# 1NC Round 2

## Off-Case

### T Per Se

#### ‘Prohibiting’ a practice requires per se illegality.

Lee Mendelsohn 6, Director at Edward Nathan, “KIPA Conduct Amounts to Price Fixing”, Business Day (South Africa), 6/12/2006, Lexis

The first step in any competition law analysis is to define the relevant market. There are two components to an analysis of the relevant market, namely the relevant product market and the geographic market.

The relevant product market consists of those products and services that operate as a competitive constraint on the behaviour of the suppliers of those products and/or services.

The relevant product market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to substitute the product with another product or would cause suppliers of other products to begin producing the product in question.

The relevant geographic market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to purchase the product from other geographic areas, alternatively suppliers of the product in other geographic areas to supply those products into the area in question.

For the purposes of this case study, we are instructed to accept that each medical speciality constitutes a relevant product market and that the relevant geographic market for each of them is Kleindorpie.

The Competition Act provides that "an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if … it involves … directly or indirectly fixing a purchase or selling price or any other trading condition".

An "agreement" is defined as including a contract, arrangement or understanding, whether or not legally enforceable. The term agreement is very widely defined. A "horizontal relationship" is defined as a "relationship between competitors".

The prohibition on the fixing of a purchase or selling price or any other trading condition is one of the so-called "per se" prohibitions which are included in our Competition Act. The prohibition is automatic and absolute and the fixing of prices or other trading condition cannot be justified on the basis of any technological, efficiency or other procompetitive gains that could outweigh the potential anticompetitive effect of the fixing of the price or trading condition. If the capitation plan of KIPA falls within the restrictive horizontal practice prohibiting price fixing and the fixing of other trading conditions, such practice will be a contravention of the act.

#### Vote Neg---key to link uniqueness and preventing bidirectionality on an otherwise unlimited topic – fringe standards with distinct lit, and affs that change levels of enforcement or presumption make the topic unmanageable.

### 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.

### Devolved Authority CP

#### The United States federal government should: -- devolve authority to substantially increase its prohibitions on anticompetitive business practices to include nascent competitors by lowering HSRA filing requirements. -- 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, --substantially increase technology development and industry investment in the defense, emerging technology, pharmaceutical, and biotechnology sectors, Artificial intelligence, and --implement and maintain oversight over regulations for experimental development for emerging technologies, and artificial intelligence.

#### Government participation solves tech innovation in every sector.

Mazzucato 13—(RM Phillips Chair in the Economics of Innovation at the University of Sussex at time of publication, former adjunct professor of economics at New York University, MA and PHD in economics from the New School for Social Research). Mariana Mazzucato. August 21, 2013. “State of innovation: Busting the private-sector myth”. NewScientist. <https://www.newscientist.com/article/mg21929310-200-state-of-innovation-busting-the-private-sector-myth/>. Accessed 11/27/21.

IMAGES of tech entrepreneurs such as Mark Zuckerberg and Steve Jobs are continually thrown at us by politicians, economists and the media. The message is that innovation is best left in the hands of these individuals and the wider private sector, and that the state – bureaucratic and sluggish – should keep out. A telling 2012 article in The Economist claimed that, to be innovative, governments must “stick to the basics” such as spending on infrastructure, education and skills, leaving the rest to the revolutionary garage tinkerers.

Yet it is ideology, not evidence, that fuels this image. A quick look at the pioneering technologies of the past century points to the state, not the private sector, as the most decisive player in the game.

Whether an innovation will be a success is uncertain and it can take longer than traditional banks or venture capitalists are willing to wait. In countries such as the US, China, Singapore and Denmark the state has provided the kind of patient and long-term finance new technologies need to get off the ground. Investments of this kind have often been driven by big missions, from putting a human on the moon, to solving climate change. This has required not only funding basic research – the typical “public good” that most economists admit needs state help – but applied research and seed funding too.

Apple is a perfect example. In its early stages the company received government cash support via a $500,000 small business investment company grant. And every technology that makes the iPhone a smartphone owes its vision and funding to the state: the internet, GPS, touchscreen displays and even the voice-activated smartphone assistant Siri all received state cash. The US Defence Advanced Research Projects Agency (DARPA) bankrolled the internet, and the CIA and the military funded GPS. So, although the US is sold to us as the model example of progress through private enterprise, innovation there has benefited from a very interventionist state.

The examples don’t just come from the military arena, either. The US National Institutes of Health spends around $30 billion every year on pharmaceutical and biotechnology research and is responsible for 75 per cent of the most innovative new drugs annually. Even the algorithm behind Google benefited from US National Science Foundation (NSF) funding.

Across the world we see state investment banks financing innovation. Green energy is a great example. From Germany’s KfW state bank to the Chinese and Brazilian development banks, state-run finance is playing an increasing role in the development of the next big thing: green tech.

In this era of obsession with reducing public debt – and the size of the state more generally – it is vital to dispel the myth that the public sector will be less innovative than the private sector. If not, the state’s ability to continue to play its enterprising role will be weakened. Stories about how progress is led by entrepreneurs and venture capitalists have aided lobbyists for the US venture capital industry in negotiating lower capital gains and corporate income taxes – hurting the ability of the state to refill its innovation fund.

The fact that companies like Apple and Google pay hardly any tax – relative to their massive profits – is all the more problematic, given the significant contributions they have had from the government. Thus, the “real” economy (made up of goods and services) has experienced a shift similar to that of the “financial” economy: the risk has been increasingly moved to the public sector while the private sector keeps the rewards. Indeed, one of the most perverse trends in recent years is that while the state has increased its funding of R&D and innovation, the private sector is apparently de-committing itself. In the name of “open innovation” big pharma is closing down its R&D labs, relying more on small biotech companies and public funds to do the hard stuff. Is this a symbiotic public-private partnership or a parasitic one?

It is time for the state to get something back for its investments. How? First, this requires an admission that the state does more than just fix market failures – the usual way economists justify state spending. The state has shaped and created markets and, in doing so, took on great risks. Second, we must ask where the reward is for such risk-taking and admit that it is no longer coming from the tax systems. Third, we must think creatively about how that reward can come back.

There are many ways for this to happen. The repayment of some loans for students depends on income, so why not do this for companies? When Google’s future owners received a grant from the NSF, the contract should have said: if/when the beneficiaries of the grant make $X billion, a contribution will be made back to the NSF.

Other ways include giving the state bank or agency that invested a stake in the company. A good example is Finland, where the government-backed innovation fund SITRA retained equity when it invested in Nokia. There is also the possibility of keeping a share of the intellectual property rights, which are almost totally given away in the current system.

Recognising the state as a lead risk-taker, and enabling it to reap a reward, will not only make the innovation system stronger, it will also spread the profits of growth more fairly. This will ensure that education, health and transport can benefit from state investments in innovation, instead of just the small number of people who see themselves as wealth creators, while relying increasingly on the courageous, entrepreneurial state.

### Tech Stocks CP

#### 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.

### Midterms DA

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.

### 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

## FTC Adv

### Innovation Turn---1NC

#### Platforms are competitive, innovative, and pro-consumer. Regulators must accept some static inefficiency for the sake of the next world-changing breakthrough.

Atkinson ’20 [Robert D. Atkinson & Joe Kennedy; November; Ph.D. at UNC-Chapel Hill; former chief economist for the U.S. Department of Commerce, Economics PhD from George Washington University, J.D. from the University of Minnesota; The Evolution of Antitrust in the Digital Era: Essays on Competition Policy, “The Antitrust “Challenge” of Digital Platforms: How a Fixation on Size Threatens Productivity and Innovation,” p. 11–15]

II. THE BENEFITS DIGITAL PLATFORMS BRING

The dominant fact about digital platforms is that they deliver significant benefits to a wide range of users, including app developers, sellers of a wide variety of goods and services, advertisers, consumers, and tens of millions of people who use social media to stay in touch with family and friends.

The value of these benefits is hard to measure, in part because many services are offered for free. But even if they were not, the consumer surplus between their value to Internet users and the amount that users actually have to pay is very large. A recent study by MIT economists estimates the median Internet user would require compensation of $17,530 to give up search engines for one year. The equivalent estimates for email and digital maps are $8,414 and $3,648, respectively.

A filing by scholars from the Mercatus Center lists five ways Internet platforms create value:

* By allowing people to rent out other people's cars, homes, and other property, they increase the value of underutilized capital.
* By connecting large numbers of buyers and sellers, they make both supply and demand more competitive and allow greater specialization among producers, leading to more choice for consumers.
* By lowering the transaction costs of finding willing partners, negotiating over price, ensuring quality, and monitoring performance, they increase the number of beneficial trades.
* By making it easy for both buyers and sellers to check on the past performance of potential counterparties, they increase the amount of information in the marketplace and reduce the risk to parties.
* By offering an alternative to traditional markets, whose regulators are often captured by existing producers, they create opportunities for new suppliers to satisfy the unmet needs of consumers and force incumbents to become more efficient.

These benefits tend to have progressive effects. The savings from lower prices and free services often benefit low-income consumers the most, because the savings represent a higher proportion of their total income. Moreover, higher-income users are more valuable to platforms because they are more likely to buy advertised goods and services, yet both higher income and lower-income consumers receive the same services.

These companies are also among the most innovative in the world. Amazon and Alphabet led all companies in investment in research and development in 2018.

Microsoft and Apple came in sixth and seventh, while Facebook was 14th. Each company is constantly innovating its core business in order to respond to competitive threats, including from each other, and attract new users. In addition to their core businesses, they are among the leaders in investing in the next generation of general-purpose technologies, including artificial intelligence, autonomous vehicles, block-chain, quantum computing, and robotics. Development of these technologies will deliver significant economic and social benefits.

III. THE ALLEGED THREAT TO ANTITRUST

Antitrust concerns about the largest digital giants are driven largely by the difficulty for antitrust thinking to effectively adapt to the network age. At the turn of the 19th century, some saw large firms with a significant share of the market as at best suspect; at worst a serious problem. Today, some see platform-based businesses in a similar light. But, in the digital economy, platforms may very well become the dominant form of business organization, for precisely the same reasons large industrial organizations became dominant in the 20th century: they are the most efficient organizational form for the current technology.

Today, antitrust concerns over platforms are driven by two common traits of multi-sided platforms. On the demand side, the push for bigness is caused by network externalities. The network's value to each user is increased by each additional user. One platform that contains everyone is more valuable than two platforms, each of which contains half the users. This is because with one platform every user can reach every other user. For example, Facebook has announced plans to make Facebook Messenger, WhatsApp, and Instagram interoperable, since these services are all owned by Face- book, so that users on one app can message users on the other apps using whichever service they prefer. Internet users would be worse off if the Federal Trade Commission obtained an injunction preventing Facebook from merging these services, or worse, split these companies apart, because then users would have to create and maintain separate accounts on each of these services to communicate with all of their contacts. Of course, not every network works this way, and mandating interoperability requirements for social networks could create security risks or create other problems for users, such as spam or harassment. Even the classic example, the telephone, has lost its monopoly on intercommunication; people no longer need a phone to call each other. Internet-protocol standards allow voice packets to be generated and sent on a variety of different platforms. Users also have different interests, so often not everyone needs to communicate with everyone else, in which case the network advantage will fade out at a certain size. The net result is scale. As an Obama administration Council of Economic Advisers' report noted, "Some newer technology markets are also characterized by network effects, with large positive spillovers from having many consumers use the same product. Markets in which network effects are important, such as social media sites, may come to be dominated by one firm. . ."

On the supply side, firms often grow bigger to benefit from economies of scale. By growing larger, firms can reduce their average total cost of production by spreading their fixed costs over more units. But traditional economic theory also assumes that most firms will eventually face increasing marginal costs because of inefficiencies that come from being too large. These increasing marginal costs limit how large firms can grow, making it difficult for any one firm to capture the entire market. However, digital platforms usually enjoy fixed marginal costs that do not increase with size. This means that their average total cost continues to decline as they add more users, and they do not face the same constraints on their size or market share. These efficiencies benefit society.

