# R6 Texas Neg Disclosure

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**1NC---T**

T Expand---

**“Expand the scope” means broadening the range of claims that can be brought legitimately---that’s distinct from changing what is prohibited**

**Barrera 96** – J.D., Wayne State University Law School.

Lise A. Barrera, “Is the Courtroom the New Front for the Resolution of Publishing Disputes?,” The Wayne Law Review, Vol. 42, Summer 1996, LexisNexis

It is important to note the **distinction between** the **expansion of the scope** of section 43(a) and the **standard that courts apply** in **granting relief to claims** under this section. The scope of section 43(a) **allows plaintiffs to claim the** **section provides them with protection** and thus should grant them relief. The **expansion of the scope allows** a **much broader range of claims to be brought** legitimately under section 43(a). Once the scope of the statute allows the claim to be brought, the courts **apply a standard** to the claim in order to **determine whether a plaintiff should be granted relief**.22 The standard applied is also the product of years of judicial interpretation. While the scope of section 43(a) is expanding, however, the standard for relief seems to be becoming higher and harder to meet.

**The only way to do that is by reducing or eliminating an antitrust immunity or exemption---the scope of antitrust laws is *only limited* by sectoral exemptions, state action immunity, and Noer-Pennington immunity**

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

Bruce H. Kobayashi and Joshua D. Wright, "Antitrust Exemptions and Immunities in the Digital Economy," Global Antitrust Institute, 5-28-2020, https://gaidigitalreport.com/2020/10/04/exemptions-and-immunities/

Introduction

The antitrust laws were designed to regulate private conduct in order to promote competition and protect consumer welfare from exercises of monopoly power by firms. In other words, the antitrust laws, as “the magna carta of free enterprise,”[1] are designed primarily to regulate private conduct, not government conduct and public restraints of trade.[2] Private activity may still fall **outside the scope of the antitrust laws** when it is **exempted specifically** by Congress, heavily guided or **influenced by the governmen**t, or relates to **attempts to petition the government** to take action.

**Antitrust laws’ outer boundaries** fall into **three categories**: (1) **sectoral** or **industry-level exemptions**, which single out an industry or business line from antitrust scrutiny; (2) **state action immunity**, which provides immunity for anticompetitive behavior by state governments and municipalities under certain conditions; and (3) **Noerr-Pennington immunity**, which aims to protect speech in the form of petitioning activity from antitrust liability.[3] The digital economy interfaces with the government in many respects; therefore, the **antitrust laws’ reach**—shaped by these **exemptions** and **immunities**—plays a clear role in guarding consumer welfare.

**Vote neg---**

**[1]---Limits---any other interpretation allows the aff to change *any* determination the courts have made about the legality of private sector practices, which creates an untenable research burden**

**[2]---Grounds---provides a core mechanism that can predictably and reliably be the focus of neg contestation**

**1NC---T**

T Prohibition---

**Prohibition requires completely ending a practice**

**Feldman 86** – Member of Procopio's Native American Law practice

Glenn M. Feldman, On Appeal from the United States Court of Appeals for the Ninth Circuit, California v. Cabazon Band of Mission Indians, 1986 U.S. S. Ct. Briefs LEXIS 1221, Supreme Court of the United States, 1986, LexisNexis

In arguing that California's bingo laws are prohibitory rat ther than regulatory, the appeallants have simply misunderstood the fundamental distinction between "prohibition" and "regulation" of conduct. As succinctly put by the Supreme Court of Washington more than 50 years ago, after noting that the **prohibition** and **regulation** of the sale of liquor are **entirely different things**: "To **prohibit** the liquor traffic implies the **putting a stop** to its sale as a beverage, to **end it fully**, **completely**, and **indefinitely**." In contrast, regulation "implies that the sale of intoxicating liquor shall go on **within the bounds** of **certain prescribed rules**, **restrictions**, and **limitations**." Ajax v. Gregory, 32 P.2d 560, 563 (Wash. 1934). Because regulation of conduct involves prescribing limitations, regulation, by definition, necessarily involves some degree of prohibition. Blumenthal v. City of Cheyenne, 186 P.2d 556, 566 (Wyo. 1947). The two concepts, however, are **analytically distinct**. Therefore, when courts have been faced with statutory schemes similar to California's bingo laws, they have consistently held them to be regulatory and not prohibitory.

**That’s distinct from changes in punishment**

**Craco et al. 92** – Attorney for American Institute of Certified Public Accountants

Louis A. Craco, Brief of American Institute of Certified Public Accountants as Amicus Curiae in Support of Respondent, Reves v. Ernst & Young, 1992 U.S. S. Ct. Briefs LEXIS 452, Supreme Court of the United States, June 1992, LexisNexis

The **Senate Report** also notes that, by "effectively remov[ing] the criminal figure from the particular corrupt organization[,]" the "**prohibition is not a penalty against any individual**[,]" but "instead a **protection** of the public **against parties engaging in certain types of businesses** after they have shown that they are likely to run the organization in a manner detrimental to the public interest." S. Rep. No. 91-617, supra, at 82 (emphasis added).

**Vote neg---**

**[A]---Limits---allowing affs that change punishments for certain actions explode limits and doubles the size of the topic**

**[B]---Grounds---core neg generics are predicated on increased prohibitions, not changes to how those prohibitions operate**

**1NC---CP**

Advantage Counterplan---

**The United States federal government should:**

* **substantially increase taxes on corporations and the wealthy and direct those funds to social welfare programs**
* **substantially increase tax credits for those with the lowest wages**
* **provide universal, high-quality, free education from pre-K through post-secondary school**
* **establish and enforce labor protection laws**
* **provide a federal jobs guarantee**
* **direct all above policies to primarily benefit historically disadvantaged communities**

**Counterplan is a much more comprehensive approach to solving inequality---aff can’t solve the social barriers to addressing underlying issues**

**PIIE ’20** – Peterson Institute for International Economics, think tank based in DC

“How to Fix Economic Inequality? An Overview of Policies for the United States and Other High-Income Economies” <https://www.piie.com/sites/default/files/documents/how-to-fix-economic-inequality.pdf>

SECTION 7 Policy recommendations

This menu of policy recommendations is focused on the United States, with some also applicable to other advanced economies. It represents some commonly cited solutions by inequality experts, organized by **policies related to taxes, education, labor, corporate regulations, and the social safety net**. Economics can provide some guidance over which approach is most effective, but **political attitudes toward inequality will play a significant role in which ones to focus on**.

**1NC---CP**

Public Enforcement Counterplan---

**Counterplan avoids private enforcement---private suits are an inextricable part of antitrust liability---public enforcement is sufficient**

**McCarthy et al.**, GC & Chief Legal Officer of Womble Bond Dickinson (US) LLP, **‘07**

(Eric, Allyson Maltas, Matteo Bay and Javier Ruiz-Calzado, “Litigation culture versus enforcement culture A comparison of US and EU plaintiff recovery actions in antitrust cases,” <https://www.lw.com/upload/pubContent/_pdf/pub1675_1.pdf>)

In comparison, in the European Union, private enforcement actions are **rare** and play less of a role than **public enforcement** in the fight against anti-competitive behaviour. Several obstacles hinder actions for damages in member state national courts, including a plaintiff’s limited access to evidence, the unavailability of class actions and the potential that the plaintiff may have to pay the defendants’ costs if the plaintiff loses the case. To address these obstacles and the great diversity of damages actions among the member states, the European Commission recently published a green paper on Damages Actions for Breach of the EC Antitrust Rules.3 The green paper examines those aspects of EU litigation practice that have led to a pronounced underdevelopment of private damages actions in the EU. Since its publication in December 2005, the green paper has sparked significant debate within the international antitrust community about the role of private enforcement of EC Treaty competition law and about damages actions in particular. The general expectation is that private damages actions will emerge (albeit slowly) in the European Union. This article compares the state of plaintiff recovery actions in antitrust cases in the US with that of the EU and explores why the United States is more litigious than the EU.

Private antitrust damages actions in the US

Rightly or wrongly, the United States has earned the reputation of **having a ‘litigation culture’** that permeates its entire legal system.4 If that is true, it certainly **earned its stripes** this past year in the area of **antitrust** litigation. Although the number of civil cases filed in the United States dropped by 10 per cent from 2004 to 2005, the number of antitrust civil filings, almost all of which were initiated by private plaintiffs, **rose by 8.8 per cent.**5 In the first six months of 2006, the number of antitrust class actions **doubled** over the same period in 2005.6 Some experts speculate that “[h]ard-charging regulators, a more aggressive plaintiffs[’] bar, and the implementation of [CAFA]” may contribute to the increase in antitrust litigation.7 But **in all likelihood**, the explanation is far more elementary. As discussed in greater detail below, the pot of treble damages available to plaintiffs in the United States, as well as pro-plaintiff discovery and procedural rules, **make private damages extremely easy and attractive to pursue.**

The treble damages remedy

In 1914, the US Congress passed the Clayton Act, codified at 15 USC sections 12-27. Section 4 of the Act extends the Sherman Act’s prohibitions on anti-competitive behaviour and, most notably, **allows “any person who shall be injured** in his business or property **by reason of anything forbidden in the antitrust laws**” **to sue** for and “recover threefold the damages by him sustained”.8 Treble damages were designed to deter illegal conduct, deprive antitrust violators of the “fruits of their illegal activities” and provide compensation to victims of wrongdoing.9

The Clayton Act’s treble damages provision is not without its critics.10 Many practitioners and policy makers contend that trebling damages creates **too great an incentive for plaintiffs to sue.** Additionally, they argue, treble damages actions can result in a **windfall to plaintiffs**. Furthermore, some believe that **large fines** and the **potential for criminal penalties** create just as much of a **deterrent against violations**, **without the need for treble damages**.11 Nonetheless, the ability of a US **private plaintiff** to recover treble damages is so sacred and well protected that earlier this year the First Circuit held in Kristian v Comcast Corp12 that, although Comcast could contract with its subscribers to arbitrate antitrust claims, the arbitration agreements could not bar treble damages because “**the award of treble damages under the federal antitrust statutes cannot be waived**”.13

Although exceptions to the treble damages provision remain few and far between, congress enacted the Criminal Penalty Enhancement and Reform Act (CPERA) in June 2004. CPERA eliminates the treble damages remedy for corporations that qualify for amnesty under the Department of Justice’s Amnesty Programme.14 Under CPERA, a corporation must report its own anti-competitive behaviour to the DoJ and enter into the Corporate Leniency Programme.15 If a private plaintiff sues the corporation for the same behaviour, the civil court may assess single damages against the participating corporation, but only if the judge in the civil action determines that the corporate defendant is cooperating with the civil claimant by providing a full account of the conduct, furnishing all potentially relevant documents, and securing testimony, depositions and interviews from employees.16

Discovery and evidence

Plaintiffs enjoy broad discovery rights in the United States under the Federal Rules of Civil Procedure. These rules provide significant incentives for plaintiffs to file damages suits, even if they have very little factual bases for the underlying claims. At the outset of a case, the parties are obliged to make certain disclosures to one another, including the name of each individual “likely to have discoverable information” and a description by category and location of all documents in the party’s possession or control that it may use to support its claims or defences.17 Thereafter, during the fact-finding or discovery period, plaintiffs may seek a defendant’s business documents through written requests18 as well as answers to questions through written interrogatories.19 Plaintiffs may also ask questions of a defendant’s employees (regardless of seniority), who must sit for depositions and testify under oath.20 Moreover, plaintiffs may seek documents and testimony from non-parties with relative ease.21

Armed with such easy access to a defendant’s or non-party’s documents and employees, plaintiffs with limited evidentiary bases for their lawsuits may be inclined to sue and go on ‘fishing expeditions’ to discover facts to support their case.

Contingent fees

Plaintiffs that file antitrust damages actions in the United States routinely do so on a contingent fee basis. Under such an arrangement with counsel, the plaintiff client does not pay any fees to his or her attorney unless and until the plaintiff collects damages either by settling with the defendant or prevailing at trial. Typically, plaintiffs’ attorneys demand 33 per cent of the recovery as the fee.22 The result is a win for both client and attorney. The fee arrangements allow plaintiffs with limited funds the freedom to pursue their lawsuits without having to fund the litigation along the way. The plaintiffs’ attorney, on the other hand, is attracted to the prospect of treble damages, and thus a larger fee, and therefore is willing to front the litigation costs in the hopes of earning a sizeable fee at the conclusion of the suit.

Class actions

Class actions are the procedural device that enable one or more plaintiff members of a proposed class to sue on behalf of all similarly situated members of the same proposed class.23 Courts in the US have recognised that class actions can be appropriate mechanisms for promoting private enforcement of the antitrust laws.24 In this way, large numbers of potential claimants can prosecute their claims in a cost-efficient manner.25 The objective of any class action lawyer is to get the class certified. To do so, the court must find that the proposed class is “so numerous that joinder of all members is impracticable”, that there are “questions of law or fact common to the class”, that the “claims or defenses of the representative parties are typical of the claims or defenses of the class” and that the proposed class representatives “will fairly and adequately protect the interests of the class”.26 In addition, in most antitrust cases, the court must determine that the “questions of law or fact common to the members of the class predominate over any questions affecting only individual members” and that “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”27 Under rule 23, proposed class members are afforded the opportunity to decline to join or to ‘opt out’ of the class. But if the class is certified, all class members who do not affirmatively opt out are bound by the decision in the case and cannot pursue their claims individually. Class actions remain a popular means among plaintiffs’ lawyers to litigate antitrust conspiracy claims because they are regularly certified.

State indirect purchaser actions

In Illinois Brick Co v Illinois,28 the US Supreme Court held that, in order to maintain a claim for damages under section 4 of the Clayton Act, a plaintiff must have purchased the product in question directly from the alleged defendant-antitrust violator. The landmark decision thus precludes plaintiffs in a federal court from seeking alleged damages that were ‘passed through’ from the defendant down the chain of distribution in the form of overcharges. In direct response to Illinois Brick, many US state legislatures passed antitrust statutes that permit indirect consumers (ie, below the direct purchaser in the distribution chain) to sue the alleged violator. Today, 29 states permit such suits, or, alternatively, allow the state attorney general to pursue antitrust claims on behalf of indirect consumers.29 In these ‘Illinois Brick repealer’ states, as they are known, defendants face the real prospect of defending against lawsuits that mirror direct purchaser lawsuits pending against them in a federal court.

