# 1NC Round

## Off-Case

### T Scope

#### ‘Scope’ is the extent of the area dealt with or relevant to the core laws

Oxford Languages ND, “scope,” shorturl.at/wCDY3

scope

the extent of the area or subject matter that something deals with or to which it is relevant.

"we widened the scope of our investigation"

#### It’s bounded by exemptions and immunities

Kruse et al. 19, Layne E. Kruse, Co-Chair; Melissa H. Maxman, Co-Chair; Vittorio Cottafavi, Vice Chair; Stephen M. Medlock, Vice Chair; David Shaw, Vice Chair; Travis Wheeler, Vice Chair; Lisa Peterson, Young Lawyer Representative; all on the Exemptions and Immunities Committee of the ABA Antitrust Section, “Long Range Plan, 2018-19,” American Bar Association, 3/18/19, https://www.americanbar.org/content/dam/aba/administrative/antitrust\_law/lrps/2019/exemptions-immunities.pdf

D. Top 3 Accomplishments Since Last Long Range Plan in 2015

(1) Publications. In addition to our Annual ALD Updates, we are set to publish an update to the Noerr-Pennington Handbook, which should be out in 2019. We also published a new version of the State Action Handbook in 2016. The Handbook on the Scope of the Antitrust Laws was published in 2015.

(2) Commentary on Legislative and Regulatory Proposals. The Committee has been very active in supporting Section commentary on proposed legislation, regulations, and other policy issues.

For instance, in March 2018, the E&I Committee assisted former E&I Chair John Roberti in composing his article, “The Role and Relevance of Exemptions and Immunities in U.S. Antitrust Law”, presented to the DOJ Antitrust Division Roundtable on behalf of the ABA Antitrust Section.

In January 2018, in response to a request from the Section Chair, we submitted Section comments along with the Legislative and State AG Committees, addressing the proposed Restoring Board Immunity Act legislation that would impact the post-NC Dental exemptions and immunity climate. Previously, we commented on the Professional Responsibility Act.

(3) Spring Meeting Programs. We have sponsored or co-sponsored a program at every Spring Meeting since our last long range plan. In 2019 we will chair Sham Litigation after FTC v. AbbVie The FTC v. AbbVie decision – calling for the disgorgement of $448 million on the basis of sham patent litigation. In addition, we will co-sponsor in 2019 with the Trade, Sports & Professional Associations Committee, a program on “Antitrust Law's Anomalous Treatment of Sports,” addressing how US courts have shown broad deference to the "rules of the game," including near-immunity status for concepts such as "amateurism."

II. Major Competition/Consumer Protection Policy or Substantive Issues Within Committee’s Jurisdiction Anticipated to Arise Over Next Three Years

A. Issue #1: Will Certain Exemptions Be Eliminated or Expanded?

A goal of the current DOJ Antitrust Division is to streamline antitrust laws, and in particular, take a hard look at exemptions and immunities. This is in the wheelhouse of our Committee’s fundamental policy issue: How much of the economy has opted out of our antitrust system? Is that a problem or are ad hoc exemptions acceptable ways to fine tune the application of the antitrust laws?

We anticipate, therefore, that efforts to enact or to repeal existing statutory exemptions and immunities will continue. In recent years, there have been efforts to repeal the exemptions for railroads and (at least in part) the McCarran-Ferguson insurance exemption. The Section and the Committee has generally supported efforts to repeal statutory exemptions. Given that repeal issues are very political it is unlikely that we will see many exemptions actually repealed.

On the other hand, proposals for new exemptions and immunities will continue to be introduced in Congress. The Committee will improve on a template for use in assisting the Section in drafting comments to Congress on newly proposed exemptions and immunities.

One development that may continue in the health care area are issues over a "COPA" or "Certificate of Public Advantage" at the state level. A COPA is a state statutory mechanism that provides certain collaborations in the health care community with immunity from private or government actions under the antitrust laws by invoking the state action doctrine. The FTC has generally opposed such efforts at the state level, but several states have used them to immunize health care mergers. This is a major development that should be monitored.

Through programs, newsletters, and Connect entries, the Committee intends to educate its members about Congressional and other efforts to repeal, or introduce new, exemptions and immunities, as well as the application of existing statutory exemptions and immunities in the courts. The Committee’s Handbook on the Scope of Antitrust Law, published in 2015, addresses developments in the statutory immunities area. It built on the prior publication, Federal Statutory Exemptions from Antitrust Law Handbook in 2007. Our Scope book will need to be updated within the next three years.

B. Issue #2: Will There Be Legislative Solutions to State Action Issues at State and Federal Levels?

The FTC’s case against the North Carolina Board of Dental Examiners put the "active supervision" prong of the state action test front and center. North Carolina State Board of Dental Examiners v. Federal Trade Commission, 135 S.Ct. 1101 (2015). The Court agreed with the FTC’s position that state occupational licensing boards comprised of market participants must satisfy the active supervision requirement. This spurred additional suits against other types of state boards involving regulated professionals. Moreover, every State had to reassess its boards to determine if there is "active supervision." Courts and state legislatures are addressing those issues. We also expect the proper framing of the clear articulation prong of the state action doctrine will be addressed. The Supreme Court spoke to the clear articulation test in FTC v. Phoebe Putney Health System, Inc., 133 S.Ct. 1003 (2013), narrowing the foreseeability test to cover only situations in which the anticompetitive conduct is the “inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature.” How this test has played out in the lower courts will be of particular interest to the Committee and its membership. The COPA issues, at the state level, as previously mentioned, will impact this area.

The Committee expects to address these issues through updates to Connect, newsletters, Spring Meeting programs, committee programs, its contributions to the Annual Review of Antitrust Law Developments. The State Action Practice Manual addresses these issues, as well as the Committee’s Handbook on the Scope of Antitrust Law.

C. Issue #3: Will Noerr Be Restricted or Expanded?

The Noerr-Pennington doctrine is an exemption issue that is frequently litigated. In particular, the most likely area of further development is in the pharma industry. Alleged misrepresentations to government agencies has caught the attention of some courts. In addition, there may be more development on the pattern exception, which raises the issue of whether each act of petitioning in a pattern must satisfy the objectively and subjectively baseless requirements for sham petitioning. The Committee’s new Handbook on Noerr (forthcoming) and its earlier Handbook on the Scope of Antitrust Law addresses developments in the Noerr law.

III. Specific Long Term Plans to Strengthen Committee

The Committee provides important services to the membership of the Section through publications, drafting ABA Antitrust Section comments to proposed regulation and international competition proposed immunities, and programming. The goals of the Committee include: (1) to provide policy comments on key questions about the scope of the antitrust laws for legislation and policy-making; (2) produce a mix of publications and programming that provides relevant and useful information to our members; (3) to ensure that the Committee remains valuable to our members’ practices; and (4) to make the most productive use of electronic communications to deliver the Committee’s work product.

A. Potential Modifications to Charter: What is the Role of this Committee?

The Committee’s current charter accurately characterizes its purview—that is, addressing the scope of the antitrust laws. That scope, of course, is defined primarily in terms of exemptions and immunities (both statutory and non-statutory). The Committee, however, has dealt with other doctrines, such as preemption and primary jurisdiction. These areas may not necessarily be viewed as traditional exemptions or immunities, but they nonetheless directly affect the application and extent of the antitrust laws. In addition, the Committee expends significant efforts to address international issues, including statutory exclusions from the U.S. antitrust laws, including the FTAIA; the related doctrines of act of state, sovereign immunity, and foreign sovereign compulsion; and industry-specific exemptions and exclusions from non-U.S. antitrust laws, including blocking exemptions.

#### ‘Expand’ must make more expansive---NOT merely clarify existing principles

Terry J. Hatter, Jr. 90, Judge, US District Court, California Central, “In re Eastport Assoc.,” 114 B.R. 686, Lexis

[\*\*10] Second, Eastport asserts that the presumption against retroactivity does not apply because the amendment was intended only as a clarification of existing law. HN7 Where an amendment to a statute is remedial in nature and merely serves to clarify existing law, no question of retroactivity is involved and the law will be applied to pending cases. City of Redlands v. Sorensen, 176 Cal. App. 3d 202, 211, 221 Cal. Rptr. 728, 732 (1985). The evidence in this case, however, does not support the conclusion that the amendment to section 66452.6(f) was simply a clarification of preexisting law. The Legislative Counsel's Digest specifically states that "the bill would expand the definition of development moratorium." Senate Bill 186, Stats. 1988, ch. 1330, at 3375 (emphasis added). Since the Legislative Counsel is a state official required by law to analyze pending legislation, it is reasonable to presume that the Legislature amended the statute with the intent and meaning expressed in the Counsel's digest. People v. Martinez, 194 Cal. App. 3d 15, 22, 239 Cal. Rptr. 272, 276 (1987). By its ordinary meaning, the term "expand" indicates a change in the law, rather than a restatement of existing [\*\*11] law. In light of the Counsel's comment, Eastport's argument is unpersuasive.

#### The AFF intensifies the application to already covered activities---it does NOT curtail an exemption or immunity.

#### Vote Neg---exemptions and immunities provide a limited AND predictable basis for prep, and focuses debates on the balance between antitrust and regulation, ensuring conceptual unity.

### T Private Sector

#### “Private sector” means all non-governmental persons or entities, including non-profits

Senate Report 95, (Senate Report, 1995, 104-1, “UNFUNDED MANDATE REFORM ACT OF 1995,” <https://www.congress.gov/congressional-report/104th-congress/senate-report/1>)

"Private sector" is defined to cover all persons or entities in the United States except for State, local or tribal governments. It includes individuals, partnerships, associations, corporations, and educational and nonprofit institutions.

#### That includes any universally applied standard, like CWS (Consumer Welfare Standard)

Phillips 18, commissioner on the Federal Trade Commission (Noah J. Phillips, 11-1-2018, “Before the Federal Trade Commission, “Competition and Consumer Protection in the 21st Century,” <https://www.ftc.gov/system/files/documents/public_events/1415284/ftc_hearings_session_5_transcript_11-1-18_0.pdf>)

Our second topic today is the consumer welfare standard. And I think most folks even out in the public know, this is the standard that we use across the board, mergers and conduct in courts and at agencies, to judge anticompetitive conduct. It is not only a standard that we in the U.S. apply, it is a standard that is used by competition agencies around the world. It is an economically-grounded standard, and it requires that there be harm to consumers for conduct to be condemned. Mere harm to competitors is considered insufficient. So let me repeat that again. There has to be harm to consumers, not just competitors. The reason that is so, the reason harm to competitors is considered insufficient is because sometimes a less-efficient firm losing sales or market share to a cheaper, more innovative or efficient rival, can be and often is consistent with vibrant competition and with outcomes that benefit consumers. Courts and agencies have embraced this standard for decades. Today, there are two very important discussions going on about the consumer welfare standard, and they are happening simultaneously. And I think it is important that we understand that there are two conversations going on. One is a continuing discussion about how we apply the standard, regarding whether enforcement is at the appropriate level, whether it is properly targeted. This is an introspective question on some level, in which scholars, economists, practitioners, and enforcers all ask ourselves, are we bringing the right kinds of cases? Are we using the right kinds of evidence? Should we be doing more or less in certain places? The antitrust bar, the business community, and others benefit from this ongoing and active analysis. The second discussion happening now, and the one on which today’s consumer welfare standard panels will focus, is whether the standard is itself the right metric we ought to use in antitrust enforcement and in antitrust law; some argue that enforcement under the consumer welfare standard has failed because of the law, and accordingly, that we should reform the law.

#### Vote neg---potential subsets is infinite---only economy-wide affs have link uniqueness by forcing the aff to structurally change antitrust

### Devolved Authority CP

#### The United States federal government should: -- devolve authority to ban anticompetitive unilateral conduct by dominant digital platforms.

#### to applications of state antitrust laws, -- adopt an incentive scheme for sufficient implementation including threatening contingent pre-emption and establishing financial inducements and penalties, and -- delineate the devolution of powers in a publicly available *Code of Restrictions and Savings*.

#### Devolved state authority is uniform, not pre-empted, and solves case without federal enforcement.

Zimmerman 9—(Professor of Political Science, University of Albany). Joseph F. Zimmerman. September 5, 2009. “Congressional Devolution of Powers and Preemption of State Regulatory Powers: Countervailing Trends”. Presented at the annual meeting of the American Political Science Association, Toronto, Ontario, Canada. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1450981>. Accessed 1/9/22.

Congress is free to devolve its domestic powers to states with the exception of coinage and in 1789 enacted the first statute devolving powers to state, and in 1790 enacted the first two of 615 preemption statutes removing regulatory powers from the states. There are nine types of devolution statutes with savings clauses in preemption acts the most common type. Preemption statutes vary in length from less than one page to hundreds of pages, and some are included in another preemption statute or in an omnibus consolidated appropriation act. Courts play a key role in determining whether a statute is a preemptive if it lacks an explicit preemption statement.

The proliferation of these statutes has produced a democratic deficit by making it difficult for citizens to determine which plane of government is responsible for many regulatory functions. Congress could clarify to an extent the responsibilities of each plane by directing national regulatory departments and agencies to prepare a Code of Restrictions for each partial preemption statute and implementing regulations. Furthermore, Congress should enact additional innovative preemption statutes respecting state sovereignty while promoting more harmonious state regulation.

Congress first devolved some of its constitutionally delegated powers to the states in 1789 and enacted its first two preemption statutes in 1790 removing completely two state regulatory powers. Subsequently, numerous statutes containing devolution and/or preemption provisions have been enacted and illustrate the Association’s 2009 annual meeting theme of “Politics in Motion.” These countervailing trends reveal Congress has been the principal architect of constitutionally authorized changes in regulatory power distribution in the United States federal system.

The first devolution statute granted power to states to regulate marine pilots in ports and the first two preemption statutes—Copyright Act and the Patent Act—completely removed state regulatory powers in these fields.1 The United States federal system today is the most complex federal system in the world and stands in sharp contrast to the relatively simple and easy to understand system during the early decades of the economic union and the political union when interactions between the national government and the states were limited. The theory of dual federalism had general validity during this time period.

The first part of this paper examines briefly powers devolved by Congress to the states. The second part focuses Congress’ use of its preemption powers to remove regulatory powers from the states, mandate that they initiated specified actions, and forbid states to initiate specified actions. The concluding part contains recommendations addressed to Congress to enact innovative statutes encouraging states to harmonize their regulations, preserve the discretionary authority of states, and improve national-state relations.

Devolution of Powers

Textbooks on the federal system explain the powers delegated by the United States Constitution to Congress and the President by Articles I and II, respectively, and note the Tenth Amendment reserves unspecified powers to the states. Generally omitted are powers devolved by the constitution to each state legislature to (1) determine the times, places, and manner of holding elections for United States Senators and Representatives subject to alteration by Congress, (2) enter into compacts with sister states with the consent of Congress, (3) appoint presidential and vice presidential electors, (4) require Congress to call a convention for the purpose of proposing constitutional amendments, and (5) regulate or prohibit drinking of intoxicating liquors.2

Unless constitutionally prohibited, a national legislature may devolve its legislative, executive, and administrative powers to one or more territorial governmental units.3 The above constitutionally devolved powers are outweighed in importance by congressionally devolved powers, including consent to interstate compacts allowing states to initiate actions otherwise unconstitutional.4

Each devolution statute is relatively short in length and may be classified as one of following eleven types. A statute may (1) turn over a specified regulatory responsibility to the states, (2) include one or more savings clauses preventing complete prevention of a field such as a declaration of intent not to preempt, (3) return to states regulatory enforcement authority in a new completely preempted field, (4) authorize a national department or agency to delegate regulatory primacy to states, (5) grant authority to states to establish regulatory standards more stringent than national standards without the approval of a federal agency, (6) permit a state veto of a national government officer’s decision subject to an override by Congress, (7) exempt from preemption a uniform state law enacted by a state legislature, (8) include an opt-in provision and/or an opt-out provision in a preemption statute, (9) empower governors to initiate actions not authorized by their respective state constitution and statutes, (10) grant authority to each state attorney general to file a law suit to enforce a preemption statute, and (11) authorize a state agency to administer a federal program.5

Powers Devolved to State Legislatures

A number of devolved powers are relatively insignificant as illustrated by the requirement all appraisals of properties involving federal government transactions must be made by state-licensed or state-certified appraisers, and authorization for a state to register pesticides to meet special local needs. Space limitations prevent a listing of all devolved powers and attention is focused on devolution statutes involving four regulatory fields.6

Marine Ports and Water Safety

Congress in 1789 granted states authority to regulate marine pilots and the current Shipping Statute provides “pilots in the bays, rivers, harbors, and ports of the United States shall be regulated only in conformity with the laws of the States.”7

The Port and Tanker Safety Act of 1978 directs the United States Secretary of Transportation to require federally licensed pilots on all domestic and foreign self-propelled vessels “engaged in foreign trade when operating in the navigable waters of the United States in areas and under circumstances where a pilot is not otherwise required by state law.”8 This act also devolves power to states to prescribe higher “safety equipment requirements or safety standards” than federal ones for bridges and other structures on or in the navigable waters of the United States.9

The Coast Guard Authorization Act of 1984 directs the Secretary of Transportation to develop standards for determining whether an individual is intoxicated while operating a marine recreational vessel.10 In 1987, the Coast Guard encouraged state legislatures to enact such standards by promulgating a rule adopting a state blood-alcohol-content (BAC) standard if it exists, but also establishing a national BAC standard of 0.08 percent in the absence of a state standard.11 The Coast Guard similarly promulgated a regulation exempting from preemption a state which has a life jacket requirement for persons on boats.12

Insurance Regulation

States historically regulated the business of insurance and the United States Supreme Court in 1868 opined the business does not involve commerce and hence is not subject to regulation by Congress.13 The court in 1944 reversed this decision by holding insurance involves interstate commerce.14 States successfully lobbied Congress to enact the McCarran Ferguson Act of 1945, the most important devolution statute unrelated to a preemption statute, exempting state regulation of the industry from the antitrust statutes and devolving to states the power to regulate the business of insurance.15

Insurance companies with the passage of time became increasingly frustrated with nonharmonious state regulations that required up to eighteen months to secure the approval of all states for a new product, and lobbied Congress to enact the Gramm-Leach-Bliley Financial Modernization Act of 1999 that partially preempts thirteen specified areas of insurance regulation by establishing maximum regulatory standards and threatened to impose a national licensing system for insurance agents if twenty-six states failed to adopt a uniform system by November 12, 2002.16 A federal licensing system was averted when thirty-five states on September 10, 2002, were certified as having a uniform system.