Digitally powered business models, including platforms, also have the advantage of being able to have strong offerings along a number of dimensions. Traditional firms normally focus on and gain advantage in one, or possibly two of three aspects: price, quality or customization, in large part because there are significant tradeoffs between each. Customization comes at the expense of low cost, for example. Indeed, much of the business strategy literature is premised on firms identifying which of these market areas they should specialize in. But for many Internet platforms, digital technologies enable them to make strong offerings in all three aspects: low prices, higher quality, and customization.

These advantages are not likely to be absolute, however. Economists Daniel Spulber & Christopher Yoo point out that market share due to network effects can be interrupted by periodic outbreaks of new competition for the market, raising the possibility that the dominant platform will be replaced. Two of the biggest drivers of this disruption are technology and demographics. Historically, technological innovation played a significant role in companies like IBM (mainframes), Digital Equipment Corporation (minicomputers), AT&T (telephony), Walmart (retail) and FedEx (delivery) losing dominant market shares. Indeed, important transitions such as the move from analog to digital, the rise of the Internet, and the advent of smart phones have been especially challenging for incumbents to spot and respond to.

As antitrust scholars Carl Shapiro & Hal Varian note, "[T]he information economy is populated by temporary, or fragile, monopolies. Hardware and software firms vie for dominance, knowing that today's leading technology or architecture will, more likely than not, be toppled in short order by an upstart with superior technology." And as IT industry expert David Moschella points out, "today's giants are more vulnerable than previous industry leaders in at least one way: the customer switching costs are mostly ones of changing habits, not conversion effort and cost, and this relative ease of transition could be an important factor sometime down the road." Today, rapid advances in technology continue to present platforms with new services and business models. Platforms that do not quickly adapt to these opportunities leave the door open for rivals.

In fact, Spulber & Yoo believe platforms are likely to face even more competition in the future, spurring more innovation. However, in order to enable this dynamic efficiency, regulators may have to allow static inefficiency for a limited period of time. Businesses with large upfront expenses and low marginal costs often need to earn higher rates of return to recoup their investments, and to fund the next big investments in innovation. But even then, their advantages may be temporary, particularly in a globally competitive economy. Similarly, the advantage of efficiencies of scale can be offset if competitors also enjoy zero marginal cost.

#### Concentration rewards innovation. Today, research labs innovate; garages don’t. Startups suck.

Atkinson ’18 [Robert and Michael Lind; March 30; PhD from the University of North Carolina; professor of practice at the Lyndon B. Johnson School of Public Affairs at the University of Texas, JD from the University of Texas Law School, International Relations MA from Yale University; Big is Beautiful: Debunking the Myth of Small Business, “The Myth of the Genius in the Garage: Big Innovation,” Ch. 6]

Most of all, today’s perspective allows us to see that the origin myth of the information age—the overthrow of sclerotic, hide-bound, giant corporations by scrappy, brilliant tinkerers building the future in their garages—is just a myth. Steve Jobs, Bill Gates, and others deserve credit for their brilliant success in commercializing new technologies. But most of those technologies had been invented in the laboratories of giant corporations, many of them working for the US military or civilian federal agencies on contract. The tech revolution of our time owes far more to teams of scientists and engineers working in well-funded corporate labs than to college dropouts tinkering in garages.

From the Alto to the Apple Macintosh

Before there was the Apple Macintosh, there was the Alto. And before there was Apple, there was Xerox PARC. On March 1, 1973, the first Xerox Alto was unveiled. The Alto was the first PC to combine a graphical user interface with a handheld mouse and other features that became standard elements of PCs a decade later. By the end of the decade, roughly 1,500 Altos were in use.

In 1976, Steve Jobs and Steve Wozniak cofounded Apple computer, a venture that grew out of the Homebrew Computer Club, a group of computer hobbyists that met in Silicon Valley. Initially Apple sold PCs named Apple I and Apple II. A key moment in the history of the young company came in 1979, when the twenty-four-year-old Jobs persuaded Xerox to allow Apple staff to tour the Xerox PARC facility in Silicon Valley in return for Xerox’s acquisition of stock in Apple. Taking part in the second tour, Jobs was reportedly amazed by the Alto, seeing the commercial potential of the device. According to Larry Tesler, a Xerox engineer who demonstrated the use of the new “windows” and other features of the Alto, “He was very excited. Then, when he began seeing the things I could do onscreen, he watched for about a minute and started jumping around the room, shouting, ‘Why aren’t you doing anything with this? This is the greatest thing. This is revolutionary!’”2

In 1981 Xerox brought out a version of the Alto called the Xerox Star, but the concepts pioneered by Xerox and others were commercialized best by Apple, which released the first Macintosh PC in 1984, following the poor sales of the Apple Lisa, which came out in 1983. And just as the Apple Mac was inspired in part by the Xerox Alto, so the Apple LaserWriter drew on the laser printer technology developed by Xerox.

It would be wrong to accuse Apple of simply copying ideas from PARC. Even before the PARC visit, the designers of the Macintosh intended it to include a number of features, such as bitmapped screens, that later appeared in the Mac. Furthermore, Apple modified the pioneering design of the Alto in numerous ways that made the Macintosh both cheaper and easier to use. And, of course, Apple also pursued a business and marketing strategy that proved to be more successful than those of its rivals, including Xerox, which was hamstrung by unimaginative management that failed to see the commercial potential in these innovations. In the late 1970s and early 1980s, Apple promoted its computers through computer stores, magazines, and schools and encouraged software developers to write their own programs.

Xerox PARC itself developed concepts that originated at other institutions. One was the Augmentation Research Center (ARC) of the Stanford Research Institute (SRI). ARC’s founder, Douglas Engelbart, was a radar technician serving in the US Army when he read an essay that changed his life, “As We May Think,” by Vannevar Bush, published in the Atlantic in July 1945.3 At the time Bush was the director of the federal Office of Scientific Research and Development, and played a critical role in developing the atomic bomb.

Bush envisioned a device he called the Memex that would permit individuals to share text and pictures and serve as the basis for a collective memory. Following the war, Engelbart graduated with a Ph.D. in engineering and joined SRI in 1957. In 1962 he published an essay titled “Augmenting Human Intellect: A Conceptual Framework.” With funding from the Defense Advanced Research Projects Agency (DARPA), Engelbart created his own lab at SRI, the ARC, to develop what he called the oN-Line System (NLS).

Engelbart showcased his lab’s work at what is now called “the Mother of All Demos,” a presentation at a San Francisco conference of the Association for Computing Machinery/Institute of Electrical and Electronics Engineers (ACM/IEEE) on December 9, 1968. In ninety minutes Engelbart and his colleagues, including some at remote sites communicating by wireless technology, demonstrated many of the features of what became the PC: the mouse, windows, graphics, hypertext, and even video conferencing. Vannevar Bush’s dream of the Memex had been realized.4

When Xerox founded PARC in 1970, the lab hired veterans of ARC. The first director of the PARC Computer Sciences Division was Robert Taylor, who as the director of the Information Processing Techniques Office of DARPA had funded Engelbart’s work at ARC. Taylor hired engineers and scientists from the DARPA and ARC networks.5 In turn, many PARC veterans went on to play leading roles in Silicon Valley in the late twentieth century.

The history of the tech industry provides many other examples of giant firms and corporate research labs responsible for breakthroughs that were developed and commercialized by others—including veterans of the same institutions. For example, after presiding over the development of the transistor at AT&T’s Bell Labs, William Shockley in 1957 founded his own semiconductor company in Mountain View, California, called Shockley Semiconductor Laboratories. Rebelling against his authoritarian style, eight of the young technicians he had recruited—the “traitorous eight”—quit and formed their own company, Fairchild Semiconductor. Fairchild produced spin-offs, including Intel, which became known as “Fairchildren.” One of the eight was Gordon Moore, who became a cofounder of Intel and is best known for Moore’s law, which predicted the regular doubling of the number of transistors per integrated circuit. Another, Eugene Kleiner, cofounded the Silicon Valley venture capital firm Kleiner Perkins Caulfield & Byers, which made early investments in such companies as AOL, Amazon, Google, Netscape, and Sun Microsystems.6

If Silicon Valley has a birthplace, it is 367 Addison Avenue, Palo Alto, California. In 1939 this bungalow was home to two young electrical engineers, both graduates of Stanford, Dave Packard and Bill Hewlett, when they founded the partnership Hewlett-Packard (HP). In the garage they assembled their first products, audio oscillators, selling eight to Walt Disney Studios to test sound systems in movie theaters scheduled to run the first stereophonic movie, Fantasia. But it was World War II that gave HP a real boost, as it produced radio, radar, sonar, and other supplies for the US military. After incorporating in 1947, HP became the world’s largest producer of electronic measuring devices, as well as a major producer of computers, calculators, and printers.7

But there was more to the success of HP than the genius of two young electrical engineers with access to a garage. The historical marker at the HP Garage makes this clear. Under the heading “Birthplace of Silicon Valley” the historical marker reads:

This garage is the birthplace of the world’s first high-technology region, “Silicon Valley.” The idea for such a region originated with Dr. Frederick Terman, a Stanford University professor who encouraged his students to start up their own electronics companies in the area instead of joining established firms in the East. The first two students to follow his advice were William R. Hewlett and David Packard.

Writing in the Harvard Business Review, Gary P. Pisano and Willy C. Shih coined the term “the industrial commons” for an industry-specific network that can include, among other things, “R&D know-how, advanced process development and engineering, and manufacturing competencies related to a specific technology.”8 Long before it had a name, an industrial commons existed in Silicon Valley based on productive interactions among startups, big firms, university research departments, government agencies, and venture capitalists.

To be sure, the “innovation in a garage” story is partly right. Startups do play an important role in innovation, particularly early in the emergence of whole new technologies. But the story and its proponents assume that startups are the source of virtually all innovations and moreover that a startup can no longer be innovative once it gets big. In this perspective, while HP might have developed some important innovations in the 1930s and 1940s, or Apple in the 1980s and 1990s, by the time these firms become giants they had to have lost most of their ability to innovate and become dependent on new garage innovators, which they simply bought up. As we will see, this is just plain wrong.

Firm Size and Innovation

Economists have studied the relationship between firm size and innovation for over a century. Joseph A. Schumpeter’s 1911 book, The Theory of Economic Development, focused on the entrepreneur as the driving force for innovation. He wrote, “The typical entrepreneur is more self-centered than other types, because he relies less than they do on tradition and connection and because his characteristic task … consists precisely in breaking up old, and creating new, tradition.”9

But writing thirty years later, after the emergence of dedicated corporate research labs and what Alfred Chandler called the “managerial corporation,” Schumpeter viewed the large corporation as central to innovation. In Capitalism, Socialism, and Democracy, first published in 1942 he said, “Technological progress is increasingly becoming the business of teams of trained specialists who turn out what is required and make it work in predictable ways.”10 He went on to observe that innovation by individual inventors and entrepreneurs “is already losing importance and is bound to lose it at an accelerating rate. … Innovation itself is being reduced to routine. Technological progress is increasingly becoming the work of trained specialists who turn out what is required to make it work in predictable ways.”11 Schumpeter argued that by focusing on price gouging by monopolies, traditional economists ignored the case of the innovative firm, which could recoup spending on R&D by using its market power to charge a price higher than marginal cost. According to Schumpeter, “There cannot be any reasonable doubt that under the conditions of our epoch such superiority is as a matter of fact the outstanding feature of the typical large-scale unit of control.”12

In 1952 John Kenneth Galbraith agreed with Schumpeter, with whom he had studied at Harvard. Writing in American Capitalism, he said, “The modern industry of a few large firms is an excellent instrument for inducing technical change. It is admirably equipped for financing technical development and for putting it into use. The competition of the competitive world, by contrast, almost completely precludes technical development.”13 Among leading contemporary economists, William J. Baumol emphasized the extent to which competition among oligopolistic firms based on innovation, not prices, is the major driver of technological progress. He compared this oligopolistic competition to an arms race “that participants cannot easily quit.”14

In contrast to the crude simplicities of Econ 101, in which competition among numerous small firms in conditions of technological stasis drives down prices for consumers, in what might be called Econ 201, or modern industrial economics, competition among a small number of large firms drives technological innovation. History does not bear out the claim that large, oligopolistic corporations are inevitably less dynamic and innovative than small firms. On the contrary, as Joseph Bowring has written, “Core firms are not pitiful, helpless giants fated to topple and rot into … senescence; their competitive advantages have made them virtually indestructible.”15

For more than a century, then, a rich body of academic economic and historical scholarship has treated oligopolistic competition among large firms in imperfectly competitive markets as the norm in modern industrial economies. And yet this scholarship is all but unknown to policy makers and the educated public. The fault lies largely with the mathematical turn taken by neoclassical economics departments in the second half of the twentieth century. In 1939 John Hicks, one of the founders of modern mathematical economics, observed that it was difficult if not impossible to produce elegant mathematical models of oligopolistic markets:

If we assume that the typical firm (at least in industries where the economies of large scale are important) has some influence over the price at which it sells … [it] is therefore to some extent a monopolist. … Yet it has to be recognized that a general abandonment of the assumption of perfect competition, a universal adoption of the assumption of monopoly, must have very destructive consequences for economic theory.

