# 1AC Navy v2

**1AC---Platforms**

Advantage 1 is Platforms---

**Platform companies facilitate transactions between two sets of users—think Amazon—the *Amex* decision made it extremely difficult to challenge anticompetitive conduct in platform markets**

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(Herbert, “Antitrust and Platform Monopoly,” 130 Yale L.J. 1952)

A. Against Platform Exceptionalism

**In *Amex***, the Supreme Court **disregarded a basic principle about markets**, which is that they consist of **close substitutes**.212 Instead, it lumped production complements into the same market, and in the process, it **stymied coherent economic analysis** of the problem. To be sure, power in one side of a two-sided market cannot be assessed without determining what is occurring on the other side. But one does not need to group the two sides into the same “market.” Rather, a relevant market should be determined by reference to the side where anticompetitive effects are feared. Then, assessing power requires the fact finder to consider offsetting effects, some of which may occur on the other side.213

Second, the Court ignored an important distinction between fact and law. Disputes about market boundaries involve questions of fact. Nevertheless, the majority wrote—**as a matter of law**—that two-sided platforms compete **exclusively with other two-sided platforms**. These dicta have already produced **mischief in lower-court decisions**. For example, it led one court to conclude that a merger between a two-sided online flight-reservation system and a more traditional system **could not be a merger of competitors**.214

Third, without argument or evidence, the Court required litigants to show market power indirectly in vertical restraints cases by reference to a relevant market, even though superior techniques are available. Direct measures are particularly useful in digital markets, where the necessary data are easy to obtain and product differentiation makes traditional market definition unreliable.215 This was another breach of the boundary between fact and law.

Fourth, the Court misunderstood the economics of free riding, ignoring the fact that when a firm is able to recover the value of its investments through its own transactions, free riding is not a problem.

Fifth, the Court **failed** to perform the kind of **transaction-specific factual analysis** that has become **critical to economically responsible antitrust law**. Rather, it simply assumed, **without examining the actual transactions** before it, that losses on one side of a two-sided market are **inherently offset by gains on the other side**.216 Amex’s antisteering rule produced immediate losses for both the affected cardholder and the affected merchant. The only beneficiary was Amex, the operator of a platform able to shelter itself from competition. That competition, in turn, would have benefitted both cardholders and merchants.

Markets differ from one another.217 This is why we apply mainly antitrust law to **some markets**, regulation to others, and some mixture of the two to yet others. It is also why antitrust is **so fact intensive**, particularly on issues pertaining to market power or competitive effects. Indeed, the **biggest advantage that antitrust has** over legislative regulation is its **fact-driven methodology**. Antitrust courts do and should **avoid speaking categorically** about market situations that are not immediately before them and avoid making cursory conclusions based on inadequate facts. Within the antitrust framework, **there is no reason to think that digital platforms are unicorns** whose rules as a class differ from those governing other firms. Every market has its distinct features, but the ordinary rules of antitrust analysis are **adequate to consider them**. The ***Amex*** decision is a **cautionary tale** about what can happen when a court is so overwhelmed by a market’s idiosyncrasies that it makes **grand pronouncements**, abandoning well-established rules for analyzing markets in the process.

**Fintech’s disruptive startups have been squashed by large financial institutions**

**Loo ’18** – Associate Professor at BU Law [Rory Van; Associate Professor, Boston University School of Law and Affiliated Fellow, Yale Law School Information Society Project; 2018; "Making Innovation More Competitive: The Case of Fintech"; UCLA Law Review; https://heinonline.org/HOL/Page?handle=hein.journals/uclalr65&div=7&g\_sent=1&casa\_token=&collection=journals; accessed 8-18-2021]

Fintechs can be of any size. Four of the ten largest U.S. companies, **Google, Apple, Amazon, and Facebook**, **all have built payment systems** and made other **inroads into finance**.36 Despite the participation of large technology companies, **the main drivers of fintech innovation** have been the **thousands of startups** attracting billions of dollars in investment each year. Startup business models are novel, diverse, and shifting. One of the earliest fintech areas was peer-topeer lending, in which companies link individuals who have money to those who want it.37 Most of the original peer-to-peer companies have already grown beyond their origins and now engage in more familiar "marketplace lending."38 They receive money from banks to lend to individuals, and their innovations have spread to other areas, such as sophisticated analytic tools for estimating borrowers' creditworthiness.39

Unlike the other categories of consumer fintechs, advisory fintechs do not need to directly receive any money from consumers to offer their basic product. The goal of Credit Karma, NerdWallet, Mint, and other advisory fintechs is to help people make all of their financial decisions through a single app.4" These companies learn about users-with permission-by accessing personal bank accounts, credit scores, credit card records, tax returns, and other similar sources of financial information. Users then receive recommendations about credit cards or mortgages with lower fees, savings accounts that pay higher rates, and other products that better meet their needs.41

While the term "fintech" is used here to exclude traditional banks, all major financial institutions have become highly technological. The leading banks are each purchasing fintech startups, forming strategic partnerships, or internally building whiz teams to design new products.42 JP Morgan Chase's Intelligent Solutions Group has over 200 analysts and data scientists and produced about fifty technologies in 2015 alone.43 Goldman Sachs, which has more engineers than Facebook or Twitter, is launching an online lender.44 In light of Wall Street's increasing launch of digital products and adoption of artificial intelligence,45 regulating fintech amounts to regulating the future of finance.

B. Private Sector Institutional Dynamics

Fintechs could in theory pose a threat to traditional banks. Almost threequarters of millennials say they would prefer to receive their financial services from technology companies such as Google and Amazon, rather than big banks.46 Convenience, trust, and price all could play important roles in driving customer switching. Individual users, including small businesses, increasingly find dealing with big banks to be time-consuming and frustrating compared to the ease of tailored startup apps.47 In recent years, consumers have grown distrustful of large financial institutions, whose reputations have been battered by subprime mortgage lending, the financial crisis, the LIBOR scandal, and Wells Fargo opening millions of fake accounts in customers' names. 48

Innovation helps explain why publicly traded companies are disappearing at a **faster rate** today than ever before-**six times as fast** as forty years ago.49 Online startups have even thrived in other **heavily regulated** industries, such as transportation and gambling." Convenience and lower costs have driven some of this success, and many fintechs offer **similar advantages**.51 Furthermore, unlike some industries that **Silicon Valley has invaded**, finance lacks a **meaningful physical component**. This makes the base products **inherently vulnerable** to digital competition. Traditional banks' infrastructures-including their **legacy information systems** and physical branches-**inhibit their ability** to rapidly respond to disruption.

Since Dimon's 2015 warning, however, the **dynamics** between fintech and traditional firms appear to have **shifted**. Entrepreneurs who started out wanting to do to banks what Amazon did to retail have wound up **licensing their technology** to banks.52 As one industry observer puts it: "What was once perhaps an **adversarial** relationship has warmed .... Many no longer see an **existential threat** in fintech. Instead, they believe that "[i]t is most likely that the small fintech companies will be **subsumed**" by large financial institutions. 4

Ii. The Competition Shortcomings

A given fintech's decision of whether to **challenge or join** banks will depend in part on whether regulations and market dynamics give it a **real chance** to compete. Competition is **extremely difficult** to measure, and economic models **inadequately** consider important factors, such as innovation.5 To assess the hypothesis that a lack of competition inhibits fintech, this Part surveys the evidence related to entry barriers, customer switching, anticompetitive prices, and the relative pace of U.S. innovation.

A. Entry Barriers

When firms face excessive barriers to entering a market, competition can **stagnate**, raising prices and **lowering innovation**. 6 Although part of the problem is simply the large amount of regulation, 7 fintech has faced two further entry barriers: traditional firms' ability to block market access and the difficulty in obtaining a federal bank license.

Legacy financial institutions can limit some fintechs' operations through control of data. Most notably, advisory fintechs rely on access to both personal and general product data. 8 Some banks' response has been to block or limit fintechs' access to customer accounts, thereby making it harder for fintechs to provide tailored advice. 9 Legacy institutions can also block fintechs from collecting online product information by using laws never intended for such a purpose, including trespass to chattel, the Digital Millennium Copyright Act,6 " and the Computer Fraud and Abuse Act.61 As a result, advisory fintechs cannot on their own provide comprehensive financial advice to their users. In order to access crucial data, fintechs may need to prioritize big banks' interests over helping consumers switch.

Some legacy firms can also **limit market access** through their dominant market positions. Over **99 percent** of all credit card transactions run through the Visa, American Express, Mastercard, and Discover networks.62 Many commentators have documented credit card companies' ability to engage in **exclusionary conduct**, such as vertical restraint clauses that prevent merchants from using other payment methods.63 Although credit card companies may not be able to use those **same tactics** against payment fintechs, their strong market positions could enable them to **deploy other tactics**. They have, for instance, instituted "Honor All Cards" rules requiring merchants to accept their **contactless payments** as a condition of accepting plastic cards. These rules arguably "**foreclose entry to** those digital wallets that.., do not use the credit **card networks** for payments. 64

**That means US fintech will lose to international competitors.**

**Loo ’18** – Associate Professor at BU Law [Rory Van; Associate Professor, Boston University School of Law and Affiliated Fellow, Yale Law School Information Society Project; 2018; "Making Innovation More Competitive: The Case of Fintech"; UCLA Law Review; https://heinonline.org/HOL/Page?handle=hein.journals/uclalr65&div=7&g\_sent=1&casa\_token=&collection=journals; accessed 8-18-2021]

C. International Competitiveness

Less **efficient** and **innovative** U.S. financial services are problematic not only in **isolation**, but also from an **international perspective**. Scholars and regulators have inconclusively debated whether banks need to be big to maintain their international competitiveness. 12' Less well-recognized is how a lack of **domestic competition** may undermine U.S. financial firms' global competitiveness. Foreign financial firms may gain an **edge** by being subject to greater competition in their home markets, thereby being **forced to innovate** more and operate leanly. This creates two potential problems. First, reduced domestic competitiveness may make the United States **less able** to enter foreign markets. The U.S. economy has **benefited** in recent years from billions of dollars in revenues **earned abroad** by Google and other leading digital companies. 126 Given the growing portion of the global economy taken up by finance, the fintech lag could constitute a **large-scale missed opportunity** for U.S. firms to strengthen the economy by **bringing in revenues** earned abroad.

Second, in the long term, American financial firms may become **more vulnerable** to international competition even in **domestic markets**. Although U.S. licenses can shield banks from foreign fintech challengers today, distributed **ledger** technologies may change this. Americans are already **increasingly using** Bitcoin, Ethereum, and other unregulated virtual currencies based on blockchain technology.127 Much is unknown about how such technologies will develop, and the trust offered by a governmentally overseen financial system may prove difficult to replicate. 128 If, however, an era of **wide-open** global finance arrives, U.S. financial institutions could find themselves **suddenly exposed** to international competition as never before. Without U.S. regulators to **insulate** them, U.S. financial institutions made soft by lesser competition would be more prone to lose **significant market share** to foreign financial institutions than they would be if domestic markets were more **competitive**.

**Fintech innovation is key to the effectiveness of U.S. economic sanctions**

**Harrell and Rosenberg 19** – Peter E. Harrell is an adjunct senior fellow at the Center for a New American Security; former Deputy Assistant Secretary for Counter Threat Finance and Sanctions at the U.S. State Department. Elizabeth Rosenberg is a senior fellow and director and director of the Energy, Economics, and Security Program at the Center for a New American Security.

Peter E. Harrell and Elizabeth Rosenberg, “Economic Dominance, Financial Technology, and the Future of U.S. Economic Coercion,” *Center for a New American Security*, 2019, pp. 25-26, http://files.cnas.org.s3.amazonaws.com/documents/CNAS-Report-Economic\_Dominance-final.pdf.

**Developments in fin**ancial **tech**nology also **have the potential to affect the availability and strength of coercive economic measures** over the longer term. The movement to develop **blockchain-based, decentralized payments platforms and** new digital **currencies** or tokenized assets that feature anonymity **can undermine** the strength of **coercive economic measures**. However, **fin**ancial **tech**nology **developments**, such as the development of artificial intelligence/machine learning (AI/ML) compliance technologies, also **present potential means to better detect and stop evaders and avoiders of U.S. economic coercion** throughout global chains of financial interconnectivity.

**Fin**ancial **tech**nologies are not themselves the drivers of potential future changes to the sources of coercive economic leverage. However, they may **enable foreign governments to** develop better tools to **insulate transactions from U.S. jurisdiction**. And, regardless of the actions of foreign governments as they spread commercially, they may help evaders duck U.S. coercive economic power in limited but meaningful ways. **Conversely, new AI/ML or other technologies may help U.S. policymakers implementing economic coercion** to better do their job.

Financial technology can be a facilitator of rapid transformation in the financial services sector. Importantly, financial technology developments will not happen just in the United States; a number of other countries, from China to Singapore to Switzerland, are promoting themselves as financial technology leaders. There is no guarantee that financial technology innovators and investors will be centered in the United States in the future—which represents a vulnerability to U.S. economic prominence.

Maintaining U.S. Leverage

**The extent to which the U**nited **S**tates **will maintain coercive economic leverage** in a world where financial technology disrupts aspects of the traditional financial architecture **will depend** to a significant degree **on the extent to which U.S. firms**, and large global firms, continue to **play a dominant role in the development of the technology**. To put it bluntly, a blockchain-based clearing mechanism that enables trade between foreign countries without financial transactions touching the dollar would likely undermine U.S. leverage if the technology were developed and operated by a foreign company that had no need to adhere to U.S. law. **The U**nited **S**tates **would maintain** at least some **leverage if the technology were developed** or operated **by a U.S. company** obliged to adhere to U.S. sanctions, technology-export restrictions, and other relevant laws, or a foreign company with significant U.S. exposure.

**Iran’s an emerging global hub for Bitcoin mining---that obviates the effectiveness of sanctions.**

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Thomas, 1-29-2019, "How Bitcoin Could Help Iran Undermine U.S. Sanctions,” New York Times, https://www.nytimes.com/2019/01/29/world/middleeast/bitcoin-iran-sanctions.html

**Iran’s economy** has been **hobbled by banking sanctions** that effectively stop foreign companies from doing business in the country. But transactions in **Bitcoin**, difficult to trace, could allow Iranians to make international payments while **bypassing** the **American restrictions on banks**.

In the past, the threat of United States sanctions has been enough to squelch most business with Iran, but the **anonymous payments** made in Bitcoin **could change that**. While Washington could still monitor and intimidate major companies, countless small and midsize companies could exploit Bitcoin and other cryptocurrencies to **conduct business under American radar**.

The United States Treasury, well aware of the threat, is attempting to bring Bitcoin and the others into line. In recent weeks, in response to an internet fraud case originating from Iran, the Treasury imposed sanctions on two Iranians and the Bitcoin addresses, or ‘‘wallets,’’ they had used for trading in the currency.

The Treasury also has warned digital marketplaces that buy and sell Bitcoin and companies that sell computers used to process Bitcoin transactions that they should not provide services to Iranians. Several well-known trading sites are now blocking buyers and sellers from Iran. Some have confiscated money belonging to clients based in Iran.

“Treasury will aggressively pursue Iran and other rogue regimes attempting to exploit digital currencies,” the department said in a statement.

But by their nature, cryptocurrencies are uncontrolled by any person or entity. At best, efforts to regulate or monitor trade in them are episodic, whack-a-mole affairs. With Bitcoin and other cryptocurrencies, there is simply no way to duplicate the banking sanctions that have proved so damaging to the Iranian economy.

Bitcoin transactions are recorded on a digital ledger or database known as the **blockchain**, maintained communally by many **independent computers**. The system is designed explicitly to avoid central banks and **large financial institutions**. Like emails delivered without going through a central postal service, the computer network maintaining Bitcoin records enables the movement of money without **going through any central authority.**

The Iranian government has been slow to recognize the potential sanctions-evading possibilities of Bitcoin. But it is now considering the establishment of **exchanges to facilitate trading**, one official, Abdolhassan Firouzabadi, said recently. Despite the failure of Venezuela’s state-backed cryptocurrency, the Petro, Iran’s central bank said recently that it was seriously considering creation of something similar, possibly called the Crypto-Rial, named after the national currency, the rial.

Still, Iran’s venture into Bitcoin pales in comparison to what has been happening the former Soviet republic of Georgia, where thousands of people have jumped into the cryptocurrency business.

At the computerized processing operation in the Iranian desert, no one seemed particularly concerned with the geopolitical implications of Bitcoin.

The operation consisted of 2,800 computers from China, fitted into eight containers, which when linked are called a farm. It makes intense mathematical calculations, known as mining, needed to confirm Bitcoin transactions. Miners collect fees in Bitcoin for their services.

Ignoring the rain, the European visitor used the calculator on his mobile phone to determine how much money could be made from this particular farm, multiplying computer power and deducting electricity and operational costs.

He estimated about five Bitcoins a month, which at roughly $4,000 per Bitcoin at current price levels, would be about $20,000.

“Not too bad,” he said.

The currency fluctuates like any other, though it has proved particularly volatile, sinking to slightly less than $4,000 a unit from nearly $20,000 about a year ago.

“We’ll have two engineers on site to keep everything running, that’s it,” said Behzad, the chief executive of IranAsic, the company running the site. He, like the European investor, did not want to provide his family name, out of fear of penalties from the United States.

The Chinese computers, called Antminer V9s, were regarded as outdated by the European visitor. Still, he said, “I guess this is the last place on earth where they are still profitable.”

That helps explain why Iran seems to be taking its first baby steps toward becoming a **global center for mining Bitcoins**. Because of generous **government subsidies**, electricity — the **energy for the computers needed to process cryptocurrency** transactions — **costs little in Iran**. It goes for about six-tenths of a cent per kilowatt-hour, compared with an average of 12 cents in the United States and 35 cents in Germany.

In recent months, **dozens of foreign investors** from **Europe**, **Russia** and **Asia** have considered moving their mining **operations to Iran** and other low-cost countries like Georgia. “We have to be flexible in this industry and go where **prices are the lowest** in order to survive,” said the European investor.

**Tracking solves Iranian evasion---US lead key**

**Robinson 21** --- Ph.D., Co-founder and Chief Scientist discusses cryptocurrency forensics, investigations, compliance, and sanctions.

Tom, "How Iran Uses Bitcoin Mining to Evade Sanctions and “Export” Millions of Barrels of Oil," Elliptic, <https://www.elliptic.co/blog/how-iran-uses-bitcoin-mining-to-evade-sanctions>

The **Iranian state** is therefore **effectively selling its energy reserves** on the global markets, using the **Bitcoin** mining process to **bypass trade embargoes**. Iran-based miners are paid directly in Bitcoin, which can then be used to pay for imports - allowing sanctions on payments through Iranian financial institutions to be **circumvented**.

This has become **all but an official policy**, with a think tank attached to the Iranian president’s office recently publishing a report highlighting the use of cryptoassets to avoid sanctions.

Many of those making the Bitcoin transactions and paying the fees to Iran-based miners will be **located in the** **U**nited **S**tates - the very country spearheading the sanctions. As the US government considers whether to lift some sanctions on Iran in exchange for a return to a nuclear deal, it will need to consider the role that Bitcoin mining plays in enabling Iran to monetise its natural resources and **access financial services** such as payments.

In the meantime, financial institutions should consider the sanctions risk they are exposed to due to Iranian Bitcoin mining - particularly those that are beginning to offer cryptoasset services. If 4.5% of Bitcoin mining is based in Iran, then there is a 4.5% chance that any Bitcoin transaction will involve the sender paying a transaction fee to a Bitcoin miner in Iran. Financial institutions should also be on the lookout for crypto deposits originating from Iranian miners that are seeking to cash-out their earnings.

Solutions for Sanctions Risks

However as we discuss in more detail our new sanctions guide, solutions to these challenges exist and are already used by financial institutions engaging in cryptoasset activity.

For example, **blockchain analytics solutions** such as those provided by Elliptic can be used by regulated **financial institutions** to **detect and block cryptoasset deposits** from Iran-based entities **including miners**. Techniques can also be employed to ensure that **transaction fees are not paid** to miners in high risk jurisdictions.

**Strong sanctions prevent Iranian nuclear acquisition**

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Kallen, 2021, “Economic Sanctions and Nuclear Non-proliferation: A Comparative Study of North Korea and Iran, “University of Waterloo, Fulfilment of the thesis requirement for the degree of Master of Arts, https://uwspace.uwaterloo.ca/bitstream/handle/10012/16666/Morrison\_Kallen%20.pdf?sequence=3

Economic sanctions have been successful in stopping Iran from **pursuing their nuclear program thus far**. Iran has conceded multiple times to the United States and the international community to halt the **enrichment of uranium** and the advancement of their nuclear program. The most notable example of Iran’s concessions has been the signing of the Joint Comprehensive Plan of Action in which Iran agreed to halt and greatly reduce their nuclear program in return for substantial easing of economic sanctions. The second criteria has been met as Iran’s economy has significantly worsened due to continued economic pressure from the United States and the international community. Iran’s economy has **significantly worsened** due to **continued economic pressure** from the United States and the international community. Continued economic pressure has been **paramount** to bringing Iran to the negotiating table. While the United States and its regional allies do pose a military threat to Iran, that is **unlikely a sufficient factor** in dissuading Iran.

We have established that the level of political contestation in the targeted countries, their economic and security vulnerabilities, and the degree of international cooperation are important factors in determining if economic sanctions are effective at limiting nuclear proliferation. In Iran’s case the regime, while authoritarian, allows for limited **political contestation**. The general public gets to elect the president (even if candidates are handpicked by the supreme leader). Iranians have been able to protest against the government. One goal of economic sanctions is to **galvanize the general public** against the government and their policy decisions. Iranians have indeed been frustrated by the sanctions and **voiced their discontent** with the government policies targeted by the sanctions.

Iran’s international environment is also conductive for economic sanctions to be effective. Iran is a regional power with an impressive arsenal of missiles and extensive network of proxy forces. Therefore, nuclear weapons are not imperative for Iran’s defence. On the other end, Iran’s economy is largely based on oil and gas exports. **Integration** into the global market is very important for Iranians and a **vital source of revenue for the government**. Economic sanctions have hurt the Iranian economy and therefore have **hurt Iranians**. The **economic squeeze** has brought **Iran to the negotiating table** in the past and **will likely do so in the future**. The international approach to Iran has been encompassing with the European Union and the United Kingdom taking a common stand with the United States in preventing Iran from acquiring nuclear weapons. Even after the United States left the JCPOA the EU and UK have attempted to develop mechanisms to provide Iran with economic incentives to keep Iran abiding to the JCPOA. Even though China has given Iran an economic lifeline there is tension within Iran over concerns of becoming too economically dependent on China.

**Israel preempts Iran prolif---draws in all major powers**

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Adam M. Scheinman, What if Iran leaves the NPT?, 8 June 2018, <https://thebulletin.org/2018/06/what-if-iran-leaves-the-npt/>

Not to diminish the immensity of North Korea’s nuclear challenge, but Iran’s withdrawal from the NPT carries weightier risks. It would likely mean that Iran’s Supreme Leader had given the green light to an Iranian nuclear weapon, opening the floodgates to NPT withdrawals by other Arab states—Saudi Arabia, the UAE, and Egypt head that list. These and possibly other Sunni governments, none of whom can rely on a major power for defense, may conclude that they require their own nuclear weapon to check Iran’s rise. The Saudis are very clear and public on this point.

More immediately, Israel may feel compelled to **strike** Iranian nuclear facilities **before** they become fully **operational**. This raises the specter of a **regional war** that may **draw in** **several** of the **nuclear weapon states**—the **United States, the UK, France, and Russia**—and reshape the Middle East in ways we cannot predict. Whether the NPT could survive such a shock is another unknown.

**Can’t stay contained---multiple pathways to global nuclear war.**

**Avery 13** – Lektor Emeritus & Associate Professor, U of Copenhagen

John Scales Avery, Lektor Emeritus, Associate Professor, at the Department of Chemistry, University of Copenhagen, since 1990 he has been the Contact Person in Denmark for Pugwash Conferences on Science and World Affairs, An Attack On Iran Could Escalate Into Global Nuclear War, 11/6/13, http://www.countercurrents.org/avery061113.htm

Despite the willingness of Iran's new President, Hassan Rouhani to make all reasonable concessions to US demands, Israeli **pressure groups in Washington** continue to demand an attack on Iran. But such an attack might escalate into a **global nuclear war**, with catastrophic consequences. As we approach the 100th anniversary World War I, we should remember that this colossal disaster **escalated uncontrollably** from what was intended to be a **minor conflict**. There is a danger that an attack on Iran would escalate into a large-scale war in the Middle East, entirely destabilizing a region that is already deep in problems. The unstable government of **Pakistan** might be **overthrown**, and the revolutionary Pakistani government might enter the war on the side of Iran, thus **introducing nuclear weapons** into the conflict. **Russia and China**, firm allies of Iran, might also be **drawn into** a **general war in the Middle East**. Since **much of the world's oil** comes from the region, such a war would **certainly** cause the **price of oil to reach unheard-of heights**, with **catastrophic effects on the global economy**. In the dangerous situation that could potentially result from an attack on Iran, there is a risk that nuclear weapons would be used, either intentionally, or by accident or **miscalculation**. **Recent research has shown** that besides **making large areas of the world uninhabitable** through **long-lasting radioactive contamination**, a nuclear war would **damage global agriculture** to such an extent that a **global famine** of previously unknown proportions would result. Thus, nuclear war is the **ultimate ecological catastrophe**. It could **destroy human civilization** and much of **the biosphere**. To risk such a war would be an unforgivable offense against the lives and future of all the peoples of the world, US citizens included.

