequently surprised most observers by announcing that it would provide lethal assistance to Ukraine, a move pushed by top members of Trump's national security team.) Perhaps most important, Trump has found that whatever his contempt for the rules-based order, he needs it. Here he follows a line of American politicians who have chafed at perceived limits on U.S. freedom of action but ultimately recognized that the order protects and advances U.S. interests. To counter North Korea, he needs both strong Asian alliances and a working relationship with Beijing (contrary to everything he said during the campaign). To defeat the Islamic State (also known as isis), he needs the allies and partners that made up the coalition, built during the Obama administration, that helped eject isis from Mosul and Raqqa. Trump has therefore been forced to embrace elements of the order he would rather dismiss. Trump's own lack of focus has helped. The international relations expert Thomas Wright is correct to warn that "since World War II, the foreign policy of every administration has been defined by the character and opinions of its president," not anybody else. And Trump's worst impulses may yet win out, with disastrous consequences. But unlike his predecessors, Trump has displayed relatively little interest in translating his impulses into consistent policy actions. That can potentially allow the system around him, including voices outside government, to play a more powerful constraining role than usual.

## Systemic Risk

### 1NC---AT: Dartmouth Cyber Security Advantage

#### Big tech fixing cybersecurity now---only the have the power to do it.

Ingrid Chung 21. Summer editorial intern at National Review. "Big Tech Is Doing the Right Thing on Cybersecurity". National Review. 8-30-2021. https://www.nationalreview.com/corner/big-tech-is-doing-the-right-thing-on-cybersecurity/

President Joe Biden recently met with Big Tech executives to discuss how to improve cybersecurity after recent cyberattacks in which government software contractor Solarwinds and oil pipeline Colonial Pipeline were targeted. Leading tech corporations, including IBM, Google, and Amazon, will all try to improve cybersecurity by investing in the training of personnel in this field and upgrading their respective encryption and security systems. Microsoft has also committed to investing $150 million in upgrades for cybersecurity systems of government agencies. Big Tech may not always do the right thing, but these plans to enhance cybersecurity are certainly something that we can all stand behind.

In recent years, as the Internet has become increasingly influential and indispensable, cybersecurity has, correspondingly, become an increasingly prominent threat to not only citizens’ privacy but also to national security. Former national-security adviser John Bolton explained the significance of cybersecurity to national defense in a recent National Review article, in which he characterized threats from cyberspace as “a multiplicity of hidden, ever-changing threats.” A recent report by the Heritage Foundation raised concern over espionage, trading of secrets, and the disruption of military commands and communication potentially being conducted in the cyber domain.

The effective regulation of cyberspace, a relatively new front for modern warfare characterized by its elusiveness and lack of boundaries, is sometimes challenging. Laxness in cybersecurity, however, has often led to catastrophic consequences. For instance, the WannaCry Ransomware Cyber Attack in 2017, in which files in affected computer systems were locked until ransom was paid for their decryption, affected approximately 200,000 computers in 150 countries and led to enormous financial costs. Victims of the cyber-extortion scheme included entities from government agencies such as the English National Health Service to major international corporates such as Boeing.

It is well established that both the state and leading tech corporations have a legitimate interest in enhancing cybersecurity. The government is responsible for engaging in national defense in the cyber domain and tech corporations are obligated to protect the privacy of their users, whose personal information is often entrusted to them.

Big Tech’s plans to cooperate with the government to improve cybersecurity through financial investments appears to be promising.

While it may be difficult to predict the effectiveness of such investments, the fact that Big Tech and the government are placing the enhancement of cybersecurity close to the top of their agenda and are committing to coordinated efforts is good news. Big Tech, with its financial prowess derived from the sheer size of the industry, and a unique relationship with the use of cyberspace, is uniquely positioned to materially contribute to state-led efforts to secure cyberspace. Furthermore, investing in education on cybersecurity of employees may also be useful in raising awareness and amplifying the industry’s collective concern over capacity to combat cyberattacks in the long ru

### 1NC---AT: Weiss

#### EMP’s zero the case---they obvi don’t solve it---we are blue

Weiss ’19 [Matthew and Martin; May 29; National Sales Director at United Medical Instruments, UMI and Research assistant at the American Jewish University; Neurosurgeon at UCLA-Olive View Medical Center; Energy, Sustainability, and Society, “An assessment of threats to the American power grid,” vol. 9]

Consequences of a sustained power outage

The EMP Commission states “Should significant parts of the electrical power infrastructure be lost for any substantial period of time, the Commission believes that the consequences are likely to be catastrophic, and many people will die for the lack of the basic elements necessary to sustain life in dense urban and suburban communities.” [67].

Space constraints preclude discussion on how the loss of the grid would render synthesis and distribution of oil and gas inoperative. Telecommunications would collapse, as would finance and banking. Virtually all technology, infrastructure, and services require electricity.

An EMP attack that collapses the electric power grid will collapse the water infrastructure—the delivery and purification of water and the removal and treatment of wastewater and sewage. Outbreaks that would result from the failure of these systems include cholera. It is problematic if fuel will be available to boil water. Lack of water will cause death in 3 to 4 days [68].

Food production would also collapse. Crops and livestock require water delivered by electronically powered pumps. Tractors, harvesters, and other farm equipment run on petroleum products supplied by an infrastructure (pumps, pipelines) that require electricity. The plants that make fertilizer, insecticides, and feed also require electricity. Gas pumps that fuel the trucks that distribute food require electricity. Food processing requires electricity.

In 1900, nearly 40% of the population lived on farms. That percentage is now less than 2% [69]. It is through technology that 2% of the population can feed the other 98% [68]. The acreage under cultivation today is only 6% more than in 1900, yet productivity has increased 50 fold [69].

As stated by Dr. Lowell L Wood in Congressional testimony:

“If we were no longer able to fuel our agricultural machine in the country, the food production of the country would simply stop, because we do not have the horses and mules that used to tow agricultural gear around in the 1880s and 1890s”. “So the situation would be exceedingly adverse if both electricity and the fuel that electricity moves around the country……… stayed away for a substantial period of time, we would miss the harvest, and we would starve the following winter” [70].

People can live for 1–2 months without food, but after 5 days, they have difficulty thinking and at 2 weeks they are incapacitated [68]. There is typically a 30-day perishable food supply at regional warehouses but most would be destroyed with the loss of refrigeration [69]. The EMP Commission has suggested food be stockpiled for a possible EMP event.

A prescription for failure

Even if all the recommendations of the Congressional EMP Commission were implemented, there is no guarantee that the grid will not sustain a prolonged collapse. There should therefore be contingency plans for such a failure.

There is also another consideration. The foundational pillars of prior American nuclear defense policy, in today’s climate, are of uncertain validity. Mutual assured destruction is the Maginot line of the 21st century. Nonproliferation will prove difficult to resurrect.

The consequences of a widespread nuclear attack have been positioned to the public as massive deaths from blast effects, and then further lingering deaths from the effects of radiation. We suspect there will be no electricity, and there will be no electricity for a very long time.

There should be an actionable plan in anticipation of a possible prolonged collapse of the grid—a retro-structure and a skill set to provide a framework for survival. Our sense is there is no plan.