Faced with a choice between complex reality and elegant equations that assumed competitive equilibrium, Hicks advised the academic economics profession to ignore reality in order to save the equations:

It is, I believe, only possible to save anything from this wreck—and it must be remembered that the threatened wreckage is the greater part of general equilibrium theory—if we can assume that the markets confronting most of the firms with which we shall be dealing do not differ very greatly from perfectly competitive markets. … We must be aware, however, that we are taking a dangerous step, and probably limiting to a serious extent the problems with which our subsequent analysis will be fitted to deal.16

The academic economics discipline has largely taken Hicks’s advice. Galbraith compared the emphasis of academic neoclassical economics on small firms in competitive markets to a description of the United States which, by assuming away New York, Chicago, Los Angeles and all other communities larger than Cedar Rapids, was then able to describe the country as essentially a small-town, front-porch community. Only an assumption very important to economics, as it is conventionally taught, would justify such a questionable defense.17

Galbraith noted the mystical American belief in competitive markets: “For competition, with us, is more than a technical concept. It is also a symbol of all that is good. We wouldn’t survive under a regime of competition of classical purity—with an economy rigorously so characterized we should have succumbed not to Hitler but to Wilhelm II—but we must still worship at its throne.”18

Schumpeter’s argument that firms with temporary monopolies would have both the resources and the incentive to innovate was challenged by the economist Kenneth J. Arrow, who argued that innovation would be greater in more competitive markets.19 But as the Obama Council of Economic Advisers reported, “Allowing firms to exercise the market power they have acquired legitimately can maintain incentives for research and development, new product introduction, productivity gains, and entry into new markets, all of which promote long term economic growth.”20

The Rise and Fall of the Corporate Research Lab

Ironically, neoclassical economics predicts that in a truly competitive economy there would be little or no R&D. It is much cheaper for companies to copy another firm’s innovations than to invest in expensive innovation. In other words, the company that chooses to fund breakthrough R&D cannot be certain it will recoup enough of the gains from its initial investment if other companies can copy it through reverse engineering and other means. So in a completely competitive and free market with no patent and other intellectual property protection it is quite possible that no companies would spend money on risky long-term innovation, in part because profit rates would be at the cost of capital, leaving little or no resources to invest in R&D.

History bears out what economic theory predicts. Modern economic progress depends largely on the commercialization of technological innovation that originates in systematic early-stage research. Since the nineteenth century, early-stage research has been undertaken chiefly by three types of institutions—research universities, government labs, and corporate research labs—and funded by two main sources—government spending and corporate profits. And in the last half century some high-tech startups, funded by venture capital, have played a key role as well.

This approach to technological innovation was pioneered in the late nineteenth century by imperial Germany. The modern research university in the United States, starting with Johns Hopkins and then others, is modeled on imperial German precedents. Indeed, two universities founded as research universities along German lines, MIT and Stanford, have played a disproportionate role in technological progress. With its Kaiser Wilhelm Institutes, imperial Germany also pioneered the government research laboratory, which in the United States includes laboratories associated with the Department of Energy and the Department of Defense, among others. After the Civil War, the United States pioneered the state technical universities (e.g., North Carolina State University, Ohio State University), most of which were established by federal land grant funds.

Corporate research labs were also pioneered by the German chemical industry in the late nineteenth century and soon copied by many nations in the first half of the twentieth century. Throughout the twentieth century, most of the breakthrough technological innovations in the private sector originated with companies that were funded by government either directly or indirectly (through tax incentives, grants, or contracts) or with companies that enjoyed some modicum of market power. IBM’s development of much early computer technology with Department of Defense funding is an example of the former. Bell Laboratories benefited from the legal monopoly in the United States held by its parent company, AT&T.

However, it was not until the 1920s and 1930s that the main sources of innovation in the United States changed from being based largely on technical tinkering and trial and error by mechanics and inventors to a science-based approach in which innovation followed from a more fundamental understanding of underlying processes. Since then the research labs of large corporations, sometimes supported by the federal government, have become the major source of technological innovation.

With the growth of a more formal, laboratory-based system of R&D, R&D expenditures and the number of scientists and engineers employed in industrial research exploded. Growing by 300 percent between 1921 and 1938, industrial research was one of the largest forty-five occupations by employment in 1937. Industrial laboratories increased from fewer than 300 in 1920 to more than 2,200 in 1938 to almost 5,000 in 1956, with many, like Bell Labs, conducting extensive basic research. At the same time, annual expenditures on industrial research ballooned from $25 million to $175 million.21

As a result, the locus of innovation switched from individual inventors tinkering, like Edison and Bell, in their garages to scientists working in corporate labs. Reflecting this switch was the distribution of patents: in 1901, 20,896 patents were issued to individuals in the United States, and only 4,650 went to corporations. The proportions were more even in the 1930s, but in 1953 individual inventors received only 40 percent of patents, and of the 60 percent of patents that went to firms, two-thirds originated with a company’s research personnel.22 By 1980 corporations were obtaining about five times more patents than individuals. As a result, in the mid-twentieth century, a few large corporations dominated private R&D. In 1974, 126 companies with more than 25,000 employees performed three quarters of all industrial research; of these companies, four were responsible for 19 percent of industrial R&D.23

Big companies were responsible for major technology breakthroughs. Synthetic materials derived from hydrocarbons became the foundation of new products and industries. Standard Oil of New Jersey led the way in developing synthetic rubber during World War II, and seemingly miraculous new materials flowed from the corporate laboratories of giant firms like DuPont and Dow: nylon, polyester, Formica, latex paint, Kevlar armor, Fiberglas, Lucite, Plexiglas. In the private sector, only immense corporations with steady profits that went in part to fund cutting-edge research could have made and commercialized these discoveries. Henry Kressel and Thomas Lento have described the importance of corporate laboratories in the genesis of the information and communications technologies (ICT) revolution:

For example, the UNIX operating system and its offshoots and the software languages C and C++ were developed at Bell Labs in Murray Hill, New Jersey. Relational databases and reduced instruction set computers were invented at IBM Yorktown Labs, New York. Semiconductor devices and integrated circuit manufacturing were developed at Bell Labs, Western Electric, and RCA Labs (later Sarnoff Corporation).24

As Michael Mandel has observed, most Nobel Prize winners in science and technology have worked for universities and very large corporations. The last time the founder of a startup won a Nobel Prize (in physics) was in 1909; the prize went to Guglielmo Marconi, the pioneer of radio. Since then, two colossal corporations, AT&T and IBM, have won all the Nobel Prizes awarded to companies.25

The Decline and Fall of the Corporate Research Lab

As the historian Eric Hobsbawn has written, “It is often assumed that an economy of private enterprise has an automatic bias towards innovation, but this is not so. It has a bias only towards profit.”26 This view is borne out by the shift by many US corporations in recent decades from early-stage research to later-stage, more incremental development and, for some, to various forms of financial engineering, which can yield higher short-term profits. Among the casualties of this shift has been the classic corporate research lab.

Increased competitive pressures have led to less corporate expenditure on basic and applied research (as opposed to product and process development), exactly as economic theory would predict. As one MIT study found, more competition, including from low-wage, mercantilist nations such as China, reduced US business R&D expenditures.27 Couple that with pressure from Wall Street to focus on short-term profits, not long-term breakthroughs whose benefits, however useful for society, are not always captured by the business making the investment, and we see a shift away from what Clayton Christensen calls disruptive innovation to safer sustaining innovation. One of the few exceptions to the trend of declining corporate R&D expenditure on basic science is found in the pharmaceutical industry, for the simple reason that their future is impossible without new drugs, which require early-stage research (patent protections also give pharmaceutical companies some chance to recoup the costs of expensive R&D). As in-house corporate laboratories have declined in importance, large firms in many industries have adopted the model of partnering with or acquiring small startups.28

As a share of revenue, US corporate R&D has remained relatively steady, falling just slightly since 2000. But because the economy is getting more innovation-based and the United States should be specializing even more in innovation as globalization deepens, one would have expected corporate R&D to increase as a share of GDP. Moreover, Ashish Arora, Sharon Belenzon, and Andrea Patacconi observed that the number of publicly traded companies whose researchers published in scientific journals had declined by two-thirds to a mere 6 percent between 1980 and 2015.29 The authors concluded, “Large firms appear to value the golden eggs of science (as reflected in patents) but not the golden goose itself (scientific capabilities).”30 According to them, firms that engage in more research have lower stock values.31

Under pressure from shareholders, many firms have eliminated or spun off their research efforts. Under pressure from the activist investor Nelson Peltz, for example, DuPont merged with Dow and cut R&D.32 Bell Labs virtually disappeared after AT&T spun it off after AT&T was broken up. In 2002 Xerox PARC became an independent subsidiary that has replaced basic R&D with research on demand for clients. IBM Research still exists, and has produced major innovations such as the artificial intelligence system Watson, but even it faces pressures as IBM revenues and profits decline.33 Apparent exceptions to the trend prove the rule. Because Microsoft was somewhat insulated from competitive pressures, it was able to invest $6 billion to $12 billion per year in R&D from 2002 to 2016.34 The fact that Google is a closely held corporation insulated from shareholder pressure with robust profits may explain its willingness to engage in “moonshot” projects, such as self-driving cars. Although even Google appears to have cut back on some of these projects with longer and more speculative outcomes.

While firms may do less basic and early stage applied research than in the past, they continue to fund R&D, with the largest global corporations leading the way. According to Peter Nolan, Jin Zhang, and Chunhang Liu, “The increased focus on core business among the world’s leading systems integrators and subsystems integrators has enhanced the efficiency of R&D expenditure, allowing benefits from economies of scale and scope.”35

A New Age of the Individual Entrepreneur?

The decline of the classic mid-twentieth-century corporate research lab is one factor in the contemporary revival of small-is-beautiful thinking in the area of innovation. Another is the association of innovation in the popular mind and the media with a few entrepreneurs in the tech sector, such as Steve Jobs and Mark Zuckerberg. Because of this, in the last couple of decades there has been ongoing debate over which Joseph Schumpeter was correct about innovation—Schumpeter I, who ascribed innovation to individuals, or Schumpeter II, who believed that the future of innovation lay with the research teams of “trustified” capitalism.

When Schumpeter published The Theory of Economic Development in 1911 (Schumpeter I), individual entrepreneurs such as Thomas Edison, Andrew Carnegie, and John D. Rockefeller were the drivers of innovation and growth. But when he wrote Capitalism, Socialism, and Democracy in 1942 (Schumpeter II), it was large managerial corporations such as ATT, GM and DuPont with dedicated R&D labs that drove innovation. This change over time does much to explain the evolution of his views on the firm size sources of innovation.