**The aff solves—it enables tailored remedies that promote competition but maintain efficiency**

**Hovenkamp**, James G. Dinan University Professor, University of Pennsylvania Carey Law School and The Wharton School, **‘21**

(Herbert, “Antitrust and Platform Monopoly,” 130 Yale L.J. 1952)

More Creative Alternatives

Frequently, **neither** simple **injunctions** nor **simple breakups** will be **good solutions for platform monopoly**. Injunctions may be inadequate to restore competition, and breakups may **impair efficient operation** and **harm consumers** in the process.

The case for a breakup is strongest when noncompetitive performance or conduct seems to be inherent in a firm’s current structure. Even then, however, there is no guarantee that the firm, once dismantled, will perform any better than before. For example, how do we break up Facebook without harming the constituencies that it serves?

The approaches discussed briefly in this Section **do not require the breakup of assets** or the **spinoff of divisions** or subsidiaries other than some that have been acquired by merger. Rather, they alter the nature of ownership, managerial **decision making**, **contracts**, intellectual-property **licenses**, or information management. Instead of **attempting to force greater competition** between a dominant platform and its rivals, we might do better to **leave the firm intact** but **encourage more competition within it**. Alternatively, we might increase interoperability by requiring more extensive sharing of information or other inputs. While the current antitrust statutes grant the courts equitable power sufficient to accomplish these remedies,299 the proposals are novel and could provoke resistance.

These remedies can be applied to entities other than structural monopolies, and for offenses under both section 1 and **section 2 of the Sherman Act**. While less intrusive than asset breakups, however, they can be more intrusive than simple conduct injunctions. As a result, they should be limited to situations where **prohibitory injunctions alone are unlikely to be adequate**. **Occasional uses of unlawful** exclusive **dealing**, most-favored-nation agreements,300 or other anticompetitive contract practices **deserve an injunction**, but ordinarily **would not merit a breakup** of the entire firm or fundamental alteration of its management structure.

The traditional way that antitrust law applies structural relief is to break up firms’ various physical assets, through such devices as forcing selloffs (divestiture) of plants, products, or subsidiaries.301 To the extent these breakups interfere with a firm’s production and distribution, **they can produce harmful results** such as increased costs or loss of coordination. This is particularly true of integrated production units, such as single digital platforms. The D.C. Circuit noted this concern in Microsoft when it refused the government’s request for a breakup.302

a. Enabling Competition Within the Platform

One alternative to divestiture is to leave a platform’s physical assets and range of participants intact but change the structure of ownership or management so as to make it more competitive internally. A platform or other organization **can itself be a “market”** within which competition can occur. In that case, antitrust law can be applied to its internal decisions, **improving competition** **without** limiting the **extent of scale economies or beneficial network effects.**

Ordinarily, agreements among subsidiaries or other agents within a firm are counted as unilateral and so are attributed to the firm itself.303 That rule is a direct consequence of the separation of ownership and control. The all-important premise, however, is that the firm’s central management is the only relevant economic decisionmaker. When that is not the case, even agreements among the various constituents within the firm can be treated as cartels.

There is plenty of precedent on this issue. The history of antitrust law is replete with examples of incorporated firms that are owned or managed by distinct and often competing entities. The courts have treated these firms as cartels or joint ventures, even for practices that, from a corporate law perspective, appeared to be those of a single firm. If properly managed, the result can be to force entities within the same incorporated organization to behave competitively vis-à-vis one another.

Firms whose ownership is reorganized in this fashion **can still be very large** and **retain** most of the **attributes of large firms**. On the one hand, this will **satisfy** those concerned that the breakup of large firms can **result in the loss of economies of scale or scope**, or of other synergies that generally lead to high output and lower prices. **On the other hand,** it will not satisfy those who believe that “big is bad” for its own sake.304

Joint management of unified productive assets has a storied history that goes back to the Middle Ages. Farmers, ranchers, and fishermen produced cattle, sheep, and fish on various “commons,” or facilities that were shared among a large number of owners and subjected to management rules.305 Many of these operated on a mixed model that involved individual production for stationary products such as crops, but a commons for grazing cattle or other livestock. For mobile products such as cattle or fish, the costs of shared management were lower than the costs of creating or maintaining boundaries. That was not the case for radishes or wheat. So rather than cutting a large pasture or bay into 100 fenced-off plots, participating property owners operated it as a single economic unit, substituting management costs for fencing costs. Just as for any firm, size and shape are determined by comparing the costs and payoffs of alternative forms of organization.306

So while a commons can be a very large firm, it can be operated by a collaboration of competing entities rather than a single one. Output reductions and price setting by a single firm are almost always out of reach of the federal antitrust laws. On the other hand, if a market is operated by a joint venture of

active business participants, their pricing is subject to the laws against collusion. Their exclusions also operate under the more aggressive standards that antitrust applies to concerted, as opposed to unilateral, refusals to deal.307 The fact that this joint venture is a corporation organized under state law, as many ventures are, does not make any difference. It is still a collaboration as far as antitrust law is concerned.

The theory of the firm precludes claims of an antitrust conspiracy between a corporation and its various subsidiaries, officers, shareholders, or employees. This preclusion is an essential corollary to the proposition that a corporation is a single entity for most legal purposes and not simply a cartel of its shareholders or other constituent parts. This is how corporate law preserves the boundary between firms and markets.308

But important exceptions exist. While a corporation is a single entity for most antitrust purposes, if it is operated by its shareholders for the benefit of their own separate businesses, its conduct is reachable under section 1 of the Sherman Act. A cartel is still a cartel even if it organizes itself into a corporation.

The classic antitrust example of such a collaborative structure is in the 1918 Chicago Board of Trade case, which first articulated the modern rule of reason for antitrust cases.309 As Justice Holmes had described the Board thirteen years previously, 310 it was an Illinois state-chartered corporation whose 1600 members were themselves traders for their own individual accounts, and with individual exclusive rights to do business on the Board’s trading floor.311 The “call rule,” which prevented collaborative price making among the members except during exchange hours, could not have been challenged under the antitrust laws as unilateral conduct. A single firm may set any nonpredatory price it wishes. Further, all of the relevant participants were inside the firm. Nevertheless, they were regarded as independent actors for the purpose of trading among themselves.

Thus the United States challenged the call rule as price fixing among competitors. 312 Not only is the substantive law against such collaborative activity more aggressive than that against unilateral actions, but the remedial problems are less formidable. If a firm acting unilaterally should set an unlawful price, the court must order it to charge a different price, placing it in the awkward position of a utility regulator. By contrast, price fixing by multiple independent actors operating in concert is remedied by a simple order against price fixing, requiring each participant to set its price individually without dictating what the price must be. The Supreme Court ultimately found the Chicago Board’s call rule to be lawful. If it had not, however, the remedy would have been an injunction against enforcement of the rule, leaving the members free to set their own prices. In fact, the United States’ requested relief was precisely that.313

The same thing applies to refusals to deal. If a firm is acting unilaterally, its refusal to deal is governed by a strict standard under which liability is unlikely, particularly if there has not been an established history of dealing.314 Further, in many circumstances a court can enforce a dealing order only by setting the price and other terms. By contrast, if the entity that refuses to deal is operated by a group of active business participants, its collective refusal to deal is governed by section 1 of the Sherman Act. A court usually need do no more than issue an injunction against the agreement not to deal. This is true even if the actors have incorporated themselves into a single business entity, as in the Associated Press case, which involved a New York corporation whose members were 1200 newspapers. 315 The government charged the Association with “combining cooperatively” to prohibit news sales to nonmembers or making it more difficult for a newspaper to enter competition with an existing newspaper.316 The Court upheld an injunction against the restrictive rules under the Sherman Act.317

The modern business world provides many analogies to this structural situation. For example, each of the NCAA’s 1200 member schools operates as a single entity in the management of education, student housing and discipline, and financing of its own operations, including athletic departments. By contrast, the rules for recruiting and maintaining athletic teams, their compensation, as well as the scheduling, operation, and playing rules of games, are controlled through rulemaking by the collective group.318 While the schools compete with one another in recruiting athletes and coaches, in obtaining both live and television audiences, and in the licensing of intellectual property, all of these things fall within NCAA rulemaking and are reachable by antitrust law. Specifically, decisions to restrict the number of televised games;319 to limit the compensation of coaches320 or players;321 or to limit licensing of students’ names, images, and likenesses322 all fall within section 1 of the Sherman Act. When a violation is found, the antitrust remedy is an injunction permitting each team to determine its choices individually.

The same analysis drove the American Needle litigation, a refusal-to-deal case that involved the National Football League (NFL).323 The NFL is an unincorporated association controlled by thirty-two individual football teams, each of which is separately owned. NFL Properties (NFLP) is a separate, incorporated LLC in New York, controlled by the NFL. The individual teams are members, and they also collectively control the licensing of the teams’ substantial and individually owned intellectual-property rights. In this case, the team members voted to authorize NFLP to grant an exclusive license to Reebok to sell NFLlogoed headwear (i.e., helmets and caps) for all thirty-two teams.324 The plaintiff, American Needle, was a competing manufacturer that the agreement excluded.325

The issue for the Supreme Court was whether NFLP’s grant of an exclusive license should be addressed as a “unilateral” act of NFLP or as a concerted act by the thirty-two teams acting together, and the Court unanimously decided the latter.326 As a matter of corporate law, the refusal to deal appeared to be unilateral. NFLP, the licensing party, was an incorporated single entity. The lower court had relied on earlier Seventh Circuit decisions holding that professional sports leagues should be treated as single entities under these circumstances.327

The Supreme Court’s decision to the contrary was consistent with its earlier cases Sealy328 and Topco.329 In both of those cases, the Court held that even if an entity is incorporated, it can be addressed as a collaboration of its competing and actively participating shareholders. In Sealy, each member was a shareholder, and collectively the members owned all of Sealy’s stock.330 In Topco, each of the twenty-five members owned an equal share of the common stock, which had voting rights. They also owned all of the preferred stock, which was nonvoting, in proportion to their sales.331

Agreements among the active memb+ers or shareholders on incorporated real-estate boards are treated in the same way. Acting as a single entity, the board organizes the listing of properties for sale, formulates listing rules, promulgates standardized listing forms and sales agreements, and controls much of the conduct of individual brokers. Acting individually, the shareholder-brokers show properties to clients and obtain commissions from sales. Each real-estate office acts as not only a shareholder or partner in the overall organization, but also a competitor for individual real-estate sales.

Without discussing single-entity status, in 1950 the Supreme Court held that price fixing among real-estate agents who were members of an incorporated board was an unlawful conspiracy.332 A leading subsequent decision involved Realty Multi-List, a Georgia corporation organized and owned by individual real-estate brokers.333 Under the corporation’s arrangement, one shareholder member could show properties listed by a different shareholder member.334 The Fifth Circuit concluded that both the agreements among the members fixing commission rates and setting exclusionary and disciplinary rules for brokers who deviated from these rates were unlawful under section 1 of the Sherman Act.335

In the 2000s, the government and private plaintiffs sued several multiplelisting services, challenging their decisions to exclude real-estate sellers.336 The Fourth Circuit eventually applied American Needle, rejecting the contention that concerted action was lacking because the parties making the decision were acting as “agents of a single corporation.”337 Several other decisions have arrived at similar results reaching both price fixing and concerted exclusion.338

Hospital-staff-privileges boards also provide an analogy. Hospitals regularly use such boards to decide which physicians can be authorized to practice at the hospital. If physician-board members with independent practices deny staff privileges to someone, they may be treated as a conspiracy rather than a single actor.339

Even an incorporated natural monopoly can be subject to section 1 of the Sherman Act if it is controlled by its shareholders for their separate business interests. That issue arose in the 1912 Terminal Railroad decision.340 The railroadbridge infrastructure across the Mississippi was very likely a natural monopoly, given it operated as a bottleneck through which all traffic across the river had to pass.341 However, the facility was incorporated, and its shareholders were a group of thirty-eight firms and natural persons organized by railroad financier Jay Gould.342 The venture constituted a single corporation under Missouri law, but it was actively managed by its shareholder participants, all of whom had separate businesses. They were mainly individual railroads, a ferry company, bridges, a “system of terminals,” and several individuals.343 The venture thus controlled an extensive collection of railroad transportation, transfer, and storage facilities at a point at which all east-west traffic in that part of the country had to cross the Mississippi River.344

The Court’s order is both interesting and pertinent to platforms. It rejected the government’s request for dissolution. It noted that dissolving the corporation would do nothing to eliminate the bottleneck.345 Rather, it ordered the district court to fashion a “plan of reorganization” that permitted all shippers, whether or not they were members of the organization, to have access on fair and reasonable terms, with the goal of “plac[ing] every such company upon as nearly an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.”346 Dissolution would be mandated only if the parties failed to agree on these terms.347

The *Terminal Railroad* decree suggests a way to remedy anticompetitive behavior by large digital platforms representing several sellers **without sacrificing operational efficiencies**. Rather than requiring divestiture of productive assets, which almost always leads to higher prices, we could restructure ownership and management. A large firm such as Amazon can attain economies of scale and scope that rivals cannot match. Further, **Amazon benefits consumers**, most suppliers, and labor, by selling its own house brands and the brands of third-party merchants on the same website. This is how a seller of house brands can break down the power of large name-brand sellers.348

The problem is not that Amazon sells too much, but rather that Amazon’s ownership and management make it **profitable for Amazon to discriminate** in favor of its own products and against those of third-party sellers, or to enter other anticompetitive agreements with independent sellers. Breaking up Amazon or forcing a physical separation of own-product and third-party sales would mean giving up a great deal of brand rivalry that benefits consumers.

Suppose a court required Amazon to turn important commercial decisions over to a board of active Amazon participants who made their own sales on the platform, purchased from Amazon, or dealt with it for ancillary services. Acting collaboratively, they could control product selection, distribution and customer agreements, advertising, internal product development, and pricing of Amazon’s own products. Their decisions would be subject to antitrust scrutiny under section 1 of the Sherman Act.

Such an approach could be particularly useful in situations involving **refusals to deal**. To illustrate, an important focus of the EU’s November 2020 Statement of Objections Against Amazon is on claims that Amazon “artificially favour[s] its own retail offers” in product areas where it sells both its own and third-party merchandise.349 Under current United States antitrust law, a firm acting unilaterally would not be prevented from discriminating between its own and thirdparty sales. That was the very issue in Trinko—namely, that monopolist Verizon discriminated against third-party carriers and favored its own.350

If decision making in this area were entrusted to a board of active sellers, including both Amazon itself and third parties, the section 1 standard would reach the conduct. Justice Scalia’s Trinko opinion, citing Terminal Railroad, observed that the Supreme Court had imposed nondiscrimination obligations under similar circumstances, but only when the government was attacking concerted rather than unilateral conduct.351 Further, when such conduct is concerted, it is “amenable to a remedy that does not require judicial estimation of free-market forces: simply **requiring** that the outsider be **granted nondiscriminatory admission** to the club.”352 The number and diversity of participants could vary, but they should be sufficiently numerous and diverse to make anticompetitive collusion unlikely. That could include individual merchants who sell on Amazon, principal shareholders, and perhaps customers and others. The Board should be subject to rules setting objective standards for product selection.

Numerosity should not interfere with effective operation. The Chicago Board of Trade had 1800 trading members and decisionmakers in 1918, when organizational rules and procedures were still being managed with pencil and paper.353 The NCAA has more than 1200 member schools,354 and the Associated Press had more than 1200 member newspapers in 1945.355 The Terminal Railroad Association had 38 shareholder members, but the decree contemplated nondiscriminatory sharing with any non-shareholder who wished to participate. 356 One large real-estate board, the Chicago Association of Realtors, has

over 15,500 members.357

The designated decisionmakers need not be Amazon shareholders, as long as they have independent business interests and operate on Amazon. In fact, the details of state corporate law or organization would not ordinarily affect the federal antitrust issue. For example, in some of these cases—such as Terminal Railroad, 358 Sealy,359 and Topco360—the relevant decisionmakers owned shares in the corporation. In American Needle, the organization in question was NFL Properties, an LLC,361 which does not have shareholders but rather owner-members similar to a partnership. Similarly, in Associated Press, the Court probed a cooperative association incorporated under the Membership Corporation Laws of New York.362

Whether the court applies the per se rule or the rule of reason in such cases would depend on the offense. In NCAA, the Supreme Court concluded that the rule of reason should apply to all restraints undertaken by the association because cooperation was necessary to the creation of the product: intercollegiate sports.363 That is not the case with product sales on Amazon. Rather, the traditional distinction between naked and ancillary restraints would work well. Price fixing or unjustified limitations on output would be strongly suspect.364 On the other hand, rules establishing uniform practices governing distribution and resolution of customer complaints could certainly be reasonable and thus lawful. Concerted refusals to deal can cover a range of practices from naked boycotts motivated by price (per se unlawful)365 to reasonable standard setting (rule of reason),366 and should be addressed accordingly.

Such an approach **would notably not aim at size *per se*.** An Amazon with competitively restructured management could be **just as large as it is now**. Indeed, **it could be even larger**. Cartels and monopolies function by **restricting output**, and facilitating internal competition could serve to increase it. Amazon would likely **retain the efficiencies that flow from its size and scope**. We would have effectively **turned the internal workings of its platform into a market**. It still might be in a position to undersell other businesses or to exclude products that its members and rules disapprove. **If it did so in an anticompetitive manner,** however, section 1 of **the Sherman Act could be applied**.

**Regulatory approaches are systemically compromised—capture and comfort means anticompetitive conduct becomes the norm**

**Lambert**, Wall Family Chair in Corporate Law and Governance Professor of Law, University of Missouri Law School, November, **‘11/1/21**

(Thomas, “Tech Platforms and Market Power: What’s the Optimal Policy Response?” Mercatus Working Paper)

The agency oversight approach, however, **is not simply “faster antitrust** with expert adjudicators.” While standards-based and flexible, the approach differs from antitrust along three significant dimensions: **focus**, political **susceptibility**, and duration of **control**. Taken together, antitrust **courts’** more **narrowly focused objectives**, **greater insulation** from **political influences**, and **limited jurisdiction** over their subjects render them far less susceptible to **adverse public choice concerns** than agencies like the UK’s DMU.

In crafting remedies for anticompetitive harm, antitrust courts have a tremendous reservoir of authority.174 But antitrust’s focus—and the objective of any court-ordered remedy—**is narrow:** the restoration of market output **to competitive levels** for the benefit of consumers.175 This **precludes** successful claims by, and remedies in favor of, parties **seeking some private benefit** apart from the enhancement of market output. A digital markets **regulator** is unlikely to be as laser-**focused** on output effects as an antitrust court and will therefore be a more attractive target to rentseeking firms. The DMU’s “open choices” objective, for example, **invites a laggard competitor** that might otherwise be driven out of business to seek some rule **hindering its more efficient rivals**, on the ground that preserving its own offering will create a broader range of options for consumers.

A second important difference between antitrust courts and agencies relates to the decision makers’ incentives. The **federal judges** determining liability and imposing remedies in antitrust cases have **little reason to please** the parties before them. Possessing life tenure and fearing no retribution save possible reversal, they are **insulated from outside pressure** and motivated to make decisions calculated to enhance market output and thereby benefit consumers. The bureaucrats staffing agencies, by contrast, **do not enjoy this level of political insulation**. Many will have been appointed by or **have ties to a political leader**, whom they will wish to please. They may also contemplate **future employment** at one of their regulatees or at a regulatee’s rival. **Even absent** contemplation of a job change, they may have a **stake** in one regulatory outcome over another, as the budget or prestige of their agency **may be affected** by the regulatory choices they make. **Their personal interests** are therefore less aligned with the public’s interest **in maximizing overall market output.**

A third difference between antitrust and agency oversight is that antitrust courts’ involvement with parties is **limited in duration**, while overseeing agencies **remain perpetually involved** with the firms they regulate. Ongoing oversight requires **continuous contact** with the regulatee, whose perspective the regulator needs in order to make sound decisions. Eventually, however, the regulator may begin seeing things from the perspective of the regulatee.176 This is **especially likely** if the individuals with interests adverse to the regulatee’s position are widely dispersed and difficult to organize.177 The benefits to a regulatee from a decision may be outweighed by the **aggregate costs it would impose**, but if the costs are so widely spread that no individual or group has an incentive to incur the cost of arguing against the decision, the only argument the regulator will hear is that of the **regulatee-beneficiary**.178 In light of the relationships that develop from perpetual supervision and the common “concentrated benefits-diffused costs” dynamic, agencies possessing continuing oversight over their regulatees are **frequently captured by those firms,** **to the detriment of the public at large**.179

It seems, then, that the ongoing agency oversight model for addressing market power from digital platforms **may not be the panacea** its proponents have suggested. Combining broad discretion that invites interest group **manipulation**, **exposure to political pressures** that may sway regulators from pursuing the public interest, and the sort of continuous regulatee contact **that often leads to capture**, the approach raises **serious public choice concerns**. The UK’s experience with its new DMU will be informative. But US policymakers would do well to wait on the results of the UK’s experiment, and the resolution of the numerous pending antitrust actions, before abandoning antitrust in favor of a digital platforms regulator.

### 1AC---Plan

Plan---

**The United States federal government should increase prohibitions on those anticompetitive business practices which cause net-harm on one side of platforms.**

**1AC---Conduct**

Advantage 2 is Conduct---

**The full scope of *Amex* is unclear—companies will exploit it to misuse their platforms—that’s effectively impossible to police**

**Khan**, JD, FTC Chair, former director of legal policy with the Open Markets Institute, former professor at Columbia Law, **‘18**

(Lina, “The Supreme Court just quietly gutted antitrust law,” July 3, <https://www.vox.com/the-big-idea/2018/7/3/17530320/antitrust-american-express-amazon-uber-tech-monopoly-monopsony>)

Antitrust laws have never permitted monopolistic firms to wield their market power against one set of customers so long as they benefit another set of players. Yet this kind of “balancing” is exactly what the Second Circuit ratified. Consider: Under the logic the appeals court used, an anticompetitive scheme by Uber to suppress driver income would not be considered illegal unless those bringing the suit showed that riders were also harmed.

What’s more, the court said, plaintiffs have to **meet this new burden** at the **very earliest stage of litigation.**

Last Monday, a 5-4 majority on the Supreme Court upheld that approach. Not only does the decision show stunning disregard for core elements of antitrust law, it carelessly mangles long-accepted legal rules along the way to establishing its position. Perhaps most strikingly, it overrides or ignores facts established by the district court.

For example, the Supreme Court states that AmEx’s increased merchant fees reflect “increases in the value of its services,” even though the lower court expressly found that AmEx’s price hikes exceeded the value of the cardholder rewards.

**In practice**, the Court has **shielded from effective antitrust scrutiny a huge swath of firms** that provide services on more than one side of a transaction — and, in today’s digital economy, **there are many** (as Justice Stephen Breyer noted in a dissent he read from the bench to emphasize his concerns).

Worse yet, **the Court left unclear what kinds of businesses actually qualify for this new rule**. As the Open Markets Institute, for which I work, explained in an amicus brief, deciding an antitrust case using the amorphous concept of a “two-sided” market **will incentivize all sorts of companies to seek protection under this bad new theory**.

What kinds of companies **might have more freedom** to exert pressure on customers, as a result of this decision? Not newspapers, the Court said: Readers are “largely indifferent” to the number of advertisements on newspaper pages, even though advertisers are looking to reach readers. So someone suing a newspaper on antitrust grounds (say, for prohibiting advertisers from doing business with other newspapers) would not have to prove that a newspaper’s conduct harmed both readers and advertisers.

On the surface, the Court’s language suggests that the special rule **would apply to Amazon’s marketplace** for third-party merchants, to eBay, and to Uber — but not to Google search or Facebook. Indeed, the Justice Department’s antitrust division chief, Makan Delrahim, has also come to this conclusion about the scope of the decision. But the Court’s opinion **hardly delivers a clear and workable standard for judges to go by**.

One can imagine the **reams of studies Google would commission** to show that targeting users with advertising **did indeed amount to a “transaction**” with users that users highly valued — a showing that, if successful, **would likely qualify it for the shield of the special rule**. If so, Google might be able to **impose exclusionary contracts** on advertisers and **significantly boost the prices it charges** them. Amazon, meanwhile, can continue to **squeeze the suppliers** and retailers reliant on its platform with **little worry** about being charged with the abuse of monopsony power.

