# 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

### K

#### Outweighs the K --- endlessly repeating that “heg causes violence” is NOT a *substitute for impact calculus* --- some violence matters more, and war is conceptually distinct!

Barkawi 12 (Tarak Barkawi, PhD in Political Science, Reader in the Department of International Relations, London School of Economics, “Of Camps and Critiques: A Reply to ‘Security, War, Violence’,” Millennium - Journal of International Studies September 2012 vol. 41 no. 1 124-130)

A final totalising move in ‘Security, War, Violence’ is the idea that the study of war should be subsumed under the category of ‘violence’. The reasons offered for this are: violence does not entail a hierarchy in which war is privileged; a focus on violence encourages us to see war in relational terms and makes visible other kinds of violence besides that of war; and that the analysis of violence somehow enables the disentangling of politics from war and a proper critique of liberal violence.22 I have no particular objection to the study of violence, and I certainly think there should be more of it in the social sciences. However, why and how this obviates or subsumes the study of war is obscure to me. Is war not historically significant enough to justify inquiry into it? War is a more specific category relative to violence in general, referring to reciprocal organised violence between political entities. I make no claims that the study of war should be privileged over that of other forms of violence. Both the violence of war, and that of, say, patriarchy, demand scholarly attention, but they are also distinct if related topics requiring different forms of theorisation and inquiry. As for relationality, the category of war is already inherently relational; one does not need the concept of violence in general to see this. What precisely distinguishes war from many other kinds of violence, such as genocide or massacre, is that war is a relational form of violence in which the other side shoots back. This is ultimately the source of war’s generative social powers, for it is amidst the clash of arms that the truths which define social and political orders are brought into question. A broader focus on violence in general risks losing this central, distinctive character of the violence of war. Is it really more theoretically or politically adequate to start referring to the Second World War as an instance of ‘violence’? Equally, while I am all for the analysis of liberal violence, another broad category which would include issues of ‘structural violence’, I also think we have far from exhausted the subject of liberalism and war, an important area of inquiry now dominated by the mostly self-serving nostrums of the liberal peace debates.

#### Competition policy---wide array of empirical evidence shows it leads to massive economic benefits.

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.

#### Their ethics are tautological --- competing rights claims collapse --- the only option is to maximize lives saved.

Greene 10 (Joshua Greene, Associate Professor of Social science in the Department of Psychology at Harvard University, “The Secret Joke of Kant’s Soul published in Moral Psychology: Historical and Contemporary Readings,” Historical and Contemporary Readings, [www.fed.cuhk.edu.hk/~lchang/material/Evolutionary/Developmental/Greene-KantSoul.pdf](http://www.fed.cuhk.edu.hk/~lchang/material/Evolutionary/Developmental/Greene-KantSoul.pdf))

What **turn-of-the-millennium science is telling us is that** human **moral judgment is not a** pristine **rational enterprise**, that our moral judgments are driven by a hodgepodge of emotional dispositions, which themselves were shaped by a hodgepodge of evolutionary forces, both biological and cultural. Because of this, it is exceedingly unlikely that there is any rationally coherent normative moral theory that can accommodate our moral intuitions. Moreover, anyone who claims to have such a theory, or even part of one, almost certainly doesn't. Instead, what that person probably has is a moral rationalization. It seems then, that we have somehow crossed the infamous "is"-"ought" divide. How did this happen? Didn't Hume (Hume, 1978) and Moore (Moore, 1966) warn us against trying to derive an "ought" from and "is?" How did we go from descriptive scientific theories concerning moral psychology to skepticism about a whole class of normative moral theories? The answer is that we did not, as Hume and Moore anticipated, attempt to derive an "ought" from and "is." That is, our method has been inductive rather than deductive. We have inferred on the basis of the available evidence that the phenomenon of rationalist deontological philosophy is best explained as a rationalization of evolved emotional intuition (Harman, 1977). Missing the Deontological Point I suspect that rationalist deontologists will remain unmoved by the arguments presented here. Instead, I suspect, they will insist that I have simply misunderstood what Kant and like-minded deontologists are all about. Deontology, they will say, isn't about this intuition or that intuition. It's not defined by its normative differences with consequentialism. Rather, deontology is about taking humanity seriously. Above all else, it's about respect for persons. It's about treating others as fellow rational creatures rather than as mere objects, about acting for reasons rational beings can share. And so on (Korsgaard, 1996a; Korsgaard, 1996b). This is, no doubt, how many deontologists see deontology. But this insider's view, as I've suggested, may be misleading. The problem, more specifically, is that it defines deontology in terms of values that are not distinctively deontological, though they may appear to be from the inside. Consider the following analogy with religion. When one asks a religious person to explain the essence of his religion, one often gets an answer like this: "It's about love, really. It's about looking out for other people, looking beyond oneself. It's about community, being part of something larger than oneself." This sort of answer accurately captures the phenomenology of many people's religion, but it's nevertheless inadequate for distinguishing religion from other things. This is because many, if not most, non-religious people aspire to love deeply, look out for other people, avoid self-absorption, have a sense of a community, and be connected to things larger than themselves. In other words, secular humanists and atheists can assent to most of what many religious people think religion is all about. From a secular humanist's point of view, in contrast, what's distinctive about religion is its commitment to the existence of supernatural entities as well as formal religious institutions and doctrines. And they're right. These things really do distinguish religious from non-religious practices, though they may appear to be secondary to many people operating from within a religious point of view. In the same way, I believe that most of the standard deontological/Kantian self-characterizatons fail to distinguish deontology from other approaches to ethics. (See also Kagan (Kagan, 1997, pp. 70-78.) on the difficulty of defining deontology.) It seems to me that consequentialists, as much as anyone else, have respect for persons, are against treating people as mere objects, wish to act for reasons that rational creatures can share, etc. A consequentialist respects other persons, and refrains from treating them as mere objects, by counting every person's well-being in the decision-making process. Likewise, a consequentialist attempts to act according to reasons that rational creatures can share by acting according to principles that give equal weight to everyone's interests, i.e. that are impartial. This is not to say that consequentialists and deontologists don't differ. They do. It's just that the real differences may not be what deontologists often take them to be. What, then, distinguishes deontology from other kinds of moral thought? A good strategy for answering this question is to start with concrete disagreements between deontologists and others (such as consequentialists) and then work backward in search of deeper principles. This is what I've attempted to do with the trolley and footbridge cases, and other instances in which deontologists and consequentialists disagree. If you ask a deontologically-minded person why it's wrong to push someone in front of speeding trolley in order to save five others, you will get characteristically deontological answers. Some will be tautological: "Because it's murder!" Others will be more sophisticated: "The ends don't justify the means." "You have to respect people's rights." But, as we know, these answers don't really explain anything, because if you give the same people (on different occasions) the trolley case or the loop case (See above), they'll make the opposite judgment, even though their initial explanation concerning the footbridge case applies equally well to one or both of these cases. Talk about rights, respect for persons, and reasons we can share are natural attempts to explain, in "cognitive" terms, what we feel when we find ourselves having emotionally driven intuitions that are odds with the cold calculus of consequentialism. Although these explanations are inevitably incomplete, there seems to be "something deeply right" about them because they give voice to powerful moral emotions. But, as with many religious people's accounts of what's essential to religion, **they don't** really **explain** what's distinctive about **the philosophy in question**.

#### Liberalism, while flawed, is contingent and are appropriate cites for struggle. It provides the only effective grammar for understanding and combatting harms to person. AND, the NEGs burden must be to establish some alternative basis for ethics that they can prove solves their offense and ours.