In other words, the relative importance of small and large firms in innovation is time dependent. One reason why there was a revival of Schumpeter I theories after the late 1980s was that as the IT revolution took off, it enabled a swarm of entrepreneurs—people like Michael Dell, Larry Ellison, Bill Gates, or Steve Jobs—to strike out and form new companies. But as the technology has matured there has been shaking out and consolidation, to the point that the balance has shifted back toward the large firm. This is why by the mid-2000s only about 7 percent of new company startups in the United States were in high-tech industries and only about 3 percent of business founders considered their new businesses to be “technologically sophisticated.”36

But with the cutbacks in corporate funding for earlier-stage, more risky research and the seeming flowering of small, innovative startups, is it still true that big firms are innovative? The dominant narrative would suggest no: these corporate giants have become sluggish, risk-averse copiers. The entrepreneur Sam Hogg speaks for most when he writes, “Startups require innovative entrepreneurs, and that typically isn't in a job description for a large company. Big companies hire people when the workload demands it, not when they can come up for air and think about innovation.”37

But this narrative, as widely touted as it is, is not true. Scholarly research shows that large corporations continue to play a leading role in innovation. To be sure, some research has found that some small businesses are more innovative per dollar of revenue than large firms. A Small Business Administration (SBA)–funded study found that “small businesses develop more patents per employee than larger businesses, with the smallest firms, those with fewer than 25 employees, producing the greatest number of patents per employee.”38 Another study found that “small patenting firms are roughly 13 times more innovative per employee than large patenting firms.”39 Still another found that “small firms with at most 290 employees obtained on average 1.2626 patent citations per dollar of R&D stock, while large firms obtained 0.5712; thus, small firms obtained on average 2.2104 times more citations per dollar of R&D stock than large firms.”40

But studies claiming to find that small firms are more innovative are actually looking at a small subset of firms. Among firms that obtain patents, small businesses do produce more patents per employee than large firms. But that doesn’t stop the SBA from misleadingly stating that small firms produce thirteen times more patents per employee than large firms.41 Note the omission of the word “patenting” before the words “small business.” Also note that the top 1.5 percent of patenting firms, all large firms, are responsible for 48 percent of all patents from 1999 to 2008. In 2011, 108,626 utility patents of US origin were granted. Just fifty US companies getting the most patents (all large corporations) were responsible for over 30 percent of these patents. The reality is, only a tiny fraction of the nation’s 6 million small firms patent or innovate.42 This is not to say that some small technology-based firms are not highly innovative. But to assume that small always equates with innovative or entrepreneurial is not accurate.

One reason for this poor performance is that very few new businesses have any intention or capability to innovate. As Scott Shane writes,

Most new businesses don’t intend to do something innovative enough to alter the market they are in. Data from the Entrepreneurship in the United States Assessment indicates that only 2 percent of new business founders expect their new companies to have a substantive effect on the markets in which they operate, and 91 percent expect to have little or no impact on those markets.43

Shane goes on to note that

almost all new businesses produce the same products and services as existing businesses, and almost none of them provide a product or service that their founder views as unique. Even among some of the best start-ups—the Inc. 500 firms, which are the fastest growing private companies in the United States—only 10 percent offer a product or service that other companies do not offer.44

Another study found that

within the first four years of business, only 2.7 percent of the businesses in the sample had already applied or were in the process of applying for patents. Copyright and trademark usage is slightly higher but still most firms do not innovate at least according to these crude observable measures. … Nearly 85 percent of small businesses did not acquire a patent, trademark or copyright during their first four years of existence.45

This study also found that just between 6 and 8 percent of new businesses had developed any proprietary business practices or technology during their first few years of business.46

Studies touting the superiority of small firms thus need to be interpreted with care. First, while small technology companies in some industries may be more innovative dollar for dollar than large firms, the real question is the share they contribute to overall innovation. On this measure, it is small. For example, one study found that while small technology firms patent more per employee than large firms, they were responsible for just 6.5 percent of patents from 2002 to 2006.47 In other words, while small technology firms may be more efficient at innovation, collectively they do much less of it than large firms. In fact, one firm, IBM, received more patents than all the 504 small firms in the study combined. When looking at small firms that had received more than 15 patents in five years Nolan and coworkers found that a number of firms fell out of the database. Six percent of small firms became large firms, while 17 percent had merged or been acquired. Most of the remaining small firms that dropped out did so because they fell below the fifteen-patent threshold, while another 4 percent dropped out because they became troubled or declared bankruptcy. Among the top 700 firms in 2003, the top seventeen were responsible for 25 percent of all R&D expenditures, the top thirty-three for 40 percent, and the top 300 for 80 percent.48

Moreover, while small firms account for 49 percent of US employment, they account for just 16 percent of business spending on R&D, while firms of more than 25,000 workers account for 36 percent (see figure 6.1).49 Likewise, they account for 18.8 percent of patents issued, while the largest firms account for 37.4 percent of patents.50 Average R&D spending per worker increases with company size (not controlling for industry), with firms with five to ninety-nine workers spending around $790 per worker and large firms with 5,000 or more workers spending around $3,370 per worker.51

Figure 6.1 US Business R&D by Firm Size, omitted.

Source: National Science Foundation, “Business Research and Development and Innovation: 2012,” NSF 16-301 (Arlington, VA: NSF, October 29, 2015) (Table 21. Percent of R&D by Firm Size), <https://nsf.gov/statistics/2016/nsf16301/#chp2>.

When Adams Nager and coworkers at the Information Technology and Innovation Foundation surveyed almost 1,000 US scientists and engineers involved in filing triadic patents (patents filed in the United States, Europe, and Japan), they found that approximately 75 percent of materials science and IT patents and 60 percent of life science patents were filed by firms with more than 500 employees.52 Countering the popular narrative that large firms are sluggish copiers and small firms the true innovators, small or medium-sized firms with 500 or fewer workers in the sample accounted for only around 30 percent of patents, yet they employed 48.4 percent of workers. As the innovation scholar Luc Soete has found, “Inventive activity seems to increase more than proportionately with firm size.”53

Other research suggests that even among firms that patent, the assumption that small firms are more innovative is not that simple, in part because of the focus on patents as a measure of innovation. In a 1996 paper, Wesley M. Cohen and Steven Klepper found that R&D and firm size are closely related. In other words, large firms invest more in R&D as a share of sales.54 Like other scholars, Cohen and Klepper found that the number of patents and innovations produced per R&D dollar declined with increasing firm size. But they argue that this is not due to inefficiency, bureaucracy, and lack of drive but rather reflects a mismeasurement of innovation outputs. Large firms engage in “cost spreading,” in which the benefits from one innovation are spread across more units and products, leading to a greater overall level of innovation per unit of R&D. They write, “Not only does cost spreading provide the basis for explaining the R&D-size relationship, it also challenges the consensus that has emerged from the R&D literature that large firm size imparts no advantage in R&D competition.”55 Further, “By applying the fruits of their R&D over a larger level of output, larger firms not only have a greater incentive to undertake R&D than smaller firms but they also realize a greater return from their R&D than smaller firms.”56

More recently, in 2016, business professors Anne Marie Knott and Carl Vieregger explain how previous studies got the data wrong.57 Historically, innovation scholars have relied on product or patent counts as a proxy for innovation output. But doing so overemphasizes product innovation and underestimates process or incremental innovation—innovation activities that large firms engage in more but rarely involve a patent filing. But the recent development of the National Science Foundation’s Business Research and Development and Innovation Survey allowed them to better analyze incremental and process innovation. They estimate that a 10 percent increase in the number of employees increases R&D by 7.2 percent and that a 10 percent increase in firm revenues increases R&D productivity by 0.14 percent. Their conclusions show that large firms invest more in R&D activities and enjoy higher returns on innovation output per dollar invested in R&D.

One reason why some studies have found less R&D per employee or sales among large firms is that smaller firms are newer and are more R&D-focused because they are not producing as much. In other words, in young firms a larger share of the effort is devoted to developing a product because they don’t have a product. This is perhaps why a study of more than 1,000 European enterprises of all sizes from 2002 and 2005 found that after the age of the firms was controlled for, large firms were about 14 percent more likely to be involved in innovation (product and process) than small firms. And small firms that were young and middle-aged were two and a half to three times more likely than large firms not to be involved in any innovation.58 These results held when a number of factors such as industry, country, and ownership type were controlled for.

This pattern has been found to be true in many nations. For example, as one study of innovation in Japan found, “Japanese SMEs [small and medium enterprises] spend comparatively little on innovation. While Japan as a whole spends a lot on R&D in comparison with other developed economies, its SMEs do not.”59 Another study found that EU nations with smaller average firm size, such as Italy and Spain, have corporate R&D spending that is about half the EU level as a share of GDP. The authors conclude that “economies geared to small-scale production may be ill prepared to appropriate the full benefits of the current phase of massive and rapid technological change.”60 OECD data on thirty-three nations that compared the percentage of large firms that introduced a new product to the percentage of small firms that did so found that in no nation were small firms more likely to introduce a new product. In fact, the advantage for large firms ranged from double in Australia to almost six times higher in Spain and Poland (see figure 6.2). This is one reason why a study of 1,053 enterprises from twenty-six countries in the years 2002 to 2005 found a positive and statistically significant relationship between firm size and innovation.61

Figure 6.2 Ratio of Share of Large Firms to Share of Small Firms Introducing New Products, 2010–2012, omitted.

Source: OECD, OECD Science, Technology and Industry Scoreboard 2015: Innovation for Growth and Society (Paris: OECD Publishing, October 19, 2015) (Table 4.5.3. Firms Introducing Products New to the Market, by Firm Size, 2010–12, October 2015), http://dx.doi.org/10.1787/sti\_scoreboard-2015-en.

Moreover, if startups are the driver of innovation, how do small business defenders explain that California and Massachusetts—home of Silicon Valley and Route 128, respectively—had below-average rates of new firm formation?62 As Shane writes, San Francisco and Boston metro areas “aren’t anywhere close to the number one metro area in terms of per capita firm formation; that honor goes to Laramie, Wyoming. San Francisco comes in at number 121 out of 394, with about 40 percent the per capita business formation rate of Laramie,” with San Jose coming in even lower at 165.63

Another problem is that it is misleading to generalize about the relationship between firm size and innovation across industries. One 1987 study of four decades of innovation in the UK found a U-shaped pattern, with the greatest innovation carried out by the smallest and biggest firms.64 But this ignores the unique characteristics of particular industrial sectors. As Giovanni Dosi and coworkers noted in 2011, “Innovative firms are likely to be rather small in industrial machinery; big firms prevail in chemicals, metal working, aerospace and electrical equipment, while many ‘science-based’ sectors (such as electronics and pharmaceuticals) tend to display a bimodal distribution with high rates of innovation of small and very large firms.”65

Finally, one reason the research on firm size and innovation is somewhat ambiguous is that small firms play a more important role in some industries than in other industries, and at different times. In other words, a healthy innovation ecosystem depends on a mix of firm sizes. As Zoltan J. Acs and David B. Audretsch found in one of the definitive studies on the issue, “The greatest difference between the large- and small-firm innovation rates, implies that the correct answer is: It depends on the particular industry. For example, in the tire industry, the large-firm innovation rate exceeded the small-firm innovation rate by 8.46, or by 8 innovations per 1,000 employees.”66 They found that in industries characterized by higher levels of capital intensity, “innovation tends to be greater in large firms than in small firms.”67 For example, in the US electric utility industry most of the research is conducted by large generation companies, especially if they are part of a larger holding company.68 Interestingly, electric utility R&D declined precipitously (by 78.6 percent) after US electricity markets were restructured to make them more competitive, more evidence of the inverted U-shape of innovation and competition (see chapter 11). An older (1974) study found that “larger pharmaceutical firms were ‘better’ at innovation than smaller firms.”69 Likewise, a 1980 Federal Trade Commission report concluded: “It is questionable whether smaller firms could support an R&D program on a scale similar to that of General Electric. Without the support of a multiplant operation such as General Electric, it is doubtful that various large, specialized research programs on lamps and lighting would be undertaken in the private sector.”70 We see this in agricultural biotechnology. As a report from the US Department of Agriculture notes, “In the crop seed and animal breeding sectors, the emergence of biotechnology was a major driver of consolidation. Companies sought to acquire relevant technological capacities and serve larger markets to share the large fixed costs associated with meeting regulatory approval for new biotechnology innovations.”71