Federal judges generally lack the expertise needed to **independently assess the hyper-complex economic studies that this new rule will spur**. Rather than focusing on the conduct between a company and one set of its customers, **the new rule requires a much more involved showing.**

***Amex* undermines enforcement against nascent acquisitions**

**Salop**, Professor of Economics & Law, Georgetown University Law Center and Senior Consultant, Charles River Associates, **‘21**

(Steven, “Dominant Digital Platforms: Is Antitrust Up to the Task?” yalelawjournal.org/pdf/SalopEssay\_rnon2ejq.pdf)

This most recent agency loss involved an **acquisition by a dominant digital platform.** Sabre is a **digital platform** that permits airlines to post schedules, fares and seat availability and allows travel agents to access this information, make travel bookings and pay for them. Sabre proposed to acquire Farelogix, which provides technology to airlines. This technology allows an airline to disintermediate Sabre by allowing the airline to **connect directly to travel agencies** and provide travel agencies with information and ticket-booking services itself. Thus, this acquisition **was analytically like a vertical merger**, where Farelogix **sells a critical input** (i.e., its technology) to airlines, which they use to compete with Sabre for the business of travel agents. The competitive concern is that Sabre would **foreclose airlines’ ability to acquire the Farelogix technology input.**

Perhaps attempting to exploit the horizontal-merger structural presumption and avoid the difficulties they faced in AT&T/Time Warner, the DOJ did not litigate the case as a vertical merger. Instead, the complaint alleged that Sabre and Farelogix competed in the provision of booking services for airline tickets sold through travel agencies. This competition is indirect, resulting from Farelogix working with the individual airlines to disintermediate Sabre. However, the trial court did not miss the point. It observed that “Sabre and Farelogix view each other as competitors” and found that “the record reflects competition between Sabre’s and Farelogix’s direct connection solutions for airlines.”94

Having concluded that competition was reduced by the merger, the trial court **nonetheless rejected the DOJ’s complaint** on the grounds that Farelogix and Sabre **do not compete in the two-sided platform market**.95 While Sabre provides services to customers on both sides (i.e., to both airlines and travel agencies), Farelogix provides services to **only one side** (i.e., to airlines, but not to travel agencies). The travel agency services are provided by the airlines themselves, using the Farelogix technology.

This approach was both defective and unnecessary because Sabre competed with the combination of Farelogix and the airlines.96 Yet the court thought that **American Express compelled the opposite result**, despite its own fact-finding and the vertical nature of the transaction. If other U.S. courts similarly follow this same defective approach, the result will be **underdeterrence of anticompetitive acquisitions by digital platforms**.97 Indeed, this approach would lead to **ludicrous results**. Under this reasoning, Microsoft could have **legally ended the competitive threat from Netscape** and Java simply **by acquiring them instead of trying to destroy them.**

**Exclusionary practices suppress innovation---sole big tech innovation has reached its ceiling**

**Allensworth**, Professor of Law at Vanderbilt Law School, **‘21**

(Rebecca, “Antitrust’s High-Tech Exceptionalism,” 130 Yale L.J. 588)

E. Whither Innovation?

As a theoretical matter, big tech’s refusals to deal and predatory copying **suppress innovation**. A retailer with a new idea for a household product will be **less inclined to invest** in producing it if he knows Amazon can **appropriate the returns**. A developer with a better “app for that” will be less likely to bring it to market if she believes Apple or Facebook might someday **remove it from their platforms.** And if a rival search company cannot hope to keep its data private from Google, it will not invest in building a better search engine to try to take on the giant.

Whether big tech stifles innovation as an empirical matter is less clear, but there is anecdotal evidence that it does. During a recent hearing following the House Judiciary Committee’s investigation into competition abuses among high-tech firms, Representative Cicilline read a quote that he said was typical of the entrepreneurs he interviewed: “If someone came to me with an idea for a website or a web service today, I’d tell them to run. Run as far away from the web as possible.”111 **Venture capital,** while booming overall,112 **is shy about funding projects that might compete with Big Tech**. The best-case scenario for a start-up is acquisition by one of the big four—a lucrative payday, for sure, but nothing compared to what could come from **actually toppling a dominant firm**. This puts a **ceiling on the upside**, and with the **ever-present risk of failure**, **it likely leads to under-investment in new ideas**. As one funder put it, **“[w]e don’t touch anything that comes too close to Facebook, Google or Amazon**.”113

CONCLUSION: “ANTITRUST IS GREEDY”

The promise that we saw in high tech during its first boom—that it would change the way we work, communicate, shop, and play—**has largely been realized**. Few can argue with the efficiencies that digital communication and commerce have brought to our lives and markets. But, as Professor Herbert Hovenkamp has said, **“antitrust is greedy.”**114 It wants not only efficiency in end products, but efficiency in the competitive process that brings them about. During the dot-com era, American antitrust institutions became enthralled with the idea that encouraging the development of dynamic, innovative products required **compromising our commitment to dynamic**, innovative markets. That compromise contributed—in a way that is often overlooked—to the current competition crisis in big tech.

**Platform misuse enables a host of bad practices—undermines cyber security**

**Stucke** is a co-founder of The Konkurrenz Group and a law professor at the University of Tennessee, **‘18**

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

So, the divergence in antitrust enforcement may reflect differences over these data-opolies’ **perceived harms.** Ordinarily the harm from monopolies are higher prices, less output, or reduced quality. It superficially appears that data-opolies pose little, if any risk, of these harms. Unlike some pharmaceuticals, data-opolies do not charge consumers exorbitant prices. Most of Google’s and Facebook’s consumer products are ostensibly “free.” The data-opolies’ scale can also mean higher quality products. The more people use a particular search engine, the more the search engine’s algorithm can learn users’ preferences, the more relevant the search results will likely be, which in turn will likely attract others to the search engine, and the **positive feedback continues**.

As Robert Bork argued, there “is no coherent case for monopolization because a search engine, like Google, is free to consumers and they can switch to an alternative search engine with a click.”

How Data-opolies Harm

But higher prices are not the only way for powerful companies to **harm their consumers** or the rest of society. Upon closer examination, data-opolies can **pose at least eight potential harms.**

**Lower-quality products** with **less privacy**. Companies, antitrust authorities increasingly recognize, can **compete on privacy and protecting data**. But **without competition**, data-opolies **face less pressure**. They can depress privacy protection below competitive levels and **collect** personal data **above competitive levels**. The collection of too much personal data can be the equivalent of charging an excessive price.

Data-opolies can also fail to disclose what data they collect and how they will use the data. They face little competitive pressure to change their opaque privacy policies. Even if a data-opoly improves its privacy statement, so what? The current notice-and-consent regime is meaningless when there are **no viable competitive alternatives** and the **bargaining power is so unequal.**

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.**

**Platform monopoly ensures any breach cascades, collapses society**

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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 econom**y (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.**

### 1AC---Access

Advantage 3 is Access---

#### Innovation not all created equal – Only nascent firms foster transformative tech innovation across sectors, AND it can’t be predicted or directed

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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.

#### Maintaining our innovative lead solves nuclear war

Kroenig and Gopalaswamy 18 – Associate Professor of Government and Foreign Service at Georgetown University and Deputy Director for Strategy in the Scowcroft Center for Strategy and Security at the Atlantic Council; Director of the South Asia Center at the Atlantic Council

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.

#### Continued software breakthroughs vital to solution-development for every existential risk

Hayes 14 – Correspondent-Democrat & Chronicle

Matthew Hayes, Bill Gates sees innovation solving world problems, 2014, <http://www.democratandchronicle.com/story/money/business/2014/10/05/bill-gates-sees-innovation-solving-world-problems/16760969/>

ITHACA – Bill Gates delivered an optimistic message about the future to Cornell University students during a back-and-forth Wednesday evening with President David Skorton. Gates, who fielded questions from the audience, spoke to the packed auditorium at Bailey Hall with the message that innovations in science, medicine and computer technologies will continue to shape the world for the better. Progress in reducing health and income inequalities in developing countries gave him particular pride, he said. The Bill & Melinda Gates Foundation, which he co-chairs with his wife, has dispersed more than $30 billion in grants since its inception 14 years ago. The foundation has a mission to improve education in the United States and a global focus on improving people’s health in poor countries. “We saw that health was the greatest injustice,” he told Skorton about his foundation’s mission to improve people’s health. Feeding the poor is only one priority of the Gates Foundation. The philanthropic group has helped lower the number of childhood deaths from 10 million in 2000 to about 6 million today. His goal is to reduce that further to 2 million, he said. He expressed optimism that research into diseases that ravage the poorer parts of the world — malaria, cholera, tuberculosis and others — will continue to be funded. Economic development in poorer countries has helped reduce global inequality, which he said is at a lower level than it has ever been. “The world is A, much richer, and B, much richer in a far more equitable way,” he told the students. That has been the opposite of what has happened in the past three decades or so in the United States, he said. He called for tax policies to help level that inequality, with a progressive consumption tax and a high estate tax that limits the dynastic possession of wealth. While he expressed concern about the current political climate in the country, he felt that science innovations can overcome problems in Washington, D.C. “The things that count in society don’t depend on politicians being geniuses,” he said. At the dedication Gates had a similar optimistic message earlier in the day during the dedication ceremony of Gates Hall. Gates said it’s an exciting time to be involved in the computer sciences, even more than when he got involved 46 years ago. Despite the advances over the past few decades, he said, “the full dream of what is possible with computing has not yet been realized.” Problems like developing vaccines, energy sources without carbon dioxide emissions, and understanding issues as diverse as neurological disease and weather forecasting can all be tackled with emerging technologies. “With every one of these problems, the **digital tools combined with really amazing software are going to be the reason that we can solve these things**,” he said. He said **figuring out solutions depends on software-intensive techniques**, and that Cornell students will be poised to make gains in those fields.

#### Synthetic biology advances elsewhere will inevitably result in easy global ability to engineer superbugs. ONLY the U.S. getting out ahead with new breakthroughs can solve

Lohr 11/23 – Quoting Endy, Professor of Bioengineering, Stanford University

Steve Lohr, Quoting Drew Endy, professor of bioengineering at Stanford University, 23 November 2021, https://www.nytimes.com/2021/11/23/business/dealbook/synthetic-biology-drew-endy.html

Synthetic biology holds great promise, but there is a dark side as well. Hacking biology and democratizing the tools to do so raises the specter of an angry loner or terrorist group creating a build-your-own pandemic genetically targeted at their enemies, among other potential horrors.

Mr. Endy, though synthetic biology’s champion, has been cleareyed about the risks since the outset. He was the lead author of a report for the Pentagon’s advanced research agency in 2003 that laid out a framework for developing synthetic biology and managing its risks. In the report, he assessed the spectrum of dangers and imagined the bad-actor threat as “Bin Laden Genetics.”

Today, risk management, Mr. Endy said, should start with the assumption that in the not too distant future “anyone, anywhere can make any virus from scratch.”

One line of protection is synthetic biology itself. For example, Mr. Endy points to the possibility of advanced technologies like engineered chromosomes that would give humans a built-in defense system, say, against the world’s top 20 pathogens.

#### Only a tech ecosystem that supplements Big Tech with many small disruptive innovators which are independent BUT able to access platforms’ data will allow us to beat China in AI. Centralization guarantees defeat, because China’s better at it and has way more people! Try or die for competitive innovation.

Wheeler 20, visiting fellow in Governance Studies at The Brookings Institution, Chairman of the Federal Communication Commission (FCC) from 2013 to 2017, ‘20

(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 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 key to solve**

**Donahoe 21** – Executive director of Stanford’s Global Digital Policy Incubator. Former U.S. Ambassador to the UNHRC in Geneva.

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.

**Empirical evidence shows competition policy DOES solve**

**Maximiano and Volpin 20** – Ruben Maximiano is a Senior Competition Expert at the OECD and a lecturer at Lille Catholic University, where he teaches EU competition law. Cristina is a Competition Law & Policy Expert at the OECD

Ruben Maximiano and Cristina Volpin, December 2 2020, “The Role of Competition Policy in Promoting Economic Recovery,” OECD, https://one.oecd.org/document/DAF/COMP(2020)6/en/pdf

A significant array of empirical evidence shows that competition delivers many benefits at both macro and micro-economic levels. At the macro-economic level **competition promotes the optimal use of scarce economic resources, drives economic growth, boosts firms’ productivity and production levels, multiplies business opportunities and can help reduce inequality and create more and better jobs** (OECD, 2014[34]). At the micro level, **competition leads to better prices, greater choice and higher quality of goods and services**. Competition also accelerates the adoption of new technologies and encourages innovation. This works as a virtuous circle, since a competitive and innovative firms will spur its competitors to compete and innovate. It is this mechanism that then leads to the macro economic benefits boost of growth, benefits that accumulate over time, increasing prosperity in the long run. When the variety of innovation is not protected, consumers are more exposed and more severely affected by demand or supply shocks. This is particularly relevant in a pandemic and post-pandemic world. Using the example of the US market for medical ventilators during the Covid-19 pandemic, Scott Morton (2020[35]) underlines the importance of competition as a key driver of quality, choice and innovation and, in particular, in preserving the variety of innovation. **Competition can help ensure more stable distribution of essential goods**. Even when disruption occurs, in competitive supply chains, these may be corrected by competitors’ entry. Moss and Alexander (2020[36]) have argued that competition can help ensure that food systems (including agricultural inputs, processing, manufacturing, and distribution) are more resilient. The authors state that, while shocks such as extreme weather conditions, diseases and conflict regularly affect food supply chains, those economies where competition is vigorous are less likely to suffer disruptions.

## 2AC

### AT: Gradualism

#### Non-unique—platform monopoly is a structural limit on high-tech innovation

Newman, Associate Professor, University of Miami School of Law, ‘19

(John, “Antitrust in Digital Markets,” 72 Vand. L. Rev. 1497)

Despite the fact that digital markets frequently exhibit high barriers to entry, skeptics of antitrust enforcement have one card left to play: they portray digital markets as nonetheless being characterized by intense innovative rivalry.135 As a result, the argument runs, antitrust would move too slowly to correct any problems and is unnecessary because the relevant markets will quickly correct themselves.136 Under this view, the lure of monopoly profits will inevitably attract disruptive upstarts seeking to replace dominant incumbents—and monopoly is actually good and desirable because it is necessary to spur technological progress.137 This unorthodox vision traces its roots to Schumpeter’s decades-old invocation of “creative destruction,”138 which became a favorite trope among those associated with the Austrian and Chicago schools.139

For empirical support, proponents of this digital creative destruction narrative commonly point to Facebook’s “disruption” of MySpace and Google’s “disruption” of Yahoo.140 Thus, for example, Robert Bork and Gregory Sidak argued that Google should not face antitrust liability because “[i]t surpassed Yahoo, just as Yahoo surpassed others before it.”141 Put another way, if Facebook and Google could supplant their predecessors, they must themselves face the constant risk of disruption—their perch at the top is a precarious one.

Let us pause to revisit these two commonly cited examples of digital disruption. It is true that Facebook supplanted MySpace as the largest social network—in April 2008.142 That was, to put it rather mildly, some time ago.143 Facebook’s reach continuously expanded during the following decade. As of 2018, Facebook, Inc. controlled the three largest mobile social networking apps in the United States144 and boasted a combined user base over five times larger than that of its nearest rival.145 With each passing year, the creative-destruction narrative becomes ever less credible.

The Google example fares even worse. Google was already the world’s second most popular search provider by 2000.146 That same year, Yahoo (previously the most popular provider) announced that Google would begin serving as the search engine for Yahoo’s web portal,147 effectively making Google the dominant global search provider.148 As with Facebook, Google’s stranglehold over search only increased with the passage of time—as of 2018, after nearly two decades of dominance, Google still controlled more than 90% of the global market for general search results.149

The anecdotes of MySpace and Yahoo, still commonly cited by those who argue that digital markets are epicenters of creative destruction,150 look increasingly creaky with age. The relevant markets have been characterized not by the “gale” of creative destruction described by Schumpeter, but by entrenched and unchecked dominance. It is high time to abandon the “romantic but naïve Schumpeterian [notion] that giant” monopolists and concentrated oligopolies are necessary for technological progress.151 In fact, a more sophisticated reading of Schumpeter suggests that he was not nearly so opposed to government intervention—particularly in the form of antitrust enforcement—as his modern-day adherents tend to be.152 An antitrust enterprise that somehow came to view monopoly as good and necessary has rather clearly lost its way.153

Durable market power is the precise evil antitrust laws are meant to prevent. Far from being self-correcting, digital markets often facilitate such power. This suggests that the orthodox position rests in part upon a flawed assumption about the balance of error costs in this context. The societal cost from false negatives is substantially higher than pro-defendant analysts have previously assumed. Normatively, this militates in favor of an invigorated approach to digital markets.

#### False negatives outweigh false positives.

Baker, JD, PhD, Research Professor of Law at American University Washington College of Law, former FCC Chief Economist, former Senior Economist on Presidential Council of Economic Advisors, Jerry S. Cohen Award for Antitrust Scholarship, ‘19

(Jonathan, *The Antitrust Paradigm: Restoring a Competitive Economy*, Chapter 6, Harvard University Press)

In arguing that the costs of false positives outweigh those of false negatives, antitrust conservatives often highlight the supposed durability of erroneous judicial precedents. "If the court errs by condemning a beneficial practice," Easterbrook writes, "the benefits may be lost for good" through the precedential effect of the judicial decision.67 Easterbrook expresses particular concern with erroneous Supreme Court decisions,68 presumably because lower courts' errors of law are frequently corrected on appeal.69

It is hard to credit the claim that bad precedents systematically outlive market power .7° Erroneous precedents may not disappear overnight, but neither do cartels nor single-firm dominance. It took seven years for the Supreme Court implicitly to overrule the erroneous precedent of Appalachian Coals7,1 which had allowed coal producers to cartelize during the Great Depression, and ten years explicitly to overrule Schwinn, 72 which had made vertical intrabrand non price agreements illegal per se. Yet these lengths of time are comparable to the typical duration of cartels cut short by antitrust enforcement and, in consequence, less than the cartels' likely duration if market forces were the sole mechanism for correction. 73

Furthermore, even before the Court overrules an erroneous precedent, a number of circumstances may limit its practical effect. Precedents may be undermined by lower courts,74 abrogated by legislative action,75 or narrowed, procedurally or substantively, by the Court itself.76 The instances in which the Supreme Court has overruled its own antitrust decisions, the range of mechanisms available for correcting bad court decisions, and the Supreme Court's thoroughgoing adoption of the Chicago school's critique all call into question Easterbrook's claim that erroneous judicial precedents, even from the Supreme Court, are more durable than monopolies and cartels.77

#### No link—type 1 errors are structurally limited

Hovenkamp, Assistant Professor, USC Gould School of Law, ‘19

(Erik, “Platform Antitrust,” 44 J. Corp. L. 713)

Supporters of AmEx III's two-sided netting requirement presume that this burden shifting framework is inarguably better equipped to avoid judicial errors. 19 1 But, more accurately, it would produce a tradeoff in errors. It reduces the likelihood of type one errors (mistaken finding of liability), while increasing the likelihood of type two errors (mistaken denial of liability). While one may reasonably posit that it is preferable to err on the side of non-intervention, the two error types are not equally likely. A defendant is much better informed about the broader function of its restraint and its comparative effects across the two sides. That would suggest a defendant can more capably demonstrate a plausible crossplatform efficiency than a plaintiff can refute one. As such, in cases that turn on considerations of procompetitive justifications (stage two), type one errors will be substantially less likely to arise, given that the defendant need not quantify the relevant efficiencies.

### 2AC---T Structural

#### The term “prohibition” includes indirect coercion and penalties.

Whyte 19 – Former Chief Legal Counsel, Montana Department of Revenue

Daniel J. Whyte, Brief of Respondents, Espinoza v. Montana Department of Revenue, 2019 U.S. Supreme Court Briefs Lexis 6391, Supreme Court of the United States, November 2019, LexisNexis

I.A The Free Exercise Clause bars laws "prohibiting the free exercise" of "religion." This Court has held that the term "prohibition" covers not only direct bans on religious practice, but also "indirect coercion or penalties on the free exercise of religion." Trinity Lutheran Church of Columbia, Inc. v. Comer, 137 S. Ct. 2012, 2022 (2017) (internal quotation marks omitted). Thus, in Trinity Lutheran, this Court held that when a church was barred from receiving a generally available benefit, it was penalized for being a church, in violation of the Free Exercise Clause.

#### ‘Practices’ includes exclusionary conduct.

OECD 90, Organisation for Economic Co-operation and Development, “GLOSSARY OF INDUSTRIAL ORGANISATION ECONOMICS AND COMPETITION LAW,” OECD, 1990, https://www.concurrences.com/IMG/pdf/oecd\_-\_glossary\_of\_industrial\_organisation\_economics\_and\_competition\_law.pdf?39924/e9f9a49f59fa42b7de2397532968788aa2855447

ANTICOMPETITIVE PRACTICES

INSTITUTION DEFINITION

Refers to a wide range of business practices in which a firm or group of firms may engage in order to restrict inter-firm competition to maintain or increase their relative market position and profits without necessarily providing goods and services at a lower cost or of higher quality. The essence of competition entails attempts by firm(s) to gain advantage over rivals. However, the boundary of acceptable business practices may be crossed if firms contrive to artificially limit competition by not building so much on their advantages but on exploiting their market position to the disadvantage or detriment of competitors, customers and suppliers such that higher prices, reduced output, less consumer choice, loss of economic efficiency and misallocation of resources (or combinations thereof) are likely to result.

Which types of business practices are likely to be construed as being anticompetitive and, if that, as violating competition law, will vary by jurisdiction and on a case by case basis. Certain practices may be viewed as per se illegal while others may be subject to rule of reason. Resale price maintenance, for example, is viewed in most jurisdictions as being per se illegal whereas exclusive dealing may be subject to rule of reason. The standards for determining whether or not a business practice is illegal may also differ. In the United States, price fixing agreements are per se illegal whereas in Canada the agreement must cover a substantial part of the market. With these caveats in mind, competition laws in a large number of countries examine and generally seek to prevent a wide range of business practices which restrict competition.

These practices are broadly classified into two groups: horizontal and vertical restraints on competition. The first group includes specific practices such as cartels, collusion, conspiracy, mergers, predatory pricing, price discrimination and price fixing agreements. The second group includes practices such as exclusive dealing, geographic market restrictions, refusal to deal/sell, resale price maintenance and tied selling. Generally speaking, horizontal restraints on competition primarily entail other competitors in the market whereas vertical restraints entail supplier-distributor relationships.

However, it should be noted that the distinction between horizontal and vertical restraints on competition is not always clear cut and practices of one type may impact on the other. For example, firms may adopt strategic behaviour to foreclose competition. They may attempt to do so by pre-empting facilities through acquisition of important sources of raw material supply or distribution channels, enter into long term contracts to purchase available inputs or capacity and engage in exclusive dealing and other practices. These practices may raise barriers to entry and entrench the market position of existing firms and/or facilitate anticompetitive arrangements.

### 2AC---T Private Sector

#### C/I: “Expand the scope of its core antitrust laws” requires modifying the applicability of the antitrust laws by a part of the private sector

Kovacic et al. 03 – Professor at George Washington University Law School

William E. Kovacic, Theodore B. Olson, R. Hewitt Pate, Paul D. Clement, Jeffrey A. Lamken, Catherine G. O’Sullivan, Nancy C. Garrison, David Seidman, Brief for the United States and the Federal Trade Commission as Amici Curiae Supporting Petitioner, Verizon Communs. Inc. v. Law Offices of Curtis v. Trinko, 2003 U.S. S. Ct. Briefs LEXIS 513, Supreme Court of the United States, May 2003, LexisNexis

Conversely, the 1996 Act does not expand the scope of the antitrust laws to outlaw conduct that, but for the 1996 Act, would not violate the antitrust laws. Such an expansion of Sherman Act duties would "modify \* \* \* the applicability of \* \* \* the antitrust laws" in contravention of 47 U.S.C. 152 note. Violations of the duties imposed by the 1996 Act are just that--violations of the 1996 Act, subject to the sanctions and penalties imposed by that Act. They do not automatically amount to treble-damages antitrust claims. The courts of appeals are again in accord. Pet. App. 29a; Covad, 299 F.3d at 1283 ("We agree with Goldwasser that merely pleading violations of the 1996 Act alone will not suffice to plead Sherman Act violations."); Goldwasser, 222 F.3d at 400 (It is "both illogical and undesirable to equate a failure to comply with the 1996 Act with a failure to comply with the antitrust laws."); Cavalier Tel. Co., 2003 WL 21153305, at \*11-\*12 (similar).

#### “The” is a specifying term.

Random House 6 (Unabridged Dictionary, http://dictionary.reference.com/browse/the)

The (used, esp. before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article *a* or *an*): the book you gave me; Come into the house.