The act convinced the National Association of Insurance Commissioners (NAIC) that state legislatures must initiate additional actions to harmonize insurance regulations, and drafted the Producer Licensing Model Act, providing for interstate reciprocity, that has been enacted by forty-seven state legislatures.17 NAIC also drafted the Interstate Insurance Product Regulation Compact creating a commission with authority to protect consumers by establishing uniform regulatory standards for annuity, disability income, life insurance, and long-term health care products.18 Thirty-four state legislatures and the Puerto Rico legislature by September 1, 2009, enacted the compact creating a commission as a central filing and decision-making body for regulatory approval of new insurance products. The commission acts expeditiously on applications for approval of new products and the time to render a decision on each application averages thirty-one days.

A number of large insurance companies currently are lobbying Congress to authorize a national charter for insurance companies, and thereby establish a dual insurance charter system somewhat similar to the dual bank charter system. The failure of federal financial regulatory agencies to use successfully powers granted to them by eleven congressional statutes and the success of state attorneys general in prosecuting financial services companies for fraud constitute strong evidence that Congress should not establish a dual insurance charter system at this time.19

Minimum Standards Preemption

This preemption type involves devolution of congressional powers and can be described as “contingent” complete preemption designed to encourage states to initiate action to meet minimum national regulatory standards under the threat of losing primacy in a regulatory field. Congress in 1965 decided water pollution could not be abated by state and local governmental regulation aided by federal conditional grants-in-aid, and a new problem-solving approach was necessary.20 To continue to exercise regulatory authority under a minimum preemption statute, a state must submit a plan containing standards at least as stringent as national ones to the appropriate federal agency for approval and provide evidence the state possesses qualified enforcement personnel and equipment essential for effective enforcement. The agency, after approving a plan, devolves “regulatory primacy” to the state and the role of the agency is limited to monitoring the state’s performance and providing technical advice. A state on occasion has returned “regulatory primacy” to the Environmental Protection Agency, but reaccepted primacy after negotiating an agreement with the agency.

This type of preemption encourages states to become responsible in large measure for implementing national regulatory policies and in effect multiplies federal government resources by incorporating resources of the states in national programs. Although this statement suggests Congress “commandeers” resources of reluctant states to achieve its policy goals, this suggestion is not entirely accurate. A state prior to minimum standards preemption may have wished to initiate more stringent regulatory programs, but was reluctant to do so for fear industrial firms would be discouraged from expanding their facilities within the state which also would acquire an anti-business image injuring its industrial recruitment program.

Congress to date has enacted eight minimum standards regulatory acts: Water Quality Act of 1965 (now Clean Water Act), Air Quality Act of 1967 (now Clean Air Act), Safe Drinking Water Act of 1974, Surface Mining Control and Reclamation Act of 1977, Hazardous Liquid Pipe Line Safety Act of 1979, Pipeline Safety Improvement Act of 2002, Fax Prevention Act of 2005, and Secure and Fair Enforcement for Mortgage Licensing Act of 2008. 21

### Adv CP

The United States federal government should

* not expand the scope of antitrust;
* establish a national innovation policy targeted around AI, 5G, cyber and fintech innovation to oversee procurement reform, incentives for research and development, and workforce training;

#### increase funding for the FTC and make that funding specifically tailored for protecting data privacy and fighting fraud.

#### It kickstarts innovation.

Sadat ’20 [Mir; November 22; former Policy Director leading interagency coordination on defense and space policy issues, including at the Department of Defense and National Security Council, Ph.D. from Claremont Graduate University; The Hill, “Why innovation is so important to America's global leadership,” https://thehill.com/opinion/technology/526535-why-innovation-is-so-important-to-americas-global-leadership]

The U.S. government must mitigate the harm to America’s innovation base. So far, the government has yet to craft a national innovation policy and stand up a true national innovation council to modernize government; coordinate between the government, industry and academia; transform monopolistic or oligopolistic markets into competitive sectors; and ensure that America regains global economic leadership through foreign partnerships. Reform of American innovation is necessary for several reasons.

First, to harness the untapped potential of exponential technologies, the government must democratize its requirements processes that have advantaged legacy systems and traditional technology providers. The government must evolve its industrial age procurement policies, practices and beneficiaries to the digital age by placing innovation at the core of its activities. The innovation base needs public and private investment capital, scaled to the risk and importance of the invention, to level the playing field for startups and scale-ups, and to increase competitiveness. In short, the government must increase funding and incentives for Apollo-scale research and development (R&D) programs.

Second, to create exponential technologies in an era of unprecedented disruption, America’s workforce requires continuous training and education. The “lone innovator” is a myth because every American invention is a mix of persistence, genius, teamwork, business model and resource management. The government must establish whole-of-nation policies that stimulate world-class innovators in the areas of science, technology, engineering and mathematics (STEM); support nationwide STEM access and diversity; promote R&D and economic growth in technologically underserved areas using economic opportunity zones; and improve mentorship programs for underrepresented persons.

Third, individual innovators and their teams are challenged to achieve successful outcomes because of the high costs and risks, the uncertainty and gaps in funding, and the vicissitudes of the market’s readiness. America’s innovators are strewn across the federal enterprise, the national security establishment, state and local governments, startups and established corporations, universities and research institutions, and other consortiums. Innovators must collaborate by leveraging innovation multipliers such as diversity of effort, thought and demographics.

Fourth, if rules-based, free-market innovation is to compete economically and demonstrate American leadership, then the government must create and enhance opportunities for innovators to compete in international markets and garner global funding. Innovation is the global competition that transcends borders. We must be the first to disrupt our markets, rather than others who could render particular industries potentially obsolete.

#### That solves privacy and fraud.

Access Now et al. 21 (November 15th, “Coalition Letter to Congress in Support of Build Back Better Act FTC Provisions,” https://epic.org/documents/coalition-letter-to-congress-in-support-of-build-back-better-act-ftc-provisions/)

The Act’s increased funding for the FTC is pivotal. The Commission is badly understaffed and under-resourced, which limits its ability to address an ever-deepening crisis of exploitative data practices.[1] Allocating $1 billion for data protection and antitrust work and establishing a bureau in the FTC to address privacy, civil rights, and data security matters will go far in addressing these problems. This is particularly critical in light of numerous security breaches that lead to identity fraud, which cost consumers an estimated $13 billion in 2020 alone.[2] A better funded and organized Commission will be better equipped to prevent unfair and deceptive data practices, which disproportionately harm people of color and low-income communities. For example, as the FTC noted in its recent report Serving Communities of Color, people of color are disproportionately affected by fraud.[3]

### Tech Stocks DA

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

#### maintain the scope of antitrust laws at status quo levels

#### cease and/or settle current FAANG\* antitrust lawsuits

#### issue a memorandum to the fifty state attorney generals to enter deferred prosecution and settlement agreements on current FAANG antitrust lawsuits

\*FAANG = Facebook/Meta, Apple, Amazon, Netflix, Google/Alphabet.

#### Tech stocks are up big

Wang 2/2/22 (Lu, “Faang Stocks Blindside Traders With $870 Billion Out-of-Nowhere Surge”, https://www.msn.com/en-us/money/markets/faang-stocks-blindside-traders-with-870-billion-out-of-nowhere-surge/ar-AATptxz?ocid=FinanceShimLayer)

(Bloomberg) -- Retail traders sold the ETF dip, hedge funds bailed at the fastest rate in five months, and institutions cut allocations to lows unseen since the financial crisis. Then the tech megacaps staged an $870 billion comeback.

It’s something few investors saw coming, after a hawkish Federal Reserve sparked a violent new-year rotation out of growth companies like software and into cheap, economically sensitive shares.

Yet as Google’s parent Alphabet Inc. joins Microsoft Corp. and Apple Inc. in reporting robust results, both day traders and Wall Street pros risk getting blindsided by the rebound in the famous tech cohort known as Faang.

“Growth and tech have seen a major reversal off the lows,” said Chris Harvey, head of equity strategy at Wells Fargo Securities. “The quick turnaround is likely causing pain not only for investors that have shunned Tech but also some near-term pain for short sellers.”

It’s a lesson for anyone betting that the heydays are likely over for the Faang grouping, which also includes Amazon.com Inc. and Facebook parent Meta Platforms Inc. While the pandemic-era safety trade in large-cap equities is on the wane, this earnings season is showing yet again the dangers for anyone shunning these reliable profit generators.

#### The plan unleashes worries of a legal assault against tech giants—causes a stock sell-off

Delavigne 21 (Lawrence, Writer for Reuters, “U.S. big tech dominates stock market after monster rally, leaving investors on edge”, 8/28/21 https://www.reuters.com/article/us-usa-markets-faangs-analysis/u-s-big-tech-dominates-stock-market-after-monster-rally-leaving-investors-on-edge-idUSKBN25O0FV)

BOSTON, MA.(Reuters) - U.S. technology giants are increasingly dominating the stock market in the midst of the coronavirus pandemic, even as they draw accusations of unfair business practices, and some investors fear the pump is primed for a tech-fueled sell-off.

The combined value of the S&P 500's five biggest companies - Apple Inc AAPL.O, Amazon.com Inc AMZN.O, Microsoft Corp MSFT.O, Facebook Inc FB.O and Google parent Alphabet Inc GOOGL.O - now stands at more than $7 trillion, accounting for almost 25% of the index's market capitalization. That compares with less than 20% pre-pandemic.

The quintet’s burgeoning share prices reflect a transition to an increasingly technology-driven economy that has been accelerated by the coronavirus outbreak, as doorways fill with Amazon packages, homebound families stream movies and friends commiserate on Facebook.

Yet the companies are drawing opposition. U.S. lawmakers are accusing them of stifling competition, a charge also leveled in recent days against Apple by Epic Games, creator of the popular game Fortnite.

Some investors worry the companies powering this year’s equity rally could become the market’s Achilles’ heel if a legal assault, a shift to undervalued names or a move higher in bond yields dries up appetite for technology stocks.

“People see these companies as winners and investors are willing to pay any price to own them,” said Michael O’Rourke, chief market strategist at JonesTrading. “That’s always a risk.”

LEGAL THREAT

One potential threat comes from an array of investigations and legal actions.

The latest came Monday, when a federal judge temporarily blocked Apple from cutting off all the developer accounts of Epic Games, pending a full hearing on the issue. It was a partial win for Epic, which had called Apple’s rules an anticompetitive abuse of power.

The standoff centers on Apple’s App Store, which forms the centerpiece of a $46.3 billion-per-year services business that has helped buoy the company’s share price.

The decision “is just a first battle of many on the horizon,” said Dan Ives, an analyst at Wedbush Securities. “From a valuation perspective, there’s clearly an overhang around antitrust.”

Wedbush nevertheless raised its target price for Apple on Wednesday to $700 a share in a “bull case” scenario, citing a “once in a decade” opportunity to take advantage of as many as 950 million potential iPhone upgrades worldwide.

Apple shares on Thursday closed at $500.04.

Still, this week’s Apple court decision may be a taste of things to come for technology giants, whose influence has been one of the few issues capable of galvanizing bipartisan interest among lawmakers.

Alphabet, Facebook, Amazon and Apple face a series of federal government probes into allegations that they unfairly defend their market share, with litigation against Alphabet possible later this year.

“These few behemoths dominate their industry and can set the rules of the global economy,” said U.S. Senator Richard Blumenthal, a Democrat who has been outspoken about antitrust issues. “This kind of concentrated power is always dangerous.”

The opposition is a worry for investors hoping the companies will continue delivering robust growth that justifies their valuations.

Amazon said it operates in a “fiercely competitive” market, citing U.S. Census Bureau data that only about 10% of U.S. retail sales occur online.

Apple declined comment. The company previously said it competes vigorously against Samsung Electronics Co Ltd 005930.KS and other Android device makers in the smart phone markets.

Alphabet declined comment. It previously said it competes with Amazon, Microsoft, Comcast Corp CMCSA.O, AT&T Inc T.N and many others.

Facebook and Microsoft had no immediate comment.

INVESTMENT DILEMMA

For some investors, the companies embody a dilemma that has dogged them at various times during the last decade. Many have found that cutting exposure to tech-related shares has limited portfolio performance over the long term.

The Big Five have seen their shares jump 22% or more to record highs this year, with Amazon soaring 86%. By comparison, the median stock performance across the S&P 500 year-to-date is a 4% drop.

The companies’ “increased market share ... provides potentially huge opportunities supporting growth prospects over many years,” said David Polak, equity investment director at $1.7 trillion Capital Group, which owns shares of big technology companies.

Still, some worry that a bad patch in the companies’ widely owned shares could trigger violent swings in broader markets.

Goldman Sachs analysts said in a recent report that the S&P 500 “has never been more dependent on the continued strength of its largest constituents.”

Another risk is a broad-based economic rebound boosting earnings of companies that have underperformed during the pandemic, potentially making their shares more competitive with tech stocks, said Edwin Jager, head of fundamental equities at hedge fund firm DE Shaw & Co, which oversees more than $50 billion.

In addition, a sustained rise in bond yields could make growth stocks less attractive, Jager said. Longer-term Treasury yields hit multi-month highs on Thursday after the Federal Reserve announced a shift in monetary strategy.

A change of sentiment toward big tech could take a comparatively heavier toll on the shares of less profitable technology companies that have rallied alongside the market’s giants.

#### High tech stock valuation now is key to Chinese rebound after Evergrande

Spilka 10/27/21 (Dmytro Spilka is a finance writer based in London. Founder of Solvid and Pridicto. His work has been published in Nasdaq, Kiplinger, Financial Express, and The Diplomat. “With Tech-Driven Rebound, Asian Markets Turn Corner on Evergrande Crisis”, https://thediplomat.com/2021/10/with-tech-driven-rebound-asian-markets-turn-corner-on-evergrande-crisis/)

Asian stocks, alongside many of their global counterparts, have recently undergone a healthy rebound upward as the embattled Chinese property giant Evergrande reportedly made its bond interest payments – a feat some onlookers feared wouldn’t happen.

Leading technology names across Asia have contributed to the market recovery also. Tech stocks have been at the forefront of the markets as they seek to accelerate away from September’s Evergrande crisis. Notably, the Hang Seng TECH (HSTECH) sub index has helped to drive some growth at the beginning of the fourth quarter, along with the general Hong Kong benchmark Hang Seng Index (HSI).

Analysts have found that a recent Wall Street rally, which helped to cause growth among Apple (APPL), Facebook (FB), and Microsoft (MSFT) stocks, has also helped to restore confidence in Asian tech, soothing concerns surrounding Evergrande. In China, shares have also been rising in what’s reportedly been the country’s weakest period of economic growth in a year.

So have the dark clouds dispersed from Asia’s markets? And can investor interest in big tech help to steer a stock market recovery in what’s been a challenging year for the continent?

The plight of Evergrande has been one of the biggest stories in finance in 2021. Although plans to rescue the Chinese developer are in place, progress has been slow. This led the firm to the brink of default, risking a collapse that would shock China’s real estate industry, house prices, and economy on a domestic and international scale.

With total debts amounting to $305 billion, Evergrande’s floundering stocks have hindered China’s recovery from the financial impact of the COVID-19 pandemic.

However, the recent news that Evergrande has met its deadline to deliver a bond interest payment of $83.5 million has delivered a wave of optimism across Asian markets.

Sadly, the interest payment is unlikely to appease the long-term fears of investors, and although the $83.5 million payment has helped the company to avoid an official default, it’s widely recognized as only a short-term fix at this stage.

Evergrande will need to repeat the process all over again in the coming days with a second offshore bond payment worth $47.5 million. Given that the company’s total liabilities amount to around 2 percent of China’s GDP, the growing debts of Evergrande could lead to a significant economic collapse that’s felt heavily across Asia and the rest of the world alike.

“Evergrande making its interest payment is a positive surprise,” said Paul Lukaszewski, head of corporate debt at Abrdn. “Importantly other developers also confirmed making interest payments – for a market which has fully capitulated, the fact the world did not end overnight could itself be a positive catalyst.”

“Multiple financing channels are effectively closed to developers in response to the policies implemented by the government. For those channels to reopen, investors have to believe these companies can remain going concerns. This means they need to have sufficient access to their own cash flows and to refinancing options to address their debt as it becomes due,” Lukaszewski added.

Although all eyes will remain firmly on Evergrande as the firm seeks to navigate away from its deep crisis, optimism appears to be seeping back into Asian markets, and growth in tech stocks appears to be playing a key role in aiding an economic recovery.

Nasdaq has reported that Asian markets have been trading mostly higher in the wake of the Evergrande crisis, owing to Wall Street support from crude oil prices and technology stocks that have mirrored their peers on Nasdaq.