Huge jury verdicts and settlements

One natural result of the ease with which plaintiffs can pursue treble damages actions in the United States is huge jury verdicts in private antitrust cases. In Conwood v US Tobacco, the plaintiff manufacturer of moist smokeless tobacco (snuff) sued a competitor, the manufacturer of Copenhagen and Skoal, for unlawful monopolisation in violation of section 2 of the Sherman Act, among other claims.30

The jury awarded plaintiffs approximately US$350 million in damages, which, when trebled, resulted in an award that exceeded US$1 billion. The award is thought to be the largest antitrust jury verdict ever recorded.31

Additionally, the several aspects of US litigation highlighted above are a catalyst to settlement. Even before discovery begins, some defendants, confronted with the promise of invasive and expensive discovery, will choose to settle with plaintiffs in order to spare their employees from intrusive discovery and to save on exorbitant legal fees. Plaintiffs routinely extract large settlements from defendants after gaining access to corporate documents and information that, although not dispositive of any wrongdoing, are damaging or embarrassing enough to justify settlement. Similarly, class actions may contribute to settlement of private damages actions because, if certified, defendants do not want to risk losing at trial and therefore pay treble damages. The same is true for state indirect purchaser actions. Defendants often settle these suits in order to avoid duplicative litigation costs.32 Settlement is also preferable for many defendants in this situation who rightly fear the application of collateral estoppel if they are adjudicated liable in even one state.33

The ultimate risk of large jury verdicts inspire settlements even if the defendants litigate the cases for years and at great expense. In 1998, in In re NASDAQ Market-Makers Antitrust Litigation, MDL Docket No. 1023, plaintiffs settled with 37 defendants for a total of US$1.027 billion.34 And in 2003, on the eve of trial, defendant Visa USA settled with plaintiffs in In re Visa Check/Mastermoney Antitrust Litigation, 297 F Supp 2d 503, 506-508 (EDNY 2003) for approximately US$2 billion. Two days later, defendant MasterCard settled for approximately US$1 billion. The combined US$3.05 billion settlement has been described as “the largest antitrust settlement ever”.35 Private damages actions in the EU

In stark contrast to the United States, private damages actions in the EU are few in number and have never played much of an antitrust enforcement role. Although the European Court of Justice (ECJ) in 2001 explicitly recognised a right to damages for breaches of EC competition law,36 plaintiffs have pursued very few damages claims for violations of competition rules. According to a 2004 study (the Ashurst Study), private damages actions based on the violation of either EU or national antitrust rules are in a state of “total underdevelopment” due to various obstacles in bringing such lawsuits.37

To address these obstacles, the EC recently published a green paper, in which the Commission has sparked significant discussion on the present and future role of private enforcement in the EU. This section explores that role.

EU antitrust laws and enforcement

In the EU, there are two levels of antitrust laws and enforcement. The Commission enforces EU antitrust rules at the EU level, which is limited to public enforcement. At the member state level, however, national antitrust authorities and national courts apply both EU and national antitrust laws. Member states permit private enforcement, including damages actions, through national courts.38 Within this two-tiered system, national antitrust authorities and national courts may apply both EU and national antitrust laws, though substantively there is often little difference between the two.

Articles 81 and 82 of the European Community Treaty govern antitrust enforcement. The ECJ long ago decided that these provisions create rights for private parties that national courts must safeguard.39 In Courage v Crehan, the ECJ held that these rights include the right to damages,40 and recently it clarified that such a right includes compensation not only for actual loss, but also for loss of profit plus interest.41 Moreover, with the adoption of Regulation 1/2003,42 the Council of the European Union ‘modernised’ antitrust enforcement by including new procedural rules for the application of articles 81 and 82. In particular, by devoting specific provisions to national courts, the EU legislative branch has recognised the fundamental role that national courts play in the private enforcement of EU antitrust law for the first time since the inception of EU antitrust enforcement in the early 1960s.

The green paper

These developments, however, have not been sufficient to ensure an effective system of private antitrust enforcement, particularly damages actions, throughout 25 jurisdictions with very different legal traditions and markedly diverse substantive and procedural rules. According to the Ashurst Study, to date there have been only 28 successful private actions for damages for violations of the antitrust laws in the EU.43 More often than not, only single large companies that allege anti-competitive behaviour by dominant competitors have pursued private damages actions. For these well-financed plaintiffs, the damages that they seek are large enough to offset the trouble and costs of private litigation before a national court.

In light of the obstacles to private enforcement in the EU, the Commission published its green paper in 2005 to facilitate damages actions, enhance the overall effectiveness of antitrust enforcement and, ultimately, increase compliance with antitrust laws. In response to criticism from those practitioners who fear the adoption of a USstyle system that could lead to ‘excessive litigation’, the Commission has stated that the objective is that of building “an enforcement culture, not a litigation culture”, in which private enforcement would complement public enforcement.44 For each obstacle to damages actions, the green paper proposes several solutions, although the Commission has not yet indicated how it intends to implement any of these solutions (eg, by means of an EU Directive harmonising certain aspects of national law, or thorough ‘soft law’ such as Commission guidelines).

Amount of damages

**Treble damages are not available in the EU**. It is also not likely that they will be any time soon; the Commission notes that the US treble damages system can lead to “**unmeritorious or vexatious litigation”**.45 Instead, compensation is **limited to the harm suffered**, without the possibility of obtaining punitive or exemplary damages. Plaintiffs may thus usually recover only the loss actually incurred, as well as, in some countries, the loss of profits.46 The Ashurst Study, however, revealed that this system of limited recovery **provides disincentives to private litigation**.47 To provide **balance**, the Commission proposes to maintain the rule of **single damages**, while contemplating the possibility of awarding double damages in cartel actions.48 On this issue, it recognises that the addition of double damages will require the implementation of appropriate measures to avoid jeopardising the effectiveness of leniency programmes (eg, successful immunity applicants would be exposed to single damage recovery only).49

**Expanding liability to private plaintiffs is bad---turns case and undermines solvency**

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(Jon and Timothy J., “Private Antitrust Remedies: An Argument Against Further Stacking the Deck,” March, <https://instituteforlegalreform.com/wp-content/uploads/2021/03/March-2021-Antitrust-Paper-FINAL.pdf>)

Advocates of **expanding private antitrust remedies** begin with the premise that “private enforcement deters anticompetitive conduct” and conclude, in the words of the Report, that legal “obstacles” to recovery by “private antitrust plaintiffs” should be eliminated to maximize deterrence.24 But even if the premise is true,25 **the conclusion would not follow**. The Report appears to assume that the more deterrence the law provides, the better, and that any “obstacles” to private recovery should thus be removed.26 But that position ignores the consequences of **overdeterrence**, including the prospect that firms will respond to the threat of **draconian penalties** in ways that **reduce the threat of liability** but that **ultimately harm consumers.**

**Overdeterrence** is a **particular concern** in antitrust doctrine because the line separating lawful from unlawful conduct can be **blurred** and much of the conduct falling on the lawful side of the line **is socially beneficial**. As economists William Baumol and Alan Blinder explain: One problem that haunts most antitrust litigation is that **vigorous competition** may look very similar to acts that **undermine competition** …. The resulting danger is that courts will prohibit, or the antitrust authorities will prosecute, **acts that appear to be anticompetitive but that really are the opposite**. The difficulty occurs because effective competition by a firm is always tough on its rivals.27

For example, **excessive antitrust remedies** for predatory pricing may not only deter firms from engaging in conduct that would ultimately be deemed unlawful, but also induce them to **keep prices well above their costs** and, in effect, hold a price umbrella over smaller, potentially litigious rivals. Such a regime would result in **less competition** and **higher prices** for consumers—the very outcomes the antitrust laws are **designed to prevent**.

**Proposals to slap another layer of deterrence on top of existing private remedies** are **particularly perverse** because, as discussed above, the current U.S. regime is **already overdeterrent**, in that it subjects firms to unusually severe liability risks even for overt conduct subject to the rule of reason. If anything, Congress should consider **aligning private antitrust remedies with remedies for analogous common law torts** by, for example, **limiting treble damages** and one-way fee-shifting to cases involving hard-core violations that may elude detection, such as price-fixing cartels. In all events, Congress should not make a bad situation worse by ratcheting up the level of overdeterrence.

**1NC---DA**

Jurisprudence DA---

**The aff’s disruption of antitrust distorts the principles that guide judicial decision-making and upsets developing coherence**

**McGinnis and Meerkins 16** – George C. Dix Professor, Northwestern Pritzker School of Law; Associate, Shook, Hardy & Bacon LLP

John O. McGinnis and Andrew M. Meerkins, "Dworkinian Antitrust," Iowa Law Review, Volume 102, Issue 1, November 2016, https://ilr.law.uiowa.edu/print/volume-102-issue-1/dworkinian-antitrust/

VIII. Conclusion

Antitrust law is written in such **broad term** that the **language alone** **does not appear to determine outcomes**. Yet it would **not be fair** to describe antitrust jurisprudence today as reflecting **broad judicial discretion** to make policy judgments to fill in the interstices of the law. Thus, legal positivism does not provide a very good description of antitrust jurisprudence.

Today, antitrust reflects a **consistent focus** on a **single principle**, and that principle is realized in individual cases by operation of a series of subprinciples **derived from microeconomics**. Thus, a better description of antitrust is found in Dworkin’s jurisprudence. Dworkinian integrity also explains unusual features, like antitrust law’s relative **disregard of precedent** and judicial reliance on Department of Justice guidance to inform analysis.

Besides offering a good explanation of antitrust, Dworkinian jurisprudence turns out to be a relatively attractive one for the subject. Unlike other areas where a Dworkinian jurisprudence has been pushed, the **principle at issue** here is one that **reflects consensus** in the community and is **capable of practical application**. It may seem ironic given Dworkin’s political leanings that a subject area so greatly influenced by classical economics provides perhaps the best example of his legal philosophy in action. But it is not surprising. **Economics** provides a series of principles for achieving this goal that **command consensus** in the community and can provide a **normative basis** for preferring efficiency. **Antitrust shows that judges can be better trusted with more than a legislative text** **when they have other, objective sources of discipline.**

**Successful and coherent judicial piloting of antitrust spills over to other areas of governance---specifically, judicial review of cost-benefit analyses (CBAs)**

**McGinnis and Meerkins 16** – George C. Dix Professor, Northwestern Pritzker School of Law; Associate, Shook, Hardy & Bacon LLP

John O. McGinnis and Andrew M. Meerkins, "Dworkinian Antitrust," Iowa Law Review, Volume 102, Issue 1, November 2016, https://ilr.law.uiowa.edu/print/volume-102-issue-1/dworkinian-antitrust/

VII. Integrity’s Province

**Antitrust’s** **increasing coherence** under the **stewardship of the courts** could conceivably **lead to calls for increased judicial piloting** of other substantive areas of the law. But judges will rarely face the Dworkinian-style restraints on discretion that they do in antitrust law. Thus, in this Part, we briefly outline and generalize the factors that have made a Dworkinian approach attractive in antitrust law. This Part concludes with the tentative hypothesis that **other areas relying on microeconomic principles** are the **most likely candidates** for Dworkinian jurisprudence, and that **judicial review of administrative agency cost-benefit analyses may be one promising area**. Integrity is plausible jurisprudence not within the entire empire of law, but only in a few small areas.

A. Requirements

The first prerequisite for **appropriate** and **successful judicial policymaking** is the presence of a **single guiding principle** or purpose of the law. Barring that, multiple goals that are almost universally consistent could be suitable as well. This possibility helps to explain why antitrust remains an acceptable subject for **integrity jurisprudence**, despite the lingering academic debate about whether the law should maximize consumer surplus or total surplus. In almost all cases, a judge could promote both goals with the same decision.

Consistency of principle, however, is not enough to curtail judicial discretion. Judges are entrusted with antitrust law not just because of the **exclusivity of the consumer-welfare principle**, but also because of the **ubiquity of economic analysis** to reach the goal. These economic subprinciples are capable of **progressive reticulation**. They are useful to judges in deciding the specific case before them, because they provide a **toolbox of methods** that can **predict the consumer welfare consequences** of the agreement or practice before the court. As in antitrust, the applicable subprinciples should derive from an **independent**, relative **objective** **discipline**, like **microeconomics**. Independence denies judges the ability to manipulate the principles to reach a preferred outcome. Moreover, the objective standing of the subprinciples seems crucial, insofar as they must be continually tested and revised to reflect the most current data and reality. Thus, integrity ultimately requires **ascertainable** and **consistent guiding principles** and accompanying subprinciples capable of reliably and consistently resolving live cases.

B. Areas Likely Suitable for Integrity

Given the requirements of singular or consistent guiding principle and independently established and practically useful subprinciples, we next consider which types of substantive law are the most fruitful candidates for increased judicial caretaking under an integrity regime. Our purpose here is modest, and we do not seek to definitively establish or defend any specific substantive areas of the law. Rather, we identify a few of the likely characteristics of the type of law suitable for our integrity jurisprudence, and conclude with a possible suggestion that could warrant further exploration.

The first place to turn for a suitable candidate is the **underlying language** from **which the law arises**, be it statute, regulation, or constitution. Recall that the antitrust laws are remarkable for their brevity, and are much less detailed than other statutes or regulations. This sort of abstract language is likely a prerequisite for Dworkinian jurisprudence. In the presence of a detailed regulatory or statutory scheme, there is far less room for doubt on what Congress or the promulgating administrative agency meant to accomplish. A judge dealing with a concrete scheme is more likely to find herself guided to the answer by the formal text itself, and is less likely to be forced to venture beyond it except in hard cases. Moreover, even when faced with difficult questions, she is likely to have a wealth of traditional legal materials to help guide her analysis. Thus, there is little need for the Dworkinian jurisprudence outlined above.

But abstract language alone does not necessarily make judicial shaping of the law desirable. First, the presence of abstract language does not necessarily tell us whether an **underlying guiding principle** or general aim of the law **exists**. A judge faced with an abstract provision must therefore **analyze the law** to ensure that the **underlying principle** or principles are **ascertainable and consistent**. An abstract provision with inconsistent guiding principles is **inappropriate for integrity**, as we have seen from antitrust’s troubled past. And even where the underlying principle or purpose of the law is clear, if there are only indeterminate analytical tools or subprinciples to guide analysis, the judge remains unconstrained. Thus, Dworkinian jurisprudence is only likely to be appropriate if the guiding principle of an abstract provision is **readily ascertainable**, and there are **formal subprinciples** to **guide judicial decision-making.**

In light of our criteria, we suspect that those areas of the law that rely on **economic analysis** are the **most likely candidates** for fruitful integrity jurisprudence. It is not immediately apparent which other set of subprinciples could exhibit the independence and objective bona fides necessary for meaningful constraints. Economic analysis alone is insufficient, however, if there is no agreement on the aims. For example, **judicial review of agency cost-benefit analysis** conducted in promulgating regulations is an area likely to **feature economic analysis prominently**. Yet if a reviewing court were forced to make distributional decisions—to decide which group should receive a benefit or cost—then it would be acting in the same way as earlier antitrust courts. Only if the structure of the law ignored distributional outcomes could courts then **improve** the direction of the law by **employing economics** to **shape regulations** while being meaningfully constrained and not impinging on the province of the legislature.

**Lack of judicial review creates a moral hazard for faulty and manipulated CBAs---opens the floodgates to widespread deregulation**

**Potter 17** – Associate Professor of Politics at the University of Virginia

Rachel Augustine Potter, "How the Trump administration can use benefit cost analysis to justify deregulation," Brookings, 8-1-2017, https://www.brookings.edu/research/how-the-trump-administration-can-use-benefit-cost-analysis-to-justify-deregulation/

The Trump administration recently released its regulatory blueprint for the next several months. Unsurprisingly, the plan centers on the administration’s **deregulatory agenda**. Benefit-cost analysis (**BCA**) will **inevitably play an important role** in this process.[1] This is because, as required under Executive Order 12,866, agencies will have to show quantitatively that the benefits of repeal justify the costs.