### 2AC---Neolib K

#### Government sponsored tech innovation fails---empirics.

Thierer 8/18 – Adam Thierer is a Senior Research Fellow at the Mercatus Center at George Mason University. He specializes in innovation, entrepreneurialism, Internet, and free-speech issues, with a particular focus on the public policy concerns surrounding emerging technologies.  
Adam Thierer, August 18 2021, “Government Planning and Spending Won’t Replicate Silicon Valley,” Discourse, https://www.discoursemagazine.com/economics/2021/08/18/government-planning-and-spending-wont-replicate-silicon-valley/

Politicians used to promise a chicken in every pot. Today, it’s a Silicon Valley in every state.

The computing and internet revolutions gave rise to prominent tech clusters in Silicon Valley, Seattle, Boston, Austin and elsewhere. This has left many pundits and policymakers wondering how America might [spread the wealth](https://itif.org/publications/2019/12/09/case-growth-centers-how-spread-tech-innovation-across-america), so to speak, by reproducing these successes in other parts of the country.

A major effort is afoot to do just that. While promoting “innovation hubs” and “science parks” has been a long-standing priority for many state and local officials, a more concerted effort is now underway that marries traditional state and local economic development efforts with a renewed bipartisan interest in [comprehensive industrial policy planning](https://www.researchgate.net/publication/352259022_Does_the_US_Need_a_More_Targeted_Industrial_Policy_for_AI_High-Tech) at the federal level.

Earlier this summer, the Senate passed a 2,300-page industrial policy bill, the “[United States Innovation and Competition Act of 2021](https://www.congress.gov/bill/117th-congress/senate-bill/1260/text),” that included almost $10 billion over four years for a Department of Commerce-led effort to fund 20 new regional technology hubs, “in a manner that ensures geographic diversity and representation from communities of differing populations.” A similar proposal that is moving in the House, the “[Regional Innovation Act of 2021](https://www.congress.gov/bill/117th-congress/house-bill/4588/text),” proposes almost $7 billion over five years for 10 regional tech hubs.

Meanwhile, the Biden administration also is pitching ideas for new high-tech hubs. In late July, the Commerce Department’s Economic Development Administration [announced plans](https://www.aip.org/fyi/2021/commerce-department-dedicating-1-billion-spur-%E2%80%98regional-industry-clusters%E2%80%99) to allocate $1 billion in pandemic recovery funds to create or expand “regional industry clusters” as part of the administration’s new [Build Back Better Regional Challenge](https://eda.gov/arpa/build-back-better/). Among the possible ideas the agency said might win funding are an “artificial intelligence corridor,” an “agriculture-technology cluster” in rural coal counties, a “blue economy cluster” in coastal regions, and a “climate-friendly electric vehicle cluster.”

Efforts to geographically diversify tech clusters are rooted in an understandable desire to extend the benefits of technological innovation beyond major cities. It is hard to fault state and local policymakers for wanting government to do more to attract new investment, firms and jobs to their communities.

Unfortunately, the “if you build it, they will come” mentality surrounding tech clusters and regional innovation hubs doesn’t take into account many economic, political, cultural and geographic challenges. Indeed, the history of previous efforts proves that these things cannot simply be willed into existence through top-down industrial policies, big bureaucracies and a lot of new spending programs. Clusters tend to grow more organically, and efforts by the government to force them are unlikely to meet with any more success than past experiments.

Wishful Thinking About Economic Development Subsidies

“Economic theory offers little reason to think that targeted economic development subsidies benefit the broader communities that ultimately pay for them,” concluded a recent Mercatus Center study on “[The Economics of a Targeted Economic Development Subsidy](https://www.mercatus.org/publications/government-spending/economics-targeted-economic-development-subsidy).” The authors highlighted the extensive economic literature that finds that “the net effect of targeted economic development subsidies is likely to be negative” because “the taxes funding the subsidies will discourage more economic activity than will be encouraged by the subsidies themselves.”

That points to the first problem with governments trying to pick winners: There is no free lunch. Economic development and industrial policy efforts always sound great in theory, but in the end they rely on government-granted privileges—discriminatory tax or regulatory relief, cash subsidies, loans and loan guarantees, in-kind donations and the provision of other valuable goods and services. The costs of these targeted privileges are passed along to those firms and economic sectors without the political clout to get the favors, or just borne by taxpayers more generally.

The second problem with policymakers trying to pick winners is that they’re just not very good at it. Forecasting future market trends and the evolution of technology has always been notoriously difficult, even in the private sector. Lacking a profit motive and business acumen, governments have a much worse track record than investors, regularly picking more losers than winners. This problem has grown more acute today due to “[the pacing problem](https://www.mercatus.org/bridge/commentary/pacing-problem-and-future-technology-regulation),” which refers to the inability of government policies and programs to keep up with the ever-quickening pace of modern technological innovation.

These realities have not stopped policymakers from repeatedly trying to use both direct and indirect subsidies to attract high-tech sectors and talent to specific destinations. But there is no precise recipe for growing tech clusters. And as economists [William R. Kerr](https://www.hbs.edu/competitiveness/faculty/Pages/faculty-profile-details.aspx?profile=wkerr) and [Frédéric Robert-Nicoud](https://www.unige.ch/gsem/en/research/faculty/all/frederic-robert-nicoud/) [note](https://www.aeaweb.org/articles?id=10.1257/jep.34.3.50), “developing even a semi-formal definition is tricky.” Typically, however, a tech cluster includes “an important overall scale of local activity, complemented by spatial density and linkages amongst local firms.”

This is not easily replicated. Indeed, in the U.S. a huge amount of the nation’s high-tech startup activity and venture capital funding is concentrated only in Silicon Valley and eight other big-city areas: New York City, Boston, Los Angeles, Seattle, Washington, D.C., San Diego, Austin and Chicago. Of course, large cities have long possessed many advantages for attracting skilled labor and investors, and they often tend to have a high concentration of universities and research labs, making it far easier for tech clusters to develop in these large urban centers than in rural areas. Fine. But much of the nation is dotted with other large cities. Why can’t they become thriving tech clusters?

This kind of thinking is driving the latest push to create the next great innovation hub. “With federal support, the U.S. can recreate Silicon Valley success nationwide,” [says Steve Case](https://thehill.com/opinion/technology/550262-with-federal-support-the-us-can-recreate-silicon-valley-success-nationwide?rl=1), former head of America Online. [Others argue](https://www.brookings.edu/events/leveraging-regional-tech-hubs-to-advance-racial-equity/) regional tech hubs can help advance economic inclusion and racial equity.

#### ---Only tech markets can aggregate information and distribute the resources to develop the AI and Fintech innovations necessary.

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?

#### ---We need market competition in narrow industries like tech to beat China, BUT that doesn’t mean the logic of competition should structure everything.

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

Indeed, after the financial crisis, monetary policy engaged in a truly unprecedented expansion, with the Federal Reserve lowering interest rates to zero and increasing its balance sheet from approximately $900 billion before the crisis to $4.5 trillion after, most of which constituted either troublesome mortgage-backed securities or treasury bonds. 36 The share of wealth of the world's richest people roughly doubled. 37 At the same time, however, one would seem to look in vain for any shift toward an increased laissez faire competition policy during the Obama administration. Indeed, antitrust enforcement under the Obama administration arguably increased relative to the George W. Bush administration, even if only at the margins and not in the area of monopolization. 3

#### Empirics prove competition policy works.

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Ruben Maximiano and Cristina Volpin, December 2 2020, “The Role of Competition Policy in Promoting Economic Recovery,” OECD, https://one.oecd.org/document/DAF/COMP(2020)6/en/pdf

A significant array of empirical evidence shows that competition delivers many benefits at both macro and micro-economic levels. At the macro-economic level competition promotes the optimal use of scarce economic resources, drives economic growth, boosts firms’ productivity and production levels, multiplies business opportunities and can help reduce inequality and create more and better jobs (OECD, 2014[34]). At the micro level, competition leads to better prices, greater choice and higher quality of goods and services. Competition also accelerates the adoption of new technologies and encourages innovation. This works as a virtuous circle, since a competitive and innovative firms will spur its competitors to compete and innovate. It is this mechanism that then leads to the macro economic benefits boost of growth, benefits that accumulate over time, increasing prosperity in the long run. When the variety of innovation is not protected, consumers are more exposed and more severely affected by demand or supply shocks. This is particularly relevant in a pandemic and post-pandemic world. Using the example of the US market for medical ventilators during the Covid-19 pandemic, Scott Morton (2020[35]) underlines the importance of competition as a key driver of quality, choice and innovation and, in particular, in preserving the variety of innovation. Competition can help ensure more stable distribution of essential goods. Even when disruption occurs, in competitive supply chains, these may be corrected by competitors’ entry. Moss and Alexander (2020[36]) have argued that competition can help ensure that food systems (including agricultural inputs, processing, manufacturing, and distribution) are more resilient. The authors state that, while shocks such as extreme weather conditions, diseases and conflict regularly affect food supply chains, those economies where competition is vigorous are less likely to suffer disruptions.

#### The “imminent collapse unless alt” narrative is wrong—enough time to address existential risk without discarding capitalism

Wade, Professor of Global Political Economy at the Department of International Development, London School of Economics, ‘21

(Robert H., “What is the Harm in Forecasting Catastrophe due to Man-Made Global Warming?” July 22, <https://www.globalpolicyjournal.com/blog/22/07/2021/what-harm-forecasting-catastrophe-due-man-made-global-warming>)

When parts of western Germany, Belgium and Netherlands have just experienced catastrophic floods and the Pacific northwest has recently broken heat records, it is counter-intuitive to challenge the prevailing pessimism about global warming – captured for example by the Financial Times columnist Martin Wolf who says, “Given this signal failure [to vaccinate against Covid in line with the global interest], it is impossible to imagine we will do much more than fiddle while the planet burns.”

The danger of this mindset is that it encourages inflation of the threat-language far beyond the credible science, so that the future cannot be discussed except in terms of a choice between “disaster”, “catastrophe”, “planetary extinction” on the one hand or impossibly fast reforms to how humanity lives, works and governs, on the other.

Every sensible person agrees that (1) global warming has been happening over most of the second half of the twentieth century and on into the twenty first, and (2) most of it to date is due to greenhouse gas emissions. What could be called the “mainstream view” of climate change goes much further, onto uncertain epistemological ground: (3) man-made global warming is the main cause of all kinds of disagreeable events – including extreme weather, rising seas, and much more; (4) humanity faces impending catastrophe unless we undertake far-reaching changes to how we live, work and govern in order to cut CO2 emissions and dematerialize economies (“net zero by 2050”).

This essay identifies some of the weaknesses in the evidence presented in support of the mainstream view, including weaknesses in the claim that 97% of climate scientists believe in anthropogenic global warming, in the claim that global temperatures will rise much faster than they have been rising, and in the (implicit) claim that the horrifying worst-case scenario presented by the Intergovernmental Panel on Climate Change represents the likely scenario to 2100 in the absence of radical actions starting now. It identifies the incentive mechanisms that produce the exaggerations and sustain wide credence in them. At the end it considers the question: does highlighting the doomsday exaggerations serve to reduce the political and public pressures for necessary ameliorative action, in a world where powerful fossil lobbies seek to block or delay such action for reasons independent of “evidence”? To what extent must mass publics be “panicked” in order to induce enough collective political, business and family action to substantially slow the growth of greenhouse gas emissions?

Policy Recommendations

Every sensible person agrees that (1) global warming has been happening over most of the second half of the twentieth century and on into the twenty first, and (2) most of it to date is due to greenhouse gas emissions.

But too much policy discussion about global warming is polarized and locked into a “syndrome of exaggeration”. The mainstream view talks of coming disaster, catastrophe, even extinction, short of urgent and massive action on a global scale. But it is easy to question the empirical basis of this forecast – not least the long history of repeated wild exaggerations of disaster relative to what later transpired. In response an active but small “sceptical” community exaggerates its scepticism. The two sides make a syndrome in that the behaviour of each confirms the negative expectations of the other.

What is now strangely urgent is to calm down the present climate hysteria so that safety-first resource allocation and consumption decisions can be made without “climate” being the touchstone of the very future of humanity, the current idol of the ancient human longing for Salvation in anxious times, the pathway for all the ingredients of a better world.

The essay suggests changes in the budget and mandate of the Intergovernmental Panel on Climate Change; more action by learned societies in calling to account the wild exaggerators; beefing up the Loss and Damage pillar of the Paris Agreement; boosting investment in “clean coal” technologies as well as renewables, and linking coal-power retirement to the coming on stream of attractive alternatives; creating central planning capacity at national and international levels (eg in multilateral development banks) to integrate investment decisions in energy, transport, buildings, industry and agriculture; and last but not least, respecting the principle of free speech while maintaining the standards of civil discourse.

Every sensible person agrees that (1) global warming has been happening over most of the second half of the twentieth century and on into the twenty first, and (2) most of it to date is due to greenhouse gas emissions. Many go on to say that (3) global warming is the cause of all kinds of disagreeable events – including extreme weather, rising seas, and much more; and that (4) humanity faces impending catastrophe short of far-reaching changes to how we live, work and govern in order to cut CO2 emissions and dematerialize economies. This could now be described – with only a little exaggeration – as the mainstream view.

The Impending Catastrophe

Here are examples of people and organizations claiming that catastrophe for humanity and the biosphere lies ahead if the people of developed and developing countries alike do not make radical changes soon.

The New York Times reported after the G7 Summit in June 2021 that “Mr Biden was once again part of a unanimous consensus that the world needs to take drastic action to prevent a climate disaster”. The report explains that “… the world needs to urgently cut emissions if it has any chance of keeping average global temperatures from rising above 1.5C compared with preindustrial levels. That’s the threshold beyond which experts say the planet will experience catastrophic, irreversible damage.”

US climate envoy John Kerry delivered a dire warning on 12 May 2021 on “the mounting costs … of global warming and of a more volatile climate”. 2020’s tally of “22 hurricanes, floods, droughts and wildfires shattered the previous annual record of 16 such events, and that was set only 4 years ago…. You don’t have to be a scientist to begin to feel that we’re looking at a trend line.”

Christiana Figueres, former executive secretary of the UN Framework Convention on Climate Change and pivotal figure in the Paris Agreement, declared in 2020, “It is only over the next 10 years from here to 2030 that we can influence what is going to happen. The scary thing is that after 2030 it basically doesn’t really matter what humans do. We will be in danger of those tipping points having a domino effect on each other and we will lose total control.” (1)

Some more examples:

Kevin Drun, 2019: “[The Green New Deal] would only change the dates for planetary suicide by a decade or so. It’s nowhere near enough even if we do it ”.

Professor Frank Fenner, microbiologist, ANU, 2010: “We’re going to become extinct. Whatever we do now is too late”

John Davies, geophysicist, senior researcher at the Cold Climate Housing Research Center, 2014: “With business as usual life on earth is largely doomed”.

James Hansen, former Director, NASA Goddard Institute for Space Studies, testifying at a Congressional hearing on global warming in 2008: “We’re toast if we don’t get on to a very different path. This is the last chance” to avoid mass extinctions, ecosystem collapse and dramatic sea level rises. “We [scientists] see a tipping point occurring right before our eyes. The Arctic is the first tipping point and it’s occurring exactly the way we said it would.” In five to 10 years [by 2013-2018], the Arctic will be free of ice in the summer.

James Hansen, testimony at Congressional hearing, 1988: “world's leading climate expert [Hansen] predicts lower Manhattan underwater by 2018”

Dr Michael Mann, Penn State: “We’re talking about literally giving up on our coastal cities of the world and moving inland”

United Nations Environment Programme, 2005: “Fifty million climate refugees by 2010.” (2)

United Nations Environment Programme, 2011: “60 million environmental refugees by 2020”

The Guardian carried a front-page story in 2004 headlined, “Now the Pentagon tells Bush: climate change will destroy us”. The by-line reads: “Secret report warns of rioting and nuclear war. Britain will be ‘Siberian’ in less than 20 years. Threat to the world is greater than terrorism”. The text continues, “A secret report, suppressed by US defence chiefs…, warns that major European cities will be sunk beneath rising seas as Britain is plunged into a ‘Siberian’ climate by 2020. Nuclear conflict, mega-droughts, famine and widespread rioting will erupt across the world.” (Emphases added).

Remember that in the 1960s and 1970s many experts forecast an immanent Ice Age. For example, 1970: “Ice age by 2000”. 1971: “New Ice Age coming by 2020 or 2030.” 1976: “Scientific consensus planet cooling famines imminent”. 1978: “No end in sight to 30 year cooling trend”.

The Climate Change Consensus

The diagnoses and prescriptions in the above statements express an underlying consensus.

Human actions (mainly burning fossil fuels and changing land use) are causing rising concentration of atmospheric CO2 (and other greenhouse gases, GHG),

Rises in man-made GHG are causing rising global temperatures in atmosphere and seas, and

This temperature rise poses not just a serious threat to humanity and the whole biosphere, but an existential threat.

In other words, the existence of humans and many other species is at stake if we do not succeed in drastically cutting CO2 emissions as the way to reduce the atmospheric concentration of GHG and thereby slow or reverse the rise in global temperature. In the oft used phrase, humanity faces an “existential crisis” induced by climate change caused by human actions. Implied but not normally stated, there are no benefits from higher concentrations of CO2 or higher temperature to be weighed against costs. Also implied but not normally stated, we must act to stop climate change regardless of cost, because the costs might include deep disruption of human civilization or even extinction.

We have to think of avoiding climate change as the global equivalent of avoiding explosions at nuclear power plants (Chernobyl, Fukushima). We invest heavily in safety-first measures in order to reduce the probability of a nuclear explosion to a very low level because the costs of a nuclear explosion are so huge. The same logic applies at the level of climate, in terms of the costs of average temperature rising by more than ~ 1.5 C from “pre-industrial”.

This is the Anthropogenic Global Warming Consensus, or Climate Change Consensus (CCC) for short. I use “consensus” in the same sense as “the Washington Consensus” about best policy for developing countries, the phrase coined by John Williamson in 1990.

The CCC is now well anchored into international agreements (such as the Paris Declaration), national policy, and increasingly corporate strategy too. The periodic Assessment Reports of the Intergovernmental Panel on Climate Change (IPCC) reaffirm it, particularly in the Summary for Policymakers. Financial Times journalist Pilita Clark observed, “The world has rarely seen any environmental idea take off like the push to cut greenhouse gas emissions to net zero. A fringe concept six years ago, it has gone mainstream so quickly that more than 60 percent of countries now have some sort of net zero goal, along with investors managing nearly $37tn and at least 20 percent of the 2,000 largest publicly listed companies. The International Energy Agency [IEA] warns in a striking net zero report today that all new oil, gas and coal projects and exploration must stop if global warming is to stay below 1.5C.”

Scientific support comes from the fact that 97% of climate scientists agree that man-made greenhouse gases have been responsible for “most” of the warming of the Earth’s average temperature over the second half of the twentieth century. The 3% who are sceptical are not highly regarded scientists and some are in the pay of fossil fuel interests.

In the face of this scientific, interstate, and corporate agreement about the necessity of a global Big Push to cut CO2 emissions fast, developing countries and China carry a heavy responsibility, because they are the major source of global CO2 emissions, mainly from their consumption of fossil fuels. They must quickly follow the developed countries in investing on a massive scale in sources of renewable energy, whose prices are falling fast. Developed countries will offer large-scale financing and technical assistance for them to make the switch – in the developed countries’ self-interest.

It is true that developed countries put up most of the stock of greenhouse gases now in the atmosphere as they used fossil fuels to power their ascent to the top of the global hierarchy of income and wealth over the past two centuries. But that gives developing countries, even though they remain well down the income hierarchy, no justification for saying that they therefore have the right to carbon space for powering their economic development – because continuing to use relatively accessible, cheap and reliable fossil-fuel energy to power their growth pushes all humanity and the biosphere towards ruin.

Do Virtually all Climate Scientists Agree with the CCC?

It is widely cited that “97% of climate scientists agree warming is man-made”; or more exactly, “97% of science papers taking a position on climate change say it is man-made”. The conclusion is frequently amped up to “a 97% consensus that ‘humans are causing a global warming crisis’”.

Note that this last statement – with “crisis” – is not the same as the previous two, but all three statements tend to be conflated, so that people agreeing with “most recent warming is man-made” tend to be scored as agreeing that global warming is a crisis, which commonly gets inflated into agreeing that it is an existential crisis or the existential crisis.

Note that these statements of “consensus” do not specify the time period.

Note also that “high consensus” in science is only a weak criterion of “truth” in science – but the 97% figure is often deployed as evidence of the “truth” that warming is man-made. Of course, it is worth knowing to what extent there are “widely accepted truths” in any field. But problems come when the “fact” of consensus is established in a clearly tendentious way.

A standard source of the claim that 97% of climate scientists agree that global warming is man-made is the study by John Cook et al. (2013). The study rated about 12,000 abstracts of peer-reviewed papers published between 1991 and 2011. The rating was done by 12 volunteers, each abstract was rated by two people, making 24,000 ratings. The ratings were in three categories: (1) implicit or explicit endorsement of human-caused global warming; (2) no opinion; (3) implicit or explicit rejection or minimization of the human influence. About 4,000 abstracts took a position on the cause of global warming, 97.1% of which endorsed human-caused global warming.

Notice that this should not be, but commonly is translated as “97% of climate scientists endorse …”. Notice too that the abstracts were not rated as to whether they stressed greenhouse gases or man-made changes in land use and land cover; the implicit assumption is, man-made greenhouse gases are the cause of warming. Finally, notice that the abstracts were not rated as to whether they endorsed the idea of a global warming crisis or catastrophe; only as to whether they endorsed the idea of human causes of global warming.

A Wikipedia essay describes the study as “a landmark climate research paper [which] found that 97.1% of climate scientists supported the hypothesis of anthropogenic global warming (AGW). As of March 2021, the paper has received at least 1,270,076 downloads.”

There is an obvious question. Does “endorsement of human-caused global warming” mean warming caused 100% by human actions, or 75%, or 50%, or 25%? Any of these may be consistent with “climate change is man-made”. By leaving the degree of causation by humans open, thumbs can be put on the scales to yield the conclusion that virtually all well-qualified scientists believe that global warming of the past several decades is caused almost entirely by human action (would not be occurring in the absence of that action).

Professor Mike Hulme, professor of Human Geography at the University of Cambridge, concludes: “The ‘97% consensus’ article is poorly conceived, poorly designed and poorly executed.” Analysis by David Legates et al (2015) found that only 0.3% of the sampled papers “endorsed the standard definition of consensus: that most warming since 1950 is anthropogenic”. Research physicist Nicola Scafetta: “Cook et al (2013) is based on a straw man argument because it does not correctly define the IPCC AGW [anthropogenic global warming ] theory, which is NOT that human emissions have contributed 50%+ of the global warming since 1900 but that almost 90-100% of the observed global warming was induced by human emission”. (3)

It is testimony to the apocalyptic emotion behind people’s response to “climate change” and “global warming” that the Cook et al. paper, and others with similar methods, have commanded such credence in the face of evident flaws – notably (1) in fudging the distinction between agreeing that human actions have some role in global warming and agreeing that human actions explain most global warming; (2) in not asking whether – extent to which -- the scientists’ papers identified global warming as a problem, a crisis, an existential crisis, over what time period. (4)

By keeping it vague what the “consensus” agrees on, authors and users of the studies have given the impression that endorsement of “humans are causing global warming” means endorsement that “humans’ enhancement of the greenhouse effect will be dangerous enough to be ‘catastrophic’”, and therefore also means endorsement of the imperative for urgent, radical action on a global scale by governments, firms and families.

It is testimony to the pervasive anxiety of the zeitgeist that such surveys are routinely cited as demonstrating a near-unanimous scientific consensus in favor of radical, far-reaching climate policy (including for energy, food and materials), when the surveys do not even ask the question as to whether the respondent considers that (a) the anthropogenic component of recent warming is dangerous, and (b) dangerous enough to require a global climate policy. The surveys are almost valueless scientifically, but valuable politically.

Upward Bias in Temperature Forecasting Models

The prospect of a coming catastrophe for humanity and the biosphere rests heavily on outputs of climate forecasting models. But as David Legates and co-authors argue, these models “exhibit a strong exaggeration in their results even when narrowly adopting atmospheric carbon dioxide as the sole driver of climate responses…. [General circulation models, such as those of the IPCC, the Intergovernmental Panel on Climate Change] have consistently overestimated the climate sensitivity to rising atmospheric carbon dioxide.”

Ross McKitrick (2020) begins his assessment, “Two new peer-reviewed papers from independent teams confirm that climate models overstate atmospheric warming, and the problem [of overstatement] has gotten worse over time, not better”. One of the papers (by McKitrick and John Christy) examined 38 models, the other, 48 models, used by the Intergovernmental Panel on Climate Change (IPCC), the various US “National Assessments”, the EPA’s “Endangerment Finding”, and more.