Mills 17

(Charles W. Mills is a Distinguished Professor of Philosophy at The Graduate Center, City University of New York,“Black Rights/White Wrongs: The Critique of Racial Liberalism,” 2017, Oxford University Press, http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780190245412.001.0001/acprof-9780190245412-chapter-3)

For me, then, racial liberalism (analogous to patriarchal liberalism) is a liberalism in which key terms have been written by race and the discursive logic shaped accordingly. This position expresses my commitment to what has been called the “symbiotic” view of racism, which sees race as historically penetrating into liberalism’s descriptive and normative apparatus so as to produce a more-or-less consistent racialized ideology, albeit one that evolves over time, rather than seeing race as being externally and “anomalously” related to it.5 Unlike my post-structuralist and post-colonial colleagues, however, I see this penetration as contingent, not a matter of a pre-ordained logic of liberalism itself, but a consequence of the mandates for European liberal theorists of establishing and maintaining imperial and colonial rule abroad, and nonwhite racial subordination at home.6 Hence the hope of redeeming liberalism by self-consciously taking this history into account: recognizing the historic racialization of liberalism so as better to deracialize it—thereby producing a color-conscious, racially reflexive, anti-racist liberalism on the alert for its own inherited racial distortions.7 Abstract Platonized liberalism erases actual liberalism’s racist history, a blinding white Form that, in pretending a colorlessness that it did not and does not achieve, obfuscates more than it illuminates. The problem is not abstraction as such but a problematic mode of idealizing abstraction that abstracts away from social oppression, and in that way both conceals its extent and inhibits the development of the conceptual tools necessary for understanding and dealing with its workings.8 Identifying the historically hegemonic varieties of liberalism as racialized and white alerts us to the erasure, the whiting-out, of the past of racial subordination that current, seemingly genuinely inclusive varieties of liberalism now seek to disown. (p.xvi)

As the title of this book signifies, then, it is an enterprise based on the inversion of the standard metaphors in which white is right and black is wrong. It urges us to recognize how the historically exclusionary rights of white liberalism (a.k.a. “liberalism”), based on the suppression of equal black rights, have left a legacy of white wrongs. These wrongs have thus been not merely material but also normative and conceptual, wrongs within the apparatus of liberalism itself—as summarized by the two famous judgments about white “moderates” (in context roughly equivalent to “liberals”) made by Martin Luther King Jr. and Dick Gregory that I have used as my epigraphs. Hence the need for their black righting.

Part I of the book covers the overarching themes of epistemology, personhood, and property, all central to the liberal project, and all, in my opinion, distortionally shaped by race. Liberal enlightenment presumes an objective perception of things as they are and as they should be, factually and morally, for political communities characterized by reciprocally respecting relations among equally recognized persons in agreement on the fair terms for the appropriation of the world. But racial domination interferes with objective cognition, denies equal racial personhood, and generates rationalizations of unjust white acquisition. Thus they are all negatively transformed by the dynamic of racial liberalism.

The opening chapter sets the stage with a 2012 interview I did with Tom Mills (no relation, so far as I know) of the British New Left Project. For the benefit of a transatlantic audience less familiar with critical race theory, I explain the rationale for retaining “race” as a crucial category, suitably transformed, and what I see as its historic link with imperial domination and its relation to the conceptually distinct, if empirically overlapping, systems of gender and class. Racial liberalism is introduced as homologous with the far more familiar “patriarchal liberalism” identified by feminist theory.

Chapter 2, “Occupy Liberalism!,” locates the project within the broader context of the need to transform liberalism for a progressive political agenda. Invoking the slogan of the (then) recent “Occupy!” movement, I argue—against radical orthodoxy—that liberalism has an under-appreciated radical potential that is masked by the long complicity of its hegemonic varieties with plutocratic, patriarchal, and white-supremacist structures of power. But this complicity, I argue, is a function of dominant group interests and the successful political projects of the privileged, not the consequence of any ineluctable immanent conceptual dynamic of liberalism as a political ideology. Once we pluralize liberalism into liberalisms (both actual and hypothetical), we should be able to see how many claims about liberalism’s putatively problematic ontology and alleged incapacity to recognize and/or theorize social oppression really depend on the contingent features (p.xvii) of its historically dominant (but not inevitable) incarnations. An emancipatory liberalism can, I contend, be reconstructed that is not theoretically constrained in these unfortunate ways.

With this background established, I go on in chapter 3, “Racial Liberalism,” to make a detailed case for the usefulness of the construct. I point out the global hegemony of liberalism in a post–Cold War world and the triumph in the academy over the last few decades of Rawlsian contractarian liberalism in particular. But in the wide range of political responses to the work of John Rawls, the historic racialization of the contract apparatus and of the dominant varieties of liberalism will rarely be a topic of inquiry. Yet insofar as racism (ostensibly) violates the moral norms of modern political theory in general, liberal theorists across the spectrum, however much they disagree on other issues, should be able to converge on the necessity for purging contemporary liberal theory of its racist ancestry. Contra the exponents of color-blindness, however, I argue that this project can only be accomplished through a color-conscious investigative genealogy and reconstruction. Thus I urge a self-conscious deracializing of liberalism that would begin by recognizing the centrality of a social ontology of race to the modern world and the acknowledgment of a corresponding history of racial exploitation that needs to be registered in liberal categories and addressed as a matter of liberal social justice.

Oppositional bodies of political thought are often preoccupied with epistemological questions, in part for the simple reason that they are trying to explain how a dominant but misleading body of ideas (classist, sexist, racist) continues to perpetuate itself. One wants to understand both how the privileged can continue to deny the unfairness of their privilege and how (perhaps) one was oneself originally taken in by these ideas. I suggest that this pattern of denial and misapprehension can in the case of race be thought of as a “white ignorance,” an elaboration of the concept I introduced in The Racial Contract of an “epistemology of ignorance.”9 Chapter 4, “White Ignorance,” locates white miscognition as a structural phenomenon rather than a matter of individual white myopias. It is the result (not unavoidably, but as a strong psychological tendency) of racial location. Because of racial privilege, an inherited racialized set of concepts and beliefs, differential racial experience, and racial group interest, whites tend to get certain kinds of things wrong. As such, the chapter can be seen as a contribution from critical philosophy of race to the new “social” epistemology that has emerged in recent decades, a welcome turn away from the solipsistic Cartesian meditations that have typically characterized modern epistemology.

Chapter 5, “ ‘Ideal Theory’ as Ideology,” takes a critical look at what could be called the epistemology of normative theory, specifically the normative (p.xviii) apparatus of “ideal theory” liberalism. Like chapter 2, it also adopts a broader perspective, reminding us that a focus on race should not exclude a concern with gender and class privilege also, all of which are indeed always in the modern world in intersection and interaction with one another. First written as a contribution to a feminist collection on moral psychology, it was then reprinted in a special symposium of the feminist philosophy journal Hypatia, stimulating widespread discussion. The chapter expressed a frustration I and many others at the time (as it turned out) had begun to feel with “ideal theory” in ethics and political philosophy, most notably, of course, though not exclusively, in the work of Rawls. “Ideal theory” is not just normative theory, which by definition is a prerequisite for ethics and political philosophy, but the normative theory of a perfectly just society. The rationale was that developing such a perspective was crucial to doing non-ideal justice theory properly later on. But to many of us at the time it became increasingly questionable whether this “later on” was ever going to arrive, and that in reality ideal theory—whatever its original motivation—was functioning as a way of avoiding the hard facts of class, gender, and racial oppression; how they shape the human agents enmeshed in these relations of domination; and what our normative priorities should be. So the essay was an early effort in what has since become a growing wave of criticism of ideal theory, and I would like to think that it made at least a small contribution to getting things going.