Other research has found that “small firms prevail in the early stages and innovation tends to concentrate in larger firms as industries evolve towards maturity.”72 We saw this in the 1990s when many small firms emerged and competed to be the winners in IT. But only a few firms could emerge as winners, and the ones that did continued to invest in innovation to improve their products and services and gain advantage in related activities. The study concluded, “The question is no longer whether size positively or negatively affects innovation but under what circumstances may small firms enjoy an innovation advantage over large ones (and vice versa).”73 This is why Frederic M. Scherer’s warning that “the search for a firm size uniquely and unambiguously for invention and innovation is misguided” is such good advice.74

According to some, however, big firms are the natural enemies of small, innovative startups. Big companies, it is asserted, can present a take-it-or-leave-it ultimatum to smaller innovative firms: either merge with us or be destroyed. Barry C. Lynn writes, “In such an environment, independent firms find it ever harder to keep it that way; just ask the founders of Tom’s of Maine, Ben and Jerry’s, Niman Ranch, Honest Tea, or Stonyfield Farm, all of which have been forced to sell out to bigger companies.”75

In at least one of these cases, Lynn is mistaken. When one of us asked Seth Goldman, the cofounder and “TeaEO” of Honest Tea, why he chose to partner with Coca-Cola, he said this:

Honest Tea was not “forced” to sell out to a big company. Rather, we chose to partner with Coca-Cola as a way to put our growth on a faster track. … It had taken us 10 years to get into 15,000 retail accounts, and we had sold a cumulative $120 million over those first ten years. In the next six years, we expanded into more than 100,000 accounts, and we sold a cumulative $880 million. So there were some powerful incentives (and rewards) for us to sell to Coke, but we certainly weren’t forced to do so. … Moreover, Honest Tea’s ability to raise capital from investors was dependent on the belief that at some point we would be able to sell to a larger company which would give a return to our investors. Now that I have the benefit of hindsight, I would not have chosen a different outcome for the brand.76

In the case of Honest Tea, partnering with a large corporation allowed an innovative startup with deeply held progressive values and behaviors to get its healthy products in front of many times more American consumers. And it sent a clear message to other budding entrepreneurs: if you can succeed in building a successful company, you can put its growth on steroids by partnering with a larger company. This is something progressives should be cheering, not decrying.

In conclusion, it should be no surprise that despite the publicity that rewards the rare successful tech startup, most small businesses are not innovative. Few of them want to be. In a 2011 study, Erik Hurst and Benjamin Wild Pugsley found that most small businesses do not intend to grow or innovate.77 Most small business owners cited nonpecuniary reasons, such as being their own bosses or having flexible schedules, as their motives for starting a company; only 41 percent had a new business idea or sought to create a new product.78 Only 15 percent of new businesses surveyed planned “to develop proprietary technology, processes, or procedures in the future.”79 This is not to say that tech startups and small R&D-intensive firms are not important to driving innovation, but to privilege small over large when it comes to innovation is a fundamental mistake.

#### Spillover is guaranteed by an atmosphere of capricious application. Both rivals AND the government game enforcement.

Hoffman ’21 [D. Bruce and Garrett D. Shinn; June; Director of the Bureau of Competition at the US Federal Trade Commission; Associate specializing in antitrust at Cleary Gottlieb; CPI Antitrust Chronicle, “Self-Preferencing and Antitrust: Harmful Solutions for an Improbable Problem,” <https://www.clearygottlieb.com/-/media/files/cpi--hoffman--final-pdf.pdf>; KP]

One response to this quandary might be to try to prohibit self-preferencing that degrades rivals, rather than self-preferencing that improves the platform’s own product. That’s clearly a better starting point. But, once again it turns out to be difficult to define in practice — and it creates a high risk of opportunistic behavior.

If, for example, the mall owner launches a series of renovations, snack stores could complain if their area gets a face-lift later than the spaces around the pretzel store, because they’re being put at a relative disadvantage. But they could just as readily complain if their area gets renovated first, because the dust and disruption from the construction could drive shoppers away from their stores — and maybe some of those shoppers would end up at the pretzel shop. Ultimately, a prohibition of this nature would become a “Swiss Army knife” tool store owners could use to extract costly concessions from the mall without any connection to true competitive issues. And the ever-present threat of legal sanctions for routine business activities could have a chilling effect on the mall, deterring it from making sensible choices or eventually forcing it to give up on the pretzel shop — even if doing so hurts customers.

There are other problems as well. For one, how should enforcers decide which platforms should be subjected to remedies? Clearly, prohibiting all platforms from self-preferencing would be absurd, impossible to enforce, and a massive government overreach that would no doubt spark an equally massive backlash; our farmer should be able to put her vegetable stand by her market’s entrance without worrying that antitrust enforcers will descend on her, brandishing subpoenas and dense economic treatises, early one Saturday morning.

But drawing finer lines isn’t much more promising. For starters, using ad hoc or arbitrary classifications — such as the type of business involved, or the size of the platform in transaction value34 — has no apparent relationship to competitive harm. Such capricious line-drawing would likely lack a rational basis, and certainly would be unlikely to advance any legitimate economic end.

Some proposals suggest using market power as a yardstick, a measure that at least finds its foundation in antitrust law principles.35 But despite its appeal, that proposal fares little better. Platforms are ubiquitous, and because “market power” can often be creatively defined,36 limiting enforcement to platforms with market power is a fairly hollow safeguard. For example, if a mall has numerous local retail competitors, but the next closest mall is two towns over, does it have market power? Is the market for retail, or malls? Thinking back to our farmer — does she have market power because she owns a piece of land that’s convenient to a particular town? Disgruntled or opportunistic competitors will have a strong incentive to push the boundaries of any rule to gain leverage and extract rents from platforms — but that’s not likely a procompetitive result.37

#### The plan spills over, decimating business confidence and overall economic recovery

Trace Mitchell 21, Policy Counsel at NetChoice, JD from the George Mason University, Antonin Scalia Law School, Former Research Associate at the Mercatus Center at George Mason University, BA in Political Science and Government from Florida Gulf Coast University, “Weaponizing Antitrust to Attack Big Tech Is a Bad Idea”, Morning Consult, 3/3/2021, https://morningconsult.com/opinions/weaponizing-antitrust-to-attack-big-tech-is-a-bad-idea/

From the House Judiciary report calling for dramatic antitrust reform to federal antitrust regulators and state attorneys general initiating lawsuits against Facebook and Google, government officials are once again calling for more aggressive antitrust enforcement to go after America’s tech businesses.

And while critics from all sides are reaching for any and all tools to go after “Big Tech,” weaponizing antitrust will only end up harming American consumers and the American economy at a time when we’re still trying to keep our heads above water.

Using antitrust to go after American tech won’t stop at Silicon Valley. Every sector of our economy will be at risk of politically motivated antitrust enforcement. And that won’t just hurt consumers searching for information on Google or shopping for products on Amazon — America’s economy could lose its global competitiveness amid a global pandemic.

In fact, the recent cases against Google from the Department of Justice and state attorneys general are a great example of just how this misuse of antitrust could harm Americans across the country and halt innovation in its tracks.

These suits conveniently forget how consumers benefit from Google’s suite of products in attempts to claim that Google unfairly monopolized the search and search advertising markets. Even worse, by claiming consumer harm, the government fails to truly grasp what consumers actually want.

You see, under the consumer welfare standard, antitrust enforcement is built to focus on what consumers want and whether consumers benefit. When the government argues Google is harming Americans because its products are preinstalled and even the default search engine on Apple, the government forgets that American consumers don’t think this is a problem.

The vast majority of search users prefer Google to its competitors. And through preinstallation, we get free-to-use products, quick searches and near-limitless information in an integrated system with the click of a mouse. It isn’t a problem; it’s a time saver. Further, because Google can reinvest in developing more user-friendly tech in a preinstalled ecosystem, we get interoperable apps that make our experience that much more convenient and intuitive. And even if consumers do want a different app, they can fix this problem with no heavy leg work or travel — just the swipe of a finger.

But if the government gets its way, the message could be disastrous for innovation: Even if your business benefits Americans and improves the user experience, the government can still put a target on your back. Not to mention, the government would be more likely to put a target on your back if you’re large and politically disfavored. Consumers across the internet and the American economy would be hurt and left without more accessible and more affordable technology as options.

We should be working to reward, not punish, innovation. Otherwise, the next Google may just decide it isn’t worth the time and effort.

Similarly, the Federal Trade Commission’s recent case against Facebook also puts the wants of policymakers above the actual interests of consumers.

Here, the government claims that Facebook harms consumers by acquiring and then integrating services like Instagram and WhatsApp. So harmful, the Federal Trade Commission says, that Facebook must divest from these services, even if that would harm American consumers, innovation and entrepreneurship for decades to come.

But this is not a case of consumer harm or bad behavior — Facebook’s acquisition of Instagram and WhatsApp helped ensure that consumers’ desires were prioritized. Through millions of investment dollars into research and development, Facebook turned good services into great services that consumers actively keep coming back to.

Through relentless product improvement, WhatsApp became a free-to-use platform and Instagram became one of the most successful photo-sharing social media apps in the world. In both cases, consumers benefited from convenient and state-of-the-art advancements. No longer do we have to pay to use messaging or search through multiple results to shop our influencer feed.

As it stands, the Federal Trade Commission case could splinter one successful tech company into multiple, less efficient organizations, setting a precedent that could affect every American industry. Consumers would not only lose Facebook’s free-to-use services but also potentially the next big clothing brand or the next hit microbrewed beer.

By impeding mergers, the sheer fear of potential antitrust enforcement would shutter the doors on small businesses from all sectors of the economy. So much investment in innovation is built on the possibility of being acquired by a larger player. Entrepreneurs and innovators from manufacturing, automotive and tech alike would be left with an unfortunate takeaway — succeed and benefit consumers, but not too much.

And with an economy still struggling to recover, the absolute last thing we need is to leave consumers without innovative and affordable choices, small businesses without key investment opportunities and our economy without a competitive edge globally.

But by weaponizing antitrust, we’ll get neither thoughtful intervention nor consumer benefits. Instead, the United States will lose ground to foreign competitors and American consumers will ultimately pay the price.

### Slow Growth---1NC

#### No impact to slow growth.

Dr. Christopher J. Fettweis 17, Associate Professor of Political Science at Tulane University, PhD in Government and Politics from the University of Maryland, “Unipolarity, Hegemony, and the New Peace”, Security Studies, Vol. 26, No. 3, p. 434-442 [language modified]

Others are more skeptical of institutions’ potential to shape behavior, and believe instead that stability is dependent upon the active application of the hegemon’s military power.51

The second version of the hegemonic-stability explanation is based upon a different view of human nature than is the liberal, one less sanguine about the potential for voluntary cooperation. Actors respond to concrete incentives, according to this outlook, and will ignore rules or law if transgressions are not punished. The would-be hegemon must enforce stability, therefore, not merely establish it. Policing metaphors are common in this literature, with the United States playing the role of sheriff or globocop charged with keeping the peace.52

[FOOTNOTE]

52 Richard N. Haass, The Reluctant Sheriff: The United States after the Cold War (New York: Council on Foreign Relations Press, 1997); Colin S. Gray, The Sheriff: America's Defense of the New World Order (Lexington: University Press of Kentucky, 2004).

View all notes

[END FOOTNOTE]

Take away the police, or damage their credibility, and instability would soon return. “The present world order,” according to Robert Kagan, “is as fragile as it is unique,” and would collapse without sustained US efforts.53 “In many instances,” add Lawrence Kaplan and William Kristol, “all that stands between civility and genocide, order and mayhem, is American power.”54 Though this argument is commonly associated with neoconservatism55—and will be referred to as the neoconservative explanation from here on in—it is also accepted by a number of scholars and observers generally considered outside of that ideological approach.56

The two versions are united on this point: it is not unipolarity in general that accounts for the New Peace, but American unipolarity in particular. US hegemony is essentially benevolent, according to both liberals and neoconservatives. The United States has constructed an order that takes the interests of other states into account, which decreases revisionist impulses. At the very least, it is nonthreatening, and does not generate the kind of balancing behavior that might be expected to bring it to an end.57 In the liberal version, the order constructed by the United States is beneficial to all its members, who have a stake in its maintenance. Adherents of the more muscular version, whether neoconservative or not, assume that the default position of smaller states in a unipolar system is to bandwagon with the center.58 No one seems to suggest that there is an irenic structural logic of unipolarity independent of US behavior. The question is therefore not so much about the connection between unipolarity and the New Peace as much as it is whether US behavior, in one form or another, has brought it about.