### AT: Grid

#### The grid is resilient to cyber-attacks and states have no motive.

Jesse Dunietz and Robert M. Lee 17. \*\*Scientific American's 2017 AAAS Mass Media fellow, and a Ph.D. candidate in computer science at Carnegie Mellon University. \*\*CEO of industrial cybersecurity firm Dragos. “Is the Power Grid Getting More Vulnerable to Cyber Attacks?” Scientific American. <https://www.scientificamerican.com/article/is-the-power-grid-getting-more-vulnerable-to-cyber-attacks/>

Two weeks ago it was cyberattacks on the Irish power grid. Last month it was a digital assault on U.S. energy companies, including a nuclear power plant. Back in December a Russian hack of a Vermont utility was all over the news. From the media buzz, one might conclude that power grid infrastructure is teetering on the brink of a hacker-induced meltdown. The real story is more nuanced, however. Scientific American spoke with grid cybersecurity expert Robert M. Lee, CEO of industrial cybersecurity firm Dragos, Inc., to sort out fact from hype. Dragos, which aims to protect critical infrastructure from cyberattacks, recently raised $10 million from investors to further its mission. Before he founded the company, Lee worked for the U.S. government analyzing and defending against cyberattacks on infrastructure. For a portion of his military career, he also worked on the government’s offensive front. His work has given him a front-row view on both sides of infrastructure cybersecurity. [An edited transcript of the interview follows.] How concerned should we be about grid and infrastructure cybersecurity, and what should we be most worried about? The electric grid and most infrastructure we have is actually fairly well built for reliability

and safety. We’ve had a strong safety culture in industrial engineering for decades. That safety and reliability has never been thought of from a cybersecurity perspective, but it has afforded us a very defensible environment. As an example: if a portion of the U.S. power grid goes down. We usually anticipate those things for hurricanes or winter-weather storms. And we’re good at moving away from the computers and doing manual operations, just working the infrastructure to get it back. Usually it’s hours, maybe days; never more than a week or so. A lot of these cyberattacks deal with the computer technology and the interconnected nature of the infrastructure. And so when they target it in that way, you’re talking hours, maybe a day, at most a week of disruption. For reasonable scenarios, we’re not talking about a long time of outages, and we’re not talking about compromising safety. Now, the scary side of it is [twofold]. One, our adversaries are getting much more aggressive. They’re learning a lot about our industrial systems, not just from a computer technology standpoint but from an industrial engineering standpoint, thinking about how to disrupt or maybe even destroy equipment. That’s where you start reaching some particularly alarming scenarios. The second thing is, a lot of that ability to return to manual operation, the rugged nature of our infrastructure—a lot of that’s changing. Because of business reasons, because of lack of people to man the jobs, we’re starting to see more and more computer-based systems. We’re starting to see more common operating platforms. And this facilitates a scale for adversaries that they couldn’t previously get. When you say our adversaries are getting more aggressive, what are you referring to? The key events are things like the Ukraine attack in 2015–2016, [in which a cyberattack brought down portions of the Ukrainian power grid], as well as two different campaigns in 2013–2014, BlackEnergy2 and Havex, [two malware programs that were deployed against energy sector companies]. Basically, far-reaching espionage on industrial facilities one year; the next year getting into industrial environments; and then culmination in attacks in 2015–2016. That’s aggressive in itself. For my own firm, what we’re seeing in the [overall] activity in the space is it’s growing. Over the last decade, I have seen adversary activity increase in some measure, and then around 2013–2014 just start spiking. What are the adversaries actually doing in these attacks? [There are two broad categories of attacks.] Stage I intrusions are those designed to gain information. These are the traditional espionage efforts we’ve become accustomed to hearing about, where information is stolen or deleted. A Stage II attack could result in temporary loss of power, physical damage to equipment, or other types of scenarios we often hear about. It is important to note these are not trivial to accomplish. If an attacker wants to progress to a Stage II attack, during the Stage I intrusion they have to steal information specific to [that] industrial environment. The 2013–2014 campaigns that I mentioned were exactly the kinds of Stage I activity that you’d want to use to pivot into a Stage II activity. And so they scared the heck out of all of us. But the stuff we’ve heard about recently—the nuclear site and about a dozen energy companies that were compromised in a phishing campaign that made the news—none of that sounded tailored toward pivoting into a Stage II. Once an adversary has broken into the “business networks” used for email, documents and so on, how far a jump is it for them to access the industrial control system (ICS) networks used to control and monitor the industrial equipment? In nuclear environments, [business networks and control networks are] airgapped—[i.e., computers on one network cannot talk to those on the other]—because of safety regulations. The idea that because you got into the business network you can easily move into the ICS network is ridiculous. That is not true with other industrial infrastructures—electric energy, oil and gas, manufacturing, etc. You absolutely have [ICS] networks that are connected up. The nuance here is that we have a joke in the community: you’ll get security folks who don’t know much about ICS coming in with penetration testers and saying, “Oh my gosh, I found so many vulnerabilities!” And so the joke is, why don’t I just sit you down at the terminal? I will give you 100 percent access. Now make the lights blink. There’s a big gap there. [So the challenge is] not so much getting access. It’s once you get access, do you know what to do in a way that’s not just going to be embarrassing? What motivation do these adversaries have to attack the U.S. grid? I do not feel that there is a legitimate reason for adversaries to disrupt or destroy industrial infrastructure outside of a conflict scenario. Ukraine and Russia is a great example. I don’t necessarily mean declared war, but in places where we see conflict, I think we’ll see industrial attacks: North Korea-South Korea, China-Taiwan. But there are some scenarios that concern me, where we might have our hands forced and not have clarity around what happened. I’m aware of at least one case where a skilled adversary broke into an industrial environment, and in the course of intelligence operations they accidentally knocked over some sensitive system that led to visible destruction and almost to multiple casualties. And the worst part is, we didn’t actually realize it was a failed operation until about a month after, because the forensics and analysis take time. So you could have a scenario where the U.S., Russia, China, Iran—big players—are doing intelligence operations on each other, are doing pre-positioning to have deterrence or political leverage, and mess up that operation in a way that looks like an attack that we do not have transparency on for some time. We do not have international norms around how to handle that. Outside of conflict scenarios, though, I don’t see the advantage to [deliberate] disruptive or destructive attacks. I think we haven’t seen it not because they haven’t wanted to, but because the return on investment is minimal. What’s really advantageous is sitting U.S. congressmen and policymakers fearing what can happen with industrial infrastructure. That fear drives policy far more than actually turning the lights off and having them realize [they will] come back on in six hours.

# Block

## CP

### AT: PDB---2NC

#### Perm do both.

#### 1. It links to the net benefit. The CP does not “expand the scope of core antitrust laws” and pics out of the FTC and DOJ as enforcers.

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

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

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

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

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

### AT: PDCP---2NC

#### Perm do the CP. It’s severance:

#### 1. Enforcement: antitrust requires the FTC and DOJ as enforcers---regulations are distinct legal mechanisms to restrain anticompetitive effects---that’s Fullerton.

#### 2. Antitrust laws are enforced by the DOJ and FTC.

DOJ and FTC 16. Antitrust Guidance for Human Resource Professionals Department of Justice Antitrust Division Federal Trade Commission. https://www.justice.gov/atr/file/903511/download

This document is intended to alert human resource (HR) professionals and others involved in hiring and compensation decisions to potential violations of the antitrust laws. The Department of Justice Antitrust Division (DOJ or Division) and Federal Trade Commission (FTC) (collectively, the federal antitrust agencies) jointly enforce the U.S. antitrust laws, which apply to competition among firms to hire employees. An agreement among competing employers to limit or fix the terms of employment for potential hires may violate the antitrust laws if the agreement constrains individual firm decisionmaking with regard to wages, salaries, or benefits; terms of employment; or even job opportunities. HR professionals often are in the best position to ensure that their companies’ hiring practices comply with the antitrust laws. In particular, HR professionals can implement safeguards to prevent inappropriate discussions or agreements with other firms seeking to hire the same employees.