Big tech firms have played a key role in aiding global markets, and their respective impact on the market was shown as the NYSE FANG+ Index climbed to its fifth consecutive positive session recently – its longest streak since June. In all, the index has climbed some 11 percent from an early October low.

The index is comprised of 10 companies with U.S. and Asia representation included – and shares in the China-based companies Alibaba and Baidu have helped to push more growth. Alibaba and Baidu experienced 4.1 percent and 2.2 percent price rises, respectively, amidst the rally.

The growth of big tech may be bolstered by upcoming developments in emerging technology markets, which could help to mitigate the impact of Evergrande across Asian finance.

Maxim Manturov, head of investment research at Freedom Finance Europe, believes that developments in fintech can carry a positive impact on markets as major financial institutions seek to grow their digital services globally.

With the further growth of financial technology services intending to aid millions of customers, it’s fair to anticipate that the growing fintech market will play a key role in bringing optimism back to Asian markets.

Although there are many hurdles ahead, and investors are rightly looking out for news on the embattled Evergrande, big tech performance has helped to return some optimism back to Asian markets. Provided there are no high-profile defaults on the horizon, tech looks set to help Asia turn the corner on a difficult third quarter and to look with more enthusiasm to a brighter fourth quarter.

#### China’s economy driven by tech growth prevents great power war

Beckley & Brands 9/24/21 (MICHAEL BECKLEY is Associate Professor of Political Science at Tufts University and Jeane Kirkpatrick Visiting Fellow at the American Enterprise Institute. HAL BRANDS is Henry A. Kissinger Distinguished Professor of Global Affairs at the Johns Hopkins University School of Advanced International Studies and a Senior Fellow at the American Enterprise Institute. China Is a Declining Power—and That’s the Problem, https://foreignpolicy.com/2021/09/24/china-great-power-united-states/)

All of this is happening, moreover, as China confronts an increasingly hostile external environment. The combination of COVID-19, persistent human rights abuses, and aggressive policies have caused negative views of China to reach levels not seen since the Tiananmen Square massacre in 1989. Countries worried about Chinese competition have slapped thousands of new trade barriers on its goods since 2008. More than a dozen countries have dropped out of Xi’s Belt and Road Initiative while the United States wages a global campaign against key Chinese tech companies—notably, Huawei—and rich democracies across multiple continents throw up barriers to Beijing’s digital influence. The world is becoming less conducive to easy Chinese growth, and Xi’s regime increasingly faces the sort of strategic encirclement that once drove German and Japanese leaders to desperation.Case in point is U.S. policy. Over the past five years, two U.S. presidential administrations have committed the United States to a policy of “competition”—really, neo-containment—vis-à-vis China. U.S. defense strategy is now focused squarely on defeating Chinese aggression in the Western Pacific; Washington is using an array of trade and technological sanctions to check Beijing’s influence and limit its prospects for economic primacy. “Once imperial America considers you as their ‘enemy,’ you’re in big trouble,” one senior People’s Liberation Army officer warned. Indeed, the United States has also committed to orchestrating greater global resistance to Chinese power, a campaign that is starting to show results as more and more countries respond to the threat from Beijing. In maritime Asia, resistance to Chinese power is stiffening. Taiwan is boosting military spending and laying plans to turn itself into a strategic porcupine in the Western Pacific. Japan is carrying out its biggest military buildup since the end of the Cold War and has agreed to back the United States if China attacks Taiwan. The countries around the South China Sea, particularly Vietnam and Indonesia, are beefing up their air, naval, and coast guard forces to contest China’s expansive claims. Other countries are pushing back against Beijing’s assertiveness as well. Australia is expanding northern bases to accommodate U.S. ships and aircraft and building long-range conventional missiles and nuclear-powered attack submarines. India is massing forces on its border with China while sending warships through the South China Sea. The European Union has labeled Beijing a “systemic rival,” and Europe’s three greatest powers—France, Germany, and the United Kingdom—have dispatched naval task forces to the South China Sea and Indian Ocean. A variety of multilateral anti-China initiatives—the Quadrilateral Security Dialogue; supply chain alliances; the new so-called AUKUS alliance with Washington, London, and Canberra; and others—are in the works. The United States’ “multilateral club strategy,” hawkish and well-connected scholar Yan Xuetong acknowledged in July, is “isolating China” and hurting its development. No doubt, counter-China cooperation has remained imperfect. But the overall trend is clear: An array of actors is gradually joining forces to check Beijing’s power and put it in a strategic box. China, in other words, is not a forever-ascendant country. It is an already-strong, enormously ambitious, and deeply troubled power whose window of opportunity won’t stay open for long. In some ways, all of this is welcome news for Washington: A China that is slowing economically and facing growing global resistance will find it exceedingly difficult to displace the United States as the world’s leading power—so long as the United States doesn’t tear itself apart or otherwise give the game away. In other ways, however, the news is more troubling. History warns the world should expect a peaking China to act more boldly, even erratically, over the coming decade—to lunge for long-sought strategic prizes before its fortunes fade. What might this look like? We can make educated guesses based on what China is presently doing. Beijing is already redoubling its efforts to establish a 21st century sphere of economic influence by dominating critical technologies—such as artificial intelligence, quantum computing, and 5G telecommunications—and using the resulting leverage to bend states to its will. It will also race to perfect a “digital authoritarianism” that can protect an insecure Chinese Communist Party’s rule at home while bolstering Beijing’s diplomatic position by exporting that model to autocratic allies around the world. In military terms, the Chinese Communist Party may well become increasingly heavy-handed in securing long, vulnerable supply lines and protecting infrastructure projects in Central and Southwest Asia, Africa, and other regions, a role some hawks in the People’s Liberation Army are already eager to assume. Beijing could also become more assertive vis-à-vis Japan, the Philippines, and other countries that stand in the way of its claims to the South and East China Seas. Most troubling of all, China will be sorely tempted to use force to resolve the Taiwan question on its terms in the next decade before Washington and Taipei can finish retooling their militaries to offer a stronger defense. The People’s Liberation Army is already stepping up its military exercises’ intensity in the Taiwan Strait. Xi has repeatedly declared Beijing cannot wait forever for its “renegade province” to return to the fold. When the military balance temporarily shifts further toward China’s favor in the late 2020s and as the Pentagon is forced to retire aging ships and aircraft, China may never have a better chance of seizing Taiwan and dealing Washington a humiliating defeat. To be clear, China probably won’t undertake an all-out military rampage across Asia, as Japan did in the 1930s and early 1940s. But it will run greater risks and accept greater tensions as it tries to lock in key gains. Welcome to geopolitics in the age of a peaking China: a country that already has the ability to violently challenge the existing order and one that will probably run faster and push harder as it loses confidence that time is on its side. The United States, then, will face not one but two tasks in dealing with China in the 2020s. It will have to continue mobilizing for long-term competition while also moving quickly to deter aggression and blunt some of the more aggressive, near-term moves Beijing may make. In other words, buckle up. The United States has been rousing itself to deal with a rising China. It’s about to discover that a declining China may be even more dangerous.

### Floodgates DA

#### Courts fear a clog of trebled antitrust suits—they manage the burden with procedural ‘floodgates’.

Stern 3—(BA, JD Candidate at University of Pennsylvania Law School). Toby J. Stern. 2003. “Federal Judges and Fearing the "Floodgates Of Litigation". 6 U. Pa. J. Const. L. 377. <https://scholarship.law.upenn.edu/jcl/vol6/iss2/8/>. Accessed 11/4/21.

\*\*Clayton Act Section 4 is the basis for private rights of action in antitrust—it establishes damages for "any person injured in his business or property by reason of anything forbidden in the antitrust laws”

Another set of cases in which the floodgates argument recurs are those involving the enforcement of the antitrust laws under Section 4 of the Clayton Act.3 9 Floodgates arguments are particularly applicable to Section 4 cases. That statute mandates treble damages and attorneys' fees to a successful antitrust litigant,40 providing an incentive for 41 someone with a marginal claim to sue.

For example, in Calderone Enterprises Corp. v. United Artists Theatre Circuit, Inc., the Second Circuit Court of Appeals considered "the question whether one who is not a 'target' of an alleged antitrust conspiracy has standing under § 4 of the Clayton Act., 42 In answering the question in the negative, the court argued against opening the floodgates to "every creditor, stockholder, employee, subcontractor, or supplier of goods and services that might be affected."4 Specifically, the court claimed that "the lure of a treble recovery, implemented by the availability of the class suit... would result in an overkill." 44 The dissenting judge, however, held fast to his view of the relevant Supreme Court precedents, claiming that the Court "has constantly recognized that antitrust laws should be given the broadest and most liberal interpretation in order to effectuate Congressional intent."45

A similar situation arose in In re Industrial Gas Antitrust Litigation.4 In that case, the Seventh Circuit held that a fired and blacklisted gas worker was not entitled to bring a private treble damages suit against his employer under Section 4.47 The court echoed the fear expressed in Calderone (and cited the language quoted from Calderone above), claiming that "[u]nless § 4's phrase 'by reason of' is interpreted to require a direct causal link between the antitrust violation and the resulting injury, the courts would be flooded with antitrust litigation.”48

Thus the floodgates argument can appear in many types of cases, but tends to recur in those cases where a litigant seeks to establish a new right or cause of action. 49 At the appellate level, it is as likely to be found in dissenting opinions as it is in those of the majority.

#### The plan causes judicial reactions of anti-plaintiff antitrust hurdles.

Stone 10—(JD from Northwestern, former law clerk to Justice Antonin Scalia on the United States Supreme Court). Judd E. Stone & Joshua Wright. 2010. “Antitrust Formalism Is Dead! Long Live Antitrust Formalism! Some Implications of American Needle v. NFL” Cato Sup. Ct. Rev, 369–70. Accessed 11/5/21 via Westlaw.

\*\**Bell Atlantic Corp. v. Twombly* was a 2007 case that held parallel action alone isn’t illegal under the Sherman Act unless accompanied by evidence of an agreement

But what of Twombly itself? One potential response to Twombly already proposed in multiple circles is simple legislation codifying the previous pleading requirements. This action would presumably lead to a large increase in cases at the margin between, as Twombly put it, merely “conceivable” versus “plausible.”152 These cases would be by necessity among the weakest antitrust suits present, requiring the most extensive discovery in order to vindicate the least obvious consumer harms. Antitrust has seen this pattern play out before, however; it was due to the massive proliferation of private actions that inspired much of the error-cost protections not only ensconced in the consumer harm requirements of Section 2 but narrowing Section 2's scope altogether. To borrow a phrase, the cautionary tale for repealing Twombly is that opening the floodgates to all conceivable antitrust claims is a strategic maneuver that will favor plaintiffs in only the very shortest of temporal horizons--before the antitrust “system” of rules reacts accordingly.

The expectation that American Needle represents a permanent shift toward more expansive antitrust enforcement is thus misguided. The narrowing of Copperweld was made possible by the successful implementation of the Twombly filter, and necessitated by Copperweld's failure in application. The Court's decision to broadly scuttle \*406 the single-entity defense was heavily informed by error-cost principles, if unfortunately implemented in a particularly formalistic way, and does not insinuate sweeping pro-plaintiff changes to Section 1 for the foreseeable future. Indeed, even as American Needle was argued, Chief Justice Roberts maintained substantial hesitancy over even the use of the Rule of Reason, which remained “a continuing project of [the] Court.”153 This work will almost certainly continue as it has for the last 30 years: motivated by a sincere concern for error costs and consistency with economic learning and empirical data.154

#### Strong private right of action in antitrust prevents economy-wide price-fixing cartels and economic collapse.

Lande 16—(Venable Professor of Law at the University of Baltimore School of Law, Director of the American Antitrust Institute). Robert Lande. Spring 2016. Antitrust Magazine. “Class Warfare: Why Antitrust Class Actions Are Essential for Compensation and Deterrence.” Volume 30. https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=2019&context=all\_fac.

The antitrust statutes provide that violations result in automatic treble damages for the victims.2 The legislative history 3 and case law indicate that compensation of victims is a goal, perhaps the dominant goal, of antitrust law’s damages remedy.4 Class actions play an essential role in ensuring that the treble damages remedy serves its intended function of “protecting consumers from overcharges resulting from price fixing.”5 As the Supreme Court noted, “[C]lass actions . . . may enhance the efficacy of private [antitrust] actions by permitting citizens to combine their limited resources to achieve a more powerful litigation posture.”6 Accordingly, “courts have repeatedly found antitrust claims to be particularly well suited for class actions . . . .”7

Without class actions, cartels and other antitrust violators that inflict widespread economic harm would have little to fear from the treble damages remedy. This is because, as a practical matter, class action cases are virtually the only way for most victims of anticompetitive behavior to receive compensation.8 A 2013 study that Professor Joshua Davis and I conducted documents the benefits of private enforcement by analyzing 60 of the largest recent successful private U.S. antitrust cases (defined as suits resolved since 1990 that recovered at least $50 million in cash for the victims9 ). These actions returned a total of $33.8–$35.8 billion in cash to victims of anticompetitive behavior.10 These figures do not include products, discounts, coupons, or the value of injunctive relief or precedent—only cash.11 Consequently, these totals significantly understate the actual benefits of this litigation to the victims involved. And, of course, this study covered only 60 suits (albeit 60 of the largest private recoveries) out of the many hundreds of private cases filed in the United States during this period.

#### Impact is global war.

Haas 17—(President of the Council on Foreign Relations, former Director of Policy Planning for the US State Department (2001-2003), and President George W. Bush's special envoy to Northern Ireland and Coordinator for the Future of Afghanistan). Richard Haas. A World in Disarray: American Foreign Policy and the Crisis of the Old Order. 1-10-17. Penguin Press.

A large portion of the burden of creating and maintaining order at the regional or global level will fall on the United States. This is inevitable for several reasons, only one of which is that the United States is and will likely remain the most powerful country in the world for decades to come. The corollary to this point is that no other country or group of countries has either the capacity or the mind-set to build a global order. Nor can order ever be expected to emerge automatically; there is no invisible hand in the geopolitical marketplace. Again, a large part of the burden (or, more positively, opportunity) falls on the principal power of the day. There is more than a little self-interest at stake. The United States cannot remain aloof, much less unaffected by a world in disarray. Globalization is more reality than choice. At the regional level, the United States actually faces the opposite problem, namely, that certain actors do have the mind-set and means to shape an order. The problem is that their views of order are in part or in whole incompatible with U.S. interests. Examples would include Iran and ISIS in the Middle East, China in Asia, and Russia in Europe.

It will not be an easy time for the United States. The sheer number and range of challenges is daunting. There are a large number of actors and forces to contend with. Alliances, normally created in opposition to some country or countries, may not be as useful a vehicle in a world in which not all foes are always foes and not all friends are always friendly. Diplomacy will count for a great deal; there will be a premium on dexterity. Consultations that aim to affect the actions of other governments and their leaders are likely to matter more than negotiations that aim to solve problems.

Another reality is that the United States for all its power cannot impose order. Partially this reflects what might be called structural realities, namely, that no country can contend with global challenges on its own given the very nature of these challenges. The United States could reduce its carbon footprint dramatically, but the effect on global climate would be modest if India and China failed to follow suit. Similarly, on its own the United States cannot maintain a world trading system or successfully combat terrorism or disease. Adding to these realities are resource limits. The United States cannot provide all the troops or dollars to maintain order in the Middle East and Europe and Asia and South Asia. There is simply too much capability in too many hands. Unilateralism is rarely a serious foreign policy option. Partners are essential. That is one of the reasons why sovereign obligation is a desirable compass for U.S. foreign policy. Earlier I made the case that it represents realism for an era of globalization. It also is a natural successor to containment, the doctrine that guided the United States for the four decades of the Cold War. There are basic differences, however. Containment was about holding back more than bringing in and was designed for an era when rivals were almost always adversaries and in which the challenges were mostly related to classical geopolitical competition.1 Sovereign obligation, by contrast, is designed for a world in which sometime rivals are sometime partners and in which collective efforts are required to meet common challenges.

Up to this point, we have focused on what the United States needs to do in the world to promote order. That is what one would expect from a book about international relations and American foreign policy. But a focus on foreign policy is not enough. National security is a coin with two sides, and what the United States does at home, what is normally thought of as belonging to the domestic realm, is every bit as much a part of national security as foreign policy. It is best to understand the issue as guns and butter rather than guns versus butter.

When it comes to the domestic side, the argument is straightforward. In order to lead and compete and act effectively in the world, the United States needs to put its house in order. I have written on what this entails in a book titled Foreign Policy Begins at Home.2 This was sometimes interpreted as suggesting a turn away from foreign policy. It was nothing of the sort. Foreign policy begins at home, but it ends there only at the country’s peril.3

Earlier I mentioned that the United States has few unilateral options, that there are few if any things it can do better alone than with others. The counterpart to this claim is that the world cannot come up with the elements of a working order absent the United States. The United States is not sufficient, but it is necessary. It is also true that the United States cannot lead or act effectively in the world if it does not have a strong domestic foundation. National security inevitably requires significant amounts of human, physical, and financial resources to draw on. The better the United States is doing economically, the more it will have available in the way of resources to devote to what it wants and needs to do abroad without igniting a divisive and distracting domestic debate as to priorities. An additional benefit is that respect for the United States and for the American political, social, and economic model (along with a desire to emulate it) will increase only if it is seen as successful.

