# 1AC LHPC

### 1AC – Self-Preferencing

Advantage one is self-preferencing

#### Firms like Google foreclose competition by simultaneously operating a platform and competing on them – dominant platforms systematically promote their own products at the expense of rivals

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Daniel, 7/8/21, “How Self-Preferencing Can Violate Section 2 of the Sherman Act,” Competition Policy International, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3868896

With this framing, Google’s conduct exemplifies how a dominant firm can use self-preferencing to monopolize a market and violate Section 2 of the Sherman Act. Numerous government reports and anecdotal accounts detail the exclusionary effects Google’s conduct has on market participants and consumers.23

Google’s market share in search far exceeds required thresholds for monopoly power under the Sherman Act.24 Multiple comprehensive investigations into the company’s operations found that Google’s market share in search is almost 90 percent.25 Other evidence also shows that Google is an “indispensable medium” and essential for a firm’s success.26 For example, Google is the top referral site for internet traffic; thus, if a site is not on Google, it is close to not existing at all on the internet for most consumers.27 Multiple accounts show that the corporation also has monopoly power in several other markets.28

Google has also engaged in “willful acquisition or maintenance of its monopoly” that harms the competitive process. In multiple instances, comprehensive reports show that Google obtained its dominant position by engaging in a surfeit of exclusionary conduct that includes the use of self-preferencing, making hundreds of acquisitions, and imposing many restrictive contracts on third parties rather than as a consequence of a “superior product, business acumen, or historic accident.”29 Specifically, concerning Google’s use of self-preferencing, two cases are particularly illustrative.

In 2011, the Federal Trade Commission investigated Google for self-preferencing its comparison shopping and local shopping sites.30 Google decided to explicitly demote the search rankings of rival sites like Yelp to promote and advantage its own digital properties, such as Google Maps and Google Shopping.31 Google effectively used its horizontal monopoly in general search (i.e. Google.com) to extend its market power into vertical search services (i.e. restaurant ratings and reviews).

In another instance, starting around 2015, Google wanted to maintain its dominant position in digital images. To do this, Google changed its search ranking algorithm and entered into agreements with Shutterstock and Getty Images to supply it with high-quality stock photos. Google’s changes and agreements significantly demoted the search ranking of Dreamstime, a rival stock photo provider. Since Google relegated Dreamstime’s site to the back pages of its search results, it effectively made Dreamstime’s site and other similarly situated sites that do not have an agreement with Google invisible to consumers and depriving consumers of an alternative service.32 Dreamstime even tried to increase their spending by millions of dollars on Google’s advertising platform, hired advertising and search consultants, and implemented a series of changes recommended by Google to improve their search ranking, all to no avail.

Both of these instances provide an adequate basis for a violation of Section 2 of the Sherman Act. In both examples, Google used self preferencing derived from its “dominant economic power” to “foreclose competition, to gain a competitive advantage, or to destroy a competitor” and harm the competitive process, — as opposed to succeeding on account of “superior service, lower costs, and improved efficiency.”34 Since Google is indispensable to third parties,35 an artificially lower search ranking from self-preferencing can be devastating for a firm’s competitive position. As such, self-preferencing not only leads to substantial foreclosure of a rival site, but it also can raise the costs to dependent firms because a firm may have to either enter into a special deal with Google or pay for advertising on Google’s search platform to ensure they are at a higher search position.36 All of this has the effect of raising a rival’s costs or forcing a dependent firm to operate in a significantly weaker bargaining position as a direct result of the firm’s market power and self-preferencing.

Google’s actions are similar to those in a previous Supreme Court case that affirmed a finding of monopolization and a violation of Section 2 of the Sherman Act in 1973.38 Like Google, Otter Tail Power Company was a vertically integrated corporation (in this case, an electrical utility) that had monopoly power in its relevant market.39 Like Google’s search engine, Otter Tail’s electrical generation and distribution infrastructure were not easily replicable by rivals.40 Like Google’s actions toward Dreamstime, Yelp, and others, Otter Tail used its “strategic dominance” and control of its infrastructure to disadvantage and foreclose municipal rivals by refusing to transmit power over its own power lines from generators to municipal utilities to protect its distribution monopoly.

The primary rationale for the Supreme Court’s decision that Otter Tail violated Section 2 of the Sherman Act is because the company “[used its] monopoly power to destroy threatened competition[.]”42 Importantly, the Court also distinguished Otter Tail’s conduct from fair competition principles in which firms, including monopolists, succeed through “superior service, lower costs, and improved efficiency” rather than the use of unfair or exclusionary tactics.

In addition to Google’s monopoly power and exclusionary tactics, other aggravating factors increase the likelihood that the corporation is seeking to maintain its monopoly in violation of the Sherman Act. First, similar to other exclusionary monopolization offenses (like exclusive dealing or tying), self-preferencing does not need to be used against every possible competitor or cause full foreclosure of a rival or dependent firm to obtain the desired adverse effect.44 For example, Google does not need to demote the search rankings of every rival vertical search engine or even remove a rival firm like Yelp or Dreamstime from their site entirely. Detailed analysis shows that less than 1 percent of users clicked on a link on the second page of a Google search result, and most user clicks are confined to the first few search results.45 Thus, getting demoted even slightly would effectively relegate a site to digital jail. Similar effects exist across other sites like Amazon.46 In fact, selective manipulation, exclusion, or demotion of a site like Yelp or Dreamstime may actually be just as, if not more of, an effective indicator to determine whether a firm is intending to exclude a rival to leverage into a market or attempting to succeed in the marketplace by providing “superior service, lower costs, and improved efficiency.”47 Additionally, excluding individual firms by self-preferencing may also prove to be an easier path to maintain a firm’s dominance.48 As the Supreme Court stated in 1959, violations of the Sherman Act are “not to be tolerated merely because the victim is just one merchant whose business is so small that his destruction makes little difference to the economy. Monopoly can as surely thrive by the elimination of such small businessmen, one at a time, as it can by driving them out in large groups.

Along similar lines, since self-preferencing needs to be only applied selectively to obtain significant exclusion of a rival or dependent firm, consumers would generally be unable to know or discover that such actions are taking place.50 The founders of Google admitted this and were acutely aware that self-preferencing would also be “very difficult to detect” and have “a significant effect on the market.

Second, many technology industries, like internet search, have high barriers to entry and the GAFA corporations have durable and persistent monopoly power.52 In Google’s case, no competitor has meaningfully challenged its dominant position in almost two decades. Such a situation increases the presumption that antitrust action is warranted.

Third, self-preferencing facilitates other kinds of predatory and exclusionary behavior condemned by the antitrust laws, including tying.54 Self-preferencing can operate as a form of tying since a company like Google, by preferencing its own services (or the services of other companies) and demoting rivals, encourages users to adopt its products and services together, potentially locking them in. Thus, self-preferencing can raise barriers to entry such that a rival service is unfairly inhibited from obtaining a sufficient number of users to be a viable market participant.

Lastly, while benign forms of self-preferencing exist, such as a non-dominant grocery store changing the shelving placement of food items to favor its own in-store brands,56 there are critical differences that distinguish that conduct from Google’s and similarly situated digital giants.57 Unlike an individual grocery store, Google has monopoly power.

Also, as opposed to the physical world, in the digital realm, users confine their searches to the first set of results they are shown. In the digital realm, searching for a particular website or product is a nearly endless process. There will always be more results than a user can review. Thus, in part, there is a “paradox of choice” that exists, and consumers feel that it is not worth their time to endlessly explore options they are presented with.58 As such, users, across multiple technology platforms, confine their search to the first page they are presented with rather than engage in a more scrupulous search as they likely would for a product if they were at a physical retail outlet.59 Thus, self-preferencing in the digital realm can have significant foreclosure effects that are not analogous to physical retailers. All these aggravating factors can just as easily apply to the conduct or industries of the other digital giants.

#### Scenario 1 is innovation – self-preferencing makes competition effectively impossible

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Gene Kimmelman, “Competition in Digital Technology Markets: Examining Self-Preferencing by Digital Platforms,” Testimony Before the U.S. Senate Subcommittee on Antitrust, Competition Policy, and Consumer Rights, 10 March 2020, pp. 3-7, https://www.judiciary.senate.gov/imo/media/doc/Kimmelman%20Testimony.pdf.

Self-Preferencing in Interoperability

Digital platforms have many tools that could be used to restrict competition. Platforms can refuse to make their own services—which may reach a vast customer base—interoperable with those of nascent competitors, while at the same time enabling such interoperability with the services they own and control. This disparity in access to customers often delivers a crippling blow to small players entering the market. One potential example of this was Facebook’s “Find My Friends” feature. The feature allowed a user of other social networks to quickly interface with Facebook to “find their friends” on that social networking site. They could then add their Facebook friends to non-Facebook sites with just one click of a button. Good for consumers and good for competition. Unfortunately, Facebook discontinued the feature for upstart competitors, such as the video app Vine and the messaging app MessageMe.10

Cross-posting is another important interoperability feature. This allows users to easily send their social media posts, at the time of posting, to another platform in addition to the one they are using. If users prefer one platform but have many friends on another platform, they can use cross-posting to reach those friends on the other platform. Facebook currently offers crossposting between Facebook and Instagram, two companies that it owns. It also offers cross- posting with Twitter, but not with other companies. Entrepreneurs considering entering the market for social networking know they cannot count on cross-posting with Facebook. This makes entry harder for those potential competitors.

The CMA interim report concludes:

The Facebook ‘family’ of apps further insulates Facebook.com from competitive pressure. We have also received some evidence demonstrating that new entrants may, in some circumstances, be reliant on Facebook. This appears to primarily occur through . . . providing access to the Facebook social graph, or cross-posting capabilities. By permitting and then restricting other social media platforms’ access to these APIs, Facebook may be able to affect the competitive constraints it faces.11

Interoperability can be enormously beneficial to both consumers and competition, yet is rarely in the economic self-interest of an already dominant digital platform like Facebook. The solution to this is simple: mandate interoperability by law. Congress should pass the bipartisan ACCESS Act, championed by Senators Warner, Hawley, and Blumenthal to open up competition for social networks.

Preferencing Owned Products on the Platform

Another potential competitive issue arises when a platform sells its own products on the platform it controls. When companies face a competitor that is also the market referee setting its own rules for competition, the competitive dangers are not hard to grasp.

Two examples best illustrate this problem. Although originally just an online bookstore, Amazon has grown into a massive online market known as “the Marketplace.”12 Amazon is also a retailer, selling directly on the Marketplace in competition with the other retailers. The Amazon retailer could unfairly benefit from its vertical relationship with the Amazon Marketplace if Amazon puts a thumb on the scale to make sure it is among the first to appear in search results, get more space on the page, or are more likely to win the coveted “Buy Box,” where consumers click to purchase.

Similarly, Apple’s iOS operating system works most fluidly with Apple’s own apps. Email on an iPhone defaults to Apple’s Mail app, directions to Apple’s Maps, in the latest iOS’s shortcut menu, hitting the “play” button will default to Apple Music or iTunes over Spotify, etc. Although some consumers would prefer to stay in the Apple ecosystem, the potential harm could be akin to tying or bundling in antitrust: consumers are pushed into imperfect choices on ancillary products and services. Apple appears to hear an outcry from app developers complaining about these issues and is reportedly considering changes.13

Even if such preferencing is more convenient for some consumers in the short run, the impact on competition may harm consumers with fewer choices, lower quality products, and higher prices in the long run. Investigations can establish whether these concerns are valid, whether they are doing more harm than enabling benefits, and if they rise to the level of an antitrust violation. Congress should also establish a framework to protect competition and consumers from this potential conflict of interest for dominant platforms that act as a gatekeeper.14

Data & Self-Preferencing

Digital platforms often require that in exchange for access to their platform, companies must give the platform access to some of their important data. Sometimes this is actually required to provide the service, sometimes it is not. Either way, this could have harmful anticompetitive effects if the platform is a gatekeeper distribution system where access to the platform can make or break a company’s commercial viability.

One popular example might be Amazon. Amazon competes as a retailer on its own ecommerce Marketplace. Competing retailers must share with Amazon certain data about their products and customers in order to use the platform. The data advantage this grants Amazon over rivals, together with the tools of self-preferencing available to the platform, can enable a platform to compete unfairly by better predicting consumer behavior. In the case of a bottleneck or gatekeeper platform, this would be a powerful barrier to entry. Any retailer that might one day impose competitive pressure on the platform itself could be easily identified through the data and limited by the self-preferencing power.

The CMA report found that Facebook also has a significant data advantage over competitors. This makes advertising on Facebook much more appealing than advertising on another large publisher site. These publishers, like the New York Times or BuzzFeed, are competing with Facebook for advertising, but they also rely on Facebook as a distribution tool for their content. Facebook gets some data about how users interact with their content. CMA describes how Facebook’s own terms and conditions for publishers on their site govern which company gets access to which sources of data. Due to Facebook’s strong market position and barriers to entry and expansion like network effects, the CMA interim report found that Facebook has market power.15 The CMA expects this market power may allow Facebook to extract more data from consumers, which it can use in ways that are valuable to Facebook, but consumers likely do not fully understand.16 And the CMA found that Facebook has significant market power over advertisers.17 It may be that this also allows Facebook to extract more data and money from advertisers as well. If so, this would be another appropriate area for Congress to protect business proprietary data.

Self-Preferencing to Prevent Future Competition

Crucially, self-preferencing can be used as a tool to prevent future competition. It is very difficult to compete against a gatekeeper platform, but one of the few methods available is to start in one “vertical,” one service that the platform provides like a voice assistant or travel service, and expand from there. A potential competitor must identify a lucrative vertical—one with expansion potential—and then thrive there so that it can expand or build business relationships with nearby verticals to provide an alternative to the platform. If the potential competitor’s vertical is dependent on a platform owned by the gatekeeper it is trying to compete against, the platform can use its self-preferencing power to prevent that potential competitor from ever getting the scale it needs to compete.

Some have argued that Google’s purchase and subsequent treatment of the maps and directions app Waze may have been one such example. Waze may have had the opportunity to become a meaningful independent competitor to the Google Maps app. But the importance of the Waze acquisition was not just about competition for mapping applications. Maps and directions are an important source of location data, useful for building an advertising competitor. And, maps and directions are an important “vertical” that can be used for expansion to one day build an offering that could actually exert competitive pressure on Google. One can imagine a world where companies swallowed by Google like Waze and ITA get together with Expedia, TripAdvisor, or similar firms, either by contract or acquisition, to offer a complete travel search experience for users. People in that world might still use Google for a lot of their searches, but for lucrative travel-related searches likely to turn into an expensive purchase, there might be stronger competition from this alternative. Of course, it is hard to prove what might have happened, but specialized search companies growing organically or working with each other and complimentary service providers could provide the best path to challenge dominant platforms. Merger enforcement and exclusionary conduct enforcement should pay closer attention to this potential source of competition. However, to maximize opportunities for such competition to develop, we need more than antitrust; this is also an area where new pro-competition regulatory tools could be employed to require merging parties to demonstrate that their transaction will expand competition.

#### Undermines tech innovation

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Frank Pasquale, “Paradoxes of Digital Antitrust: Why the FTC Failed to Explain Its Inaction on Search Bias,” *Harvard Journal of Law & Technology*, July 2013, pp. 3-5, http://jolt.law.harvard.edu/assets/misc/Pasquale.pdf.

Now competition authorities beyond the FTC are considering whether Google itself is a monopolizer, cutting off upstart, specialized search engines in order to expand its own internet empire. Their decisions will shape the future of the digital marketplace. Without strong action, centrifugal tendencies will increasingly dominate the internet, as innovation will centralize in the few mega-firms capable of promoting new services on an ever-less-level playing field. If antitrust law continues to decline in power and scope, we should expect a digital replay of the domination of monopolistic trusts in the late 19th century. As central to our era’s economy as railroads were to that time’s economy, these mega-firms are likely to exploit their infrastructural status for as long as they can convince regulators and politicians that their market domination is the natural price of innovation. Thus other competition authorities need to avoid the FTC’s quiescence. This essay explains (a) what the search bias case was about, (b) why competition is not “one click away,” (c) why the FTC’s explanation of its inaction was unsatisfactory, and (d) how competition agencies will need to treat search bias claims going forward to avoid the embarrassing denouement of the FTC’s investigation.

II. A BRIEF GUIDE TO SEARCH BIAS CONCERNS

Imagine that you own Company A, and your main competitor is the persistent (but demonstrably worse) Company B. In searches for the products you sell, you reliably end up in the top five results in the studies you’ve commissioned; your competitors at Company B are on the fifth or sixth pages. What happens if Google purchases Company B, and immediately after the purchase, Company B appears to dominate the first page of results, and your company has been relegated to later pages? You might start by appealing to Google employees who run webmaster forums there, but that (and other mechanisms of corporate due process) are quite likely to fail. Should there be some type of remedy at law?

As Google acquires more companies, this type of dispute is becoming increasingly likely. Agencies and courts around the world have already heard many complaints about anticompetitive practices at Google. But there are many economists and lawyers who would dismiss such complaints as parochial disputes, whines from also-rans unaccustomed to the harsh new realities of online competition. The etiolated state of American antitrust law makes that position popular among US elites

Despite growing concern about online intermediaries’ power, legal authorities have done little to regulate these intermediaries over the past decade. If a search engine is abusing its position, market-oriented scholars say, economic forces will usually solve the problem.7 Can’t find something on Google? Hop over to the Bing search engine. Don’t like the new version of iTunes? Buy a subscription to a music service.

However well it worked in prior decades, this sanguine attitude runs into several problems in the digital age.8 How are users to even know if something is being hidden from them if they are coming to a firm like Apple or Google to find what they need? As antitrust authorities investigated it in 2012, Google’s spokespersons never tired of repeating that “competition is just a click away;” users had only to type in “Bing” to find another search engine. The mantra was disingenuous, since it was the entities that were trying to be found, and not consumers acting as “finders,” who had initiated the complaints against Google. Small, web-based companies had to go where the users were—and in general purpose search, that was largely Google (just as Twitter dominates microblogging, Facebook general social networking, and Apple a leading entertainment and app ecosystem).

Nevertheless, scholars have tended to assume that the more innovation happens on the Internet, the more choices users will have and the more efficient the market will become. Yet these scholars have not paid enough attention to the kind of innovation that is best for society, and whether the uncoordinated preferences of millions of web users for low-cost convenience are likely to address the many concerns raised by dominant intermediaries.9 This has left policymakers adrift, and quick to resort to canned stories about competition and consumer welfare that miss the stakes of a case like Google’s.

#### Only nascent firms foster transformative tech innovation

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(C. Scott, and Tim, “Nascent Competitors,” 168 U. Penn. L. Rev. 1879)

Over the last century and a half, small, innovative firms have played a particularly important role in the process of innovation and competition. This is not to discount the important history of innovation at big firms with large research laboratories, such as Bell Labs, Xerox PARC, and research labs at General Electric and Merck.30 However, over the same period, a significant number of disruptive innovations—those that transform industry—have come out of very small firms with new technologies unproven at the time: examples include the Bell Telephone Company, RCA, MCI, Genentech, Apple, Netscape, and dozens of others.31

There is a particular competitive significance of the big innovations at the smaller firms, for they also represent competitive entry, and sometimes completely transform the industry.32 New, unproven innovators are a key source of disruptive innovation.33 Consider that Bell’s telephone did not improve the telegraph, but replaced it, or the impact of Apple’s personal computer on the computing industry. As this suggests, nascent competitors can hold the promise of offering fresh competition for the market, not just in the market. They have the capacity to displace an incumbent through a paradigm shift—for example, a new platform for developing software or decoding a genome. Nascent competition tends to be important in industries marked by rapid innovation and technological change. Software, pharmaceuticals, mobile telephony, e-commerce, search, and social network services are leading examples.

Future potency. Second, a nascent competitor is relevant due to its promise of future innovation. Its potency is not yet fully developed and hence unproven. Whether that innovation will make a difference in the marketplace is subject to significant uncertainty. That is due to the unpredictable rate and direction of technological change. This uncertainty stems from the same forces of technological progress that make innovation so valuable. The nascent competitor may fail in various ways: the unproven cure, despite highest hopes, may flunk its clinical trials; the technologies thought to be the future might, in fact, be overrated. This uncertainty may not be a quantifiable risk, like the odds in a casino, but closer to Knightian true uncertainty—in other words, not readily susceptible to measurement.34 The unpredictable path of innovation often results in product plasticity, in which products evolve and are used for purposes different than the original. For example, in the 1990s, mobile telephones gained popularity as a complement to a wired telephone, as a means for making calls on the go.35 Today, they compete with land lines, cameras, computers, televisions, and credit cards. General purpose technologies such as computing and Internet connectivity act as powerful fuel for unpredictable change.36 Uncertainty about what products the incumbent and the nascent competitor will actually offer in the future has a further consequence—uncertainty about the degree to which those products will actually compete.

#### Key to out-compete China—targeted remedies are key

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(Tom, “Digital Competition With China Starts With Competition At Home,” <https://www.brookings.edu/wp-content/uploads/2020/04/FP_20200427_digital_competition_china_wheeler_v3.pdf>)

The United States and China are engaged in a technology-based conflict to determine 21st-century international economic leadership. China’s approach is to identify and support the research and development efforts of a handful of “national champion” companies. The dominant tech companies of the U.S. are de facto embracing this Chinese policy in their effort to maintain domestic marketplace control. Rather than embracing a China-like consecration of a select few companies, America’s digital competition with China should begin with meaningful competition at home and the allAmerican reality that competition drives innovation.

America’s dominant tech companies have seized upon the competition with China as a rationale for why their behavior should not be subject to regulatory oversight that would, among other things, promote competition. “China doesn’t regulate its companies” has become a go-to policy response. When coupled with “of course, we support regulation, but it must be responsible regulation,” it throws up a smokescreen that allows the dominant tech companies to make the rules governing their marketplace behavior.

At the heart of digital competition — both at home and abroad — is the capital asset of the 21st century: data. Initiatives such as machine learning and artificial intelligence are data-dependent, requiring a large data input to enable algorithms to reach a conclusion. China’s immense population of almost 1.5 billion gives it an advantage in this regard. By definition, a population that approaches five times the size of the U.S. population produces more data. The previously “backward” nature of the Chinese economy has resulted in another Chinese data advantage: New smartphone-based apps, created in place of the digital integration that China previously lacked, produce a richer collection of data. This bulk and richness of Chinese data creates an inherent digital advantage when compared to the United States.