Hegemonic stability is in some ways more theoretically elegant than the other possible explanations for the New Peace. For one thing, it does not suffer from questions regarding its causal direction. While it may be reasonable to suggest that peace produced the expansion of democracy and/or economic development rather than the other way around, peace did not produce unipolarity. In fact, if the United States is indeed supplying the global public good of security, it might be able to take credit for a number of these positive trends. Not just peace but democracy, economic stability, and development all might be beneficial side effects of unipolarity. 59 “A world without U.S. primacy,” argued Samuel P. Huntington, “would be a world with more violence and disorder and less democracy and economic growth.”60

There is a great deal at stake here, for both scholarship and practice. If hegemony is responsible for the New Peace, then its peaceful trends are unlikely to last much beyond the unipolar moment. The other proposed explanations described above are essentially irreversible: nuclear weapons cannot be uninvented, and no defense against their use is ever going to be completely foolproof; the pace of globalization and economic interdependence shows no sign of slowing; democracy seems to be firmly embedded in the cultural fabric of many of the places it currently exists, and may well be in the process of spreading to the few places where it does not. The UN, while oft criticized, shows no signs of disappearing. And finally, history contains precious few examples of the return of institutions deemed by society to be outmoded, barbaric, and/or futile.61 In other words, liberal normative evolution is typically unidirectional. Few would argue, for instance, that either slavery or dueling is likely to reappear in this century; illiberal normative recidivism is exceptionally rare.62 If the neoconservatives are correct and US hard power is primarily responsible for the New Peace, however, then it cannot be expected to last long after US hegemonic decline, or adjustment in its grand strategy toward retrenchment. If liberal internationalists are right and the New Peace is largely a product of the world order that the United States has forged, then it may have a bit more staying power beyond unipolarity, but not necessarily much.

Determining the relationship between hegemony and the New Peace has importance that goes beyond the academy. Whether or not decline is on the immediate horizon, unipolarity is unlikely to last forever. If the New Peace is essentially an American creation, that post-unipolar future is likely to be quite a bit more violent than the present.

Evidence for and against Pax Americana

Since the world had never experienced system-wide unipolarity prior to the end of the Cold War, judgments about its relative stability and likely duration are necessarily speculative.63 Extrapolations can be made from regional unipolar systems, like the Roman Mediterranean, but definitive system-wide statements cannot be made from one case. Still, if US power were primarily responsible for the New Peace, one would expect that it would leave some clues about its effects. This section reviews three kinds of evidence regarding Pax Americana in order to determine whether an empirical relationship can be said to exist between various kinds of US activity and global stability.

Conflict and Hegemony by Region

Even the most ardent supporters of the hegemonic-stability explanation do not contend that US influence extends equally to all corners of the globe. The United States has concentrated its policing in what George Kennan used to call “strong points,” or the most important parts of the world: Western Europe, the Pacific Rim, and Persian Gulf.64 By doing so, Washington may well have contributed more to great power peace than the overall global decline in warfare. If the former phenomenon contributed to the latter, by essentially providing a behavioral model for weaker states to emulate, then perhaps this lends some support to the hegemonic- stability case.65 During the Cold War, the United States played referee to a few intra-West squabbles, especially between Greece and Turkey, and provided Hobbesian reassurance to Germany’s nervous neighbors. Other, equally plausible explanations exist for stability in the first world, including the presence of a common enemy, democracy, economic interdependence, general war aversion, etc. The looming presence of the leviathan is certainly among these plausible explanations, but only inside the US sphere of influence. Bipolarity was bad for the nonaligned world, where Soviet and Western intervention routinely exacerbated local conflicts. Unipolarity has generally been much better, but whether or not this was due to US action is again unclear.

Overall US interest in the affairs of the Global South has dropped markedly since the end of the Cold War, as has the level of violence in almost all regions. There is less US intervention in the political and military affairs of Latin America compared to any time in the twentieth century, for instance, and also less conflict. Warfare in Africa is at an all-time low, as is relative US interest outside of counterterrorism and security assistance.66 Regional peace and stability exist where there is US active intervention, as well as where there is not. No direct relationship seems to exist across regions.

If intervention can be considered a function of direct and indirect activity, of both political and military action, a regional picture might look like what is outlined in Table 1.

These assessments of conflict are by necessity relative, because there has not been a “high” level of conflict in any region outside the Middle East during the period of the New Peace. Putting aside for the moment that important caveat, some points become clear. The great powers of the world are clustered in the upper right quadrant, where US intervention has been high, but conflict levels low. US intervention is imperfectly correlated with stability, however. Indeed, it is conceivable that the relatively high level of US interest and activity has made the security situation in the Persian Gulf and broader Middle East worse. In recent years, substantial hard power investments (Somalia, Afghanistan, Iraq), moderate intervention (Libya), and reliance on diplomacy (Syria) have been equally ineffective in stabilizing states torn by conflict. While it is possible that the region is essentially unpacifiable and no amount of police work would bring peace to its people, it remains hard to make the case that the US presence has improved matters. In this “strong point,” at least, US hegemony has failed to bring peace.

In much of the rest of the world, the United States has not been especially eager to enforce any particular rules. Even rather incontrovertible evidence of genocide has not been enough to inspire action. Washington’s intervention choices have at best been erratic; Libya and Kosovo brought about action, but much more blood flowed uninterrupted in Rwanda, Darfur, Congo, Sri Lanka, and Syria. The US record of peacemaking is not exactly a long uninterrupted string of successes. During the turn-of-the-century conventional war between Ethiopia and Eritrea, a highlevel US delegation containing former and future National Security Advisors (Anthony Lake and Susan Rice) made a half-dozen trips to the region, but was unable to prevent either the outbreak or recurrence of the conflict. Lake and his team shuttled back and forth between the capitals with some frequency, and President Clinton made repeated phone calls to the leaders of the respective countries, offering to hold peace talks in the United States, all to no avail.67 The war ended in late 2000 when Ethiopia essentially won, and it controls the disputed territory to this day.

The Horn of Africa is hardly the only region where states are free to fight one another today without fear of serious US involvement. Since they are choosing not to do so with increasing frequency, something else is probably affecting their calculations. Stability exists even in those places where the potential for intervention by the sheriff is minimal. Hegemonic stability can only take credit for influencing those decisions that would have ended in war without the presence, whether physical or psychological, of the United States. It seems hard to make the case that the relative peace that has descended on so many regions is primarily due to the kind of heavy hand of the neoconservative leviathan, or its lighter, more liberal cousin. Something else appears to be at work.

Conflict and US Military Spending

How does one measure polarity? Power is traditionally considered to be some combination of military and economic strength, but despite scores of efforts, no widely accepted formula exists. Perhaps overall military spending might be thought of as a proxy for hard power capabilities; perhaps too the amount of money the United States devotes to hard power is a reflection of the strength of the unipole. When compared to conflict levels, however, there is no obvious correlation, and certainly not the kind of negative relationship between US spending and conflict that many hegemonic stability theorists would expect to see.

During the 1990s, the United States cut back on defense by about 25 percent, spending $100 billion less in real terms in 1998 that it did in 1990.68 To those believers in the neoconservative version of hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace,” argued Kristol and Kagan at the time.69 The world grew dramatically more peaceful while the United States cut its forces, however, and stayed just as peaceful while spending rebounded after the 9/11 terrorist attacks. The incidence and magnitude of global conflict declined while the military budget was cut under President Clinton, in other words, and kept declining (though more slowly, since levels were already low) as the Bush administration ramped it back up. Overall US military spending has varied during the period of the New Peace from a low in constant dollars of less than $400 billion to a high of more than $700 billion, but war does not seem to have noticed. The same nonrelationship exists between other potential proxy measurements for hegemony and conflict: there does not seem to be much connection between warfare and fluctuations in US GDP, alliance commitments, and forward military presence. There was very little fighting in Europe when there were 300,000 US troops stationed there, for example, and that has not changed as the number of Americans dwindled by 90 percent. Overall, there does not seem to be much correlation between US actions and systemic stability. Nothing the United States actually does seems to matter to the New Peace.

It is possible that absolute military spending might not be as important to explain the phenomenon as relative. Although Washington cut back on spending during the 1990s, its relative advantage never wavered. The United States has accounted for between 35 and 41 percent of global military spending every year since the collapse of the Soviet Union.70 The perception of relative US power might be the decisive factor in decisions made in other capitals. One cannot rule out the possibility that it is the perception of US power—and its willingness to use it—that keeps the peace. In other words, perhaps it is the grand strategy of the United States, rather than its absolute capability, that is decisive in maintaining stability. It is that to which we now turn.

Conflict and US Grand Strategy

The perception of US power, and the strength of its hegemony, is to some degree a function of grand strategy. If indeed US strategic choices are responsible for the New Peace, then variation in those choices ought to have consequences for the level of international conflict. A restrained United States is much less likely to play the role of sheriff than one following a more activist approach. Were the unipole to follow such a path, hegemonic-stability theorists warn, disaster would follow. Former National Security Advisor Zbigniew Brzezinski spoke for many when he warned that “outright chaos” could be expected to follow a loss of hegemony, including a string of quite specific issues, including new or renewed attempts to build regional empires (by China, Turkey, Russia, and Brazil) and the collapse of the US relationship with Mexico, as emboldened nationalists south of the border reassert 150-year-old territorial claims. Overall, without US dominance, today’s relatively peaceful world would turn “violent and bloodthirsty.”71 Niall Ferguson foresees a post-hegemonic “Dark Age” in which “plunderers and pirates” target the big coastal cities like New York and Rotterdam, terrorists attack cruise liners and aircraft carriers alike, and the “wretchedly poor citizens” of Latin America are unable to resist the Protestantism brought to them by US evangelicals. Following the multiple (regional, fortunately) nuclear wars and plagues, the few remaining airlines would be forced to suspend service to all but the very richest cities.72 These are somewhat extreme versions of a

central assumption of all hegemonic-stability theorists: a restrained United States would be accompanied by utter disaster. The “present danger” of which Kristol, Kagan, and their fellow travelers warn is that the United States “will shrink its responsibilities and—in a fit of absentmindedness, or parsimony, or indifference— allow the international order that it created and sustains to collapse.”73 Liberals fear restraint as well, and also warn that a militarized version of primacy would be counterproductive in the long run. Although they believe that the rule-based order established by United States is more durable than the relatively fragile order discussed by the neoconservatives, liberals argue that Washington can undermine its creation over time through thoughtless unilateral actions that violate those rules. Many predicted that the invasion of Iraq and its general contempt for international institutions and law would call the legitimacy of the order into question. G. John Ikenberry worried that Bush’s “geostrategic wrecking ball” would lead to a more hostile, divided, and dangerous world.74 Thus while all hegemonicstability theorists expect a rise of chaos during a restrained presidency, liberals also have grave concerns regarding primacy.

Overall, if either version is correct and global stability is provided by US hegemony, then maintaining that stability through a grand strategy based on either primacy (to neoconservatives) or “deep engagement” (to liberals) is clearly a wise choice.75 If, however, US actions are only tangentially related to the outbreak of the New Peace, or if any of the other proposed explanations are decisive, then the United States can retrench without fear of negative consequences. The grand strategy of the United States is therefore crucial to beliefs in hegemonic stability. Although few observers would agree on the details, most would probably acknowledge that post-Cold War grand strategies of American presidents have differed in some important ways. The four administrations are reasonable representations of the four ideal types outlined by Barry R. Posen and Andrew L. Ross in 1996.76 Under George H. W. Bush, the United States followed the path of “selective engagement,” which is sometimes referred to as “balance-of-power realism”; Bill Clinton’s grand strategy looks a great deal like what Posen and Ross call “cooperative security,” and others call “liberal internationalism”; George W. Bush, especially in his first term, forged a strategy that was as close to “primacy” as any president is likely to get; and Barack Obama, despite some early flirtation with liberalism, has followed a restrained realist path, which Posen and Ross label “neo-isolationism” but its proponents refer to as “strategic restraint.”77 In no case did the various anticipated disorders materialize. As Table 2 demonstrates, armed conflict levels fell steadily, irrespective of the grand strategic path Washington chose.