Many of the rules the Trump administration will be targeting were put into place—and justified **through BCA**—just a few years ago during the Obama administration. To repeal them, the very same agencies (and often even the same personnel) that put the rules in place will have to use the same **analytical techniques** to demonstrate that these rules are no longer warranted

One might reasonably think that having gone through this analytical process the first time would have created a safeguard against removing these rules. This post explains why **that’s not the case.**

Quantitatively Justifying Deregulation

Because it is only required for a subset of the most important rules,[2] BCA **does not** constrain all regulations. For those rules that do require analysis, agencies looking to pare back existing regulations will need to conduct BCA de novo. There are at least three avenues by which an agency’s **new BCA** could come to the conclusion that **deregulation is justified**.

First, agencies can choose to rely on **different data sources** to show that an existing rule is no longer quantitatively justified. For regulations that have been in effect for a while, agencies may, for instance, be able to use new data to show that expected benefits never materialized.

Second, agencies may choose less costly or **less intrusive regulatory approaches**. For example, an agency might propose to substitute an information disclosure provision for a regulatory mandate, which still accomplishes the same policy goal. Reducing the cost term in that way makes it relatively straightforward for agencies to demonstrate the value of a new approach.

Third, BCA is built upon a series of assumptions about how the world works, and agencies may rely on **new** and **different assumptions** that yield different conclusions. Some assumptions are specific to particular rules, and agencies revisiting old rules may choose to rely on new assumptions that were not used in previous BCAs. The Trump administration might also choose to alter across-the-board assumptions that apply to all of an agency’s rules or to all agencies in the executive branch.

Where Politics Comes Into Play

Each of these approaches (or some combination of the three) can be used to **justify deregulation through BCA**. In some cases, the deregulatory changes that occur will streamline existing regulatory burdens. Such rollbacks might happen under any administration, regardless of ideology. For instance, the Obama administration—which pursued a very different regulatory vision from Trump’s—pushed agencies to look back at their regulations and remove any that were outdated or ineffective. Trump, however, envisions deregulatory changes on a broader scale. And just as past administrations have done, the new administration can **stack the analytical deck** in ways that favor a particular outcome—in this case, deregulation.

The Trump administration has already made one **broad analytical change** that effectively lowers the bar for agencies to roll back climate-related regulations by changing how agencies calculate the benefits of CO2 emission reductions. The Obama administration established administration-wide estimates of the “social cost of carbon,” which agencies were to include in their analyses. These estimates were determined via an **interagency review process**, which was influenced by two key considerations. First, the estimates included the global benefits (i.e., the benefits to the rest of the world) of emissions reductions achieved within the U.S. Second, they relied on a lower discount rate—the rate at which agencies calculate the present value of future actions—than used for other environmental emissions. The Trump administration’s withdrawal of the carbon calculation allows agencies to revert to assessing just the domestic benefits of their climate regulations, using the same discount rates typically used for other (non-climate) regulations. The net effect is that climate regulations, which have near-term costs and long-term benefits, will yield lower estimated net benefits.

Other assumptions could potentially be **changed to favor deregulation**. For instance, agencies rely on estimates of the Value of a Statistical Life (VSL) to calculate the benefits of regulations that result in reduced mortality. Each agency has its own VSL calculation, which they can adjust to reflect societal changes. Trump’s agencies could conceivably adjust VSLs downward, making regulations **appear less beneficial** than they might otherwise. Such changes have been politically controversial before: the Environmental Protection Agency was accused of biasing the VSL downward during the Bush years and biasing it upward during the Obama years.

Finally, agencies may **face pressure** from the administration to **deemphasize regulatory benefits** when conducting BCA. As critics have noted (see here and here), Trump’s “2-for-1” executive order, which requires agencies to repeal two regulations for every new one they enact, references regulatory costs 18 times but omits any mention of regulatory benefits.

In general, costs are easier to quantify than benefits, since it can be difficult to put monetary values on things like human dignity and equity. While it is not unreasonable for agencies to discuss such benefits qualitatively—and is even envisioned in BCA guidelines—doing so may **open the door** to **manipulation or misuse**. If one side of the ledger (costs) is tangible and the other (benefits) is not, determining whether the former exceeds the latter is inevitably a judgment call. Consider, for example, a rule that is projected to cost $250 million each year for the next 10 years. On the benefits side of the ledger, the agency only partially quantifies the rule’s benefits at, say, $100 million annually and then indicates that the rule will enhance privacy for the affected population, but provides no monetary value of that benefit. Overseen by an office that is headed by a deregulation-focused Trump appointee and under **considerable political pressure** to deregulate, an agency can **easily make the case** that the benefits of privacy do not justify the costs of the rule.

Regulatory Analysis Is Still Valuable

BCA is not immune to political influence, but the **baby should not be thrown out with the bath water**. Just because BCA can be manipulated doesn’t mean it isn’t valuable. Regulation invariably creates societal winners and losers; conducting regulatory analysis forces an agency to be **more transparent** regarding its assumptions. In other words, the practice provides a departure point for an informed discussion among experts and stakeholders.

Nonetheless, to the extent that agencies do inappropriately manipulate BCA in their pursuit of regulatory or deregulatory goals, **there is an additional backstop. Courts** have recently turned a **more critical eye** towards agency regulatory analyses that are **insufficiently rigorous**.[3] **Given this trend** and the Obama-appointee-heavy makeup of the DC Circuit, agencies are **not guaranteed a free pass** on their analyses. **Using the courts as a way to check the quality of BCA** is imperfect, since it requires vigilance and resources, but it **may well be the stage upon which future battles over deregulation will be fought.**

**Unchecked deregulation collapses society---enforceable rules are a cornerstone of effective civilization**

**Cohen 19** – Senior Vice Dean of Columbia’s School of Professional Studies and a Professor in the Practice of Public Affairs at Columbia University’s School of International and Public Affairs

Steve Cohen, "The Dangers of Deregulation," State of the Planet, 12-2-2019, https://news.climate.columbia.edu/2019/12/02/the-dangers-of-deregulation/

From unsafe Boeing 737 Max jets to exploding chemical plants in Houston, we are seeing some **visible** and **dramatic impacts** of decades of **deregulation**. This trend did not start under President Donald Trump but has **picked up momentum** and **increased legitimacy** since his inauguration. Regulation is simply another word for policing. Cops inspect behavior for illegality and when they find it, turn it over to courts for adjudication. Rules and their enforcement are a **requirement of civilization.** Without it, we must all protect ourselves **in a war of all against all**. Only anarchists oppose all rules and it is difficult to find any pure anarchists. The issue of deregulation is not one of freedom versus tyranny, but simply how many rules we need and what behaviors we need protection from. A secondary issue relates to the method and style of regulation. Opponents of New York City’s police practice of stop, question and frisk did not favor deregulation of the rules of weapon possession, they objected to the method the NYPD used to enforce those rules.

In a world of **growing technological complexity**, the average person is in no position to understand, evaluate and prevent the **potential dangers** they might face. About 1 percent of us work on farms and all of us eat food produced by people we don’t know working for companies that are organized to achieve financial profit. We don’t really know much about the food we are eating. The capitalist form of organization provides great incentives for efficiency and creativity as companies seek financial gain. A food company that poisons its customers will find little market advantage in that behavior, and so you might argue that self-regulation is all that is needed, and government policing is unneeded. But we have a Food and Drug Administration and rules on food safety because we worry that the drive for short-term profit might encourage a company to **seek short-cuts** around food safety requirements. We believe that defining poisoning customers as criminal behavior provides an additional disincentive to take food safety short-cuts beyond the long-term self-interest of a food company. Remove the rule and threat of punishment and the **probability** of more poisoned consumers **increases**.

The idea that all regulation inhibits capitalism and that the freer the market the better is part of the ideological perversion of the idea of regulation. The opposite view that all regulation is good and only the state is capable of protecting us from harm is an equally ideological perversion of the idea of regulation. We need rules to ensure that the **game is fair** and that the players and bystanders are **protected** from the **negative impacts of competition**. But it is possible to over-regulate and under-regulate. Regulation can stifle production and creativity, but deregulation can harm us and kill us. Regulation, like policing, is necessary but not self-justifying. I accept the idea that risk is necessary for reward. But I want to calculate the risk and quantify the reward. In the case of **highly complex technologies** like jet planes and chemical plants, an analysis of **risk and reward** requires scientific **observation, analysis**, projection and debate. That can’t be done when **anti-regulatory ideologues** are blindly moving to dismantle science, **rules and enforcement**.

Deregulation **by definition** leads to **increased danger**. In place of deregulation, I would like to see more effective and scientifically sophisticated rules, enforced with humility and greater government-industry communication. I’d like to reduce the role of lobbyists and ensure that when self-policing is permitted, it always be subject to random and unannounced inspection.

What we have instead in Washington is **actually worse** than pure deregulation, but an effort to **delegitimize the idea of government regulation** of business. The danger of this approach is the same as taking the New York Police Department off the streets of New York City. It’s an invitation to **lawlessness and dangerous behavior**. Most of us don’t live on acres of land in the wild west, but in cities, whereas Paul Simon once wrote, “one man’s ceiling is another man’s floor.” Our actions almost inevitably impact others, and the behavior of others affects us.

Of course, rules, crime and punishment are not the only methods for encouraging socially responsible behavior. Positive role models, economic incentives, moral suasion, education and technical assistance can have equally positive results. But they require a foundation of law and correct behavior. Socially responsible behavior needs to be **defined by law**. Reducing **greenhouse gasses** **is difficult** to achieve if these emissions are **not defined as pollutants**. Once they are defined as pollutants, reductions can be achieved through tax incentives, technical assistance, or direct grants-in-aid. They can also be achieved through command-and-control regulation. The issue for policymakers should be: What would be more effective, incentives or disincentives? Or should there be a mix of both? Regulated parties are too often defined as criminals that have not yet been caught. That approach makes little sense if we want to achieve the benefits of production while minimizing the costs.

Two recent examples of under-regulation illustrate the danger of deregulation: The regulation of the **Boeing 737 Max** jet plane and the **explosion of chemical plants** in Texas. There are sadly many other examples we could examine.

The regulatory failure of the U.S. federal government and Boeing over the 737 Max is obvious. Due in part to budget cuts and in part to anti-regulatory ideology, the Federal Aviation Administration (FAA) delegated some of the regulatory process to Boeing which was in a hurry to bring its new plane to market. David Gelles and Natalie Kitroeff summarized the findings of a federal task force probing this regulatory process in the New York Times this past October. According to their piece:

“The Federal Aviation Administration relied heavily on Boeing employees to vouch for the safety of the Max and lacked the ability to effectively analyze much of what Boeing did share about the new plane, according to the report by a multiagency task force. The system of delegation is now being scrutinized by lawmakers in the wake of the tragedies. Boeing employees who worked on behalf of the F.A.A. faced “undue pressures” at times during the plane’s development because of “conflicting priorities,” according to the report.”

To Boeing senior management, regulation was just a **little check-off process** on the way to the market. The FAA has been **hollowed out of technical capacity** by decades of **anti-regulatory ideology** which was ineffectively countered by eight years of the Obama presidency. Once the Tea Party took over the budget process, the Obama White House was never able to restore capacity to regulatory agencies. The Environmental Protection Agency lost over 2,000 staff during the Obama years. The FAA did not have the ability to understand and assess the safety of the jet’s technology. Instead of preventing death and destruction, it took two tragic crashes to ground the plane and begin the assessment that should have taken place before the plane was allowed to fly.

And then we have last week’s **massive fire** and **explosion** at a **chemical plant** in Port Neches, Texas. The danger of additional explosions and toxic emissions forced the temporary evacuation of thousands of nearby residents and was **not an** **isolated or rare occurrence**. According to Merrit Kennedy of NPR:

“The explosion is the latest in a string of industrial incidents in the region. The Houston area saw three fires at chemical facilities in a month-long span in March and April — including an explosion at the KMCO plant in Crosby that killed a worker, as Houston Public Media’s Florian Martin reported. In July, more than 30 people were treated for minor injuries after a fire at an Exxon Mobil refinery in Baytown… A search of Texas Commission on Environmental Quality records shows that this year, TPC Group [owner of the plant] has been ordered to pay more than $378,000 in fines over multiple environmental violations at two facilities, in Port Neches and in Houston.”

Texas prides itself on its free market-focused, lightly policed approach to business policy, and so along with jobs and growth, they get blown out windows and toxic fumes. A well-managed factory controls its emissions and has enough safety protocols in place to avoid blowing up. But the people who work at the plant that might want to spend a little more time and money to make the place safer and cleaner are delegitimized by the absence of effective government oversight. The only good news is that the first explosion was at 1 AM and not 1 PM or the impact on workers and residents could well have been greater.

The **danger of deregulation** is that without **adequate policing** of **complex technical processes**, the public is left to the **mercy of the market**. Most businesses are well run and pay attention to safety and emissions. But clearly, some are poorly run and place short-run profits **over** health and safety. Regulation reinforces correct behavior and justifies investment in safety. Deregulation **reinforces a Wild West mindset** that is **inappropriate** for the crowded planet that we all live on.

**1NC---DA**

Blockchain DA---

**Frenzy of M&A now because Biden’s executive order won’t be implemented for years**

David **French and** Sierra **Jackson**, Reuters, July 12, 20**21**, Analysis: Dealmakers see M&A rush, then chills, in Biden's antitrust crackdown, https://www.reuters.com/business/dealmakers-see-ma-rush-then-chills-bidens-antitrust-crackdown-2021-07-12/

Dealmakers expect **a new wave of transformative** U.S. mergers and acquisitions (**M&A**), as companies **rush to complete deals** **before President Joe Biden's antitrust push takes shape**, to be followed by a slowdown when regulators start cracking down.

Biden signed a sweeping executive order on Friday to bolster competition within the U.S. economy. This included a call for regulatory agencies to increase scrutiny of corporate tie-ups which have left major sectors such as technology and healthcare dominated by few players. read more

The order came amid an **unprecedented M&A frenzy**, as companies **borrow cheaply** and **spend mountains of cash** they have accumulated on **transformative deals** to reposition themselves for the post-pandemic world. **Almost $700 billion** worth of U.S. deals were announced in the second quarter, **the highest on record**.

The dealmaking **bonanza is set to continue**, as companies seek to **take advantage of the time window** during which regulators **frame precise rules** to implement Biden's order, advisers to the companies said. The M&A slowdown will come **only when regulators implement the rule changes**, **possibly in two years or more,** they added.

"The order itself will be **less likely to have a chilling effect** on strategic M&A than the potential chilling effect of a significant increase in the number of prolonged investigations and merger challenges brought by the agencies," said Michael Schaper, partner at law firm Debevoise & Plimpton.

Spokespeople for the White House and the two main antitrust regulators, the Federal Trade Commission (FTC) and the U.S. Department of Justice (DoJ), did not immediately respond to requests for comment.