#### 3. DOJ and FTC.

DOJ. “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.

#### 4. They are 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.

#### 5. It is a jurisdictional question---antitrust authorities don’t intervene in regulatory concerns.

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>

As argued in this Article, the recent Comcast decision should not be dismissed as an inconvenient hurdle to be sidestepped by reclassification; rather it marks a pivotal invitation to Congress to redefine the boundaries between the FCC and antitrust authorities. In the long wake of assorted jurisdictional tugs of war between the two regimes, and amidst a legacy of accusations of regulatory capture and administrative overreach,29 the net neutrality debate accentuates historic preferences for antitrust versus regulation, a subject which should be revisited and squarely addressed. Before that can be done, however, the rules of the road—the issue of jurisdiction—must be clearly decided.

The analysis of the relevant jurisdiction is broken into two rival camps: (1) regulatory jurisdiction and (2) antitrust jurisdiction. The first camp, regulatory jurisdiction, the more complex of the two, is further divided into two subparts of particular concern (a) legacy-based regulation and (b) “satellite jurisdiction.” The first subpart of regulatory jurisdiction, legacy-based regulation, refers to the FCC’s congressionally designated core industry. The concern with legacy-based regulation is that the FCC will engage in procedural opportunism: that is, the agency may exploit the service classification process to extend its own regulatory authority.

#### Defining antitrust via an agency is key:

#### 1. Limits---infinite actions can be labelled anticompetitive---the only functional limit is that antitrust agencies must be involved. Forcing FTC key warrants is good to prevent an explosion of affs.

#### 2. Ground---“write it as a regs” topic was vetoed because it kills core tradeoff DAs. They are the only offense in the topic paper, especially because single sector affs are T.

#### 3. Predictability---our ev is from the most common federal sources.

### 2NC---Solvency

#### The counterplan just does the remedies of the aff---antitrust enforcement is too slow

Stigler Committee on Digital Platforms 19. The Steigler Committee is an independent committee of over 30 area experts and scholars tasked with creating a report on the regulation of digital platforms. What follows are the credentials of the report’s main organizers, but a full list of scholars and qualifications can be found at the link listed later in this cite. Luigi Zingales is the Robert C. McCormack Distinguished Service Professor of Entrepreneurship and Finance at the University of Chicago Booth School of Business. Guy Rolnik is a Clinical Associate Professor of Strategic Management at the University of Chicago Booth School of Business. Filippo Maria Lancieri is a fellow at the George J. Stigler Center for the Study of the Economy and the State. "Stigler Committee on Digital Platforms: Final Report." The University of Chicago Booth School of Business. 9-16-2019. https://www.chicagobooth.edu/research/stigler/news-and-media/committee-on-digital-platforms-final-report

However, because technology platforms present the enforcement challenges detailed above, even effective enforcement may not be enough to generate competitive digital markets in a timely fashion. Therefore, the report suggests that Congress should consider creating a specialist regulator, the Digital Authority. The regulator could be tasked with creating general conditions conducive to competition. The committee also suggests separating out some types of regulation that will apply to virtually all market participants while other regulation will apply only to companies with bottleneck power. “Bottleneck power” describes a situation where consumers primarily single-home and rely upon a single service provider, which makes obtaining access to those consumers for the relevant activity by other service providers prohibitively costly.

The Digital Authority could routinely collect data on digital transactions and interactions, with an emphasis on data from businesses with bottleneck power. These data – made public to the extent possible – would allow policy makers and researchers to assess the performance of the sector. The DA could have a mandate to create “light touch” behavioral nudges when they will make markets more competitive. An example of a regulation that would enhance competition is data portability. The DA could set up rules that allow users to easily port their data from one service provider to another and monitor compliance. The DA may also promote open standards in such areas as micro-payments and digital identities. Should Congress request it, the DA could oversee a mandate for interoperability in any market where market power has become entrenched and threatens long term harm to competition. The Report also suggests that the DA could carry out a parallel merger review that would be set up to incorporate necessary antitrust reforms and modern standards.

Some regulations could apply only to firms that meet the DA’s definition for bottleneck power. Because the cost of false negatives is high and there is uncertainty, the public interest requires the DA to take a more interventionist approach in these settings. The DA could have merger review authority over even the smallest transactions involving digital businesses with bottleneck power because nascent competition against these entities is very valuable for consumers. Non-discrimination rules could protect against a complement that is a potential competitor of the platform itself, or one that operates only on the platform as a rival provider of content.

When a company has been found liable for violating the antitrust laws, part of the current process is that antitrust authority devises a remedy to restore the lost competition. Data sharing, full protocol interoperability, non-discrimination requirements, and the unbundling of content from a platform are all tools that the regulator, in conjunction with the antitrust authority, could apply and monitor over time in order to restore competitive markets.

#### Independent remedy imposition worked in the past

Jeff Bercovici, 19. San Francisco bureau chief of Inc. Previously held senior editorial positions at Forbes, AOL, and Radar. "Why Breaking Up Big Tech Won't Fix the Real Problem With Silicon Valley," Inc. June 2019. https://www.inc.com/magazine/201906/jeff-bercovici/tech-regulation-break-up-big-companies-monopoly-facebook-amazon-elizabeth-warren.html