The most basic test of the success of the model will be economic growth. U.S. growth levels may appear all right when compared with what a good many other countries are experiencing, but they are below what is needed and fall short of what is possible. There is no reason why the United States is not growing in the range of 3 percent or even higher other than what it is doing and, more important, not doing.4

### Midterms DA

#### **Dems will lose now but it’s not locked in**

Stuart Rothenberg 3-29 [Roll Call, "New polls confirm Democratic problems for November," accessed 3-29-2022, https://rollcall.com/2022/03/29/new-polls-confirm-democratic-problems-for-november/, hec]

The Pew Research survey showed registered voters split evenly on the “generic ballot,” with 43 percent planning to vote for the Democratic nominee for Congress in November and the same percentage planning to vote for the Republican nominee. The NBC News survey found 46 percent of respondents preferring a Congress controlled by Republicans, while 44 percent favored a Democratic-controlled Congress. Both surveys are good news for Republicans. Historically, the generic ballot test has underestimated the GOP vote. Even more important, voters who decide late in a cycle — including those who are now “undecided” about their congressional vote later this year — tend to reflect the national mood, which currently shows an unpopular president and a public that believes the country is headed “off on the wrong track.” The large number of Democratic retirements could also give Republicans additional targets, though that could be offset by a surprisingly good Democratic redistricting cycle. Turnout, of course, is always crucial, and once again the news is not good for Democrats. The Pew Research Center survey found Republicans are 10 points more likely than Democrats to say that partisan control of Congress “really matters.” That difference in intensity is likely to translate into a significant turnout advantage for the GOP.

#### **Antitrust ensures a Democrat win.**

Teachout ’20 [Zephyr; December 18; Associate Professor of Law at Fordham University School of Law; The New Republic, “A Blueprint for a Trust-Busting Biden Presidency,” <https://newrepublic.com/article/160646/biden-antitrust-blueprint-monopoly-busting>]

Just as important, given the precarious political footing of the incoming Biden administration, is the potent electoral appeal of such an agenda—something that FDR also well understood as he instituted federal income supports as the basis for a Democratic governing coalition that spanned generations. Antitrust is one of the few policy arenas in which aggressive action will win Biden the devoted support from the activist left wing of the Democratic Party, while splitting apart and exposing the always unsustainable economic arguments mounted against crony capitalism by self-styled populists on the right. For starters, this realignment of the Democratic Party’s vision of the American political economy would go a long way to help Democrats win the Senate in 2022—a cycle that boasts an unusual number of vulnerable GOP incumbents, weighed down with the dismal Trump-McConnell legacy on Covid relief.

The opportunity that Biden and the Democrats need to seize here stems from the basic fact that antitrust politics is not like other politics. Traditional left and right loyalties simply do not hold within its orbit. The economic populists of the right hate corporate monopolies as much as working-class progressives and immigrant small-business owners do. It’s not for nothing that Ted Cruz keeps yelling about monopolies—or that Trump, when he first campaigned in 2016, and when he was clearly losing in 2020, turned to attacking corporate monopolies. Trump of course reneged on his trust-busting promises, but he understood the rhetorical power of saying that “big media, big money, and big tech” were all against him. On the front lines of Democratic policymaking, meanwhile, a generation’s worth of neoliberal giveaways to these sectors is finally yielding to a new social democratic consensus. In antitrust politics, Amy Klobuchar, Elizabeth Warren, and Bernie Sanders share their anger with Andrew Yang and Scott Galloway—a beloved tech business guru who rooted for Bloomberg.

Within the electorate proper, the depth of the emerging new antitrust consensus is even more striking. One recent poll by Data for Progress showed that 74 percent of Republicans and 80 percent of Democrats are “very concerned” or “somewhat concerned” about monopolies in the U.S. economy. The same survey showed the number of people who support breaking up big tech companies outnumbers those who oppose it by a two-to-one margin, again with no significant Democratic-Republican divide on the question. Indeed, some surveys now show that Republicans are more likely to see tech companies as having too much political power. A Harvard CAPS/Harris survey found similar numbers in 2019, with nearly 70 percent of voters saying that big tech should be subject to antitrust review, and had used market power to gain enormous profits. Almost two-thirds of Americans also told Data for Progress they wanted actions against big tech.

And while big tech soaks up a great deal of attention as the most recent monopoly player on the block, the same trend holds through most major sectors of the U.S. economy—voters see a plague of bigness, and are increasingly clamoring for the federal government to intervene. A 2020 poll by RuralOrganizing.org found that among rural voters, fighting corporate power is a top priority. Sixty-nine percent of the respondents in the survey believed that “a handful of corporate monopolies now run our entire economy.” Almost half said they’d be more likely to support a political leader combating this pattern of top-down concentration and endorsed “a moratorium on factory farms and corporate food and agriculture monopolies.” Opposition to the 2018 Bayer-Monsanto merger reached as high as 93 percent in one poll, with critics citing very sophisticated economic arguments for their opposition. More than 90 percent of respondents, for example, were concerned that the newly merged ag-and-medical giant would “use its dominance in one product to push sales of other products.”

These aren’t the voices of diehard Democrats with a few Republican crossovers, or vice versa. Within traditional political and policy disputes, you don’t see anything close to such openings for trans-partisan accord. In one representative 2020 Hill-HarrisX survey, for instance, 88 percent of Democrats supported Medicare for All, while 46 percent of Republicans did. Antitrust, by contrast, is foundationally bipartisan, interdenominational, cross-cutting—everything Biden said he wanted to be during his general election campaign and in his victory speech. Unlike other well-flogged economic or culture-war issues, antitrust affords an inviting path out of the bitter cul-de-sacs of prevailing political debate. In an age of trench-warfare–style base mobilizations, the antitrust agenda promises something else: a vision of widening opportunities for ordinary citizens, the basic American civic ethos of giving people a fair shot, and a governing plan that could actually unite Republican and Democratic support.

#### Locks in appeasement.

Charles ‘21 [Robert B.; March 12; J.D. from Columbia University Law School, MA from Oxford University, BA from Dartmouth College, Former Professor of Law at Harvard University’s Extension School, Former Assistant Secretary of State; AMAC Magazine, “The Sun Also Rises: 2022 Elections,” http://digitaledition.qwinc.com/publication/?m=40499&i=699518&view=articleBrowser&article\_id=3972169&ver=html5]

But here is where the "storyline" (sorry, "narratives" are children's stories) changes. The year 2022 represents a chance for a sharp turn back to normalcy. Americans are sick of lockdowns, lost jobs, and canceled pipelines, drilling, and fracking. They are tired of elites not caring.

They are tired of leaders with constitutional immunity from defamation hammering their free speech. They are tired of left-leaning governors halting worship but allowing riots. They are tired of restrictions on assembly, travel, self-defense, and independence. To borrow from Barbara Stanwyck (friend of Ronald Reagan) in Christmas in Connecticut, "In short, they are tired."

They should be. That is why 2022 matters. America deserves better and can get it. Here is how. The House and Senate could be flipped in 2022, throwing brakes on a runaway power grab.

To date, we have seen more executive orders than in recent history. Efforts continue to curtail the legislative filibuster, permitting any random outrages on majority vote. We see bills like H.R. 1, hoping to unconstitutionally federalize state elections and blunt free speech.

So, what do we know? Midterm elections favor the party that does not hold the White House. This year, Republicans need 10 seats to regain the House, putting Nancy Pelosi in the past. As Biden's approval lags—from job cuts, lockdowns, higher taxes, expensive oil and gas, re-indulging China and Iran, defense cuts, "open borders," and attacks on rights—momentum builds.

Fear of Biden-Harris flipped 15 Democrat seats to Republican in 2020. As safety, security, health, and jobs roil people, a wholesale shift may be in the offing. If 2020 was "Year of the Republican Woman," with a record 26 GOP women in the House, 2022 could see more. Experts note that these women are conservative—and their voices are rising.

Other issues play into 2022, especially censorship. Already, 4.6 percent of 2020 Biden voters say they would NOT have voted Biden if they had known more about Hunter. Biden won by 4.4 percent.

Even when lockdowns lift, socialist Democrat priorities are on track to kill jobs, raise taxes and costs, and restrict rights. Reopening schools is a parental priority, yet Democrats are slowing openings to satisfy teacher unions—that is, their donors.

On the numbers, Republicans have a real shot at regaining control of both chambers, which means hope for core values, defense, free markets, constitutional rights, a family focus, safe streets, secure borders, less regulation, and a shot at returning to what most call normalcy.

In the US House, 15 pickups are discussed, including Reps. Carolyn Bourdeaux (D-Ga.), Andy Kim (D-N.J.), Cheri Bustos (D-lll.), Ron Kind (D- Wis.), Peter DeFazio (D-Ore.), Filemon Vela, Henry Cuellar, Vicente Gonzalez, Colin Allred (D-Texas), Sharice Davids (D-Kan.), Katie Porter (D- CA), Deborah Ross (D-N.C.), John Garamendi (D-Calif.), Stephanie Murphy (D-Fla.), and Carolyn Maloney (D-NY).

Beyond these, two vacancies exist for the late Ron Wright (TX) and Luke Letlow (LA). Biden aims to pull Reps. Marcia Fudge (D-OH) and Cedric Richmond (D-LA) into his administration, bringing possible gains to 19. Again, history cuts for Republicans.

In the US Senate, 34 of 100 seats are up in 2022. Of these, 14 are held by Democrats and 20 by Republicans. While this suggests a challenge, especially since four Republican incumbents are not seeking re-election, Democrat seats in Georgia and Arizona were won by slim margins, and trends put Democrats on defense, with Biden's woeful agenda to defend.

Another harbinger is redistricting. The GOP will control two-thirds of all House seats and the Democrats a tenth, the rest settled by divided states and state commissions. Likely, 117 congressional districts will be drawn by Republican-controlled states, 47 by Democrats, 132 by division or commission. Seven are "at large," covering an entire state.

Perhaps the biggest factor, beyond 75 million voters roiled by 2020 and Biden's stumbling start, is history. Looking back, in 19 of the last 21 midterm cycles, the president's party lost seats in one or both chambers. In 18 of those 19, the president lost seats in both chambers. Only John F. Kennedy and George W. Bush gained seats in their first midterm, the latter after 9/11.

Specifically, FDR lost 81 House seats and seven Senate in his first midterm, Truman lost 45 House and 20 Senate, Ike 18 House and one Senate, Johnson 47 House and four Senate, and Nixon 12 House (picking up two Senate). Ford lost 48 House and five Senate, Carter 15 House and three Senate, and Reagan 26 House (picking up one Senate). Bush 41 lost eight House and one Senate, Clinton 52 House and eight Senate, Obama 63 House and three Senate, and Trump 40 House (picking up two in Senate). So, you see which way the wind blows.

The party in the White House loses big in most midterms—and in both chambers, slowing the president's agenda. The only first-term gains were in the Senate, all four Republicans: Nixon, Reagan, Bush 43 (who gained in both chambers), and Trump.

The message is this: have hope and focus on 2022. Sudden turnabouts are not just for movies and not just for one side. The funny thing is that the sun also rises. Much that is wrong can be corrected.

#### Nuclear war.

Means ‘21 [Grady; August 30; Former Policy Assistant to Vice President Nelson Rockefeller, Retired American Business Executive, and MA in Economics and Engineering from Stanford University, Former Systems Engineer for Northrop Corporation, Former Economist in the Office of the Secretary of the U.S. Department of Health, Education, and Welfare, Founder of SAGE Consulting, Author of MetaCapitalism and Wisdom of the CEO; The Hill, “Biden Brings The World Closer To Nuclear War,” https://thehill.com/opinion/white-house/569732-biden-brings-the-world-closer-to-nuclear-war]

Over the past six months, the world has edged closer to nuclear war than it has been since the Cuban Missile Crisis. The Doomsday Clock is ticking toward midnight. The global power balance has been dramatically reshuffled, and the potential for disastrous miscalculation hasn't been so high in 80 years. The match and fuse for this is instability — an exaggerated sense of U.S. weakness and lack of capability and resolve — that could lead to huge, aggressive military miscalculations and mistakes by our enemies. The Biden administration has set the table for such a catastrophe.

The timing could not be more dangerous. China has changed strategic direction and has been building its nuclear stockpile and delivery systems. China also has continued to develop hypersonic weapons, including stand-off “carrier killers,” space weapons and cyber capabilities to blind opponents’ strategic and conventional systems. Russia has been advertising (mostly for domestic consumption, but nonetheless worrying) its “unstoppable” delivery systems, and has a very capable nuclear stockpile and military. Iran will continue to move forward with building nuclear weapons. Pakistan and India both have significant nuclear capability in an increasingly unstable part of the world. Nuclear-armed North Korea is again assuming a more belligerent posture. Israel has a full nuclear triad (land, air, subs) to respond to existential aggression. The U.K. and France have significant nuclear deterrents. The world is a powder keg.

In Hollywood terms, today’s capacity for nuclear holocaust is thousands of times greater than the era portrayed in the Armageddon films “On the Beach,” “Fail Safe,” or “Dr. Strangelove.” There would not be anything left for “Mad Max.” Climate disasters may be unfolding over the next hundred years. Nuclear disaster is unfolding now. COVID-19 has killed more Americans than the flu typically does. Nuclear war could kill us all. Our leaders must get their priorities straight.

The danger lies in the growing global perception of weakness and incompetence in the Biden administration, combined with claims of the politicized weakening of the FBI, CIA, State Department and Defense Department. This has crystallized in Secretary of State Antony Blinken’s unsure Anchorage meeting with the Chinese, Biden’s wooden Geneva summit with Russia’s Vladimir Putin, the colossal failure of the Afghan withdrawal, which may devolve into a humiliating hostage crisis for America, and the budget- and inflation-based defunding of Defense. In addition, the fully politicized Intelligence and Armed Services committees on Capitol Hill add to the danger. Our enemies may decide that now is the time to move.

### Taxes CP

#### The United States federal government should apply a substantial progressive tax on rents from unilateral conduct by dominant digital platforms.

#### The CP solves the case by expanding antitrust but, rather than enforcing it with a prohibition, it levies a progressive tax on anticompetitive rents---that’s an instantly effective deterrent AND creates traditional enforcement as follow-on.

Yonah ’21 [Reuven Avi; July 29; Irwin I. Cohn Professor of Law and Director of the International Tax LLM Program at the University of Michigan Law School, PhD in History from Harvard University, AM in History from Harvard University, JD from Harvard Law School; Tax Notes Federal, “A New Corporate Tax,” https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3743202]

If we can regulate our corporations simply through the medium of taxation, we can destroy every trust in a fortnight. It would be a great deal better for the Finance Committee to turn its attention to the imposition of such a tax upon corporations and the persons who actually need regulation, who are exercising powers that are injurious to the American people, destroying competition and invading our prosperity, than to attempt to levy a revenue tax upon all the little shareholders of all the little corporations throughout the length and breadth of the United States.1

I. Introduction: Why Tax Corporations?

Should the U.S. tax corporations? For many academic and political observers, the answer is no.2 The corporate tax is a strange tax because by definition it is not borne by the corporate taxpayer, because corporations are legal entities and cannot economically bear the burden of taxation. Moreover, unlike other indirect taxes (for example, consumption taxes that are passed on to consumers or the employer’s portion of the payroll tax that is passed on to employees), economists after over 50 years of debate are not sure who bears the burden of the corporate tax: shareholders, all capital providers, corporate employees, or consumers. The most likely answer is that all of the above do in varying ratios depending on the current elasticities of capital, labor, and demand in the global economy, and on the degree to which the U.S. economy is open.3

The general public, on the other hand, is convinced that the corporate tax is borne by large corporations, and politicians respond by maintaining the corporate tax as a tax paid by someone other than the voters. But this fiscal illusion, the opponents of the tax pronounce, is hardly a valid reason to maintain a very complicated tax that is the cause of significant deadweight loss (changes in behavior caused by the tax) and transaction costs (tax compliance and avoidance costs).4

This article will argue that we do need a corporate tax, but not for the traditional reason, which is that if we do not tax corporations, rich shareholders will be able to defer tax on their income. Instead, the article will argue that we should tax corporations for the same reason we originally adopted the corporate tax in 1909: to limit the power and regulate the behavior of our largest corporations, which are monopolies or quasi-monopolies that dominate their respective fields and drive their competitors out of business (the best example being Big Tech — that is, Amazon, Apple, Facebook, Google, and Microsoft). But if that is the reason to have a corporate tax, it should have a different structure from the current flat corporate tax of 21 percent. Instead, the tax should be set at zero for normal returns by allowing the expensing of physical capital, but at a sharply progressive rate for supernormal returns (rents), culminating at a rate of 80 percent for income above $10 billion a year.5 After this introduction, Section II of the article discusses and rejects the traditional reason given for taxing corporations. Section III argues that the only reason to maintain a corporate tax is as a tax on monopolistic rents. Section IV develops this proposal in some detail and Section V provides a conclusion.

II. A Tax on Shareholders?

The traditional reason for taxing corporations is that if we did not, rich shareholders would be able to earn their income through corporations and defer the tax until there is a dividend distribution or they sell the shares, or even avoid the tax altogether by holding their shares until death and having their heirs sell at a stepped-up basis.

That is not a valid reason for keeping alive a tax as complicated and costly as the corporate tax, which is why many academic observers have called for its abolition. Given that the corporate tax rate has been sharply cut to 21 percent and that the revenue from the corporate tax is at $230 billion (in 2019) and only a small fraction (below 7 percent) of total federal revenues of $3.4 trillion, it does not appear impossible that some future president could successfully argue for abolishing the corporate tax, despite its public popularity.