Dealmakers were **bracing for a tougher antitrust environment** under Biden **even before last week's executive order.** Last month, the DoJ sued to stop insurance broker Aon's (AON.N) $30 billion acquisition of peer Willis Towers Watson (WTY.F). And Biden tapped Lina Khan, an antitrust researcher who has focused her work on Big Tech's immense market power, to chair the FTC.

**Antitrust scrutiny deters investment in finance---wards away big tech**

**Pedersen 20** – Brendan Pedersen covers federal bank regulation and fintech policy for American Banker

Brendan Pedersen, "Congress's scrutiny of tech giants could be blessing and curse for banks," American Banker, 10-13-2020, https://www.americanbanker.com/news/congresss-scrutiny-of-amazon-google-could-be-blessing-curse-for-banks

WASHINGTON — A Democratic proposal to reform antitrust law to limit the reach of the largest technology firms may hearten banks, but analysts say the financial services sector is not immune from a revived focus on breaking up megacompanies.

In the sweeping 400-page report by the House Judiciary Committee’s antitrust law subcommittee, lawmakers laid out a sweeping case for reforming laws that allow the colossal growth of just a handful of tech giants: Amazon, Apple, Facebook and Google.

“To put it simply, companies that once were scrappy, underdog startups that challenged the status quo have become the kinds of monopolies we last saw in the era of oil barons and railroad tycoons,” the report said, adding later that “the totality of the evidence produced during this investigation demonstrates the pressing need for legislative action and reform.”

The U.S. banking industry has long worried about the **financial ambitions of leading tech firms** and even the possibility that one of the four Big Tech giants could charter or **acquire a bank** with significant competitive advantages at the expense of traditional financial services firms. While none of the four companies have applied for banking powers, past reports have circulated of Google and Amazon being among those having engaged with bank regulators.

The report authored by subcommittee staff did not specifically focus on the tech giants' financial services aims, but rather on how their global reach and impact on sectors like the news media could threaten democratic norms.

But observers said **tighter restrictions** on acquisitions by tech leaders could put them on more equal footing with banks and even **discourage their potential interest** in acquiring financial technology startups. The report also appears to validate the regulatory regime for bank parents as a potential model for reining in growth of the tech sector.

“A **more aggressive antitrust stance** would reduce the likelihood that those companies get even **deeper into financial services**, so it protects some turf for banks that don't have to compete with a Bank of Amazon or an Apple Bank,” said Jeremy Kress, an associate professor of business law at the University of Michigan.

**Big tech in finance is key to widespread blockchain adoption**

**Pejic 17** – author of "Blockchain Babel," a strategy guide to blockchain based on management theory and scientific research. He was voted by McKinsey and the Financial Times as one of three finalists in the Bracken Bower Prize for his work on blockchain in 2016

Igor Pejic, "Tech giants will not be silent about blockchain for long," American Banker, 5-18-2017, https://www.americanbanker.com/opinion/tech-giants-will-not-be-silent-about-blockchain-for-long

The hunt for the killer blockchain application is in full swing. The emergence of the technology saw something akin to a Cambrian explosion for blockchain startups. Now, more than 300 of them are vying to be the global economy’s “next best thing,” posing an obvious competitive threat to traditional financial institutions.

Banks, payment processors and credit card companies worry that brainy entrepreneurs, who transform high IQs into billions of dollars, could cast a pall over their core business. But **it is not fintechs** they should be worried about. It’s the **tech titans** in Silicon Valley that should keep them up at night.

Management theory makes the distinction between de novo market entrants and diversifying market entrants. The former are complete newcomers; they include fintech companies. But diversifying market entrants are firms that have been successful in other arenas. In most technological shifts, it is diversifying entrants that grab market share because they are experts in capabilities that suddenly become relevant to the new product or service generation. And unlike startups, they come with legions of experts, a global network and stuffed pockets. When the camera maker Polaroid failed, it was not de novo entrants that took over. Rather, it was Canon and Nikon that brought to the table their experience with optoelectronics. But how do you spot diversifying entrants in advance? A good start is to identify which competencies will become central once the blockchain hits the market.

For example, a technology like blockchain, challenging one of the world’s largest industries, needs more than just programmers and algorithms. The storage, archiving, communication and file serving needed to run distributed ledgers **gobble up** hard-drive space at **unprecedented speeds**. Moreover, blockchains have an end of life. When they go out of business, they still need to be accessible.

These requirements call out for the capabilities of the cloud-computing giants, such as Amazon, Microsoft and IBM. Banks must not underestimate what these companies can contribute to the blockchain; they offer more than just raw server resources.

At the same time, pure cloud companies will never be able to cut into banks’ core business; they are too far away from the end customer. The really dangerous diversifying entrants will come from somewhere else: **internet giants** such as Google, Apple and Facebook, which already collect massive amounts of data.

Globally dominating data-collecting companies — search platforms, social networks, e-commerce giants — are neglected in the discussion about blockchain. Internet firms haven’t shown a lot of interest in lowering the blockchain gauntlet onto the banking world. **But they will**.

Data behemoths are pointedly silent about the new technological development. Yet their core competencies will be crucial in a blockchain-based banking world. According to a Finextra Research report, companies such as Google and Facebook are **perfectly suited** to outdo banks in driving blockchain mass adoption (particularly in payments) due to their large global customer base. Already, large data collectors are entering payments with Android or Apple Pay and the companies are positioning themselves where they are the strongest: at the front end.

The likes of Google know what we search, what we write in emails, with whom we interact, and which places we frequent. And they know how to turn that data into dollars. Blockchain technology **trims transaction costs to the bone**, and financial services can be offered for free. This model p**lays into the hands of data behemoths**, whose business models are already geared to making money out of free services. Selling highly accurate personalized advertising in two-sided platforms is in their DNA.

Secondly, globally recognizable and trusted brands are another major asset of the tech titans. Google, Apple, and Amazon have been at the pinnacle of global brand valuation lists for years. The gap between these top three and other brands is stunning. Their brands are worth, respectively, $109 billion, $108 billion and $106 billion. People spend hours staring at their logos while checking emails, searching the web, chatting with friends or shopping online. AT&T comes in fourth with “only” $87 billion.

Silicon Valley’s behemoths are also competing to place their brands on payment interfaces.

To be sure, banks are likely to stay on top of global finance for some time to come. But, as it is the painful case with most technological leaps, the **barriers to entry** for nonbank competitors **will eventually disappear**. By how much will depend on identifying the right challengers on time and fending them off. Banks are well advised to keep a close eye on the blockchain activities of data behemoths.

**Blockchain solves snap financial collapse**

**Furber 19** – Sophia Furber is a journalist with S&P Global Market Intelligence, where she leads EMEA fintech and banking tech reporting, citing Brian Behlendorf, executive director of Hyperledger

Sophia Furber, "Blockchain could prevent rerun of 2008 banking meltdown, says tech veteran," S&P Global Market Intelligence, 6-28-2019, https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/blockchain-could-prevent-rerun-of-2008-banking-meltdown-says-tech-veteran-52534233

The aftermath of the 2008 global financial crisis would have been **considerably less chaotic** if banks had used **blockchain** to keep track of **complex derivative trades**, according to technologist Brian Behlendorf, executive director of Hyperledger.

Hyperledger, a global cross-industry group that aims to advance the use of blockchain technologies, is an initiative of the The Linux Foundation and counts major global banks including Deutsche Bank AG, JPMorgan Chase & Co. and Citigroup Inc. among its members.

More than the crash in the U.S. housing market, it was what happened next with the **vast** quantity of credit derivatives that really tipped the financial system into crisis, Behlendorf said.

At the height of the global financial crisis in October 2008, the collapse of Lehman Brothers Holdings Inc. triggered hundreds of billions in credit default swap, or CDS, protection payouts, but because the derivative instruments had been bought and sold **so many times**, it was **difficult to** know who was liable to pay out.

'A crisis of paperwork'

"This was not a crisis of over-exuberance. It was **a crisis of paperwork**," Behlendorf said in an interview. "It showed the fallibility of [banks'] digital systems. There was not an **automated systematic record** of who owned what, and banks were **slow to respond**."

Using blockchain would have meant that banks had a **common system of record** for instruments such as swaps, which could have resulted in a more "**orderly unwinding**" of contracts, he said.

There is a strong case for using blockchain in the parts of a bank that deal with settlements, clearing and trading, as this could help to **prevent a re-run** of the events of 2008, he said.

Until February this year, Hyperledger had been chaired by Blythe Masters, the JP Morgan banker widely credited with inventing the credit default swap in the 1990s. Following her career in banking, Masters has emerged in recent years one of the most vocal advocates for the use of blockchain in the world of finance and spent four years as CEO of blockchain services firm Digital Asset Holdings, LLC before stepping down in February this year, citing personal reasons.

Masters has taken a step back from Hyperledger for the time being for health reasons, according to Behlendorf.

The global CDS market has shrunk considerably since the days of the global financial crisis: outstanding notional amounts of CDS contracts stood at $8 trillion at the end of the first half of 2018, compared with $61.2 trillion at the end of 2007, according to the Bank for International Settlements.

But beyond the infamous CDSs, the global derivatives market **is still vast — and growing**. The notional outstanding value of over-the-counter derivatives stood at $595 trillion as of end-June 2018, up from $532 trillion at end-2017, according to the BIS.

**Absent central bank liquidity, the economy collapses---that sparks global world war**

**Sundaram and Popov 19** – former economics professor, was United Nations Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007; former senior economics researcher in the Soviet Union, Russia and the United Nations Secretariat, is now Research Director at the Dialogue of Civilizations Research Institute in Berlin

Jomo Kwame Sundaram and Vladimir Popov, "Economic Crisis Can Trigger World War," Inter Press Service, 2-12-2019, http://www.ipsnews.net/2019/02/economic-crisis-can-trigger-world-war/

KUALA LUMPUR and BERLIN, Feb 12 2019 (IPS) - Economic recovery efforts since the 2008-2009 global financial crisis have mainly depended on unconventional monetary policies. As fears rise of yet another **international financial crisis**, there are **growing concerns** about the increased possibility of **large-scale military conflict.**

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

Crisis responses limited

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

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

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

From bust to bubble

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

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

**Adv 1**

1. **Innovation Turn:**

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

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

II. THE BENEFITS DIGITAL PLATFORMS BRING

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

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

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

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

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

These companies are also among **the most innovative in the world**. Amazon and Alphabet **led all companies** in investment in **r**esearch **and d**evelopment in 2018.

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

III. THE ALLEGED THREAT TO ANTITRUST

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

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

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

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

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

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

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

**Immediately expanding scope of antitrust liability brings mergers to a halt---undermines dynamism and global competitiveness**

**Thierer 21** – Adam Thierer is a senior research fellow with the Mercatus Center at George Mason University. Author of several books on antitrust law; former president of the Progress & Freedom Foundation, director of Telecommunications Studies at the Cato Institute, and a senior fellow at the Heritage Foundation.

(Adam Thierer, 2-25-2021, "Open-ended antitrust is an innovation killer," TheHill, https://thehill.com/opinion/technology/540391-open-ended-antitrust-is-an-innovation-killer)

Antitrust reform is a hot bipartisan item today, with Democrats and Republicans floating proposals to significantly expand federal control over the marketplace. Much of this activity is driven by growing concern about some of the nation’s largest digital technology companies, including Facebook, Google, Amazon and Apple.

Unfortunately, the calls for more bureaucracy and regulation emanating from all corners of the political world could have an unintended consequence: **discouraging the sort of vibrant innovation and consumer choice** that made America’s tech companies household names across the globe.

Sen. Amy Klobuchar (D-Minn.) is leading one charge. Klobuchar, who chairs the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, recently introduced the “Competition and Antitrust Law Enforcement Reform Act.” This sweeping measure seeks to expand the powers and budgets of antitrust regulators at the Federal Trade Commission and the Department of Justice. It also includes new filing requirements and potentially hefty civil fines.

**The most important feature** is the proposed **change to the legal standard by which regulators approve business deals**. It would allow the government to stop any deal that creates an “appreciable risk of materially lessening competition,” and it also defines exclusionary behavior as, “conduct that materially disadvantages one or more actual or potential competitors.”

These may sound like **simple**, **semantic tweaks**, but – much like some of the other policy ideas currently circulating – **they would upend decades of settled law and create a sea change in U.S. antitrust enforcement**. **This change could undermine business dynamism, innovation and investment in ways that inhibit the global competitiveness of U.S. businesses.**

Critics of merger and acquisition (M&A) activity by large tech firms include not only Sen. Klobuchar but also Republicans such as Sen. Josh Hawley (R-Mo.). Hawley recent offered an amendment to a budget bill that would preemptively prohibit mergers and acquisitions by dominant online firms. Klobuchar and Hawley believe that M&A skews the market in favor of today’s largest firms, entrenching their market power and discouraging innovation.

History teaches a different lesson. Consider DirecTV and Skype, both once considered innovative market leaders in their respective fields of satellite TV and internet telephony. Both firms stumbled, however, and they might not even be with us today without creative business deals. DirecTV has been partially or fully controlled by Hughes Electronics, News Corp., Liberty Media and now AT&T. Skype has swapped hands multiple times, moving from eBay, to a private investment firm and now to Microsoft.

These were complex deals, and some didn’t work, leading to divestitures. But each was a learning experience that illustrated **how dynamic media and technology markets** can be with firms constantly searching for **value-added arrangements** that serve their customers and shareholders. If we make this type of activity presumptively illegal, we’re imagining that **government bureaucrats are better suited to make these calls than businesspeople** and the consumers who choose whether or not to buy the product.

Worse yet, legal tests like those Klobuchar proposes – “conduct that materially disadvantages potential competitors” – **are remarkably open-ended and could be easily abused**. The system will be gamed by opponents of deals for business reasons. They will claim that their own failure to attract investors or customers must all be the fault of more creative rivals. That’s a recipe for **cronyism and economic stagnation.**

Those who worry about today’s largest tech giants becoming supposedly unassailable monopolies should consider how similar fears were expressed not so long ago about other tech titans, many of which we laugh about today. Just 14 years ago, headlines proclaimed that “MySpace Is a Natural Monopoly,” and asked, “Will MySpace Ever Lose Its Monopoly?” We all know how that “monopoly” ceased to exist.

At the same time, pundits insisted “Apple should pull the plug on the iPhone,” since “there is no likelihood that Apple can be successful in a business this competitive.” The smartphone market of that era was viewed as completely under the control of BlackBerry, Palm, Motorola and Nokia. A few years prior to that, critics lambasted the merger of AOL and TimeWarner as a new corporate “Big Brother” that would decimate digital diversity and online competition.

GOP divided over bills targeting tech giants

Today, we know these tales of the apocalypse ended up instead becoming case studies in the continuing power of “creative destruction.” New innovations and players emerged from many unexpected quarters, decimating whatever dreams of continued domination the old giants once had.

Today’s biggest players face similar pressures, and it’s better to let rivalry and innovation emerge organically, not through the wrecking ball of heavy-handed antitrust regulation.

**Internal link goes one way---large-firm dynamism is the only way to maintain tech leadership**

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

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

But the administration should not forget the law of unintended consequences -- **effective** antitrust measures could **stifle** the ability of American tech companies to **compete with their Chinese challengers**. Presumably, that is the last thing the America First president wants to see.