No Western Enlightenment philosopher can equal the standing of Immanuel Kant, the luminary par excellence of eighteenth-century thought, with stellar accomplishments not merely in ethics and political philosophy, but in metaphysics and aesthetics also. Yet Kant, the pre-eminent theorist of personhood, whose work through his appropriation by John Rawls and Jürgen Habermas has become central to normative political philosophy as well as ethics, has also a more dubious accomplishment to his (dis)credit: being one of the founders—or (for some theorists) the founder—of modern “scientific” racism. As such, he wonderfully illustrates the combination of light and darkness in the “white” Enlightenment’s racial liberalism. Until recently, when the challenge from scholars of race made some response unavoidable, mainstream white political philosophers and ethicists had for the most part scrupulously avoided any mention of his racist writings in anthropology and physical geography. Now the dominant line of argument is that they are embarrassing and should of course be condemned, but they form no part of his philosophy. In chapter 6, “Kant’s Untermenschen,” I challenge this conceptual segregation and ask whether it would not be more theoretically fruitful to explore the possible presence in Kant’s work of a philosophical anthropology of persons and sub-persons, thereby inevitably raising questions about the standard (p.xix) interpretations of the prescriptions of his ethics, political philosophy, and teleology.

The seeming demise of Marxism—though as I write this introduction in 2016, the worsening conditions of plutocracy, not merely in the United States but globally, must surely be fostering a rethinking10—has taken “exploitation” off the table as a subject for moral analysis. Exploitation is assumed to be necessarily tied to the labor theory of value, long repudiated not merely by mainstream economists but by even most contemporary Marxists. But a concept of exploitation can easily be developed that is straightforwardly condemnable by respectable liberal criteria: exploitation as the “using” of people for illicit benefit and unjust enrichment. Marx famously contrasted the transparent exploitation of slave and feudal societies with the more opaque exploitation of capitalism, which, resting as it did on “free” wage-labor and voluntary consent, generally needed theoretical work to uncover. But racial exploitation in modernity was originally as transparently exploitative as (or even more transparently exploitative than) exploitation in pre-modern systems. Racial chattel slavery, aboriginal expropriation, colonial forced labor, and so forth are paradigms of non-consensual coercive systems directed by liberal polities at home and abroad. Yet they have not received the attention they deserve in liberal descriptive and normative theory for what they say about the actual architecture of the liberal state and its supervision of the wrongful transfer of wealth and opportunities from people of color to whites. In chapter 7, “Racial Exploitation,” I argue for a revival of the concept of exploitation in philosophical discourse that could be brought into fruitful engagement with the by now large body of literature in sociology and economics on racial differentials in wealth and how they serve to perpetuate racial inequality.

Part II of the book focuses on Rawls, Rawlsianism, and white political philosophy more generally. My claim is that most of this work either exemplifies the racial liberalism I am critiquing or adopts strategies for addressing and correcting it that are, in my opinion, going to be inadequate.

Chapter 8, “Rawls on Race/Race in Rawls,” examines the writings of the person generally regarded (certainly in Anglo-American analytic philosophical circles) as the most important American political philosopher of the twentieth century, and, for some, the most important political philosopher, period, of the twentieth century. I try to bring out the absurdity of the leading American philosopher of justice having nothing substantive to say over his working lifetime about what has historically been the most salient form of American injustice, racial domination. Moreover, by analyzing the underpinnings of Rawlsian ideal theory, I try to make the stronger case not merely that Rawls and Rawlsians have not addressed the issue of racism, but that the apparatus itself hinders them from doing so adequately, (p.xx) not merely contingently but also structurally. In the conclusion, I point the reader to my own work in my 2007 book with Carole Pateman, Contract and Domination, where I argue that retrieving the Rawlsian apparatus for racial justice and non-ideal theory will require radical changes in it.11

The natural follow-up is a look at the work of Tommie Shelby, since he—as a black philosopher at Harvard, Rawls’s home institution for most of his career—is the most prominent African American representative of the position that, contra my claims, Rawls’s apparatus as is can indeed be used to tackle racial injustice. In chapter 9, “Retrieving Rawls for Racial Justice?,” I do a detailed analysis of one of Shelby’s articles and explain why I think his attempted appropriation of Rawls (an extension to race of Rawls’s “fair equality of opportunity” principle) cannot work. I should emphasize here that I do not, of course, see Shelby as himself an exponent of racial liberalism but rather as a philosopher trying, as I am, to correct it. But my contention is that the racial liberalism that for me Rawls represents is more deeply embedded in the apparatus and thus requires more conceptual rethinking and reworking of that apparatus than Shelby recognizes.

Chapter 10, “The Whiteness of Political Philosophy,” takes a retrospective look at the evolution (and non-evolution) of the field in the many years since my graduation. Commissioned by the hyperactive (in a good way) George Yancy for a volume bringing together seventeen black and Hispanic/Latino philosophers to reflect on their experiences in the profession, it offers both an account of how much progress has been made in recent decades in Africana philosophy and race as legitimate philosophical areas of research, and how far we still have to go. Though there has been a burgeoning of literature in the discipline, the low demographic numbers of black philosophers and people of color generally, and the radicalness of the challenge race poses to conventional ways of doing philosophy, somewhat temper one’s optimism about its future. Using a well-known companion to political philosophy as a representative target, I point out how “white” its conceptual framework and underlying assumptions are, paying virtually no attention to the large body of work in post-colonial theory and critical race theory not just in philosophy but across many other disciplines.

Finally, in an epilogue that is simultaneously a prologue (in gesturing toward what I intend to be a future project), I sketch the contours of what I am calling a “black radical liberalism.” Taxonomies of Africana political thought have traditionally opposed black radicalism and black liberalism, the latter seen as necessarily committed to mainstream white norms and assumptions, even if adjusted somewhat for racial difference. But in keeping with the overall line of argument of this book, I make a case here for a different variety of black liberalism, one radicalized by taking seriously (in a way that mainstream black liberalism does not) the shaping of the modern (p.xxi) world by white supremacy. Black radical liberalism as an emancipatory ideology will of course have to be supplemented and modified by the experience of other racially subordinated communities. But given the centrality of African slavery and subsequent anti-black oppression to the making of modernity, it represents a crucial step toward the comprehensive theorization and reconstruction of the deracialized, color-conscious liberalism for which I am calling.

#### There’s no coherent alternative to liberalism – they reject collective subjectivity necessary to theorize alternatives

David Chandler, Professor of International Relations at the University of Westminster, “The uncritical critique of ‘liberal peace’,” Review of International Studies (‘10), 36, 137–155

Beyond the critique of the liberal peace?