There are three reasons why the corporate tax is not a valid way of taxing shareholders. First, despite over 50 years of economic research, economists are still unsure of who bears the burden of the corporate tax.6 Plausible candidates are (a) the shareholders, if the corporate tax reduces corporate profits available to them as dividends or is reflected in the price of their shares (although even that assumes that the tax was not priced in when they bought the shares, in which case only the original shareholders in an initial public offering bear the burden); (b) all capital providers, if the tax causes capital to flow from the corporate to the noncorporate sector, which is influenced by the ever-changing relative tax rates on corporate versus passthrough businesses; (c) employees, if the corporations can effectively reduce wages in response to the tax by, for example, threatening to move production overseas; or (d) consumers, if corporations enjoy a monopolistic or quasimonopolistic position and therefore can raise prices to include the tax without fear of being undercut by competition. The true answer is probably that all of the above bear the burden in different ratios over time depending on the elasticities (response to the tax) of capital, labor, and demand.

Second, as economists have recently emphasized, many shareholders are tax exempt. In fact, a recent study has shown that 70 percent of U.S. equities are held by tax-exempt institutions or individuals (for example, through retirement accounts).7 The authors of the study argue that this is a reason to tax corporations because otherwise capital would not be taxed at all, but it seems to me that if we believe in the reason that we exempt these individuals and institutions from tax, there is no reason to tax them indirectly through a corporate tax (assuming that they do in fact bear the tax burden).

Third, even for taxable shareholders, there are better ways of taxing the shareholders directly, thereby eliminating the incidence issue. For closely held corporations, the answer is to tax the shareholders on their income earned through the corporation — that is, to make passthrough treatment mandatory — because there are no administrability issues for those corporations and most of them are passthroughs in any case. For publicly traded corporations and partnerships, passthrough taxation is not administratively feasible. Instead, the shareholders should be taxed on the changing value of their shares, because liquidity and valuation are not issues for publicly traded shares, and the same tax can be collected on a withholding basis on foreign shareholders and if necessary on tax-exempt domestic shareholders (the government can impose a lien on some of the shares and sell them if the tax is not paid by foreign shareholders).8 Pre-enactment unrealized appreciation can be reached by applying the tax in the year of enactment to the difference between the end-ofyear share value and original basis.

For these reasons, if the only rationale for having a corporate tax is to indirectly tax shareholders, it is not clear that it is worth fighting for against the many voices calling for its abolition. But that is in fact not the only rationale, as the next section explains.

III. A Tax on Monopolistic Rents

When the corporate tax was enacted in 1909, taxing shareholders was not the reason. In fact, taxing shareholders would in 1909 have been unconstitutional under the Supreme Court’s 1895 Pollock decision9 which both President Taft and then-Senate Majority Leader Nelson Aldrich believed precluded a tax on shareholders, although to placate the Progressives they also introduced a constitutional amendment to allow Congress to tax individual income, which neither expected to pass. Instead, the corporate tax was designated as an excise tax on the privilege of conducting business through the corporate form, since the Supreme Court had held such excise taxes on corporations to be constitutional in 1898; but neither Taft nor Aldrich thought that was a good reason to impose a federal tax on corporations, because the privileges of the corporate form derived from state, not federal, law.

Instead, as I have shown elsewhere by examining the legislative history, the corporate tax of 1909 was primarily seen as a vehicle for limiting the power of and regulating the great trusts such as John D. Rockefeller’s Standard Oil Co. or J.P. Morgan’s U.S. Steel Corp.10 The Taft administration was at the same time litigating against Standard Oil and American Tobacco (among many other trusts) to break them up under the Sherman Act of 1890, but the prospects of the litigation were uncertain (the government had lost the E.C. Knight case in the Supreme Court in 1895 and only narrowly won the Northern Securities case in 1904). Thus, as Taft said in his message to Congress, we should have a corporate tax to curb the trusts:

Another merit of this tax is the federal supervision which must be exercised in order to make the law effective over the annual accounts and business transactions of all corporations. While the faculty of assuming a corporate form has been of the utmost utility in the business world, it is also true that substantially all of the abuses and all of the evils which have aroused the public to the necessity of reform were made possible by the use of this very faculty. If now, by a perfectly legitimate and effective system of taxation, we are incidentally able to possess the Government and the stockholders and the public of the knowledge of the real business transactions and the gains and profits of every corporation in the country, we have made a long step toward that supervisory control of corporations which may prevent a further abuse of power.11

The corporate tax of 1909 had several features that were considered potentially effective as antitrust measures. First, even though the tax rate was only 1 percent, both supporters and opponents knew the rate could be increased (as it ultimately was, reaching 52.8 percent in 1968) and the threat of those changes might deter the trusts. Second, the tax returns were to be made public, thus alerting the press and the voters to which corporations were the most profitable and therefore the likeliest targets for antitrust enforcement actions. Third, while intercorporate dividends were exempt (a controversial feature, because the trusts were holding corporations), there were no tax-free reorganizations and no consolidated returns.

Unfortunately, all these antitrust features of the corporate tax were eliminated by 1928. The publicity feature was eliminated in 1910, taxexempt reorganizations were adopted in 1919, and consolidated returns were made elective in 1928. Also, various pro-corporate provisions like accelerated depreciation, percentage depletion, and the foreign tax credit were adopted in the same period. While the Franklin D. Roosevelt administration limited the dividends received deduction and tax-exempt reorganizations in the 1930s, it never eliminated them, and subsequent enactments like investment tax credits reduced the corporate tax even further. As for the rate, it never exceeded 52.8 percent (as opposed to the individual rate, which reached 94 percent during World War II and was still as high as 70 percent when Ronald Reagan was elected president). The effective corporate tax rate was much lower because of interest and depreciation deductions and investment tax credits. In 1986 the corporate rate was reduced from 46 percent to 34 percent (later raised to 35 percent), and despite various base-broadening measures, the effective corporate rate remained low. Corporate tax revenues consequently declined from 25 percent of total federal revenues in the 1960s to less than 10 percent in the 2000s. Finally, in 2017 the corporate tax rate was reduced to 21 percent, and it was a flat rate — all the previous progressivity, which applied only to small corporations with revenues below $15 million, was eliminated.

Other than the rates, we are unlikely to reverse these pro-trust features of the corporate tax, because they are old, well established, and benefit small as well as large corporations, which are not the proper subject of a corporate tax designated to limit the power of monopolies and quasi-monopolies.

Recent research by Edward Fox has shown, however, that most of the existing corporate tax falls on supernormal returns.12 Fox shows this by demonstrating from corporate tax returns for 1995-2013 that if expensing of capital expenditures were allowed before 2017, corporate tax revenues would have been almost identical to actual revenues. Because (as discussed later) expensing is equivalent to exempting the normal return, that means that the corporate tax has historically fallen primarily on supernormal returns, or rents. This finding is consistent with Laura Power and Austin Frerick’s evidence from 2016 that excess returns to corporations have been increasing over time.13 In the current environment, because expensing is in fact allowed until 2022, that finding is even more likely to be true.

In that case, and if the main reason to have a corporate tax is to tax rents and limit monopolies, then the tax should have a different rate structure than we have now. I would suggest that the effective tax rate on normal corporate profits be zero. On supernormal returns, because the main concern is monopolies and quasi-monopolies, the tax should be progressive, with a very high tax rate (for example, 80 percent) for profits above a very high threshold (for example, $10 billion). In between, there should be a series of graduated tax rates, similar to the individual rate schedule before 1980.

#### Using taxes as a new, independent regulatory tool mainstreams them as an instrument to broadly cushion societal responses to inevitable ecological, demographic, and political crises---extinction.

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1. Introduction

Environmental problems are of all times. Yet, over the past two decades, climate change, air pollution, natural resource depletion and biodiversity loss have reached the status of worldwide persistent threats (Foxon, Reed, and Stringer 2009). There is increasing consensus in the literature that common policy responses, which are in the main incremental, will not provide structural solutions to those problems (Elzen and Wieczorek 2005). Transition theory links those challenges to socio-technical systems, which fulfil a societal function using technical components, infrastructure, regulations and networks of organisations (Geels and Kemp 2000). A transition is a radical and structural change with economic, cultural, ecological and institutional developments taking place at different levels of the socio-technical system (Rotmans and Loorbach 2009).

An important discussion in transition literature concerns the question of whether transitions, niches and regimes can be governed, or even steered, in a (sustainable) direction. Most transition scholars see an active role for government, but not in the classical way as the top-down commander who can steer at will using its toolbox of instruments (Paredis 2013). Rather, government is seen as just one group of actors (Geels, Elzen, and Green 2004), who are part of the regime but simultaneously shape its adaptive capacity (Smith, Stirling, and Berkhout 2005). Government actors exert a substantial influence on the functioning of the socio-technical system as they often maintain and reproduce regime functions in an intensive manner (Smith, Stirling, and Berkhout 2005).

To address the complexity and long-term focus (one to two generations) of transitions, “existing policy instruments need to be combined with new approaches” (Elzen and Wieczorek 2005, 657). In addition to command-and-control (CAC) instruments and communicative instruments, economic instruments are used in environmental policy (Howlett and Ramesh 2003; Perman et al. 2003). Geels (2012) indicates, in the context of transport systems, that economic instruments can be used to enhance pressure on an unsustainable regime. Chappin (2011) applies simulation models to study the influence of carbon taxes on energy transitions. Although these studies point at the potential of taxation, the theoretical dynamics behind the impact of a tax on the transition process are not yet well understood, and available studies on the topic are scarce. This paper aims to contribute to the growing literature of transition governance by means of an exploratory analysis of the potential of taxation as an instrument to support sustainability transitions. We will do so by combining the literature on environmental taxation with the literature on sustainability transitions, and by identifying the conditions for a tax to have that potential. In our theoretical exploration, we will combine two heuristic frameworks from transition thinking, the multi-level perspective (MLP) and the multi-phase perspective (MPP), with the neoclassical theory of Pigouvian taxation, which is the basis of environmental taxation theory.

This paper is organised as follows. The MLP and MPP are explained in Section 2, along with other transition concepts. In Section 3, an overview is provided of the theoretical foundations of regulatory taxation. Section 4 shows the results of the combination of the theoretical strands of transitions and environmental taxation. Section 5 is dedicated to the limitations and barriers to the potential of environmental taxation, and in Section 6, we draw conclusions and provide suggestions for future research.

2. Transition theory: the MLP and the MPP

The MLP on sustainability transitions distinguishes between three levels (Geels 2004; Verbong and Geels 2007). At the macro level, the landscape represents the external environment of the system. Changes at the landscape level influence the socio-technical system (Markard and Truffer 2008). Examples of such developments are global warming, global economic growth, political crises or demographic evolutions (Geels 2002). At the meso level, the regime is the dominant form of functioning in the socio-technical system (Avelino and Rotmans 2009). The regime can be a dominant technology, institution, policy, practice or culture. At the micro level, niches present alternative (sustainable) technologies, institutions, policies, practices or cultures that cause disruptions in the functioning of the socio-technical system. By experimenting and growing stronger, niches can eventually overtake the role of the regime and install a new dynamic balance in the socio-technical system (Kemp and Loorbach 2006; Loorbach and Wijsman 2013). For example, learning effects from experiments with niche technologies such as photovoltaic energy and wind power in the energy system may make those technologies increasingly successful. After the growing phase, they may also become cheaper than regime technologies such as nuclear and fossil fuel power generation. Those niches exert pressure on the regime, which could, in combination with other pressures from the landscape, policies, market developments and cultures, lead to a replacement of nuclear and fossil fuel-based power by renewables, ending up in a new equilibrium that will be more sustainable than the previous one.

A transition presents a radical and fundamental change in the dominant structure, culture and practices of a socio-technical system (Loorbach and Rotmans 2006). The structure of the system consists of institutional, infrastructure, legal and economic provisions that are inherent to the functioning of the socio-technical system (de Haan 2010). Culture is regarded as the shared values, norms and perspectives, which may be cognitive, normative or ideological in nature, and which underlie the socio-technical system (de Haan and Rotmans 2011). Practices are the routines, habits and procedures operated by the actors in the system, which interact with the structure and the culture of the system.

The change that is required for a transition will not come about in a linear way. Rather, periods of rapid and slow (or no) change can alternate (de Haan and Rotmans 2011). This implies that there are multiple phases in a transition process. Loorbach (2007) describes four phases that together depict an ideal–typical transition process, the MPP. In the first phase, the pre-development phase, actors are engaged in experiments (Kemp and Loorbach 2006). During the take-off phase, the second phase, the regime will show signs of destabilisation and niches will get an opportunity to position themselves as a viable alternative (van der Brugge and Rotmans 2007). Rapid structural and cultural changes in the socio-technical system become visible in the acceleration phase (van der Brugge 2009). In the last phase, the stabilisation phase, a new sustainable regime is established (Avelino and Rotmans 2009).

Transitions are driven by various endogenous and exogenous developments. Exogenous developments are changes at the landscape level. Endogenous developments, on the other hand, are events occurring at the meso level (regimes) and micro level (niches). According to de Haan and Rotmans (2011), there are three groups of conditions for change: tensions, stress and pressure. Tensions are changes occurring at the landscape level threatening the position of the unsustainable regime. A regime that functions inadequately or inconsistently will experience stress, which can nurture the downfall of the regime. Regime pressure or selection pressure, finally, will appear when niches impose themselves on the regime's position by becoming viable alternatives or by making the regime's functioning obsolete. Regime pressure, along with the reactions of regime and niche actors, will create patterns of change (Frantzeskaki and de Haan 2009). When tensions dominate, a reconstellation pattern will appear. Stress and pressure will result in the patterns of, respectively, adaptation and empowerment. When certain patterns chain together, they create transition paths (de Haan 2010). Choices made in the past will affect the path along which transitions will move. Actors are confronted with path dependencies, which may turn into lock-ins. For example, the choice of the authorities of some countries to invest in nuclear power plants has created path dependencies in the energy systems of these countries, which function as lock-ins that prevent a breakthrough to an energy system based on renewable energy.

Two governance approaches within transition science indicate that belief in classical policy solutions is limited. The two most well-known governance models in transition literature are transition management (Loorbach 2007; Kemp and Loorbach 2006; Loorbach and Rotmans 2010) and strategic niche management (Hoogma 2000). Both these governance approaches emphasise the difficulties in steering socio-technical change. Strategic niche management sees the main role of government in process management, creating room for niche experimentation, making sure that the process is not dominated by certain actors, and in learning and facilitating other actors’ learning possibilities (Kemp, Schot, and Hoogma 1998). The other governance approach, transition management, departs from the same view, but presents a process management method for policy-makers wishing to influence burgeoning transition processes (Loorbach and Rotmans 2006). Transition management has been criticised, mainly because the term ‘management’ seems to suggest that it is possible to steer transitions by “deliberate intervention in pursuit of specific goals” in a top-down way (Shove and Walker 2007, 764). Although transition management scholars such as Loorbach and Rotmans develop a more nuanced perspective on the ‘steerability’ of a transition than the name ‘management’ suggests, they do assert that ‘goal-oriented transitions’, in which the policy goals guide the process, exist. This view is not shared by all transition scholars. For example, Dewulf et al. (2009) think that a multiplicity of theories is needed for addressing such complex issues as sustainability. Shove and Walker (2007) question the very starting point of transition management that it is possible to deliberately steer socio-technical system change in any direction.

Both strategic niche management and transition management focus on policies that are aimed at the level of the niches. However, they largely ignore that the destabilisation of incumbent regimes can equally be a valuable strategy, because this could speed up the upscaling of niche technologies (Kivimaa and Kern 2016). Policies discouraging certain niche technologies or practices can play a role here (Turnheim and Geels 2012). Taxation will be further examined as a regime destabilisation instrument, as the main subject of this paper. In addition, ‘policy mixes for creative destruction’ will be explored in Section 4.2.

3. Regulatory and environmental taxation

A basic idea in economics is that markets allocate resources in an efficient way. However, this thesis is only valid under the condition of the presence of well-defined and enforceable private property rights (Perman et al. 2003). If that condition is not met, the market is not capable of creating or maintaining a socially optimal or desirable situation, and market failures appear (Bator 1958). One example of a market failure is the existence of external costs or environmental externalities (Perman et al. 2003). Externalities are “benefits or costs generated as an unintended by-product of an economic1 activity that do not accrue to the parties involved in the activity and where no compensation takes place” (Owen 2004, 129). Pollution resulting from production activities is a typical example of a negative externality imposed on citizens, because the victims of the pollution have no legal rights to claim any compensation for the damage suffered. To resolve this market failure, governments can create property rights for ‘an unpolluted environment’ and give them to the victims, or even to the polluter. In the latter case, the polluter receives a ‘license to pollute’ a certain amount. Following the Coase theorem (Coase 1960), depending on the specific circumstances, this situation will lead to an equally efficient outcome as compared to victim property rights. However, from an equity point of view, the two solutions generate entirely different outcomes, as in the one case it is the polluter who pays, and in the other it is the victim (Perman et al. 2003). In theory, the polluter and the victims could bargain and agree on compensation for the damage based on the victim's or polluter's property rights, in which case government intervention becomes redundant (Coase 1960). In practice, however, the large number of victims and polluters and the costs of bargaining often prevent an optimal outcome of private bargaining. In that case, government regulation, through the use of CAC instruments, economic instruments or suasion, is needed (Perman et al. 2003). In this paper, we focus on the use of taxation as a regulatory2 policy instrument in response to existing market failures. Regulatory taxes aimed at environmental improvement are called environmental taxes.3 An alternative name is Pigouvian taxation, after the twentieth-century economist Arthur C. Pigou, who developed the idea to use taxation to tackle externalities (Pigou 1920). According to Pigou, an environmental tax equal to the marginal damage at the efficient pollution level maximises allocative efficiency and welfare. The theory of Pigouvian taxation belongs to the neoclassical economic perspective, which assumes that economic agents act in a rational way according to their individual preferences in such a way that their utility (or profit for companies) is maximised (rational choice theory). Moreover, neoclassical economics assumes that preferences are fixed, as an exogenous factor, which was the dominant assumption until the 1990s (Arnsperger and Varoufakis 2006). Later, some economists regarded preferences as fixed in the short run, but subject to change in the long run (Doyle 2004). Others completely dismissed the notion of fixed preferences stating that individual preferences change as a result of past outcomes, and sometimes even rapidly and systematically (Van Boven, Loewenstein, and Dunning 2003).