While antitrust has been used to regulate technology companies before, perhaps most notably Microsoft two decades ago, its application against Amazon.com, Facebook, and Google seems different.

For the last half-century or so, U.S. antitrust law has been underpinned by the concept of maximizing **consumer welfare**, frequently measured by price to consumers. In regulating big technology companies today, however, a new paradigm has emerged, dubbed "hipster antitrust."

Hipster antitrust looks beyond traditional economic harm and includes wider effects such as wage inequality, data privacy intrusions, and sheer size as grounds to invoke the law.

But **the wider the antitrust authorities reach**, the more likely they are to **damage the tech giants' global competitiveness**. This applies **especially in the key field of artificial intelligence**, where the U.S. and China are world leaders.

AI is the engine powering the Fourth Industrial Revolution and the fuel for that engine is data, **lots of data**. Such data can **only be collected at scale**, which conflicts with hipster antitrust **notions of size**. If American antitrust measures compel large technology companies to shrink or in the extreme, to break up, then the U.S. will find itself at a **disadvantage** to China.

The idea of **size** is one of many **fundamental differences** separating Chinese and American technology ecosystems. Chinese government leaders have clearly grasped that scale matters for the technologies they want to dominate, such as artificial intelligence, as well as for the type of digital governance Beijing is striving to implement.

In the U.S., however, the economic value attached to scale is offset by deep-rooted concerns about privacy, bullying behavior and unfair political and social influence. Senator Elizabeth Warren of Massachusetts, a popular Democratic Party candidate for the 2020 presidential election, wrote: "Today's big tech companies have too much power -- too much power over our economy, our society and our democracy."

But in China this is not a hot-button political issue. In a recent fintech course I helped lead comprised of students from different countries, mainland Chinese students considered privacy differently than peers elsewhere. Though aspects of privacy are important to Chinese users, many readily understand there are trade-offs in operating on technology platforms.

Chinese technology platforms such as Alibaba and Meituan have developed **so-called "super apps"** that serve the same functions that users in the West might find by going to different applications on their devices.

Super apps are designed to be convenient to users so they can handle everything from ride hailing, shopping, food purchases, and payment, all without leaving the digital confines of a single app. This has become the dominant way Chinese citizens consume online. With the most internet users in the world, approximately 750 million, super apps also provide Chinese technology companies an incredible amount of data.

In his book, "AI Superpowers: China, Silicon Valley, and the New World Order," technology executive and investor, Kai-Fu Lee outlined four factors necessary to win the AI race: talent, computing speed, data, and government policy. Though the U.S. has an advantage in many areas, **that lead is shrinking**, and if China does overtake the U.S. in artificial intelligence, it will likely be a result **of advantages in data and government policy**.

This combination of data and government policy is perhaps best exemplified by SenseTime, widely considered the world's most valuable artificial intelligence startup. SenseTime boasts world leading facial recognition, which is enhanced because it reportedly has access to Chinese government databases, a rich source of data to further develop models.

Chinese companies like SenseTime have excelled in facial recognition, with some reports estimating that there are almost ten times as many Chinese facial recognition patents filed as American. Chinese surveillance technology is already used in the U.S., including New York City.

This widening gap will have **broader implications** beyond surveillance, security, and policing. Facial recognition technology will also serve as a biometric identifier for finance, retail, and health. With China moving forward aggressively both domestically and abroad in its use of such technologies, American competitors who are pursuing facial recognition, such as Amazon and Google, may not be able **to close the growing competitive chasm**.

So while American politicians may see antitrust investigations into large technology companies as necessary, there could be a significant impact on America's ability to compete with China.

Google's former CEO, Eric Schmidt forecast last year that China and the United States would lead the bifurcation of the internet into two spheres. Evidence of this splintering is already apparent. What remains undetermined, however, is which of those spheres will dominate.

Large Chinese technology companies, for example Alibaba Group Holding, are already setting-up far-flung outposts by partnering with and investing in local, non-Chinese technology companies around the world. This form of Chinese technological expansion allows Chinese big tech to **shape user privacy norms,** establish global networks, and attract more users into their ecosystems, all of which leads to increased user activity and ultimately more data.

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

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

1. **Startups are booming---the pandemic created fertile ground for innovation.**

Greg **Rosalsky 21**, Reporter at NPR, M.A. in Economics and Public Policy from the Woodrow Wilson School at Princeton University, “What America's Startup Boom Could Mean For The Economy,” NPR, 06-29-2021, https://www.npr.org/sections/money/2021/06/29/1010229557/what-americas-startup-boom-could-mean-for-the-economy

Back in November, the Planet Money newsletter reported that — despite a deadly pandemic and an ugly recession — **America was seeing a boom in the creation of** new **startups**. We spoke with University of Maryland economist John Haltiwanger, one of the leading scholars of business formation. Now Haltiwanger has a new study out, and the trend is clear: "The surge continues," Haltiwanger says. "We're now convinced **this wasn't just a blip."**

Like so many other areas of the economy, applications for new businesses pulled back in the first half of 2020 but then snapped forward again like a slingshot. Not only was 2020 the best year on record for new business creation since the Census Bureau began tracking it in 2004, but applications for new businesses have continued to soar, through at least last month. In May, there were a half a million applications for new businesses; the second highest month on record, below only last July. In total, there have been more than six million filings for new businesses since the pandemic began. The boom can be seen in both businesses composed of only one self-employed person and businesses that the Census expects will employ multiple people.

Over the last year and half, we have been reshuffling how and where we work and shop; and that shift has created all sorts of opportunities for entrepreneurs. With the pandemic, it's like someone ripped out an irrigation pipe for brick-and-mortar commerce and plugged it into virtual commerce. It's brought a drought to face-to-face businesses, and a bounty to businesses you interact with on a digital screen. The retail sector alone, driven by e-commerce, accounts for about a third of all the new startup growth. In addition, trucking, warehousing, and delivery services are all seeing surges — which makes sense, as we've seen a massive shift of spending on in-person services to tangible goods that are bought online.

We've also seen the rise of remote work and a reshuffling of the population, from city centers to suburbs, and from traditional job centers to "Zoom Towns." Where people go, they bring their dollars. It may help explain why the food and accommodation sector is the greatest area of growth. We've also seen huge growth in the types of businesses that can provide remote services.

There are at least two potential theories for what's going on. First, while **the boom is undeniably good news**, there is a slightly negative take: we've seen a surge in new businesses mainly because the pandemic forced two painful restructurings to the economy. It began by ravaging the face-to-face economy and creating an awkward marketplace where we could only do stuff six feet apart. This suffocated many existing businesses while providing oxygen for others, such as online retailers, video conferencing apps, drive-thrus, delivery services, mask and sanitizer companies, and the like. Yet, many of these new opportunities for pandemic-friendly businesses may prove to be only temporary. Many of them could die as we head back to normal.

Now that most of us are vaccinated, we're releasing the pressure cooker of our pent-up demand for going out. It's leading to the second major restructuring: new businesses — restaurants, bars, salons and so on — are growing out of the ashes of the businesses scorched by the pandemic. This is great news! It's better than no new businesses. But it's possible that we're now just heading back to normal, as opposed to something new and better. Think of it like the economy doing a pendulum swing from a normal economy to a pandemic economy and back to a normal economy again.

It's hard to completely rule out this Negative Nancy take. We don't have many details about what exactly the new businesses created during the pandemic are doing, or how big they're gonna get. More importantly, we still don't have great data on how many and what kinds of businesses died over the last year, and whether these new businesses are merely just filling the massive hole created at the beginning of the pandemic. The data suggests the biggest surges occurred at the beginning and tail ends of the pandemic, which is consistent with the idea that this was a pendulum swing.

But Haltiwanger offers a second, more optimistic theory, which says this is about way more than just a pendulum swing**: it's a rocket ship to a better economy**. As painful as the pandemic has been, he believes it has forced the business world to drop outdated ways of doing things and embrace **tech**nology in a new way. "I don't think any of us had a clue that we could do so much business activity remotely," Haltiwanger says. "That sparks all kinds of new ideas."

The MIT economist Erik Brynjolfsson told us last year that history suggests there is "a lot of inertia in the way people work" and that "unless there's a shock, most people will tend to continue to do things the old way." The pandemic, he said, provided that shock. It's forced businesses to fully embrace technologies that enable a whole raft of new business practices, including remote work. Moreover, he argued, **these changes** may finally **result in real productivity growth after** so many **years of stagnation.**

When Haltiwanger looks at the data on business creation, he sees signs that this pickup in productivity may be on the verge of happening. "I have been struck over the last six months at how much of a sustained increase this surge in new business applications has been," he says. "Here's the thing: when we've seen sustained increases like this in the past, it has boded well for job creation, innovation, and productivity growth in the United States."

The legendary Harvard economist Joseph Schumpeter developed a concept known as creative destruction that may help explain what's going on. It describes the cycle of business death and birth that remakes the economy into something more efficient and productive. Economists believe it's a vital process to improve society's living standards. **As destructive as the pandemic has been, it's possible we'll look back and see it as the spark for creating a new and better economy.**

1. **Antitrust fails at regulating big tech**

**Rosoff 21** – Matt Rosoff, Editorial Director, Digital at CNBC

Matt Rosoff, “Op-ed: This week showed how the Big Tech antitrust campaign is totally misguided,” June 30, 2021, CNBC, <https://www.cnbc.com/2021/06/30/op-ed-antitrust-crusade-against-big-tech-is-misguided.html>

On Wednesday, the tech industry saw five companies debut on public stock markets. One of them, Chinese ride-hailing giant Didi, is worth nearly $70 billion. Two others, Taboola and Integral Ad Science, compete in the online advertising industry -- one of the markets that has supposedly been ruined by Alphabet (in particular) and Facebook.

More generally**, this year has seen the hottest IPO market in years**, and investors continue to pile into start-ups at a record pace -- **Q1 saw more than $64 billion in venture funding**, a record.

**This does not look like a deserted wasteland of stifled innovation and broken dreams**.

Meanwhile, the general public doesn’t see tech power as a particularly pressing issue. In a survey funded by a tech industry group, 44% of respondents ranked tech industry regulations as the lowest priority on a list of five options, behind the economy, public health, climate change and infrastructure. Yes, 53% of the respondents thought some legislation was a good idea. But that does not mean the public wants Congress and the courts to aim the antitrust cannon at these giants.

As I wrote four years ago, antitrust is the wrong approach here.

**None of these companies have monopolies over meaningfully defined relevant markets** -- you really have to stretch and squeeze the market definitions for their dominance to come into clear view. The real state of the tech industry is an all-out business war between the five giants, **a constantly shifting landscape of rivalries and backbiting** -- think Great Powers Europe before World War I -- with numerous well-funded competitors of all sizes waiting to seize any opportunity and fill any gap they leave open.

For instance:

Google dominates search and Facebook is the biggest social media company by far. But the main source of their revenues is online advertising, and **they compete bitterly for every available online ad dollar**, with Amazon coming quickly up behind. And yet, there’s still enough space for TikTok, Twitter, Snap and a dozen small ad-tech competitors to build sustainable, thriving ad-supported businesses.

Amazon, Microsoft and Google are locked in a hard-knocking three-way war for supremacy in cloud computing infrastructure. And yet, there are dozens of companies delivering thriving cloud services on top of or alongside these platforms, including Snowflake, which debuted last year and is now worth more than $70 billion, and Zoom, which went public in 2019, and is worth almost $115 billion.

Facebook hates Apple and complains about its control over iPhone apps every chance it gets -- except, Mark Zuckerberg now admits that Facebook might actually be stronger after Apple’s recent privacy changes to the iPhone. Meanwhile, Apple’s iOS is actually a minority competitor, as Google’s Android operating system is the dominant mobile platform in the world -- and Microsoft just signed a deal with Amazon to support Android apps on Windows.

To be perfectly clear: Yes, it is in the public interest to regulate these tech giants more strictly.

For instance, Facebook and Google’s YouTube exercise an enormous amount of influence over public discourse and politics by allowing misinformation to spread almost unchecked.

Amazon and Apple control extremely valuable marketplaces that reach hundreds of millions of people, and can use this control to pit suppliers against each other and extract arguably onerous fees.

Union advocates allege Amazon illegally interfered in a recent attempt to unionize in Alabama, and many workers have complained about working conditions in warehouses and delivery vehicles.

All of the companies have used acquisitions to enter adjacent markets and, arguably, to stifle potential competitors before they got too big -- a tactic also used by companies outside the Big Five, such as Oracle in past years and Salesforce more recently.

Several of their founders are now centi-billionaires, a perfect example of the runaway income inequality that many progressives believe must be curbed.

But all of these activities can be addressed with targeted regulations or stricter enforcement of existing laws. **Antitrust is a blunt instrument** meant to address major market distortions created by true monopolists. Being big, in itself, **is not illegal**. **Applying antitrust law to these companies is misguided, wrong, and will not have the desired effect of curbing their power in meaningful ways**.

1. **Structural separation fails.**

**Miller 21** – Senior policy research editor at the Mercatus Center at George Mason University

Tracy C. Miller, “Evaluating Arguments for Antitrust Action against Tech Companies,” Mercatus Research, Mercatus Center at George Mason University, April 2021, https://www.mercatus.org/publications/antitrust-and-competition/evaluating-arguments-antitrust-action-against-tech-companies

The **pitfalls of structural separation** are **comparable** in some ways to the **ineffectiveness** of past court decisions in which firms found guilty of monopolization were **broken into smaller firms**. This antitrust remedy was common in some early cases, including the cases against Standard Oil, Alcoa, and United Shoe Machinery.143 Although one cannot be sure what would have happened in the absence of antitrust action against these dominant firms, some **evidence suggests** that breaking them up **did not enhance competition** and, in at least one case, may have **worsened consumers’ welfare**. By the time each of these firms was broken up, the market had changed in a way that reduced the consequences of the breakup. While its case was being decided, Standard Oil’s market share had fallen from 82 percent to 64 percent.144 According to Boudreaux and Folsum, the decline in the company’s market share was the result, in part, of its refusal to invest in the Texas oil boom and of the influence of its delay in switching from kerosene to gasoline.145

Following the Alcoa case, the size of the aluminum market grew to the point where it exceeded the output at which economies of scale favored Alcoa. This expansion of the market likely would have led to entry and growth of competitors, even without government assistance that was used to encourage entry.146 In the case of United Shoe Machinery, foreign competition led to a growing share of shoes being manufactured outside the United States, and to the extent that the breakup of United Shoe raised costs, it may have contributed to the decline of shoe manufacturing in the United States.