If the United States will never out-bulk China in the quantity and quality of data, it must out-innovate China. Here, the United States has an advantage, should it choose to take it. The centralized control of the Chinese digital economy is an anti-entrepreneurial force. In contrast, innovation is the hallmark of a free and open market. But the domestic market must, indeed, be free, open, and competitive.

Currently, the American digital marketplace is not competitive. A handful of companies command the marketplace by hoarding the data asset others need to compete. As innovative as America’s tech giants may be, they represent a bottleneck that starves independent innovators of the mother’s milk of digital competition. If America is to out-innovate China, then American innovators need access to the essential data asset required for that innovation.

The nation’s response to Chinese competition must not be the adoption of China-like national champions, nor the “China doesn’t regulate its companies that way” smokescreen. American public policy should embrace the all-American concept of competition-driven innovation. This begins with breaking the bottleneck that withholds data from its competitive application. This does not necessarily mean breaking up the dominant companies, but it does mean breaking open their mercenary lock on the assets essential for competition-driven innovation.

#### China will overtake the U.S. in AI by 2030 – national policies to maintain our lead are key

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Graham Allison, “China Will Soon Lead the U.S. in Tech,” *The Wall Street Journal*, 7 December 2021, https://www.wsj.com/articles/china-will-soon-lead-the-us-in-tech-global-leader-semiconductors-5g-wireless-green-energy-11638915759.

Central Intelligence Agency Director Bill Burns announced in October that the agency is establishing two new major “mission centers,” one focusing on China and the other on frontier technologies. This action reflects his judgment that China is the “most important geopolitical threat we face in the 21st century” and that the “main arena for competition and rivalry” between China and the U.S. will be advanced technologies. The question Americans should be asking is: Could China win the technology race?

A new report on the “Great Technological Rivalry” from Harvard’s Belfer Center answers: Yes. The report isn’t alarmist but nonetheless concludes that China has made such extraordinary leaps that it is now a full-spectrum peer competitor. In each of the foundational technologies of the 21st century—artificial intelligence, semiconductors, 5G wireless, quantum information science, biotechnology and green energy—China could soon be the global leader. In some areas, it is already No. 1.

Last year China produced 50% of the world’s computers and mobile phones; the U.S. produced only 6%. China produces 70 solar panels for each one produced in the U.S., sells four times the number of electric vehicles, and has nine times as many 5G base stations, with network speeds five times as fast as American equivalents.

In the advanced technology likely to have the greatest effect on economics and security in the coming decade—artificial intelligence—China is ahead of the U.S. in crucial areas. A spring 2021 report from the National Security Commission on AI warned that China is poised to overtake the U.S. as the global leader in AI by 2030. U.S.-born students are earning roughly as many doctorates each year in AI-related fields as in 1990, while China is on track to graduate twice as many science, technology engineering and mathematics Ph.D.s as the U.S. by 2025. The Harvard report adds that China now clearly tops the U.S. in practical AI applications, including facial recognition, voice recognition and fintech.

The U.S. still has a dominant position in the semiconductor industry, which it has held for almost half a century. But China may soon catch up in two important arenas: semiconductor fabrication and chip design. China’s production of semiconductors has surpassed America’s, with its share of global production rising to 15% from less than 1% in 1990, while the U.S. share has fallen from 37% to 12%.

In 5G, the Pentagon’s Defense Innovation Board reports that China is on track to replicate the economic and military advantages America gained from being the global leader in 4G. China has installed 950,000 base stations to America’s 100,000. By the end of last year, 150 million Chinese were using 5G mobile phones with average speeds of 300 megabits a second, while only six million Americans had access to 5G with speeds of 60 megabits a second. America’s 5G service providers have put more focus on advertising their capabilities than on building infrastructure.

The Chinese Communist Party has made no secret of its ambitions: China intends to become the global leader in the technologies that will shape the decades ahead. The party’s 2013 economic reform plan highlighted technological innovation as the way to avoid the trap of getting stuck as a middle-income country. The celebrated “Made in China 2025” program aims to dominate domestic production of 10 emerging technologies, including 5G, AI and electric vehicles.

China also plans to extend its lead in robotics to sustain its position as the manufacturing workshop of the world. In May, Xi Jinping clearly stated his judgment that “technological innovation has become the main battleground of the global playing field, and competition for tech dominance will grow unprecedentedly fierce.” It is striking how successful China has been in meeting its ambitious technology targets.

In sum, although the U.S. remains the global leader in many important races, including aeronautics, medicine and nanotechnology, China has emerged as a serious competitor. Fortunately, Americans are beginning to wake up to this reality. In June the Senate passed the Innovation and Competition Act with bipartisan support, authorizing $250 billion of investment in science and technology over the next five years. Unfortunately, that legislation has stalled in the House and faces an uncertain future as part of the annual defense bill.

More recent congressional spending proposals, such as the $1.2 trillion infrastructure bill and the $1.7 trillion social-spending package, have included investments in research and development in areas like green technologies and energy storage. While these investments are greatly needed, it will take more attention and investment in strategic technologies to compete with China. Unless the U.S. can organize a national response analogous to the mobilization that created the technologies that won World War II, China could soon dominate the technologies of the future and the opportunities they will create.

#### Maintaining our innovative lead solves nuclear war

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Matthew Kroenig and Bharath Gopalaswamy, "Will disruptive technology cause nuclear war?," Bulletin of the Atomic Scientists, 11-12-2018, <https://thebulletin.org/2018/11/will-disruptive-technology-cause-nuclear-war/>

Rather, we should think **more broadly** about how new technology might affect global politics, and, for this, it is helpful to turn to scholarly international relations theory. The dominant theory of the causes of war in the academy is the “bargaining model of war.” This theory identifies rapid shifts in the balance of power as a primary cause of conflict.

International politics often presents states with conflicts that they can settle through peaceful bargaining, but when bargaining breaks down, war results. Shifts in the balance of power are problematic because they undermine effective bargaining. After all, why agree to a deal today if your bargaining position will be stronger tomorrow? And, a clear understanding of the military balance of power can contribute to peace. (Why start a war you are likely to lose?) But shifts in the balance of power muddy understandings of which states have the advantage.

You may see where this is going. New technologies threaten to create potentially destabilizing shifts in the balance of power.

For decades, stability in Europe and Asia has been supported by US military power. In recent years, however, the balance of power in Asia has begun to shift, as China has increased its military capabilities. Already, Beijing has become more assertive in the region, claiming contested territory in the South China Sea. And the results of Russia’s military modernization have been on full displayin its ongoing intervention in Ukraine.

Moreover, China may have the lead over the United States in emerging technologies that could be decisive for the future of military acquisitions and warfare, including 3D printing, hypersonic missiles, quantum computing, 5G wireless connectivity, and artificial intelligence (AI). And Russian President Vladimir Putin is building new unmanned vehicles while ominously declaring, “Whoever leads in AI will rule the world.”

If China or Russia are able to incorporate new technologies into their militaries before the United States, then this could lead to the kind of rapid shift in the balance of power that often causes war.

If Beijing believes emerging technologies provide it with a newfound, local military advantage over the United States, for example, it may be more willing than previously to initiate conflict over Taiwan. And if Putin thinks new tech has strengthened his hand, he may be more tempted to launch a Ukraine-style invasion of a NATO member.

Either scenario could bring these nuclear powers into direct conflict with the United States, and once nuclear armed states are at war, there is an inherent risk of nuclear conflict through limited nuclear war strategies, nuclear brinkmanship, or simple accident or inadvertent escalation.

This framing of the problem leads to a different set of policy implications. The concern is not simply technologies that threaten to undermine nuclear second-strike capabilities directly, but, rather, any technologies that can result in a meaningful shift in the broader balance of power. And the solution is not to preserve second-strike capabilities, but to preserve prevailing power balances more broadly.

When it comes to new technology, this means that the United States should seek to maintain an innovation edge. Washington should also work with other states, including its nuclear-armed rivals, to develop a new set of arms control and nonproliferation agreements and export controls to deny these newer and potentially destabilizing technologies to potentially hostile states.

These are no easy tasks, but the consequences of Washington losing the race for technological superiority to its autocratic challengers just might mean nuclear Armageddon.

#### China tech lead spreads authoritarianism globally

Meserole and Sisson 21 – Chris Meserole is a fellow in foreign policy at the Brookings Institution and director of research for the Brookings Artificial Intelligence and Emerging Technology Initiative. Melanie Sisson is a fellow in the Brookings Institution’s Center for Security, Strategy, and Technology.

Chris Meserole and Melanie W. Sisson, “U.S.-China technology competition,” *Brookings Institution*, 23 December 2021, https://www.brookings.edu/essay/u-s-china-technology-competition/.

Yet Beijing doesn’t need to bundle Huawei routers with Xi Jinping Thought to undermine liberal values. The real fear is that autocrats, as well as democratically-elected populist leaders, will increasingly build out the next generation of telecommunications infrastructure on Chinese hardware. The more they do so, the more U.S. and European leaders will lose a point of leverage — it’s much easier to insist on governing telecommunications and surveillance technology in line with democratic values when you are the supplier of that technology.

Put differently, the big problem with Chinese technology exports is the downward pressure it places on democratic principles like transparency and accountability, particularly when it comes to the governance of surveillance technologies like facial recognition. If democracies fail to provide compelling alternatives, we’re going to find ourselves in a race to the moral bottom.

SISSON:

Chris is quite right that which governments states buy their technology from matters. Purchasing technology from countries committed to open societies and human rights is an opportunity to encourage the adoption of liberal principles. As Chris also notes, China does not currently seem to use technology exports and financing explicitly as a means of also exporting socialism, communism, or authoritarianism more generally. It is possible, however, that the effect will be a spread of illiberalism all the same.

In addition to concerns about how already-illiberal regimes might use Chinese technologies, there is a risk of catastrophic success in all recipient states. It is possible that near-term material effects — felt in economic growth, rising quality of life, and popular satisfaction — will make deals with China appealing for various governments to get into and very hard for them to get out of. Over time these political and economic dynamics might enhance China’s influence — in bilateral relationships and in overall global market share — and could habituate societies into technical standards that run counter to liberalism, such as built-in restrictions on transnational flows of information and the denial of privacy protections. The longer these conditions persist, the more entrenched and normalized they become, and the more readily they can be used by regimes interested in exercising social and political control.

#### Collapse of democracy guarantees global war

Larry Diamond 19. PhD in Sociology, professor of Sociology and Political Science at Stanford University. “Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition and American Complacency,” Kindle Edition

In such a near future, my fellow experts would no longer talk of “democratic erosion.” We would be spiraling downward into a time of democratic despair, recalling Daniel Patrick Moynihan’s grim observation from the 1970s that liberal democracy “is where the world was, not where it is going.” 5 The world pulled out of that downward spiral—but it took new, more purposeful American leadership. The planet was not so lucky in the 1930s, when the global implosion of democracy led to a catastrophic world war, between a rising axis of emboldened dictatorships and a shaken and economically depressed collection of selfdoubting democracies. These are the stakes. Expanding democracy—with its liberal norms and constitutional commitments—is a crucial foundation for world peace and security. Knock that away, and our most basic hopes and assumptions will be imperiled. The problem is not just that the ground is slipping. It is that we are perched on a global precipice. That ledge has been gradually giving way for a decade. If the erosion continues, we may well reach a tipping point where democracy goes bankrupt suddenly—plunging the world into depths of oppression and aggression that we have not seen since the end of World War II. As a political scientist, I know that our theories and tools are not nearly good enough to tell us just how close we are getting to that point—until it happens.

#### Innovation is key to solve

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Eileen Donahoe, “System Rivalry: How Democracies Must Compete with Digital Authoritarians,” *Just Security*, 27 September 2021, https://www.justsecurity.org/78381/system-rivalry-how-democracies-must-compete-with-digital-authoritarians/.

Last, but not least, democracies need to recognize that normative leadership and technological leadership go together. If our goal is to spread democratic values rather than authoritarian norms, we must lead in technological innovation, particularly in AI and quantum computing. Dominance in those realms will translate into leverage and influence in normative realms and tech standard setting bodies. In addition, we need to become far more proactive in exporting democratic digital infrastructure as part of our trade and economic development aid programs, rather than ceding the opportunity to China to embed values into digital infrastructure in the developing world.

#### Scenario 2 is SMEs – self-preferencing erodes local businesses

Pat **Garofalo 20** [director of state and local policy at the American Economic Liberties Project; former reporter at U.S. News and World Report], 8-30-2020, "Close to Home: How the Power of Facebook and Google Affects Local Communities," American Economic Liberties Project, https://www.economicliberties.us/our-work/close-to-home-how-the-power-of-facebook-and-google-affects-local-communities/#

Google Undermines Local Businesses:

For a local business to operate and be successful, local residents must be able to find it. There’s a long history of enabling such matchmaking between customers and businesses through newspapers, radio, TV, directories, and local advertising channels. Today, one of the key mechanisms filling this critical function is local search. Local search is the single largest category of search on Google, the world’s dominant search engine. In 2018, Google said local search grew by 50 percent over the year before, outpacing the overall search market.[18] More than 80 percent of cell phone users report searching for businesses “near me.”[19]

And yet, Google’s search properties, either general search or via its Maps subsidiary, often hurt local businesses and residents by allowing scammers to infiltrate its listings. For instance, Florida locksmith Rafael Martorell explained that the name of his business, A-Atlantic Lock and Key, was stolen by scammers on Google who pretended to be him and would charge customers five or six times what he normally charged. “One of the scammers put the name of my company, and the address that he put was my own house,” he said, alleging that such practices are an epidemic in the locksmith industry.[20]

“90 percent of our advertising, most of that for years was the Yellow Pages,” Martorell said. “Then suddenly Google came, without us noticing. And then we figured it out, we knew we had to go to Google and that is when the issues began. Because the local listings, most of them are fraudulent. Completely phony, fraudulent.”[21] The Wall Street Journal noted several other sectors in which similar scams have occurred.[22]

Since Google is so dominant in search, merchants have little alternative to battling the corporation endlessly, trying to buy ads for which they can’t ascertain the true value – and where a substantial amount of clicks can be fraudulent[23] – or simply vanishing from the vast majority of internet searches when they are either not listed or when their listing has incorrect information. (Facebook can create similar issues for small businesses via fraud, driving up costs for businesses running ads and opaque algorithm changes that limit small businesses ability to ensure their customers actually see their content.)[24][25]

Google’s size and scale leads to neglect of local needs. The corporation has eight products with more than a billion users, so the ability of a top executive to focus on any one town, or even a major city, is virtually nil. Google is slow to correct misinformation and has allowed whole neighborhoods to be renamed thanks to user mistakes. In other instances, Google has decided that an entire sector of the economy, such as third-party tech repair shops, is simply too difficult to validate, so it excludes them from search results entirely.[26]

Google’s power is immense, and in some ways, more significant than that of the government. As one businessperson told the Wall Street Journal, “if Google suspends my listings, I’m out of a job. Google could make me homeless.”[27]

Poor-quality results can even be profitable for Google. Legitimate businesses often pay for ads on Google in order to rise back above fraudulent listings. Martorell, for instance, spent $115,000 on Google ads between 2008 and 2015, before giving up on the platform and relying on local referrals.[28]

Local search is not an inherently concentrated business. There are competitors, such as Yelp, TripAdvisor, and other specialized vertical search engines that can compete over quality. And yet Google is a virtual monopoly. That’s because dominance didn’t occur naturally or through differentiating based on quality. It happened through the exercise of power and capital.

For example, Google pays to be the default search option on Safari on the iPhone. Google also provides its Android operating system and its app store Google Play to cell phone makers for free so that they make Google search the default on Android phones.[29]

This search dominance also allows Google to preference its own products providing local information over those of its competitors, even when its own organic search results indicate that Google content is of worse quality.[30]

Google’s search results have evolved over time. While the company once simply provided a list of hyperlinks to other websites, saying that it’s goal was to get consumers into Google and then out to their preferred web destination as quickly as possible, it now provides answers to specific queries and makes suggestions for content that can be accessed through Google directly, through its use of information boxes.

These include answers to factual questions, like offering that Thomas Jefferson was the third president without having to send the user to an online encyclopedia. But these boxes also allow Google to make a judgment call to preference its own content and products in harmful ways.

For example, a search for a local Thai restaurant will provide links to restaurant websites, but above the hyperlinked search results Google provides direct links to restaurants on Google Maps and Google’s restaurant reviews, as shown below:

Placement on a Google results page is critical because more than a quarter of users click the very first result of a search, while just 2.5 percent click on the tenth. Barely any users venture onto the second page of results.[31] As of 2019, less than half of Google searches result in a user clicking away from Google.[32]

Google’s ability to exclude competitors leads to the quality degradation in results, and so users end up more susceptible to fraudulent listings than they would otherwise, undermining the relationship between local businesses and local customers.

As one study on Google’s self-preferencing noted, “The easy and widely disseminated argument that Google’s universal search always serves users and merchants is demonstrably false.”[33] The European Union in 2017 fined Google €2.4 billion euros for similar self-preferencing of its Google comparison shopping products, which it placed above those of other third-party sales platforms or direct vendors.[34]

According to at least two studies, users prefer the content that Google’s algorithm would naturally show them to that shown when Google circumvents its algorithm to preference its own content. In 2015, Michael Luca, Tim Wu, Sebastian Couvidat, and Daniel Frank found that users are 40 percent more likely to engage with local search content produced by Google’s organic algorithm than they are with the content Google instead preferences in local search. (Yelp, a Google competitor, provided funding for the study.)

“Google is degrading its own search results by excluding its competitors at the expense of its users,” they wrote. “In the largest category of search (local intent-based), Google appears to be strategically deploying universal search in a way that degrades the product so as to slow and exclude challengers to its dominant search paradigm.”[35]

In a 2018 paper, Luca and Hyunjin Kim also found that users preferred organic search results to Google’s preferenced results. Furthermore, they found that other, more specialized search engines saw a fall in traffic as a result of Google’s actions tying its reviews product to its search engine.[36] “Our findings suggest early evidence that dominant platforms may, at times, be degrading products for strategic purposes, such as excluding competitors in adjacent markets that they are looking to enter or grow in,” they wrote.

The Federal Trade Commission in 2013 concluded that such behavior was anti-competitive, though it closed the investigation without action. According to documents from that investigation that were accidentally leaked to the Wall Street Journal, Google engaged in this conduct because it feared competition from specific search verticals such as Yelp and TripAdvisor. One executive in an email explicitly pointed to the threat such specific verticals posed to Google’s traffic, and therefore revenue.[37]

An inability for customers and local businesses to find each other, whether because there are too many scam listings to wade through or because Google is pushing an inferior product, hurts local economies – first, by potentially driving legitimate businesses under via depriving them of customers, and second by exposing customers to fraudulent businesses charging excessive rates. Changing Google’s business model so that it doesn’t have incentives to self-deal or tolerate scam artists will begin to rectify these problems.

#### Determines SMEs growth.

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Inge, 11-12-2019, "Differentiated Treatment in Platform-to-Business Relations: EU Competition Law and Economic Dependence," OUP Academic, https://academic.oup.com/yel/article/doi/10.1093/yel/yez008/5622729

The relationship between platforms and businesses is at the core of various ongoing competition investigations. Online platforms provide significant benefits to businesses by enabling them to target a wide audience that typically exceeds the territory of individual Member States and even beyond. In the absence of platforms which act as intermediaries between business users and consumers, small and medium-sized enterprises (SMEs) in particular would not have had equally effective opportunity to reach consumers. In this regard, platforms often constitute the main entry points for businesses to access certain markets. At the same time, platforms rely on the presence of businesses in order to create value for consumers. Even though platforms and businesses are thus dependent on each other in order to operate their respective services, platforms typically have a superior bargaining position in relation to their business users. This may result in an imbalance between the interests of platforms and businesses, potentially leading to unfair practices. The scope for such issues is particularly present when platforms both act as intermediaries by facilitating market access for businesses and compete with these businesses by offering their own products to consumers on their marketplaces.1

#### SMEs key to economic strength and quick recovery from decline.

**Longley 21** --- U.S. government and history expert with over 30 years of experience in municipal government and urban planning.

Robert, 7-26-2021, "How Small Business Drives U.S. Economy," ThoughtCo, https://www.thoughtco.com/how-small-business-drives-economy-3321945

What really drives the U.S. economy? No, it is not war. In fact, it is small business -- firms with fewer than 500 employees -- that drives the U.S. economy by providing jobs for over half of the nation's private workforce.In 2010, there were 27.9 million small businesses in the United States, compared to 18,500 larger firms with 500 employees or more, according to the U.S. Census Bureau. These and other statistics outlining small business' contribution to the economy are contained in the Small Business Profiles for the States and Territories, 2005 Edition from the Office of Advocacy of the U.S. Small Business Administration (SBA). The SBA Office of Advocacy, the "small business watchdog" of the government, examines the role and status of small business in the economy and independently represents the views of small business to federal government agencies, Congress, and the President of the United States. It is the source for small business statistics presented in user-friendly formats and it funds research into small business issues. "Small business drives the American economy," said Dr. Chad Moutray, Chief Economist for the Office of Advocacy in a press release. "Main Street provides the jobs and spurs our economic growth. American entrepreneurs are creative and productive, and these numbers prove it." Small Businesses Are Job Creators SBA Office of Advocacy-funded data and research shows that small businesses create more than half of the new private non-farm gross domestic product, and they create 60 to 80 percent of the net new jobs. Census Bureau data shows that in 2010, American small businesses accounted for: 99.7% of U.S. employer firms; 64% of net new private-sector jobs; 49.2% of private-sector employment; and 42.9% of private-sector payroll Leading the Way Out of the Recession Small businesses accounted for 64% of the net new jobs created between 1993 and 2011 (or 11.8 million of the 18.5 million net new jobs). During the recovery from the great recession, from mid-2009 to 2011, small firms -- led by the larger ones with 20-499 employees -- accounted for 67% of the net new jobs created nationwide. Do the Unemployed Become Self-Employed? During periods of high unemployment, like the U.S. suffered during the great recession, starting a small business can be just as hard, if not harder than finding a job. However, in March 2011, about 5.5% -- or nearly 1 million self-employed people – had been unemployed the previous year. This figure was up from March 2006 and March 2001, when it was 3.6% and 3.1%, respectively, according to the SBA. Small Businesses Are the Real Innovators Innovation – new ideas and product improvements – is generally measured by the number of patents issued to a firm. Among firms considered “high patenting” firms – those being granted 15 or more patents in a four-year period -- small businesses produce 16 times more patents per employee than large patenting firms, according to the SBA. In addition, SBA research also shows that increasing the number of employees correlates with increased innovation while increasing sales does not.