In a first-best world with no uncertainty, regulatory taxes are statically efficient because the emission reductions are achieved while using a minimum amount of resources (Sandmo 2000). They are dynamically efficient because taxpayers will be inclined to seek further reduction methods due to the fact that the undesirable behaviour remains taxed (Faure and Weishaar 2012). In this theoretically ideal situation, a tax always leads to a more efficient solution than a licence or other CAC type of instrument. However, if complexity or uncertainty is introduced, many authors criticise Pigou's theory on the optimal level of an externality tax. Although a complete review of this literature exceeds the scope of this paper, we present three of the most important critiques. First, Coase (1960) dismissed the idea that a tax equal to the marginal damage cost increases total welfare in all situations. When there is uncertainty about the marginal abatement cost curves of polluting firms, the comparison changes. Taxes keep the edge over CAC instruments when the (absolute value of the) slope of the marginal abatement cost curve is greater than the slope of the marginal damage curve. Conversely, when the marginal abatement cost curve is less steep than the marginal damage curve, CAC instruments are to be preferred to taxes (Perman et al. 2003; Baumol and Oates 1988). Second, Baumol and Oates (1988) add that it is often hard to calculate the monetary value of the marginal damage of the polluting activity, in which case a standard may also be the recommended instrument choice. And third, in case of monopoly or oligopoly, the optimal tax rate may vary from lower to higher than the marginal damage (Ebert and von dem Hagen 1998).

An important element in the discussion on the optimal tax rate is the price elasticity of demand, which is not static. The absolute value of demand elasticities tends to increase over time (Lipsey and Chrystal 2007; Pindyck and Rubinfeld 2009). The reason is that demand elasticity is, in fact, mainly determined by the availability of substitutes. Investment decisions are made with a long-term perspective, and in the long run, more options are available for developing new (clean) technologies than in the short run (OECD 2000). For example, Sterner (2007) estimated that the demand elasticity of petrol and diesel in the long run is about three times higher than in the short run.

In addition to determining the correct tax rate, other tax design elements need to be decided. First, the tax base, which is the object that is taxed (Sandmo 2000), needs to be chosen. This can be input products, output products, production factors (energy), production (processes, activities or techniques), consumption or emissions (Vollebergh 2008; Weber 2011). The most effective way of eliminating externalities is by choosing the externality itself (e.g. CO2 emissions) as the tax base (OECD 2010). In practice, emission-measuring problems often hinder direct taxation of emissions. Proxies, such as petrol sold as a transport fuel, then form alternative tax bases (Dias Soares 2011). Second, tax rates can be differentiated (Määttä 2006), in which case certain products, processes or groups of taxpayers are granted a lower tax rate or are exempt from the tax. Third, a tax can be implemented at one specific moment in time or in multiple phases whereby the tax rate is raised or reduced in each phase.

4.1. (In)compatibility arguments

The transition school sees public authorities as just one group of actors in a socio-technical system. They are an important actor, but they cannot steer a transition in a top-down way (Kemp, Rotmans, and Loorbach 2007). Traditional decision-making models, including neoclassical economics, are mostly rejected based on the following four arguments. First, traditional policy-making is deemed unfit for dealing with high-complexity, long-term, wicked societal problems, because the knowledge on ecological cause–effect relations is often limited and political compromises inevitably lead to incrementalism as opposed to structural system change (Rotmans, Loorbach, and Van derBrugge 2005; Kemp, Rotmans, and Loorbach 2007; Mathijs 2008). Second, the existing policies are the result of outdated legislation, routines and institutional relations and are characterised by path dependency and technological lock-in (Rotmans, Loorbach, and Van der Brugge 2005). Third, the view of neoclassical economics on the preferences of individuals is too static, while instead a transition would require changing preferences (Kemp, Rotmans, and Loorbach 2007). Finally, steering a transition towards sustainability involves a subjective interpretation of sustainability, which “should arise from a multi-actor process, involving a balanced diversity of stakeholders” (van der Brugge, Rotmans, and Loorbach 2005, 167). Geels (2012) describes transitions as co-evolutionary processes, which require the involvement of many social groups. Network management in decision-making would be a step forward, but even those policy networks are not necessarily concerned with the long term (Kemp, Rotmans, and Loorbach 2007).

Transition management is a governance approach based on transition theory, which proposes a bottom-up approach to steer a transition, based on multi-actor involvement. However, it does not offer a full-fledged alternative to traditional policy-making, as it is “not directly solution-oriented, but explorative and design-oriented” (Rotmans, Loorbach, and Van der Brugge 2005, 6). Therefore, some transition scholars revert to other academic fields, such as evolutionary economics to analyse sustainability transitions and related policy strategies. Inspired by the field of biology, this field focuses on three central concepts: diversity, selection and innovation. Models from evolutionary economics can cope with complexity; they deviate from neoclassical economic theories by acknowledging that economic agent behaviour is explained by bounded rationality (van den Bergh, Hofkes, and Oosterhuis 2006). People's rationality is bounded because of a lack of appropriate and reliable information, limited cognitive capacities and limited decision-making time (Kahneman 2003; Simon 1955). Evolutionary economics leaves more room for environmental taxation than most transition studies, although it emphasises the need for a combination of policy instruments or policy mixes (van den Bergh et al. 2006). The role of policy mixes for sustainability transitions is further treated in Section 4.2.

So, if the neoclassical policy instrument of environmental taxation is so hard to reconcile with the bottom-up governance principles of transition theory, is it still worthwhile to study the combination? Four arguments support an affirmative answer. First, as we demonstrated in Section 3, the impact of environmental taxation is much higher in the long run than in the short run, which gives this instrument an interesting appeal considering the fundamental long-term change transition theory describes. Second, when the economy is (threatening to get) stuck in a technology that is not serving the long-run transition goal, a regulatory tax on that technology may unlock (further) lock-in, thus avoiding an important obstacle for a sustainability transition (den Butter and Hofkes 2006). Third, policy attention tends to go to supporting niches but much less to destabilising the dominant regime, which is politically more difficult. However, according to Kivimaa and Kern (2016), niche support policies will need to go hand-in-hand with regime destabilisation policies aimed at internalising externalities. A tax on the dominant regime technology is particularly suitable for that purpose (Geels and Schot 2007). Fourth, the bounded rationality concept embraced by transition theory still incorporates a level of rationality, implying that a price signal may still have an effect.

We conclude that there is no consensus on the use of regulatory taxes to enhance sustainability transitions. Some scholars see a role for taxation, but rather as one part of a more comprehensive policy mix (Geels 2006; Kemp, Schot, and Hoogma 1998; Markard and Truffer 2008).

## FTC Adv

### Turn---1NC

#### FTC credibility is collapsing now and results in elimination of competition authority—the plan is a win that saves FTC antitrust.

Lopez-Galdos 21—(Global Competition Counsel at the Computer & Communications Industry Association, previously served as Director of Competition & Regulatory Policy, and is a professor at George Washington University Competition Law Center and at the University of Melbourne Law School). Marianela 7-28-21. “Policy Decisions of Antitrust Institutions Series: The Future of the FTC and Its Perils”. Disruptive Competition Project. <https://www.project-disco.org/competition/072821-policy-decisions-of-antitrust-institutions-series-the-future-of-the-ftc-and-its-perils/>

One of the most challenging matters to tackle when it comes to leadership of antitrust authorities, or administrative agency for that matter, is legacy and the impact for the future of the agency. To put it simply, while antitrust leaders leave agencies, the side effects of leadership’s successes and failures condition the future of the agencies. Their leadership has consequences and sets precedent which will bind the agency well into the future.

Under the current political context, it would not be surprising if the current Neo-Brandeisian FTC enjoyed political support and success with its decision to bring big cases, especially against leading tech companies. In the short term, if the FTC makes headlines for opening cases against “Big Tech”, policymakers pushing for antitrust reforms will surely applaud the new changes as they would reflect a commitment to enhanced enforcement outcomes notwithstanding the strength of the cases.

However, in the mid-and long-term, if the FTC loses the big cases, the commitment to policy outcomes won’t be met. And then, it is unlikely that the question would be whether the antitrust norms are fit for today’s economy, but rather if the agency is capable of executing its mandate effectively. The recent decision in the FTC v. Facebook case is a good example of this paradigm, where the Judge expressed that the FTC had not carried out a sufficiently robust analysis supported by evidence, and therefore dismissed the case.

Eventually, the agency’s short-term reputational gains could quickly turn into a debacle for the institution itself with the caveat that by then, most probably, Neo-Brandeisian leadership will be long gone. Unfortunately then, the U.S. antitrust system — which is the only one to keep two federal antitrust agencies, bringing about positive outcomes for consumers — might be at risk. Political support to merge these two institutions could gain even more support, as has happened in the past, to the detriment of consumers.

#### Axing FTC authority ensures presidential discretion over antirust—that wins the tech race with China.

McGinnis 21—(George C. Dix Professor in Constitutional Law at Northwestern Pritzker School of Law). John O. McGinnis & Linda Sun. 2021. “Unifying Antitrust Enforcement for the Digital Age”. 78 Wash. & Lee L. Rev. 305.

Antitrust law has always affected foreign policy. That much is evident in the various international antitrust organizations and agreements in existence.189 Enforcement decisions, even those involving only domestic companies, have political and economic ramifications for the United States internationally.190 However, antitrust law plays a particularly important role in international politics today due to the rise of technology. Technology has revolutionized foreign intelligence and espionage.191 Accordingly, countries have grappled for control of the technology industry, notably China and the United States, 192 initiating “the technology cold war.”193 Both the United States and China have used antitrust regulation to further their position in this technology war.194 Therefore, technological advancement requires that antitrust enforcement be carefully coordinated with foreign policy.

The executive branch, specifically the President, directs and controls relations with international entities.195 Thomas Jefferson described the President as “the only channel of communication between the United States and foreign nations.”196 Traditional descriptions of executive power by political writers have necessarily included foreign affairs powers.197 The Constitution specifically enumerates the President’s power to make treaties, appoint ambassadors, and control the army and navy.198 These designations enable the President to conduct diplomacy with foreign nations.199 The Supreme Court has affirmed that the President is “the sole organ of the federal government in the field of international relations.”200 The Secretary of State, the Foreign Service, and the U.S. Agency for International Development report to the President and carry out his or her foreign policy.201 Outside of constitutional grants of power, as a practical matter, the President is generally privy to information relevant to foreign affairs on a more up-to-date basis than other governmental bodies.202 His or her constitutional power and comparative information advantage both place the President in a position to direct international relations and safeguard against foreign threats. Therefore, the President must directly oversee antitrust policy to carry out his or her constitutional foreign policy duties.

The President has such direct oversight of the DOJ. The President appoints the Attorney General and Assistant Attorneys General 203 and retains the power to fire these agents at will.204 The Antitrust Division has a particularly hierarchal structure wherein the President appoints an Assistant Attorney General who oversees the entire Antitrust Division.205 The same cannot be said for the FTC. The FTC is an independent agency, and heads of the agency can only be removed by the President for good cause.206 The President may exert political pressure on the FTC as an independent agency to take a specific action, but he is not able to direct the agency in the same way.207 And, since the Supreme Court upheld the constitutionality of the independence of the FTC,208 the President has never fired any Commissioner.

Under dual antitrust enforcement, the President is thus ~~handicapped~~ [hindered] in his or her direction of antitrust policy. The FTC and DOJ jointly represent the United States in multiple international antitrust organizations, such as the Internal Competition Network209 and Competition Committee of the Organization for Economic Cooperation and Development.210 The FTC has the power to enforce its antitrust judgments abroad,211 which further hinders the President’s ability to form cohesive international policies. Further, the FTC does not distinguish between its international and domestic activities. After the agency determines its enforcement policies, it “enforces them to the fullest extent of its jurisdictional authority, whether foreign or domestic.”212 This could give rise to antitrust decisions that cut against the nation’s best interest. Antitrust policy is a tool in the toolbox when it comes to navigating a complex global economy and political landscape. It should be used in the context of the country’s overall international policies and goals.

### Terror/Scams---1NC

#### FTC doesn’t solve fraud

Chesney & Citron 19 --- Bobby Chesney and Danielle Citron, California Law Review, “Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security”, https://www.californialawreview.org/print/deep-fakes-a-looming-challenge-for-privacy-democracy-and-national-security/#clr-toc-heading-3

A review of current areas of FTC activity suggests limited possibilities. Most deep fakes will not take the form of advertising, but some will. That subset will implicate the FTC’s role in protecting consumers from fraudulent advertising relating to “food, drugs, devices, services, or cosmetics.”[247] Some deep fakes will be in the nature of satire or parody, without intent or even effect of misleading consumers into believing a particular person (a celebrity or some other public figure) is endorsing the product or service in question. That line will be crossed in some instances, however. If such a case involves a public figure who is aware of the fraud and both inclined to and capable of suing on their own behalf for misappropriation of likeness, there is no need for the FTC or a state agency to become involved. Those conditions will not always be met, though, especially when the deep-fake element involves a fraudulent depiction of something other than a specific person’s words or deeds; there would be no obvious private plaintiff. The FTC and state attorneys general (state AGs) can play an important role in that setting.

### Scams---1NC

#### Impacts a joke---it’s inevitable --- good scammers will get away with it

#### No conflict escalation warrant in their ev---we’ll read defense when they make an arg

### A2: Nuclear Terrorism---1NC

#### No nuclear terror.

Mueller ’20 [John; Professor of Political Science and Senior Research Scientist with the Mershon Center for International Security Studies @ Ohio State University, Senior Fellow @ Cato Institute, PhD @ University of California, Los Angeles; “Nuclear Alarmism: Proliferation and Terrorism”; June 24th, 2020; https://www.cato.org/publications/publications/nuclear-alarmism-proliferation-terrorism]

Building a Bomb of One’s Own

Because they are unlikely to be able to buy or steal a usable bomb and because they are further unlikely to have one handed off to them by an established nuclear state, the most plausible route for terrorists would be to manufacture the device themselves from purloined materials. That is the course identified by a majority of leading experts as the one most likely to lead to nuclear terrorism.44

The simplest design is a “gun” type of device in which masses of highly enriched uranium are hurled at each other within a tube. Such a device would be, as Allison acknowledges, “large, cumbersome, unsafe, unreliable, unpredictable, and inefficient.“45

The process of making such a weapon is daunting even in this minimal case. In particular, the task requires that a considerable series of difficult hurdles be conquered and in sequence.

To begin with, now and likely for the foreseeable future, stateless groups are incapable of manufacturing the requisite weapons‐​grade uranium themselves because the process requires an effort on an industrial scale. Moreover, they are unlikely to be supplied with the material **by a state** for the same reasons a **state is unlikely** **to give them a workable bomb**.46 Thus, they would need to steal or illicitly purchase the crucial material.

A successful armed theft is exceedingly unlikely, not only because of the resistance of guards but also because chase would be immediate. A more plausible route would be to corrupt insiders to smuggle out the necessary fissile material. However, that approach requires the terrorists to pay off a host of greedy confederates, including brokers and money transmitters, any one of whom could turn on them or — either out of guile or incompetence — furnish them with stuff that is useless.47 Moreover, because of improved safeguards and accounting practices, it is decreasingly likely that the theft would remain undetected.48 That development is important because if any missing uranium is noticed, the authorities would investigate the few people who might have been able to assist the thieves, and one who seems suddenly to have become prosperous is likely to arrest their attention right from the start. Even one initially tempted by, seduced by, or sympathetic to, the blandishments of the smooth‐​talking foreign terrorists might soon develop sobering second thoughts and go to the authorities. Insiders tempted to assist terrorists might also come to ruminate over the fact that, once the heist was accomplished, the terrorists would, as analyst Brian Jenkins puts it none too delicately, “have every incentive to cover their trail, beginning with eliminating their confederates.“49

It is also relevant to note that over the years, known thefts of highly enriched uranium have totaled fewer than 16 pounds. That amount is far less than that required for an atomic explosion: for a crude bomb, more than 100 pounds are necessary to produce a likely yield of one kiloton. Moreover, none of those thieves was connected to al Qaeda, and, most arrestingly, none had buyers lined up — nearly all were caught while trying to peddle their wares. Indeed, concludes analyst Robin Frost, “There appears to be no true demand, except where the buyers were government agents running a sting.” Because there appears to be no commercial market for fissile material, each sale would be a one‐​time affair, not a continuing source of profit such as drugs, and there is no evidence of established underworld commercial trade in this illicit commodity.50

If terrorists were somehow successful in obtaining a sufficient mass of relevant material, they would then have to transport it out of the country over unfamiliar terrain, probably while being pursued by security forces. Then, they would need to set up a large and well‐​equipped machine shop to manufacture a bomb and populate it with a select team of highly skilled scientists, technicians, and machinists. The process would also require good managers and organizers. The group would have to be assembled and retained for the monumental task without generating consequential suspicions among friends, family, and police about their curious and sudden absence from normal pursuits back home. Pakistan, for example, maintains a strict watch on many of its nuclear scientists even after retirement.51

Some observers have insisted that it would be “easy” for terrorists to assemble a crude bomb if they could get enough fissile material.52 However, Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland’s Spiez Laboratory, conclude that the task “could hardly be accomplished by a subnational group.” They point out that precise blueprints are required, not just sketches and general ideas, and that even with a good blueprint, the terrorist group “would most certainly be forced to redesign.” They also stress that the work, far from being “easy,” is difficult, dangerous, and extremely exacting and that the technical requirements “in several fields verge on the unfeasible.“53

Los Alamos research director Younger makes a similar argument, expressing his amazement at “self‐​declared ‘nuclear weapons experts,’ many of whom have never seen a real nuclear weapon,” who “hold forth on how easy it is to make a functioning nuclear explosive.” Information is available for getting the general idea behind a rudimentary nuclear explosive, but none is detailed enough for “the confident assembly of a real nuclear explosive.” Younger concludes, “To think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is far‐​fetched at best.“54

Under the best of circumstances, the process could take months or even a year or more, and it would all, of course, have to be carried out in utter secret even while local and international security police are likely to be on the intense prowl. In addition, people, or criminal gangs, in the area may observe with increasing curiosity and puzzlement the constant comings and goings of technicians unlikely to be locals.