It would appear that the ostensibly **more radical critics**, those **who draw out the problematic nature of power relations** – the ‘power-based’ critiques above – in fact, **have** very little to offer as a critical alternative to the current policies of intervention and statebuilding, other than a scal**ing back of the possibilities of social change**. The leading critics of the liberal peace, like Mark Duffield, Michael Pugh and Oliver Richmond – working through critical theoretical frameworks which problematise power relations and highlight the importance of difference – suggest that the difference between the liberal West and the non-liberal Other **cannot be bridged through Western policymaking**. For Pugh, as we have seen above, taking critical theory to its logical conclusion, capitalist rationality is itself to be condemned for its universalising and destabilising impulses. Similarly, for Duffield, it seems that the problem of hegemonic relations of power and knowledge cannot be overcome, making any projection of the ideals of development or democracy potentially oppressive.63 Oliver Richmond, has systematised this perspective, highlighting the problems of the disciplinary forms of knowledge of ‘liberal peace’ approaches and suggesting that while it may be possible to go beyond them through the use of post-positivist and ethnographic approaches – enabling external interveners to have a greater access to the knowledge of ‘everyday life’ in non-liberal societies being intervened in – any attempt to know, rather than merely to express ‘empathy’, is open to hegemonic abuse.64 It would appear that, **without a** political agent **of emancipatory social change**, the **radical** ‘power-based’ **critics of liberal peace** who draw upon the perspectives of critical theory, cannot go beyond the bind which they have set themselves**, of overcoming hegemonic frameworks of knowledge and power**. In fact, it could be argued that **these critical approaches**, lacking **the basis of** a political subject to give content to critical theorising, ultimately **take an uncritical approach to power**. Power is **assumed rather than theorised**, making the limits to power appear merely as external to it. It is assumed that there is an attempt to transform the world in liberal terms and that the failure to do so can therefore be used to argue that liberal forms of knowledge are inadequate ones. The critique is not essentially of power or of intervention but of the limited knowledge of liberal interveners. The alternative is not that of emancipatory social transformation **but of the speculative and passive search for different, non-liberal, forms of knowledge or of knowing.** This comes across clearly in the conclusions reached by Duffield, Richmond and others, and highlights the lack of a critical alternative embedded in these approaches. The more ostensibly conservative critics of the liberal peace, drawn largely to the policymaking sphere, have much clearer political aims in their critique of the liberal peace. This is manifest in their focus on institutional reform, understood as a way of reconciling non-liberal states and societies both to the market and to democratic forms. This, like the transitology discourse before it, is a radical critique of classical liberal assumptions. In their advocacy of these frameworks, discursively framed as a critique of the ‘liberal peace’, they have a clear point of reference. Although, as highlighted above, this point of reference is a **fictional** one: a constructed narrative of post-Cold War intervention, which enables them to ground the scaling-back of policy expectations against a framework of allegedly unrealistic liberal aspirations. **This critique of liberalism is not a critique of interventionist policymaking** **but** rather a defence of current practices on the basis that they have not been properly applied or understood. Institutionalist approaches, which have informed the interventionist frameworks of international institutions and donors since the early 1990s, are explicit in their denunciation of the basic assumptions of classical liberalism. This critique of liberalism is however an indirect one, inevitably so, as the institutionalist critique developed at the height of the Cold War.65 This is why, while the classical concepts of the liberal rights framework remain – ‘sovereignty’, ‘democracy’, ‘rule of law’, ‘civil society’ – they have been given a **new content**, transforming the universal discourse of the autonomous liberal rights-holder from that of the subject of rights to the object of regulation.66 This new content has unfortunately been of little interest to the more radical ‘power-based’ critics of the ‘liberal peace’. But, in understanding the content of institutionalist approaches, it is possible to tie together the superficial nature of external engagement with the fact that it has a non-liberal content rather than one which is too liberal. The institutionalist discourse of intervention and regulation is not one of liberal universalism and transformation but one of restricted possibilities, where democracy and development are hollowed out and, rather than embodying the possibilities of the autonomous human subject, become mechanisms of control and ordering. Institutionalisation reduces law to an administrative code, politics to technocratic decision-making, democratic and civil rights to those of the supplicant rather than the citizen, replaces the citizenry with civil society, and the promise of capitalist modernity with pro-poor poverty reduction.67 To conceptualise this inversion of basic liberal assumptions and ontologies as ‘**liberalism’ would be to make the word** meaningless **at the same time as claiming to stake everything on the assumed meaning** and stakes involved in the critique of the ‘liberal’ peace.68

#### Their arguments that the settler state has never and can never do anything good in this context is reductive and obscures the possibilities for effective resistance

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(Lisa, with Tim Rowse, *Between Indigenous and Settler Governance*, introduction. https://www.taylorfrancis.com/books/9780203085028)