McKitrick continues, “Both papers looked at ‘hindcasts’, which are reconstructions of recent historical temperatures in response to observed greenhouse gas emissions and other changes (eg aerosols and solar forcing). Across the two papers it emerges that the models overshoot historical warming from the near-surface through the upper troposphere, in the tropics and globally.” The study based on 48 models for 1998 to 2014 found that they warm on average 4 to 5 times faster than the observations.

McKitrick concludes, “modelling the climate is incredibly difficult, and no one faults the scientific community for finding it a tough problem to solve. But we are all living with the consequences of climate modelers stubbornly using generation after generation of models that exhibit too much surface and tropospheric warming, in addition to running grossly exaggerated forcing scenarios (eg RCP8.5).

“[W]hen the models get the tropical troposphere wrong, it drives potential errors in many other features of the model atmosphere. Even if the original problem was confined to excess warming in the tropical mid-troposphere, it has now expanded into a more pervasive warm bias throughout the global troposphere.

“If the discrepancies in the troposphere were evenly split across models between excess warming and cooling we could chalk it up to noise and uncertainty. But that is not the case: it’s all excess warming…. That’s bias, not uncertainty, and until the modelling community finds a way to fix it, the economics and policy making community are justified in assuming future warming projects are overstated, potentially by a great deal….”

The strong upward bias in temperature forecasts relative to observations compromise the models’ forecasting impacts on ecosystems, including agriculture, by exaggerating the probability of catastrophic effects.

The IPCC makes projections of future global temperatures to the end of century based on various models. They range from a low of 1.4 C to a high of 5.6 C over pre-industrial temperature (roughly 1900). The wide range makes them almost meaningless. The IPCC explains that the wide range results from uncertainty about the magnitude of the feedback between warming and increased rates of evaporation – and David Seckler adds, also about the effects of evaporation on clouds and precipitation. (5)

It is astonishing to learn that the climate models miss a critical component of the climate system -- the hydrological cycle, and specifically clouds, which the IPCC calls the “wild card” in the climate system.

The IPCC’s Worst Case Scenario is commonly used as the Business as Usual without a Radical Policy Action’ Scenario

The IPCC’s Assessment Report 5 (AR5), published in 2014, presented a range of forecasts of global climate out to 2050 and 2100, based on different assumptions about radiative forcing (a measure of how much of the sun’s energy the atmosphere traps). The most extreme – the worst case – was called Representative Concentration Pathway (RCP) 8.5. It assumes ominous reversals in several basic, long-standing trends, all heading in the extremely wrong direction to 2100:

high population growth to reach more than 12 billion people

slow technology development

coal consumption increases by 500 % between 2005 and 2100 (no account taken of supply constraints)

slow GDP growth

fast rise in world poverty

high energy use

high GHG emissions.

temperature forecast: 5 C rise between 2005 and 2100.

RCP 8.5’s vision is horrifying, as worst-case scenarios should be.

A whole wave of literature, in peer-reviewed journals as well as in media, even by IPCC authors, has since presented this worst-case as either “the most likely case” or “the baseline case – business as usual without policy action”. This misleading assumption provoked a recent paper in Nature subtitled: “Stop using the worst-case scenario for climate warming as the most likely outcome” (see also, Chrobak, 2020).

The Politics: How has the CCC become so Dominant

How can we understand the present dominance of the CCC in public and political opinion around the world, despite repeated evidence -- over decades -- of wildly exaggerated forecasts of doom when compared against measured outcomes, and despite the real uncertainties (“known unknowns”) in knowledge about basic mechanisms?

We can identify several mutually reinforcing reasons.

1. The public demand for negatively-inflected news, especially on climate

News that fits the CCC plays into a more general logic of “If it bleeds, it leads”, meaning that the media tend to deliver negativity – about climate, health, almost anything – because readers and viewers want negatively-inflected stories. Recent research finds that across all types of articles the most popular stories have high negative content. Surprisingly, politics matters little: there is no difference between conservative and liberal outlets in propensity to deliver negativity. Rather, the difference is between media outlets by size and influence: the bigger and more influential the media brand, the stronger the bias towards the negative – showing how good they are at delivering what people want. According to Matthew Yglesias, several recent research studies find that “the kind of stories people like to consume are compulsive rather than satisfying …. You’re clicking and sharing stories about terrible things and raising alarms and listening to the alarms that are being raised by others, and it all feels very compelling precisely because it’s gloomy and alarming …. People like to get mad, then share the content so that peers can share their outrage.”

Climate lends itself well to this negativity bias. Richard Betts, then the head of climate impacts at the Met Office, explained the demand for negative climate stories (BBC News Channel, 11 January 2010, emphasis added ):

“The focus on climate change is now so huge that everybody seems to need to have some link to climate change if they are to attract attention and funding. Hence the increasing tendency to link everything to climate change – whether scientifically proven or not …. I have quite literally had journalists phone me up during an unusually warm spell of weather and ask ‘is this a result of global warming?’ When I say ‘no, not really, it is just weather’, they’ve thanked me very much and then phoned somebody else, and kept trying until they got someone to say yes it was. Talking up of the problem then gives easy ammunition to those who wish to discredit the science.”

Holman Jenkins, in The Wall St Journal (2018), describes the other side of the exaggeration incentive: “Over the past 15 or 20 years the climate beat has been handed over to reporter-activists who’ve decided that climate science is impenetrable but at least nobody ever got fired for exaggerating the risks of climate change.”

Climate scientist Judith Curry identifies a similar logic in the frequent conflation of extreme weather events and “global warming”. “In 2005 [following Hurricane Katrina] the public found it very hard to care about 1 degree or even 4 degrees of warming – heck, the temperatures varied by that much on a day-to-day basis.… However, arguments that a relatively small amount of global warming (order 1 C) could result in more intense hurricanes, well that got their attention…. The activists now had a new weapon in their arsenal – attributing extreme weather events to manmade climate change. The ‘will to act’ seemed tied to alarmism about extreme weather events. Which provides a key political role for unsupported ‘storylines’ about extreme weather events.” The “heat dome” over the Pacific northwest of the US and Canada in June 2021 was generally treated as yet more evidence of “climate change. You would not know it from the coverage, but in Washington and Oregon, the number of days per decade with temperature above 99 F shows no upward trend from 1911-20 to 2011-20. For example, the number of days above 99 F in 1971-80 was more than in 2011-20. Across the US the 1930s was arguably the hottest decade on record; the time of the deadly “Dust Bowl”, summer 1936, was the hottest summer on record between 1895 and 2020.

An attempt to push the distinction between “weather” and “climate” is unwelcome in this context, because it weakens the motivating, mobilising force of “climate” as the boundless enemy that could destroy humanity, like the Biblical Flood. The Climate Apocalypse is imminent, is the motivational message (also see Adler, 2019).

This is the deeper story behind the wild exaggerations of the forecasts and the continued high credibility of those who make them. The exaggerations express the apocalyptic thinking about climate now sweeping the world, including the financial and corporate world. They express a story of humans damaging Nature, and Nature destroying humans in return. These stories themselves express ancient de-creation stories of humans misbehaving in the eyes of God, and God punishing them. The Biblical flood occurred because God decided the people had become wicked, had stopped respecting God and Nature, so He resolved to wipe life off the face of the earth, saving only a breeding pair of each species in order to recreate the world in His image. Much the same story appeared in Sumerian culture long before the Bible, and later in the Quran, expressing a desperate human wish for Salvation.

In our more secular age, apocalyptic theology can rely on Nature in place of God -- Nature invested with God-like powers of punishment and reward.

2. The “political” science of the IPCC

The IPCC was established to provide a properly scientific center of gravity for discussions about climate, and issue regular balanced assessments of the state of scientific climate knowledge. But there are at least two basic problems with the IPCC process. One is that the mandate of the IPCC says that it is “to assess … the scientific, technical and socio-economic information relevant to understanding the scientific basis of risk of human-induced climate change, its potential impacts and options for adaptation and mitigation” (emphasis added). (6) The mandate does not mention to assess the interaction between human and natural causes. It is as though natural causes do not exist. The IPCC’s whole body of work consequently is slanted towards exaggerating human causes of given climate changes, marginalizing the role of natural causes interacting with human causes. Which among other effects leads it to give undue weight to “mitigating” climate change (by changing human actions) relative to “adapting” to climate changes partly induced by natural forces.

The common justification given by IPCC defenders is: natural causes operate only very slowly; the climate is changing fast; therefore the climate changes must be driven by humans, and humans can change their behaviour fast – when forced and sufficiently motivated to do so ( using all the techniques of Machiavelli). This justification underplays the point that some natural causes – eg the Atlantic Multidecadal Oscillation – do change fairly quickly, over decades, with far reaching effects (eg Atlantic Multidecadal Oscillation and its impacts on the Greenland ice sheet).

The second IPCC problem is that this bias to doomsday forecasts – therefore to urgent and far-reaching action -- is intensified in the process of translating from the technical reports to the summaries for policy makers. The translation – done mostly by non-scientists -- tends to downplay uncertainties and up-play certainties in an alarming, even catastrophizing direction. Hence the tendency to treat worst-case scenarios as likely scenarios. Recall the subtitle to the Nature paper, “Stop using the worst-case scenario for climate warming as the most likely outcome” (2020).

3. Logic of decision-making and logic of mobilization

The tendency to treat worst-case scenarios as likely scenarios “in the absence of radical changes to how we live, work and govern” can be understood in terms of the distinction between the logic of decision-making and the logic of mobilization or action. To make the best decision about what to do, one needs to explore a range of possible alternative courses of action, weigh up the pros and cons of each, then decide which is best. But having exposed many people to a range of options, there may be action-sapping disagreement as to which is best. To get a great mass of people to move all in one direction one needs to present them with only two alternatives, one of which is crazy, and pretend to be entirely confident of the two outcomes. (7) If they can be convinced that there are only two alternatives and one is crazy, they will follow.

The Climate Change Consensus expresses the logic of mobilization. It presents two alternatives. “Do nothing (or little)”, which leads to catastrophe, extinction, the planet becomes ungovernable, coastal cities must be abandoned, lower Manhattan will be underwater by 2018. Or else, quickly decarbonize the world economy and push towards a broader dematerialization of lifeways. No prizes for guessing which wins. This is how you mobilize people on a vast scale to do what you think must be done. Or as a US senator from the West once put it, “Managing politicians is like herding wild horses. To get them running in the same direction you have to stampede them.” (8)

4. Left and right politics

While the demand for negatively-inflected news cuts across the political spectrum, political ideology certainly shapes people’s beliefs about climate. Climate change “scepticism” is almost a talisman of the center-right and right, and is strongly promoted by fossil fuel interests. Climate “alarmism” is more pronounced on the center-left and left of the ideological spectrum. It is promoted as a sacred unifying mission by a great global phalanx of left-green civic action organizations (Extinction Rebellion is prominent).

A Guardian article describes the right-wing “sceptical” tactic. “Vested interests have long realized [that people-at-large trust climate scientists on the subject of global warming] and have engaged in a campaign to misinform the public about the scientific consensus. For example, a memo from communications strategist Frank Luntz leaked in 2002 advised Republicans, ‘Should the public come to believe that the scientific issues are settled, their views about global warming will change accordingly. Therefore, you need to continue to make the lack of scientific certainty a primary issue in the debate’. This campaign has been successful… The media has assisted in this public misconception, with most climate stories ‘balanced’ with a ‘sceptic’ perspective. However, this results in making the 2-3% seem like 50%... As a result, people believe scientists are still split about what’s causing global warming, and therefore there is not nearly enough public support or motivation to solve the problem.”

Both sides accuse the other of abusing “the science”. Both sides generate expansive pressures to describe more and more trends, issue more and more prescriptions, without ambiguity and shading, and judge more and more of the other’s claims pre-emptively. Individual issues (eg extreme weather) are not discussed in terms of their own evidence but are packaged together in ideological visions, the better to establish clear moral battle lines, disagreement being moral heresy.

This is the playing out of a larger process of polarization common when scientific disagreements become public. As described by sociologist of science Robert K. Merton, each group then responds to stereotyped versions of the other. “They see in the other’s work primarily what the hostile stereotype has alerted them to see, and then promptly mistake the part for the whole. In this process, each group … becomes less and less motivated to study the work of the other, since there is manifestly little point in doing so. They scan the out-group’s writings just enough to find ammunition for new fusillades.” (9)

The result is a “syndrome of exaggeration”: each side exaggerates evidence in its favour and downplays evidence against, which justifies the other in exaggerating evidence in its favour and downplaying evidence against; and back again. It is a syndrome in that the behaviour of each side confirms the negative expectations of the other. They often go at each other ad hominem, like adolescent school boys, including people who regard themselves as serious scientists. In the digital era members of both sides are able to quickly find one another and the enemy. (10)

Yet to talk of “two sides” is misleading, because the side championing the CCC is by far the dominant. Recall the Financial Times journalist Pilita Clark: “The world has rarely seen any environmental idea take off like the push to cut greenhouse gas emissions to net zero.” For political leaders and increasingly business leaders, being seen to give high value to protecting the public against all the ills attributed to “climate change” – including by pledging big changes to be made long after they leave office -- is a way to show foresight, statesmanship, leading on the front foot. Many right-wing politicians and business leaders now wish to present themselves as fighters against climate change, even as they continue to support fossil-fuel industries.

5. Finance and business interests

There are now powerful industrial interest groups promoting climate alarmism for profit-seeking reasons, including those invested in the switch from fossil fuels to renewables and those invested in the switch from combustion to electrical engines. The CEO of the electric vehicle car company Lucid (a former Tesla engineer) said recently that the transition to an EV world will happen faster than anyone expects, driven by the environmental imperative. He said, “The environment is in crisis. The world needs millions of electric cars tomorrow”. He did not suggest where all the electricity will come from.

Many big players in finance see opportunities for speculative profits by playing up climate dangers. Goldman-Sachs in 2005 authored the firm’s environmental policy, which said “voluntary action alone cannot solve the climate change problem”, from a firm that has consistently opposed government regulation. It and other financial firms supported what Matt Taibbi called “a new commodities bubble disguised as an ‘environmental plan’” – a carbon credit market in the form of cap-and-trade. Coal plants, utilities, natural gas distributors and some other industries are assigned carbon emission limits. To exceed the limits they must buy credits from those who emit less than their limit. As of 2010, the volume of the market in the US was estimated as $1 trillion annually. Goldman and the others were making themselves central actors in the market. The best thing about it is that the emission limits keep being lowered, implying that the price is guaranteed to keep rising, to the benefit of the intermediaries.

On top of all this, the whole “sustainable investing” movement provides opportunities for big profits at the intersection of the already thick alphabet soup of sustainability disclosure regulations (TCFD, SASB, GRI, CDSB among others, in the case of the EU) and the lack of meaningful, reliable data. “At the moment, the risk is that it is ‘garbage in, garbage out’”, says the head of sustainable finance at S&P Global Ratings.

So the fact that the financial sector is “worried” about climate change could be taken to be part of the problem, underlining the need for public authorities to take charge and frame parameters within which private operations produce public benefits. (11)

Conclusion

I have argued that the “plausible” risks of climate change are commonly exaggerated within the climate community. Recall for example, Christiana Figueres, 2020, “The scary thing is that after 2030 it basically doesn’t really matter what humans do”; Kevin Drum, 2019, “[The Green New Deal] would only change the dates for planetary suicide by a decade or so”; Frank Fenner, 2010, “We’re going to become extinct. Whatever we do now is too late.” Many more in the same doomsday vein.

We have seen that the standard global warming models have a powerful built-in bias to exaggerate the rate of future temperature rise, as seen in (most of) them “hindcasting” temperature rises several times faster than actually observed. We have seen that forecasters commonly take “worst-case scenarios” as “likely scenarios in the absence of radical action” (eg reaching net zero carbon emissions by 2050), to the point where Nature recently published a paper sub-titled, “Stop using the worst-case scenario for climate warming as the most likely outcome”.

The dismaying thing is that scientists and advocates have been making catastrophising global warming forecasts of this kind for decades past, normally dated some 10 to 30 years into the future. The due date comes without catastrophe, but never a retrospective holding to account. Rather, on to the next catastrophising forecast another 10 to 30 years ahead. Scientists-writers-activists know the catastrophe forecasts get the attention, the clicks, the research funding. We saw the exaggeration mechanism spelled out by Richard Betts of the BBC, Holman Jenkins of the Wall St Journal, and climate scientist Judith Curry.

The built-in exaggeration of the costs of climate change blunts the parallel with nuclear power plants. We know with high certainty the costs of nuclear explosions. We know the costs of global temperature going above 1.5 C above “pre-industrial” much less certainly, and we can see the mechanisms by which the likely costs are being systematically exaggerated.

On the other hand, there is abundant evidence that even without the doomsday exaggerations the plausible risks of climate change could be very serious, in particular because of the inherent political economy difficulty of getting needed global or regional cooperation when political action is mostly at the level of sovereign nation states (see the G20).

Coal power generation is the single biggest source of GHG emissions, and emissions from coal consumption will probably not fall fast, whatever the promises. First, coal is cheap, accessible and generates reliable power for many developing countries; in Asia, coal alone generates 40 percent of energy consumption, much higher than the world average of 29 percent. (12) Second, developing countries, including China, assert a strong claim on carbon space to power their economic development. They see it partly as a matter of fundamental justice, since developed countries emitted most of the CO2 that is already in the atmosphere and seas as the necessary condition for them becoming developed. Developed countries promise finance and technical assistance on a massive scale to accelerate the energy transition in developing countries – and have a long track record of leaving promises as promises. (See the global distribution of Covid vaccines. See the results of vaunted “voting reform” in the World Bank, leaving the US with 17% and China with 6%.) What is more, the Japanese government plans up to 22 new coal power plants, as it closes nuclear plants in the wake of Fukushima.

Then comes a question: does drawing attention to the doomsday exaggerations of the CCC – “disaster”, “catastrophe”, “extinction”, “fiddling while the planet burns” - serve to reduce the political and public pressures for necessary ameliorative action, in a world where powerful fossil lobbies seek to block or delay such action for reasons independent of “evidence”? Should “Third Way” essays like this one not be published, because “give them (deniers, sceptics) an inch and they will take a mile”? To what extent must mass publics be “panicked” in order to induce enough collective political and business action – national, international – to substantially slow the growth of GHG emissions? If we can sustain emission- and temperature-curbing action only by holding up the certainty of disaster, catastrophe, extinction, then better to let the doomsday exaggerations continue as the necessary condition for that ameliorative action. What is the harm, when the alternative is ruin for humanity and the biosphere?

The danger is that the repeated wild exaggerations produce a public backlash, a discrediting, and a strengthening of the many “deniers” who see “leftists, governments, and the United Nations” as the source of malevolence in the world. A more accurate accounting of the evidence would (hopefully) produce a more calibrated and sustained public and business response.

What to do? (13)

The IPCC should allocate some 10% of its budget to a Red Team, dedicated to independent scrutiny of its evidence and conclusions (especially the Summary for Policymakers). (14) The IPCC should revise its mandate to require it explicitly to focus on interactions between natural forces and human actions, as it is now almost required not to, biassing its assessment of the state of scientific knowledge towards “man-made global warming” as an almost separate system.

Learned societies should more actively seek to understand and publicize the reasons for repeated large-scale discrepancies between “hindcasts” and “forecasts” on the one hand and actual observations on the other, discrepancies strongly biased towards “disaster”.

It is particularly important that the knee-jerk attribution of extreme weather events to global warming be challenged with reference to evidence. Judith Curry explained – quoted earlier -- why CCC advocates have a powerful incentive to attribute cases of extreme weather to global warming, tout court. She has recently written, “Apart from the reduced frequency of the coldest temperatures, the signal of global warming in the statistics of extreme weather events remains much smaller than that from natural climate variability, and is expected to remain so at least until the second half of the 21rst century.” She goes on to amplify a point made earlier about the limits of the climate models used for the IPCC assessment reports: they are driven mainly by predictions of future GHG emissions. They do not include predictions of natural climate variability arising from solar output, volcanic eruptions or evolution of large-scale multi-decadal ocean circulations. They do a particularly poor job of simulating regional and decadal-scale climate variability. (15)

Participants on both sides have to learn the art of respecting the principle of free speech while maintaining the standards of civil discourse.

While I have stressed the CCC’s support for urgent and radical changes to the way we live, work and govern, some CCC champions argue that the world economy could continue on a largely unchanged growth trajectory provided that we switch fast from fossil fuels to renewables. Indeed, this switch is beginning to happen fast, with coal and nuclear energy production unable to compete without subsidies in areas where natural gas, wind and solar resources are readily available.

But to say that life can continue as before provided we substitute renewables for fossil fuels obscures the huge difficulties for many developing countries of getting out of fossil fuels while growing fast enough to reduce the income gap with developed countries.

We must give high priority to investments in “clean coal” technologies, such as carbon capture, storage and use, to make the dirtier coal cleaner in existing and new coal-power plants; and link coal-power retirement to the coming on-stream of attractive alternatives. The multilateral development banks have recently or will soon announce bans on coal power. The G7 leaders meeting in mid 2021 promised to stop using government funds to finance new international coal power plants by the end of 2021. China’s Belt and Road Initiative should increase its pressure on host countries to cut back on dirty coal and boost clean coal and renewables.

A high and immediate priority is to build a robust financing and technical assistance mechanism for help from developed to developing countries. The Paris Agreement instituted a Mitigation pillar and an Adaptation pillar. Intense debate took place around the third, Loss and Damage, the name of a mechanism to compensate for the destruction that Mitigation and Adaptation cannot prevent. Developed countries by and large have sought to marginalize the Loss and Damage pillar, as they have long sought to marginalize Special and Differential Treatment for developing countries in trade and investment agreements. “Finance is something that really rich countries, particularly the US, have made sure that there is no progress and not even discussion on”, remarked Harjeet Singh, senior advisor at Climate Action Network International. (16)

My “forecast” is that in the next two to three decades to midcentury we will make rapid progress in scientific knowledge about weather and climate, helped by longer and more accurate satellite and ocean records and by a new generation of climate models that operate at one to ten kilometers scale (as distinct from the current models’ 50 kilometer scale). We will probably continue to make rapid progress in decoupling GHG from GDP growth, with a combination of state direction-setting and private innovation focused on transformations in energy, transport, buildings, industry and agriculture, using incentives like research and development subsidies and tax credits for technology investment, and penalties for carbon-intensive activities. (17) In transport, this entails coordination across urban planning decisions, public transport investment, future of remote working, infrastructures for electric charging and hydrogen loading. (18) Transformations in these systems are already underway, and the prospect of vast new green investments, supported and under-written by the state, will intensify them. These green investments will open productive investment opportunities previously limited by stagnant wages and rising debt, which have driven investment into increasingly speculative ventures. If by two or three decades ahead it looks as though the second half of this century could well experience globally extreme climate and ocean events, we will be much more knowledgeable about what to do than we are today. (19)

#### No resource shortages – tech prevents every scenario

Bailey ’18 – Warren T. Brookes Fellow in Environmental Journalism at the Competitive Enterprise Institute, award-winning science correspondent for Reason magazine

Ronald. February 16. “Is Degrowth the Only Way to Save the World?” <https://reason.com/blog/2018/02/16/is-degrowth-the-only-way-to-save-the-wor>

Unless us folks in rich countries drastically reduce our material living standards and distribute most of what we have to people living in poor countries, the world will come to an end. Or at least that's the stark conclusion of a study published earlier this month in the journal Nature Sustainability. The researchers who wrote it, led by the Leeds University ecological economist Dan O'Neill, think the way to prevent the apocalypse is "degrowth."

Vice, pestilence, war, and "gigantic inevitable famine" were the planetary boundaries set on human population by the 18th-century economist Robert Thomas Malthus. The new study gussies up old-fashioned Malthusianism by devising a set of seven biophysical indicators of national environmental pressure, which they then link to 11 indicators of social outcomes. The aim of the exercise is to concoct a "safe and just space" for humanity.

Using data from 2011, the researchers calculate that the annual per capita boundaries for the world's 7 billion people consist of the emission of 1.6 tons of carbon dioxide per year and the annual consumption of 0.9 kilograms of phosphorus, 8.9 kilograms of nitrogen, 574 cubic meters of water, 2.6 tons of biomass (crops and wood), plus the ecological services of 1.7 hectares of land and 7.2 tons of material per person.

On the social side, meanwhile, the researchers say that life satisfaction in each country should exceed 6.5 on the 10-point Cantril scale, that healthy life expectancy should average at least 65 years, and that nutrition should be over 2,700 calories per day. At least 95 percent of each country's citizens must have access to good sanitation, earn more than $1.90 per day, and pass through secondary school. Ninety percent of citizens must have friends and family they can depend on. The threshold for democratic quality must exceed 0.8 on an index scale stretching from -1 to +1, while the threshold for equality is set at no higher than 70 on a Gini Index where 0 represents perfect equality and 100 implies perfect inequality. They set the threshold for percent of labor force employed at 94 percent.