#### Sustained economic crisis causes war – unequal recovery guarantees lashout

Sundaram and Popov 19 – Jomo Kwame Sundaram is a former economics professor and former UN Assistant Secretary-General for Economic Development. Vladimir Popov is a former economics researcher for the UN Secretariat.

Jomo Kwame Sundaram and Vladimir Popov, “Economic Crisis Can Trigger World War,” *Inter Press Service*, 12 February 2019, http://www.ipsnews.net/2019/02/economic-crisis-can-trigger-world-war/.

Economic recovery efforts since the 2008-2009 global financial crisis have mainly depended on unconventional monetary policies. As fears rise of yet another international financial crisis, there are growing concerns about the increased possibility of large-scale military conflict.

More worryingly, in the current political landscape, prolonged economic crisis, combined with rising economic inequality, chauvinistic ethno-populism as well as aggressive jingoist rhetoric, including threats, could easily spin out of control and ‘morph’ into military conflict, and worse, world war.

Crisis responses limited

The 2008-2009 global financial crisis almost ‘bankrupted’ governments and caused systemic collapse. Policymakers managed to pull the world economy from the brink, but soon switched from counter-cyclical fiscal efforts to unconventional monetary measures, primarily ‘quantitative easing’ and very low, if not negative real interest rates.

But while these monetary interventions averted realization of the worst fears at the time by turning the US economy around, they did little to address underlying economic weaknesses, largely due to the ascendance of finance in recent decades at the expense of the real economy. Since then, despite promising to do so, policymakers have not seriously pursued, let alone achieved, such needed reforms.

Instead, ostensible structural reformers have taken advantage of the crisis to pursue largely irrelevant efforts to further ‘casualize’ labour markets. This lack of structural reform has meant that the unprecedented liquidity central banks injected into economies has not been well allocated to stimulate resurgence of the real economy.

From bust to bubble

Instead, easy credit raised asset prices to levels even higher than those prevailing before 2008. US house prices are now 8% more than at the peak of the property bubble in 2006, while its price-to-earnings ratio in late 2018 was even higher than in 2008 and in 1929, when the Wall Street Crash precipitated the Great Depression.

As monetary tightening checks asset price bubbles, another economic crisis — possibly more severe than the last, as the economy has become less responsive to such blunt monetary interventions — is considered likely. A decade of such unconventional monetary policies, with very low interest rates, has greatly depleted their ability to revive the economy.

The implications beyond the economy of such developments and policy responses are already being seen. Prolonged economic distress has worsened public antipathy towards the culturally alien — not only abroad, but also within. Thus, another round of economic stress is deemed likely to foment unrest, conflict, even war as it is blamed on the foreign.

International trade shrank by two-thirds within half a decade after the US passed the Smoot-Hawley Tariff Act in 1930, at the start of the Great Depression, ostensibly to protect American workers and farmers from foreign competition!

Liberalization’s discontents

Rising economic insecurity, inequalities and deprivation are expected to strengthen ethno-populist and jingoistic nationalist sentiments, and increase social tensions and turmoil, especially among the growing precariat and others who feel vulnerable or threatened.

Thus, ethno-populist inspired chauvinistic nationalism may exacerbate tensions, leading to conflicts and tensions among countries, as in the 1930s. Opportunistic leaders have been blaming such misfortunes on outsiders and may seek to reverse policies associated with the perceived causes, such as ‘globalist’ economic liberalization.

Policies which successfully check such problems may reduce social tensions, as well as the likelihood of social turmoil and conflict, including among countries. However, these may also inadvertently exacerbate problems. The recent spread of anti-globalization sentiment appears correlated to slow, if not negative per capita income growth and increased economic inequality.

To be sure, globalization and liberalization are statistically associated with growing economic inequality and rising ethno-populism. Declining real incomes and growing economic insecurity have apparently strengthened ethno-populism and nationalistic chauvinism, threatening economic liberalization itself, both within and among countries.

Insecurity, populism, conflict

Thomas Piketty has argued that a sudden increase in income inequality is often followed by a great crisis. Although causality is difficult to prove, with wealth and income inequality now at historical highs, this should give cause for concern.

Of course, other factors also contribute to or exacerbate civil and international tensions, with some due to policies intended for other purposes. Nevertheless, even if unintended, such developments could inadvertently catalyse future crises and conflicts.

Publics often have good reason to be restless, if not angry, but the emotional appeals of ethno-populism and jingoistic nationalism are leading to chauvinistic policy measures which only make things worse.

At the international level, despite the world’s unprecedented and still growing interconnectedness, multilateralism is increasingly being eschewed as the US increasingly resorts to unilateral, sovereigntist policies without bothering to even build coalitions with its usual allies.

Avoiding Thucydides’ iceberg

Thus, protracted economic distress, economic conflicts or another financial crisis could lead to military confrontation by the protagonists, even if unintended. Less than a decade after the Great Depression started, the Second World War had begun as the Axis powers challenged the earlier entrenched colonial powers.

### 1AC – Data

Advantage 2 is data

#### Scenario 1 is misinformation – platform dominance destroys local news sources – misinformation fills in the vacuum

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Pat Garofalo, “Close to Home: How the Power of Facebook and Google Affects Local Communities,” *American Economic Liberties Project*, August 2020, pp. 11-15, https://www.economicliberties.us/wp-content/uploads/2020/08/Working-Paper-Series-on-Corporate-Power\_6.pdf.

Facebook and Google Undermine Local News: According to the Save Journalism Project, 32,000 newsroom employees have been laid off in the last 10 years. 1,300 communities have lost local news coverage in the last 15 years. 60 percent of U.S. counties have no daily newspaper and 171 counties have no newspaper coverage at all.38 Significant outlets such as the Denver Post, the Columbus Dispatch, or the Fayetteville Observer, along with many others, have been acquired by financiers who gut newsrooms and consolidate publications in order to squeeze whatever remaining capital there might be out of the newspaper business.

This decline in news coverage has had several deleterious effects on local governance and commerce. First, it lowers democratic participation, as regular newspaper readers are more likely to vote.39 Areas that lose their daily newspapers see fewer candidates run for office, have incumbents win more often, and see voter turnout decrease.40 One study found that staff cuts at local newspapers are correlated with less competitive mayoral races, fewer candidates entering races and more incumbent-only races.41 Residents of areas with less local news coverage aren’t as likely to know the name of their member of Congress – and those members aren’t as responsive to their districts, bringing less federal money back.42

Lack of local news coverage also makes local financing more expensive. According to a 2018 study, municipalities that experience a newspaper closure have higher borrowing costs in the following years, with the average bond issue costing the municipality an extra $650,000.43 “Our evidence suggests that there is not a sufficient degree of substitutability between local newspapers and alternative information intermediaries for evaluating the quality of public projects and local governments,” the researchers wrote. Essentially, the lack of local news coverage led to the belief that officials would be worse stewards of the public dollar, so investors demanded higher interest rates.

This newsroom cataclysm occurred because Google and Facebook monopolized the digital ad market, hoovering up the revenue that used to support the journalism ecosystem. Currently, Google and Facebook receive 60 percent of digital ad revenue. Amazon and several other companies account for another 15 percent. That means every news publication in the country is fighting over, at best, 25 percent of the available ad revenue. In recent years, Google and Facebook have gained nearly all of the digital ad growth.44

Here is a quick look at how the two companies have used their monopolies to decimate the news industry:

GOOGLE

The key mechanism underlying Google’s ability to dominate the digital ad market is that it largely controls how digital ads are bought and sold, inserting itself into the middle of transactions between advertisers and publishers and taking a cut that would otherwise go to those publishers.45 Starting with its 2008 acquisition of DoubleClick, the corporation has rolledup of much of the underlying infrastructure for buying and selling display ads. As Professor Fiona Scott Morton and David Dinielli put it, “Google has made it nearly impossible for publishers and advertisers to do business with each other except through Google.”46

Google ties its ad software to search data generated by the Google homepage and YouTube content – which is a must-have property for advertisers due to high engagement levels – plus the analytics systems that supposedly provide insights into how successful an ad campaign is. Its pricing is opaque, so publishers are not certain how large a cut Google is taking from them, other than that it’s significant, and advertisers are not certain that their ads are reaching the audience Google says they are.47

Google also directly competes against those publishers, since it too sells digital ad space. But it can use inside information gleaned from its ownership of the ad market infrastructure to front-run orders and to steer advertisers toward Google-owned properties such as YouTube.48,49 Publishers have little choice but to continue using Google’s services, because there are few other places to turn, and because Google’s data collection is so vast, and thus its targeting capabilities so extensive.

Google not only dominates the ad market, but also uses its dominance of search to directly hurt legitimate news outlets. For example, it demanded that news outlets adopt Accelerated Mobile Pages (AMP), under threat of exclusion from mobile search results, which it now loads for users rather than directing them to publishers’ websites. This keeps users within the Google ecosystem and hurts publishers’ ability to build an audience.50 Publishers report lower ad revenue and lower traffic from AMP.51

Through its Google News and Google Discover apps, Google is also a news aggregator in its own right, providing sufficient content based off AMP pages that users often don’t have to leave for publishers’ sites, having gleaned the high points of the story they’re reading straight from Google.52 (As noted above, fewer than half of Google queries now result in a click away from Google.)53

Finally, Google search is using news content in several ways that keep users in its ecosystem, such as providing “snippets” of articles in response to search queries that are sufficient enough information that users won’t move to the publishers’ site, or linking product review articles to its own Google sales platforms, so users can see the key parts of those reviews without leaving Google.54 Those moves deprive publishers of traffic and insights into their audiences, which hurt their ability to build or monetize those audiences or generate higher traffic numbers in order to charge higher ad rates. 47 Ibid. 48 Srinivasan, Dina, “Why Google Dominates Ad

FACEBOOK

The Facebook undermines the news industry via its own propensity for spreading misinformation and literal fake news – stories concocted out of thin air by those hoping to profit from them. It serves as a breeding ground for local conspiracies, such as one falsely claiming Syrian refugees committed a rape in a small Idaho town (which had no Syrian refugees in it).55 Against that content, it sells targeted advertising – collecting the revenue that could be keeping local news outlets, with editorial judgment and a wall between the content creators and advertising sales teams, in business.

Facebook’s business model is based, first, on its reach. It has more than 1.7 billion daily users worldwide, and also controls other key social network tools such as Instagram and WhatsApp that it acquired through mergers.56 Facebook properties account for 75 percent of user time on social networks.57

Facebook gained that network using two methods. First, Facebook won more users than early competitors such as MySpace by pledging a safe space to both users and partners, promising it wouldn’t engage in the sort of data collection practices it currently employs across the web. Second, the corporation engaged in a merger spree to acquire competitors, most notably Instagram and WhatsApp.58 Facebook, today, uses exclusionary practices, such as prohibiting interoperability with rival social media platforms, locking in users and enabling the corporation to exclude competitors from taking advantage of its networked scale. Switching from Facebook is only useful if your entire network of friends, family, and business and personal contacts move at the same time. As a result, the cost of switching away from Facebook to another network is high.

Facebook’s dominance enables it to collect significant amounts of personal data from both individuals and publishing partners. It can then target users with personalized ads, outcompeting publishers by using their own audience data to enrich its ad targeting.

In 2018, the Pew Research Center reported that social media had surpassed local newspapers as a news source for Americans.59 But Facebook’s newsfeed is designed to serve up sensational and rumor-laden content that encourages users to keep coming back for more – allowing Facebook to collect ever larger amounts of data, which it then uses to sell ever more targeted ads. By one estimate, Facebook controls 50 percent of available display ad space in the ad market.60 Newspapers simply cannot achieve the reach or targeting capabilities for advertisers that Facebook can.

Then, adding insult to injury, Google and Facebook give a fraction of the money they’ve siphoned away from new outlets back to them in the form of grants that can never make up for what was lost.61,62

That dynamic leaves readers with fewer and fewer sources of real information able to sustain themselves, leaving local residents with less quality journalism on which to base their economic and democratic choices. Into that void have stepped hundreds of hyperpartisan sites pretending to be local news sources63 – which, of course, have a large presence on Facebook.64

#### Platforms maintain dominance in news via anticompetitive practices – self-preferencing in news competition drives traditional publishers out of business

Hubbard 17 – Director of enforcement strategy at the Open Markets Institute. Former assistant attorney general in the New York State Attorney General’s Antitrust Bureau.

Sally Hubbard, “Fake News is A Real Antitrust Problem,” *CPI Antitrust Chronicle*, December 2017, pp. 3-4, https://www.competitionpolicyinternational.com/wp-content/uploads/2017/12/CPI-Hubbard.pdf.

IV. CASE STUDY: FACEBOOK INSTANT ARTICLES

A look at Facebook Instant Articles (“FBIA”) sheds light on the ways tech platforms can pull technological levers to disadvantage their publishing rivals in the contest for user eyeballs. In Facebook’s early days, publishers and Facebook made a bargain: Publishers would fuel Facebook’s platform with free high-quality content, and in return Facebook would provide publishers with user traffic. Over time, Facebook has adjusted its product design to keep more and more of that traffic for itself.

Facebook has implemented product changes that deter users from clicking away from its platform and onto publishers’ sites. In 2014, Facebook defaulted users to an in-app browser for clicking on external links, rather than sending users to an external browser. But the in-app browser is slow. On iOS, for example, Facebook does not use the fastest in-app browser that Apple makes available. In a test by The Capitol Forum, Facebook’s in-app browser on iOS loaded on average three seconds slower than regular Safari.14 A study by Google shows that 53 percent of mobile users abandon websites that take more than three seconds to load.15

As publishers grew frustrated by slow load times, Facebook presented FBIA as a purported solution. Facebook claims that Instant Articles are not prioritized in the news feed, but their faster load times increase engagement and thus bring prioritization. According to Facebook, users click on Instant Articles 20 percent more than other articles, and they share Instant Articles 30 percent more than mobile web articles on average.16

Prioritizing content that is either native to Facebook’s platform or that does not require clicks to publishers’ sites resembles conduct at issue in the European Commission’s Google Shopping decision. The EC determined that Google abused its dominance in search by prioritizing its own comparison shopping service in its search results, to the detriment of rival shopping services. The EC fined Google 2.4 billion euro and required Google to treat its competitors equally as it treats its own shopping services. Because Instant Articles are housed on Facebook’s platform, publishers that adopt the format lose the web traffic that supports their advertising revenue. The granular user data publishers collect via cookies on their sites will cede to whatever basic data Facebook chooses to provide. Publishers further cannot verify the accuracy of the data Facebook does provide them. Indeed, Facebook has reported several times in recent months that its metrics were wrong.17

Antitrust enforcers are beginning to understand that data confers competitive advantage. At a September 9, 2016, data ethics event on Data as Power, EC Commissioner Margethe Vestager stated that it is important to “keep a close eye on whether companies control unique data, which no one else can get hold of, and can use it to shut their rivals out of the market,” adding, “That could mean, for example, data that’s been collected through a monopoly.”

As for advertising, Facebook promises to give publishers 70 percent of ad revenue served up in Instant Articles through the Facebook Audience Network. But if publishers widely adopt the format and users grow accustomed to it, Facebook easily could change that split in its favor in the future. Once dependent on a dominant tech platform, publishers lack bargaining power to protest changes because they cannot credibly threaten to abandon the platform.

In contrast to the impact on legitimate news publishers, Facebook’s tactics to keep users on its platform do not financially impair fake news purveyors because fake news costs very little or nothing to produce. If a fake news article generates 100,000 “likes” on Facebook and only 50 users manage to venture off of Facebook to the fake news website, its creator has made a profit. In contrast, if 100,000 people “like” a New York Times article on Facebook but only 50 visit NYTimes.com, the New York Times has not recouped the money it paid to journalists to write and research the piece.

And because the New York Times article is not incendiary or outrageous, it may not lead to 100,000 “likes” on Facebook. With less engagement, Facebook will not make as much money from the New York Times article as it would from the article claiming the Pope had endorsed Donald Trump, and hence its algorithm will give the New York Times article lower priority.

FBIA is just one example of the ways that tech platform business models conflict with those of legitimate news publishers. Google has also been accused of “nativizing” content, which means taking publishers’ and other creators’ content and rendering it native to Google’s search pages. Getty Images has filed complaints in the EU accusing Google of nativizing Getty’s photos within its digital walls,18 an accusation Google denies. Both Facebook and Google give priority placement to nativized content in their search results and news feeds, respectively, lessoning consumers’ interactions with publishers’ websites.

#### Competition solves – creates an incentive to eliminate fake news, but anticompetitive practices insulate dominant firms from market signals

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Allen Grunes, “Is ‘Fake News’ A Competitive Problem,” *CPI Antitrust Chronicle*, December 2017, pp. 6-7, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3093547.

IV. FAKE NEWS AND MARKET POWER

But there is another side to the story, which is captured very well in a recent observation by Professor Yochai Benkler about the persistence of fake news on Facebook: “Facebook has become so central to how people communicate, and it has so much market power, that it’s essentially immune to market signals.”32

Market power here is not about price. It is about non-price effects. Economists and antitrust agencies recognize that market power can be manifested in non-price terms and conditions that adversely affect customers, including reduced product quality, reduced product variety, reduced service, or diminished innovation. As the 2010 Horizontal Merger Guidelines suggest, “Such non-price effects may coexist with price effects, or can arise in their absence.”33 In other words, there can be market power even when something is “free.” It can arise in dimensions such as quality. Leaving aside the shoppers who happily pay for the National Enquirer and similar tabloids, fake news can be thought of as news with zero – or even negative – quality.

There are both technical and economic reasons why fake news is a persistent problem. In an article in the The Atlantic called “Google and Facebook Failed Us,” staff writer Alexis Madrigal focuses on how the fake news problem continues to persist at both Google and Facebook and discusses some of the technical issues associated with allowing algorithms to be responsible for screening news.34 It appears that algorithms do better with more data and worse when something new pops up and there is little to go on. Madrigal illustrates with an example. Shortly after the recent Las Vegas shootings took place, a group called “Las Vegas Shooting/Massacre” appeared on Facebook purporting to be a source of investigative journalism:

The group is run by Jonathan Lee Riches, who gained notoriety by filing 3,000 frivolous lawsuits while serving a 10 year prison sentence after being convicted for stealing money by impersonating people whose bank credentials had been phished. Now, he calls himself an “investigative journalist” with Infowars, though there is no indication he’s been published on the site, and given that he also lists himself as a former male underwear model at Victoria’s Secret, a former nuclear scientist at Chernobyl, and a former bodyguard at Buckingham Palace, his work history may not be reliable.35

As Madrigal points out, the problems with surfacing this man’s group to Facebook users “is obvious to literally any human. But to Facebook’s algorithms, it’s just a fast-growing group with an engaged community.”36 He continues:

Imagine a newspaper posting unverified rumors about a shooter from a bunch of readers who had been known to perpetuate hoaxes. There would be hell to pay—and for good reason.37

There is a competitive dimension here. Competitive pressure acts as an external check on the distribution of fake news by the major traditional news outlets. If a major news organization repeatedly published deliberately false news reports or unverified rumors, there would be significant reputational damage which likely would also result in financial loss. Some number of consumers would likely shift to other competitively close alternatives. In this respect, a small but significant decrease in quality is conceptually similar to a small but significant increase in price.

But these competitive pressures do not seem to be constraining the major online news intermediaries. In this environment, “market signals” do not appear to be working. If you want to switch away from the dominant social media services, which is where about two-thirds of Americans are reportedly getting at least some of their news,38 where do you go? To be fair, it is not that the online social media and search giants do not care at all about information quality. They undoubtedly take steps both before and after the fact to prevent bad actors from gaming them. Without competitive pressure, however, the market is not forcing their hand. In antitrust terms, as Benkler says, this may be evidence of significant market power.

One would probably want to test the market power hypothesis by looking for other evidence. For example, one might look at the bargaining between online firms and traditional news organizations. One might look at the consumer response to repeated instances of exposure to fake news.

Assuming the market power hypothesis holds up (and I suspect it will), it is reasonable to conclude that there may be a competition problem. Fake news would be a competition problem if most consumers don’t want it but media markets provide it anyway. In that situation, a purveyor must have market power, at least to disseminate fake news repeatedly. Otherwise, most of its customers would leave. Technically, the firm would have the ability to reduce quality below the competitive level without losing so many sales that its conduct (the fake news) is unprofitable.

However, merely being in possession of market power is not an antitrust violation in the U.S. So the additional question needs to be asked whether the market power arose, was maintained, or was enhanced as a result of anticompetitive conduct such as a prior anticompetitive merger.

So is fake news an antitrust problem? Not to date, so far as we can tell. But it could be, and there we need to be vigilant.

Professors Emily Bell and Taylor Owen have suggested that “[U]niversal access to accurate information is at the heart of a well-functioning democracy, and that access is now shaped by the enormously powerful and largely unaccountable technology companies of Silicon Valley.”39 For better or worse, that seems to be a reasonable conclusion. One consequence may be that we need to think about online firms not only as technology companies but also as news and information media and do more careful scrutiny of their mergers and conduct because of their importance to the “marketplace of ideas.” This is an idea that Maurice Stucke and I developed in the context of traditional media mergers.40 Given the importance of data to the success of online advertising, we may need to think somewhat differently about mergers and conduct than we are accustomed to.

#### Misinformation is existential – collapses democracy and ruins global action on other existential risks

Di Minardi 20, The grim fate that could be ‘worse than extinction,’ BBC, October 15, , https://www.bbc.com/future/article/20201014-totalitarian-world-in-chains-artificial-intelligence

What would totalitarian governments of the past have looked like if they were never defeated? The Nazis operated with 20th Century technology and it still took a world war to stop them. How much more powerful – and permanent – could the Nazis have been if they had beat the US to the atomic bomb? Controlling the most advanced technology of the time could have solidified Nazi power and changed the course of history.

When we think of existential risks, events like nuclear war or asteroid impacts often come to mind. Yet there’s one future threat that is less well known – and while it doesn’t involve the extinction of our species, it could be just as bad.