Across many popular product categories, from batteries to baby food, the retail behemoth quietly discon­tinued aggressive promotions for its private-label brands, which compete with--and in truth are often near-clones of--independent merchants' products. It was an uncharacteristic retreat for a company that generally loves nothing more than using every weapon in its substantial arsenal to annihilate its rivals. Call it the Elizabeth Warren effect. Amid growing public wariness of the biggest tech companies and their outsize role in our economy and public life, the Democratic presidential candidate is far from the only politician in her party demanding stiffer regulation. Even President Trump has blasted Amazon as a "no-tax monopoly," and his Federal Trade Commission is spinning up a tech task force "to ensure consumers benefit from free and fair competition." Still, it's Warren's proposal to break up Google, Apple, Amazon, and Facebook--on the grounds that "they have hurt small businesses and stifled innovation"--that has captured imaginations and newspaper headlines. In Mountain View and Menlo Park, they're suddenly sweating through their hoodies. Hence Amazon's about-face. "They're trying to get out in front of the issue and defuse any regulatory solution," says economist Hal Singer of Georgetown University and Economists Incorporated. To Singer, whose work has influenced policy proposals from senators including Mark Warner and Al Franken, it was a hopeful sign. Another came from Facebook CEO Mark Zuckerberg, who, after years of lobbying against government oversight, recently called for **legislators to establish ground rules for "harmful content"** so companies like his don't have to figure them out on their own. Concessions like these suggest **we can keep the digital giants from squelching competitors without resorting to extreme measures**. That's good, because there are plenty of reasons to be skeptical about the idea of breaking up big tech. For one thing, such **trustbusting doesn't address the real problem**: platform owners abusing their absolute dominion over what have become, for many, indispensable venues for doing business. "When you're dealing with natural monopolies, you have to take away their ability to exploit their control over a marketplace," says Barry Lynn of the Open Markets Institute. Splitting off Amazon's e-commerce operation from its cloud services division wouldn't do much to help merchants on the former who see themselves as victims of the company's self-dealing, or enterprise software startups on the latter who suspect Amazon is using their data to copy their products. Amazon controls 85 percent of U.S. e-commerce sales for the categories of arts and crafts/party supplies, and 83 percent of U.S. e-commerce sales for the category of household essentials. Preventing dominant incumbents from buying up newcomers--another favored fix--might create more competition, but it also might depress startup formation, since founders often see acquisition as their most reliable exit strategy. **Antitrust is full of** such **question marks**, and the academic literature underpinning the case for trust-busting is riddled with inconsistency, says Geoffrey Manne of the International Center for Law & Economics. "The evidence is weak," he says. "Noticing there's an increase in concentration and asserting it correlates with some outcome you're worried about doesn't mean there's a causal relationship." Even those who generally agree with Warren's diagnosis of the problem see her call for breakups as more rallying cry than policy prescription. "You have to get everything down to a bumper sticker," says Singer. This may focus minds on the matter, but it distracts from **competing remedies**--which are straightforward, historically validated, and politically plausible. One is **enforced nondiscrimination**. This is essentially a legal framework preventing platform owners like Google and Amazon from using their control to advantage their own interests, by, say, favoring their own offerings. The principle that a company whose network represents an essential public service has an obligation not to discriminate is a principle with deep roots in American law, dating back to the establishment of railroad and telegraph lines. "The only network monopolies we've not applied these rules to are the platform monopolies," says Lynn, "because they've spent a hell of a lot of money to ensure it wouldn't happen." (Lynn and his team were with the think tank New America until, he contends, Google, a major funder, pressured its leadership to cut ties with him. Google has denied this.) Indeed, the tech giants have already endorsed the principle of nondiscrimination. They've lobbied the FCC on behalf of so-called net neutrality rules that prevented internet service providers from offering faster connectivity to companies willing to pay more. Nondiscrimination has been a useful tool in regulating the cable television industry, and Amazon's willingness to back down on promoting its own goods at the expense of outside sellers suggests the tech giants can live--and continue to innovate--when that becomes the norm. "Yes, their profits will be lower than in a world where they're free to discriminate with impunity," says Singer, "but not materially lower." His idea: **federal legislation establishing a nonpartisan "net tribunal" that would adjudicate claims of digital self-dealing**. Breaking up big tech companies is the nuclear option: Possessing the option provides useful leverage. But if you're in a position that requires you to seriously consider using it, something has gone badly wrong. Why not try fixing what's broken before pushing the button?

### 2NC---Solvency---Certainty

#### The counterplan’s clear standards create certainty

Stigler Committee on Digital Platforms 19. The Steigler Committee is an independent committee of over 30 area experts and scholars tasked with creating a report on the regulation of digital platforms. What follows are the credentials of the report’s main organizers, but a full list of scholars and qualifications can be found at the link listed later in this cite. Luigi Zingales is the Robert C. McCormack Distinguished Service Professor of Entrepreneurship and Finance at the University of Chicago Booth School of Business. Guy Rolnik is a Clinical Associate Professor of Strategic Management at the University of Chicago Booth School of Business. Filippo Maria Lancieri is a fellow at the George J. Stigler Center for the Study of the Economy and the State. "Stigler Committee on Digital Platforms: Final Report." The University of Chicago Booth School of Business. 9-16-2019. https://www.chicagobooth.edu/research/stigler/news-and-media/committee-on-digital-platforms-final-report

1. The Digital Authority

To be effective, a proposed regulatory regime requires an enforcement body capable of carefully designing and enforcing the relevant regulations. We start therefore with a proposal for Congress to pass legislation creating a Digital Authority with the mandate to develop targeted regulation to achieve the goals described above and subsequently engage in monitoring and enforcement.

We anticipate that this regulator will also be tasked with non-competition digital goals, such as those in the areas of privacy, media, data-use restrictions, and consumer protection. While the antitrust agencies will employ structural interventions to protect competitive markets wherever possible, the focus of this regulator will be on both carrying out remedies for the antitrust authority that require ongoing oversight, and on developing regulations going forward that are a combination of structural safeguards, such as unbundling or separation, with limited behavioral interventions in areas where traditional antitrust tools are insufficient. Other jurisdictions that are assessing competition in digital platforms all propose some form of regulation.[[2]](#footnote-2) Having forward-looking regulations in place will increase business certainty about what conduct is permitted and how enforcement actions are likely to proceed. Ideally, this predictability and clarity will encourage companies to comply with the law, thus requiring fewer government resources for enforcement.

The DA legislation will require Congress to define the scope of regulatory power. The definition must include digital businesses that facilitate transactions of any kind (including the sale of advertising). It should have clear and broad authority over digital business models in order to prevent firms subject to regulation from evading its oversight.

## Dynamism

### 2NC---AT: Big Firms Less Innovative

#### Getting bought is key to venture capital

Herbert Hovenkamp et. al, 19. Hovenkamp is the James G. Dinan University Professor at the University of Pennsylvania Law School and the Wharton School of the University of Pennsylvania. Hemant Bhargava is an academic leader in economic modeling and analysis of technology-based business and markets. Also William Kovacic. "Why Breaking Up Big Tech Could Do More Harm Than Good," Knowledge@Wharton, University of Pennsylvania. 03-26-2019. https://knowledge.wharton.upenn.edu/article/why-breaking-up-big-tech-could-do-more-harm-than-good/

Warren’s Two-pronged Strategy

In her proposal to break up Big Tech, Warren has put forward two ways of curbing their market power. One is to mandate that companies with revenues of at least $25 billion and that offer an online marketplace or platform to the public would be designated as ‘platform utilities.’ As such, they can’t participate on the platform since they could give themselves an advantage. But this rule not only requires a new statute, it could be harmful to consumers, experts said. Imagine if Amazon could not sell its Amazon Basics-branded products on its own site. Take household batteries, which Amazon Basics sells for 10% to 50% less than branded rivals, Hovenkamp said. By banning Amazon Basics, consumers would pay higher prices for Duracell batteries, which is owned by Berkshire Hathaway, a behemoth. Or shoppers could buy Energizer, Rayovac and Eveready batteries, whose parent is a “very large battery company,” he said. Hovenkamp noted that name-brand batteries have markups in excess of 50% or 60%. Warren’s second idea is to appoint regulators who would reverse “illegal and anti-competitive” tech mergers such as Amazon’s deal with Whole Foods and Zappos, Facebook’s WhatsApp and Instagram purchase and Google’s Waze, Nest and DoubleClick acquisitions. The idea “has some real merit at a particular level,” Hovenkamp said. “A case is to be made that some of these independent firms that the large platforms have acquired could have developed into rivals.” “It is a long, long way … to put all of these measures in place.”–William Kovacic But Bhargava said restricting big tech companies from buying smaller startups can be harmful. For many startups, the initial, say, $100 million they get from venture capitalists is given with the expectation that they will be bought by a Google or Facebook. “For many of these firms, the only way out is to get acquired by these big tech companies,” he said. “**If you** somehow **tell them that is not going to happen, then they may never reach the point of developing that ambitious product.”**

## Dep Trap

#### skills financing

Thembalethu Buthelezi and James Hodge 21. Thembalethu Buthelezi is Principal Economist at the Economic Research Bureau of the Competition Commission of South Africa. James Hodge is Chief Economist at the Economic Research Bureau of the Competition Commission of South Africa. “Chapter IV: Competition Policy in the Digital Economy: the South African Perspective” in Competition and Consumer Protection Policies for Inclusive Development in the Digital Era. https://unctad.org/system/files/official-document/ditccplp2021d2\_en\_0.pdf

Developing domestic firms to compete in this space is another area for competition and even industrial policy. Online businesses can sell products globally without a physical presence in the countries they service. Such global reach and costless replication mean that the previous drivers of localized production are frequently left out. For instance, transport costs for raw materials, import tariffs or domestic distribution all provided a rationale for a local presence. That rationale may be missing in many (but not all) future digital markets. As a result, the driving force of innovation and back-end jobs created by these firms may remain in their headquartered country, leading to even greater exclusion of developing countries. Furthermore, global platforms may choose to shift their profits to low-tax jurisdictions – a strategy not necessarily viable for local platforms – that provide these global firms with a significant competitive advantage over local platforms.