So how does the U.S. do with regard to their biophysical boundaries and social outcomes measures? We Americans transgress all seven of the biophysical boundaries. Carbon dioxide emissions stand at 21.2 tons per person; we each use an average of 7 kilograms of phosphorus, 59.1 kilograms of nitrogen, 611 cubic meters of water, and 3.7 tons of biomass; we rely on the ecological services of 6.8 hectares of land and 27.2 tons of material. Although the researchers urge us to move "beyond the pursuit of GDP growth to embrace new measures of progress," it is worth noting that U.S. GDP is $59,609 per capita.

On the other hand, those transgressions have provided a pretty good life for Americans. For example, life satisfaction is 7.1; healthy life expectancy is 69.7 years; and democratic quality stands at 0.8 points. The only two social indicators we just missed on were employment (91 percent) and secondary education (94.7 percent).

On the other hand, our hemisphere is home to one paragon of sustainability—Haiti. Haitians breach none of the researchers' biophysical boundaries. But the Caribbean country performs abysmally on all 11 social indicators. Life satisfaction scores at 4.8; healthy life expectancy is 52.3 years; and Haitians average 2,105 calories per day. The country tallies -0.9 on the democratic quality index. Haiti's GDP is $719 per capita.

Other near-sustainability champions include Malawi, Nepal, Myanmar, and Nicaragua. All of them score dismally on the social indicators, and their GDPs per capita are $322, $799, $1,375, and $2,208, respectively.

The country that currently comes closest to the researchers' ideal of remaining within its biophysical boundaries while sufficient social indicators is...Vietnam. For the record, Vietnam's per capita GDP is $2,306.

"Countries with higher levels of life satisfaction and healthy life expectancy also tend to transgress more biophysical boundaries," the researchers note. A better way to put this relationship is that more wealth and technology tend to make people happier, healthier, and freer.

O'Neill and his unhappy team fail drastically to understand how human ingenuity unleashed in markets is already well on the way toward making their supposed planetary boundaries irrelevant. Take carbon dioxide emissions: Supporters of renewable energy technologies say that their costs are already or will soon be lower than those of fossil fuels. Boosters of advanced nuclear reactors similarly argue that they can supply all of the carbon-free energy the world will need. There's a good chance that fleets of battery-powered self-driving vehicles will largely replace private cars and mass transit later in this century.

Are we about to run out of phosphorous to fertilize our crops? Peak phosphorus is not at hand. The U.S. Geological Survey (USGS) reports that at current rates of mining, the world's known reserves will last 266 years. The estimated total resources of phosphate rock would last over 1,140 years. "There are no imminent shortages of phosphate rock," notes the USGS. With respect to the deleterious effects that using phosphorus to fertilize crops might have outside of farm fields, researchers are working on ways to endow crops with traits that enable them to use less while maintaining yields.

O'Neill and his colleagues are also concerned that farmers are using too much nitrogen fertilizer, which runs off fields into the natural environment and contributes to deoxygenated dead zones in the oceans, among other ill effects. This is a problem, but one that plant breeders are already working to solve. For example, researchers at Arcadia Biosciences have used biotechnology to create nitrogen-efficient varieties of staples like rice and wheat that enable farmers to increase yields while significantly reducing fertilizer use. Meanwhile, other researchers are moving on projects to engineer the nitrogen fixation trait from legumes into cereal crops. In other words, the crops would make their own fertilizer from air.

Water? Most water is devoted to the irrigation of crops; the ongoing development of drought-resistant and saline-tolerant crops will help with that. Hectares per capita? Humanity has probably already reached peak farmland, and nearly 400 million hectares will be restored to nature by 2060—an area almost double the size of the United States east of the Mississippi River. In fact, it is entirely possible that most animal farming will be replaced by resource-sparing lab-grown steaks, chops, and milk. Such developments in food production undermine the researchers' worries about overconsumption of biomass.

And humanity's material footprint is likely to get smaller too as trends toward further dematerialization take hold. The price system is a superb mechanism for encouraging innovators to find ways to wring ever more value out less and less stuff. Rockefeller University researcher Jesse Ausubel has shown that this process of absolute dematerialization has already taken off for many commodities.

After cranking their way through their models of doom, O'Neill and his colleagues lugubriously conclude: "If all people are to lead a good life within planetary boundaries, then the level of resource use associated with meeting basic needs must be dramatically reduced." They are right, but they are entirely backward with regard to how to achieve those goals. Economic growth provides the wealth and technologies needed to lift people from poverty while simultaneously lightening humanity's footprint on the natural world. Rather than degrowth, the planet—and especially its poor people—need more and faster economic growth.

#### Movements fail to overcome opposition and undermines centuries of progress.

Hovenkamp, James G. Dinan University Professor, University of Pennsylvania Law School and the Wharton School, ‘18

(Herbert, “Whatever Did Happen to the Antitrust Movement?” Faculty Scholarship at Penn Law. 1964)

As a movement, antitrust often succeeds at capturing political attention and engaging at least some voters, but it fails at making effective or even coherent policy. The result is goals that are unmeasurable and fundamentally inconsistent, although with their contradictions rarely exposed. Among the most problematic contradictions is the one between small business protection and consumer welfare. In a nutshell, consumers benefit from low prices, high output, and high quality and variety of products and services. But when a firm or a technology is able to offer these things they invariably injure rivals, typically those who are smaller or heavily invested in older technologies. Although movement antitrust rhetoric is often opaque about specifics, its general effect is invariably to encourage higher prices or reduced output or innovation, mainly for the protection of small business or those whose technology or other investments have become obsolete. Indeed, that has been a predominant feature of movement antitrust ever since the Sherman Act was passed, and it remains a prominent feature of movement antitrust today. Indeed, some spokespersons for movement antitrust write, as Louis Brandeis did, as if low prices are the evil that antitrust law should be combatting.17

Nevertheless, mantras such as “industrial concentration” or “big business” have great political force. These terms provide almost nothing in the way of administrable rules while yet evoking an image of something big, bad, and powerful that government must bring under control. For example, here is the plank of the 2016 Democratic Party’s platform on antitrust:

Large corporations have concentrated their control over markets to a greater degree than Americans have seen in decades—further evidence that the deck is stacked for those at the top. Democrats will take steps to stop corporate concentration in any industry where it is unfairly limiting competition. We will make competition policy and antitrust stronger and more responsive to our economy today, enhance the antitrust enforcement arms of the Department of Justice (DOJ) and the Federal Trade Commission (FTC), and encourage other agencies to police anti-competitive practices in their areas of jurisdiction.

We support the historic purpose of the antitrust laws to protect competition and prevent excessively consolidated economic and political power, which can be corrosive to a healthy democracy. We support reinvigorating DOJ and FTC enforcement of antitrust laws to prevent abusive behavior by dominant companies, and protecting the public interest against abusive, discriminatory, and unfair methods of commerce. We support President Obama’s recent Executive Order, directing all agencies to identify specific actions they can take in their areas of jurisdiction to detect anticompetitive practices—such as tying arrangements, price fixing, and exclusionary conduct—and to refer practices that appear to violate federal antitrust law to the DOJ and FTC.18

The antitrust plank never references low consumer prices, or anything having to do with product quality. That is not because Democrats are not interested in low consumer prices.19 Rather, they apparently believe that antitrust has little to do with it. The references to prices occur in other sections of the platform, devoted to such subjects as health and safety and the high price of pharmaceutical drugs. Those sections make no reference to antitrust law.20 The only references to “consumers” occur in planks pertaining to unionization, affordable housing, Wall Street, banks and Dodd-Frank, and clean energy.21 So according to the platform, while legal policy generally is concerned with high consumer prices, antitrust policy apparently is not. By contrast, the 2016 Republican platform never references antitrust, although it does contain a plank promoting a “competitive America,” but focused entirely on lowering tax rates.22

The antitrust plank in the 2016 Democrat platform is actually one of the most detailed to appear in any platform by a major political party.23 The catchphrases that it uses, however—“corporate concentration,” “unfairly limiting competition,” or “abusive behavior by dominant companies”—can mean practically anything depending on assumptions. The platform is peppered with references to “fair” or “fairness,” including the antitrust plank, but with no reference point indicating how fairness should be assessed. Is it “fair” that consumers be asked to pay high prices in order to accommodate the shortcomings of some businesses; or conversely, is it “fair” that small businesses suffer simply because they are not able to compete with larger firms on price or quality; or is it “fair” that firms heavily invested in old brick-andmortar distribution lose out to more technologically entrepreneurial firms? “Fairness” as an antitrust concern means nothing without a reference point or set of measurement tools.

As for specific practices, the antitrust plank in the Democrat platform singles out “tying arrangements, price fixing, and exclusionary conduct,” saying nothing about mergers, other vertical restraints, or anticompetitive patent practices. In fact, the platform never mentions patents, although it makes frequent references to innovation, largely in the context of proposed government intervention to stimulate production24 or to finance research and development and educate people for more technically demanding jobs.25 Of the three anticompetitive practices that it singles out, “price fixing” is completely uncontroversial and has always been a central focus of nearly every articulation of antitrust policy, left, center, and right—including in Bork’s The Antitrust Paradox. 26 The term “exclusionary conduct” is so vague that it is meaningless. Both socially harmful and socially beneficial conduct can be “exclusionary.” The inclusion of “tying arrangements” is mystifying. Tying is ubiquitous in modern economies and is an essential characteristic of networks and technology.27 Further, the vast majority of it is procompetitive because it increases output without excluding anyone. Finally, the number of antitrust tying cases is small in comparison with merger cases, which make up a large portion of antitrust enforcement activity. A major party platform that identifies “tying arrangements” but not “mergers” as a fundamental concern requires an explanation. Most importantly, it seems to miss the whole point of competitive markets, which is to produce a high output of quality, competitively priced goods.

At least in part, the Democratic Party platform reflects the reappearance of movement antitrust. While it is hardly the only expression, and certainly not the most extreme, it represents a troublesome development—namely, the idea that America needs higher prices in order to give smaller firms a fair chance. The platform also gives a reader the strong impression that its slogans were selected in order to achieve maximum political traction with the illiterati, and perhaps that is all that can be expected of a political platform. In the process, however, it does antitrust policy a great disservice by making its legitimate targets almost impossible to define and not providing ammunition for attacking them when they are defined. Its supporters generally disparage the use of economics, sometimes suggesting that antitrust policy should be governed by political theory instead.28 Exactly how political theory gets one to specific antitrust rules is not completely clear, but it involves excluding the opinions of antitrust experts concerning the public’s interest.29

Movement antitrust argues variously for abandoning the measurement of competition by reference to output and price,30 or even abandoning consumer welfare as an antitrust proscription altogether.31 It accuses retailers such as Amazon of engaging in “predatory pricing” without providing a coherent definition of the practice.32 It never explains how a nonmanufacturing retailer such as Amazon could ever recover its investment in belowcost pricing by later raising prices, and even disputes that raising prices to higher levels ever needs to be a part of the strategy, thus indicating that it is confusing predation with investment.33 Charging low but profitable prices indefinitely is not unlawful “predatory pricing”‘ nor is forcing suppliers to price competitively.

The movement antitrust attack on “consumer welfare” reflects both a misunderstanding of that term, and an exaggeration of its influence on recent antitrust jurisprudence. This point is critical because much of movement antitrust blames the consumer welfare principle for the current state of antitrust law. Consumer welfare as it is properly used today refers to the welfare of consumers as consumers, pure and simple.34 Speaking objectively, consumer welfare is improved by high output and low prices, as well as high quality. Under this definition the welfare of producers, competitors, or anyone other than consumers who might be affected by a practice is ignored. In addition to its substantive advantages, this principle has a powerful administrative advantage: it does not require courts to compute welfare “tradeoffs,” because there is nothing to trade off.35

In sharp contrast, Robert Bork very famously used the term “consumer welfare” when he was really referring to the combined welfare of both producers and consumers.36 He observed that an economic tradeoff occurs when a supplier practice causes monopolistic increases in consumer prices but also reduces the supplier’s costs.37 Most peculiarly, for Bork the word “consumer” referred to suppliers as well as customers.38 For Bork, a practice that generated one hundred dollars in seller profits but buyer losses of sixty dollars would be counted as a net improvement of “consumer welfare.” Bork also believed, however, that actual computation of welfare tradeoffs in individual cases would be too difficult. Further, an attempt to do so would overlook important efficiencies. Rather, efficiencies should be presumed, even when the challenged practice creates market power.39 That presumption of efficiency without proof is one of the most controversial aspects of Bork’s approach to the welfare question.

These two understandings of consumer welfare have produced a troublesome ambiguity in antitrust law ever since. For example, some of those who write in movement antitrust today attribute the consumer welfare principle to Bork,40 and as a result blame it for higher prices that accrue to producers. But the important thing is that high producer profits for Bork was part of the consumer welfare that antitrust law should produce.

This ambiguity about definition has also affected Supreme Court usage of “consumer welfare.” The Supreme Court has never categorically embraced any particular definition of consumer welfare, even though it has used the term several times. Six majority opinions speak of consumer welfare. Two were quotations from Bork’s The Antitrust Paradox, suggesting that the Court was either speaking of producer welfare as well, or else that it did not appreciate the difference between Bork’s definition and true consumer welfare.41 Plaintiffs won both cases, however, and the holdings are consistent with true consumer welfare. Indeed, in one of them, Reiter v. Sonotone Corp., the Supreme Court held that end-use consumers had standing to pursue price fixing, making it an important consumer welfare decision.42

Of the remaining four uses, two involved predatory pricing cases observing that consumer welfare would be enhanced by a period of below-cost pricing that was not followed by recoupment of losses through subsequent higher prices.43 That would very likely be true. An unsuccessful attempt at predatory pricing would result in lower consumer prices temporarily, but no subsequent period of high prices. The final uses of consumer welfare are related to the Leegin Creative Leather Products, Inc. v. PSKS, Inc. decision holding that some instances of resale price maintenance may promote consumer welfare. The first was Leegin itself44 and the second was Ohio v. American Express Co., making essentially the same observation.45 That could also be true under either definition of consumer welfare.

Four additional usages of the term are in dissents.46 Finally, the term appeared in Justice Brennan’s concurring opinion in the Jefferson Parish Hospital District No. 2 v. Hyde tying case. Justice Brennan observed that some ties could impair horizontal competition, injuring consumer welfare.47 A few other cases never use the phrase “consumer welfare” but do speak more generally about benefits to consumers.48 None of these Supreme Court decisions distinguish the Bork definition of consumer welfare from the true consumer welfare position. Beyond the Supreme Court, the strongest case for application of a consumer welfare principle is in merger law under the Horizontal Merger Guidelines, which embrace a consumer welfare principle to the extent that they tie merger policy to the effect on output and consumer prices.49

One of the most disturbing things about movement antitrust is its indifference or even disparagement of low consumer prices. Without citing any evidence, some of its protagonists proclaim that most Americans are not concerned with high prices that might result from monopoly, but rather with “loss of their properties, hence their independence, even their dignity.”50 They recommend harsh rules against vertical integration without ever stating a test, other than a very general suggestion that vertical integration leads to leveraging and foreclosure.51 They call for a return to the merger enforcement standards expressed in the 1968 Merger Guidelines—for example, blocking any merger between a firm with fifteen percent of a market and any other firm whose market share is one percent or more. The relevance of these numbers is not apparent, other than their suggestion that firms are

currently too big.52

Clearly, high prices are not the target. The movement’s proponents denigrate the importance of prices to merger analysis—for example, objecting to the fact that, while the 1968 Merger Guidelines were not particularly focused on consumer prices, guidelines issued in the 1980s and after were. Indeed, low prices appear to be the enemy that antitrust must combat.53 Movement protagonists argue in favor of resale price maintenance, not in order to promote lower cost distribution, but rather to protect less efficient retailers’ higher margins from predatory pricing—without any evidence of a type of predatory pricing that resale price maintenance could combat.54 They enthusiastically embrace Louis Brandeis’s repeated arguments that “price-cutting” is in fact “the most potent weapon of monopoly—a means of killing the small rival.”55 Much of the resale price maintenance that Brandeis supported occurred at the behest of dealer cartels who forced suppliers to use resale price maintenance as a way of disciplining price cutters.56

Certainly, big business can cause harm to the lives of Americans in other ways than through competitive pricing. But these ways need to be articulated, supported by evidence, and then sorted into those things that are conceivably within the domain of antitrust and those that are not. Promiscuous application of the antitrust laws so as to make big firms smaller and prices higher could cause irreparable harm, not only to consumers, but to the entire economy.

#### The ALT fails---it cannot change mindsets.

Thomas Wiedmann et al. 20, Sustainability Assessment Program, School of Civil and Environmental Engineering, UNSW Sydney; Manfred Lenzen, ISA, School of Physics, The University of Sydney; Lorenz T. KeyßEr, Institute for Environmental Decisions, Department of Environmental Systems Science, ETH Zürich; Julia K. Steinberger, Sustainability Research Institute (SRI), School of Earth and Environment, University of Leeds, "Scientists’ Warning on Affluence," Nature Communications, Vol. 11, 06/19/2020, Springer.

Growth imperatives are active at multiple levels, making the pursuit of economic growth (net investment, i.e. investment above depreciation) a necessity for different actors and leading to social and economic instability in the absence of it7,52,60. Following a Marxian perspective as put forward by Pirgmaier and Steinberger61, growth imperatives can be attributed to capitalism as the currently dominant socio-economic system in affluent countries7,51,62, although this is debated by other scholars52. To structure this topic, we will discuss different affected actors separately, namely corporations, states and individuals, following Richters and Siemoneit60. Most importantly, we address the role of the super-affluent consumers within a society, which overlap with powerful fractions of the capitalist class. From a Marxian perspective, this social class is structurally defined by its position in the capitalist production process, as financially tied with the function of capital63. In capitalism, workers are separated from the means of production, implying that they must compete in labour markets to sell their labour power to capitalists in order to earn a living.

Even though some small- and medium-sized businesses manage to refrain from pursuing growth, e.g. due to a low competition intensity in niche markets, or lack of financial debt imperatives, this cannot be said for most firms64. In capitalism, firms need to compete in the market, leading to a necessity to reinvest profits into more efficient production processes to minimise costs (e.g. through replacing human labour power with machines and positive returns to scale), innovation of new products and/or advertising to convince consumers to buy more7,61,62. As a result, the average energy intensity of labour is now twice as high as in 195060. As long as a firm has a competitive advantage, there is a strong incentive to sell as much as possible. Financial markets are crucial to enable this constant expansion by providing (interest-bearing) capital and channelling it where it is most profitable58,61,63. If a firm fails to stay competitive, it either goes bankrupt or is taken over by a more successful business. Under normal economic conditions, this capitalist competition is expected to lead to aggregate growth dynamics7,62,63,65.

However, two factors exist that further strengthen this growth dynamic60. Firstly, if labour productivity continuously rises, then aggregate economic growth becomes necessary to keep employment constant, otherwise technological unemployment results. This creates one of the imperatives for capitalist states to foster aggregate growth, since with worsening economic conditions and high unemployment, tax revenues shrink, e.g. from labour and value-added taxes, while social security expenditures rise60,62. Adding to this, states compete with other states geopolitically and in providing favourable conditions for capital, while capitalists have the resources to influence political decisions in their favour. If economic conditions are expected to deteriorate, e.g. due to unplanned recession or progressive political change, firms can threaten capital flight, financial markets react and investor as well as consumer confidence shrink51,58,60. Secondly, consumers usually increase their consumption in tune with increasing production60. This process can be at least in part explained by substantial advertising efforts by firms47,52,66. However, further mechanisms are at play as explained further below.

Following this analysis, it is not surprising that the growth paradigm is hegemonic, i.e. the perception that economic growth solves all kinds of societal problems, that it equals progress, power and welfare and that it can be made practically endless through some form of supposedly green or sustainable growth59. Taken together, the described dynamics create multiple dependencies of workers, firms and states on a well-functioning capital accumulation and thus wield more material, institutional and discursive power (e.g. for political lobbying) to capitalists who are usually the most affluent consumers61,67. Even if different fractions of the capitalist class have manifold and competing interests which need to be constantly renegotiated, there is a common interest in maintaining the capitalist system and favourable conditions for capital accumulation, e.g. through aggregate growth and high consumption51,62. How this political corruption by the super-affluent plays out in practice is well documented, e.g. for the meat industry in Denmark6.

Super-affluent consumers drive consumption norms

Growth imperatives and drivers (with the latter describing less coercive mechanisms to increase consumption) can also be active at the individual level. In this case, the level of consumption can serve as a proxy47,60,68. To start with, individual consumption decisions are not made in a vacuum, but are shaped by surrounding (physical and social) structures and provisioning systems47,61,69. Sanne66 and Alexander47 discuss several structural barriers to sufficiency-oriented lifestyles, locking in high consumption. These include lack of suitable housing, insufficient options for socialising, employment, transport and information, as well as high exposure to consumer temptations. Often, these conditions are deliberately fostered by states and also capitalists (the latter overlapping with super-affluent consumers and having disproportionate influence on states) to increase consumption61,66.

Further active mechanisms to spur growth include positional and efficiency consumption, which contribute to an increase in consumption overall52,60,68,70. After basic material needs are satisfied, an increasing proportion of consumption is directed at positional goods52,70. The defining feature of these goods is that they are expensive and signify social status. Access to them depends on the income relative to others. Status matters, since empirical studies show that currently relative income is one of the strongest determinants of individual happiness52. In the aggregate however, the pursuit of positional consumption, driven by super-affluent consumers and high inequalities, likely resembles a zero-sum game with respect to societal wellbeing70,71. With every actor striving to increase their position relative to their peers, the average consumption level rises and thus even more expensive positional goods become necessary, while the societal wellbeing level stagnates42,71. This is supported by a large body of empirical research, showing that an individual’s happiness correlates positively with their own income but negatively with the peer group’s income71 and that unequal access to positional goods fosters rising consumption52. This endless process is a core part of capitalism as it keeps social momentum and consumption high with affluent consumers driving aspirations and hopes of social ascent in low-affluence segments70,72. The positional consumption behaviour of the super-affluent thus drives consumption norms across the population, for instance through their excessive air travel, as documented by Gössling73.

Lastly, in capitalism, workers must compete against each other in the labour market in order to earn a living from capitalists7,63. Following Siemoneit68, this can lead to a similar imperative to net invest (increase the level of consumption/investment) as is observed with capitalists. In order to stay competitive, individuals are pushed to increase time and cost efficiency by investing in cars, kitchen appliances, computers and smartphones, by using social media and online trade etc. This efficiency consumption—effectively another facet of the rebound effect38,47,68—helps to manage high workloads, thus securing an income, while maintaining private life. This is often accompanied by trends of commodification61, understood as the marketisation of products and services which used to be provisioned through more time-intensive commons or reciprocal social arrangements, e.g. convenience food vs. cooking together. As in the food example74, this replacement of human labour with energy- and material-intensive industrial production typically increases environmental pressures47,75. Through these economic pressures, positive feedback loops and lock-ins are expected to emerge, since other consumers need to keep up with these investments or face disadvantages, e.g. when car or smartphone ownership become presupposed. Taken together with positional consumption, structural barriers to sufficiency and the substantial advertising efforts by capitalists, these mechanisms explain to a large extent why consumers seem so willing to increase their consumption in accordance with increasing production60.

### 2AC---Agency Tradeoff DA

#### Non-unique and turn—defense-friendly standards increases cost and reduces impact of agency enforcement

Alison Jones, Professor of Law at King's and a solicitor at Freshfields Bruckhaus Deringer LLP, and William E. Kovacic, George Mason University Foundation Professor at the George Mason University School of Law, former FTC Commissioner, 2020, Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy, The Antitrust Bulletin 2020, Vol. 65(2) 227-255

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

#### No uniqueness---FTC attacking tech NOW---only question of relative probability of success.

**Carpenter 12/3** – journalist

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

Like any smart newbie looking to make a good first impression, Federal Trade Commission Chair Lina Khan is beginning her antitrust campaign with an easy case.

The FTC moved Thursday to block semiconductor maker Nvidia’s planned $40 billion acquisition of chip designer Arm, jumping ahead of counterparts in Europe who have all-but-guaranteed they would try to scuttle the largest-ever semiconductor deal. FTC officials argue that California-based Nvidia could undermine its competitors if it takes over Arm’s technology, which it licenses to Apple, Samsung, Intel, and dozens more of the industry’s largest manufacturers.

“This proposed deal would distort Arm’s incentives in chip markets and allow the combined firm to unfairly undermine Nvidia’s rivals,” FTC Bureau of Competition Director Holly Vedova said in a statement. “The FTC’s lawsuit should send a strong signal that we will act aggressively to protect our critical infrastructure markets from illegal vertical mergers that have far-reaching and damaging effects on future innovations.”

In a statement, a Nvidia spokesperson told Fortune that the company “will continue to work to demonstrate that this transaction will benefit the industry and promote competition.”

The FTC filing has, understandably, been cast as Khan’s opening salvo in her promised crusade to increase enforcement of antitrust law, which she and many Democrats argue has been ignored amid rapid Big Tech consolidation.