In 2007, Australia, Canada, New Zealand and the United States underscored their peculiar historical, legal and political interconnections. Despite the fact that they constitute the archetype of settler colonialism, the CANZUS states alone voted against the United Nations Declaration on the Rights of Indigenous Peoples. All four countries had relented and signed the document by 2010. Nevertheless, their 2007 objections are revealing. They argued that indigenous rights to selfdetermination and control of national resources fell within domestic rather than international jurisdiction; such rights were contingent on local democratic processes conducted under the legitimate authority of national settler sovereignties. Their dissent from the Declaration did not reﬂect a history of distinct severity in the treatment of indigenous peoples. On the contrary, the CANZUS states had long provided conditions that were conducive to the growth of a global movement for indigenous rights and their indigenous peoples, though still poor and oppressed, have fared much better than their counterparts in other parts of the world (Merlan 2009: 306-12). Rather, this paradox draws our attention to a key historical and legal continuity between North America and Australasian settler colonialism; indigenous recovery in these interconnected polities has taken place in the gaps and ﬁssures of setter sovereignties – spaces that are historically emergent, ﬂuid and contested. This volume examines the history, current development and future of ‘indigenous self-determination’ in the CANZUS states. Though we deal only with Anglophone settler polities here, we note that ‘indigenous’ has become a global category, and that its boundaries are sometimes stretched by the politics of self-ascription, and at other times narrowed by rules of tribal membership (Gover 2010). By ‘self-determination’ we comprehend a broad range of indigenous collective action. Not only do we use ‘self-determination’ to describe independent, territorial sovereignty, we use it to refer to informal practices of corporate consultation and assertion, and to more formal treaty-or constitution-based recognition of tempered indigenous sovereignty or jurisdiction within settler states (Pitty and Smith 2011; Muehlebach 2003). The work gathered here focuses chieﬂy on the period when technologies of settler governance intruded on indigenous life with new intimacy and persistence, from the middle of the nineteenth century until the present. Our authors ﬁnd that, even at their most racist and self-serving, settler states in Australasia and North America were complex institutions; their claims to jurisdiction, their eﬀorts at dispossession, even their establishment of formal bureaucratic tyrannies over indigenous people were both presumptuous and unconsummated. This volume recovers some of the many diﬀerent ways in which indigenous individuals and collectivities have crafted claims to equality, citizenship, diﬀerence, political autonomy and redress in the shadow of North American and Australasian settler sovereignties. Our historical chapters ﬁnd persistent pluralisms, where indigenous aspirations, collectivities and laws have continued and even structured the interaction of indigenous peoples with settler governments. Each suggests, in its way, that settler words like ‘conversion,’ ‘guardianship,’ ‘protection’ and ‘assimilation’ have obscured the breadth and resilience of modes of indigenous self-governance on missions, in reserves and in urban indigenous communities. Together they show that long after settler courts and parliaments deﬁned and diminished indigenous jurisdictions, unexpected spaces remained open for some old and some very new modes of indigenous collective assertion. Some of these historical pluralisms are unsurprising: our contributors have recovered rich ediﬁces of indigenous governance that set the rules of encounter on the trading frontiers of Canada, marshaled pan-Indian support in post-removal Indian Country in the United States and informed contemporary Ma-ori-state engagements in New Zealand. Other modes of pluralism are unexpected: whether it be the enormously creative interaction between Christian conversion and indigenous resistance in nineteenthcentury New Zealand and early twentieth-century Natal or the persistence of sorcery in contemporary Aboriginal communities. Other chapters remind us that relationships between settler and indigenous governance are historically emergent – constantly reshaped both by historical context and by their ongoing interactions. Legal historians have clearly described the moment in the second quarter of the nineteenth century when CANZUS states predicated their sovereignty on exercises of jurisdiction over indigenous people in territory, markedly attenuating indigenous rights to govern themselves according to their own law (Ford 2010; Kercher 1995: 1-12; McHugh 2004). But some of our contributors suggest that this story is altogether too tidy. Settler states indulged in many moments of self-articulation. Before the nineteenth century, Vattel’s Law of Nations convinced many that indigenous rights had no place in the law of nations. Other constitutive moments came later; for example, when British settler colonies were given legislative power over indigenous aﬀairs, between the 1850s and 1890s. Indeed, settler state making is still a work in progress. The exercise of settler jurisdiction over indigenous people remains patchy, and evolving deﬁnitions of indigenous governance and indigenous land rights by settler courts constantly redeﬁne the relationship among sovereignty, territory and jurisdiction. The contemporary relationship of indigenous rights to land (dominium) and to autonomy or sovereignty (imperium) has yet to be resolved by philosophers and lawyers (McHugh 2011: 240-43). Their uncertain relationship is evident in shifting Supreme Court deﬁnitions of the province of federal, state and Indian jurisdiction in the United States that have increasingly attenuated the capacity of longestablished indigenous governments to govern Indian reservations. Meanwhile, the growing value of indigenous land claims in remote parts of Australia and Canada has proved even more challenging. On the one hand, indigenous land claims before settler courts have been predicated on ancient association, sacralized possession and corporate identity; even at their weakest, they subtly aﬃrm indigenous corporate autonomy. On the other hand, mining booms and the ecological turn have transformed economic ‘wastelands’ into important sources of revenue, material bases that could be used to support much stronger institutions of governance among indigenous communities. Canadian and Australian courts in particular have yet to reconcile common law notions of ‘property’ with claims by Aborigines that they should be able to ‘speak for country’, regulate visitors, or negotiate with mining companies about access to mineral rights which have mostly been reserved to the Crown. Nor is law the only mechanism through which indigenous collectivities have succeeded in altering the practices of settler statehood. Post-1960s reckonings with indigenous activism have resulted in the attenuation of executive and legislative policies of dispossession and assimilation in North America and Australasia. Since the 1960s, CANZUS states have all dabbled in self-determination, the recognition of their special duties to indigenous peoples and the return of tempered property rights to a lucky few indigenous communities. However, these ameliorative measures have always been ambivalent (Cronin 2007; Foley 2007; Kowal 2008) and in some ways have served to reaﬃrm settler sovereignties over indigenous peoples (McHugh 2011: 101). In recent decades, indigenous claims have slowly pushed CANZUS polities into a paradigm of negotiation which assumes the political or legal authority of indigenous collectivities to represent their members and to control resources. The neoliberal withdrawal of government has, arguably, made space for indigenous collective assertion by fostering mediated (if unequal) negotiations between indigenous peoples and mining corporations, even where indigenous peoples lack hard legal rights to the resources in play (Gover and Baird 2002; MacDonald and Muldoon 2006). More challenging, perhaps, is this volume’s engagement with the impact of the colonial encounter on indigenous people. Drawing on a rich, pan-colonial historiography stretching from Africa (Cooper 2005) to Australia (Attwood 1989), many chapters in this volume insist that, like their settler oppressors, indigenous peoples are themselves historically emergent as individuals and collectivities. There is no eternal indigene and, as Tim Rowse argues, perhaps it is time to stop weighing indigenous articulations of selfhood and collective rights against ahistorical categories of authenticity. Contact with Europeans changed indigenous life and indigenous people – not just in the realm of ideas, but in the material details of life. Indigenous peoples have crafted new subjectivities in the context of their Christian conversion which facilitated new collective assertions. Some indigenous people have adopted Western forms of government which have both strengthened indigenous capacities for contemporary self-governance and goaded settler institutions into acts of further oppression. Settler contact opened new avenues for political discourse; as Bain Attwood pointed out some years ago, indigenous claims against settler states have probably always been hybrid discourses mediated through settler networks of people and of thought (Attwood 2003: xiii). Indeed, key indigenous intellectuals have accepted Western categories of thought about modernization, racial citizenship and assimilation and deployed them against settler oppression. Contemporary indigenous communities struggle to articulate their indigeneity through settler citizenship or, even more importantly, against rapidly changing economic structures that have reduced many indigenous people to welfare dependence, chronic illness and material want. At the same time, holders of the growing indigenous estate contend with each other about how to use, manage and dispose of their interests in land as conservators, culturebearers and capitalists. The problem of reconciling this cacophony of indigenous subjectivities – capitalist, citizen, minority, Christian, pagan, hunter-gatherer, historical victim, repository of pre-contact culture andmember of a semi-autonomous ﬁrst people – forms one of the greatest problems of settler political theory and of contemporary indigenous politics (Anaya 2004; Anaya 1999; Kuper 2003; Rowse 1994; Waldron 1992; Waldron 2003). The historical remaking of indigenous peoples shapes and constrains their claims in dynamic interaction with the rich detritus of settler and indigenous custom, law and policy. Every essay in this collection explores the messy array of gaps and perversities in settler regimes for indigenous governance. Together they illuminate the limitations and the possibilities of indigenous recovery historically, and in the face of ongoing dispossession and oppression. Some describe the emergence of new collectivities, new discourses and new practices that frame indigenous claimsmaking and self-determination to this day. Others have located and described those places in the margins of settler colonialism where the complexity of human interactions left space for indigenous peoples to express and adapt their corporate will and aspirations. These are tempered, circumscribed and problematic spaces. The most exciting essays here, it seems to me, explore how indigenous self-governance came to terms with settler sovereignty. They narrate histories of indigenous cultural and religious engagement, focus on past and present meeting points between laws, or ﬁnd changing norms in the complexity of settler and indigenous practice that have created new places outside law for the expression of indigenous corporate ambitions. Indigenous collectivities have navigated multiple regimes of colonialism and bureaucratic management since 1800. Their successes and failures show that there are no inevitable or predetermined outcomes in the gap between settler and indigenous governance.

#### Viewing settler colonialism as a structure exceptionalizes it, reproducing colonial thought and ignoring contingent and complex historical formations

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Manu Vimalassery, Juliana Hu Pegues, and Alyosha Goldstein, “Introduction: On Colonial Unknowing,” *Theory & Event*, vol. 19, no. 4, 2016, https://muse.jhu.edu/article/633283#bio\_wrap.

Structures and Events

The theorization of “settler colonialism” is indicative of these tensions. Activists and academics have increasingly taken up settler colonialism as an analytic to address the particular ways in which colonialism operates and persists in places such as Canada, Australia, New Zealand, and the United States, as well as Israel/Palestine. To a considerable extent, much of the work that has recently become associated with settler colonial studies has already been underway in Native American and Indigenous studies, as well as other fields including ethnic studies and colonial discourse studies. Our contention is that the particular ways in which settler colonialism has assumed predominance as an analytic risks obscuring or eliding as much as it does to distinguish significant features of the present conjuncture.22 Indeed, we suggest that when settler colonialism is deployed as a stand-alone analytic it potentially reproduces precisely the effects and enactments of colonial unknowing that we are theorizing in this introduction. Approaches to the analysis of settler colonialism, as isolated from imperialism and differential modes of racialization, are consequences of the institutionalization of this work as a distinct subfield, which is claimed and consolidated through analytic tendencies that foreclose or bracket out interconnections and relational possibilities. Settler colonial histories, conditions, practices, and logics of dispossession and power must necessarily be understood as relationally constituted to other modes of imperialism, racial capitalism, and historical formations of social difference.

The key insights of settler colonial studies into the particularity of settlement as a manner of colonial power have also led to a tendency to focus on this distinction as constituting a discrete and modular form or ensemble of practices— such as Patrick Wolfe’s often cited contention that “settler colonialism destroys to replace”23—that can be applied across differences of geography or time. As such, settler colonialism appears as a self-contained type rather than a situatedly specific formation that is co-constituted with other forms and histories of colonialism, counter-claims, and relations of power. For instance, in the U.S. context, settler colonialism as a singular manner of colonialism entirely misses the ways in which the abduction and enslavement of Africans and their descendants was a colonial practice that, while changing in its intensities and modes of organization over time, was co-constitutive of colonialism as a project of settlement rather than a supplement that demonstrates the taking of land and labor as distinct endeavors.