If this is to be avoided, then developing countries will need to provide industrial policy incentives for global firms to station operations in their jurisdictions. It will also need to support the development of local digital firms to participate in the digital age, much like the infant industry arguments of old times. It will also require investment in skills and capital financing. This must include the funding of research through universities and will require regulators such as the CCSA to invest in-house talent focused on digitalization of the economy.

## Syst Risk

#### Big tech fixing cybersecurity now---only the have the power to do it.

Ingrid Chung 21. Summer editorial intern at National Review. "Big Tech Is Doing the Right Thing on Cybersecurity". National Review. 8-30-2021. https://www.nationalreview.com/corner/big-tech-is-doing-the-right-thing-on-cybersecurity/

While it may be difficult to predict the effectiveness of such investments, the fact that Big Tech and the government are placing the enhancement of cybersecurity close to the top of their agenda and are committing to coordinated efforts is good news. Big Tech, with its financial prowess derived from the sheer size of the industry, and a unique relationship with the use of cyberspace, is uniquely positioned to materially contribute to state-led efforts to secure cyberspace. Furthermore, investing in education on cybersecurity of employees may also be useful in raising awareness and amplifying the industry’s collective concern over capacity to combat cyberattacks in the long run.

#### Disaggregation is worse for cyber and grid resilience.

John Brandon 13. Contributing Editor. "Why Hackers Target Small Businesses: Cybersecurity Threats to Start-Ups". From The Dec. 2013/Jan. 2014 Issue of Inc. Magazine https://www.inc.com/magazine/201312/john-brandon/hackers-target-small-business.html

For many years, the average American small business was an unlikely target for a sophisticated cyberattack. Fewer financial resources and a relatively unknown brand worked in your favor to ward off hackers. Not anymore.

The dam has broken for small companies when it comes to security. Jeremy Grant, an adviser at the Department of Commerce’s National Institute of Standards and Technology, says in the past two years he has seen "a relatively sharp increase in hackers and adversaries targeting small businesses."

According to the security company Symantec, cyberattacks on small businesses rose 300 percent in 2012 from the previous year.

Smaller companies are attractive because they tend to have weaker online security. They’re also doing more business than ever online via cloud services that don’t use strong encryption technology. To a hacker, that translates into reams of sensitive data behind a door with an easy lock to pick. If you have any Fortune 500 companies as customers, you’re an even more enticing target--you’re an entry point.

## FTC

### 1NR---Turns Case

#### A---Slow growth---Algorithmic bias drains business profitability.

Kalinda Ukanwa 21. Assistant professor of marketing at the University of Southern California’s Marshall School of Business, 5/23/21. “Algorithmic bias isn’t just unfair — it’s bad for business.” https://www.bostonglobe.com/2021/05/23/opinion/algorithmic-bias-isnt-just-unfair-its-bad-business/

These moves respond to growing concerns that algorithms have been reproducing discrimination in situations such as home lending, the allocation of health care, and decisions about who deserves parole. While many people hoped machines could help us make fairer decisions, as the use of AI has exploded it’s become clear that all too often they simply replicate and even amplify our existing prejudices.

An important part of the story has been missing, however. It’s one that might make businesses more amenable to regulation or even preclude the need for it by motivating them to act on their own. Algorithmic bias is not only a pressing ethical and societal concern — it’s also bad for business.

My research shows that over time, word of mouth about algorithmic bias among customers will hurt demand and sales and cut into profits. This damage won’t just hit a few unlucky companies that find themselves embroiled in public controversy around algorithmic discrimination. It can occur even if the inner workings and biases of an algorithm remain invisible to the public.

To understand how this can happen, consider one tech giant’s failed attempts at algorithmic design. In 2014, Amazon launched an internal tool to evaluate resumes. Although the algorithm was not programmed to look at the gender of the job applicants, it was trained using data from the company’s previous decade of hiring decisions, and the applications in that period mainly came from men. Based on past patterns, the algorithm learned to downgrade resumes that mentioned certain women-only colleges or women’s sports or clubs.

Amazon dropped that tool once these biases were discovered, but companies still widely use algorithms for recruiting and hiring. Not only are employers potentially missing out on valuable candidates, but over time these losses will compound through word of mouth. People learn about opportunities from members of their social circles, who often have race, age, gender, and other demographic characteristics in common. When women hear that their female friends and colleagues have been passed over for jobs at a particular company, they are less likely to apply, even if they know nothing about why these other candidates were rejected.

Using group characteristics to make decisions about whether and how to provide services to individual consumers may seem logical in some cases and may even be profitable in the short term. For example, a property manager might believe there are legitimate business reasons to choose tenants based on their age or education level. But my research, which uses computational methods to simulate consumer behavior, shows that these types of “group-aware” algorithms will tend to become less profitable over time.

In a study I conducted with Roland Rust, we simulated how customers would respond to two banks. One bank is “group-aware” and has various loan-approval thresholds for members of different groups. For example, women might have to meet a higher standard than men to get a loan. The other bank in the model is “group-blind”: It has the same approval threshold for every applicant.

Our model indicates that most members of the favored group meet the loan threshold at both banks, so they are likely to apply to either. But members of the group being discriminated against learn from one another to avoid the group-aware bank in favor of the group-blind one. Furthermore, members of the group experiencing discrimination also influence some members of the favored group to avoid the group-aware bank. As time passes, there is a net movement of customers toward the group-blind bank, hurting the profitability of the group-aware bank.

In short, when consumers learn from one another that a company is less likely to serve them, even if the discrimination is unintentional, they’ll avoid that company and it’ll lose revenue.

Algorithms often become group-aware when they aren’t intended to be. AI teases out correlations in the data that serve as stand-ins for group membership. For example, in our geographically segregated society, ZIP codes and other location data are a common proxy for race. Ride-sharing companies discovered the problem when a study revealed that their location-based pricing algorithms charge customers more for rides to or from neighborhoods primarily occupied by people of color. In other words, programming an AI system to ignore people’s gender or race or leaving this information out of the data set entirely isn’t enough to ensure an algorithm is group-blind.

What can companies do to make algorithms treat people fairly? Here are three key steps they can take:

1. Rather than removing group identifiers, businesses should include demographic characteristics in their data so they can continually audit their algorithms to determine whether they inadvertently discriminate against certain groups. There are a number of tools to evaluate whether bias is creeping in. IBM’s AI Fairness 360 is an open-source tool kit that helps detect bias in machine learning models. Microsoft’s FATE research group produces reports and tools aimed at reducing bias and increasing transparency and accountability in AI.