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

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

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

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

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

Among those cases: Amazon’s proposed $8.5-billion deal to buy Hollywood’s MGM Studios; defense giant Lockheed Martin’s looming $4.4 billion acquisition of Aerojet Rocketdyne; and the $43 billion merger of AT&T’s WarnerMedia division with Discovery.

#### Turn—*Amex* requirement eats up agency resources

Ben Brody, Bloomberg, U.S. Google Monopoly Case Could Hit Supreme Court AmEx Hurdle, August 28, 2020, <https://www.bloomberg.com/news/articles/2020-08-28/u-s-google-monopoly-case-could-hit-supreme-court-amex-hurdle>

Google’s lucrative search ad business sells advertising space to brands around the results it provides to consumers. It also plays a key intermediary role connecting buyers and sellers of digital display ads across the web, and as a seller of display ad space for its YouTube video unit. Investigators have looked into all three, Bloomberg has reported.

Antitrust experts said that one reason for the delay in the Google lawsuit, which was expected in July, could be that government lawyers needed more time to construct the case to meet the standards in the AmEx ruling.

“That’s a complex, lengthy complaint to draft, and that takes time,” said Spencer Weber Waller, director of the Institute for Consumer Antitrust Studies at Loyola University Chicago. The government would probably have to create a “a belt-and-suspenders approach” that says why it would win under two kinds of market definitions, he said.

#### No internal link—agency resources ineffective b/c they drive away the best talent

Alison Jones, Professor of Law at King's and a solicitor at Freshfields Bruckhaus Deringer LLP, and William E. Kovacic, George Mason University Foundation Professor at the George Mason University School of Law, former FTC Commissioner, 2020, Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy, The Antitrust Bulletin 2020, Vol. 65(2) 227-255

The modern critique of the U.S. system often describes the federal agencies as captured by the business community or beholden to ideas that disfavor robust intervention.143 Advocates of change suggest that the execution of their reform program at the federal antitrust agencies will require the appointment of senior managers and new staff who repudiate the consumer welfare standard, or at least embrace a vision for expanded enforcement under the consumer welfare, and embrace the multidimensional conception of the proper goals of competition law. Those already employed by the enforcement agencies as managers and staff will be expected to accept the expanded (goals) framework or they will find their duties reduced and their roles marginalized. New appointees to top leadership positions will not be tainted by substantial previous experience in the private sector, nor will they have spent too much time as civil servants in a government enforcement culture that assumed the primacy of consumer welfare as the aim of antitrust law and accepted norms that tilted toward underenforcement. The concern about compromised motives is also likely to disqualify many academics who, though sympathetic to some expansion of antitrust enforcement, remain excessively beholden to some notion of a consumer (rather than citizen) welfare standard, or have engaged in consulting on behalf of large corporate interests.

One consequence of the acute anxiety about capture is to slam the revolving door shut, or at least to slow the rate at which it spins. We offer two cautions about this approach. First, the modern experience of the FTC raises reasons to question the strength of the theory. For example, if business perspectives dominate the FTC, why did the agency persist in its efforts to challenge reverse payment agreements involving leading pharmaceutical producers?144 Was it because the pharmaceutical firms weren’t as good at lobbying as, say, the information services giants? And what explains the FTC’s decision to sue Qualcomm for monopolization early in 2017?145 Is this simply attributable to the inadequacy of Qualcomm’s Washington, DC, lobbyists, or is the capture explanation for the behavior of the federal antitrust agencies not entirely airtight?

Our second caution is that severe restrictions on the revolving door could deny the federal agencies access to skills they will need to carry out a major expansion of anti

trust enforcement. Recruiting attorneys, economists, and other specialists from the private sector can give the agencies a vital infusion of talent which, when combined with agency careerists, permit the creation of project teams that can equal the capability of the best teams that the defense can mount in major litigation matters. We also are wary of the idea that an attorney or economist coming from the private sector will discourage effective intervention during the period of public service as a way to pave the road to a better private sector position upon leaving the agency. Rather, there is evidence to suggest that creating a reputation for aggressiveness and toughness as an enforcer increases one’s post-agency employment options. More than a few individuals have development prosperous careers based on piloting businesses through navigational hazards that they helped create while they were senior officials in public agencies.

#### No tradeoff – newest resolution creates more capacity

Gehl 9-24 (Kate, Senior Counsel for Foley and Lardner LLP, Elizabeth A. N. Haas, Partner, Alan D. Rutenberg, Partner, H. Holden Brooks, Partner, Benjamin R. Dryden, Partner, Foley and Lardner LLP“A Divided FTC Approves Omnibus Resolutions to Step Up Enforcement Actions and Votes to Withdraw the 2020 Vertical Merger Guidelines” [https://www.foley.com/en/insights/publications/2021/09/divided-ftc-approves-omnibus-resolutions Published 9-24-2021](https://www.foley.com/en/insights/publications/2021/09/divided-ftc-approves-omnibus-resolutions%20Published%209-24-2021), MSU-MJS)

According to the FTC’s press release, the resolutions are aimed at broadening its ability “to obtain evidence in critical investigations on key areas where the FTC’s work can make the most impact.” The resolutions also will purportedly permit the FTC to “better utilize its limited resources” to quickly investigate potential misconduct. The FTC views the resolutions as one method to increase efficiency at the FTC, which certain Commissioners believe has become necessary due to the “increased volume of investigatory work” caused by a “surge” in merger filings in recent months.

In practice, these resolutions allow a single Commissioner, instead of a majority of sitting Commissioners, to approve compulsory process requests in

any investigation within the scope of the resolution for the next 10 years. What practical effect these resolutions will have remains to be seen; however, businesses engaged in conduct that may be implicated by the resolutions should be aware that FTC staff will now have an expedited ability to carry out compulsory process requests, which will very likely increase the number and scope of investigations conducted by the FTC.

#### Funding is normal means – AND boosts are coming

Byers 21 (Dylan Byers, senior media reporter for NBC News; **internally citing George Washington University professor and former FTC chair William Kovacic**; “Is Facebook untouchable? It's complicated,” NBC News, 7-1-2021, https://www.nbcnews.com/tech/tech-news/facebook-untouchable-complicated-rcna1323)

The House Judiciary Committee recently advanced six bills that would bolster the government's ability to regulate Big Tech. They range from simple budgeting measures — one would give more funding to the FTC and the Department of Justice for their antitrust enforcement efforts — to profound reforms — one that would stop platform companies from preferencing their products over those of their competitors and another that would make it illegal for companies to eliminate competitors through acquisitions.

This legislative package faces an arduous road ahead. House Majority Leader Steny Hoyer, who sets the House floor schedule, has said none of the six bills are ready for a vote, which suggests they don't have broad bipartisan support. If and when they do make it through the House, they face an even harder battle in the Senate.

"It's hard to imagine that the larger legislative package is accomplished this year," Kovacic said, though he predicted a few of the less-threatening bills — budgeting, for example — are likely to pass on their own.

"The funding for the FTC and DOJ antitrust divisions, it's nearly 100 percent likely that Congress will pass that law," he said. He said another bill, which would block the tech firms from moving court hearings to more favorable states, was also likely to pass.

#### Pounder—FTCs new rulemaking agenda overstretches the agency—merger review + tons of new rules

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.

### 2AC---Regs CP

#### Perm do both---shields the link.

Kobayashi & Wright 20 – Paige V. and Henry N. Butler Chair in Law and Economics at the Antonin Scalia Law School at George Mason; University Professor and the Executive Director of the Global Antitrust Institute at Scalia Law School at George Mason University, holds a courtesy appointment in the Department of Economics, former Commissioner at the Federal Trade Commission

Bruce H. Kobayashi, Joshua D. Wright, “Antitrust and Ex-Ante Sector Regulation,” Report on the Digital Economy, Section III, Global Antitrust Institute, 2020, https://gaidigitalreport.com/2020/10/04/ex-ante-regulation-versus-ex-post-antitrust-enforcement/#\_ftn29

Conclusion

Using ex-ante regulation to replace inefficient and ineffective ex-post litigation based antitrust is a familiar refrain for those interested in regulating large technology firms. But the narrative that antitrust is either solely or predominantly based on ex-post litigation is a false narrative, as both the current antitrust laws and its institutions incorporate many of the features that reformers put forth as ex-ante regulation. As a matter of optimal regulatory design, this is not surprising, as a true ex-ante approach will incorporate both approaches.

In the U.S., the Supreme Court has expanded its implied immunity and related common law limits on the use of the antitrust laws in response to the potential costs of inconsistent and overlapping regulation. This forces an ex-ante choice between antitrust and sector specific regulation when addressing specific problems associated with regulated industries. We suggest the ex-ante choice between antitrust and sector regulation be made based on the comparative institutional advantage of each approach, and that such an approach will result in the allocation of duties to deal and price setting to sector specific regulators. Because both approaches are imperfect vehicles for controlling competition, both the initial allocation between antitrust and regulation and the choice to regulate in the first place should be undertaken with caution, and expected to involve a long, slow, and costly evolution towards a more efficient system of antitrust and regulation.

#### Doesn’t solve adv 1—only DOJ and FTC have authority over mergers—that’s key to nacent acquisitions, AI, and fintech

James Lowe, Sidley Austin LLP, Relevant Authorities and Legislation, 2020, <https://iclg.com/practice-areas/merger-control-laws-and-regulations/usa>

The principal merger authorities in the United States are the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ). The agencies share jurisdiction; and for transactions subject to premerger reporting obligations, the notification must be submitted to both agencies, and both agencies may conduct a preliminary review. Under an interagency clearance agreement, only one of the agencies will open a formal investigation into any particular merger.

#### Antitrust key—ex ante enforcement/regulation is extremely dangerous in platform markets—ex post litigation minimizes costs

Shelanski, JD, PhD, Professor @ the Georgetown University Law Center, Partner, Davis Polk & Wardell, former ORIA Administrator, former FCC Chief Economist, former Director of the FTC Bureau of Economics, ‘13

(Howard, “Information, Innovation, and Competition Policy For The Internet,” University of Pennsylvania Law Review, May 2013, Vol. 161, No. 6)

Competition enforcers could adopt a number of approaches to these mixed results depending on whether the changes are on balance more beneficial than harmful, or depending on whether the harms are intentional or not. Both inquiries, however, run the risk of calling into question company's best judgment about how to engineer its own products. Finding that an innovation—say a new proprietary interface or product integration is anticompetitive because the value of the innovation to consumers deemed ex post to be outweighed by the costs of competitive exclusion cause firms to hesitate to make beneficial product changes. Knowing the firm could be punished for the effects the innovation has on rivals if the innovation does not turn out well (or perhaps turns out too well for compet itors' tastes), the firm will raise the required ex ante probability of success and undertake fewer R&D efforts. Similarly, punishing a firm that has or mixed motives for undertaking innovation might harm consumers deterring product changes that benefit consumers despite the firm's partly anticompetitive motives.

Absent compelling evidence, then, caution and modesty in enforcement are warranted in this area. This prescription comes not from a glib hope that competition or innovation will somehow eradicate any harm, but from risk that intervention is as likely to make things worse as to make things better. Some have advocated for a government regulatory body to evaluate search algorithms and other intermediary behavior on the Internet.112 There are compelling reasons to be very skeptical of interposing such a government review process into the ongoing and demanding process of private innovation. Algorithms change quickly and must adapt to gaming manipulation by those seeking to profit from online search.113 Regulators are certain to know less about a new technology than those who invent work with it daily. Moreover, regulatory processes and related litigation will inevitably become part of rivals' competitive strategy, distracting resources from competition and innovation in the marketplace. A much better course is for government to give a wide berth to innovation, even where the firm's intentions may not seem benevolent and where the conduct may appear harm competition at the same time that it benefits consumers. And where there is a compelling case for harm, ex post intervention on a case-by-case basis through antitrust law is preferable to general regulation in this context.

This wide berth does not, however, mean we should abandon enforcment or place all purportedly innovative conduct beyond the reach of antitrust law. Microsoft 7/114 gave significant deference to product innovation and integration, but clearly left open the door to a finding that such activity was a ruse or pretext for anticompetitive exclusion. It allowed for antitrust liability where a product innovation was not in some way different and better than what a consumer could do for himself, thereby preserving anticompetitive tying as a possible claim against a software platform.115

Generalizing from the Microsoft II decision, where innovation was clearly a pretext for harming rivals or for deterring rival innovation, competition enforcement should be available. Two kinds of conduct which digital platforms have been accused of undertaking would appear to harm innovation without constituting legitimate innovation: raising rivals' costs and forced free riding.

#### Regulatory programs cannot address all platform conduct

Hovenkamp, James G. Dinan University Professor, University of Pennsylvania Carey Law School and The Wharton School, ‘21

(Herbert, “Antitrust and Platform Monopoly,” 130 Yale L.J. 1952)

If action is needed, the alternative to antitrust is some form of regulation. But broad regulation is ill-suited for digital platforms because they are so disparate. By contrast, regulation in industries such as air travel, electric power, and telecommunications targets firms with common technologies and similar market relationships. This is not the case, however, with the four major digital platforms that have drawn so much media and political attention—namely, Amazon, Apple, Facebook, and Google. These platforms have different inputs. They sell different products, albeit with some overlap, and only some of these products are digital. They deal with customers and diverse sets of third parties in different ways. What they have in common is that they are very large and that a sizeable portion of their operating technology is digital. To be sure, increased regulatory oversight of individual aspects of their business—such as advertising, acquisitions, or control of information—is possible and likely even desirable. But the core of their business models should be governed by the antitrust laws.

This Article argues that sustainable competition in platform markets is possible for most aspects of their business. As a result, the less intrusive and more individualized approach of the antitrust laws is better for consumers, input suppliers, and most other affected interest groups than broad-brush regulation. It will be less likely to reduce product or service quality, limit innovation, or reduce output. Where antitrust law applies, federal judges should be given a chance to apply the law.

#### If they try to, it’s too broad and harms innovation

Hovenkamp, James G. Dinan University Professor, University of Pennsylvania Carey Law School and The Wharton School, ‘21

(Herbert, “Antitrust and Platform Monopoly,” 130 Yale L.J. 1952)

Few platforms are natural monopolies. If the market contains room for competition among multiple incumbent firms, regulation is usually a poor alternative. 70 It rarely comes close to mimicking competitive behavior. Regulation necessarily generalizes and applies the same rules to several firms in an area, while antitrust requires a fact-specific inquiry for each firm. This is particularly important if the firms in question are quite diverse.

Regulation also entrenches existing technologies and, in doing so, bolsters existing incumbents. For example, the Federal Communications Commission’s (FCC) longstanding willingness to protect AT&T’s dominant position from all rivals very likely held back innovation in telecommunications for decades.71 Of course, proper regulatory design might mitigate this. But if viable and robust competitive alternatives are available, regulation usually is not the best answer.

#### New agency is a disaster—capture completely undermines solvency

Childson, former chief technologist at the FTC, ‘19

(Neil, “Creating a new federal agency to regulate Big Tech would be a disaster,” October 30, <https://www.washingtonpost.com/outlook/2019/10/30/creating-new-federal-agency-regulate-big-tech-would-be-disaster/>)

On its face, a single expert agency, laser-focused on one set of problems, sounds sensible. But history shows that such industry-specific agencies are most susceptible to “regulatory capture,” a term used to describe when an institution is dominated by the industry they are charged with overseeing — for example, when a state board that sets the rules for the practice of dentistry is dominated by practicing dentists.

The idea was popularized by the Stigler Center’s namesake, Nobel 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,” Stigler warned that any regulated industry has strong incentives to form close connections with its regulators to seek favors. The inevitable result, he argues, is that industries disproportionately influence the agency’s agenda, shape its rulemaking and even supply it with personnel.

Companies find it much easier to influence narrowly focused institutions than institutions with broader law enforcement mandates. Where the latter hear from a wide range of companies with a variety of concerns, the former hear only from one type of company. Think about how much easier it is to talk your way out of a speeding ticket from the local police officer, who knows your family, than it is to deal with an effectively anonymous city cop who pulls over dozens of drivers a day. Similarly, big companies would much rather deal with a select group of bureaucrats whom they know well — and who hear only their perspective most of the time.

Captured agencies don’t hold companies accountable; instead, they act to benefit the industry’s established players, disadvantaging newer firms and the public at large. In worst-case scenarios, such agencies can block new, disruptive competitors that threaten the established, regulated industry.

The recent report from the Stigler Center holds up the Federal Communications Commission as an example of what a new Digital Authority could look like. But the FCC is a perfect example of the likely problems of an industry-specific regulator. At nearly every turn, with every new potentially disruptive communications innovation, the FCC (and its predecessor, the Federal Radio Commission) did the bidding of the best-connected incumbents. As former FCC chairman Michael Powell said, “[T]he history of the FCC is, when something happens that it doesn’t understand, kill it. We tried to kill cable. We tried to kill long-distance. When [MCI founder] Bill McGowan start[ed] stringing out microwave towers that threatened AT&T, the FCC tried to stop him. The FCC tried to kill cable because it was going to threaten broadcasting.” While it didn’t halt technological progress or competition, it often slowed it, occasionally by decades.

#### Antitrust paradigm key—letting consumer protection rationale take over destroys decades of predictable law

Wright, JD, PhD, Professor, George Mason University School of Law and Department of Economics, and Inaugural Scholar-in-Residence, FTC Bureau of Competition, ‘12

(Joshua, “The Antitrust/Consumer Protection Paradox:

Two Policies at War with Each Other,” 121 Yale L.J. 2218)

The new consumer protection policy contemplated by Dodd-Frank combines the insights of behavioral economics and its fundamental assumptions about individually irrational behavior and welfare with the centralization- and incentives-of a powerful administrative agency. While some have recognized the monumental changes that Dodd-Frank portends for consumer protection law, its significant implications for antitrust law have not been fully appreciated.26 By way of contrast with the near-sudden legislative creation of the new behavioral consumer protection law, the evolution of the Sherman Antitrust Act has been a tale of measured integration of neoclassical microeconomic analysis into the vague contours of the Sherman Act. Antitrust law has gradually incorporated both theoretical and empirical insights from antitrust economics under the Supreme Court's auspices and through the case-by-case development of a common law of antitrust. There is no serious debate that the institutional integration of economics into antitrust law through the courts has been a boon for consumers.

Robert Bork's The Antitrust Paradox famously exposed the then-incoherent, unstable, and unpredictable body of antitrust law pursuing multiple (sometimes conflicting) goals, none with any success. The integration of economics shifted antitrust law from an intellectually embarrassing and socially costly body of law to a broad "consumer welfare prescription."" Indeed, antitrust law has traveled an institutional journey that has resulted in its deep commitment not merely to economic analysis generally but specifically to rational choice microeconomics.

The antitrust/consumer protection paradox represents a critical crossroads for consumer law. While the intellectual and philosophical underpinnings of rational choice and behavioral economics are important components of the rift in consumer law, they do not explain its emergence. Rather, the key to understanding the emerging chasm between antitrust and consumer protection lies in comparative institutional analysis. The primacy of judicial decisionmaking and private litigation in the development of antitrust is conducive to a set of economic tools that narrows the possible set of outcomes, reduces uncertainty, and improves the quality of decisions. 9 An important feature of behavioral economics is that it broadens rather than reduces uncertainty about possible equilibrium outcomes from a given transaction, rule, or business practice. Thus, it is unsurprising that behavioral economics has not gained traction in the courts, especially with respect to antitrust.3 o On the other hand, behavioral economics' lack of predictability makes it malleable and easier to manipulate than its neoclassical relative, which are attractive features for achieving the political ends sought by an administrative agency.

The emerging policy equilibrium is both unstable and untenable in the long run. It is not only wildly inefficient but also causes firms attempting to avoid liability from one pillar of consumer law to increase their exposure under another. There can be no peaceful equilibrium coexistence of the "new" consumer protection and the "old" antitrust. There are only two general possibilities for the ultimate resolution of this paradox: (1) the successful hostile takeover of "old" antitrust by a "new" behavioral version consistent with the "new" consumer protection or (2) the failure of behavioral consumer protection institutions and reversion to neoclassical consumer law. Over the short and perhaps even medium term, the divergence is likely to persist. Indeed, resolution of the internal intellectual conflict within antitrust evolved over decades, not years. The outcome, in terms of both the nature and timing of such a resolution, depends most critically upon a comparative analysis of antitrust and consumer protection institutions

### 2AC---Forecasting CP

#### Perm: do the CP---‘should’ isn’t mandatory.

Duarte 19. Development Code of the City of Duarte, California, Municipal Code, “ARTICLE 1 - ENACTMENT, APPLICABILITY, AND ENFORCEMENT”, 1/10/2019, https://library.municode.com/ca/duarte/codes/development\_code?nodeId=ART1ENAPEN\_CH19.02PUAPDECO

B. *Terminology*. When used in this title, the following rules apply to all provisions of this Development Code: 1. *Language*. When used in this Development Code, the words "shall," "must," "will," "is to," and "are to" are always mandatory. "Should" is not mandatory but is strongly recommended; and "may" is permissive.

#### 4. Perm do the plan and invoke CP over all antitrust. It’s all of the AFF and some of the CP---BUT forces the NEG to have an AFF key warrant for the net ben.

#### TEXT:

The United States should only allow the continuation of net harms on under antitrust law only when a team of the Good Judgment Project’s “super-forecasters” has determined that the activity reduces the numerical probability of abuse from an unacceptably high level.

#### 2] Giving a random group of people a veto over antitrust is an unprecedented shock. Wrecks R&D investment.

**Lin et al. 21** --- School of Law, Southwestern University of Finance and Economics, Chengdu.

Yuchen, Daxin Dong, Jiaxin Wang, “The Negative Impact of Uncertainty on R&D Investment: International Evidence,” International Evidence, Sustainability 2021, 13, 2746. https://doi.org/10.3390/ su13052746

In summary, in this study, we reported a significantly negative impact of uncertainty on R&D investment at the country level. The analyses were based on a sample covering 109 countries from 1996 to 2018. It was also found that uncertainty reduced the number of annual new patent applications. The adverse impact of uncertainty on R&D was not only significant statistically, but also economically. According to the estimation results, if the uncertainty index rises by one unit (one standard deviation), the scale of R&D investment and the number of patent applications will decline by 15.6% (2.1372%) and 22.7% (3.1099%), respectively. Further analyses demonstrated that the effect of uncertainty was not uniform across all countries. In some country groups, the effect was strong and statistically significant. However, in several country groups, the effect was moderate and insignificant. However, we always observed a negative effect. Overall, Hypothesis 1 in our study is verified, and Hypothesis 2 is contradicted.

The study results provided strong support to some previous studies which reported a negative impact of uncertainty on R&D investment, including Arif Khan et al. [5], Cho and Lee [11], Czarnitzki and Toole [8], Goel and Ram [12], Ivus and Wajda [1], Jung and Kwak [15], Nan and Han [17], Wang et al. [4], and Xu [20]. The results did not support several studies that reported a positive effect of uncertainty, such as Atanassov et al. [3], Gu et al. [13], Han et al. [14], Jiang and Liu [6], Meng and Shi [16], Ross et al. [9], Stein and Stone [18], Tajaddini and Gholipour [7], and Vo and Le [19]. Our study utilized a wide sample of more than 100 countries and examined the country-level aggregate R&D investment. This feature enabled our study to better depict the overall situation in the world, compared to most of the extant studies, which have only focused on the R&D of business corporations within one country.

The findings in this study have important policy implications. First, in order to keep abreast of the R&D investment dynamics, governments and economic agents should pay attention to the degree of uncertainty in the economy. The negative impact of uncertainty on R&D is a phenomenon that widely exists in different countries over the world, as shown by our analyses on the full sample, as well as various subsamples. If governments can effectively monitor the variations in uncertainty and evaluate the relevant market responses, they will be able to understand the current situation and forecast future tendency of aggregate R&D investment in a better way. Being more informed will facilitate governments to make proper public policies if necessary. After understanding the link between uncertainty and R&D, firms can reasonably expect that other enterprises in the industry will adjust investment accordingly when uncertainty changes. During the procedure of making their own R&D investment plans, firms should not neglect the potential responses of the competitors and partners to varying uncertainty.

Second, given the importance of innovation and technological advancement for sustainable economic and social development, it is necessary to reduce the degree of macro uncertainty. Governments should avoid frequent variations of economic policies and the abrupt implementation of substantial reforms. The communication and information sharing among governments and private sectors should be reinforced to reduce noises, mitigate misunderstanding, and enhance trust and confidence. Countries should also improve their institutional and economic infrastructure—for example, by reducing frictions in financial markets and strengthening governmental effectiveness—in order to increase the resistibility of economic system to unexpected shocks. In the case that the major origins of the uncertainty can be identified—such as the coronavirus pandemic in the current period—urgent actions should be carried out to deal with the problems

### 2AC---14 Amendment CP

#### No extinction from disease.

Barratt 17, PhD in Pure Mathematics, Lecturer in Mathematics at Oxford, Research Associate at the Future of Humanity Institute. (Owen Cotton-Barratt et al, “Existential Risk: Diplomacy and Governance”, pg. 9, <https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf>)

1.1.3 Engineered pandemics

For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.38 None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic.