Wolfe’s description of settler colonialism as a structure, and not an event, has by now achieved the status of a truism in analyses of settler colonialism.24 Wolfe’s work has been crucial in bringing further attention to the fact that colonialism is an ongoing fact of life for indigenous peoples more than fifty years after the advent of the so-called era of decolonization. His scholarship insightfully underscored historical continuities in the shifting regimes and policies of settler states in relation to indigenous peoples, and challenged a certain produced ignorance about the “post” colonial character of societies like the U.S., Canada, Australia, and New Zealand.25 Yet drawing an absolute distinction between structure and event, and as a result, discarding a focus on the historicity of settler colonialism, neglects some of the ways Wolfe distinguishes between the binary terms structure/event in the service of further analysis. For example, Wolfe emphasizes how settler colonialism is a “complex social formation” with “structural complexity” that emerges through process.26

When taken up as a modular analytic that travels without regard to the specificities of location or social and material relations, a categorical event/structure binary banishes deeply engaged historical knowledge from the landscape, turning away from historical materialism, devolving into a scholastic debate over identities and standpoints that are reduced to structural essences and divorced from politics or contingency. Emphasizing structure over event also limits the analysis of settler colonialism itself into a descriptive typology, orienting our vision narrowly within the technical perspective of colonial power (in the white Commonwealth countries), away from geographies from below, such as a hemispheric perspective of the Americas, with their multiple and distinct modes of colonialism, thus replicating the conditions of unknowing.27 Foregrounding structure against event might also divert attention away from imperialism. This binary perpetuates taking what Lisa Lowe calls the “colonial divisions of humanity” as given. Situating this compartmentalization as a consequence of imperial formations calls attention to how, as Lowe writes, “The operations that pronounce colonial divisions of humanity—settler seizure and native removal, slavery and racial dispossession, and racialized expropriations of many kinds—are imbricated processes, not sequential events; they are ongoing and continuous in our contemporary moment, not temporally distinct now as yet concluded.”28 If the analytic project is reduced to naming and delimiting settler colonialism as a distinct structure of power that exists in specific places, primarily the settler peripheries of Anglo imperium, we lose focus on the Caribbean and the Americas as the grounds of modern imperialism, abdicating the hard-won horizon of anti-imperialism.

An emphasis on structure over event is symptomatic of the stabilization of colonial unknowing through binaries and schematic modes of thought. As Wolfe writes, “Territoriality is settler colonialism’s specific, irreducible element.”29 However, Wolfe’s cartographic model is that of the frontier, in which “the primary social division was encompassed in the relation between natives and invaders.”30 The frontier is a linear model, a binary opposition between civilization and savagery, reflecting both a colonizing subjectivity and its state form. What socio-spatial imaginaries, and concomitant critical models, might become visible if we thought from other spatial forms, such as circles or spirals, spatial forms that are often more relevant to indigenous epistemologies than straight lines? If we remapped the colonial condition through circular or spiraling forms, what new insights might we gain on the decolonial imperative?

For one, we might be able to better grasp colonial, racial, and imperial simultaneities, as well as positions that do not easily fit into a settler/native binary. As Wolfe writes, “Settler-colonists came to stay. In the main, they did not send their children back to British schools or retire ‘home’ before old age could spoil the illusion of their superhumanity. National independence did not entail their departure.”31 Moreover, to inflect these insights through the lens of negritude produces a considerably more complex set of possibilities, where the verbs come and stay do not carry any simple or easily recoverable trace of agency or consent.32 As Iyko Day writes, “the logic of antiblackness complicates a settler colonial binary framed around a central Indigenous/settler opposition.”33

It may be useful to dissolve the implied divide between structure and event. How would our critical perspective open up if we began to understand (settler) colonialism as a structuring event, an ongoing elaboration of a structure, a suspension of time, tense, and timeliness? In order to interrogate settler colonialism as a unique structuring event or events in a structure of power, close attention to process and relationship, to structures of power as they transform in specific places and times, seems to be a useful approach for clarifying the stakes of decolonial possibility. Marx’s insights on the need for capital (and for individual capitalists) to perpetually reproduce the social relations of capitalism (on an expanding scale) and the vulnerable never given-in-advance character of that reproduction, could be relevant for contemplating settler colonialism as it constantly thwarts and undoes its own internal governing logics. To consider settler colonialism as a structure of failure seems a useful starting point for an intellectual project that proceeds from the impulse of decolonization.34 To bring the critique of imperialism back to the foreground in indigenous-centered critiques of colonialism is to bring back basic questions about the definitions of these terms, and their relation to each other. This is not about discarding analysis of settler colonialism for analysis of imperialism, but instead about entangling them in order to specify historically particular processes and structures.35 To the extent that a settler colonial analytic disavows relationships between settler and congruent modes of colonization, imperialism, and race, the field formation of settler colonial studies runs a risk of capture, breathing further life into shifting and mutable colonial sovereignty claims.

#### AND, their card about Bataille---his theory is wrong.

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(*Alexandre Kojève: The Roots of Postmodern Politics,* pg. 120-123)

It is not difficult to sympathize with Bataille's disenchantment with the mechanization and routinization of life in modern society. Nor is it difficult to share Bataille's love of life's exuberance and vitality But despite its imaginative energy and its beguilements, Bataille's thinking is seriously Rawed. I will argue that **Bataille's philosophy has the effect of undermining precisely that which he holds in the highest esteem** I will make four criticisms as follows.

First, instead of jettisoning the instrumentalism of modernity, Bataille succumbs to a crude form of means/ends rationality. Bataille's celebration of everything useless, wasteful, and sovereign is itself dependent on the utilitarian distinction between means and ends. I think that Bataille is right in thinking that we cannot understand a civilization unless we focus on that which it values above all else. However, this understanding is not best served by relying on the utilitarian categories of means and ends or associating production with the means and consumption with the ends. What a civilization holds in high esteem is usually a way of life which cannot be understood as a thing intended to be consumed Understood as that which is wasted or consumed, **an end is reduced to a static or given thing to which all life, action and energy are mere means.** Contrary to what Bataille thinks, the ends of a civilization are not cathedrals, ornaments, and idle monks. If the end is understood as a way of life, then it cannot be absolutely distinguished from the means necessary to achieve it. In other words, means are often constitutive of the ends that they supposedly serve. Bataille’s preoccupation with the means/end distinction reveals the extent to which he is **subject to the** very modes of thought **that he dearly wishes to escape.** Besides, his conception of sovereignty is absolutely arbitrary. He pronounces whatever he likes to be sovereign, and when it loses favor, he decides that it had a purpose after all, and denounces it. So, even though he declared that war was one of the supremely sovereign activities of man, he surmised that the violence of the fascists was not sovereign enough. And that the wars of bourgeois civilization were intended only to avoid stockpiling.

Second, instead of promoting man’s freedom and autonomy, Bataille’s philosophy celebrates the total servility of man to the impersonal forces of nature. The key to Bataille's way of thinking rests in his conception of life and its vitality; for it is in light of the latter that he judges modernity to be stagnant, castrated, and deathlike. **For all his “abhorrence of nature,” Bataille uses nature as the model of human life and vitality.** For Bataille, life is a "tumultuous movement that bursts forth and consumes itself an "effusion" that is "completely contrary to equilibrium, to stability."71 Life in exuberant, lavish, magnificent, and completely "untouched by the defilement of merit or intention."72 Life is a "perpetual explosion" that requires that the "spent organisms give way to new ones, which enter the dance with new forces." Life is a "costly process" exemplified by "expenditures that are finally excessive."7' **Death illustrates the ruinous extravagance of life.** Life is a fantastic expenditure of energy toward a summit that is not. Life has no purpose other than death or nothingness. In the context of the "general economy," which has absolutely nothing to do with producing at the least expense, death is the ultimate "luxury." It is a testimony to the sovereignty of life—an expenditure without purpose or utility. Besides, death makes room for new life and in so doing, accounts for "the youth of the world."74 It is the secret to the ceaseless prodigality and splendor of nature. And far from lamenting this world of nature as our "accursed share," Bataille bids us **embrace and emulate it.**

Bataille's vision of life is the model he uses to understand sexuality, civilization, history, and his own inner psychic torments. All these phenomena are subject to the same laws of nature, the laws of the "general economy.' Sexual eroticism is a microcosmic enactment of nature—it is an outlandish expenditure of energy toward a summit that is nothing by the same token, every civilization (except modern industrial civilization) is defined by **ruinously wasteful expenditures**—**human sacrifices, conquests, monks, monasteries, and Gothic cathedrals** The human psyche itself mirrors the paradoxical nature of life; man longs for a Dionysian loss of individuation and a oneness of being that is possible only in death History follows the same laws of the "general economy'—**it is nothing more than a costly effort to reach a summit that is the death of man.**

Despite his efforts to establish a distance between man and nature, a distance intended to underscore man's freedom from the impersonal and instinctive forces of nature. Bataille ends up using nature as the model of human life and freedom Bataille's work on eroticism, history, and civilization succeeds merely in illustrating that the laws of the "general economy" to which nature is subject are also the laws to which human life and history are equally subservient. **Far from understanding man** (properly so-called) as distinct from nature and animality, Bataille reduces him to a manifestation of the same tumultuous laws of the "general economy."