It’s called the “world in chains” scenario, where, like the preceding thought experiment, a global totalitarian government uses a novel technology to lock a majority of the world into perpetual suffering. If it sounds grim, you’d be right. But is it likely? Researchers and philosophers are beginning to ponder how it might come about – and, more importantly, what we can do to avoid it.

Existential risks (x-risks) are disastrous because they lock humanity into a single fate, like the permanent collapse of civilisation or the extinction of our species. These catastrophes can have natural causes, like an asteroid impact or a supervolcano, or be human-made from sources like nuclear war or climate change. Allowing one to happen would be “an abject end to the human story" and would let down the hundreds of generations that came before us, says Haydn Belfield, academic project manager at the Centre for the Study of Existential Risk at the University of Cambridge.

Toby Ord, a senior research fellow at the Future of Humanity Institute (FHI) at Oxford University, believes that the odds of an existential catastrophe happening this century from natural causes are less than one in 2,000, because humans have survived for 2,000 centuries without one. However, when he adds the probability of human-made disasters, Ord believes the chances increase to a startling one in six. He refers to this century as “the precipice” because the risk of losing our future has never been so high.

Researchers at the Center on Long-Term Risk, a non-profit research institute in London, have expanded upon x-risks with the even-more-chilling prospect of suffering risks. These “s-risks” are defined as “suffering on an astronomical scale, vastly exceeding all suffering that has existed on Earth so far.” In these scenarios, life continues for billions of people, but the quality is so low and the outlook so bleak that dying out would be preferable. In short: a future with negative value is worse than one with no value at all.

This is where the “world in chains” scenario comes in. If a malevolent group or government suddenly gained world-dominating power through technology, and there was nothing to stand in its way, it could lead to an extended period of abject suffering and subjugation. A 2017 report on existential risks from the Global Priorities Project, in conjunction with FHI and the Ministry for Foreign Affairs of Finland, warned that “a long future under a particularly brutal global totalitarian state could arguably be worse than complete extinction”.

Singleton hypothesis

Though global totalitarianism is still a niche topic of study, researchers in the field of existential risk are increasingly turning their attention to its most likely cause: artificial intelligence.

In his “singleton hypothesis”, Nick Bostrom, director at Oxford’s FHI, has explained how a global government could form with AI or other powerful technologies – and why it might be impossible to overthrow. He writes that a world with “a single decision-making agency at the highest level” could occur if that agency “obtains a decisive lead through a technological breakthrough in artificial intelligence or molecular nanotechnology”. Once in charge, it would control advances in technology that prevent internal challenges, like surveillance or autonomous weapons, and, with this monopoly, remain perpetually stable.

If the singleton is totalitarian, life would be bleak. Even in the countries with the strictest regimes, news leaks in and out from other countries and people can escape. A global totalitarian rule would eliminate even these small seeds of hope. To be worse than extinction, “that would mean we feel absolutely no freedom, no privacy, no hope of escaping, no agency to control our lives at all", says Tucker Davey, a writer at the Future of Life Institute in Massachusetts, which focuses on existential risk research.

“In totalitarian regimes of the past, [there was] so much paranoia and psychological suffering because you just have no idea if you're going to get killed for saying the wrong thing,” he continues. “And now imagine that there's not even a question, every single thing you say is being reported and being analysed.”

“We may not yet have the technologies to do this,” Ord said in a recent interview, “but it looks like the kinds of technologies we’re developing make that easier and easier. And it seems plausible that this may become possible at some time in the next 100 years.”

AI and authoritarianism

Though life under a global totalitarian government is still an unlikely and far-future scenario, AI is already enabling authoritarianism in some countries and strengthening infrastructure that could be seized by an opportunistic despot in others.

“We've seen sort of a reckoning with the shift from very utopian visions of what technology might bring to much more sobering realities that are, in some respects, already quite dystopian,” says Elsa Kania, an adjunct senior fellow at the Center for New American Security, a bipartisan non-profit that develops national security and defence policies.

In the past, surveillance required hundreds of thousands of people – one in every 100 citizens in East Germany was an informant – but now it can be done by technology. In the United States, the National Security Agency (NSA) collected hundreds of millions of American call and text records before they stopped domestic surveillance in 2019, and there are an estimated four to six million CCTV cameras across the United Kingdom. Eighteen of the 20 most surveilled cities in the world are in China, but London is the third. The difference between them lies less in the tech that the countries employ and more in how they use it.

What if the definition of what is illegal in the US and the UK expanded to include criticising the government or practising certain religions? The infrastructure is already in place to enforce it, and AI – which the NSA has already begun experimenting with – would enable agencies to search through our data faster than ever before.

In addition to enhancing surveillance, AI also underpins the growth of online misinformation, which is another tool of the authoritarian. AI-powered deep fakes, which can spread fabricated political messages, and algorithmic micro-targeting on social media are making propaganda more persuasive. This undermines our epistemic security – the ability to determine what is true and act on it – that democracies depend on.

“Over the last few years, we've seen the rise of filter bubbles and people getting shunted by various algorithms into believing various conspiracy theories, or even if they’re not conspiracy theories, into believing only parts of the truth,” says Belfield. “You can imagine things getting much worse, especially with deep fakes and things like that, until it's increasingly harder for us to, as a society, decide these are the facts of the matter, this is what we have to do about it, and then take collective action.”

#### Scenario 2 is privacy – dominant platforms’ control over data undermines user privacy

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Gregory Day and Abbey Stemler, “Infracompetitive Privacy,” *Iowa Law Review*, vol. 105, 2019, pp. 80-86, https://ilr.law.uiowa.edu/assets/Uploads/ILR-105-1-Day-Stemler.pdf.

1. Harms from Collecting Information

Platforms collect data from individuals from an incomprehensible number of sources. Amazon, for instance, gathers data from all companies using its cloud storage service, Amazon Web Services (“AWS”), which drives some of the world’s largest platforms including Netflix, Airbnb, Adobe, and Slack.103 Similarly, Facebook harvests locational data even when users are not using the app so as to help advertisers target them.104

To avoid surveillance, some consumers expend significant resources from the purchasing of webcam covers, installing software and browser extensions such as tracker blockers and ad blockers to the building of a virtual private network, known as a “VPN.”105 It is, however, unlikely that these efforts can obstruct all monitoring.106 Users may even suffer indirect costs, especially related to employment opportunities—e.g., if a job requires Adobe or Slack, one will inevitably be surveilled.

Nevertheless, despite the recent spate of high-profile breaches, evidence suggests that most consumers have yet to spend additional time or resources to protect their privacy.107 This is partially because platforms bewilder consumers with complex privacy policies found in contracts of adhesion.108 Coupling this with the power of network effects, consumers lack a meaningfully secure alternative; after all, regardless of one’s dissatisfaction with Uber, few would prefer a rival ride-share app with robust privacy protections but no cars. Individuals are, likewise, unlikely to search with the privacy-bastion DuckDuckGo, a tiny competitor (with 0.36% of the market share) which is presumed to lack Google’s quality (with 76.06% of the market).109

2. Harms from Analyzing Information

A step beyond data harvesting is analyzing the resulting information for insights about users. Consider that platforms such as Snapchat employ mapping technology from one’s smartphone to advertise businesses located in a close vicinity to that individual.110 Users are even tracked in stores via Bluetooth technology to tailor offers within the store’s own mobile app.111 In fact, Uber received a patent on technology designed to predict when a user is intoxicated based on typos, walking speed, as well as whether the user’s phone is swaying or is being held at an odd angle.112

While observers might assume that these programs analyze anonymized data and thus, it is benign, recent reporting suggests otherwise.113 When platforms analyze general data to discover broad patterns and preferences, evidence suggests that users may experience deep unease and other psychological issues based on eroding privacy.114 Increased recognition of these “big brother” capabilities of platforms can alter behavior, again, at a cost.

3. Harms from Disseminating Information

The manner and scale in which platforms collect personal information raises the danger of unwanted dissemination, which is both common and costly. Over the last decade, the number of data breaches has risen sharply.115 From 2012 to 2017, Amazon, Facebook, Google, and Uber suffered a series of breaches impacting almost 100 million people.116 Even the Domino’s data breach exposed the personal information of over 100 million individuals worldwide.117 And since each victim of identity theft suffers an average loss of $1,000, the cumulative costs borne by consumers equate to billions of dollars each year.118

In fact, the prevalence of data breaches masks the ex ante costs incurred by consumers to guard against improper dissemination. Consider that a cottage industry of identity protection companies offers to prevent unwanted dissemination of data. Their services include the monitoring of the dark web, investigating of identity theft, and insuring against breaches.119 The cyber security market is, in turn, expected to eclipse $170 billion in revenue by 2022.120

Platforms may also pass their internal costs derived from appeasing hackers and regulators onto users. For example, in 2016, Uber paid hackers $100,000 in hush money to destroy the private information of over 57 million users.121 Similarly, in 2018, Amazon gave customers between $5 and $100 gift cards per complaint as an apology for exposing their email addresses.122 These numbers pale in comparisons, however, to the hundreds of millions of dollars platforms pay globally to regulatory bodies for data breaches.123

4. Harms from Manipulation Based on Information and Insights

In addition to direct outlays, a troubling aspect of data commercialization is the hidden dangers to decisional privacy.124 Buttressed by society’s poor understanding of the ways tech firms exploit data, consumers can unwittingly participate in experiments resulting in their augmented behavior.125 The Facebook Cambridge Analytica scandal of 2018 is an unfortunate example. Russian-American professor, Aleksandr Kogan, developed a personality quiz app in 2014.126 With it, he received permission from 270,000 Facebook users to mine their data for academic purposes.127 Unbeknownst to those users, Kogan gathered the personal data of their friends, including roughly 71 million Americans.128 Kogan then sold that personalized data to Cambridge Analytica, a political firm hired by the Trump Campaign.129 As stated by Marc Rotenberg, the President of the Electronic Privacy Information Center: “No one could have known that their friends were disclosing their personal data on their behalf. It’s entirely illogical . . . .”130 The uproar incited by this scandal prompted congressional inquiries and perhaps the future regulation of Facebook.131

As the public would soon learn, the sharing of data with app developers (one of the many sides of Facebook’s platform) was and is common practice.132 In fact, Facebook and other platforms have for years harvested data from users in surprising ways. For instance, Ars Technica reported that Facebook scraped call and text data from Android phones.133 Facebook has also confirmed that it collects data from non-Facebook users—a surprising admission to many, including the U.S. Congress.134

Moreover, developers may have little understanding of how data is captured and utilized. This ignorance is because machine learning fuels many of the algorithms that modulate consumer behavior. As Jon Kleinberg and Sendhil Mullainathan write:

We have, perhaps for the first time ever, built machines we do not understand. We programmed them, so we understand each of the individual steps. But a machine takes billions of these steps and produces behaviors . . . that are not evident from the architecture of the program we wrote. . . . [A]t some deep level we don’t even really understand how they’re producing the behavior we observe. This is the essence of their incomprehensibility.135

In important part, even though platform companies may exploit data to accrue market dominance, they have largely evaded antitrust scrutiny by giving away or selling their services at low costs.136 The next Part explains why privacy is omitted from antitrust’s framework, despite its potential link to anticompetitive conduct, as well as the reasons antitrust law should concern itself with the issues of data protection and privacy.

#### Competition solves – lack of consumer alternatives disincentivizes developing privacy measures

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Gregory Day and Abbey Stemler, “Infracompetitive Privacy,” *Iowa Law Review*, vol. 105, 2019, pp. 91-93, https://ilr.law.uiowa.edu/assets/Uploads/ILR-105-1-Day-Stemler.pdf.

C. COMPETITION, PRIVACY, AND MARKET FAILURE

Privacy injuries should incur antitrust scrutiny in markets where the costs spent by consumers to prevent or remedy a privacy breach are greater than what would have occurred if not for the anticompetitive behavior. Key to our stance is that inadequately protected data can derive from a lack of competition, and that more competition would help alleviate this harm. To make this case, notice that privacy injuries constitute a form of market failure.167 If a tech company could generate $10 of revenue from exploiting data, creating $8 of costs for the company and $15 of costs borne to the public, the company is likely to do the deal—despite the net level of societal harm—because enough costs are externalized to make the transaction profitable (for the company, that is). We think that, instead of externalizing privacy costs, platforms would increase spending on data protection if sufficient market forces existed. This is because added competition would (1) punish the culprits of a data breach, (2) disclose information about data collection and privacy breaches, and (3) provide consumers with products designed to protect privacy.

1. Punishment

To begin, if technology markets were competitive, consumers could respond to a company’s data breach by giving their business to a rival firm, punishing the offender. Currently, without competing options, monopolists are more capable of surviving a privacy breach—although some consumers may quit the platform, a lack of competition enables the platform to retain users who would otherwise switch to a rival. This is why, for example, Facebook’s stock price rallied to pre-Cambridge Analytica levels soon after the scandal.168 Consumers may even harbor the belief that the few firms in a monopolized market are all effectively the same. This dynamic is akin to monopoly pricing in a concentrated market; even though consumers may detect that the monopolist’s prices are abnormally high, they lack a meaningful alternative, causing them to patronize the monopolist anyway. As a result, increasing competition would not only enable consumers to boycott firms that improperly protect data, but it would also create incentives for platforms to protect their users’ personal information before a breach occurs.

2. Information

A chief problem explaining the prevalence of infracompetitive privacy is the lack of consumer awareness for the issue. Consider that many costs derived from privacy harms are unseen. In contrast to how consumers tend to overreact to slight increases in retail prices—e.g., the act of driving across town to purchase nominally cheaper gasoline or purchasing a modestly cheaper, yet more inconvenient, airplane ticket—consumers seem to underestimate the harms levied on their decisional privacy or even accept the monetary costs of privacy breaches. This is perhaps because users enjoy obvious short-run benefits in the form of zero-priced services while cognitively disassociated from speculative long-term costs.169 Consumers could also base their decisions on incomplete information in the sense that their ability to make a rational choice is limited by inadequate market signals. Consumers might further ignore information about the costs of infracompetitive privacy given their inability to punish offending firms.170

In light of this market failure, a chief benefit of increased competition is information. Since most platforms already offer zero-price or low-price services, and thus cannot further reduce prices, heightened competition would compel firms to distinguish themselves using non-price signals in the form of enhanced privacy. As firms vie for users, they would likely disseminate information about the value of privacy and the costs of failing to protect one’s information in order to promote their services. In this sense, concentrated markets have enabled tech firms to ignore privacy concerns as few rivals exist to shed light on the problems borne from their treatment of personal information. Increased competition would therefore cause firms to not only improve the quality of their services, but also to advertise this fact to consumers, raising the attention paid by users to privacy matters.171

#### It’s reverse-causal – regression analysis proves

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D. ADDITIONAL SUPPORT

We, in fact, ran regressions supporting the existence of a relationship between privacy and competition, though we warn against relying too heavily on the results due to data and analysis limitations, as we will explain shortly. Consumers do seem to prefer privacy, yet the nature of market power enables platforms to ignore this demand. This suggests that, as long as platforms and tech companies can externalize the costs of privacy protection without a corresponding punishment, they have incentives to do so. Our hope is that the following illustrations may inspire other researchers to devise empirical methods to study this subject, given the paucity of current data.

We analyzed data provided by IBM regarding the costs of a data breach, as well as other publicly available sources, to suggest that companies wielding market power have incentives to externalize privacy costs. The dependent variable, Abnormal Churn Rate, refers to the rate at which customers quit utilizing a company beyond the expected level. Our independent variable is an industry’s level of Market Concentration, derived from the Herfindahl– Hirschman Index (“HHI”).172 The other key independent variable is the Cost of a Data Breach per Capita, measuring the cost of a privacy lapse in an industry per record breached. Because consumers are likely to take notice of a costly breach—an assumption supported by IBM—industries in which a costly data breach occurs may experience a lower Abnormal Churn Rate, except when it lacks competition.173 To control for intervening factors: (1) a proxy of the level of Intangible Property collected by an industry was added since a firm that collects little consumer information is unlikely to levy significant costs;174 and (2) we also accounted for economic changes per year via GDP data. We analyzed this data using an Ordinary Least Squares (“OLS”) analysis, which tracks the hypothesized relationship as a linear function.

We should note that our analysis suffers from structural limitations and thus should serve as an illustration rather than as strong evidence. The primary issue is the paucity of data on this subject; for instance, this is a “small n” study, meaning that we could derive better results if more observations were available. Second, we used Compustat data which canvasses only publicly traded companies, meaning that we omitted private companies from our Market Concentration and control measures. Because public firms account for only a small subset of relevant firms, and since the choice to go public is far from random, the analysis suffers from a selection effect which could alter the results. Third, the industry types used by IBM are not neatly defined NAICS categories so we hand-coded and merged the Compustat data with the IBM categories; this was an imperfect process as it required many judgment calls. Fourth, HHI data is typically used to analyze more discrete markets than our purposes. While the mechanics of HHI should logically apply to broader industries, this quirk is worth highlighting. Although these shortcomings must be kept in mind, our theory may still reflect a snapshot of reality.

For our results, the variables Breach Cost and Market Concentration were both statistically significant: Breach Cost is positively correlated with Churn Rate while Market Concentration is negatively associated, indicating that firms lose customers as the costs of a breach mount, except when the firm controls a greater share of the market. In this latter situation, consumers seem to remain with firms lacking competition despite the costs of a breach. This may shed light on why platform companies have emphasized data collection over price competition: not only does the strategy appear to enable firms to build monopoly power using network effects, but it also helps them to evade antitrust scrutiny. Since modern antitrust is chiefly concerned about consumer prices while ignoring privacy, platforms can avoid scrutiny when exploiting big data—despite the real harms of anticompetitive practices. Indeed, it seems that consumers and markets bear much of privacy’s costs, generating incentives to offload the costs of privacy whether done intentionally or negligently. In other words, even if platforms suffer costs and embarrassment, firms in concentrated markets might be making the rational, yet socially deleterious, decision of offloading privacy costs onto society. The next Section reunites competition with antitrust policy.

#### Privacy circumvention increases the risk of cascading data breaches

Stucke 18 – Douglas A. Blaze Distinguished Professor of Law at the University of Tennessee, where he teaches antitrust, privacy, business torts, law and economics, and evidence.

Maurice Stucke, “Here Are All the Reasons It’s a Bad Idea to Let a Few Tech Companies Monopolize Our Data,” *Harvard Business Review*, 27 March 2018, <https://hbr.org/2018/03/here-are-all-the-reasons-its-a-bad-idea-to-let-a-few-tech-companies-monopolize-our-data>.

Surveillance and security risks. In a monopolized market, personal data is concentrated in a few firms. Consumers have limited outside options that offer better privacy protection. This raises additional risks, including:

Government capture. The fewer the number of firms controlling the personal data, the greater the potential risk that a government will “capture” the firm. Companies need things from government; governments often want access to data. When there are only a few firms, this can increase the likelihood of companies secretly cooperating with the government to provide access to data. China, for example, relies on its data-opolies to better monitor its population.

Covert surveillance. Even if the government cannot capture a data-opoly, its rich data-trove increases a government’s incentive to circumvent the data-opoly’s privacy protections to tap into the personal data. Even if the government can’t strike a deal to access the data directly, it may be able to do so covertly.

Implications of a data policy violation/security breach. Data-opolies have greater incentives to prevent a breach than do typical firms. But with more personal data concentrated in fewer companies, hackers, marketers, political consultants, among others, have even greater incentives to find ways to circumvent or breach the dominant firm’s security measures. The concentration of data means that if one of them is breached, the harm done could be orders of magnitude greater than with a normal company. While consumers may be outraged, a dominant firm has less reason to worry of consumers’ switching to rivals.

#### Breaches collapse society

Matz 18, Sandra is an Assistant Professor of Business at Columbia Business School, 2018, Guy Rolnik is a Clinical Associate Professor for Strategic Management at the University of Chicago Booth school of Business, and an editor of ProMarket.org, Moran Cerf is a Professor of Neuroscience and Business at the Kellogg School of Management at Northwestern University, Solutions to the Threats of Digital Monopolies, <https://promarket.org/2018/04/10/solutions-threats-digital-monopolies/>

1. Risk of data breaches. A security breach of any of the digital monopolies could result in Exabytes of users’ most vulnerable information being publicly exposed (7). Besides the risk of irreparable damage to people’s reputation, private lives, and identity (as in, e.g., the “Ashley Madison” case (8)), such a breach could result in unprecedented damage to our economy (as in, e.g., the “Sony Pictures” case (9)) and our political standing (as in, e.g., “Wikileaks Cablegate” (10)). Importantly, a security collapse of that nature might only be the start of a series of follow-up breaches. A hack of Google’s Gmail, for example, could allow the perpetrators to obtain a user’s bank account password through the “forgot password” functionality, and ultimately lead to a collapse of businesses and industries (e.g. banking, taxation, weapon silos, etc.). Compared to what was deemed a “too big to fail” state when a handful of banks collapsed in 2008, such a crisis could be unparalleled. Although the digital monopolies employ talented security teams to prevent such hacks, the public has no guarantee that a skillfully deployed attack (e.g., by another nation-state, powerful underground organization, or simply a disgruntled employee) would not be successful. Even with the best efforts of the digital monopolies—which often heavily depend on the priorities of high-ranking leaders in the organization—societies should hence operate under the assumption that the data held by the digital monopolies could be leaked at any point in time.

#### Ensures cyberattacks go nuclear

Sagan and Weiner ’21 – Stanford Professors [Scott D.; Caroline S.G. Monroe professor of political science and senior fellow at the Center for International Security and the Freeman Spogli Institute at Stanford University; Allen S.; senior lecturer in law and director of the program in international and comparative law at Stanford Law School; 7-9-2021; "The U.S. says it can answer cyberattacks with nuclear weapons. That’s lunacy."; The Washington Post; https://www.washingtonpost.com/outlook/2021/07/09/cyberattack-ransomware-nuclear-war/; accessed 8-15-2021]

Over the July 4 weekend, the Russian-based cybercriminal organization REvil claimed credit for hacking into as many as 1,500 companies in what has been called the largest ransomware attack to date. In May, another cybercriminal group, DarkSide, also apparently located mainly in Russia, shut down most of the operations of Colonial Pipeline, which supplies nearly half the diesel, gasoline and other fuels used on the East Coast — setting off a round of panic buying that ended only when the company handed over a ransom. These incidents were bad enough. But imagine a much worse cyberattack, one that not only disabled pipelines but turned off the power at hundreds of U.S. hospitals, wreaked havoc on air-traffic-control systems and shut down the electrical grid in major cities in the dead of winter. The grisly cost might be counted not just in lost dollars but in the deaths of many thousands of people.