One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39

## 1AR

### T - Structural

**All their evidence is about allowing the merger to continue, NOT whether or not the legal standard is ITSELF a prohibition.**

Jo **Seldeslachts et al. ‘7**. Professor of Industrial Organization at KU Leuven and a Senior Research Fellow at DIW Berlin, with Joseph A. Clougherty and Pedro Pita Barros. “Remedy for now but prohibit for tomorrow: the deterrence effects of merger policy tools.” https://www.ssoar.info/ssoar/bitstream/handle/document/25862/ssoar-2007-seldeslachts\_et\_al-remedy\_for\_now\_but\_prohibit.pdf;jsessionid=A244005110FDB5816E0347D9F1B75436?sequence=1

Let us now think about the differences between the two antitrust actions of prohibitions and remedies.7 In the case of a prohibition, the penalty for proposing a merger with significant anti-competitive problems involves the **full prohibition of the merger**: both the pro-competitive and the anti-competitive profits for merging firms are **negated by the prohibition**. The throwing out of the pro-competitive profits along with the anti-competitive profits is **important**, as this brings about the punitive measure that Posner (1970) acknowledges as being crucial for deterrence. The big **difference between remedies and prohibitions** is that remedies attempt to identify and eliminate the anti-competitive **elements** of a merger. In essence, **the merging firms are able to hold on to the pro-competitive elements of the merger**—so they keep (ΠPC), but the anti-competitive elements of the merger (ΠAC) are negated by the remedial action. If an antitrust authority imposes remedies, then the disincentive for firms to propose anti-competitive mergers is clearly lower. In short, prohibitions seemingly involve more deterrence than do remedies, as prohibitions represent **larger punishments**.

**Prohibitions are implemented via legal tests—the threshold of the test determines how much or how little conduct is prohibited**

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, 20**16**, 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**.

### Regs CP

**Antitrust paradigm key—letting consumer protection rationale take over destroys decades of predictable law**

**Wright**, JD, PhD, Professor, George Mason University School of Law and Department of Economics, and Inaugural Scholar-in-Residence, FTC Bureau of Competition, **‘12**

(Joshua, “The Antitrust/Consumer Protection Paradox:

Two Policies at War with Each Other,” 121 Yale L.J. 2218)

The new consumer protection policy contemplated by Dodd-Frank combines the insights of behavioral economics and its fundamental assumptions about individually irrational behavior and welfare with the centralization- and incentives-of a powerful administrative agency. While some have recognized the monumental changes that Dodd-Frank portends for consumer protection law, its significant implications for **antitrust** law **have not been fully appreciated**.26 By way of **contrast** with **the near-sudden legislative creation** of the new behavioral **consumer protection law**, the evolution of the Sherman Antitrust Act has been a tale of **measured integration** of neoclassical microeconomic analysis into the vague contours of the Sherman Act. **Antitrust** law has gradually incorporated both theoretical and empirical insights from antitrust economics under the Supreme Court's auspices and through the **case-by-case development** of a common law of antitrust. **There is no serious debate** that the **institutional integration** of economics into antitrust law through the courts **has been a boon for consumers.**

Robert Bork's The Antitrust Paradox famously exposed the then-incoherent, unstable, and unpredictable body of antitrust law pursuing multiple (sometimes conflicting) goals, none with any success. The integration of economics shifted antitrust law from an intellectually embarrassing and socially costly body of law to a broad "consumer welfare prescription."" Indeed, antitrust law has traveled an institutional journey that has resulted in its **deep commitment** not merely to economic analysis generally but specifically to **rational choice microeconomics.**

The antitrust/consumer protection paradox represents a **critical crossroads** for consumer law. While the intellectual and philosophical underpinnings of rational choice and behavioral economics are important components of the rift in consumer law, they do not explain its emergence. Rather, the key to understanding the emerging chasm between antitrust and consumer protection lies in comparative institutional analysis. The **primacy of judicial decisionmaking** and private litigation in the development of antitrust is conducive to a set of economic tools that **narrows the possible set of outcomes**, **reduces uncertainty**, and **improves the quality of decisions**. 9 An important feature of behavioral economics is that it **broadens** rather than reduces **uncertainty** about possible equilibrium outcomes from a given transaction, rule, or business practice. Thus, it is unsurprising that behavioral economics **has not gained traction** in the courts, especially with respect to antitrust.3 o On the other hand, behavioral economics' **lack of predictability** makes it **malleable** and easier to manipulate than its neoclassical relative, which are attractive features for achieving the political ends sought by an administrative agency.

The emerging policy equilibrium is both **unstable** and **untenable** in the long run. It is not only **wildly inefficient** but also causes firms attempting to **avoid liability** from one pillar of consumer law to increase their exposure under another. There can be no peaceful equilibrium coexistence of the "new" consumer protection and the "old" antitrust. There are only two general possibilities for the ultimate resolution of this paradox: **(1)** the successful hostile takeover of "old" antitrust by a "new" **behavioral version** consistent with the "new" consumer protection or (2) **the failure** of behavioral **consumer protection** institutions and reversion to **neoclassical consumer law**. Over the short and perhaps even medium term, the divergence is likely to persist. Indeed, resolution of the internal intellectual conflict within antitrust evolved over decades, not years. The outcome, in terms of both the nature and timing of such a resolution, depends most critically upon a comparative analysis of antitrust and consumer protection institutions

**That undermines competition with China**

**Lee**, senior lecturer at the University of Hong Kong Faculty of Business and Economics, **‘19**

(David S., “Antitrust action risks holding back US tech giants in competition with China,” <https://asia.nikkei.com/Opinion/Antitrust-action-risks-holding-back-US-tech-giants-in-competition-with-China>)

While China aggressively expands its technological reach and hones its ability through mining evermore data, it is important that U.S. regulators understand that **aggressive antitrust sanctions** would risk **inhibiting American companies** from **maintaining the scale necessary to compete with their Chinese rivals**.

**AI supremacy will be a defining feature of superpower status**. And if future researchers one day examine how the U.S. **lost the war for artificial intelligence**, the hindsight of history may show that **the current antitrust debate was the fatal turning point**.

**Comparatively less resistant to capture and completely undermines solvency**

**Chilson**, JD, Chief Technologist at the Federal Trade Commission, where he focused on the economics of privacy and blockchain-related issues. Previously, he was an attorney advisor to Acting FTC Chairman Maureen K. Ohlhausen, **‘20**

(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]

### FTC

**Tons of antitrust now**

Jon **Swartz 12-28**, Senior Reporter for MarketWatch, “Big Tech Heads for ‘A Year of Thousands of Tiny Tech Papercuts,’ But What Antitrust Efforts Could Make Them Bleed?”, MarketWatch, 12/28/2021, https://www.marketwatch.com/story/big-tech-heads-for-a-year-of-thousands-of-tiny-tech-papercuts-but-what-antitrust-efforts-could-make-them-bleed-11640640776

Antitrust enforcement of Big Tech is expected to take place on a **scale never before seen** in 20**22**, following years of escalating **rhetoric** from Washington.

So far, Wall Street has shrugged as the five companies under the microscope — Google parent Alphabet Inc. GOOGL, -0.92% GOOG, -0.91%, Facebook parent Meta Platforms Inc. FB, -2.33%, Apple Inc. AAPL, -0.35%, Amazon.com Inc. AMZN, -1.14%, and, yes, Microsoft Corp. MSFT, -0.88% — have been targeted by governments and rivals across the globe. Despite a steady drumbeat of negative headlines, tech’s quintet of heavy hitters boasted a cumulative market value of nearly $10 trillion as 2021 neared an end, after producing a collective $2.4 trillion in revenue over the past two years of pandemic misery.

The stock prices of tech companies have only been “minorly impacted because investors do not tend to make decisions based on the mere possibility of legislation,” Ashley Baker, director of public policy at the Committee for Justice, told MarketWatch.

Many investors have simply looked back on history and shrugged, according to one Silicon Valley venture capitalist.

“There is more antitrust **noise**, but investment people remember the Microsoft and IBM IBM, -0.19% [antitrust investigations] in which waves of innovation followed those investigations and proved they did not own the industry,” Alexandra Sasha Johnson, president of Global Tech Symposium, a Silicon Valley investment conference, told MarketWatch. “Until the Big Tech companies buy each other, this is not a problem.”

For more: Big Tech was built by the same type of antitrust actions that could now tear it down

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This could finally **change** in 20**22** as it did in the late 19**90s**, when some tech companies struck a cautious stance during the Justice Department’s investigation of **Microsoft** for monopolistic practices, Syed said.

“The difference is that we’re talking about interconnected companies that own an industry versus just one company [with Microsoft],” she said. “And there is **bipartisan support**, which makes it **easier politically**.”

More on the antitrust challenges facing Big Tech in 2022

**Amazon** has mostly avoided antitrust scrutiny, but that **may change** in 2022

Possible Justice Department lawsuit looms over **Apple**, which is facing scrutiny worldwide

**Google** enters 2022 battling antitrust actions on **multiple fronts** — with **more likely to come**

Facebook’s acquisitions of **Instagram** and **WhatsApp** are antitrust **targets**, but its metaverse mergers may be the victims

Microsoft has avoided U.S. antitrust scrutiny, but Europe is a different matter

With **more than a dozen** pieces of anti-tech legislation, a **plethora of lawsuits** and regulatory **fines** **escalating** in the **U.S.** and **abroad**, as well as the Biden administration rounding out Big Tech’s **nightmare team** of government agency heads, 20**22** is shaping up as a **seminal year** for tech regulation after decades of inaction.

In rapid succession this year, Biden named and nominated an antitrust team of Tim Wu (to the newly created position of head of competition policy at the National Economic Council), Lina Khan (chair of the Federal Trade Commission) and Jonathan Kanter (head of the antitrust division of the Justice Department). Each is a heralded anti-monopolist advocate who has written extensively on the topic or represented companies making antitrust claims against Big Tech.

The trio have been referred to as members of a “New Brandeis movement,” named after Supreme Court Justice Louis Brandeis, whose decisions limited the power of big business in the early 20th century. With the New Brandeis trifecta in place, and Congress evaluating more than dozen possible anti-tech bills, next year is “shaping up to be the year of Tech Takedown,” Bhaskar Chakravorti, dean of global business at the Fletcher School at Tufts University, told MarketWatch.

More troubling for tech CEOs, he said, are the “many tiny actions at the FTC, Justice Department and Congress that will continue to keep feeding the news cycles with a steady stream of actions” that add up to a “a year of thousands of tiny tech papercuts.”

Big Tech’s treacherous path to antitrust enforcement has three potentially damaging roads: federal agencies challenging acquisitions and mergers; legislation tailored to stimulate competition and curtail the influence of tech’s dominant platforms; and federal and state lawsuits.

Closer scrutiny of M&A activity

The biggest immediate impact from the Biden administration’s all-out assault could be a cooling-off period of frenzied mergers and acquisitions by the biggest players. Regulators have been empowered with examining past deals and more strenuously inspecting tech’s latest purchases.

Major movement is already happening on the M&A front because, as lawyers and executives told MarketWatch, the FTC and Justice Department have new leadership empowered to more closely review and approve mergers while they await legislation and court actions. A non-binding presidential executive order largely seen as aimed at Big Tech announced a policy of greater scrutiny of mergers over the summer, and the FTC and Justice Department each would receive $500 million in new funding to boost staff working on antitrust enforcement as part of the House-passed reconciliation bill awaiting Senate action.

The FTC is signaling **greater oversight** over deals, requiring **affirmative consent** on certain transactions, which may **prolong uncertainty** on merger agreements. The agency has already sued to block the largest semiconductor deal ever — Nvidia Corp.’s NVDA, -0.59% proposed $40 billion acquisition of U.K.-based chip-design provider Arm Ltd., saying the deal would “distort Arm’s incentives in chip markets and allow the combined firm to unfairly undermine Nvidia’s rivals.”

Another FTC antitrust probe, into **Meta**’s plan to acquire VR fitness app Supernatural for $400 million, is **underway**, according to a report by The Information.

The Justice Department’s direction is less clear at this point, but **signals** from **Kanter**’s confirmation hearing point to “**vigorous enforcement”** of antitrust laws.

“Personnel is policy. With the trifecta of Khan, Kanter and Wu, there is a **new sheriff** in town,” Luther Lowe, senior vice president of public policy at Yelp Inc. YELP, -0.66%, told MarketWatch. “Efforts by Amazon and Facebook to recuse Khan, and Google’s attempt to recuse Kanter, is like arsonists asking for firefighters to be removed from a fire.”

**stepped up merger review drains resources**

David **McLaughlin**, Bloomberg, Tech Giants Used ‘Loopholes’ to Duck Merger Reviews, FTC Says, September 15, 20**21**, <https://www.bloomberg.com/news/articles/2021-09-15/tech-giants-used-loopholes-to-duck-merger-reviews-ftc-says>

Hundreds of deals by U.S. technology giants **flew under the radar** of merger watchdogs, fueling the companies’ unchecked growth in the digital economy, according to a Federal Trade Commission study.

The data on acquisitions by **Apple** Inc., **Amazon**.com Inc., Alphabet Inc.’s Google, and Microsoft Corp. show that **antitrust enforcers** must be **more aggressive** in making sure companies aren’t taking advantage of “loopholes” to avoid reporting deals to regulators, FTC Chair Lina **Khan said** Wednesday.

“This study highlights the systemic nature of their acquisition strategy,” Khan said about the tech companies during an FTC public meeting. “Digital markets in particular reveal how smaller transactions invite vigilance.”

The findings could bolster arguments that competition cops need to step up scrutiny of acquisitions by tech platforms to curb their power. In July, President Joe Biden vowed tougher merger enforcement of tech companies, saying the industry’s biggest players have used deals to shut down emerging threats to their businesses.

“Too often, federal agencies have not blocked, conditioned, or, in some cases, meaningfully examined these acquisitions,” the administration said.

The data comes from a study the FTC announced last year to examine deals between 2010 and 2019 by the five tech giants to better understand whether acquisitions occurring outside the view of antitrust enforcers could be undermining competition.

The FTC issued **orders to the five companies** requiring them to provide information about past acquisitions that weren’t reported to antitrust agencies. The companies identified **819 such transactions**, including acquisitions of voting control of companies, partial investments, patent acquisitions, and what the FTC called “hiring events” in which a group of employees were hired from another company.

Although the FTC didn’t identify specific transactions by companies, one example is Facebook’s acquisition last year of image library Giphy for about $400 million. Bloomberg News reported last month that before the takeover, Giphy paid a dividend to investors. While perfectly legal, the payment lowered the value of Giphy’s assets so that antitrust officials didn’t have to be notified of the deal under the reporting thresholds at the time.

Antitrust enforcers look at only a fraction of deals that occur every year. Slightly more than 2,000 deals were filed to the government between October 2018 and September 2019, the most recent period reported by the FTC and the Justice Department, which share antitrust duties. The government reviews account for about 10% of almost 22,000 deals announced in that period involving a U.S. company, according to data compiled by Bloomberg.

The U.S. system for screening mergers was created by the 1976 law known as the Hart-Scott-Rodino Antitrust Improvements Act. The law requires companies to notify antitrust officials about deals that meet annually adjusted thresholds. Transactions valued at $92 million or less don’t have to be reported, while those over $368 million do. For deals between $92 million and $368 million, filing requirements are based on assets and sales of the buyer and seller.

Those levels are far below the multibillion-dollar deals that typically garner the most attention. The thinking behind the cut-offs is that small deals don’t raise antitrust concerns and **looking at every transaction would be a waste of resources**.

**Reviewing more deals,** however, could **strain resources at the Justice Department and the FTC**. The FTC has said it’s **struggling** to handle this year’s record merger levels and has warned that it may **extend merger reviews** that can’t be completed during an initial 30-day period.

**AND their specific link non-uq—tech already a priority for resources**

Marguerite **Reardon**, FTC Chair Lina Khan outlines antitrust priorities, September 23, 20**21**, <https://www.cnet.com/news/ftc-chair-lina-khan-outlines-antitrust-priorities/>

She also suggested "targeting root causes rather than looking at one-off effects" when it comes to analyzing mergers. She said it's important to assess how business models or conflicts of interest may result in antitrust harms. Among other key principles, she said the agency needs to be "forward-looking" and to **act more quickly to mitigate harm**. This includes paying close attention to "next-generation technologies, innovations, and nascent industries across sectors."

**Khan outlined three specific policy priorities**:

Addressing "rampant consolidation." Khan said it's important to **focus resources and scrutiny on dominant firms**, where a lack of competition makes unlawful conduct more likely. This will include revising merger guidelines in conjunction with the DOJ to deter mergers that the agency and DOJ are likely to challenge.

Going after "dominant intermediaries" or "gatekeepers." Khan wrote, "Business models that centralize control and profits while outsourcing risk, liability, and costs also warrant **particular scrutiny**, given that deeply asymmetric relationships between the controlling firm and dependent entities can be ripe for abuse."

**She’s pursuing Big Tech hard now.**

David **Mclaughlin 21**, 12-1-2021, "Lina Khan, Biden’s Eyes on Big Tech," Bloomberg, https://www.bloomberg.com/news/articles/2021-12-01/lina-khan-biden-pick-to-lead-ftc-big-tech-antitrust-bloomberg-50-2021

Khan published a paper in 2017 about [Amazon.com Inc.](https://www.bloomberg.com/quote/AMZN:US) that she’d written as a student at Yale Law School. Titled “[Amazon’s Antitrust Paradox](https://www.yalelawjournal.org/note/amazons-antitrust-paradox),” the article argued that the traditional framework for [antitrust enforcement](https://www.bloomberg.com/news/articles/2018-01-17/forget-consumer-welfare-this-antitrust-movement-targets-power-instead) was inadequate to deal with today’s tech giants. It was a contrarian attack on mainstream thinking, and it made Khan a radical in the eyes of regulators and Big Law.

Today she’s on the inside. Khan is responsible for helping carry out one of Biden’s sweeping economic policy prescriptions: reining in the power of companies the administration says have benefited from [unchecked consolidation](https://www.bloomberg.com/news/articles/2021-07-10/biden-vow-to-tackle-industry-giants-confronts-consolidation-wave), to the detriment of economic growth and workers. Khan, who’s on leave as an associate professor at Columbia Law School, is putting that goal into action. In July she and her two fellow Democrats on the commission voted to rescind an Obama-era policy that limited the agency’s authority in bringing antitrust cases. The next month, seeking to salvage a landmark monopoly lawsuit against Facebook Inc. that a federal judge had dismissed earlier this summer, Khan filed a new complaint against the company. The case seeks to break up Facebook (now [Meta Platforms Inc.](https://www.bloomberg.com/quote/FB:US)) by splitting off Instagram and WhatsApp. If the FTC wins, it would be historic: The government hasn’t broken up a monopoly since AT&T’s “Ma Bell” telephone system in the early 1980s.

**Merger filings prove**

**Feiner 4/20** – News associate for CNBC. Quoting Rebecca Kelly Slaughter, current FTC commissioner and former acting FTC chair.

Lauren Feiner, “FTC commissioners agree they should act to protect consumer privacy if Congress doesn’t,” *CNBC*, 20 April 2021, https://www.cnbc.com/2021/04/20/ftc-commissioners-agree-they-should-protect-consumer-privacy.html.

Expanding resources

Another theme of the hearing was about the need for greater resources at the FTC to pursue strong enforcement.

During the coronavirus pandemic, Slaughter said, the commission did see a brief dip in merger filings, but **they’ve since returned to record levels**. She said **March saw the second-highest number of merger filings in a month** at more than 300, following November’s record over more than 400 filings.

Even with a growing workload, the FTC has not been able to hire on more help. Slaughter said **employment** at the agency **has remained flat while merger filings are** at about **double the level as they were 10 years ago**.

“The absence of resources means that our enforcement decisions are harder,” she said. “If we think that we have a real case, a real law violation in front of us, but a settlement on the table that is maybe OK but doesn’t get the job done, **we have to make difficult decisions about whether it’s worth spending** a lot of **taxpayer dollars to** go **sue the companies who are going to come in with many, many law firms worth of attorneys and expensive economic experts**, versus taking that settlement.”

**FTC commissioners agree**

**Vittorio and Kern 9/29** – Andrea Vittorio is a tech reporter for Bloomberg Law. Rebecca Kern is a tech and cyber policy reporter for Bloomberg Government.

Andrea Vittorio and Rebecca Kern, “Past FTC Officials Back Resource Boost for Consumer Privacy Work,” *Bloomberg Law*, 29 September 2021, https://news.bloomberglaw.com/privacy-and-data-security/past-ftc-officials-back-resource-boost-for-consumer-privacy-work.

**Former F**ederal **T**rade **C**ommission **officials lined up behind a** Democrat **proposal** in Congress **to boost agency resources** for policing consumer privacy as **the tech industry’s collection and use of data outpaces enforcement.**

**The commission is underfunded and understaffed, especially when it comes to** having in-house technologists who can oversee companies’ data handling and their **compliance with agency enforcement orders**, said David Vladeck, a law professor at Georgetown University who previously directed the FTC’s consumer protection bureau.

“That’s an endemic problem, and it’s going to be an enduring problem unless Congress allocates more resources to the FTC,” Vladeck said Wednesday at a hearing held by the Senate Commerce, Science and Transportation Committee.

House Democrats have included a $1 billion proposal to create a new privacy bureau within the FTC as part of a budget reconciliation measure. A privacy bureau was also proposed in the latest privacy bill from Sen. Maria Cantwell (D-Wash.), who leads the Senate Commerce Committee.

**The FTC doesn’t have the resources or the expertise to “keep pace” with technology platforms** and protect consumers’ personal information, Cantwell said during the hearing.

**They may be enforcing, but they are failing now**

John O. 1NC **McGinnis**\* **and** Linda **Sun**\*\* **20**. \*George C. Dix Professor, Northwestern University, and Associate-Designate, Wilmer Pickering Hale & Dorr LLP. “Unifying Antitrust Enforcement for the Digital Age.” Northwestern Public Law Research Paper No. 20-20. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3669087

The FTC needs more **resources** to adequately address the nation’s growing privacy concerns. Currently, the FTC oversees both consumer protection—encompassing privacy—and antitrust,249 making the FTC the chief federal agency on privacy policy and enforcement250 and the nation’s de-facto privacy agency.251 The agency has long-standing experience in enforcing privacy statutes252 and also has special privacy assets, such as an internet lab capable of high-quality tech forensics to track invasions of privacy.253 The FTC, however, has failed to keep pace with the massive growth of privacy concerns—a phenomenon also driven by modern technology. Very few Americans feel conﬁdent in the privacy of their information in the digital age.254 According to a 2019 study, over 80% of Americans feel that they have little to no control over the data collected on them by companies and the government.255 To adequately address privacy concerns, the FTC needs more resources.256 The agency has been explicit that it needs more manpower to police tech companies. In requesting increased funding from Congress, FTC Director Joseph Simons said the money would allow the agency to hire additional staff and bring more privacy cases.257 A former director of the FTC’s Bureau of Consumer Protection, which houses the privacy unit, has called the FTC “woefully understaffed.”258 As of the spring of 2019, the FTC had only forty employees dedicated to privacy and data security, compared to 500 and 110 employees at comparable agencies in the UK. and Ireland, respectively.259 Without more lawyers, investigators, and technologists, the FTC will be forced to conduct privacy investigations less thoroughly, and in some cases, **forgo them altogether**.260 Currently, the FT C’s resources are **spread thin across multiple missions**, to the **detriment of its privacy efforts**. Removing the agency’s antitrust responsibilities would reallocate resources from the antitrust department to its privacy unit and other areas of consumer protection. Further, it would free up the scarce time of the commissioners to oversee this essential effort.261

#### If privacy is a top priority, then they wouldn’t divert resources away from it---empirics prove they’ll shift from other teams

**Kern 22** – tech policy reporter for POLITICO

Rebecca Kern, "Antitrust enforcers are drowning in mergers," POLITICO, 1-10-2022, https://www.politico.com/newsletters/morning-tech/2022/01/10/antitrust-enforcers-are-drowning-in-mergers-799773

FIRST IN MT: MORE LIKE A MERGER TSUNAMI — The **Federal Trade Commission** and **Justice Department** have been warning for months that a **surge** in merger filings has **stretched them thin**. They weren’t just grousing: In 2021, companies reported 4,130 mergers to the two agencies — **more than double** the number from the previous year, according to an analysis by the law firm White & Case. In December alone, businesses reported 285 mergers, dwarfing any previous December figure since 2011 (even though December often sees a surge, as companies seek to wrap up deals by the end of the calendar year).

[[Figure omitted]]

The **flood of deals** has forced the agencies to **devote** more of their already scarce **resources** to them. **The FTC has moved some attorneys focused on policy and international affairs**, for example, **to help with merger review**. Under law, the FTC and DOJ only have 30 days to decide whether a deal warrants a more in-depth probe, an added time pressure.