Neither the primacy of George W. Bush nor the restraint of Barack Obama had much effect on the level of global violence. Despite continued warnings (and the high-profile mess in Syria), the world has not experienced an increase in violence while the United States chose uninvolvement. If the grand strategy of the United States is responsible for the New Peace, it is leaving no trace in the evidence. Perhaps we should not expect a correlation to show up in this kind of analysis. While US behavior might have varied in the margins during this period, nether its relative advantage over its nearest rivals nor its commitments waivered in any important way. However, it is surely worth noting that if trends opposite to those discussed in the previous two sections had unfolded, if other states had reacted differently to fluctuations in either US military spending or grand strategy, then surely hegemonic stability theorists would argue that their expectations had been fulfilled. Many liberals were on the lookout for chaos while George W. Bush was in the White House, just as neoconservatives have been quick to identify apparent worldwide catastrophe under President Obama.78 If increases in violence would have been evidence for the wisdom of hegemonic strategies, then logical consistency demands that the lack thereof should at least pose a problem.

As it stands, the only evidence we have regarding the relationship between US power and international stability suggests that the two are unrelated. The rest of the world appears quite capable and willing to operate effectively without the presence of a global police~~man~~. Those who think otherwise have precious little empirical support upon which to build their case. Hegemonic stability is a belief, in other words, rather than an established fact, and as such deserves a different kind of examination.

### Circumvention---1NC

#### Patchworks of adjudication crush the plan.

Rohit Chopra 20, Commissioner of the Federal Trade Commission, and Lina M. Khan, Academic Fellow at Columbia Law School, Counsel to the Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary and Former Legal Fellow at the Federal Trade Commission, “The Case for "Unfair Methods of Competition" Rulemaking”, University of Chicago Law Review, 87 U. Chi. L. Rev. 357, March 2020, Lexis

I. THE STATUS QUO: AMBIGUOUS, BURDENSOME, AND UNDEMOCRATIC?

Antitrust law today is developed exclusively through adjudication. In theory, this case-by-case approach facilitates nuanced and fact-specific analysis of liability and well-tailored remedies. But in practice, the reliance on case-by-case adjudication yields a system of enforcement that generates ambiguity, unduly drains resources from enforcers, and deprives individuals and firms of any real opportunity to democratically participate in the process.

One reason that antitrust adjudication suffers from these shortcomings is that courts analyze most forms of conduct under the "rule of reason" standard. The "rule of reason" involves a broad and open-ended inquiry into the overall competitive effects of particular conduct and asks judges to weigh the circumstances to decide whether the practice at issue violates the antitrust laws. Balancing short-term losses against future predicted gains calls for "speculative, possibly labyrinthine, and unnecessary" analysis and appears to exceed the abilities of even the most capable institutional actors. 1 Generalist judges struggle to identify anticompetitive behavior 2 and to apply complex economic criteria in consistent ways. 3 Indeed, judges themselves have criticized antitrust standards for being highly difficult to administer. 4 And if a standard isn't administrable, it won't yield predictable results. The dearth of clear standards and rules in antitrust means that market actors face uncertainty and cannot internalize legal norms [\*360] into their business decisions. 5Moreover, ambiguity deprives market participants and the public of notice about what the law is, thereby undermining due process--a fundamental principle in our legal system. 6

Decades ago, former Commissioner Philip Elman observed that case-by-case adjudication "may simply be too slow and cumbersome to produce specific and clear standards adequate to the needs of businessmen, the private bar, and the government agencies." 7Relying solely on case-by-case adjudication means that businesses and the public must attempt to extract legal rules from a patchwork of individual court opinions. Because antitrust plaintiffs bring cases in dozens of different courts with hundreds of different generalist judges and juries, simply understanding what the law is can involve piecing together disparate rulings founded on unique sets of facts. All too often, the resulting picture is unclear. This ambiguity is compounded when the Supreme Court assigns to lower courts the task of fleshing out how to structure and apply a standard, potentially delaying clarity and certainty for years or even decades. 8

#### Court circumvention---they ignore intent and plain meaning.

Crane ‘21 [Daniel A Crane. Frederick Paul Furth, Sr. Professor of Law, University of Michigan. I am very grateful for many helpful comments from Tom Arthur, Jonathan Baker, Steve Calkins, Dale Collins, Eleanor Fox, Rebecca Haw, Hiba Hafiz, Jack Kirkwood, Bob Lande, Christopher Leslie, Alan Meese, Steve Ross, Danny Sokol, and other participants at the University of Florida Summer Antitrust Workshop. "ANTITRUST ANTITEXTUALISM." https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr]

This view is so widely entrenched in the legal profession’s understanding of the antitrust laws—including, it must be admitted, this author’s—that it seems presumptuous to claim that the conventional wisdom is wrong, or at least significantly overstated. But it is. While the antitrust statutes may be lacking in some important particulars, they present a readily discernable meaning on many others. As Daniel Farber and Brett McDonnell have argued, “For the conscientious textualist, the statutory texts [of the antitrust laws] have considerably more specific meaning than the conventional wisdom would suggest.”5 And it is not simply the case that the meaning of the statutory texts could be rendered through ordinary methods of statutory interpretation but the courts have failed to see it. Rather, the courts frequently acknowledge that the statutory texts have a plain meaning, and then refuse to follow it.

But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in one consistent direction—toward reading down the antitrust statutes in favor of big business. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and continues to this day. In brief: within their first decade of antitrust jurisprudence, the courts read an atextual rule of reason into section 1 of the Sherman Act to transform an absolute prohibition on agreements restraining trade into a flexible standard often invoked to bless large business combinations; after Congress passed two reform statutes in 1914, the courts incrementally read much of the textual distinctiveness out of the statutes to lessen their anticorporate bite; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that not one of the principal substantive antitrust statutes has been consistently interpreted by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has bent always in favor of capital.

## AI Adv

### Data Not Key to Market Power

#### 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.”

### Data Not an Entry Barrier

#### Data collection doesn’t pose a barrier to entry

D. Daniel Sokol 17, Professor of Law at the USC Gould School of Law; and Roisin Comerford, associate in the antitrust group at Wilson Sonsini Goodrich and Rosati, 2017, “Does Antitrust Have a Role to Play in Regulating Big Data?,” in The Cambridge Handbook of Antitrust, Intellectual Property, and High Tech, pp. 293-316

Perhaps the most obvious and pervasive beneﬁt to be realized in the Big Data era has been the ability of ﬁrms to offer heavily subsidized, often free, services to consumers as consumers give those ﬁrms permission to monetize consumer data on the other side of their business.9 In a competition law regime where lower prices for consumers are deemed highly desirable, this is undoubtedly a beneﬁt to consumers.

The monetization of the data in the form of targeted advertising sales for antitrust purposes is not suspect or harmful, but rather “economically-rational, proﬁt- maximizing behavior,” that results in obvious consumer beneﬁt.10 Were online platforms to be prevented or restricted from collecting and monetizing consumer data, competition for users would be inhibited, and harm to consumers would result in the form of higher prices for services. Indeed switching costs are low regarding data and search.11

Some criticize the provision of free services, claiming that this makes it more difﬁcult for rivals that cannot initially monetize as effectively to compete with established rivals,12 but cases show that this argument misses the point of antitrust completely – the ability to offer high-quality services to consumers for free is a procompetitive effect of Big Data monetization, not an anticompetitive harm.13 Also, the point is simply untrue – it is not more difﬁcult for new entrants to compete with established rivals.14

### Big Data Doesn’t Hurt Innovation

#### No impact to data hording. Competition and innovation are high in the tech domain.

---prospect of rapid growth and profit makes investment into startups likely which means competitors always exist, and

---data hording doesn’t hurt competition---users already use multiple competing products and history shows they’ll switch if there’s a decline in quality

Kennedy 17 [Joe, The Myth of Data Monopoly: Why Antitrust Concerns About Data Are Overblown, https://www2.itif.org/2017-data-competition.pdf, poapst]

The Fragility of Market Power Many **data-driven companies** are in highly innovative industries. This continually changes the competitive environment around them. With enough change, their advantages can quickly be overcome by a new competitor with a different technology or business model. **Examples** of firms that saw their dominance eroded abound. MySpace and Friendster lost to Facebook; AltaVista and Lycos lost to Google; Blackberry and Nokia were displaced by the iPhone, which now competes against Android phones. And, despite all of Google’s market power, Google+ remains a weak threat to Facebook. The history of information technology has been one of quasi-competitive markets succeeding each other as the underlying technology changes. The prospect of rapid growth and large profits allows new companies with a good idea to raise capital. This ability serves as a **constant** **threat** to incumbents. Stucke and Grunes dismiss the relevancy of this history by arguing that the defeated firms fell because of mismanagement and technological obsolescence rather than because they lacked an unassailable competitive advantage.41 But that is beside the point. Or maybe it is the point. While decline might have been avoided by different actions, in each case the **company’s** dominant market position was unable to save it from a failure to remain at the forefront of offering consumers better technology and services. Companies that offer the best products deserve to remain market leaders whether they are incumbents or challengers. The important question is whether the mere **possession** of large amounts of data can **prevent** a company from being displaced in the face of a better product. The answer to that question is no. While it does cost something to switch to another service, many users already use more than one competing product, **and past experience** shows that significant switches do occur when the difference in quality becomes large enough.42

#### Big data doesn’t undermine innovation

---more data just leads to more innovation because the company has an incentive to make more money and the potential for acquisitions incentives startups because they want to be purchased for profit

D. Daniel Sokol 17, Professor of Law at the USC Gould School of Law; and Roisin Comerford, associate in the antitrust group at Wilson Sonsini Goodrich and Rosati, 2017, “Does Antitrust Have a Role to Play in Regulating Big Data?,” in The Cambridge Handbook of Antitrust, Intellectual Property, and High Tech, pp. 293-316

In addition to the alleged degradation in quality that can occur, Big Data can also, some allege, stiﬂe innovation. Where a ﬁrm’s value proposition is built on collecting and monetizing user data, if that ﬁrm collects so much user data that it becomes entrenched, it may gain both the ability and the incentive to use that data in a number of ways to eliminate potential challengers.37 As this happens, smaller rivals are prevented from accessing necessary data, and the incentive for these ﬁrms to innovate and to compete with larger dominant ﬁrms is reduced. For example, a dominant ﬁrm with access to Big Data could conceivably look to trends in data to identify potential challengers and devise strategies to quickly stamp out any rising competition by limiting or preventing their access to necessary data, or by acquiring them. Where market leaders with deep pockets acquire potential or actual new entrants, a source of innovation is removed, and competition suffers. Of course, such a discernment of trends may also be beneﬁcial to competition where it forces a market leader to further invest in innovation itself, as antitrust law fundamentals contemplate. It is also worth bearing in mind that acquiring a smaller rival is not, without proof that such acquisition is likely to substantially lessen competition, prohibited under the antitrust laws. Indeed, the potential for such acquisitions incentivizes entry.

### Pandemics

#### Internal link assumes increased awareness of safety---that’s the SQ---partisan lines and ideology thump

#### Disease can’t cause extinction

Dr. Toby Ord 20, Senior Research Fellow in Philosophy at Oxford University, DPhil in Philosophy from the University of Oxford, The Precipice: Existential Risk and the Future of Humanity, Hachette Books, Kindle Edition, p. 124-126

Are we safe now from events like this? Or are we more vulnerable? Could a pandemic threaten humanity’s future?10

The Black Death was not the only biological disaster to scar human history. It was not even the only great bubonic plague. In 541 CE the Plague of Justinian struck the Byzantine Empire. Over three years it took the lives of roughly 3 percent of the world’s people.11

When Europeans reached the Americas in 1492, the two populations exposed each other to completely novel diseases. Over thousands of years each population had built up resistance to their own set of diseases, but were extremely susceptible to the others. The American peoples got by far the worse end of exchange, through diseases such as measles, influenza and especially smallpox.