2. Companies can model how their systems’ decisions will affect demand over the long run among consumers who learn that some groups are treated differently. For example, if a bank used a model similar to the one in my study, it could easily see the long-term impact of a group-aware algorithm for making loans.

3. Whenever possible, algorithms should be designed to make decisions using context-specific data about individuals — looking at someone’s bill payment frequency in loan decisions, for example, or a patient’s cholesterol levels in health care, or a student’s grades in education — rather than trying to infer such information from other data points like their education level or where they live. The data used to train the algorithm is important too. Increasing the variation among and representation of different kinds of consumers allows algorithms to better evaluate individuals on their own merits.

Algorithms can lead to fairer outcomes, but only if they are designed and managed carefully. As computers increasingly make influential decisions about our lives, from the health care and financial services we receive to our educational and career prospects, we must remain alert to the potential for bias. There are strong ethical and moral reasons to do so, but there is also a business case to be made. We need to make sure companies understand how algorithmic bias can hurt their bottom lines.

#### B---Democracy---Algorithmic bias destroys it.

Karl Manheim\* and Lyric Kaplan\*\*, 19 – \*Professor of Law, Loyola Law School, and \*\*Associate in Privacy & Data Security Group, Frankfurt Kurnit Klein & Selz. “Artificial Intelligence: Risks to Privacy and Democracy.” 21 Yale J.L. & Tech. 106. https://yjolt.org/sites/default/files/21\_yale\_j.l.\_tech.\_106\_0.pdf

This article explores present and predicted dangers that AI poses to core democratic principles of privacy, autonomy, equality, the po- litical process, and the rule of law. Some of these dangers predate the advent of AI, such as covert manipulation of consumer and voter preferences, but are made all the more effective with the vast pro- cessing power that AI provides. More concerning, however, are AI’s sui generis risks. These include, for instance, AI’s ability to generate comprehensive behavioral profiles from diverse datasets and to re- identify anonymized data. These expose our most intimate personal details to advertisers, governments, and strangers. The biggest dan- gers here are from social media, which rely on AI to fuel their growth and revenue models. Other novel features that have gener- ated controversy include “algorithmic bias” and “unexplained AI.” The former describes AI’s tendency to amplify social biases, but covertly and with the pretense of objectivity. The latter describes AI’s lack of transparency. AI results are often based on reasoning and processing that are unknown and unknowable to humans. The opacity of AI “black box” decision-making14 is the antithesis of democratic self-governance and due process in that they preclude AI outputs from being tested against constitutional norms.

We do not underestimate the productive benefits of AI, and its inev- itable trajectory, but feel it necessary to highlight its risks as well. This is not a vision of a dystopian future, as found in many dire warnings about artificial intelligence. Humans may not be at risk as a species, but we are surely at risk in terms of our democratic institutions and values.

### 1NR---UQ

#### 1. This is our brink argument---the FTC’s managing its caseload, but only barely---the aff is a bolt from the blue, unplanned expansion of antitrust enforcement 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.”

#### 2. Current enforcement is streamlined to enable focus on algorithmic bias.

Jeffrey J. Amato and Jay R. Wexler 9/28/21. “United States: FTC Ramps Up Tech Investigations, Reduces Investigators' Hurdles.” https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1115450/ftc-ramps-up-tech-investigations-reduces-investigators39-hurdles

At its September 14, 2021 open meeting, the Federal Trade Commission (FTC) announced the passage of eight "omnibus" resolutions by a 3-2 party-line vote to authorize quicker investigations into prioritized issues. The resolutions allow staff attorneys to use compulsory process demands, which are usually issued as civil investigative demands or subpoenas, with approval from only one commissioner. Previously, agency staff were expected to receive approval from the full commission prior to issuing demands for information from companies. The resolutions aim to facilitate investigations into: unlawful conduct directed at veterans and service members; unlawful conduct directed at children; bias in algorithms and biometrics enabling discriminatory practices; dark patterns and deceptive online conduct that lure users into making unwanted purchases; repair restrictions that allegedly harm competitors and consumers; abuse of intellectual property; common directors and officers and common ownership; and monopolization offenses.

#### 3. Deadlock prevents antitrust enforcement

Doesn’t interfere with privacy enforcement because there’s consensus. The plan changes this by FIAT

Eleanor Tyler 10/7/21. Legal Analyst on the Litigation team, with a focus on antitrust, at Bloomberg Law. “ANALYSIS: FTC May Be Headed Into Deadlock, Delaying Big Deals.” https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-ftc-may-be-headed-into-deadlock-delaying-big-deals

The Federal Trade Commission may be about to pause, unable to act on antitrust enforcement and policy until President Biden’s nominee can be confirmed and seated.

On Oct. 8, Federal Trade Commissioner Rohit Chopra is stepping down to take up his new position as head of the Consumer Financial Protection Bureau. Because it takes a majority among the Commissioners present to conduct business, and because the remaining commissioners will be split 2-2 between Democrat and Republican appointees, the Commission may find itself sitting on its hands until an equally divided Senate can approve privacy expert Alvaro Bedoya, whom Biden nominated Sept. 20 for Chopra’s seat.

In the past, the Commission has typically managed to continue making decisions and bringing cases while short a member (or several). These aren’t normal times, however. Many actions could be easily conducted on a bipartisan basis, but decisions about antitrust policy—and, potentially, antitrust enforcement—have proven contentious. That poses a potential obstacle for deals currently under investigation at the FTC, which tend to be large deals and those with market overlap between the parties.

#### 4. They’re giving everything else a pass.

Zephyr Teachout 10/29/21. Associate professor of law at Fordham Law School. “Why Judges Let Monopolists Off the Hook.” https://www.theatlantic.com/ideas/archive/2021/10/antitrust-facebook-congress-sherman-act/620539/

Americans have gotten far too used to the idea that corporate behemoths are free to acquire any company they want, engage in predatory behavior, and bully, squeeze out, or demand kickbacks from smaller rivals. Indeed, the U.S. government’s decision to let Facebook buy an obvious rival, Instagram, looks so wrong in hindsight—especially now that leaked documents have revealed Facebook’s seeming indifference to the many problems that its products cause or exacerbate—that Americans should utterly disavow the complex legal framework that allowed the Federal Trade Commission to rationalize that decision. Over the past several decades, establishing that a company has violated antitrust law has become an extraordinarily difficult process. And when violations of the law are hard to punish, authorities will usually give them a pass—as the FTC did with Facebook’s acquisition of Instagram. (Yesterday, Facebook rebranded itself as Meta.)

#### No increase in merger enforcement.

Laurence Bary et al. 10/28/21. Antitrust lawyer in the Paris office of Dechert, with Mike Cowie, James A. Fishkin, Clemens Graf York von Wartenburg, Dennis S. Schmelzer and Delphine Strohl. “DAMITT Q3 2021: Where’s the Wave? No Uptick Yet in Significant Merger Enforcement Activity.” https://www.lexology.com/library/detail.aspx?g=42eaa9f3-e4f6-48d7-8680-29c7216a7f1f

Dechert has yet to see an increase in concluded significant U.S. merger investigations despite a surge in merger filings that began in the fall of 2020. Instead, we continue to see a decrease in concluded significant merger investigations year-to-date compared to this point in 2019 and 2020.