Under current U.S. nuclear doctrine, developed during the Trump administration, the president would be given the military option to launch nuclear weapons at Russia, China or North Korea if that country was determined to be behind such an attack.

That’s because in 2018, the Trump administration expanded the role of nuclear weapons by declaring for the first time that the United States would consider nuclear retaliation in the case of “significant non-nuclear strategic attacks,” including “attacks on the U.S., allied, or partner civilian population or infrastructure.” The same principle could also be used to justify a nuclear response to a devastating biological weapons strike.

But our analysis suggests that using nuclear weapons in response to biological or cyberattacks would be illegal under international law in virtually all circumstances. Threatening an illegal nuclear response weakens deterrence because the threat lacks inherent credibility. Perversely, this policy could also wind up committing a president to a nuclear attack if deterrence fails. While the American public would indeed be likely to want vengeance after a destructive enemy assault, the law of armed conflict requires that some military options be taken off the table. Nuclear retaliation for “significant non-nuclear strategic attacks” is one of them.

The Biden administration is now conducting its own review of the U.S. nuclear posture. The 2018 Trump change is an urgent candidate for reevaluation, but people have generally ignored it up to now. As officials work on this process, they have the chance to take full account of what could be called the “nuclear law revolution” — a growing recognition that international-law restrictions on warfare, and especially those that protect civilians, apply even to nuclear war.

### 1AC – Solvency

#### The United States federal government should legally increase light handed procompetitive regulatory prohibitions on anticompetitive conduct by dominant platforms.

#### The plan leads to light handed, pro-competitive regulation—that solves targeted platform harms but maintains incentives for innovation—avoids inefficient ex post remedies and burdensome structural changes

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Northwestern University. He has previously served as Chief Economist of the Federal Communications Commission, and Shelanski, Professor of Law at Georgetown University and a member of the firm Davis Polk & Wardwell LLP. He has formerly served as Director of the Bureau of Economics at the Federal Trade Commission and as Chief Economist of the Federal Communications Commission, ‘

(William and Howard, “Antitrust Enforcement, Regulation, and Digital Platforms,” 168 U. Penn. L. Rev. 1911)

Both authors come to the topic of this Article with experience in regulatory agencies and with practical understanding of the difficulties and potential drawbacks of regulation. We nonetheless find three main reasons why, despite the challenges in getting regulation right, limited regulation might have advantages over traditional antitrust adjudication in the context of large-scale industries with network effects. First, and at the broadest level, the adjudicative model for antitrust enforcement and doctrinal development has been met with well-founded criticism. This does not mean that regulation is the right alternative, but it does provide a good reason to ask whether under some circumstances a different approach might lead to better outcomes. Second, traditional antitrust remedies might not effectively address the competitive challenges of digital platform markets. Neither structural remedies like break-up or divestiture, nor the limited kinds of conduct remedies that antitrust courts and agencies have been willing or able to implement, can effectively reduce barriers to competition without diminishing network benefits for consumers. In contrast, an expert agency can potentially bring the experience and resources required to make more granular, detailed decisions about the costs and benefits of certain types of commercial behavior. Third, because of network effects, conduct that courts ordinarily judge under antitrust law’s general rule of reason might have different presumptive effects, and therefore be better governed by a more specific set of standards, in digital platform industries. An expert agency might be particularly suited to determine when “outer-boundary” theories of harm that courts rightly disfavor for general application—theories of harm like predation, refusals-to-deal, or acquisition of nascent competitors— should apply in specific contexts.

Below, we discuss why certain forms of what we call “light handed procompetitive” (LHPC) regulation could increase levels of competition in markets served by digital platforms while helping to clarify the platforms’ obligations with respect to interrelated policy objectives, notably privacy and data security. Key categories of LHPC regulation could include interconnection/interoperability requirements (such as access to application programming interfaces (APIs)), limits on discrimination, both user-side and third-party-side data portability rules, and perhaps additional restrictions on certain business practices subject to rule of reason analysis under general antitrust statutes. These types of regulations would limit the ability of dominant digital platforms to leverage their market power into related markets or insulate their installed base from competition. In so doing, they would preserve incentives for innovation by firms in related markets, increase the competitive impact of existing competitors, and reduce barriers to entry for nascent firms.

The regulation we propose is “light handed” in that it largely avoids the burdens and difficulties of a regime—such as that found in public utility regulation—that regulates access terms and revenues based on firms’ costs, which the regulatory agency must in turn track and monitor. Although our proposed regulatory scheme would require a dominant digital platform to provide a baseline level of access (interconnection/interoperability) that the regulator determines is necessary to promote actual and potential competition, we believe that this could avoid most of the information and oversight costs of full-blown cost-based regulation, for reasons we will discuss below.14 The primary regulation applied to price or non-price access terms would be a nondiscrimination condition, which would require a dominant digital platform to offer the same terms to all users. Such regulation would not, like traditional rate regulation, attempt to tie the level or terms of access to a platform’s underlying costs, to regulate the company’s terms of service to end users, or to limit the incumbent platform’s profits or lines of business. Instead of imposing monopoly controls, LHPC regulation aims to protect and promote competitive access to the marketplace as the means of governing firms’ behavior. In other words, its primary goal is to increase the viability and incentives of actual and potential competitors. As we will discuss, the Federal Communication Commission’s (FCC) successful use of similar sorts of requirements on various telecommunications providers provides one model for this type of regulation.15

There are several possible sources for digital platform regulation. Congress could enact new legislation that creates an entirely new regulatory agency for digital platforms or could give new statutory authority to an existing agency. Alternatively, the FTC could promulgate competition rules under authority that it arguably already has under the FTC Act of 1914. Several commentators have argued that the FTC could use its existing statutory authority under the FTC Act to issue broad, antitrust rules that apply generally, to all industries.16 A much more limited, and perhaps less controversial, manner in which the FTC could begin to use this authority would be to pass narrower rules that apply only to specific kinds of conduct and only to digital platform industries. Calls to regulate digital platforms involve several issues that do not centrally fall within the purview of antitrust, notably privacy and control over certain kinds of harmful content.17 To the extent there could be trade-offs among regulatory goals—for example between a platform’s interconnecting with rivals but limiting those rivals’ access to user data, or between providing nondiscriminatory access to thirdparties but blocking those that spread harmful content—there could be economies of scope to having a single agency address those issues, or at least mandating that agencies coordinate inter-related rulemaking.

#### Expert regulation is comparatively better for addressing nascent acquisition and discrimination—ex post adjudication takes too long and is too burdensome

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(William and Howard, “Antitrust Enforcement, Regulation, and Digital Platforms,” 168 U. Penn. L. Rev. 1911)

This last category of restrictions involves other forms of conduct that antitrust law recognizes as double-edged: they could increase or maintain monopoly power, but also create efficiencies that benefit consumers. Antitrust law applies rule of reason analysis to such behaviors by attempting to weigh the potentially negative effects of the behavior against the positive effects, then prohibiting the behavior only if the net effect is likely to be negative.86 Of course, any quantitative measure of the net effect of a practice is uncertain, and therefore standards of proof and evidentiary burdens play a large role in determining the actual outcomes of cases.

The general point we wish to make in this Section is that, where digital platform markets are prone to tip to durable monopoly, the presumptions and burdens that courts ordinarily apply under antitrust law’s general rule of reason might fail to prevent anticompetitive harms or to provide useful industry guidance. Such settings could be better governed by a more specific and definitive set of standards implemented through an agency better able to understand and account for relevant industry details. To the extent such regulation could lead to fewer errors of either over- or under-enforcement against digital platforms, it could be welfare enhancing compared to traditional antitrust adjudication. For example, regulation might prohibit certain conduct under specified conditions where it will be predictably harmful, establish stronger presumptions about the harms from particular conduct when undertaken by digital platforms, or implement stricter requirements for the review of specific business activities.

One area of activity where regulation might have advantages over adjudication is acquisition of nascent competitors. Several commentators have advocated stricter prohibitions against such deals on grounds that large firms might, through acquisitions, buy up the very start-ups that today look so insignificant as to escape merger review but would later prove to be serious competitors.87 It is beyond the scope of this article to address the emerging work on acquisitions of start-ups. We note, however, that the question of nascent acquisitions poses a serious challenge for antitrust enforcement. Generalist courts seem poorly suited to deciding, case-by-case, whether a particular firm that might today have little market presence or infrastructure might later emerge as a competitor to its buyer, especially if the nascent firm is currently more of a complement than competitor to the acquiring firm. The technical, economic, and industry factors that make competitive-effect determinations difficult in any merger case are particularly important in a technologically dynamic industry where one of the merging firms is new and evolving. Moreover, the alternative of waiting to see the results of a particular merger so that courts have a record on which to review the transaction creates very substantial incentive and evidentiary problems. A successful merger is one in which the parties integrate in such a way that creates commercial growth,88 and therefore it will be very difficult to distinguish commercial success due to the merger from the counterfactual of success that would have resulted had the parties remained separate. Additionally, the prospect of post consummation review of a merger, with retroactive remedies or prohibitions, could deter the very investment in integration that helps ensure a successful merger.89 These concerns lead us to suggest that the process and criteria through which antitrust law applies to acquisitions of nascent competitors by large industry players might better lend itself to guidance and administration through a regulatory entity as opposed to the generalist adjudicatory process. While we do not think banning such acquisitions is a good idea, rules that specify which transactions the agency will review, what criteria and presumptions it will apply in a particular industry, and what kind of evidence it will find relevant could provide more certainty for businesses and better protections for consumers.

#### Non-FTC regulation fails—comparatively less resistant to capture and completely undermines solvency

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(Neil, “Does Big Tech Need Its Own Regulator?” October 25, https://gaidigitalreport.com/2020/08/25/does-big-tech-need-its-own-regulator/)

A. A “Big Tech” Regulator Would be Captured by Big Tech

The biggest problem with creating a specialized agency is that such agencies are more vulnerable to regulatory capture. Instead of creating a new, separate agency to regulate big tech, Congress should assign any new authority and expertise to existing agencies, particularly to generalist agencies like the Federal Trade Commission, which—as even the Stigler Center report acknowledges—have proven relatively resistant to regulatory capture.[81]

1. All Agencies Tend Toward Capture

The basic idea of regulatory capture was explained by Nobel Memorial Prize-winning economist George Stigler, who argued that “regulation is acquired by the industry and is designed and operated primarily for its benefit.” In his foundational paper, “The Theory of Economic Regulation,” he warned that any regulated industry has strong incentives to form close connections with its regulators to seek favors. The inevitable result is that the industry disproportionately influences the agency’s agenda, shapes its rulemaking and even supplies it with personnel.[82] Captured agencies do not hold companies accountable; instead, they act to benefit the industry’s established players, disadvantaging newer firms and the public at large.

The forms and causes of regulatory capture vary, and regulatory capture is nearly always a question of degree.[83] The most egregious forms of regulatory capture are government “oversight” organizations occupied and controlled by the regulated entities themselves. For example, state boards responsible for setting the rules for the practice of dentistry should not be (but often are) dominated by practicing dentists.[84]

But regulatory capture occurs even when agencies are populated by government officials who are independent. Public choice scholars have explained how agency leaders will act in rational self-interest by seeking to keep their position and to expand the power and budget of the agency and to secure prestigious or profitable positions after leaving leadership.[85] This requires currying favor with influential politicians and powerful interest groups, usually by employing the tools of the regulator in favor of those groups’ interests.[86]

Capture can happen in less cynical and more subtle ways. Agency expertise requires experience or long-term interest in the regulated industry, and individuals with that background will tend to view issues from the perspective of that industry, want that industry to thrive, and draw information from industry sources. “Thus, even a benign, well-intentioned industry expert will be inclined to render decisions that favor the industry he regulates.”[87]

Regulatory capture undermines the agency’s oversight mission, shifting the benefit away from the public and toward the regulated industry. Perhaps most concerning, regulated incumbents can use the power of the captured agency to establish a significant barrier against competition. For example, industry participants might directly convince regulators to subsidize their businesses, giving them an advantage against would-be competitors. More subtly, large firms might support costly compliance regimes that disproportionally disadvantage smaller firms. In either case, this type of “public competition” is a particularly pernicious type of rent-seeking.[88]

Even absent overt acts by the regulated firms, regulation and incumbent business models will naturally co-evolve to fit each other. Disruptive business models that do not fit into the current regulatory boxes will face significant regulatory risks in this circumstance. Some have called this the “procrustean problem” of regulation after the ancient Greek myth in which a rogue blacksmith stretches or amputates human visitors to fit his iron guest bed.[89] Regulators need to fit and classify companies according to regulatory categories, and this naturally benefits incumbent business models while disadvantaging novel and experimental approaches.

This type of regulatory capture creates a status quo bias. The mismatch between existing regulation and a new business model can mean that innovative ways of accomplishing certain goals may be legally risky to pursue not because they are dangerous or harmful but because they were not contemplated when the regulation was developed. At best, innovators in this situation will have to educate regulators and potentially pursue regulatory changes. At worst, innovators will be warned off by their lawyers and investors, will choose to pursue less legally uncertain endeavors, and the agency will not even know the chilling effect its framework is having.

2. The Risk of Regulatory Capture is Higher for Specialized Agencies

Regulatory capture is a problem that all agencies face. However, a sector-specific regulator of big tech is more likely to be captured than are generalist agencies like the Federal Trade Commission.[90] Yale Law Professor Jonathan R. Macey examines this issue in depth in his article, “Organizational Design and Political Control of Administrative Agencies,” where he analyzes the outcomes from “the most fundamental choice of agency design: whether to create a single industry regulatory agency or a multi-industry agency.”[91] As he explains:

Where a regulatory agency represents a single ‘clientele,’ the rules it generates are far more likely to reflect the interests of that clientele than the rules of an agency that represents a number of clienteles with competing interests.[92]

That is, the smaller the number of companies under a regulator’s jurisdiction, the easier it is for those companies to capture the regulator. This is because the pressures toward regulatory capture are amplified for more specialized agencies. Although James Madison was comparing forms of national government rather than forms of agencies, his discussion of factions in Federalist 10 helps explain why narrowly specialized agencies face heightened risks of capture:

[T]he fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression.[93]

In other words, a small group with similar interests and perspectives can more easily bend government action to its benefit. When a small interest group has a dedicated regulator, the risk of regulatory capture is at its peak. “The interest group that is regulated by a single regulatory agency will be able to influence that agency to a far greater extent than the interest groups that must ‘share’ their agency with a variety of other interest group,” argues Professor Macey.[94] By contrast, government actors with jurisdiction over a wide range of conflicting interests are “beholden to many but captured by none.”[95]

Incumbents regulated by a specialized agency can more easily weaponize regulation against new competitors, often with the regulator’s help. Competitive threats to a sector also threaten the sector-specific regulator. In fact, “[t]he creation of administrative agencies helps insure against an industry’s obsolescence by creating a regulatory body with incentives to pass rules that increase the probability of the industry’s survival,” Macey explains.[96] For instance,

[L]ong after there was any economic need for a savings and loan industry, thrift regulators took extraordinary steps to ensure the industry’s survival. The regulators acted as they did, not to further the public interest, but because they understood that the survival of the industry was crucial to their own professional survival.[97]

In such situations, outside innovators can face a unified front of incumbents and regulators seeking to control disruption in their own interest, not in the public interest. This weaponization of a regulatory agency by incumbents is particularly harmful in industries with the potential for rapid and disruptive innovation, where the existential threat is heightened.[98]

For these reasons, the decision to create a new, sector-specific agency should not be taken lightly. “[T]he ability to structure the initial design of an agency,” Macey argues, “may well be the most powerful device available to politicians and interest groups” to shape the future path of an agency after its creation.[99] Specifically, when Congress chooses between a “single-interest” or “multi-interest” design for an agency, it affects which groups will be influential repeat dealers and which will be infrequent and thus less influential.[100] Macey compares single interest agencies like the Securities and Exchange Commission with multi-interest agencies like the Occupational Safety and Health Administration. He provides example after example of the SEC, the Commodities Futures Trading Commission and other sector-specific agencies serving the interests of the firms they regulate.[101]

Establishing a sector-specific agency comes with significant risks that the agency will serve the interests of the regulated industry rather than the public interest. In contrast, “[t]he FTC, unlike industry specific regulatory bodies, deals with industry in general. Perhaps this explains why, at least to date, we are unaware of claims that the FTC has been captured by any industry or special interest group.”[102]

# 2AC

## Self-Preferencing Adv

No cards

## Data Adv

No cards

## T Private Sector

#### Counterinterp – “Private sector” is anything that isn’t the government

Law Insider N.D.

“Private sector definition,” *Law Insider*, <https://www.lawinsider.com/dictionary/private-sector>.

Private sector means not of a Federal, State or Local government owned nor controlled enterprise.

#### “The” can include specifics

Random House N.D.

“The,” Unabridged Dictionary, <https://www.dictionary.com/browse/the>.

1. (used, especially before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article a or an):

#### ‘By’ only requires anticompetitive practices resulting from private sector action.

Michigan Court of Appeals 10 (SAWYER, J. Opinion in DEQ. v. Worth Twp., 808 N.W.2d 260, 289 Mich. App. 414 (Ct. App. 2010). Google scholar caselaw. Date accessed 7/23/21).

Second, we look to the meaning of the phrase "by the municipality." This phrase is key because it answers plaintiffs' contention that MCL 324.3109(2) imposes responsibility for a discharge on a municipality without regard to the source of the discharge. That is, plaintiffs argue that any discharge of raw sewage within a municipality constitutes prima facie evidence of a violation by the municipality even if the municipality is not the source of the discharge. We disagree. The word "by" has many meanings. For its meaning as a nonlegal term, we look to a layman's dictionary rather than a legal one. Horace v. City of Pontiac, 456 Mich. 744, 756, 575 N.W.2d 762 (1998). We find these definitions from the Random House Webster's College Dictionary (1997) to be particularly helpful: "10. through the agency of" and "12. as a result or on the basis of[.]" Thus, MCL 324.3109(2) imposes responsibility on the municipality not when the violation merely occurs within the boundaries 264\*264 of the municipality, but when the violation occurs "through the agency of" the municipality or "as a result" of the municipality, that is to say, when it is the actions of the municipality that lead to the discharge.

## T Prohibit

#### We meet—aff creates ex ante rules that make conduct deemed anti-competitive per se illegal

Crane, Assistant Professor, Benjamin N. Cardozo School of Law, ‘07

(Daniel, “Rules Versus Standards in Antitrust Adjudication,” 64 Wash. & Lee L. Rev. 49)

The solution, though imperfect, is to use bright-line rules as immunizing devices for broad swaths of industrial behavior while preserving a role for standards in determining liability for conduct falling outside of the safe harbors created by the rules. For many categories of conduct, such an approach minimizes the cost of configuring the law because the rule itself supplies a conclusive answer of no liability or presents a safe harbor that defendants can elect in order to minimize the likelihood of litigation. For example, specifying that a firm cannot be held liable for tying unless it has at least a 50% market share in the tying market would provide a case-dispositive safe harbor that could reduce litigation costs substantially in a large number of tying cases, even though such costs would remain in cases where the defendant's market share exceeded 50%. While it would also save costs to specify prohibitory rules for cases falling outside the safe harbor (such as making tying per se unlawful if the defendant's tying product market share exceeds 50%), the generalization of such a rule would be vastly overbroad. Bright-line rules are most appropriate in antitrust when used as immunizing devices. Relatively few categories of conduct are unambiguously harmful and can be prohibited in equally categorical terms.

**C/I Prohibit can mean ‘severely hinder’---doesn’t necessitate a ban.**

**Washington Court of Appeals 19** (KORSMO-judge. Opinion in State v. Kimball, No. 35441-5-III (Wash. Ct. App. Apr. 2, 2019). Google scholar caselaw. Date accessed 7/13/21).

His argument runs counter to the meaning of the word "prohibit." It means "1. To forbid by law. 2. To prevent, preclude, or severely hinder." BLACK'S LAW DICTIONARY 1405 (10th ed. 2014). As **"severely hinder"** suggests, a "prohibition" **need not be** an all or nothing proposition.

**Prohibitions include conditions**

**HUMES ‘16,** P. J. — 248 Cal.App.4th 410 (2016) 203 Cal.Rptr.3d 677 STEWART ENTERPRISES, INC., et al., Plaintiffs and Respondents, v. CITY OF OAKLAND et al., Defendants and Appellants. No. A143417. Court of Appeals of California, First District, Division One. June 23, 2016.

The City argues that the application of the emergency ordinance to Stewart's project impaired no vested right conferred by the permit-vesting ordinance because the latter ordinance only "proscribed the application of legislation to `prohibit' a project, whereas the [emergency ordinance] imposed [a] CUP requirement." Reasoning that the emergency ordinance merely "require[d] further discretionary review" instead of outright "prohibiting" the construction of a crematorium, the City concludes that the permit-vesting ordinance was "inapplicable." The trial court rejected this position, stating, "**To impose a condition on a building permit is to prohibit the project until the property owner satisfies the condition**. If the condition were one that the property owner could unquestionably satisfy by unilateral action, without requiring the public entity's discretionary approval, the analysis might differ. Here, however, an application for a CUP can be denied. Such a denial would plainly `prohibit' Stewart from completing `the construction ... or use authorized by [the] permit.'" (6) We agree with the trial court's reasoning. To "prohibit" is defined as "[t]o forbid by law" or "[t]o prevent or hinder." (Black's Law Dict. (8th ed. 420\*420 2004) p. 1248, col. 1.) Under either definition, the emergency ordinance "prohibited" the construction of a crematorium as authorized by Stewart's building permit. Once the emergency ordinance was applied to the project, Stewart was no longer allowed to build the crematorium because it did not have a CUP. The possibility that Stewart could regain the right to build the crematorium if it applied for and was granted a CUP does not change this fact: **a project can be "prohibited" even if the fulfillment of certain contingencies might at some later date reauthorize it.** Therefore, we conclude that the application of the emergency ordinance impaired Stewart's vested right under the permit-vesting ordinance to build the crematorium.