1. **Independently, small AI firms won’t contract with the DoD.**

**Foster & Arnold 20** (Dakota Foster, Visiting Researcher at Georgetown’s Center for Security and Emerging Technology (CSET). She is a graduate student in the Department of War Studies at King’s College London, where she is studying the Third Offset Strategy and the national security implications of changing innovation patterns between the public and private sectors. Previously, she has conducted research on terrorism and U.S. national security policy for the U.S. military, the House Foreign Affairs Committee, and the Washington Institute. She holds a B.A. from Amherst College and is an incoming student at the University of Oxford. Zachary Arnold, Research Fellow at Georgetown’s Center for Security and Emerging Technology (CSET), where he focuses on AI investment flows and workforce trends. His writing has been published in the Wall Street Journal, MIT Technology Review, Defense One and leading law reviews. Before joining CSET, Zach was an associate at Latham & Watkins, a judicial clerk on the United States Court of Appeals for the Fifth Circuit and a researcher and producer of documentary films. He received a J.D. from Yale Law School, where he was an editor of the Yale Law Journal, and an A.B. (summa cum laude) in Social Studies from Harvard University, “Antitrust and Artificial Intelligence: How Breaking Up Big Tech Could Affect the Pentagon’s Access to AI”)

Contracting with the Pentagon **is difficult, expensive, and time-consuming**. Smaller AI firms may be less able to navigate the federal procurement process, **effectively preventing the Pentagon from accessing their tech**nology. The few DOD programs that do partner with smaller firms **are under scrutiny for their efficacy.**

The high barriers of entry, coupled with an unstable budgetary environment and the high certification costs of federal contracting, favor larger companies.148 Simply put, large firms have more resources and deeper institutional knowledge to bring to the federal contracting process.

A number of programs encourage the Pentagon to partner with smaller firms, bypassing traditional obstacles. While the component pieces of large tech firms (Google Search, YouTube, AWS, and so on) would not qualify for these programs, niche AI firms focused on productization and Pentagon-specific AI applications could be eligible. The SBIR and STTR programs help fund new technologies developed by small businesses,149 and OTAs (Other Transaction Authorities) incentivize work with smaller vendors. These newer approaches to federal contracting—with their faster timelines and increased flexibility—suit technology products. Yet in spite of their promise and expansion,150 these programs have yielded mixed results; **they would not be feasible options for major AI contracts** like JEDI. Five recent audits found **the Pentagon does not prioritize small business contracting**.151 Other investigations concluded that these “small business” initiatives have disproportionately benefited large companies, channeling contracts to traditional vendors.152 In the long term, the extent to which the Pentagon invests in small businesses and how well existing programs facilitate that relationship remains unclear.

1. **AI is a loss-leader! Smaller firms can’t lose $500M every year. Only megafirms like Google can maintain strength**

**Foster 20** (Dakota Foster is a graduate student at Oxford University and a former visiting researcher at the Center for Security and Emerging Technology. “Antitrust investigations have deep implications for AI and national security”, https://www.brookings.edu/techstream/antitrust-investigations-have-deep-implications-for-ai-and-national-security/)

As Silicon Valley’s largest companies consolidate AI talent and novel ideas through acquisitions, these companies gain an ever-larger say in the future of AI. This consolidation, which antitrust action could disrupt, may not favor innovation. But breaking up major tech firms also has potential pitfalls for AI innovation. **With scale comes resources**, and AI innovation is resource-intensive, requiring large quantities of data, diverse datastores, and vast computing power—known as “compute” in industry jargon.

American tech giants’ huge revenues **uniquely equip them to fund costly AI research**. Google’s DeepMind, arguably the world’s leading AI-research organization, **is billions of dollars in debt and lost over $500 million in 2018 alone.** Google’s fortress-like balance sheet can easily absorb the costs associated with such cutting-edge research, **but smaller firms likely cannot**. The economics of compute offer a concrete example of this dynamic. The rapidly increasing volume of compute required for deep learning research, coupled with compute’s **prohibitively expensive prices**, creates **significant barriers to entry and innovation for smaller AI firms**. As Microsoft co-founder Paul Allen noted in 2019, the “exponentially higher” costs of compute may leave the U.S. with only “**a handful of places where you can be on the cutting edge**.” **Even the most well-funded independent AI organizations rely on Big Tech’s compute resources**. OpenAI’s billion-dollar compute partnership with Microsoft, reached after OpenAI spent millions renting compute from leading tech firms, offers one example.

**Adv 2**

1. **It’s declining now – proves their theories surrounding it is bunk**

**Falk 20** – Jeff Falk is director of national media relations in Rice University's Office of Public Affairs.

Jeff Falk, October 28 2020, “[US wealth, income inequality has declined, Baker Institute expert finds](https://news.rice.edu/2020/10/28/us-wealth-income-inequality-has-declined-baker-institute-expert-finds-2/),” Rice University, https://news.rice.edu/2020/10/28/us-wealth-income-inequality-has-declined-baker-institute-expert-finds-2/

Analysis of Federal Reserve survey data shows U.S. **wealth inequality has declined** for the first time in nearly 30 years, while **income inequality has seen its largest decline in three decades,** according to a new working paper from Rice’s Baker Institute for Public Policy.

The results come from the [Survey of Consumer Finances](https://en.wikipedia.org/wiki/Survey_of_Consumer_Finances) (SCF), a triennial family survey conducted by the Federal Reserve. The survey data for 2019, which was released in late September, **gives one of the best insights into U.S. households’ wealth composition**, said [Jorge Barro](https://www.bakerinstitute.org/experts/jorge-barro), fellow in public finance at the Baker Institute and author of the paper, titled [“Decline in U.S. Wealth and Income Inequality Between 2016 and 2019.”](https://www.bakerinstitute.org/media/files/files/5bc75df7/cpf-wp-us-inequality-102620.pdf)

What makes the shift particularly surprising is that it **comes after a significant tax cut signed into law in 2017**, Barro said. This tax reform, commonly known as the [Tax Cuts and Jobs Act](https://www.congress.gov/bill/115th-congress/house-bill/1/text) (TCJA), reduced the corporate tax rate from 35% to 21%.

“Given that this tax cut largely benefited those who hold corporate equity, many expected this change would actually increase wealth and income inequality,” Barro wrote. “A recent working paper at the National Bureau of Economic Research, however, notes that higher corporate taxation shifts corporate income to noncorporate businesses, increasing the dispersion of income and generating a rise in income inequality — an **outcome that would reverse with a decline in the corporate tax rate.”**

Wealth inequality rose persistently between 1992 and 2016 — a trend that saw a reversal in 2019, Barro found. “Income inequality also experienced the largest decline since 1992,” he wrote. “Both changes are a result of gains in the total shares (of wealth and income) by lower deciles (groups). While there are many plausible explanations, changing age demographics and the economic impact of the TCJA may have played a role in generating this outcome.”

Barro said an aging of the population shifts the age distribution from a large share of young and a low share of old to a low share of young and a large share of old. Because people generally have low assets early in life and higher assets later in life, this demographic shift can alter the wealth distribution from fewer high-wealth individuals to relatively many high-wealth individuals. Consequently, an aging of the population can plausibly generate a reduction in wealth inequality.

The SCF collects granular data on the financial positions of U.S. families, with regards to assets and liabilities. The extent to which a family’s assets exceed their liabilities determines their net worth, which in turn defines the family’s wealth. Between 2016 and 2019, **real median family wealth grew 17.7% from $103,460 to $121,760**. Even as broad measures of wealth grew over this time period, the dispersion of wealth contracted, Barro said.

Between 2016 and 2019, real **median U.S. family income rose 5.4% from $56,019 to $59,051**. Over that period, income inequality experienced its sharpest decline since the decline between 1989 and 1992, Barro said.

Rising wealth and income inequality have been focal points in debates in the economics profession for many years, Barro said. “Researchers and institutions have allocated considerable resources to understanding the causes of inequality and how policy can affect it. A decline in both income and wealth inequality between 2016 and **2019 will require researchers to rethink the mechanisms driving inequality.”**

Barro’s area of research involves the development of dynamic macroeconomic models for fiscal policy evaluation. Prior to joining the Baker Institute, Barro was an **economist at the University of Pennsylvania’s** Wharton Public Policy Initiative, where he **led the development of its dynamic macroeconomic model and helped launch the nonpartisan Penn Wharton Budget Model.**

1. **Antitrust can’t solve it.**

**Schechter ’16** – writer at ProMarket citing Daniel Crane, the associate dean for faculty and research and the Frederick Paul Furth Sr. Professor of Law at the University of Michigan, disputes the monopoly regressivity claim

Asher, “Is More Antitrust the Answer to Rising Wealth Inequality?” ProMarket, <https://promarket.org/2016/07/08/antitrust-answer-rising-wealth-inequality/>

Daniel Crane, the associate dean for faculty and research and the Frederick Paul Furth Sr. Professor of Law at the University of Michigan, disputes the monopoly regressivity claim. He also disputes the growing notion that a more rigorous antitrust enforcement can diminish wealth inequality, arguing that “**more antitrust is not the answer to wealth inequality**.”4

In a recent paper, Crane challenges what he deems as an oversimplification, claiming that that the relationship between antitrust law and wealth inequality is “far more complex” and that **the relationship between income distribution and market power is “subtle, circumstantially contingent, and**, at least for a developed economy, **extremely difficult to generalize**.” Crane then goes on to argue that **more antitrust can in fact lead to greater inequality**, and that “when it comes to wealth equality and social justice in a developed economy, antitrust law cannot be calibrated to help, but it can be calibrated not to harm.”5

That the U.S. economy is suffering from increasing concentration levels, and that this rise in concentration has led in some cases to significant price increases, has been established in recent years by a growing number of studies. A recent paper by José Azar, Martin C. Schmalz, and Isabel Tecu6 showed that ticket prices are 3-11 percent higher due to common ownership among airlines. A similar paper by Azar, Schmalz, and Sahil Raina that looked at common ownership in U.S. banking7 found that that the largest U.S. banks share identical top shareholders, and that reduced competition in banking leads to worse service for consumers in the form of higher fees for deposit accounts and lower savings interest rates.

In health care, studies show that consolidations among hospitals led to significant price hikes. A 2015 study by Zack Cooper, Stuart Craig, Martin Gaynor, and John Van Reenen found that in markets where hospitals have a monopoly, prices are 15.3 percent higher than in more competitive markets that have four or more hospitals.8

To be sure, Crane does not completely dispute the idea that antitrust enforcement (or lack thereof) is related in some way to growing wealth inequality. What he does dispute, he says, is the “simplistic” version of the relationship between wealth inequality and antitrust, in which consumer-to-producer wealth transfers, enabled by lax antitrust enforcement and rent extractions, create regressive distributional effects. “In a complex, advanced economy, the lines of exploitation and profiting run in too many complicated and cross-cutting directions to permit broad generalization,” he writes in the paper.

“I am not claiming that there is no relationship between wealth inequality and antitrust or market competitiveness,” Crane tells ProMarket. “I am also not claiming that there couldn’t be certain antitrust interventions that would reduce wealth inequality. I think that there could be. All I am saying is that the overall picture, **this facile assumption that more antitrust means greater equality and wealth is just way over-broad**. The interactions between the distribution of wealth in society and market competitiveness are very complex and cross-cutting, and there are a number of ways in which more antitrust would actually increase wealth inequality.”

He adds: “I am not going to argue that there could never be case in which it would be appropriate to rationalize antitrust enforcement because of the inequality factor—if inequality is your priority, you could try to make a case—but it’s just that there are countercurrents where the effects are much more complicated than the people understand.”

In his paper, Crane disputes one of the key arguments for more antitrust enforcement–that shareholders and senior corporate managers are the main beneficiaries of monopoly rents. The literature on these issues, he argues, is ambiguous. Shareholding is something tens of millions of Americans do across social classes, as part of their 401(k)s and other retirement plans. **It is far from clear that shareholders reap the lion’s share of monopoly profits,** he notes, and a number of studies have shown that mergers don’t necessarily produce positive returns to the shareholders of the acquiring firm.

**Some empirical studies**, he claims, **have actually shown that CEO compensation declines as markets become less competitive**. Labor unions have also supported anti-competitive mergers in the past, he notes—such as the merger between US Airways and American Airlines—expecting that higher concentration would lead to a monopoly wage premium.

“When it comes to regressivity in monopoly, there are two questions: who bears the brunt—who is the effective payer of monopoly overcharges—and who obtains the gains. If you look at CEOs, for instance, the economic literature on CEOS earning a higher wage or stock option in more concentrated markets is very weak. In fact, there’s **some literature** that **suggests** that **CEOs actually earn a lower wage in monopoly markets**. If it’s a monopoly market, they’re less valuable to the firm, because it’s easier to generate income. There’s some literature suggesting it’s precisely where you see highly paid corporate executives that markets are very competitive, because then special talent is most beneficial to shareholders,” he says.

Moreover, Crane argues, antitrust cases have been brought not only against abusive corporations, but against middle-class professionals, such as music teachers, dentists, and lawyers. As an example, he points to a case brought by the Department of Justice against the National Association of Realtors in 2005, a case that concerned restrictions on home buyers to search for listings online.“If you look at statistics on the income of relators and the income of people selling homes, the income profile of a home-selling family is roughly twice the income profile of a realtor, on average,” he says. “Which means that if these allegations were correct, this is a huge wealth transfer from much-richer home sellers to much poorer realtors, and the enforcement action would have actually been regressive.” His point, he stresses, is not to dispute the case, but the notion that antitrust enforcement necessarily leads to progressive wealth redistribution.

Another factor that is often not taken into account, he argues, is government purchasing. Monopolists, he notes, often sell to “large intermediary organizations, which may distribute the incidence of monopoly charges progressively.” In the US, federal procurement accounts for roughly one-seventh of the GDP, not including state and local governments. Government, he argues, pays these monopoly overcharges and ultimately transmits them to taxpayers. Since the U.S. tax code is generally progressive, he argues, those overcharges are being borne progressively. Meaning: wealthy people should, in theory at least, pay a greater share, “which actually means that an antitrust intervention that diminishes anticompetitive conduct in government procurement actually has the effect of increasing wealth inequality.”

When it comes to the issue of price discrimination, says Crane, the relatively wealthy tend to be exploited proportionally more than the relatively poor. “According to most economic accounts, price discrimination has progressive distribution effects, meaning that a greater share of the higher prices charged by price discrimination comes from wealthier individuals than from poorer ones. That’s not uniformly true, but as a generality, in a market characterized by less competition, as monopolists are increasing their prices they are going to be charging proportionally higher prices on higher-income people, on average.”

**The proponents of government antitrust action**, argues Crane, **ignore private efforts to curtail monopoly power**. Government, he argues, should “get out of the way” of these private efforts. In the paper, he writes: “When it comes to wealth equality and social justice in a developed economy, **antitrust law cannot be calibrated to help, but it can be calibrated not to harm**.”

“I think it’s just a mistake, as a general matter, to include reducing wealth inequality as one of the goals of antitrust law,” says Crane. “I’m resisting the idea that somehow talking about wealth inequality will improve antitrust enforcement. **If anything, it will just distract, making it a political hot potato, but I don’t think it will have any appreciable effect on wealth inequality**. Antitrust law works best when it’s concerned with economic efficiency and the protection of consumer welfare. That has been the consensus by economists, people in the field, and antitrust agencies for several decades now. My concern [is] that at a political level, people are looking for new scapegoats for wealth inequality, and particularly in recent times people have been looking at weak antitrust enforcement.”