The average duration of significant merger investigations remains around 12 months, with significant variations below and above the average.

The Federal Trade Commission did not file a single complaint or consent decree in the third quarter, which may suggest that it is taking longer for consent decrees to be finalized under the new administration.

#### New policy streamlines merger process by requiring prior approval

Ayla Ellison 10/26/21. Editor-in-Chief of Becker's Hospital Review. “FTC tightens reins on merger control: 6 things to know.” https://www.beckershospitalreview.com/hospital-transactions-and-valuation/ftc-tightens-reins-on-merger-control-6-things-to-know.html

The Federal Trade Commission announced Oct. 25 it is restoring its practice of requiring companies that previously pursued an anticompetitive merger to get prior approval for future transactions.

Six things to know:

1. The FTC will now require companies to get prior approval from the agency for any transaction "affecting each relevant market for which a violation was alleged" for at least 10 years.

2. The FTC said in some situations it may seek prior approval provisions that cover broader geographic markets beyond just the relevant markets affected by the merger. The agency will consider several factors to make the determination, including the level of market concentration, the degree to which the transaction increases concentration and evidence of anticompetitive market dynamics.

3. The FTC is less likely to pursue a prior approval provision against merging companies that abandon their transaction, the commission said.

4. The FTC is reinstating the prior approval practice after the commission voted in July to repeal a 1995 policy statement that prevented the agency from imposing these merger restrictions.

5. The agency said it has already implemented the policy by imposing strict limits on future acquisitions by Denver-based DaVita after the company's acquisition of University of Utah Health's dialysis clinics.

6. "The FTC should not have to waste valuable time and resources investigating clearly anticompetitive deals that should have died in the boardroom," Holly Vedova, director of the agency's bureau of competition, said in a news release. "Restoring the long-standing prior approval policy forces acquisitive firms to think twice before going on a buying binge because the FTC can simply say no."

#### 5. Other enforcement is all talk

JED GRAHAM 9/16/21. Writes about economic policy for Investor's Business Daily.

Khan is clearly using her bully pulpit to the utmost, trying to dissuade merger talks from reaching fruition.

But right now it's all talk. She has turned a few heads, but the S&P 500 and Big Tech leaders have kept cruising. Facebook stock is up 11% since Khan took the FTC's helm on June 15, while Apple has climbed 15% and Google stock 18%. That's despite reports that the Justice Department is preparing to file a second Google antitrust suit over its ad dominance.

The new antitrust enforcement regime may not change all that much "until they show that they can sue and win," Kovacic said.

### 1NR---Rule of Reason

#### “Quick look” doctrine solves rule of reason costs.

Alan J. Meese 16. Ball Professor of Law, William & Mary Law School. “In Praise of All or Nothing Dichotomous Categories: Why Antitrust Law Should Reject the Quick Look.” Faculty Publications. 1803. https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2842&context=facpubs

It is perhaps no surprise, then, that enforcement agencies, courts, and scholars have all proposed what they characterize as a middle ground between per se condemnation on the one hand, and full-blown rule of reason scrutiny on the other.98 Proponents of the middle ground approach seek to improve upon traditional section 1 analysis, which many unflatteringly characterize as “dichoto- mous” or “bipolar.”99 In particular, these scholars, jurists, and enforcement officials advocate a third category of section 1 analysis reserved for restraints that, though not unlawful per se, are inherently suspect.100 Whether dubbed “quick look,”101 the “truncated rule of reason,”102 or “stepwise analysis,”103 this alternative seeks to reduce the cost and increase the accuracy of the analysis for those restraints that escape per se condemnation but nonetheless pose a signifi- cant risk of competitive harm.

Although first employed by the Federal Trade Commission (FTC), several courts of appeals have endorsed the approach, and the Supreme Court has agreed, albeit in dicta.104 The Department of Justice has, in joint guidelines with the FTC, also endorsed this methodology.105 Numerous leading antitrust scholars have as well, although there is disagreement about how to apply the approach.106

#### The alternatives to the rule of reason are worse.

Donald M. Remy et al. 21. National Collegiate Athletic Association Chief Operating Officer and Chief Legal Officer, with Jeffrey A. Mishkin, Karen Hoffman Lent, Skadden, Arps, Slate, Meagher & Flom LLP; Beth A. Wilkinson, Rakesh N. Kilaru, Wilkinson Stekloff LLP; Seth P. Waxman, Counsel of Record, Leon B. Greenfield, Daniel S. Volchok, David M. Lehn, Derek A. Woodman, Ruth E. Vinson, Spencer L. Todd, Wilmer Cutler Pickering, Hale and Dorr LLP. “Brief for Petitioner,” NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, Petitioner, v. Shawne ALSTON, et al., Respondents, 2021 WL 408325, Westlaw

b. By requiring the NCAA to show that “each type of challenged rule” is procompetitive, Pet. App. 39a--and invalidating each type as to which that showing supposedly was not made--the courts below also effectively imposed a requirement that a restraint be the least restrictive way of achieving the procompetitive benefits. Antitrust law, however, does not require businesses to use “the least ... restrictive provision that [they] could have.” Continental T.V, Inc. v. GTE Sylvania Inc., 433 U.S. 36, 58 n.29 (1977). As its name suggests, the rule of reason requires only that an agreement be “reasonably necessary,” United States v. Arnold, Schwinn & Co., 388 U.S. 365, 380 (1967) (subsequent history omitted), or “fairly necessary,” Dr. Miles Medical Co. v. John D. Park & Sons Co., 220 U.S. 373, 406 (1911) (subsequent history omitted), to achieve a procompetitive benefit.

Unlike the Ninth Circuit, other courts have followed this Court’s precedent, holding that courts “should [not] calibrate degrees of reasonable necessity” such that the “lawfulness of conduct turns upon judgments of degrees of efficiency.” Rothery Storage & Van Co. v. Atlas Van Lines, Inc., 792 F.2d 210, 227-228 (D.C. Cir. 1986); see also id. at 229 n.11. One circuit, for example, holds that “[i]n a rule of reason case, the test is not whether the defendant deployed the least restrictive \*42 alternative” but “whether the restriction actually implemented is ‘fairly necessary’ ” to achieve the procompetitive objective. American Motor, 521 F.2d at 1248; quoted in part in Berkey Photo, Inc. v. Eastman Kodak Co., 603 F.2d 263, 303 (2d Cir. 1979). Another similarly holds that businesses need not “adopt the least restrictive means of stopping [competitors] from selling abroad, but merely means reasonably suited to that purpose.” Bruce Drug, Inc. v. Hollister, Inc., 688 F.2d 853, 860 (1st Cir. 1982). A leading antitrust commentator has made the same point in regard to the NCAA’s amateurism rules, stating that “[m]etering’ small deviations [in amateurism] is not an appropriate antitrust function.” Hovenkamp, Antitrust Balancing, 12 N.Y.U. J.L. & Bus. 369, 377 (2016).