The process of fabricating a nuclear device requires, then, the effective recruitment of people who at once have great technical skills and will remain completely devoted to the cause. In addition, a host of corrupted coconspirators, many of them foreign, must remain utterly reliable; international and local security services must be kept perpetually in the dark; and no curious outsider must get wind of the project over the months, or even years, it takes to pull off.

The finished product could weigh a ton or more. Encased in lead shielding to mask radioactive emissions, it would then have to be transported to, as well as smuggled into, the relevant target country. Then, the enormous package would have to be received within the target country by a group of collaborators who are at once totally dedicated and technically proficient at handling, maintaining, and perhaps assembling the weapon. Then, they would have to detonate it somewhere under the fervent hope that the machine shop work has been proficient, that no significant shakeups occurred in the treacherous process of transportation, and that the thing — after all that effort — doesn’t prove to be a dud.

The financial costs of the extended operation in its cumulating entirety could become monumental. There would be expensive equipment to buy, smuggle, and set up, as well as people to pay — or pay off. Some operatives might work for free out of dedication, but the vast conspiracy also requires the subversion of an array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals who are competent and capable enough to be an effective ally in the project are likely to be both smart enough to see opportunities for extortion and psychologically equipped by their profession to be willing to exploit them.

### A2: Populism !---1NC

Populism is thumped by Brazil, Turkey, and the UK.

#### No impact.

Ferguson ’16 [Niall; autumn 2016; Senior Fellow at Stanford University’s Hoover Institution, Senior Fellow of the Center for European Studies at Harvard University, and Visiting Professor at Tsinghua University in Beijing, “Populism as a Backlash against Globalization - Historical Perspectives,” <https://www.cirsd.org/en/horizons/horizons-autumn-2016--issue-no-8/populism-as-a-backlash-against-globalization>]

Such comparisons between the United States today and Germany in the 1930s are becoming commonplace. As a professional historian, I would like to offer what seems to me a better analogy. Our Tranquil Times Journalists are fond of saying that we are living in a time of “unprecedented” instability. In reality, as numerous studies have shown, our time is a period of remarkable stability in terms of conflict. In fact, viewed globally, there has been a small uptick in organized lethal violence since the misnamed Arab Spring. But even allowing for the horrors of the Syrian civil war, the world is an order of magnitude less dangerous than it was in the 1970s and 1980s, and a haven of peace and tranquility compared with the period between 1914 and 1945. This point matters because the defining feature of interwar fascism was its militarism. Fascists wore uniforms. They marched in enormous and well-drilled parades and they planned wars. That is not what we see today. So why do so many commentators feel that we are living through “unprecedented instability?” The answer, aside from plain ignorance of history, is that political populism has become a global phenomenon, and established politicians and political parties are struggling even to understand it, much less resist it. Yet populism is not such a mysterious thing, if one only has some historical knowledge. The important point is not to make the mistake of confusing it with fascism, which it resembles in only a few respects. Rather like a television chef, I shall describe a recipe for populism, based on historical experience. It is a simple recipe, with just five ingredients. Five Ingredients for A Populist Backlash The first of these ingredients is a rise in immigration. In the past 45 years, the percentage of the population of the United States that is foreign-born has risen from below 5 percent in 1970 to over 13 percent in 2014—almost as high as the rates achieved between 1860 and 1910, which ranged between 13 percent and an all-time high of 14.7 percent in 1890. So when people say, as they often do, that “the United States is a land based on immigration,” they are indulging in selective recollection. There was a period, between 1910 and 1970, when immigration drastically declined. It is only in relatively recent times that we have seen immigration reach levels comparable with those of a century ago, in what has justly been called the first age of globalization. Ingredient number two is an increase in inequality. Drawing on the work done on income distribution by Thomas Piketty and Emmanuel Saez, we can see that we have recently regained the heights of inequality that were last seen in the pre-World War I period. The share of income going to the top one percent of earners is back up from below 8 percent of total income in 1970 to above 20 percent of total income. The peak before the financial crisis, in 2007, was almost exactly the same as the peak on the eve of the Great Depression in 1928. Ingredient number three is the perception of corruption. For populism to thrive, people have to start believing that the political establishment is no longer clean. Recent Gallup data on public approval of institutions in the United States show, among other things, notable drops in the standing of all institutions save the military and small businesses. Just 9 percent of Americans have “a great deal” or “quite a lot” of confidence in the U.S. Congress—a remarkable figure. It is striking to see which other institutions are down near the bottom of the league. Big business is second-lowest, with just 21 percent of the public expressing confidence in it. Newspapers, television news, and the criminal justice system fare only slightly better. What is even more remarkable is the list of institutions that have fallen furthest in recent times: the U.S. Supreme Court now has just a 36 percent approval rating, down from a historical average of 44 percent, while the Presidency has dropped from 43 percent to 36 percent approval. The financial crisis appears to have convinced many Americans—and not without good reason—that there is an unhealthy and likely corrupt relationship between political institutions, big business, and the media. The fourth ingredient necessary for a populist backlash is a major financial crisis. The three biggest financial crises in modern history—if one uses the U.S. equity market index as the measure—were the crises of 1873, 1929, and 2008. Each was followed by a prolonged period of depressed economic performance, though these varied in their depth and duration. In the most recent of these crises, the peak of the U.S. stock market was October 2007. With the onset of the financial crisis, we essentially replayed for about a year the events of 1929 and 1930. However, beginning in mid to late 2009, we bounced out of the crisis, thanks to a combination of monetary, fiscal, and Chinese stimulus, whereas the Great Depression was characterized by a deep and prolonged decline in stock prices, as well as much higher unemployment rates and lower growth. The first of these historical crises is the least known: the post-1873 “great depression,” as contemporaries called it. What happened after 1873 was nothing as dramatic as 1929; it was more of a slow burn. The United States and, indeed, the world economy went from a financial crisis—which was driven by excessively loose monetary policy and real estate speculation, amongst other things—into a protracted period of deflation. Economic activity was much less impaired than in the 1930s. Yet the sustained decline in prices inflicted considerable pain, especially on indebted farmers, who complained (in reference to the then prevailing gold standard) that they were being “crucified on a cross of gold.” We have come a long way since those days; gold is no longer a key component of the monetary base, and farmers are no longer a major part of the workforce. Nevertheless, in my view, the period after 1873 is much more like our own time, both economically and politically, than the period after 1929. There is still one missing ingredient to be added. If one were cooking, this would be the moment when flames would leap from the pan. The flammable ingredient is, of course, the demagogue, for populist demagogues react vituperatively and explosively against all of the aforementioned four ingredients. Kearney’s Cause Now, my argument is not intended to dismiss or downplay those elements of Donald Trump’s campaign for President of the United States that have been implicitly, if not explicitly, racist. Nor do I treat lightly the various signals he has given of indifference to, or at least ignorance of, the U.S. Constitution. My point is that these demerits do not by themselves qualify Trump for comparison with Mussolini, much less with Hitler. Rather, I want to argue that Trump has much more in common with the demagogues of the earlier, lesser depression of the late nineteenth century, and that it is to that period that we should look for historical analogies and insights. The best illustration of my case is the now forgotten figure of Denis Kearney, leader of the Workingmen’s Party of California and the author of the slogan “The Chinese Must Go!” Himself an Irish immigrant to the United States—as opposed to the son of a Scottish immigrant and grandson of a German, which is what Donald Trump is—Kearney was part of a movement of nativist parties and “Anti-Coolie” clubs that sought to end Chinese immigration into the United States. The report of the Joint Special Committee to Investigate Chinese Immigration in 1877 gives a flavor of the times. “The Pacific coast must in time become either Mongolian or American,” was the committee’s view. The report argued that the Chinese brought with them the habits of despotic government, a tendency to lie in court, a weakness for tax evasion and “insufficient brainspace […] to furnish [the] motive power for self-government.” Moreover, Chinese women were “bought and sold for prostitution and treated worse than dogs,” while the Chinese were “cruel and indifferent to their sick.” Giving such inferior beings citizenship, the committee’s report declared, “would practically destroy republican institutions on the Pacific coast.” The realities were, it scarcely needs to be said, very different. According to the “Six Companies” of Chinese in San Francisco—corporate bodies that represented the Chinese population of the city—there was compelling evidence that Chinese immigration was a boon to California. Not only did the Chinese provide labor for the state’s rapidly developing railroads and farms; they also tended to improve the neighborhoods in which they settled. Moreover, there was no evidence of a disproportionate Chinese role in gambling and prostitution. In fact, statistics showed that the Irish were more of a charge on the city’s hospital and almshouse than the Chinese. Nevertheless, a powerful coalition of “laboring men and artisans,” small businessmen and “grangers” (the term used to describe those who aimed to shift the burden of taxation onto big business and the rich) rallied to Kearney’s cause. As one shrewd contemporary observer noted, part of his appeal was that he was attacking not just the Chinese, but also the big steamship and railroad companies that profited from employing Chinese labor, not to mention the corrupt two-party establishment that ran San Francisco politics: Neither Democrats nor Republicans had done, nor seemed likely to do, anything to remove these evils or to improve the lot of the people. They were only seeking (so men thought) places or the chance of jobs for themselves, and could always be bought by a powerful corporation. Working men must help themselves; there must be new methods and a new departure […] The old parties, though both denouncing Chinese immigration in every convention they held, and professing to legislate against it, had failed to check it […] Everything, in short, was ripe for a demagogue. Fate was kind to the Californians in sending them a demagogue of a mean type, noisy and confident, but with neither political foresight nor constructive talent. Kearney may have lacked foresight and “constructive talent,” but there is no gainsaying what he and his ilk were able to achieve. Beginning with the Page Law (1875) prohibiting the immigration of Asian women for “lewd or immoral purposes,” American legislators scarcely rested until Chinese immigration to the United States had been stopped altogether. The Chinese Exclusion Act (1882) suspended immigration of Chinese for 10 years, introduced “certificates of registration” for departing laborers (effectively re-entry permits), required Chinese officials to vet travelers from Asia, and, for the first time in American history, created an offense of illegal immigration, with the possibility of deportation as a part of the penalty. The Foran Act (1885) banned all contract laborers from immigrating to America. Legislation passed in the Scott Act (1888) banned all Chinese from travel to the United States except “teachers, students, merchants, or travelers for pleasure.” In all, between 1875 and 1924, more than a dozen pieces of legislation served to restrict and finally end altogether Chinese immigration. No one should therefore underestimate the power of populism. For all his coarseness and bombast, Denis Kearney and his allies effectively sealed the American border along the Pacific coast of the United States; indeed, one cartoon of the time depicted them constructing a wall across the San Francisco harbor. In the 1850s and 1860s, as many as 40 percent of all Chinese emigrants had travelled beyond Asia, though the numbers arriving in the United States had in fact been relatively small (between 1870 and 1880, a total of 138,941 Chinese immigrants came, just 4.3 percent of the total, a share dwarfed by the vast European exodus across the Atlantic in the same period). What exclusion did ensure in the late nineteenth was that Chinese immigration would not grow, as it surely would have, but instead dwindled and then ceased. Ironies Populism, then, is not just a form of political entertainment. One sometimes hears it said of Donald Trump: “Ah, he says wild things on the campaign trail, but when he is president it will be fine.” History suggests otherwise. It suggests that men who threaten to restrict immigration—as well as to impose tariffs and to discourage capital export, as populists generally do—mean what they say. Indeed, populists are under a special compulsion to enact what they pledge in the campaign trail, for their followers are fickle to begin with. In the case of Trump, most have already defected from the Republican Party establishment. If he fails to deliver, they can defect from him, too. Of course, populists are bound eventually to disappoint their supporters. For populism is a toxic brew as well as an intoxicating one. Populists nearly always make life miserable for whichever minorities they chose to scapegoat, but they seldom make life much better for the people whose ire they whip up. Whatever the demagogues may promise—and they always promise “jam today”—populism tends to have significantly more economic costs than benefits. Restricting immigration, imposing tariffs on imported goods, penalizing firms for investing abroad: such measures, if adopted by an American government in 2017, would be almost certain to reduce growth and employment, rather than the reverse. That has certainly been the Latin American experience—and few regions of the world have run the populist experiment more often. The foreign dimension brings us to a final irony. Despite their habitual insistence on narrow national self-interest, populists are nearly always part of a global phenomenon. Globalization had been making enormous strides prior to 1873, with world trade, migration, and international capital flows growing at unprecedented rates. But the crisis of that year generated a populist backlash against globalization that was itself global in its scope. Then, just as now, the principal targets of the demagogues were immigration, free trade, and high finance. Just as the United States excluded immigrants and raised tariffs, so did European countries by adopting similar discriminatory measures. In Bismarck’s Germany, populism was often antisemitic—as it was in the France of the Dreyfus Affair—while in late Victorian Britain it was anti-Irish. Tariffs went up almost everywhere except in Britain. Populism today has a similarly global quality. In June, the British vote to leave the European Union was hailed by populists right across the European continent as well as by Donald Trump in the United States and, implicitly, by Vladimir Putin in Russia. Yielding to the Complicators Let me conclude with a note of qualified optimism. Because populism is not fascism, populist victories should not be construed as harbingers of war—if anything, the opposite is true. In the 1870s and 1880s, populists did achieve significant reductions in globalization: not only immigration restrictions, but also higher tariffs. But they did not form many national governments, and they did not subvert any constitutions. Nor were populists much interested in starting wars; if anything, they lent towards isolationism and viewed imperialism as just another big business racket. In most countries, the populist high tide was in the 1880s. What came next—in many ways as a reaction to populism, but also as an alternative set of policy solutions to the same public grievances—was Progressivism in the United States and socialism in Europe. Perhaps something similar will also happen in our time. Perhaps that is something to look forward to. Nevertheless, we would do well to remember that World War I broke out during the progressive not the populist era. The world today is, as I observed at the outset, in much less turmoil than one might infer from television news. Nevertheless, the economic and social consequences of globalization and the most recent financial crisis sowed the seeds for the populist backlash that we now see. Populists are not fascists. They prefer trade wars to actual wars; administrative border walls to more defensible fortifications. The maladies they seek to cure are not imaginary: uncontrolled rising immigration, widening inequality, free trade with “unfree” countries, and political cronyism are all things that a substantial section of the electorate have some reason to dislike. The problem with populism is that its remedies are wrong and, in fact, counterproductive. What we most have to fear—as was true of Brexit—is not therefore Armageddon, but something more prosaic: an attempt to reverse certain aspects of globalization, followed by disappointment when the snake oil does not really cure the patient’s ills, followed by the emergence of a new and ostensibly more progressive set of remedies for our current malaise. The “terrible simplifiers” may have their day then. But they will end up yielding power to well-intentioned complicators, those more congenial to educated elites, but probably every a bit as dangerous, if not more so.

## Competition Adv

### Turn---1NC

#### American tech dominance is high. Only antitrust threatens it.

Abbott ’21 [Alden Abbott, Paul Redmond Michel, Adam Mossoff, Kristen Jakobsen Osenga, and Brian O’Shaughnessy; March 10; the Federal Trade Commission’s General Counsel (2018-2021), adjunct professor at George Mason University, J.D. from Harvard Law School, M.A. in economics from Georgetown University; Retired Chief Judge and United States Circuit Judge of the United States Court of Appeals for the Federal Circuit; Law Professor at George Mason University; Law Professor at the University of Richmond; chair of Dinsmore’s IP Transactions and Licensing Group; the Regulatory Transparency Project, “Aligning Intellectual Property, Antitrust, and National Security Policy,” https://regproject.org/wp-content/uploads/Paper-Aligning-Intellectual-Property-Antitrust-and-National-Security-Policy.pdf]

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

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

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

### A2: US-China War---1NC

#### No China war – certainly not over economic competition.

Henry Bienen and Jeremiah Ostriker 21. Former James S McDonnell Distinguished University Professor and Dean of Woodrow Wilson School at Princeton University, former President of NU. Astrophysicist whose academic positions have been divided among Princeton University, Cambridge University and Columbia University. “How the United States can chart a new path that avoids war with China”. Bureau of Atomic Scientists. Feb 3 2021. <https://thebulletin.org/2021/02/how-the-united-states-can-chart-a-new-path-that-avoids-war-with-china/>

Relations between China and the United States have degenerated so far that some foreign policy experts now believe that war between the countries is possible. While this is a minority view, it is a dangerous one. In the past, a US-China war was often considered unlikely for reasons of mutual economic interdependence and nuclear deterrence, not to mention the huge costs of war. Moreover, it has been said, ideological conflict and regional and international striving for advantage are not reasons enough for war. But now more pessimistic voices are also being heard. Citing pre-World War I analogies, in which it was (quite inaccurately) said that economic interdependence among European powers made war impossible, and noting what Harvard University’s Graham Allison has called the “Thucydides Trap,” in which there is a drift towards war when an emerging power threatens to displace an existing leading power, some believe war between China and the United States is becoming more conceivable and even probable.