1. **Specifically, concentration is NOT the root cause.**

**Gotts ‘18** [Ilene Knable; February 2018; J.D. from Georgetown University Law Center, antitrust partner at Watchtell, Lipten, Rosen & Katz, recognized as one of the world’s top antitrust lawyers by the Euromoney’s Women in Business Law Lifetime Achievement Award; "Back to the Future: Should the “Consumer Welfare” Standard Be Replaced in U.S. M&A Antitrust Enforcement?" Antitrust Review, Volume 1, p. 1-31]

But what does income inequality have to do with antitrust enforcement generally, and with M&A activity specifically? Some Progressive think tanks, scholars, advocates, and others have issued reports blaming inadequate antitrust enforcement for **high profits**, **concentration**, and, ultimately, **inequality effects**.68 University of Chicago Economics Professor Luigi Zingales similarly has indicated that there is “a direct connection between economic power, bigness, and political power.”69 The University of Chicago’s Booth School of Business held a conference in March 2017, entitled “Is There a Concentration Problem in America?.” Many of the speakers at the conference endorsed the need for antitrust enforcement to be strengthened: The Economist article on the conference is accurately entitled “The University of Chicago worries about a lack of competition. Its economists used to champion big firms, but the mood has shifted.”70

So, too, did the Obama Administration’s leaders of the antitrust authorities express concerns. For instance, Renata Hesse, while Acting Assistant Attorney General (“AAG”) in September 2016, said that the “legislative history of the Sherman Act makes it clear that the antitrust laws were intended to benefit participants in the American economy broadly—not just in their capacity as consumers of goods and services.”71

The **data** may **not actually support** the claim that **increased concentration** is the **source** of political and economic inequality. More fundamentally, as DOJ economist Greg Werden and Vanderbilt University Economics Professor Luke Froeb point out, none of the Progressive advocates have demonstrated **increased** concentration of **antitrust cognizable markets**, but instead make these claims based on **data** that are **far too aggregated**

.72 In addition, Werden and Froeb indicate that, even where market concentration has increased, that does not mean that there has been a **failure of antitrust law** or its enforcement; market concentration naturally increases when the most innovative and efficient firms grow, and correlates with the conclusions on concentration, as well as whether such an increase in concentration necessarily proves a decline in competition.73 However, assuming that both of the concentration concerns were true, Professor Carl Shapiro indicates:

Antitrust policy can address concerns about rising concentration and high corporate profits

(a) by increasing cartel enforcement efforts; (b) by imposing tighter controls on mergers; and (c) by taking a tougher approach to exclusionary conduct by dominant firms. Looking at competition policy more broadly, additional tools can come into play: (d) adopting policies that reduce entry barriers;74 (e) actively breaking up large firms in concentrated markets;75 and (f) regulating firms deemed to have substantial market power.76

Professor Shapiro stops short of suggesting that the last three of these actions be undertaken as a part of antitrust enforcement.

Professor Herbert Hovenkamp further argues that an antitrust policy that focuses on **wealth inequality** could actually **harm consumers**.77 For instance, a policy that condemned firms that **produce lower prices** or **higher quality** than rivals might “improve” distribution of wealth or protect smaller competitors, but at what cost to consumers? Or, for that matter, at what cost to the **creation** of **new jobs** from the increased output achieved by the **efficient firm**?

1. **It’s backwards---concentration solves inequality.**

**Litan 18** – B.S. in Economics, the Wharton School; J.D., Yale Law School; Ph.D., Yale University. Non-Resident Senior Fellow at the Brookings Institution; previously Vice President and Director of Economic Studies

(Robert Litan, “A Scalpel, Not an Axe: Updating Antitrust and Data Laws to Spur Competition and Innovation, September 2018, <https://www.progressivepolicy.org/wp-content/uploads/2018/09/PPI_AntitrustandDataLaws_2018.pdf>)

Nonetheless, fears have been expressed from across the political spectrum about the growing power of the major tech platforms – especially The Four – for stifling innovation. It is important in assessing any such claims to distinguish between the factors that have led to tech platform successes, and subsequent activities of certain platforms once they have gained some measure of market power or influence.

As for their success, there is no evidence – nor do I detect any serious argument – for the proposition that any of the major tech platforms earned their positions through anti-competitive means. Even when the Department of Justice twice sued Microsoft in the 1990s – initially for abusive licensing practices in 1994, which was settled by a consent decree, and then again in 1998 for unlawfully maintaining its Windows operating systems (OS) monopoly for personal computers, ending in certain restrictions on Microsoft’s behavior – the Department never argued that the company achieved its OS monopoly unlawfully. Likewise, each of The Four has achieved its success through superior products or services that consumers or users clearly want (shortly, I address arguments that the success of Facebook and Google is attributable, at least in part, to mergers that should not have been approved).

Moreover, in each of these cases, the tech platforms have taken advantage of economies of scale given the high fixed costs (but low to zero marginal costs) of serving additional users/ customers, or “network effects” arising from the fact that the value of their networks or platforms increases with the number of users, or both. Put differently, tech platform markets (for perfectly legitimate and well-understood reasons) tend toward monopoly – “winner take all” – or at least a high degree of market concentration.8

**Competition has not somehow been “lessened” when successful platforms invent a product or service that did not previously exist**. Furthermore, **despite their dominance in one market or sector** (which may not constitute a “relevant market” for antitrust purposes) – social media (Facebook), online commerce (Amazon), Internet search (Google), premium smartphones (Apple) – **the platforms are invading each other’s turf and**, in turn, **creating new kinds of competition against each other**. Witness Facebook’s competition with Google for online ads, which Apple is just joining. Likewise, while Google may dominate general Internet searches, its chief competitor for product searches is Amazon.

Speaking of Amazon, though businesses in various parts of the economy are fearful of that company’s business model, recent research documents that online commerce, which **Amazon** has pioneered, **has kept consumer product inflation in check** – **and**, in many cases, **helped drive prices downward**. This clearly benefits consumers.9 The Chairman of the Federal Reserve Board, Jerome Powell, has pointed to the “**Amazon effec**t” as potentially a major reason the **overall inflation** rate has **not accelerated** even as the **unemployment** rate **has fallen** to historic lows.10 It is **hard to square these developments with claims** that **competition has weakened** in consumer product markets. **All of this is good for consumers** and workers since, other things being equal, less inflation at any given level of unemployment enables the Fed to permit the economy to run “hotter,” with less unemployment, than might otherwise be the case.

Amazon, Apple and Alphabet also have entered the entertainment business, joining another tech platform, Netflix, and the traditional Hollywood studios – in the process, providing much stronger competition in the content generation market. Significantly, the tech companies’ entry into content is de novo, or from scratch, rather than through acquisition of existing firms, except for Alphabet’s acquisition of YouTube – a content site Google (later Alphabet) beefed up after it was acquired.11

Each of the tech platforms already has entered (or is looking to enter) other lines of business – either **creating new markets or adding to competition in existing ones**. Examples include Alphabet’s Waymo division that is working hard to commercialize driverless vehicles, and Amazon’s apparent intention to enter the transportation market – not only to make the company independent of third-party transporters such as FedEx, UPS and the U.S. Postal Service, but eventually to compete directly against them, potentially bringing down transportation costs as Amazon has done in other markets it has entered.

1. **Inequality doesn’t cause war**

Gal **Ariely 16**, senior lecturer in the Department of Politics & Government, Ben-Gurion University of the Negev, PhD from the University of Haifa’s School of Political Sciences, “Does National Identification Always Lead to Chauvinism? A Cross-national Analysis of Contextual Explanations,” Globalizations, 13(4), 10.1080/14747731.2015.1111654

With respect to internal explanations, the effects of income inequality and ethnic diversity are presented in Table 3. Models 3.1 and 3.2 indicate that neither directly affects chauvinism. H4 is therefore not supported. The results suggest, however, that both have a negative effect on the national-identification slopes. Contrary to our expectations, countries with higher levels of economic and ethnic division appear to exhibit a weaker relation between national identification and chauvinism. While these findings might seem to contradict H5, the pattern was caused by outliers. After excluding South Africa—the most unequal and ethnic diverse country in our sample—the effect of ethnic diversity is not even of borderline significance. After excluding Chile—the most unequal country in our sample—the interaction effects for economic inequality were also far from significant. The results, therefore, do not support H5.21 Conclusions During the historic phone call between President Obama and Iranian President Sheikh Hasan Rouhani in September 2013, the latter stated that his country’s nuclear program ‘represents Iran’s national dignity’.22 This declaration reflects the common perception that Iran’s nuclear program mobilizes Iranians in support of resisting further national humiliation at the hands of foreigners (Moshirzadeh, 2007). This reflects the important role national feelings play in the contemporary international arena. Evidence from other examples—such as the Israeli-Palestine conflict—indicates that national identity serves as a key factor in conflict resolution. The prominence of national feelings is not limited to the Middle East, their effect on public attitudes towards international issues, and conflicts also being manifest in the West (Billig, 1995; Kinder & Kam, 2010). It is thus hardly surprising that scholars seeking to develop a better understanding of conflicts adopt a social-psychology perspective, replacing the deterministic view that identification with one’s in-group necessarily leads to antagonism towards out-groups with an examination of the broader social context. In line with this approach, the present paper focuses on the way in which political and social contexts encourage chauvinistic views towards the international arena and how they affect the relation between national identification and chauvinism. Integrating various social and psychological theories, we investigated two external contextual explanations (globalization and conflict) and an internal explanation (social division). Employing cross-national survey data, we examined the relation between national identification and chauvinism across 33 countries. The findings indicate that a positive relationship exists between national identification and chauvinism across most of the countries, although the level differs from country to country. Using a multilevel regression analysis, we tested to see whether globalization, conflict, and social division correlate with this variation. The results indicate that social and political contexts are related to chauvinism and the ways national identifi- cation and chauvinism are linked. Although a closer relation exists between national identification and chauvinism in more globalized countries, globalization failed to explain the variation in chauvinism itself. These findings support the notion that globalization highlights the importance of national identity (Calhoun, 2007; Castells, 2011). While those sections of globalized societies that are attached to their country also tend to resist international cooperation and endorse hostile views, the complexity of the phenomenon—as evinced by the divergent findings of previous studies (e.g. Jung, 2008; Norris & Inglehart, 2009)—calls for further research of this interpretation. The fact that the current study is cross-sectional must also be taken into account, the findings adducing the relation but not the causal relations between the variables. In contrast to experimental studies, the present design is similarly limited in its ability to offer a robust control for alternative explanations. Another external factor found to be relevant—to a certain degree—was conflict. Countries that suffered large numbers of deaths in conflicts and mobilized resources and personnel exhibited higher levels of chauvinism. When other indices for conflict were used, however, these results were not replicated. A possible explanation for this finding lies in the inherent limitation in the way in which conflicts are measured across various countries. Measuring international conflicts is a challenging task (Anderton & Carter, 2011). While the ways of measuring conflict were chosen because they reflect different dimensions of conflict in order to be representative of a wide range of countries, the problem of comparability cannot be ignored. An alternative explanation may derive from the fact that only deaths from conflict and resources/personnel mobilization are sufficiently significant to contribute to chauvinism. The limitations of our measurements of conflict and research design mean that this idea must remain speculative, however. In addition, it is important to emphasize that the sample of countries is also limited as many countries are not involved in conflict and there is also limited variation in the types of conflicts. Contrary to what the divisionary theory of national mobilization would lead us to expect, neither economic inequality nor ethnic diversity were related to chauvinism or affected the relation between national identification and chauvinism. This finding might also be explained by the limitation of the current research design. The number of countries included in the ISSP 2003 National Identity Module being relatively small and the sample only covering countries with available survey data, the results relate solely to this specific sample of countries. Across another set of countries, social division might play a far more significant role. Another explanation might be the meaning given to national identification and chauvinism across the countries. While evidence exists for the comparability of the scales across most of the countries, the divergent meaning probably attributed to them in Germany, the United States, and Israel might form an additional limitation. The central finding is that both chauvinism and the relation between national identification and chauvinism are related to contextual factors. What ramifications do these results possess for peace research? Firstly, the fact that national identification and chauvinism are not axiomatically related to one another across all the countries supports the notion that national identifi- cation and chauvinism should not be viewed as deterministic or generic in nature (Brewer, 2001; Cook-Huffman, 2009; Spears, 2008). The relation between national identification and conflict is far more complex than has traditionally been assumed and is directly affected by social context. In view of the multiple transformations national identity is undergoing in the contemporary world, research would do well to pay greater attention to the impact of such changes on conflicts.

1. **No impact to nationalism.**

Louis F. **Cooper 16**, His online writing includes “Reflections on U.S. Foreign Policy” at the U.S. Intellectual History Blog (July 16, 2014). His Ph.D. is from the School of International Service, American University., 12-6-2016, "WPTPN: Will Populist Nationalism Lead to Great-Power War?," No Publication, http://duckofminerva.com/2016/12/wptpn-will-populist-nationalism-lead-to-great-power-war.html

Several reasons present themselves. First, nuclear weapons have given the prospect of a global war, or any great-power war, a possibility of **civilization-ending finality** that it did not have in the past. Second, the security architecture created under U.S. leadership after World War II has arguably worked to **reduce the likelihood of major armed conflict** among the great powers. Third, the existence of a network of **international institutions**, both inside and outside the UN system, has pushed in the same direction. Fourth, it is very possible that, as John Mueller and Christopher Fettweis have argued, decision-makers have to come see great-power war as “**subrationally unthinkable**, or not even part of the option set for the great powers.”[ii] The extreme destructiveness of the twentieth century’s world wars, fueled partly by developments in technology, might well have produced long-term effects on how leaders and publics think about global or great-power war, in a way, for instance, that the Napoleonic Wars, for all their horror and bloodiness, did not. Phil Arena’s recent contribution to this series argues that if the U.S. under a Trump administration signals an unwillingness to defend its allies, then Putin might be tempted to gamble on an invasion of the Baltics or Kim Jong-Un similarly might gamble on an invasion of South Korea (and that would drag in China). Putting aside Kim Jong-Un for the moment as a special case, let’s consider Putin. As long as NATO exists – and Trump, despite his statements about the unfairness of the distribution of cost burdens, has not suggested, as far as I’m aware, that he wants to dissolve the alliance – then Putin would have to assume that an attack on the Baltics would trigger a NATO response. Even if Putin does not see great-power war as unthinkable or outside his “option set,” one would assume that for reasons of pure self-interest he would not want to risk a nuclear war. Nor, one might think, would he want to jeopardize the prospect of better (from his standpoint) relations with a U.S. administration less concerned with, among other things, his commission of war crimes in Syria or his annexation of Crimea than the Obama administration has been. For these reasons, I’m not too worried that the advent of the Trump administration will lead to a war with Russia over the Baltics. The Korean peninsula is, perhaps, a more worrisome situation. Chances are, however, that Trump, after taking office, will be prevailed upon to make reassuring noises about the U.S. commitment to South Korea, and that should suffice to deter Kim Jong-Un from doing anything too rash. The cautionary point here, admittedly, is that it’s not clear whether Kim can be counted on to behave in a minimally rational fashion. Putin, whatever one might think of him, is rational. It’s not entirely clear whether Kim is. However, if Kim is irrational then all bets are off regardless of what U.S. policy pronouncements are forthcoming. World politics is not invariably cyclical and states can **learn from experience** (as even Gilpin acknowledged). If one admits this and pays **due attention to history**, then it is plausible to think that **the force of populist nationalism**, as expressed in more erratic and/or less ‘internationalist’ official policy, will **not**, whatever its **other effects may be**, **increase the low likelihood of a global war**.