## Neolib K

#### Plan’s nuanced use of competition policy is good – thinking that using competition policy to incentivize tech development is the equivalent of mass deregulation is totalizing – both state planning and complete decentralization are disasters

Coniglio, antitrust attorney in the Washington, DC office of Sidley Austin LLP, ‘20

(Joseph V., “Economizing the Totalitarian Temptation: A Risk-Averse Liberal Realism for Political Economy and Competition Policy in a Post-Neoliberal Society,” 59 Santa Clara L. Rev. 703)

The implication of the foregoing is that the most pressing task for competition policymakers may not involve a rethinking of first principles. The principles of neoliberal competition policy may have ultimately been proven justified by an unprecedented period of economic growth, technological progress and reductions in poverty, and should presumably remain operative as long as they remain the best framework for bringing about these ends. Neither, as we have suggested, must the capitalist entrepreneur be lost in the process. The totalitarian temptation to submit to general state control of the economy-whether it be in the form of communism from below or fascism from above should be resisted so as to preserve and build upon the great prosperity Western Civilization has managed to achieve.

This statement will no doubt be highly unsatisfactory to many critics of neoliberalism who seek more fundamental and revolutionary changes. Surely, they suggest, there must be some principled basis for critiquing the neoliberal status quo with which so many are frustrated. Indeed, there very well may be, and none of the arguments in this article should be understood to the contrary. The goal of this article has been limited to a tailored defense of neoliberal principles only as they relate to competition policy, broadly understood. It does not suggest that neoliberal monetary, trade, and fiscal policies are also sound-let alone a neoliberal social order, where all the core institutions within society are organized according to the neoliberal principles of wealthmaximization, empiricism, and the rest.129 This is to say that even if neoliberalism is a sound theory as applied to the area of competition policy, neoliberal monetary policy, for example, may be problematic and a just target for contemporary critics. Similarly, claiming that competition policy should be enforced using a consumer welfare standard does not mean that all the organs of law and civil society should be oriented to maximize wealth or consumer welfare, even if this economic inquiry is nonetheless informative. 30 It is well known that several prominent neoliberals have expanded the neoliberal policy apparatus beyond the regulation of market capitalism with which antitrust is concerned to domains typically understood to be beyond a purely utilitarian purview.' 3 ' However, whatever the merits of these broader neoliberal policy programs, the competition policy baby, so to speak, should not be thrown out with the bathwater.

Consider the charge that neoliberal policies have increased wealth inequality in the United States. Some commentators attempt to link this increased inequality with a decline in competition'3 2 and, by implication, consumer welfare competition policy. Notwithstanding the interest such theories appeared to have garnered from highly distinguished economists and policymakers, such as Nobel Laureate Joe Stiglitz,133 one might alternatively consider whether increasing wealth inequality and the resultant social strife are far more a result of policies in other areas, such as monetary policy. 134 At the same time as Chicago School antitrust policy took root, the American economy began to undergo sustained expansions in the money supply and reductions in interest rates that, at least in theory, disproportionately reward the owners of financial assets, who are more likely to be wealthy. 135

#### Only market incentives produce truly innovative technology – state planning can give you a lab but it cannot fiat new AI tech

Janeway, board of directors of the U.S. Social Science Research Council and co-founder of the Institute for New Economic Thinking, ‘12

(William, Doing Capitalism in the Innovation Economy, pg. 273-277)

All of the stages of development are dependent to some degree on speculative forays into the unknown. None lends itself to optimal management in accord with a strict accounting of expected returns relative to costs incurred, whether conducted by a central planner or an established, profit-making enterprise. When scientific advance was funded by the profits of the great corporations through the first half of the twentieth century, the costs of the central research labs could no more be rationalized by the calculus of prospective financial returns than could the costs of the National Science Foundation (NSF) or the Defense Advanced Research Projects Agency (DARPA) or the National Institutes of Health (NIH) – which is why they were all required to shift resources toward explicitly applied research and development when profits came under pressure. Thus, the prime and critical constituent elements of the Innovation Economy are sources of funding decoupled from concern for economic return. This is clearly so with respect to the unfettered pursuit of scientific curiosity, but support for such research may be fully available from the state only during transient moments of national self-confidence when economic competition seems least threatening. Perversely, investment in scientific research is likely to be challenged as the nation’s competitive position weakens. So the Haldane principle, invoked in Britain to defend the autonomy of scientific research from political pressures, dates back to the First World War, when the sun still did not set on the British Empire. It was radically revised by the Rothschild Report in post-Empire 1971 to draw a bright line between pure and applied research and to subject the latter to the test of a customer–contractor relationship.3 In the United States, Vannevar Bush’s vision of public investment in science transcended near-term considerations of return, economic or political. Two generations later, the NIH and NSF are collaborating under the tortuous acronym STAR METRICS – “Science and Technology for America’s Reinvestment: Measuring the Effects of Research on Innovation, Competitiveness and Science” – in response to “increasing pressure to document the results of … research investments in a scientific manner and to quantify how much of the work is linked to innovation.”4 The attempt to manage scientific research in narrow pursuit of “value for money” can be expected to reduce its potential for creative exploration of the unknown. As I learned from my engagement with computing, the state has directly and indirectly accelerated construction of technology platforms to support the speculative exploits of entrepreneurs and the capitalists who finance them. Financial bubbles, in which returns are decoupled from the economic fundamentals, are the complementary engine of Schumpeterian waste. There are some examples of efficient deployment of new technological infrastructure: the construction of the French railroad system under state direction *was a model* of engineering efficiency and proceeded pari passu with the railroad systems in Britain and the United States, but without their duplicative waste. But, regardless of how potentially revolutionary networks have been planned, their financing has exploited the essential and inevitable herding behavior of investors. And, for the final phase of the Innovation Economy, there is no substitute for the speculative wastefulness of financial markets and the proliferation of hosts of hopeful commercial monsters funded thereby to explore the new economic space. When the great technology corporations were still funding basic research in their central labs, their monopoly positions in the markets they served inhibited their ability to exploit the technologies derived therefrom. Three times I directly observed signal examples of such failure. During the 1980s, I witnessed repeated instances of “fumbling the future” at Xerox when none of the innovations delivered by PARC could measure up to the profits of the entrenched, patent-protected copier business.5 Like all investors in the birth of client–server computing, I was an indirect beneficiary of AT&T’s failure to capitalize on the extraordinary information technologies created within its Unix Systems Laboratory. And at BEA, I was both the direct beneficiary of AT&T’s invention of Tuxedo and, in equal measure, of IBM’s inability to sacrifice the profits from its proprietary products to compete directly in the new world of open and distributed computing. Joseph Schumpeter expressed the view that large firms have an inherent advantage in innovation relative to smaller enterprises.6 But, as Josh Lerner summarizes the experience of the biotech and internet revolutions: “The enabling technologies were developed with government funds at academic institutions and research laboratories. It was the small entrants … who first seized upon the commercial opportunities.”7 In defiance of Schumpeter’s expectation, economic innovation has not been effectively bureaucratized by the great corporations. Rather, it tends to be delivered by new companies. But funding those new companies depends on access to financiers who have access to financial markets prone to speculative excess. This is the lesson both of my professional life as a practitioner and of my research into the sources of venture capital returns. And it is a lesson drawn not only from the most recent iteration of the Innovation Economy or from the long-term development of the British and American economies. Even in the bank-based industrial economies of Germany and Japan, the stock exchange played a critical role in funding aggressive investment in frontier technologies during their initial high-growth decades of the late nineteenth and early twentieth centuries.8 The vast expansion of the German and Japanese banking systems took place to finance post-Second World War recovery, precisely when innovation was a distraction from the defined task of literally reconstructing the physical assets of the economy. The most recent new economy – the digital economy in whose development I have passed my professional career – was built through the combined forces of state funding of research and speculative financing of the companies created to transform the fruits of research into commercial goods and services. But the discrediting of LBJ’s Great Society in the context of Vietnam, followed by the stagflation of the 1970s, opened the door to the return of market fundamentalism as a constraint on state initiatives.

#### Being pro-free-market doesn’t tell you what the purpose of markets is – we can code the market to maximize social welfare, but central planning is computationally impossible

Posner and Weyl 18 – Eric A. Posner is Kirkland and Ellis Distinguished Service Professor of Law and Arthur and Esther Kane Research Chair at the University of Chicago. E. Glen Weyl is an economist and researcher at Microsoft Research New England.

Eric A. Posner and E. Glen Weyl, “Epilogue: After Markets?” *Radical Markets: Uprooting Capitalism and Democracy for a Just Society*, Princeton University Press 2018, Epub (email [arg5180@gmail.com](mailto:arg5180@gmail.com) for relevant text).

Markets as Miracles

As we saw in chapter 1, many economists who were committed to the market economy also considered themselves “socialists.” Yet in the early twentieth century, socialism became identified with central planning, thanks to the role of Marxism and the French Revolution in inspiring and justifying the economic policies of the Soviet Union. Central planning also received a boost from World War I, where national control of the economy for the purpose of war production was more successful than advocates of laissez-faire could ever have imagined. This led to a heated debate about whether central planning should be used in peacetime as well.

In the popular imagination, central planning could not succeed because it provided individuals with no incentives to work. People needed the prospect of riches, or at least wages, to get them out of bed in the morning. Yet incentives were quite strong in the Soviet Union, stronger, in many ways, than they are in capitalist countries. While there was less chance under Communism to grow rich, any prisoner of the Gulag knew the fate of those who “malingered.”

Another popular argument against central planning was advanced by Nobel Laureate Friedrich Hayek in 1945. Hayek argued that no central planner could obtain information about people’s tastes and productivity necessary to allocate resources efficiently.1 The genius of the market was the way that the price system could, in disaggregated fashion, collect this information from everyone and supply it to those who needed to know it, without the involvement of a government planning board.

A related version of this argument, less well-known than Hayek’s but actually more compelling, was made a few decades earlier. The brilliant economist Ludwig von Mises argued that the fundamental problem facing socialism was not incentives or knowledge in the abstract but communication and computation.2 To see what Mises meant, consider an illustrative parable proposed by Leonard Read in his 1958 essay, “I, Pencil.” 3

Read tells the “life story” of a pencil. Such a simple thing, one would at first think. And yet as you begin to reflect, you realize the enormously complex layers of thought and planning it would require to make a pencil from scratch. The wood must be chopped, cut, shaped, polished, and honed. The graphite must be mined, chiseled, and shaped. The ferrule—the collar that connects the wood shaft and the eraser—is an alloy of dozens of metals, each of which must be mined, melted, combined, and reformed. And so forth.

Yet what is most remarkable about the pencil is not its complexity but the complete lack of understanding that anyone involved in the manufacture of the eventual pencil has about any of these steps in the process. The lumberjack knows only that there is a market for his wood and some price that induces her to buy the needed tools, cut down trees, and sell lumber down the line of production. The lumberjack may never even know that the wood is used for a pencil. The pencil factory owner knows only where to purchase the needed intermediate materials and how to run a line assembling them. The knowledge and planning of the pencil’s creation emerge organically from the process of market relations.

Now suppose that we were to try to replicate the market relationships with a central planning board. The board would determine how much wood to chop and when, the number of workers to employ at each stage of production, the correct places and times to produce, ship, and build. Yet, to do this effectively the board would have to understand a great many things. It would have to learn from each of these specialized producers the unique knowledge of her domain of expertise that allows her to earn a living—for example, whether the lumber would have a more valuable use elsewhere in the economy (to build houses or ships or children’s toys) than as an input for pencils. Absorbing all this information and constantly receiving and processing the necessary updates to keep abreast of evolving conditions in each of these steps of the process, would overwhelm the capacity of even the most skilled managers.

And even if the board somehow had an unlimited capacity to absorb this information, it would still have the unmanageable problem of trying to act on this sea of data. Prices, supply and demand, and production relations in markets arise through a complex interplay of individuals each helping to optimize a tiny part of a broad social process. If, instead, a single board had to plan this entire dance, it would force a small number of individuals to contemplate an endless sequence of choices and plans. Such elaborate calculations are beyond the capacity of even the most brilliant group of engineers.

Mises wrote decades before the rise of the fields of computer science and information theory and lacked any way to formalize these intuitive ideas. Many of Mises’s arguments were dismissed by mainstream economists, whose increasingly narrow mathematical approach to the field Mises disdained. Mises’s critics, including Oskar Lange, Fred Taylor, and Abba Lerner, argued that the market mechanism was but one of many ways (and far from the most efficient way) to organize an economy. They viewed the economy purely mathematically, rather than computationally, and saw no difficulty in principle with solving a (very large) system of equations relating the supply and demand of various goods, resources, and services.

In a simplified picture of the economy, ordinary people perform dual functions as producers (workers, suppliers of capital, etc.) and consumers. As consumers, people have preferences regarding different goods and services. Some people like chocolate, others like vanilla. As producers, they have different talents and capacities. Some people are good at doing math, others at mollifying angry customers. In principle, all we need to do is figure out people’s preferences and their talents, and assign jobs to people who do them best, while distributing the value created by production in the form of goods and services that people really want. Rewards and penalties need to be determined to give people incentives to reveal their preferences and talents, and to ensure that they actually do what they are supposed to do. All of this can be represented mathematically and solved. That’s why socialist economists viewed the economy as a math problem the solution of which only required a computer.

Yet the later development of the theory of computational and communication complexity vindicated Mises’s insights. What computational scientists later realized is that even if managing the economy were “merely” a problem of solving a large system of equations, finding such solutions is far from the easy task that socialist economists believed. In an incisive computational analysis of central planning, statistician and computer scientist Cosma Shalizi illustrates how utterly impossible “solving” a modern economy would be for a central planning board. As Shalizi notes in his essay, “In the Soviet Union, Optimization Problem Solves You,” the computer power it takes to solve an economic allocation problem increases more than proportionately in the number of commodities in the economy.4 In practical terms, this means that in any large economy, central planning by a single computer is impossible.

To make these abstract mathematical relationships concrete, Shalizi considers an estimate by Soviet planners that, at the height of Soviet economic power in the 1950s, there were about 12 million commodities tracked in Soviet economic plans. To make matters worse, this figure does not even account for the fact that a ripe banana in Moscow is not the same as a ripe banana in Leningrad, and moving it from one place to the other must also be part of the plan. But even were there “merely” 12 million commodities, the most efficient known algorithms for optimization, running on the most efficient computers available today, would take roughly a thousand years to solve such a problem exactly once. It can even be proven that a modern computer could not achieve even a reasonably “approximate” solution—and, of course, today there are far more goods, services, transport choices, and other factors that would go into the problem than there were in the Soviet Union in the 1950s. Yet somehow the market miraculously cuts through this computational nightmare.

Markets as Parallel Processors

But all of this raises a question. If the problem is so hard to solve, how is it possible for the market to solve it? Consider Lange’s quote from our epigraph.5 The market is just a set of rules enforced by the government—not much different from a computer algorithm, although a very complex one. It’s true that no single person invented the market. Yet the rules of the market are well understood, and economists are constantly telling people to implement them. Imagine that a new country is created, and its leaders ask a western economist how best to create an economy. The economist will tell them how to set up a market—the rules of contract and property law, for example. (Indeed, economists have been running around the halls of government of developing countries and the floors of start-ups for decades doing just this.) Aren’t the economists just supplying a kind of computer program to the leaders, who by implementing it are engaging in a style of centralized planning?

To understand how the market solves the “very large system of equations,” you need to know the key ideas of distributed computing and parallel processing. In these systems, complicated calculations that no one computer could perform are divided into small parts that can be performed in parallel by a large number of computers distributed across different geographic locations. Distributed computing and parallel processing are best known for their role in the development of “cloud computing,” but their greatest application has gone unnoticed: the market economy itself.

While the human brain is wired differently from a computer, computational scientists estimate that a single human mind has a computational capacity roughly ten times greater than the most powerful single supercomputer at the time of this writing.6 The combined capacity of all human minds is therefore tens of billions of times greater than this most powerful present-day computer. The “market” is then in some sense a giant computer composed of these smaller but still very powerful computers. If it allocates resources efficiently, it does so by harnessing and combining their separate capacities.

Adopting this perspective, we must ask how the market is “programmed” to achieve this outcome. The economy consists of a variety of resources and human capacities at a range of locations, along with a system for transmitting data about these resources among individual human beings. A standard approach in parallel processing is to take information local to one location in, say, a picture or puzzle and assign this to one processor, integrating these inputs on still other processors in a hierarchical fashion. Now apply this image to the economy. In every place, we take one of the computers (humans) available to us and assign it to collect information about that location’s needs and resources and report some parsimonious “compressed” summary of all that data to other computers. For example, there might be a hierarchical arrangement of computers, with those responsible for particular locations on the ground reporting to a higher “layer” that integrates local areas and then upward from there.

Consider the following example. A person works on a farm and is in charge of ensuring that the farm is productive and that her family is happy. This person sends information about the farm and her family, not in its full richness and complexity, but in broad strokes, to district managers. One manager specializes in understanding the resources that farms need to operate—seeds, fertilizer— while another understands the resources that people living on farms need in order to be happy, including food and clothing. These managers would then aggregate these data and convey them to the next layer, perhaps a national wheat distributor or a regional supplier of products for use on farms. At every level of this chain, some information would need to be lost for the parallel processing to remain parallel and tractable: the farm manager could not detail every way in which a slightly better paved road would help in conveying goods to market or how slightly cleaner water would protect her crops. But at least she could report the largest and most important needs and hope that the loss of information only slightly reduces the efficiency of the resulting solution.

This arrangement has a flavor of central planning but also resembles a market economy. People specialize in different parts of the production chain and operate under limited information, yet are able to coordinate their behavior because the information takes a certain form. While people are experts on local conditions, they know little about economic conditions elsewhere. They know that grain prices are high and tractor prices are low, but not why this is the case. When they buy a tractor or sell grain, they don’t tell the vendor or purchaser their life story, all the conditions on their farm, and so forth. They just place an order or offer so much grain at the going price.

This “price system” thus greatly simplifies communication between different parts of the economy. In fact, economists have shown that prices are the minimum information that a farmer needs to plan her operations effectively. So long as every important way that the farm could benefit or draw down resources from the outside world has a price attached to it, this is all the information the farmer needs to make economic decisions. Any greater information would be a waste, from a purely economic efficiency perspective, though it might be interesting from time to time to develop personal relationships. Conversely, if these prices were not available, there would be no way for a farmer to know whether it pays to use new tractors or rely instead on more labor, nor would she know how many seeds to plant for next season. The farmer without such prices could easily produce too little or waste resources on a tractor that could be better used for more labor, seed, or even consumption.

In this sense, prices are the “minimum” information necessary for rational economic decision-making.7 No other system of distributed computing can be equally productive and yet require less communication.

Markets elegantly exploit distributed human computational capacity. In doing so they allocate resources in ways that no present computer could match. Von Mises was right that central planning by a group of experts cannot replace the market system. But his argument was mistakenly taken as implying that the market is “natural” rather than a human-created program for managing economic resources. In fact, there is nothing natural about market institutions. Human beings create markets—in their capacity as judges, legislators, administrators, and even private business people who frequently set up organizations that create and manage markets.

Markets are powerful computers, but whether they produce the greatest good or not depends on how they are programmed. We advocate “Radical Markets” because we believe that in the present stage of technological and economic development, when cooperation has grown too large to be managed by moral economies, the market is the appropriate computer to achieve the greatest good for the greatest number. If we see it as such, we can fix the bugs in the market’s code and enable it to generate more wealth that is distributed more fairly.

By sharpening our understanding of the role and value of markets, the computational analogy clarifies our claim that the solutions we propose are based on extending the reach of markets. The COST on wealth radicalizes markets as it puts greater responsibility on individuals to articulate their values and gives them greater ability to claim things they value highly. QV does the same in the political sphere. Our ideas on migration give individuals more scope for determining the best path for where they live and work. Our proposals on antitrust and data valuation break up centralized power and place greater responsibility on individuals and small firms to compete, innovate, and make rational economic choices to allow for the distributed computation of optimal economic allocations. But all these proposals raise the question: if the market is just a computer program that harnesses the power of individual human intellects, will it still be necessary as computer power increases?

#### COVID has exposed capitalism’s major crises but reforms thru existing institutions can make it sustainable – not an abandonment of current economic systems

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(Mariana Mazzucato, 4-1-2020, "Coronavirus and capitalism: How will the virus change the way the world works?," World Economic Forum, https://www.weforum.org/agenda/2020/04/coronavirus-covid19-business-economics-society-economics-change)

This triple crisis has revealed several problems with how we do capitalism, all of which must be solved at the same time that we address the immediate health emergency. Otherwise, we will simply be solving problems in one place while creating new ones elsewhere. That is what happened with the 2008 financial crisis. Policymakers flooded the world with liquidity without directing it toward good investment opportunities. As a result, the money ended up back in a financial sector that was (and remains) unfit for purpose.

Capitalism is facing at least three major crises. A pandemic-induced health crisis has rapidly ignited an economic crisis with yet unknown consequences for financial stability, and all of this is playing out against the backdrop of a climate crisis that cannot be addressed by “business as usual.” Until just two months ago, the news media were full of frightening images of overwhelmed firefighters, not overwhelmed health-care providers.

The COVID-19 crisis is exposing still more flaws in our economic structures, not least the increasing precarity of work, owing to the rise of the gig economy and a decades-long deterioration of workers’ bargaining power. Telecommuting simply is not an option for most workers, and although governments are extending some assistance to workers with regular contracts, the self-employed may find themselves left high and dry.

Worse, governments are now extending loans to businesses at a time when private debt is already historically high. In the United States, total household debt just before the current crisis was $14.15 trillion, which is $1.5 trillion higher than it was in 2008 (in nominal terms). And lest we forget, it was high private debt that caused the global financial crisis.

Unfortunately, over the past decade, many countries have pursued austerity, as if public debt were the problem. The result has been to erode the very public-sector institutions that we need to overcome crises like the coronavirus pandemic. Since 2015, the United Kingdom has cut public-health budgets by £1 billion ($1.2 billion), increasing the burden on doctors in training (many of whom have left the National Health Service altogether), and reducing the long-term investments needed to ensure that patients are treated in safe, up-to-date, fully staffed facilities. And in the US – which has never had a properly funded public-health system – the Trump administration has been persistently trying to cut funding and capacity for the Centers for Disease Control and Prevention, among other critical institutions.