We are concerned with the current direction of US-China’s policies, but we believe that the pessimists both overstate the possibility of a US-China war and understate the consequences of possible armed conflict. The production of so-called “small” nuclear weapons is given as a reason for the possibility of war without massive destruction. Nuclear war among nuclear powers has not occurred since the spread of nuclear weapons precisely because destruction would be huge and ghastly. But even lower-yield nuclear weapons nonetheless are quite deadly; each has the destructive potential of thousands of WWII airplane bombs. We cannot tell how limited the use of such weapons would be in advance of armed conflict, and, since Chinese missiles can reach our shores, we do not know if such a conflict could be contained.

There are other reasons for thinking war between China and the United States not only should be but will be avoided. We have past experience to warn us. The United States and China fought in the Korean War when US forces pushed to the Yalu River on China’s border. We know how that turned out. We also note that the United States did not send a land army to North Vietnam after China warned that the first US troops in North Vietnam would be met by Chinese “volunteers.” Lesson learned.

What points of conflict does the United States have with China that could actually lead to war? We can find only one, and it has nothing to do with trade, economic competition, ideology, human rights violations by China, or struggle for relative power in Asia or elsewhere. Taiwan is the critical point of conflict. China asserts its historical right to Taiwan as an integral part of China. The United States is committed to the principle that Taiwan’s relationship with China cannot be changed by force. Thus, how much military assistance to give to Taiwan, if China uses blockades or applies military force, is a critical issue for US policy. How and in what way to defend Taiwan loom as large questions. To do nothing in the face of Chinese military threats would not only call into question US commitments everywhere but might well lead to nuclear proliferation in Asia. What lessons would Japan, the Republic of Korea, Australia, perhaps Vietnam and Indonesia take? Taiwan itself has the capacity to build nuclear weapons and could do so, if the United States made clear that it would not respond to threats against Taiwan.

We do not minimize the difficulty of the Taiwan issue. There needs to be both clarity and ambiguity in how the United States deals with Taiwan. The United States needs to make clear that if China uses force against Taiwan there will be severe consequences. But we cannot in advance specify the consequences. We do not think war with China is probable over Taiwan. But we admit to the difficulties of finding the right policies in this area. We propose the following: As Joseph Nye noted recently in the Wall Street Journal, in consultation with China, the Biden administration should review policies for accident avoidance, crisis management, and high-level communications. Military-to-military relations already exist, and we do not know the details of them. But we suspect that the Trump administration let lapse, or weakened, constant communications and accident-avoidance protocols. These must be maintained and strengthened.

Arms sales to Taiwan are sensitive. Our aim is to avoid an invasion of Taiwan, and thus sales of missiles and technologies for defensive purposes seem right. We must make clear that we would work to circumvent a blockade of Taiwan. But obviously, Taiwan is not Berlin during the Cold War, and airlifts would have limited utility. Thus, it is the avoidance of a blockade that must be worked toward. And here, we need allies and friends in Asia and beyond to support the position that such a blockade would be disastrous for China’s economy and trade worldwide.

We can find no other issues where war could plausibly arise between China and the United States. And we reassert that any armed conflict could lead to a global catastrophe. In a more positive vein, the United States should be finding new paths to both cooperate and compete with China. The demonization of China—as per Donald Trump’s “China virus” and Secretary of State Pompeo’s bellicose language—are misguided and counterproductive. The two countries need to cooperate on climate and environmental issues and on the pandemic and other health matters.

Decoupling the economies of the United States and China would be very difficult, very expensive, and very foolish, as the Trump administration found out. It continued to want to export agricultural goods to China, and where it imposed tariffs, they raised costs to US consumers and manufacturers. We need to challenge China over its trade policies, but the best way to do that is to strengthen the US domestic economy and invest in education and technology innovation and research. So much of our vaunted technological progress has come from government investment. We should renew our government support for advanced research and technology, rather than faulting the Chinese for imitating our past actions. For but one example, consider how the internet was developed in the 1970s.

### Tech Lead Strong---1NC

#### U.S. tech innovation is high and globally dominant – big business is key.

Wolf ’21 [Martin; April 27; Chief Economics Commentator, M.A. in Economics from Oxford University; Financial Times, “China is wrong to think the US faces inevitable decline,” <https://www.ft.com/content/8336169e-d1a8-4be8-b143-308e5b52e355>]

The Chinese elite are convinced that the US is in irreversible decline. So reports Jude Blanchette of the Center for Strategic and International Studies, a respected Washington-based think-tank. What has been happening in the US in recent years, particularly in politics, supports this perspective. A stable liberal democracy would not elect Donald Trump — a man lacking all necessary qualities and abilities — to national leadership. Nevertheless, the notion of US decline is exaggerated. The US retains big assets, notably in economics.

For one and half centuries, the US has been the world’s most innovative economy. That has been the basis of its global power and influence. So how does its innovative power look today? The answer is: rather good, despite competition from China.

Stock markets are imperfect. But the value investors put on companies is at least a relatively impartial assessment of their prospects. At the end of last week, 7 of the 10 most valuable companies in the world and 14 of the top 20, were headquartered in the US.

If it were not for Saudi Arabian oil, the five most valuable companies in the world would be US technology giants: Apple, Microsoft, Amazon, Alphabet and Facebook. China has two valuable technology companies: Tencent (at seventh position) and Alibaba (at ninth). But those are China’s only companies in the top 20. The most valuable European company is LVMH at 17th. Yet LVMH is just a collection of established luxury brands. That ought to worry Europeans.

When we look only at technology companies, the US has 12 of the top 20; China (with Hong Kong but excluding Taiwan) has three; and there are two Dutch companies, one of which, ASML, is the largest manufacturer of machines that make integrated circuits. Taiwan has the Taiwan Semiconductor Manufacturing Company, the world’s biggest contract computer chipmaker, and South Korea has Samsung Electronics.

Life sciences are another crucial sector for future prosperity. Here there are seven European companies (with Switzerland and the UK included) in the top 20. But the US has seven of the top 10, and 11 of the top 20. There is also one Australian and one Japanese company, but no Chinese businesses.

In sum, US companies are globally dominant and nearly all the most valuable non-US firms are headquartered in allied countries.

### A2: Kill Zones---1NC

#### Kill zones motivate innovation---aff limits it

Joe Kennedy 20 [Senior Fellow, Information Technology and Innovation Foundation, "Monopoly Myths: Is Big Tech Creating “Kill Zones”?," 11-9-2020, https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones, hec]

One argument made against large technology companies is that they limit innovation, either by acquiring start-ups in order to terminate the development of innovations that threaten their continued dominance (“killer acquisitions”) or by creating areas of the market in which they exert dominance to the extent others won’t invest in these areas (“kill zones”). Either way, large tech companies supposedly limit prospective challengers from being able to take root and grow, thereby limiting not only competition but overall U.S. innovation. In fact, acquisitions may be beneficial, at least to innovation, if they allow the larger firm to benefit from economies of scale or network effects, and enable the smaller firm to reach many more customers much more quickly with a higher quality product. Moreover, the prospect of being purchased by a larger company often motivates founders and venture capitalists to invest. Making it more difficult for them to sell might make it harder for promising firms to find funding. And rather than looking at so-called kill zones as an innovation deterrent, it is more accurate to view them as an innovation enabler, guiding entrepreneurial resources (talent and capital) to areas that have the best chance of success. Why invest in companies seeking to duplicate usually mature products offered by large firms that benefit from economies of scale or network effects? It is better for society if new companies concentrate instead on other markets they can break into. Indeed, that seems to be occurring as venture capital investment, especially in early-stage deals, has grown significantly over the last decade, indicating that there is no shortage of innovation opportunities. Although the areas of investment have shifted in response to market developments, this reflects the natural evolution of Internet platforms, rather than a pernicious attempt to stifle competition or innovation. In either case, regulators already have sufficient powers to protect competition. The current focus on consumer welfare adequately incorporates concerns about innovation. While antitrust authorities going forward probably should broaden their review of acquisitions by dominant companies, there is no need to significantly change antitrust statutes or embrace structural remedies such as structural separation or breakups, as these would likely slow innovation and harm consumers.

### A2: Data---1NC

#### Data’s irrelevant to overall market power

Joe Kennedy 19, Senior Fellow, Information Technology and Innovation Foundation, 10/15/19, “Data and Privacy Are Not Antitrust Concerns,” https://itif.org/publications/2019/10/15/data-and-privacy-are-not-antitrust-concerns

This hearing will be devoted to the role of data and privacy in competition. It will be interesting to see what evidence the subcommittee hears about this connection, because the actual evidence is very thin. Antitrust law is an important tool for protecting competition and preventing abuses of market power. But the mere possession of data seldom confers lasting market power. And privacy issues, while very important, should not be an antitrust issue.

It is true that, in some cases, data, like other inputs to production, can be used in anticompetitive ways. But as ITIF has written, many aspects about data reduce this threat. First, the mere possession of data is seldom the main source of competitive advantage. What distinguishes companies is often the development of algorithms that add market value to the products they sell. Google’s search, for example, benefits from lots of data. But its biggest asset is the software that uses this data to deliver the most relevant search results. While more data can lead to better results, after a certain point, there are diminishing returns. Doubling the amount of data may lead to only marginal improvements in the quality of an algorithm’s output.

A great deal of data is widely available at little cost. Data, especially personal data, which is the focus of this week’s hearing, is often not exclusive to a specific company. Indeed, nothing stops users from sharing their personal information with more than one company. Data is also nonrivalrous. Unlike most resources, its use by one party does not diminish its value to anyone else. Many parties can use the same information, and once data is generated the cost of duplicating it is almost zero.

Another constraint is that lots of data is useful for only a short time. Thus, any advantage it confers is temporary. Knowledge that a consumer has been searching for hiking boots is only valuable until she buys a pair. Economists Anja Lambrecht and Catherine E. Tucker looked at the implications of data for market power and concluded that: “The unstable history of digital business offers little evidence that the mere possession of big data is a sufficient protection for an incumbent against a superior product offering.”

### Doesn’t Solve---1NC

#### Antitrust doesn’t solve---EU and other jurisdictions prove.

Ryan Bourne 20, R. Evan Scharf Chair for the Public Understanding of Economics, Cato Institute, “Does Rising Industry Concentration Signify Monopoly Power?,” Cato Institute, 2/13/20, <https://www.cato.org/economic-policy-brief/does-rising-industry-concentration-signify-monopoly-power>

An Antitrust Explanation

In theory, then, the higher national concentration we see alongside rising markups in many U.S. industries over the past two to three decades could be evidence of worrying anti‐​competitive consolidation, or it could be a consequence of competition in a world of globalization and technological change. But the evidence—particularly that industries with higher concentration tend to see robust productivity growth—increasingly points to the latter.

There are other reasons to doubt the commonly held view that weak U.S. antitrust legislation or enforcement is to blame for rising concentration. Autor and others show that the broad patterns of rising national industry concentration and the phenomenon of superstar firms are common among members of the Organisation for Economic Co‐​operation and Development, including those in the European Union, despite big differences in the application of antitrust and competition law.

### Solvency---1NC

#### The aff gets delayed and watered down---that melts solvency.

Jeffers and McCareins 19 [Mark McCareins is a Clinical Professor of Business Law at Northwestern and Co-Director of the JDMBA Program there. Glenn Jeffers is a freelance writer based in Los Angeles, “Why Antitrust Regulators Don’t Scare Big Tech”, 8-19-2019, https://insight.kellogg.northwestern.edu/article/why-antitrust-regulators-dont-scare-big-tech] IanM

The Feds Don’t Have Time on Their Side

**Even** where there may be **cause for concern**, federal regulatory **agencies** are notoriously slow to investigate **anticompetitive practices** by tech companies. The **investigations of any** of these four firms will take years to unfold, and even longer to prosecute.

Take, for example, Microsoft. The FTC launched an investigation into the software firm’s bundling practices in **1990**, with the DOJ following suit eight years later. At the time, the company’s Windows operating system accounted for 90 percent of the PC market. The DOJ eventually charged Microsoft, claiming that its Internet Explorer browser, which was built into Windows, had an unfair advantage over other web browsers like Netscape.

In 2000, a federal judge ordered the company to be split into separate entities, but an appeals court reversed the ruling. The DOJ and Microsoft finally settled the case in 2002—a full twelve years after a regulatory **agency** **first launched** an **investigation.** Microsoft was ultimately required to give computer manufacturers identical licensing contracts for Windows, which gave other companies more equal access to the browser market, as well as undergo nine years of court supervision into its business practices.

The **punishment** was, to say the least, **much reduced** from its **original form**. “The U.S. **D**epartment **o**f **J**ustice was not overly successful in that attack,” says McCareins, who was a partner in the firm that represented Microsoft, Winston & Strawn.

#### Tech giants inevitably circumvent enforcement

Jeffers citing **McCareins 19** Mark McCareins, Clinical Professor of Business Law; Co-Director, JDMBA Program at NU Kellogg. Glenn Jeffers, freelance writer, 8-19-2019, "Why Antitrust Regulators Don’t Scare Big Tech," Kellogg Insight, <https://insight.kellogg.northwestern.edu/article/why-antitrust-regulators-dont-scare-big-tech>

The Big Tech Firms Are Devoting Resources to Antitrust Compliance Because their sheer size makes them highly attractive targets for antitrust investigation, big tech companies like Apple, Google, Amazon, and Facebook will have spent a lot of time, money, and energy on staying on the right side of antitrust laws. “They should have devoted serious resources to what I would call ‘antitrust compliance,’” McCareins says. “Before they launch a new product or service, they’ve already probably run it through an antitrust filter and either said, ‘This is a solid idea,’ or ‘That may be crossing the line. Don’t do that.’” This “antitrust filter” happens on a few levels. For one, these firms are educating their employees about compliance issues. Their business development and strategy teams are also consulting with antitrust compliance experts—both within their own companies and with outside firms they’ve retained—to evaluate whether existing programs and new products and services might run afoul of regulators. “Walmart and Amazon are now bringing the benefits of their competition to the consumer. This is the exact result envisioned by the U.S. antitrust laws.” In McCareins’s view, these large businesses have to date played within the antitrust rules to keep markets competitive. Large-scale government investigations like the ones the DOJ and FTC plan could not only prove costly and ineffective, but could also draw resources away from targeting actual abuses in other markets. “It’s a trade-off,” he says. “If regulators bring a highly speculative case in one of these big-name markets because they think it will show America that they are tough on regulation, and they lose—and while they’ve been doing that, they let 20 other markets go unattended—I don’t know if that’s a good allocation of our prosecutorial resources. The Antitrust Division’s loss earlier this year in the ATT/Time Warner merger litigation is an example of the government rolling the dice with a speculative case and limited resources. One would think with respect to the current tech investigations that the government cannot afford a repeat of the ATT/Time Warner outcome.” The Feds Don’t Have Time on Their Side Even where there may be cause for concern, federal regulatory agencies are notoriously slow to investigate anticompetitive practices by tech companies. The investigations of any of these four firms will take years to unfold, and even longer to prosecute. Take, for example, Microsoft. The FTC launched an investigation into the software firm’s bundling practices in 1990, with the DOJ following suit eight years later. At the time, the company’s Windows operating system accounted for 90 percent of the PC market. The DOJ eventually charged Microsoft, claiming that its Internet Explorer browser, which was built into Windows, had an unfair advantage over other web browsers like Netscape. In 2000, a federal judge ordered the company to be split into separate entities, but an appeals court reversed the ruling. The DOJ and Microsoft finally settled the case in 2002—a full twelve years after a regulatory agency first launched an investigation. Microsoft was ultimately required to give computer manufacturers identical licensing contracts for Windows, which gave other companies more equal access to the browser market, as well as undergo nine years of court supervision into its business practices. The punishment was, to say the least, much reduced from its original form. “The U.S. Department of Justice was not overly successful in that attack,” says McCareins, who was a partner in the firm that represented Microsoft, Winston & Strawn. Any Penalties Are Likely to Be Insufficient Which brings McCareins to his final argument: even if regulators are successful in proving anticompetitive behavior by one of the big four, the penalties will likely be civil judgements in the form of large fines, which may not serve as an effective deterrent for such huge, highly profitable companies. In addition, the antitrust division announced earlier that it is not a big fan of what it describes as “behavioral remedies.” So if the division does find grounds to sue, it will need to be sure that a structural remedy will be the ultimate result. At worst, the FTC and DOJ could force a divestiture similar to the federal ruling in the Microsoft case. However, according to McCareins, divestitures do not always work to quell anticompetitive behavior in a timely manner, especially in markets where technological change is rampant. In 1984, for example, the federal government broke AT&T into eight regional telecom providers, which became known as the “Baby Bells.” But those companies have since been reunited through a series of mergers and acquisitions. AT&T is now even bigger than it was in the 1980s thanks to its acquisitions of cellular and cable companies.