Third, **Bataille intended to celebrate life, but he ends up glorifying death instead**. Bataille's longing for self-abnegation and mortification as well as his thirst for death and annihilation is radically contrary to a joyful and exuberant celebration of life. Bataille's atheistic mysticism, if it makes any sense, must be deemed the worst of all possible worlds because it combines the nihilism and meaninglessness of atheism with the self-abnegation and mortification to which theism is inclined.75

Fourth, Bataille was determined to replace the cold indifference of modernity with a profound, even violent intensification of life. He experienced the modem world as a living death from which he needed to be rescued. He thought that only a cycle of extremes could dispel the spiritual and emotional vacuum from which he suffered. He believed that he could give life a renewed vitality by embarking on a program of perpetual negation and ceaseless overturning. However, Bataille's means frustrate his ends. Instead of magnifying the vitality and intensity of life, **Bataille's strategy of perpetual negation incites a** cold nihilism and a profound indifference. Bataille's literary work is a case in point. His novels often read like scripts for grade B horror films **The latter try to terrify their audience, but elicit laughter instead**. By the same token, Bataille's efforts fail to arouse our archaic horror, provoke a feverish delirium, or simulate a sense of sacrilege. Instead of driving us to distraction, **Bataille's literary work** deadens the senses. For it is difficult to be morally horrified by characters whose conduct is as arbitrary or as “sovereign” as bolts of lighting.

In conclusion, it is my contention that Bataille is the father of post-modernism. First, he has bequeathed to postmodernism a Dionysian madness rooted in the abhorrence of reason. Following Bataille, post-modern writers like Foucault believe that all the drabness and homogeneity of modern life has its source in an excess of rationality, order, and restraint. Accordingly, they follow Bataille in urging man ot “escape from his head” like a condemned man from a prison.76 Second, postmodernism owes a great deal to Bataille’s use of gnostic as well as romantic motifs. The alluring power of postmodernism lies in its capacity of pose as the liberator of what has been hidden, repressed, vanquished, and downtrodden. Third, Bataille has bequeathed to postmodernism an appetite for endless negation and “ceaseless overturning.” Starting from Kojève’s assumption that negativity is the distinctive and glorious quality of man, Bataille reached the logical conclusion that negativity must be celebrated. What are postmodernism and its projects of genealogy and deconstruct ion if not a perpetual negation and unmasking of the given— the 'hegemonic" or "logocentric' discourse, whatever it may be. In politics as in thought, the postmodern ethos consists of negation for the sake of negation and revolt for the sake of revolt. This explains the self-contradictory and self-refuting character of the postmodern enterprise. Like Bataille, postmodernism affirms only the exhilaration of unmasking and overturning, and it assumes that perpetual negation will empower and revitalize a drab and homogeneous world. But **in the end, postmodernism is bound to succumb to the same fate as Bataille's literary efforts, instead of a heightened sense of vitality, intensity, and exhilaration, it will engender only** indifference, numbness, and nihilism.

#### Remedying dispossession with property reinforces colonial logic

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(David and Julian, “‘Being in Being’: Contesting the Ontopolitics of Indigeneity,” The European Legacy, January)

Dispossession and Indigenous Agency

The appropriation and occupation of indigenous lands, the dispossession of indigenous peoples, including notably, but not exclusively, the Palestinians, has led not simply to arguments for the return of those lands to their original owners but also to the articulation of the experience and condition of dispossession itself as a basis on which to theorize political subjectivity. In terms of the will to combat liberalism and liberal theories and practices of subjectivity this focus on the problem of dispossession is understandable. As is well documented, liberal arguments dating back to the seventeenth century concerning the nature and right to property, especially the conditions for the exercise of the right to claim ownership of land, were fundamental to the colonial project and “gigantic process of expropriation” to which indigenous peoples were subjected.10 Colonizers, in other words, would not have been able to justify their projects without the underlying theories of property that served to legitimate the acts of dispossession of indigenous peoples.

Of all the theories of property it was John Locke’s theory that has proved the most influential in legitimating the colonial dispossession of indigenous peoples. Locke’s central claim was that only those who till the soil of the land on which they live, and improve, cultivate and develop it, can claim the right to own it. The distinction between those who cultivate the land and those who merely live off it thus provided the rationale for dispossessing indigenous peoples of the right to their land.11 This distinction concerns not simply the relationship of a people to a particular land but its relationship to nature as such. Is the people in question one that has transcended nature and through its development of the soil become its master? Or is it a people that lives simply in subordination to nature, as other animals do, living off the land without improving it? These are the questions that underlie the Lockean theory of property that provided the basis not just for the dispossession of indigenous peoples of the lands on which they lived, thus denying their right to those lands, but also the racist reasoning that in turn legitimated the long history of violence against them. No wonder then that the supposedly postliberal theories of political subjectivity today involve serious reflection on the nature of dispossession itself.

This postliberal approach is explicitly and forcefully critiqued in Judith Butler and Athena Athanasiou’s 2013 Dispossession: The Performative in the Political. They conceive dispossession both as an act, “as one way that subjects are radically de-instituted,” and as an attribute of the subject that offers a counter-movement to the forces of dispossession. Butler and Athanasiou contest the histories and continuing realities of dispossession by addressing the deeper terrains of its subject-formations. The problem they identify lies both in the right to dispossess and in its assumption at the heart of the liberal subject. This assumption, which is crucial to the distinction between colonizing and colonized subjects, was the notion that the colonizers had transcended nature. Butler and Athanasiou seek to avoid any avowal of a subject that “possesses itself and its object world, and whose relations with others are defined by possession and its instrumentalities” in the struggle against regimes that dispossess indigenous peoples. “Prizing the forms of responsibility and resistance that emerge from a ‘dispossessed’ subject,” they underline their awareness that “dispossession constitutes a form of suffering for those displaced and colonized.” Their gesture of solidarity with the peoples who have been historically dispossessed is accompanied by a normative gesture that signals the need for constraint on the part of the indigenous lest they seek recourse to the forms of possessive individualism that the authors otherwise identify with colonizers: “How to become dispossessed of the sovereign self and enter into forms of collectivity that oppose forms of dispossession that systematically jettison populations from modes of collective belonging and justice” is thus the question they raise.12

Likewise, it is the question of how to oppose forms of dispossession in ways that function

doubly to produce dispossessed forms of subjectivity.13 Too many social and political struggles against dispossession are thought to recuperate the same logic of possession that accounted for the original dispossession from which the struggles in question emerged. As Libby Porter argues, “the social field of rights-based struggle becomes stuck in a mode that seeks parity only within the frame of liberal ‘possessive individualism’. Rights under this conception are a bundle of things that can be possessed, held, alienated and exchanged, and express the positionality of a possessing unitary subject.”14 The project of liberalism—not just dispossessing peoples of their lands for liberal development, but reconstituting those peoples as liberal—requires that they too partake in the logic of possession, becoming themselves possessive subjects, claiming rights to property and procedures consistent with their liberalization. This invitation, to become possessive, to partake in the logic of possession, and to emerge as fully-fledged liberal subjects, is one that has to be refused.