On top of these self-inflicted wounds, an overly “financialized” business sector has been siphoning value out of the economy by rewarding shareholders through stock-buyback schemes, rather than shoring up long-run growth by investing in research and development, wages, and worker training. As a result, households have been depleted of financial cushions, making it harder to afford basic goods like housing and education.

The bad news is that the COVID-19 crisis is exacerbating all these problems. The good news is that we can use the current state of emergency to start building a more inclusive and sustainable economy. The point is not to delay or block government support, but to structure it properly. We must avoid the mistakes of the post-2008 era, when bailouts allowed corporations to reap even higher profits once the crisis was over, but failed to lay the foundation for a robust and inclusive recovery.

This time, rescue measures absolutely must come with conditions attached. Now that the state is back to playing a leading role, it must be cast as the hero rather than as a naive patsy. That means delivering immediate solutions, but designing them in such a way as to serve the public interest over the long term.

For example, conditionalities can be put in place for government support to businesses. Firms receiving bailouts should be asked to retain workers, and ensure that once the crisis is over they will invest in worker training and improved working conditions. Better still, as in Denmark, government should be supporting businesses to continue paying wages even when workers are not working – simultaneously helping households to retain their incomes, preventing the virus from spreading, and making it easier for businesses to resume production once the crisis is over.

Moreover, bailouts should be designed to steer larger companies to reward value creation instead of value extraction, preventing share buybacks and encouraging investment in sustainable growth and a reduced carbon footprint. Having declared last year that it will embrace a stakeholder value model, this is the Business Roundtable’s chance to back its words with action. If corporate America is still dragging its feet now, we should call its bluff.

When it comes to households, governments should look beyond loans to the possibility of debt relief, especially given current high levels of private debt. At a minimum, creditor payments should be frozen until the immediate economic crisis is resolved, and direct cash injections used for those households that are in direst need.

And the US should offer government guarantees to pay 80-100% of distressed companies’ wage bills, as the UK and many European Union and Asian countries have done.

It is also time to rethink public-private partnerships. Too often, these arrangements are less symbiotic than parasitic. The effort to develop a COVID-19 vaccine could become yet another one-way relationship in which corporations reap massive profits by selling back to the public a product that was born of taxpayer-funded research. Indeed, despite US taxpayers’ significant public investment in vaccine development, the US Secretary of Health and Human Services, Alex Azar, recently conceded that newly developed COVID-19 treatments or vaccines might not be affordable to all Americans.

We desperately need entrepreneurial states that will invest more in innovation – from artificial intelligence to public health to renewables. But as this crisis reminds us, we also need states that know how to negotiate, so that the benefits of public investment return to the public.

A killer virus has exposed major weaknesses within Western capitalist economies. Now that governments are on a war footing, we have an opportunity to fix the system. If we don’t, we will stand no chance against the third major crisis – an increasingly uninhabitable planet – and all the smaller crises that will come with it in the years and decades ahead.

## Regs CP

#### Plan could be a non-antitrust agency – that’s Rogerson and Shelanski [reinserted below]

Rogerson, Charles E. and Emma H. Morrison Professor of Economics at

Northwestern University. He has previously served as Chief Economist of the Federal Communications Commission, and Shelanski, Professor of Law at Georgetown University and a member of the firm Davis Polk & Wardwell LLP. He has formerly served as Director of the Bureau of Economics at the Federal Trade Commission and as Chief Economist of the Federal Communications Commission, ‘20

(William and Howard, “Antitrust Enforcement, Regulation, and Digital Platforms,” 168 U. Penn. L. Rev. 1911)

There are several possible sources for digital platform regulation. Congress could enact new legislation that creates an entirely new regulatory agency for digital platforms or could give new statutory authority to an existing agency. Alternatively, the FTC could promulgate competition rules under authority that it arguably already has under the FTC Act of 1914. Several commentators have argued that the FTC could use its existing statutory authority under the FTC Act to issue broad, antitrust rules that apply generally, to all industries.16 A much more limited, and perhaps less controversial, manner in which the FTC could begin to use this authority would be to pass narrower rules that apply only to specific kinds of conduct and only to digital platform industries. Calls to regulate digital platforms involve several issues that do not centrally fall within the purview of antitrust, notably privacy and control over certain kinds of harmful content.17 To the extent there could be trade-offs among regulatory goals—for example between a platform’s interconnecting with rivals but limiting those rivals’ access to user data, or between providing nondiscriminatory access to thirdparties but blocking those that spread harmful content—there could be economies of scope to having a single agency address those issues, or at least mandating that agencies coordinate inter-related rulemaking.

#### Non-antitrust agency is bad—massive uncertainty and undermines efficient antitrust enforcement

Huddleston, JD, Former Director of Tech and Innovation Policy at AAF, ‘20

(Jennifer, “Why Technology Should Not Be Regulated Like Finance,” September 30, <https://www.americanactionforum.org/insight/why-technology-should-not-be-regulated-like-finance/>)

Not only have there been calls to mirror regulations from the financial sector in order to change competition policy, a recent paper has proposed creating a new specialized regulatory agency to protect consumers and regulate data. As with calls for a Glass-Steagall for tech, this proposal also finds its inspiration in the financial sector, and specifically in the Consumer Financial Protection Bureau (CFPB) created in the wake of the 2008 financial crisis. This paper by former Federal Communications Commission Chairman Tom Wheeler, Phil Verveer, and Gene Kimmelman suggests the creation of a Digital Platform Agency to regulate a number of aspects of current technology platforms to promote consumer protection. The authors recognize that antitrust is a limited tool that should not be used to address policy concerns beyond its intended competition purposes. The lessons of the CFPB show, however, that creating a new agency to focus on a perceived crisis or focus on a sole industry may create new problems and result in over-regulation that deters beneficial uses of data.

The authors argue that while consumers have benefited from technologies, the current behaviors of Big Tech do not benefit consumers and “there are inadequate public policy tools available to protect consumers and promote competition.” Other advocates for creating such an agency have also pointed to data privacy incidents such as the 2018 Cambridge Analytica scandal as a reason to establish such an agency and take a more interventionalist approach.

Creating a new agency is an approach to data regulation taken by European regulators. This approach has tended to create regulatory burdens that are greater for smaller players and also to raise the cost of doing business more generally. More specific regulation on these issues also presumes that consumers’ prefer the tradeoffs of heightened privacy and limited data usage and does not allow consumers to select products that fit their preferences. For example, as the Center for Data Innovation’s Eline Chivot and Daniel Castro point out, this more regulatory approach and the differences in interpretations among European data protection authorities could increase costs and deter certain applications of algorithms and artificial intelligence. The more aggressive regulatory posture that could come from a new agency may dissuade innovators from considering new data practices by signaling the need to seek regulatory approval and increasing the compliance costs associated with pursuing new ideas.

To be sure, American consumers are not without protection when harm does occur. The Federal Trade Commission (FTC) has been an engaged enforcer when needed for consumer harms caused by digital platforms such as data breaches or unfair and deceptive practices. While there are reforms that could provide greater certainty for consumers, innovators, and regulators (as previously discussed), the current FTC approach of mostly responsive actions balances the tradeoffs involved in many data issues while still protecting consumers when harm occurs. A new agency would likely shift this approach.

#### Links to DA—new agencies leech off of existing expert agencies

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(Christine and Raj, “Does Data Privacy Need its Own Agency?” <https://d1y8sb8igg2f8e.cloudfront.net/documents/Does_Data_Privacy_Need_its_Own_Agency.pdf>)

After authorization of the entity and confirmation of leadership, a new independent agency will face basic hurdles to set up agency infrastructure and operations that can be mitigated through agency design. A new agency needs office space; internet, email, and phone service; and a complete complement of staff including not only subject matter experts but also everything from human resources to internal information technology specialists. At a prior OTI panel, David Medine, who served as the first chairman of the PCLOB and also previously served as special counsel at the CFPB, argued that a new agency should “sit on the structure of the old agency until it’s ready to separate.” Medine noted that unlike with the PCLOB, the CFPB staff benefited from being able to use Treasury Department payroll, email, and website infrastructure before the agency was ready to stand on its own. The Brown DPA is the only DPA proposal to use this model of operating on the Federal Reserve System infrastructure. Therefore, while it is more feasible for an existing agency to begin its enforcement duties, a DPA could avoid initial operational problems that other new agencies have faced if it utilized an existing agency’s infrastructure.

#### Circumvention—FTC commission structure is durable—new agency proposals are at whims of new admin

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(Christine and Raj, “Does Data Privacy Need its Own Agency?” <https://d1y8sb8igg2f8e.cloudfront.net/documents/Does_Data_Privacy_Need_its_Own_Agency.pdf>)

All three DPA bills are based on the original leadership model of the CFPB and therefore must be modified to pass constitutional muster. The bill sponsors can decide to strike the for-cause removal requirements: § 301(c)(3) in EshooLofgren, § 4(c)(3) in Gillibrand, and § 301(c)(3) in Brown. Alternatively, they could revise their bills to adopt a multi-member body similar to the FTC. However, this seems unlikely because DPA advocates seek to differentiate their proposed agencies from the FTC, and a single director model is a significant point of distinction.

There are benefits to both the independence of the FTC and the single-director DPA model. Many federal agencies are led by a single director rather than a commission, including the administrator of the Environmental Protection Agency and the attorney general of the Department of Justice (DOJ). The tradeoff to their relative efficiency is less stability. The 2018 Sourcebook of United States Executive Agencies published by the Administrative Conference of the United States endorses the multi-member commission structure as the most stable. The Conference stated, “Among the most durable agencies,” meaning those least susceptible to elimination by hostile administrations, “are those multi-member bodies located outside the executive departments with features such as party-balancing limitations and fixed terms.”

A single-director DPA model is more likely to experience dramatic swings in policy dependent on the president in office, while the FTC model tends to be more consistent across administrations. The CFPB underwent extreme changes in policy under the Obama and Trump administrations that some attribute to the single-director structure. Some scholars argue, however, that single-director agencies are much more efficient than the alternative and that these ideological swings are simply the result of directors reflecting the partisan inclinations of whichever president they were appointed by. Moreover, data privacy legislation has more bipartisan support than Dodd-Frank did when it was passed and therefore would likely not be as susceptible to the dramatic partisan shifts as the CFPB.

## Forecasters CP

#### The distinction between prohibition and regulation is one of words, not substance.

Tobriner 80 – Judge, California Supreme Court

Matthew O. Tobriner, Metromedia, Inc. v. San Diego, 26 Cal. 3d 848, Supreme Court of California, April 1980, LexisNexis

For the reasons we shall offer, however, we believe that this doctrine, too, conflicts with reality and with current views of the police power. The distinction between prohibition and regulation in this case is one of words and not substance. "[Every] regulation necessarily speaks as a prohibition." ( Goldblatt v. Hempstead (1962) 369 U.S. 590, 592 [8 L. Ed. 2d 130, 133, 82 S. Ct. 987].) In the present case, for example, plaintiffs describe the ordinance as a prohibition of off-site advertising, while the city describes it as a regulation of advertising, one which limits advertising to on-site signs. Surely the validity of the ordinance does not depend on the court's choice between such verbal formulas.

## FTC Tradeoff DA

#### Fiat solves – new authority comes with new funding authorization

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(Christine and Raj, “Does Data Privacy Need its Own Agency?” <https://d1y8sb8igg2f8e.cloudfront.net/documents/Does_Data_Privacy_Need_its_Own_Agency.pdf>)

Proposals delegating privacy law enforcement to the FTC generally bolster an existing bureau or establish a new bureau within the agency. Senator Wyden’s Mind Your Own Business Act of 2019 would create a new 50-person Bureau of Technology within the FTC and add 125 employees to the Bureau of Consumer Protection—100 of whom would do privacy enforcement work.102 This would bring the total number of FTC employees doing privacy enforcement work up to about 190. While the Wyden bill does not provide figures for how much adding 175 new employees would cost, former FTC Chairman Joseph Simons estimated that a $50 million budget increase from Congress would enable the FTC to hire 160 new staff.103 Under this proposal, the number of employees working on privacy would more than triple. However, it would still only be about one-tenth the size of the Eshoo-Lofgren DPA proposal.

#### FTCs new rulemaking agenda overstretches the agency

Wilson, FTC Commissioner, ‘12/10/21

(Christine S., Dissenting Statement of Commissioner Christine S. Wilson

Annual Regulatory Plan and Semi-Annual Regulatory Agenda, <https://www.ftc.gov/system/files/documents/public_statements/1598839/annual_regulatory_plan_and_semi-annual_regulatory_agenda_wilson_final.pdf>)

The context in which the Commission announces this ambitious and resource-intensive rulemaking agenda gives independent cause for concern. The “surge in merger filings” has been a central focus of Chair Khan since her arrival at the agency.2 To address the uptick in merger filings, staff from many non-merger divisions throughout the agency have been commandeered to review pre-merger notification materials.3 These filings are subject to statutory timeframes, but the FTC has struggled to meet its timing obligations.4 Consequently, the FTC’s Bureau of Competition is now sending warning letters to merging parties whose statutory timeframes have expired, warning that the agency’s investigations continue and threatening that if they proceed to consummate their transactions, they do so at their own peril.5 It is puzzling that we would unleash an avalanche of rulemakings while also confronting a tsunami of merger filings.

Merger wave or no merger wave, my Democrat colleagues have long aspired to a more expansive rulemaking agenda for the agency.6 This year, they began taking steps to implement that goal. Acting Chairwoman Slaughter created a new rulemaking group within the FTC’s Office of General Counsel to “help build [the] Commission’s rulemaking capacity and agenda for unfair or deceptive practices and unfair methods of competition.”7 She also launched a review of the Commission’s Rules of Practice to “streamline” rulemaking procedures under Section 18 of the FTC Act.8 Chair Khan then ushered those changes across the finish line.9 While the Annual Regulatory Plan and Semi-Regulatory Agenda characterize those changes to our Rules of Practice as “eliminating extra bureaucratic steps and unnecessary formalities,” in reality those changes fast-track regulation at the expense of public input, objectivity, and a full evidentiary record.10 The Statement of the Commission issued in conjunction with those rule changes confirmed a desire for an ambitious rulemaking agenda,11 which predictably is reflected in this plan.

The regulatory plan identifies many rulemakings that will be launched in the coming months, including a trade regulation rule on commercial surveillance “to curb lax security practices, limit privacy abuses, and ensure that algorithmic decision making does not result in unlawful discrimination.”12 This rule may implicate competition as well as consumer protection issues, as the Statement of Regulatory Priorities notes that “surveillance-based business models” impact not just consumers but competition.13

And taking a big step into uncharted waters, the plan states that “the Commission will also explore whether rules defining certain ‘unfair methods of competition’ prohibited by Section 5 of the FTC Act would promote competition and provide greater clarity to the market.”14 In deference to President Biden’s recent Executive Order,15 the Commission may consider competition rulemakings relating to “non-compete clauses, surveillance, the right to repair, payfor-delay pharmaceutical agreements, unfair competition in online marketplaces, occupational licensing, real-estate listing and brokerage, and industry-specific practices that substantially inhibit competition.”16 As if this list is insufficiently lengthy, the plan observes that “[t]he Commission will explore the benefits and costs of these and other competition rulemaking ideas.”17 In the absence of further detail, the reader is left to daydream about the additional rulemaking adventures that await.

#### Squo litigation model horribly costly

Chopra, Commissioner, Federal Trade Commission, and Khan, FTC Chair, Academic Fellow, Columbia Law School; Counsel, Subcommittee on Antitrust, ‘20

(Rohit and Lina, “The Case for “Unfair Methods of Competition” Rulemaking,” 87 U. Chi. L. Rev. 357)

The current approach to antitrust also makes enforcement highly costly and protracted. In 2012, the American Bar Association (ABA) published the report of a task force that sought to “study ways to control the costs of antitrust litigation and enforcement.”9 The task force, the authors explained, was “a response to concerns” about both “the costs imposed on businesses by the American system of antitrust enforcement” and “the length of time required to resolve antitrust issues both in litigation and in enforcement proceedings.”10 Out-of-control costs undermine effective antitrust enforcement by agencies and private litigants, but may advantage actors who profit from anticompetitive practices and can treat litigation as a routine cost of business.

Professor Michael Baye and Former Commissioner Joshua Wright have noted that generalist judges may be ill-equipped to independently analyze and assess evidence presented by economic experts.11 Because determining the legality of most conduct now involves complex economic analysis, courts have effectively “delegate[d] both factfinding and rulemaking to courtroom economists,” making courtroom economics “not just inevitable but often dispositive.”12 In fact, paid expert testimony now is often “the ‘whole game’ in an antitrust dispute.”13

Paid experts are a major expense. Some experts charge over $1,300 an hour, earning more than senior partners at major law firms.14 Over the last decade, expenditures on expert costs by public enforcers have ballooned.15 In a system that incentivizes firms to spend top dollar on economists who can use ever-increasing complexity to spin a favorable tale, the eye-popping costs for economic experts can put the government and new market entrants at a significant disadvantage.16

Another component of the burden is that antitrust trials are extremely slow and prolonged.17 The Supreme Court has criticized antitrust cases for involving “interminable litigation”18 and the “inevitably costly and protracted discovery phase,”19 yielding an antitrust system that is “hopelessly beyond effective judicial supervision.”20 That it can easily take a decade to bring an antitrust case to full judgment means that by the time a judge orders a remedy, market circumstances are likely to have outpaced it.21 The same 2012 ABA report suggested that lengthy, costly litigation may be contributing to reduced government-enforcement efforts over time relative to the expansion of the US economy.22

#### Shifting to regulatory model frees up resources

Chopra, Commissioner, Federal Trade Commission, and Khan, FTC Chair, Academic Fellow, Columbia Law School; Counsel, Subcommittee on Antitrust, ‘20

(Rohit and Lina, “The Case for “Unfair Methods of Competition” Rulemaking,” 87 U. Chi. L. Rev. 357)

Second, establishing rules could help relieve antitrust enforcement of steep costs and prolonged trials. Identifying ex ante what types of conduct constitute “unfair method[s] of competition” would obviate the need to establish the same exclusively through ex post, case-by-case adjudication. Targeting conduct through rulemaking, rather than adjudication, would likely lessen the burden of expert fees or protracted litigation, potentially saving significant resources on a present-value basis.47

Moreover, establishing a rule through APA rulemaking can be faster than litigating multiple cases on a similar subject matter. For taxpayers and market participants, the present value of net benefits through the promulgation of a clear rule that reduces the need for litigation is higher than pursuing multiple, protracted matters through litigation. At the same time, rulemaking is not so fast that it surprises market participants. Establishing a rule through participatory rulemaking can often be far more efficient. This is particularly important in the context of declining government enforcement relative to economic activity, as documented by the ABA.48

#### Scenario fails—no privacy rule uq, legal challenges kill it

David Uberti, WSJ, FTC’s Effort to Strengthen Online Privacy Protections Faces Hurdles, 11/1/21, <https://www.wsj.com/articles/ftcs-effort-to-strengthen-online-privacy-protections-faces-hurdles-11635845401>

The Federal Trade *C*ommission has outlined *a* far-reaching vision for protecting consumers’ privacy online, but the plan faces challenges including budget constraints, personnel changes and potential legal pushback.

Critics of big technology companies have praised the FTC’s effort, which comes after years of inaction in Congress on the issue, even as businesses have ramped up data collection. The FTC has pledged to go it alone by intensifying scrutiny of digital advertising and exploring new rules for how companies can collect and use consumers’ information.

The agency hasn’t announced the start of any broad rule-making process. But its new chairwoman, Lina Khan, a Democrat who has criticized big business, said in an October statement on the FTC’s data strategy that she intends to explore privacy standards as she probes emerging technologies, discriminatory data practices and companies’ amassing of consumer information to cement their market power.

Current and former FTC officials say budgetary wrangling in Congress will shape the agency’s ultimate impact on data privacy. Some observers also caution that writing broadly defined privacy rules under a rarely used authority known as Magnuson-Moss might lead the agency into legal gray areas that could result in successful industry lawsuits.

“For those who say that Congress hasn’t acted, so let’s have the FTC do it, it’s an uphill climb,” said Jessica Rich, who stepped down as director of the FTC’s Bureau of Consumer Protection in 2017 and now works for law firm Kelley Drye & Warren LLP.

The agency is reviewing piecemeal data regulations authorized in specific laws, issuing an update last week to a rule requiring financial institutions to secure customer data.

Some Democratic lawmakers have also urged the FTC to use its Magnuson-Moss authority, established in 1975, to write more general rules for data usage. Under that authority, the FTC could prohibit certain activity and potentially fine companies on the first offense.

To restrict a behavior under a rule created through Magnuson-Moss, the agency would have to argue it constitutes an unfair or deceptive practice that harms consumers, said Justin Brookman, a former FTC official who is now director of consumer privacy and technology policy for advocacy group Consumer Reports. There is little precedent for such arguments about privacy and they could be challenged in court, Mr. Brookman said: “We’re off the map here.”

Consumer advocates say the agency could use such power to restrict digital advertising, which relies on an opaque exchange of data among businesses to target users with content. Representatives for Facebook parent Meta Platforms Inc., Alphabet Inc.’s Google and Amazon.com Inc., which together control about 90% of the digital advertising market, didn’t respond to requests for comment.

Julie Brill, Microsoft Corp.’s chief privacy officer, said new privacy standards could improve trust in the technology sector by zeroing in on data brokers or “gatekeepers” that take potentially anticompetitive actions through measures aimed at security or privacy.

Ms. Brill, a former FTC commissioner, didn’t name particular companies. Google has drawn such criticism over its decision to end third-party cookies that rival companies use to target ads. Apple Inc.’s recent move to restrict how users are tracked on mobile devices has also come under fire from companies that say they have to spend a lot more money to find new customers. A representative for Apple didn’t respond to a request for comment.

While the Biden administration has promised to hold big tech companies accountable, broad rules could prevent businesses from making innovative use of consumer data in the future, said James Cooper, a former official in the FTC’s Bureau of Consumer Protection who is now an associate professor at the Antonin Scalia Law School at George Mason University. Such regulations could take several years to complete despite Democratic commissioners voting in July to streamline the Magnuson-Moss process, Mr. Cooper added.

Ms. Khan, who became FTC chairwoman in June, in her recent statement on the agency’s data strategy called for a shift away from the “notice-and-consent” framework for privacy, in which companies explain their data practices and ask for consumers’ permission to collect and use their information. Ms. Khan wrote that policing unfair or deceptive practices through that lens can sidestep “more fundamental questions about whether certain types of data collection and processing should be permitted in the first place.”