What these authorities recognize is that a “ ‘no less restrictive alternative’ test ... would place an undue burden on the ordinary conduct of business,” with joint ventures exposed to litigation (including treble damages) based on nothing more than “the imaginations of lawyers” in “conjur[ing] up” some marginally less-restrictive alternative. American Motor, 521 F.2d at 1249. And because a “skilled lawyer would have little difficulty imagining possible less restrictive alternatives to most joint arrangements,” Areeda & Hovenkamp, 11 Antitrust Law ¶1913b (5th ed. 2020), a least-restrictive standard would open the floodgates to antitrust litigation against the NCAA, other sports leagues, and joint ventures more generally, “interfer[ing] with the legitimate objectives at issue without ... adding that much to competition.” Areeda & Hovenkamp, 7 Antitrust Law ¶1505b; see also ABA Antitrust Section, Monograph No. 23, The Rule of Reason 123 (1999) (a least-restrictive test would “plac[e] the courts in the awkward position of routinely second-guessing \*43 business decisions”). It would also put antitrust courts in the role of “central planners” that this Court has warned they are “ill-suited” to perform, Trinko, 540 U.S. at 408.

### 1NR---Link---Rulemaking

#### B. Rulemaking groups wreck limited FTC resources

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

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

#### C. Rulemaking requires immense time and resources .

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

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

#### E. Rulemaking gets challenged in court.

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

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

### 1NR---Link---Congress

#### A. the aff causes Congress to strip funding and authority from the FTC.

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

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

### 1NR---AT: Insufficient To Solve

#### Only the FTC solves algorithmic bias---it has the expertise and history.

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

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

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

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

But even if Congress does not act, that doesn’t mean nothing can be done. Fortunately, the Federal Trade Commission (FTC) has a long history of prosecuting snake oil salesmen. Under Section 5 of the FTC Act, the commission has broad authority to go after companies that engage in unfair or deceptive acts or practices.

This is why the FTC just sent a warning letter to purveyors of fake coronavirus cures, and how the FTC was able to fine companies that made scam weight loss products. In each instance these companies made claims about their products that weren’t backed by evidence. This same approach should be used for algorithms.

### 1AR---Perception---Card Referred To

#### The very existence of the Khan appointment thumps their DA.

Swartz ’21 [Jon; 6/23/21; “New FTC chair Lina Khan is Big Tech’s biggest nightmare”; https://www.marketwatch.com/story/the-wrath-of-khan-new-ftc-chair-is-big-techs-biggest-nightmare-11624384767; AS]

Two words send shudders down the spines of Big Tech executives while also raising their blood pressure: Lina Khan.

The newly appointed chair of the powerful U.S. Federal Trade Commission, an agency with broad authority to police America’s biggest corporations including its technology giants, has been one of Silicon Valley’s chief critics, earning her the bromide of being leader of the “hipster antitrust” movement among young scholars. They want to expand existing antitrust law to better target issues like corporate concentration and income inequality.

Along the way, the 32-year-old Khan has gained the support of politicians across the ideological spectrum, from progressive Sens. Elizabeth Warren of Massachusetts and Bernie Sanders of Vermont to hard-right conservatives including Sen. Josh Hawley of Missouri. Warren, who ran on breaking up Big Tech in her 2020 presidential campaign, described Khan’s appointment as “tremendous news.” During Khan’s confirmation hearings, Sen. Ted Cruz, the Texas Republican, said he looked forward to working with her.

“Antitrust enforcement fell through the floor for decades, and the courts have been defanged as well. I am thrilled by her appointment,” civil-liberties attorney Shahid Buttar told MarketWatch. “Lina’s appointment has broad societal implications far beyond tech, and into consolidation in media, finance, broadband access.”

Khan’s appointment on June 15 was Big Tech’s second major body blow in less than a week. On June 11, the Democratic-controlled House introduced sweeping antitrust legislation with bipartisan support that put Google parent Alphabet Inc. GOOGL, +0.32% GOOG, +0.60%, Amazon.com Inc. AMZN, -0.08%, Apple Inc. AAPL, +1.51% and Facebook Inc. FB, +1.39% in its crosshairs.

The five bills could have far-reaching — and potentially devastating — consequences for tech firms, forcing them to shed businesses like Facebook’s Instagram, severely restricting their ability to scoop up and acquire would-be competitors, and imposing limits on platform-run businesses. The “Ending Platform Monopolies Act,” which proposes structural separation, in part says, “It shall be unlawful for a covered platform operator to own or control a line of business, other than the covered platform, when the covered platform’s ownership or control of that line of business gives rise to an irreconcilable conflict of interest.”

What has the tech sector spooked is the role Khan could have in shaping antitrust law. It was her work as counsel on a House subcommittee, after all, that led to formulation of the five bills, and she has made no secret of how she views the big five companies, whose total market value is more than $8.5 trillion.

Her first task is likely to be the FTC’s investigation of Amazon’s proposed $8.45 billion acquisition of MGM studios, according to a Wall Street Journal report.

“What became clear is there had been a systemic trend across the US… markets had come to be controlled by a very small number of companies,” she told the BBC this year.

Critics like Khan, who wrote a paper in 2017 called “Amazon’s Antitrust Paradox” for the Yale Law Journal, argued that Amazon shouldn’t be excluded from antitrust scrutiny simply because it had a history of cutting prices. The premise of the paper was that traditional antitrust focus on prices consumers pay was inadequate to identify potential harm done by Amazon, and that current competition laws aren’t fit for the challenges of today and are badly outdated. Buttar calls the paper a “seminal work” that helped spark the House’s new antitrust legislation.

“These firms essentially provide infrastructure to the digital age,” she told the BBC in her previous interview.

“A small group of private executives are setting the rules of who gets to use the infrastructure and on what terms,” she added.

Khan, who was not available for comment for this article, is considered as much a threat to Big Tech as the antitrust bills, FTC and Justice Department investigations, and state attorneys general lawsuits.

Her appointment as chair of the FTC — rather than one of its four other members, as some in the Beltway and Silicon Valley assumed — confounded and outraged tech executives. They’re rattled by a LinkedIn profile that includes stints as an associate professor at Columbia Law School since September 2020, where she shares close ties with outspoken tech critic Tim Wu, as well as counsel for the House Subcommittee on Antitrust, Commercial, and Administrative Law, of which Rep. David Cicilline, D-R.I., is chairman, and whose findings led to the five antitrust bills.

Khan’s link to Wu is particularly vexing, tech industry observers note, since the FTC is supposed to operate independently of the White House and Wu is an antitrust advisor to President Joe Biden.

The direct link amounts to a “red-light phone” between the FTC and White House, argues Carl Szabo, vice president and general counsel of NetChoice, an industry group whose funders include Amazon, Facebook, and Google.

“You’ve put somebody in the position of neutrally enforcing the laws when they would much rather write them,” Szabo told MarketWatch. “Imagine being asked to sit before a judge who has written a paper claiming the defendant is guilty. This casts a pall of controversy and political connections, undermining trust.”

“She should recuse herself from any decision [on Big Tech] that she has rendered,” Szabo said. “Otherwise, it will end up being disputed in court.”

None of tech’s big players have publicly commented on Khan. But Jake Ward, president of Connected Commerce Council, an organization representing thousands of small businesses, told MarketWatch: “[Khan] brings an activist perspective, and wants to change a market that is working just fine. Congress and the FTC have done a nice job over the last 100 years on antitrust. We don’t need new laws; the ones we have work just fine.”

1. See [https://www.gov.uk/government/speeches/pm-speech-opening-london-tech-week-10-june-2019.](https://www.gov.uk/government/speeches/pm-speech-opening-london-tech-week-10-june-2019) [↑](#footnote-ref-1)
2. *See, e.g.*, Australian Competition (2018): 13-14; Crémer (2019): 8-10; Furman (2019): 60-61. 211 Furman (2019): 41. [↑](#footnote-ref-2)