This invitation, however, as we have known at least since Frantz Fanon’s The Wretched of the Earth (1961), is not what it seems to be. One cannot transition from colonized subject to liberal subject without conceding to one’s subjugation to the colonial schema itself. The sustainability of colonial power depends on the capacity to transform the colonized population into subjects of imperial rule.15 Thus the liberation from colonial subjugation requires the colonial subject to wage war on that schema itself.16 Embracing the logic of possession cannot work, therefore, as a mode of resistance to liberal colonialism. It does not work to produce justice even in the most naive sense. In situations where people have been dispossessed of the lands on which they lived, or as is often the case nowadays, have been displaced from one place to another, the ability to come into possession of another plot of land or place simply cannot compensate for their loss: “There is no genuine space in compensation payment calculus to attend to the loss and grief of a neighbourhood abandoned, the bulldozing of a home, the erasing of memories or the shattering of lives,” as Porter argues.17

#### Their ethical claims are circular and prescribe endless violence – claiming entitlement to land due to “original occupancy” reinscribes the colonial logic they criticize

Waldron 07

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All this has been understood and argued through by theorists of First Occupancy since John Locke's time. We know that Locke felt it necessary to qualify his version of the Principle of First Occupancy with the condition that there be 'enough and as good left for others' after the occupation.3s And the formulation and reformulation of this 'Lockean proviso' have seemed essential in the modern discussion of theories of this sort. No one now that I know of in the theory of property is willing to argue for a First Occupancy principle that is not qualified in this way, re and very few are willing to deny that this proviso may also call one's holding into question at a later time, when circumstances change. In brief it is well understood in the literature on property that First Occupancy cannot stand on its own to legitimate disproportionate possession of land by one people to the exclusion of others who have no place else to go, simply because the former people came on the scene first. And I guess that is my point. This has all been thought through, in a complex and important literature, but it is the bare Principle of First Occupancy that gets seized on opportunistically by defenders of indigenous rights in a way that is completely impervious to these details and qualifications.

What I am saying is that people need to be a little more careful about the type of property theory they implicitly buy into when they privilege indigeneity. Simple slogans like 'First come, first served' and 'We were here first' have never been particularly attractive sentiments in the history of property theory, and they become no more attractive by being associated with revulsion from historic injustice.ar They have often been associated with righteous indifference to others' interests, indifference even to others' needs, as people seek to retain possession of resources purely on the basis of historic priority. Since 1974, we have had the benefit-if that is the right word-of having a fully worked theory in front of us, based on exactly these intuitions, in the forms of Robert Nozick's theory of historical entitlement,a2 and for more than ten years after the publication of Nozick's book, the advantages and disadvantages of theories of his kind were comprehensively discussed by social and political philosophers. True the theory presented in Anarchy, State and Utopia was radically individualist in flavor, organized around the idea of absolute individual rights, whereas in the present context we are talking about the rights of communities or whole peoples. But as Nozick recognized, the logic is basically the same, and so are the difficulties.a3 In both cases, people who may have an interest in resources, for example people who may need to make use of them, are being excluded simply because they were not in the right place at the right time. I guess in the end any theory of property is going to have this sort of consequence: property is almost always exclusive in some regard, and the right to exclude is generated along with other property rights by contingent events. But just for that reason, great care needs to be taken in specifying what the contingent events are that give rise to these exclusive rights, and in specifying how they may be conditioned by circumstances. The most plausible theories of historical entitlement do this with some sort of Lockean proviso; but as we have seen that is exactly the sort of device that is likely to cast most doubt on simplistic claims of entitlement based on pure indigeneity.

Once we recognize that First Occupancy does raise serious problems of exclusion and that it does have this potential for a curious imperviousness to latter-day circumstances, then we can begin to appreciate the dangers of any simple-minded application of it or of a concept of indigeneity founded on it. Quite apart from the inherent creepiness of its underlying legitimism, there are considerable dangers in exposing modern distributions of power and property to the arcane details of recondite historical and prehistorical inquiry. For example:

recognition of special rights and entitlements for having been the earliest or original occupants might spur and legitimate chauvinist claims all over India. ... Claims to historical priority already feature in some 'communal' conflicts and incipient chauvinist movements abound, as with the pro-Marathis, Hindu-nationalist shiv Sena party in Maharashtra. In effect, if some people are 'indigenous' to a place, others are vulnerable to being targeted as nonindigenous, and groups deemed to be migrants or otherwise subject to social stigma may bear the brunt of a nativist 'indigenist' policy. aa

These dangers are not aberrations. They are part and parcel of what First Occupancy inquiries, for that principle itself purports to license some people, on grounds of historical priority, to repudiate and marginalize the claims of others. First occupancy looks all very well when one considers only that the very first occupants did not have to dispossess anyone else. But if having established their occupancy, they hold the resources exclusively against everyone else in a way that is impervious of the needs of newcomers, then there is a very grave moral danger.

1.7. IS THAT ALL THERE IS?

Some will say that the account I have given is excessively analytic-picking apart the notion of indigeneity, and confronting it with this crude dilemma: either an Established order claim, which precludes any radical reversionary remedy, or a First Occupancy claim, which is both inherently objectionable and anyway historically precarious. What could be better proof, my critics will say, of the proposition that the analytic techniques of Western political philosophy are out of place in this area and that 'liberal arguments are ... unable to comprehend what is distinctive about indigenous claims to land and self-government'. 45

Maybe they are right. Or maybe I should turn the point around and say that, if the discourse of indigeneity really is incompatible with the conceptual structure of Western political philosophy, then what are the aficionados of indigeneity doing appropriating principles like First Occupancy and Established Order from John Locke and Hugo Grotius? We cannot have it both ways. If we want to make indigeneity respectable with these venerable principles of natural law, then we have to also be prepared to buy into all their difficulties, and face up to them responsibly.

If, on the other hand, indigeneity is a sui generis notion, as the Canadian theorist James Tully has argued, generating a set of claims that, in Tullv's words:

do not derive from any universal principles, such as the freedom or equality of peoples, the sovereignty of long-standing, self-governing nations, or [even] the jurisdiction of a people over land they have occupied to the exclusion and recognition of others peoples since time immemoriala6 then it is difficult to know what to say. It cannot be that discussion is over as soon as someone mentions the word indigenous and associates a set of claims with it. Such claims are not self-justifying. They are supposed to be heard and understood, and subject to reason and criticism and examination, on both sides of the divide.

I am aware that my discussion here is far from exhausting the debatable content of indigeneity; I said that at the beginning. I am aware, too, that the concept does have an ineffable, almost mystical element, which is difficult to fathom. Is it fair to say, as Bill Oliver says, that'[t]he notion of indigenousness often leads. . . to the ascription of a timeless and sacred quality to what was simply prior occupation', a merely 'rhetorical heightening of the unexceptional fact of having been here first'?47 It may be an unexceptional fact; but what I have been doing in this chapter is trying to explore some of the principles in our tradition that might make it significant. And the conclusion I rest with is not the mundaneness of the question 'Who was here first?' but some sense of its difficulty and danger. There are places in the world-India is one, perhaps Bosnia is another, Israel/Palestine is a third, as various places in Africa provide a further and distressing set of examples-places where making that the crucial question is a deadly and vicious ingredient in social and political pathology. These frightful situations are too distant for those to worry about who talk most confidently of the rights of indigenous peoples. For me, however, there are places closer to home-Fiji, for example-where insistence on the question Who was here first? has already done great harm. The difficulties, the harm and the dangers may be less apparent in Australia, New Zealand, Canada, and the United States; but if we are seeking to buy into the general discourse of indigeneity then we had better be aware of the volatile substance we are playing with.