The agency told Congress that its inquiries into such behaviors would include more aggressive probes of digital platforms and enforcement of existing settlements with companies such as Facebook, now called Meta.

The FTC said the expansion would hinge on at least tripling the size of its Division of Privacy and Identity Protection, which has about 40 staffers.

Democratic lawmakers in September suggested creating a new FTC privacy bureau with $1 billion in funding from President Biden’s social-policy plan. But the administration last week pared down the sum to $500 million in its latest blueprint for the package.

Ms. Khan has introduced her approach amid a personnel shake-up that could influence potential rule-making, current and former officials said.

Two staffers who have overseen the FTC’s privacy work in recent years, the deputy director of the Consumer Protection Bureau and the associate director of the Division of Privacy and Identity Protection, left in October to join law firms. An agency spokeswoman didn’t respond to a request for comment on the departures.

Separately, President Biden nominated Alvaro Bedoya, a privacy scholar at Georgetown University, to an open seat on the commission. If approved by the Senate, Mr. Bedoya’s appointment would return Democrats to the majority of the five-member panel. The commission currently has two Democrats and two Republicans.

Noah Phillips, a GOP commissioner, said that differing views on FTC rules illustrate why Congress is best suited to define guardrails, rather than the panel on which he could soon be in the minority.

“The resolution of that question is much better had by elected officials than by, potentially, just three people,” he said.

# 1AR

## Self-Preferencing Adv

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## Data Adv

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#### Prohibitions are thresholds, and the remedy is determined afterward

Mark S. Popofsky, Antitrust Partner at Ropes and Gray, Served as Senior Counsel to DOJ Antitrust Division, Adjunct Professor of Advanced Antitrust Law and Economics at Harvard Law School and the Georgetown University Law Center, 2016, Section 2 and the Rule of Reason: Report from the Front, CPI Antitrust Chronicle March 2016 (1)

Courts remain, in the words of one observer, mired in an “exclusionary conduct ‘definition’ war.”2 Applying Section 2’s broad prohibition on “monopolizing” conduct requires courts to select a governing legal test. Section 2 legal tests run the spectrum from rules of per se legality to rules of near per se illegality.3 Courts, nonetheless, largely apply two dominant paradigms. The first consists of legal tests based on bright-line rules or safe harbors. Familiar examples include the Brooke Group4 below-cost price test for analyzing predatory pricing claims and the Aspen/Trinko5 “profit sacrifice” test for refusals to deal. Developing bright-line rules for Section 2, proponents argue, promotes business certainty and reduces the risk of chilling otherwise procompetitive conduct. The second paradigm is rule of reason balancing. Arguably the default Section 2 legal test,6 courts and commentators have described Section 2’s rule of reason in various ways: as mandating a step-wise approach, as requiring a balancing of pro- and anticompetitive effects, or (to borrow from Section 1) a framework for generating the enquiry “meet for the case.”7 However the rule of reason is expressed, its champions contend, its flexibility and fact-intensive approach permits courts to identify anticompetitive conduct without the under-inclusion that is an admitted feature of safe harbors and other bright-line rules.

#### Prohibition turns on whether something is anticompetitive or not, NOT the remedy

Light, Assistant Professor of Legal Studies and Business Ethics, The Wharton School, University of Pennsylvania, ‘19

(Sandra, “The Law of the Corporation as Environmental Law,” 71 Stan. L. Rev. 137)

The more fact-intensive inquiry under the rule of reason tests “whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition.”196 While this extremely broad statement might suggest that any fact is relevant to the inquiry, the salient facts under the rule of reason are “those that tend to establish whether a restraint increases or decreases output, or decreases or increases prices.”197 If an anticompetitive effect is found, then the action is illegal and the rule of reason operates, like the per se rule, as a prohibition.198 The rule of reason can also operate as a disincentive, even if no court finds an anticompetitive effect, as uncertainty and litigation risk may discourage firms from undertaking legally permissible, environmentally positive industry collaborations.199

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No cards

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#### Financialization theory is wrong

Konings, 18

Martijn Konings, Associate Professor of Political Economy at the University of Sydney, author of *The Emotional Logic of Capitalism* and *Capital and Time: For a New Critique of Neoliberal Reason*, series editor for the Stanford University Press book series, Currencies. 02-07-18. “A Critique of the Critique of Finance.” Stanford University Press Blog. https://stanfordpress.typepad.com/blog/2018/02/a-critique-of-the-critique-of-finance.html

Critics of neoliberal capitalism rarely recognize the productive power of speculation. If there is one theme that unites the various critiques of contemporary finance, it is the emphasis on its speculative character. Financial growth is said to be driven not by the logic of efficient markets, but rather by irrational sentiment, “animal spirits” that do not respect fundamental values. Emphasizing the role of volatility in contemporary capitalism (evident at the time of writing, as the stock market is experiencing a downturn) is important as an antidote to notions of market efficiency and equilibrium. But it is a mistake to think that it provides a sufficient basis for effective critique. Predictions regarding the limits or collapse of neoliberal finance have simply not enjoyed a good track record. Over and over, the contemporary financial system has proven capable of sustaining higher levels of speculative activity than anticipated. This has certainly been true of the past decade. Capital and Time: For a New Critique of Neoliberal Reason is my attempt to make sense of this—that is, to understand what might be wrong or missing in the existing heterodox critique of speculation, and to advance a more accurate understanding of the role of uncertainty, risk, and speculation in contemporary capitalism. At the heart of the critique of speculation we find a distinction between real and fictitious forms of value. Although “essentialist” (or “foundationalist”) modes of explanation have been under fire across the social sciences for several decades now, when it comes to the critique of finance they have had considerable staying-power: without a notion of real value, it often seems, we lose any objective standard against which to assess the speculative gyrations of capitalist markets. Capital and Time asks what kind of critical theory we might develop if we bracket the anxious attachment to a notion of fundamental value. To that end, it turns to the work of economist Hyman Minsky. Although Minsky has been popularized precisely as a critic of speculation, he in fact insisted that almost all value judgments and investments were to some degree speculative—their success or failure would be determined in an unknown future. For him, the key economic question is how order emerges in a world that offers no guarantees, how more or less stable standards and norms arise amidst uncertainty. Of course, the “endogenous” origin of financial standards is a well-rehearsed theme in heterodox economics—indeed, it is a staple of the “post-Keynesian” literature that claims Minsky’s legacy. But such perspectives have never been able to break with the idea that financial stability is at its core dependent on external interventions that suppress speculative impulses. For Minsky, however, this is to miss the point about endogeneity. To his mind, there was no clear dividing line between financial practices and their governance: central banks and other public authorities are no more able to see into the future and to transcend uncertainty than private investors are. Minsky was therefore highly skeptical about official claims of discretionary precision management: financial governance is always embroiled in the very risk logic that it is charged with managing. That also means that financial policy can appear quite ordinary, even banal: at the heart of capitalist financial management is a logic of backstopping and bailout that responds to the possibility that the failure of an institution may take down wider financial structures. The stability of the post-New Deal financial system is often attributed to the Glass-Steagall separation of the stock market and commercial banking. But Minsky tended to view Glass-Steagall as one of several measures to direct bank credit away from the stock market towards other, no less speculative ends, notably consumer and mortgage financing. To his mind, the stability of the post-war period derived rather from the creation of an extensive financial safety net (which included, for instance, deposit insurance, which removed the rationale behind bank runs) that served to socialize risk. This institutional arrangement turned out to have a significant drawback: a pattern of chronic inflation emerged that, by the late 1970s, was widely perceived as a major problem. Minsky’s lack of faith in the possibility of cleanly staged external interventions led him to feel that that there was no real way out of this predicament. Monetarist doctrines, ascendant during the 1970s under the influence of Milton Friedman, relied on exactly the belief in an arbitrarily defined monetary standard that Minsky rejected as naïve. Muddling through, it seemed, was the price of avoiding another financial crash and depression. The Volcker shock of 1979 changed this dynamic in a way that Minsky had not foreseen but that is comprehensible when seen through the lens he provided us with. Paul Volcker looked to monetarism not as a means to enforce an external limit or standard on the financial system, but as a politically expedient way to break with accommodating policies and to proactively engage the endogenous dynamics of finance. The consequences of the Volcker shock were predictable (which is exactly why the Federal Reserve had been reluctant to pursue similar policies in previous years): inflation gave way to instability and crisis. Inflation was conquered as jobs were lost and wages stagnated. And, far from money being returned to its neutral exchange function, opportunities for speculation multiplied. The American state was never going to sit idly by as the financial system returned to dynamics of boom and bust: when instability took the form of systemic threats, authorities would bail out the institutions that had overextended themselves. Of course, Volcker would not have been able to predict the specific features of the too-big-to-fail regime as it emerged during the 1980s and evolved subsequently; but the very point of the neoliberal turn in financial management that he had overseen was to create a context where risk could be socialized in ways that were more selective and therefore did not entail generalized inflation. The inflation of asset values that has been such a marked feature of the past four decades has always been premised centrally on the willingness of authorities to view the “moral hazard” of the too-big-to-fail logic as a policy instrument—even if they may have decried it officially as a regrettable corruption of market principles. Spectacular bailouts, mundane policies to protect the key nodes of the payment systems, the “Greenspan put”, the different iterations of quantitative easing—these are all variations on that basic too-important-to-fail logic. Existing critical perspectives tend to view crisis and the need for bank bailouts as manifesting the essential incoherence of neoliberal finance, its lack of solid foundations and the irrationality of speculation. Capital and Time breaks with such moralistic assessments. The way deepening inequality and the speculative growth of asset values continue to feed off each other is troubling for any number of reasons, but there is nothing inherently “unsustainable” about it—the process does not have a natural or objective limit. At this point in time, the critique of speculation does little more than lend credibility to official discourses that present crises as preventable and bailouts as one-off, never-to-be-repeated interventions. In that way, it prevents us from critically relating to a neoliberal reality that has been shaped to its core by the speculative exploitation of risk and uncertainty, and in which regressive risk socialization serves as the everyday logic of financial governance.

#### U.S. is dematerializing resource usage – answers REMs and carbon

-air pollution

-GHGs

-ag

-nitrogen, potassium, phosphorus

-wood

-metal

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Andrew McAfee, “Why Degrowth Is the Worst Idea on the Planet,” *Wired*, 6 October 2020, https://www.wired.com/story/opinion-why-degrowth-is-the-worst-idea-on-the-planet/.

Easing Pollution, Not Exporting It

In some important areas, however, a very different pattern emerged after 1970: Growth continued, but environmental harm decreased. This decoupling occurred first with pollution, and first in the rich world. In the US, for example, aggregate levels of six common air pollutants have declined by 77 percent, even as gross domestic product increased by 285 percent and population by 60 percent. In the UK, annual tonnage of particulate emissions dropped by more than 75 percent between 1970 and 2016, and of the main polluting chemicals by about 85 percent. Similar gains are common across the highest-income countries.

How were these reductions achieved? The two possibilities are cleanup and offshoring. Either rich countries figured out how to reduce their “air pollution per dollar” so much that overall pollution went down even as their economies grew, or they sent so much of their dirty production overseas that the air at home got cleaner. The first of these paths reduces the total burden of human-caused pollution; the second just rearranges it.

The evidence is overwhelming that rich countries cleaned up their air pollution much more than they outsourced it. For one, a great deal of air pollution comes from highway vehicles and power plants, and rich countries haven’t outsourced driving and generating electricity to low-income ones. In fact, high-income countries haven't even offshored most of their industry. The US and UK both manufacture more than they did 50 years ago (at least until the Covid-19 pandemic sharply reduced output), and Germany has been a net exporter since 2000 while continuing to drive down air pollution. The rest of the world has been exporting its manufacturing pollution to Germany (to use degrowthers’ phrasing), yet Germans are breathing cleaner air than they were 20 years ago.

Rich countries have reduced their air pollution not by embracing degrowth or offshoring, but instead by enacting and enforcing smart regulation. As economists Joseph Shapiro and Reed Walker concluded in a 2018 study about the US, “changes in environmental regulation, rather than changes in productivity and trade, account for most of the emissions reductions.” Research about the cleanup of US waters also concludes that well-designed and enforced regulations have successfully reduced pollution.

It is true that the US and other rich countries now import lots of products from China and other nations with higher pollution levels. But if there were no international trade at all, and rich countries had to rely exclusively on their domestic industries to make everything they consume, they’d still have much cleaner air and water than they did 50 years ago. As a 2004 Advances in Economic Analysis and Policy study summarized: “We find no evidence that domestic production of pollution-intensive goods in the US is being replaced by imports from overseas.”

The rich world’s success at decoupling growth from pollution is an inconvenient fact for degrowthers. Even more inconvenient is China's recent success at doing the same. China’s export-led, manufacturing-heavy economy has been growing at meteoric rates, but between 2013 and 2017 air pollution in densely populated areas declined by more than 30 percent. Here again the government mandated and monitored pollution declines and so decoupled growth from an important category of environmental harm.

Prosperity Bends the Curve

China's progress with air pollution is heartening, but it's not surprising to most economists. It's a clear example of the environmental Kuznets curve (EKC) in action. Named for the economist Simon Kuznets, EKC posits a relationship between a country's affluence and the condition of its environment. As GDP per capita rises from an initial low level, so too does environmental damage; but as affluence continues to increase, the harms level off and then start to decline. The EKC is clearly visible in the pollution histories of today's rich countries, and it's now taking shape in China and elsewhere.

Also consider air pollution death rates around the world. As the invaluable website Our World in Data puts it, “Rates have typically fallen across high-income countries: almost everywhere in Europe, but also in Canada, the United States, Australia, New Zealand, Japan, Israel and South Korea and other countries. But rates have also fallen across upper-middle income countries too, including China and Brazil. In low and lower-middle income countries, rates have increased over this period.”

The EKC is a direct refutation of a core idea of degrowth: that environmental harms must always rise as populations and economies do. It's not surprising that today's degrowth advocates rarely discuss the large reductions in air and water pollution that have accompanied higher prosperity in so many places around the world. Instead, degrowthers now focus heavily on one kind of pollution: greenhouse gas emissions.

The claims made are familiar ones: that any apparent reductions in greenhouse gas emissions in rich countries are due to offshoring rather than actual decarbonization. Thanks to the Global Carbon Project, we can see if this is the case. GCP has calculated “consumption-based emissions” for many countries going back to 1990, taking into account imports and exports, yielding the greenhouse gas emissions embodied in all the goods and services consumed in each country each year.

For several of the world's richest countries, including Germany, Italy, France, the UK, and the US, graphs of consumption-based carbon emissions follow the familiar EKC. The US, for example, has 22reduced its total (not per capita) consumption-based CO2 emissions by more than 13 percent since 2007.

These reductions are not mainly due to enhanced regulation. Instead, they've come about because of a combination of tech progress and market forces. Solar and wind power have become much cheaper in recent years and have displaced coal for electricity generation. Natural gas, which when burned emits fewer greenhouse gases per unit of energy than does coal (even after taking methane leakage into account), has also become much cheaper and more abundant in the US as a result of the fracking revolution.

To ensure that these greenhouse gas declines continue to spread and accelerate, we should apply the lessons we've learned from previous pollution reduction success. In particular, we should make it expensive to emit carbon, then watch the emitters work hard to reduce this expense. The best way to do this is with a carbon dividend, which is a tax on carbon emissions where the revenues are not kept by the government but instead are rebated to people as a dividend. William Nordhaus won the 2018 Nobel Prize in economics in part for his work on the carbon dividend, and an open letter advocating its implementation in the US has been signed by more than 3,500 economists. It's an idea whose time has come.

How We Learned to Lighten Up

Tech progress and price pressure aren't just leading to the demise of coal. They're also causing us to exploit the planet less in many other important ways, even as growth continues. In other words, EKCs are not just about pollution any more.

A good place to start examining this broad phenomenon of getting more from less is US agriculture, where we have decades of data on both outputs—crop tonnage—and the key inputs of cropland, water, and fertilizer. Domestic crop tonnage has risen steadily over the years and in 2015 was more than 55 percent higher than in 1980. Over that same period, though, total water used for irrigation declined by 18 percent, total cropland by more than 7 percent. That is, over that 35-year period, US crop agriculture increased its output by more than half while giving an area of land larger than Indiana back to nature and eventually using a Lake Champlain less water each year. This was not accomplished by increasing fertilizer use; total US fertilizer consumption in 2014 (the most recent year for which data are available) was within 2 percent of its 1980 level.

The three main fertilizers of nitrogen, potassium, and phosphorus (NKP) are an interesting case study. Their total US consumption (once other uses in addition to agriculture are taken into account) has declined by 23 percent since 1980, according to the United States Geological Survey. Yet some within the degrowth movement find ways to argue that these declines are also an illusion. These materials thus serve to clearly illustrate the differences in methodology, evidence, and worldview between ecomodernists like myself and degrowthers.

The USGS tracks annual domestic production, imports, and exports of NKP and uses these figures to calculate “apparent consumption” each year. Consumption of each of the three resources has declined by 16 percent or more from their peaks, which occurred no later than 1998. This seems like a clear and convincing example of dematerialization—getting more output from fewer material inputs.

As I argue in my book More From Less, dematerialization doesn’t happen for any complicated or idiosyncratic reason. It happens because resources cost money that companies would rather not spend, and tech progress keeps opening up new ways to produce more output (like crops) while spending less on material inputs (like fertilizers). Modern digital technologies are so good at helping producers get more from less that they're now allowing the US and other technologically sophisticated countries to use less in total of important materials like NKP.

Forest products provide another clear example of dematerialization in the US. Total annual domestic consumption of paper and paperboard peaked in 1999, and of timber in 2002. Both totals have since declined by more than 20 percent. Could these be mirages caused by offshoring that’s not properly captured? That’s highly unlikely, as the country is now onshoring more than it’s offshoring. The US has been a net exporter of forest products since 2009 and is now the world’s largest exporter of these materials.

Is the US economy also dematerializing its use of metals? Probably, but it’s hard to say for sure. The USGS tallies do show dematerialization in steel, aluminum, copper, and other important metals. But these figures don’t include the metals contained in imports of finished goods like cars and computers. America is a net importer of manufactured goods, so it could be that we’re using more metal year after year, but that much of this consumption is “hidden” from official statistics because of imports of heavy, complex products. However, my estimates indicate that this is extremely unlikely and that the country is in fact now reducing its overall consumption of metals.

#### It’s impossible for the state to aggregate enough data to effectively allocate resources.

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Nils, Christian Sandström, & Karl Wennberg, 2020, “Bureaucrats or Markets in Innovation Policy? – a critique of the entrepreneurial state,” The Review of Austrian Economics, vol. 34, pg. 81–95.

Information problems concern the difficulty a public actor face in collecting the information and acquiring the knowledge enabling correct decision-making regarding, for example, the allocation of resources. As Hayek (1945) showed, it is practically impossible to aggregate information and knowledge about production conditions, business opportunities, customer preferences, etc. to any central unit in society. Such information is dispersed, local, and time-bound in character, even in today’s modern digital economy. With regard to innovation policy and the results reviewed above, there are numerous implications of Hayek’s argument.

First, the existence of a market failure is empirically difficult to prove, or measure. The original argument by Arrow (1962) was of a theoretical nature and has not been validated. One could expect the potential size of such a market failure to vary greatly depending upon institutional characteristics, industrial context, regional and national setting. Such differences along with the fact that it is a very methodologically challenging task to locate and compute the size of a market failure means that policymakers are put in the awkward position of trying to solve a problem that is unknown both in terms of its existence, size and location. Needless to say, such a situation is almost bound to result in malinvestments.

The second implication concerns that a market economy is more compatible with the notion of dispersed knowledge than a public policy intervention. Industrial development in a market economy characterized by innovations is often described as a complex evolutionary process (Nelson and Winter 1982). Through experimental search characterized by failures and unpredictable breakthroughs, the economy develops over time (Aldrich 1999). Individual market actors make mistakes and invest in the wrong technical solution or the wrong business model for a new technology (Delmar et al. 2011). If the actors themselves who operate in a market are unable to know which technology or business model is optimal, there is reason to question how a public actor in the form of a government agency or a policymaker can perform this task satisfactorily. Government involvement in the form of “picking winners,” that is, attempts to generate growth through government selection of technologies or firms, risks becoming expensive for taxpayers (Lerner 2009). Previous research has shown that venture capital investments tend to be highly spatial and build on social networks (Hochberg et al. 2007). The price mechanism provides aggregate information about customers’ demand, and the firms’ profits and losses. Information and knowledge are thus conveyed and generated among market actors in competitive markets who are nested together through social, economic and technological interdependencies, and this information is hard to extract from its origin and locate in a central policy unit.

#### Only competition allocates R&D investments effectively – profit motive is key

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John, 11-29-16, “Despite China Favoring State-Owned Enterprises, Its Private Companies are More Innovative and Productive,” ITIF, <https://itif.org/publications/2016/11/29/despite-china-favoring-state-owned-enterprises-its-private-companies-are>

Private firms are not only more R&D intensive than SOEs, they too are better able to translate these R&D investments into productivity growth. Every 1¥ invested in R&D by a private firm returned an additional 0.16¥ in output, while every 1¥ invested in R&D by a SOE returned an additional 0.12¥ in output—[approximately a 30 percent difference](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2570736).

China’s own experience with privatizing some SOEs since joining the WTO in 2001 should give them even more reason to fully embrace market-based economic trade policies. A separate [economic analysis](http://socialsciences.cornell.edu/wp-content/uploads/2015/03/Intellectual-Property-Protection.pdf) covering firm data between 1990 and 2013 shows that, on average, when a SOE switched to private ownership, R&D as a share of net assets doubled, or an increase of 0.14 percentage points. This surge in innovative activity also explains why patenting increased by 7.2 percent, which was accompanied by high-quality patents and more collaborative R&D with international companies.

Market dynamics explain most of this sizable difference in productivity and innovation outcomes between firm ownership types. Privately-owned firms tend to operate in more competitive industries, which forces them to make more effective R&D investments to stay ahead of other firms. Conversely, state-owned firms tend to operate in less competitive industries or are insulated from market competition induced through SOE-favoring policies that limit competition in such industries and create an uneven playing field for both domestic and international private companies.