During the next hundred years a combination of invasion and disease took an immense toll—one whose scale may never be known, due to great uncertainty about the size of the pre-existing population. We can’t rule out the loss of more than 90 percent of the population of the Americas during that century, though the number could also be much lower.12 And it is very difficult to tease out how much of this should be attributed to war and occupation, rather than disease. As a rough upper bound, the Columbian exchange may have killed as many as 10 percent of the world’s people.13

Centuries later, the world had become so interconnected that a truly global pandemic was possible. Near the end of the First World War, a devastating strain of influenza (known as the 1918 flu or Spanish Flu) spread to six continents, and even remote Pacific islands. At least a third of the world’s population were infected and 3 to 6 percent were killed.14 This death toll outstripped that of the First World War, and possibly both World Wars combined.

Yet even events like these fall short of being a threat to humanity’s longterm potential.15

[FOONOTE]

In addition to this historical evidence, there are some deeper biological observations and theories suggesting that pathogens are unlikely to lead to the extinction of their hosts. These include the empirical anti-correlation between infectiousness and lethality, the extreme rarity of diseases that kill more than 75% of those infected, the observed tendency of pandemics to become less virulent as they progress and the theory of optimal virulence. However, there is no watertight case against pathogens leading to the extinction of their hosts.

[END FOOTNOTE]

In the great bubonic plagues we saw civilization in the affected areas falter, but recover. The regional 25 to 50 percent death rate was not enough to precipitate a continent-wide collapse of civilization. It changed the relative fortunes of empires, and may have altered the course of history substantially, but if anything, it gives us reason to believe that human civilization is likely to make it through future events with similar death rates, even if they were global in scale.

The 1918 flu pandemic was remarkable in having very little apparent effect on the world’s development despite its global reach. It looks like it was lost in the wake of the First World War, which despite a smaller death toll, seems to have had a much larger effect on the course of history.16

It is less clear what lesson to draw from the Columbian exchange due to our lack of good records and its mix of causes. Pandemics were clearly a part of what led to a regional collapse of civilization, but we don’t know whether this would have occurred had it not been for the accompanying violence and imperial rule. The strongest case against existential risk from natural pandemics is the fossil record argument from Chapter 3. Extinction risk from natural causes above 0.1 percent per century is incompatible with the evidence of how long humanity and similar species have lasted. But this argument only works where the risk to humanity now is similar or lower than the longterm levels. For most risks this is clearly true, but not for pandemics. We have done many things to exacerbate the risk: some that could make pandemics more likely to occur, and some that could increase their damage. Thus even “natural” pandemics should be seen as a partly anthropogenic risk.

### Smart Cities/Megacities

#### Smart cities fail---won’t be broadly adopted

---empirics prove---abu dhabi and south korea tried it but it was abandoned because the cost was too high despite putting trillions into it

---people won’t move in because they want to live in historical places with culture not algorithmic cities

Jim Robbins 21, contributor to Yale Environment 360, 12/1/21, “Why the Luster on Once-Vaunted ‘Smart Cities’ Is Fading,” https://e360.yale.edu/features/why-the-luster-is-fading-on-once-vaunted-smart-cities

Woven City is one of a burgeoning number of “smart cities” that have been recently built or are now being planned or constructed. NEOM is a $500 billion sprawling futuristic city for a million people under construction in Saudi Arabia. Egypt is building a new smart capital near Cairo that planners say could eventually be home to 6.5 million people. Telosa, proposed by a former Walmart executive, would be a city of 50,000 in the western United States “in a place yet to be determined.” Numerous smart cities have been or are being built in China.

There’s no single concept of a smart city. But the basic definition is a city filled with sensors that monitor myriad aspects of life, from traffic to pollution to energy and water use. In the case of the Woven City, “smart homes” will feature sensors that will monitor the occupants’ health. All the monitors in these cities are connected to the backbone of these prototype communities, the Internet of Things (IoT), meaning the interconnection of tiny computers placed in everyday objects. The massive trove of collected data will be interpreted with artificial intelligence to make cities greener and more livable.

While proponents say these communities represent the future of a healthier planet, some prominent smart cities have faced serious obstacles to realizing their utopian visions. Masdar City in Abu Dhabi abandoned its smart city master plan because of financial problems that began in 2008 and continued because the cost of some aspects of the city was far more than forecast. Songdo is a completed smart city with a population of 170,000 in South Korea that has not been able to fill its buildings. It’s sometimes described as a ghost town, or, variously, as cold, impersonal, homogenous, and dully predictable.

One recent paper on smart cites grappled with ways these cities can introduce serendipity into daily life to combat their monotonous nature.

“There are a lot of good things that can come of” smart city concepts, “especially for the environmental applications,” said Shannon Mattern, a professor of anthropology at The New School for Social Research and the author of A City is Not a Computer. “But it really limits your [ways] of intervention to the types of things that lend themselves to quantitative measurement,” she said. “When you take messy ambiguous dimensions of human nature and try to find ways to algorithmicize them, there is always a failure there, something that slips through the cracks.” History, culture, and the spiritual aspects of life are among those aspects that critics cite as missing from — or are diminished — in smart cities.

There has been criticism, as well, of smart cities being alien to the landscape on which they are built. In her book Spaceship in the Desert, about Masdar City, Göckcę Günel, an anthropologist at Rice University, said both Masdar City and Neom “share the vision that the desert is an empty zone on which any kind of ideal can be projected,” she said. “That’s why I compared Masdar City to a spaceship insulated from the rest of the world.”

Despite the fact that trillions of dollars are being spent to create these spectacular, Oz-like, all-encompassing cities of the future, some leading analysts believe in a very different concept of smarter cities.

“I hate almost every effort at building a greenfield smart city,” said Boyd Cohen, a professor at EADA, a business school in Barcelona, who is one of the pioneers of the smart city concept and a longtime climate strategist. “A smart city without people is a dumb city. You are building a smart city in the absence of people, in the absence of history, in the absence of culture. The developers say, ‘We are going to build this great, amazing city and people will come,’ and they don’t. People want to live in communities and have culture around them.”

Emissions from India, China, and Africa thump.

#### Even extreme warming won’t cause extinction

Dr. Toby Ord 20, Senior Research Fellow in Philosophy at Oxford University, DPhil in Philosophy from the University of Oxford, The Precipice: Existential Risk and the Future of Humanity, Hachette Books, Kindle Edition, p. 110-112

But the purpose of this chapter is finding and assessing threats that pose a direct existential risk to humanity. Even at such extreme levels of warming, it is difficult to see exactly how climate change could do so. Major effects of climate change include reduced agricultural yields, sea level rises, water scarcity, increased tropical diseases, ocean acidification and the collapse of the Gulf Stream. While extremely important when assessing the overall risks of climate change, none of these threaten extinction or irrevocable collapse.

Crops are very sensitive to reductions in temperature (due to frosts), but less sensitive to increases. By all appearances we would still have food to support civilization.85 Even if sea levels rose hundreds of meters (over centuries), most of the Earth’s land area would remain. Similarly, while some areas might conceivably become uninhabitable due to water scarcity, other areas will have increased rainfall. More areas may become susceptible to tropical diseases, but we need only look to the tropics to see civilization flourish despite this. The main effect of a collapse of the system of Atlantic Ocean currents that includes the Gulf Stream is a 2°C cooling of Europe—something that poses no permanent threat to global civilization.

From an existential risk perspective, a more serious concern is that the high temperatures (and the rapidity of their change) might cause a large loss of biodiversity and subsequent ecosystem collapse. While the pathway is not entirely clear, a large enough collapse of ecosystems across the globe could perhaps threaten human extinction. The idea that climate change could cause widespread extinctions has some good theoretical support.86 Yet the evidence is mixed. For when we look at many of the past cases of extremely high global temperatures or extremely rapid warming we don’t see a corresponding loss of biodiversity.87

[FOOTNOTE]

We don’t see such biodiversity loss in the 12°C warmer climate of the early Eocene, nor the rapid global change of the PETM, nor in rapid regional changes of climate. Willis et al. (2010) state: “We argue that although the underlying mechanisms responsible for these past changes in climate were very different (i.e. natural processes rather than anthropogenic), the rates and magnitude of climate change are similar to those predicted for the future and therefore potentially relevant to understanding future biotic response. What emerges from these past records is evidence for rapid community turnover, migrations, development of novel ecosystems and thresholds from one stable ecosystem state to another, but there is very little evidence for broad-scale extinctions due to a warming world.” There are similar conclusions in Botkin et al. (2007), Dawson et al. (2011), Hof et al. (2011) and Willis & MacDonald (2011). The best evidence of warming causing extinction may be from the end-Permian mass extinction, which may have been associated with large-scale warming (see note 91 to this chapter).

[END FOOTNOTE]

So the most important known effect of climate change from the perspective of direct existential risk is probably the most obvious: heat stress. We need an environment cooler than our body temperature to be able to rid ourselves of waste heat and stay alive. More precisely, we need to be able to lose heat by sweating, which depends on the humidity as well as the temperature.

A landmark paper by Steven Sherwood and Matthew Huber showed that with sufficient warming there would be parts of the world whose temperature and humidity combine to exceed the level where humans could survive without air conditioning.88 With 12°C of warming, a very large land area—where more than half of all people currently live and where much of our food is grown—would exceed this level at some point during a typical year. Sherwood and Huber suggest that such areas would be uninhabitable. This may not quite be true (particularly if air conditioning is possible during the hottest months), but their habitability is at least in question.

However, substantial regions would also remain below this threshold. Even with an extreme 20°C of warming there would be many coastal areas (and some elevated regions) that would have no days above the temperature/humidity threshold.89 So there would remain large areas in which humanity and civilization could continue. A world with 20°C of warming would be an unparalleled human and environmental tragedy, forcing mass migration and perhaps starvation too. This is reason enough to do our utmost to prevent anything like that from ever happening. However, our present task is identifying existential risks to humanity and it is hard to see how any realistic level of heat stress could pose such a risk. So the runaway and moist greenhouse effects remain the only known mechanisms through which climate change could directly cause our extinction or irrevocable collapse.

This doesn’t rule out unknown mechanisms. We are considering large changes to the Earth that may even be unprecedented in size or speed. It wouldn’t be astonishing if that directly led to our permanent ruin. The best argument against such unknown mechanisms is probably that the PETM did not lead to a mass extinction, despite temperatures rapidly rising about 5°C, to reach a level 14°C above pre-industrial temperatures.90 But this is tempered by the imprecision of paleoclimate data, the sparsity of the fossil record, the smaller size of mammals at the time (making them more heat-tolerant), and a reluctance to rely on a single example. Most importantly, anthropogenic warming could be over a hundred times faster than warming during the PETM, and rapid warming has been suggested as a contributing factor in the end-Permian mass extinction, in which 96 percent of species went extinct.91 In the end, we can say little more than that direct existential risk from climate change appears very small, but cannot yet be ruled out.

## Extra Adv 1

### No Startups I/L---1NC

#### Startup decline has not resulted from concentration

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Myth 4: Market Concentration Has Caused the Number of Start-Ups to Fall20 Neo-Brandeisians have argued that market concentration has grown, and that this has caused a precipitous decline in the number of business start-ups. In this narrative, “monopoly” is a sclerotic scourge, robbing the economy of its traditional dynamism—which is largely wrong.This claim is based on correlation. Concentration has increased while the number of start-ups has fallen; therefore, they argue, concentration caused the decline. In fact, there is no statistical relationship between changes in concentration and changes in new firm formation. Moreover, all the net decline in new firm formation is in one major sector—retail—wherein the results of increasing retail firm size have been superior productivity growth, higher wages for workers in larger stores, and significant consumer benefit in the form of lower prices and broader selection. (See figure 3.)

#### The startups that matter are up

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**And when it comes to the** most important kind of start-ups**—potentially** high-growth start-ups**, especially in** technology **sectors—there has** been no decline**. When MIT professors Jorge Guzman and Scott Stern looked at trends in high-growth entrepreneurship for 15 large states from 1988 to 2014, they found that even after** controlling for the size **of the U.S.** economy**, the** second-highest rate of high-growth **entrepreneurship** occurred **in 2014.21**