# 2NC

## Blockchain DA

**Financial blockchain is key to preventing terrorism**

**Readling and Schardin 16** – Justin Schardin is the Former Director of the Financial Regulatory Reform Initiative

Kristofer Readling and Justin Schardin, "Why Blockchain Could Bolster Anti-Money Laundering Efforts | Bipartisan Policy Center," Bipartisanpolicy, 6-2-2016, https://bipartisanpolicy.org/blog/blockchain-anti-money-laundering/

Blockchain could dramatically improve the **speed** and **effectiveness** of AML/CTF efforts by creating a **system-wide** ledger accessible in **real time**. This ledger would maintain **all transactional data** throughout a network of institutions rather than at a single institution. Thus, a network that included all financial institutions could **avoid** the information **asymmetry problem** above by giving law enforcement the ability to **see the entire system’s ledger** rather than just the suspicious activity reports **currently submitted** by individual institutions.

Wikipedia uses an analogous structure to maintain its articles by crowdsourcing knowledge from anyone willing to author or edit them. If someone adds erroneous information, the community’s editors will generally correct it. Since all of the articles and the history of edits to those articles are simultaneously visible to everyone who views the site, it is difficult for con-artists to make lasting changes.

Blockchain goes further than Wikipedia by storing an **entire database** of transactions (in the case of a financial blockchain) with each party **on the network** rather than on a single third-party server. This provides **enormous security benefits** because in order for a hacker to fraudulently edit the blockchain and thus steal money or assets, they would have to hack **more than half the network** rather than a single server. The more institutions that are part of the blockchain, the more difficult that becomes.

The security benefits of blockchain mean that transactions can be cleared faster because there is no need for third party verification of transactions. It also means that records of those transactions are **much more trustworthy**. This combination of **speed and trust** is an **essential improvement** over the current framework because of the **need to prevent** rather than prosecute **terrorism**.

A significant problem with blockchain that would need to be overcome is how to store the entire database at each institution while still protecting people’s privacy. There are good reasons for people to hide information from their bank or insurance company that have nothing to do with illegal activity. Therefore, many elements of any future financial system blockchain would likely need to be encrypted to protect personal information and corporate secrets.

With an encrypted blockchain, procedures could be put in place to grant financial regulators and law enforcement access **when they needed it**. This is similar to the current system except that instead of waiting for each bank to review its own transactions for suspicious activity and report them, law enforcement would be able to **review the entire network** at once **without waiting** for a bank to check its books. This could provide **essential time savings** in a world where **terrorism is a chief concern**.

**That causes nuclear escalation and extinction.**

Matthew **Bunn &** Nickolas **Roth 17**. \*Professor of practice at the Harvard Kennedy School. \*\*Research associate at the Belfer Center’s Project on Managing the Atom at Harvard University and research fellow at the Center for International and Security Studies at the University of Maryland. “The effects of a single terrorist nuclear bomb.” Bulletin of the Atomic Scientists, http://thebulletin.org/effects-single-terrorist-nuclear-bomb11150

The escalating threats between North Korea and the United States make it easy to forget the “nuclear nightmare,” as former US Secretary of Defense William J. Perry put it, that could result even from the use of just a single terrorist nuclear bomb in the heart of a major city. At the risk of repeating the vast literature on the tragedies of Hiroshima and Nagasaki—and the substantial literature surrounding nuclear tests and simulations since then—we attempt to spell out here the likely consequences of the explosion of a **single terrorist nuclear bomb** on a major city, and its **subsequent ripple effects** on the rest of the planet. Depending on where and when it was detonated, the blast, fire, initial radiation, and long-term radioactive fallout from such a bomb could leave the heart of a major city a smoldering radioactive ruin, killing tens or **hundreds of thousands of people** and wounding hundreds of thousands more. Vast areas would have to be evacuated and might be uninhabitable for years. Economic, political, and social **aftershocks** would **ripple throughout the world**. A single terrorist nuclear bomb would change history. The country attacked—and the world—would never be the same. The idea of terrorists accomplishing such a thing is, unfortunately, not out of the question; it is far easier to make a crude, unsafe, unreliable nuclear explosive that might fit in the back of a truck than it is to make a safe, reliable weapon of known yield that can be delivered by missile or combat aircraft. **Numerous government studies** have concluded that **it is plausible** that a sophisticated terrorist group could make a crude bomb if they got the needed nuclear material. And in the last quarter century, there have been some 20 seizures of stolen, weapons-usable nuclear material, and at least two terrorist groups have made significant efforts to acquire nuclear bombs. Terrorist use of an actual nuclear bomb is a low-probability event—but the **immensity** of the consequences means that even a small chance is enough to justify an intensive effort to reduce the risk. Fortunately, since the early 1990s, countries around the world have significantly reduced the danger—but **it remains very real**, and there is more to do to ensure this nightmare never becomes reality. Brighter than a thousand suns. Imagine a crude terrorist nuclear bomb—containing a chunk of **highly enriched uranium** just under the size of a regulation bowling ball, or a much smaller chunk of plutonium—suddenly detonating inside a delivery van parked in the heart of a major city. Such a terrorist bomb would release as much as 10 kilotons of explosive energy, or the equivalent of 10,000 tons of conventional explosives, a volume of explosives large enough to fill all the cars of a mile-long train. In a millionth of a second, all of that energy would be released inside that small ball of nuclear material, creating temperatures and pressures as high as those at the center of the sun. That furious energy would **explode outward**, releasing its energy in three main ways: **a powerful blast wave**; **intense heat**; **and deadly radiation**. The ball would expand almost **instantly** into a fireball the width of four football fields, **incinerating** essentially everything and **everyone** within. The heated fireball would rise, sucking in air from below and expanding above, creating the **mushroom cloud** that has become the symbol of the terror of the nuclear age. The ionized plasma in the fireball would create a localized **electromagnetic pulse** more powerful than lightning, **shorting out communications and electronics nearby**—though most would be destroyed by the bomb’s other effects in any case. (Estimates of heat, blast, and radiation effects in this article are drawn primarily from Alex Wellerstein’s “Nukemap,” which itself comes from declassified US government data, such as the 660-page government textbook The Effects of Nuclear Weapons.) At the instant of its detonation, the bomb would also release an **intense** burst of gamma and neutron radiation which would be lethal for nearly everyone directly exposed within about two-thirds of a mile from the center of the blast. (Those who happened to be shielded by being inside, or having buildings between them and the bomb, would be partly protected—in some cases, reducing their doses by ten times or more.) The nuclear flash from the heat of the fireball would radiate in both visible light and the infrared; it would be “brighter than a thousand suns,” in the words of the title of a book describing the development of nuclear weapons—adapting a phrase from the Hindu epic the Bhagavad-Gita. Anyone who looked directly at the blast would be blinded. The heat from the fireball would ignite fires and horribly burn everyone exposed outside at distances of nearly a mile away. (In the Nagasaki Atomic Bomb Museum, visitors gaze in horror at the bones of a human hand embedded in glass melted by the bomb.) No one has burned a city on that scale in the decades since World War II, so it is difficult to predict the full extent of the fire damage that would occur from the explosion of a nuclear bomb in one of today’s cities. Modern glass, steel, and concrete buildings would presumably be less flammable than the wood-and-rice-paper housing of Hiroshima or Nagasaki in the 1940s—but many questions remain, including exactly how thousands of broken gas lines might contribute to fire damage (as they did in Dresden during World War II). On 9/11, the buildings of the World Trade Center proved to be much more vulnerable to fire damage than had been expected. Ultimately, even a crude terrorist nuclear bomb would carry the possibility that the countless fires touched off by the explosion would **coalesce** into a **devastating firestorm**, as occurred at Hiroshima. In a firestorm, the rising column of hot air from the massive fire sucks in the air from all around, creating **hurricane-force winds**; everything flammable and everything alive within the firestorm would be consumed. The fires and the dust from the blast would make it extremely difficult for either rescuers or survivors to see. The explosion would create a **powerful blast** wave rushing out in every direction. For more than a quarter-mile all around the blast, the pulse of pressure would be over 20 pounds per square inch above atmospheric pressure (known as “overpressure”), destroying or severely damaging even sturdy buildings. The combination of blast, heat, and radiation would kill virtually everyone in this zone. The blast would be accompanied by winds of many hundreds of miles per hour. The damage from the explosion would extend far beyond this inner zone of almost total death. Out to more than half a mile, the blast would be strong enough to collapse most residential buildings and create a serious danger that office buildings would topple over, killing those inside and those in the path of the rubble. (On the other hand, the office towers of a modern city would tend to block the blast wave in some areas, providing partial protection from the blast, as well as from the heat and radiation.) In that zone, almost anything made of wood would be destroyed: Roofs would cave in, windows would shatter, gas lines would rupture. Telephone poles, street lamps, and utility lines would be severely damaged. Many roads would be blocked by mountains of wreckage. In this zone, many people would be killed or injured in building collapses, or trapped under the rubble; many more would be burned, blinded, or injured by flying debris. In many cases, their charred skin would become ragged and fall off in sheets. The effects of the detonation would act in deadly synergy. The smashed materials of buildings broken by the blast would be far easier for the fires to ignite than intact structures. The effects of radiation would make it far more difficult for burned and injured people to recover. The combination of burns, radiation, and physical injuries would cause far more death and suffering than any one of them would alone. The silent killer. The bomb’s immediate effects would be followed by a slow, lingering killer: radioactive fallout. A bomb detonated at ground level would dig a huge crater, hurling tons of earth and debris thousands of feet into the sky. Sucked into the rising fireball, these particles would mix with the radioactive remainders of the bomb, and over the next few hours or days, the debris would rain down for miles downwind. Depending on weather and wind patterns, the fallout could actually be deadlier and make a far larger area unusable than the blast itself. Acute radiation sickness from the initial radiation pulse and the fallout would likely affect tens of thousands of people. Depending on the dose, they might suffer from vomiting, watery diarrhea, fever, sores, loss of hair, and bone marrow depletion. Some would survive; some would die within days; some would take months to die. Cancer rates among the survivors would rise. Women would be more vulnerable than men—children and infants especially so. Much of the radiation from a nuclear blast is short-lived; radiation levels even a few days after the blast would be far below those in the first hours. For those not killed or terribly wounded by the initial explosion, the best advice would be to take shelter in a basement for at least several days. But many would be too terrified to stay. Thousands of panic-stricken people might receive deadly doses of radiation as they fled from their homes. Some of the radiation will be longer-lived; areas most severely affected would have to be abandoned for many years after the attack. The combination of radioactive fallout and the devastation of nearly all life-sustaining infrastructure over a vast area would mean that hundreds of thousands of people would have to evacuate. Ambulances to nowhere. The explosion would also destroy much of the city’s ability to respond. Hospitals would be leveled, doctors and nurses killed and wounded, ambulances destroyed. (In Hiroshima, 42 of 45 hospitals were destroyed or severely damaged, and 270 of 300 doctors were killed.) Resources that survived outside the zone of destruction would be utterly overwhelmed. Hospitals have no ability to cope with tens or hundreds of thousands of terribly burned and injured people all at once; the United States, for example, has 1,760 burn beds in hospitals nationwide, of which a third are available on any given day. And the problem would not be limited to hospitals; firefighters, for example, would have little ability to cope with thousands of fires raging out of control at once. Fire stations and equipment would be destroyed in the affected area, and firemen killed, along with police and other emergency responders. Some of the first responders may become casualties themselves, from radioactive fallout, fire, and collapsing buildings. Over much of the affected area, **communications would be destroyed**, by both the physical effects and the electromagnetic pulse from the explosion. Better preparation for such a disaster could save thousands of lives—but ultimately, there is no way any city can genuinely be prepared for a catastrophe on such a historic scale, occurring in a flash, with zero warning. Rescue and recovery attempts would be impeded by the destruction of most of the needed personnel and equipment, and by fire, debris, radiation, fear, lack of communications, and the immense scale of the disaster. The US military and the national guard could provide critically important capabilities—but federal plans assume that “no significant federal response” would be available for 24-to-72 hours. Many of those burned and injured would wait in vain for help, food, or water, perhaps for days. The scale of death and suffering. How many would die in such an event, and how many would be terribly wounded, would depend on where and when the bomb was detonated, what the weather conditions were at the time, how successful the response was in helping the wounded survivors, and more. Many estimates of casualties are based on census data, which reflect where people sleep at night; if the attack occurred in the middle of a workday, the numbers of people crowded into the office towers at the heart of many modern cities would be far higher. The daytime population of Manhattan, for example, is roughly twice its nighttime population; in Midtown on a typical workday, there are an estimated 980,000 people per square mile. A 10-kiloton weapon detonated there might well kill half a million people—not counting those who might die of radiation sickness from the fallout. (These effects were analyzed in great detail in the Rand Corporation’s Considering the Effects of a Catastrophic Terrorist Attack and the British Medical Journal’s “Nuclear terrorism.”) On a typical day, the wind would blow the fallout north, seriously contaminating virtually all of Manhattan above Gramercy Park; people living as far away as Stamford, Connecticut would likely have to evacuate. Seriously injured survivors would greatly outnumber the dead, their suffering magnified by the complete inadequacy of available help. The psychological and social effects—overwhelming sadness, depression, post-traumatic stress disorder, myriad forms of anxiety—would be profound and long-lasting. The scenario we have been describing is a groundburst. An airburst—such as might occur, for example, if terrorists put their bomb in a small aircraft they had purchased or rented—would extend the blast and fire effects over a wider area, killing and injuring even larger numbers of people immediately. But an airburst would not have the same lingering effects from fallout as a groundburst, because the rock and dirt would not be sucked up into the fireball and contaminated. The 10-kiloton blast we have been discussing is likely toward the high end of what terrorists could plausibly achieve with a crude, improvised bomb, but even a 1-kiloton blast would be a catastrophic event, having a deadly radius between one-third and one-half that of a 10-kiloton blast. These hundreds of thousands of people would not be mere statistics, but countless individual stories of loss—parents, children, entire families; all religions; rich and poor alike—killed or horribly mutilated. Human suffering and tragedy on this scale does not have to be imagined; it can be remembered through the stories of the survivors of the US atomic bombings of Hiroshima and Nagasaki, the only times in history when nuclear weapons have been used intentionally against human beings. The pain and suffering caused by those bombings are almost beyond human comprehension; the eloquent testimony of the Hibakusha—the survivors who passed through the atomic fire—should stand as an eternal reminder of the need to prevent nuclear weapons from ever being used in anger again. Global economic disaster. The economic impact of such an attack would be **enormous**. The effects would **reverberate** for so far and so long that they are difficult to estimate in all their complexity. Hundreds of thousands of people would be too injured or sick to work for weeks or months. Hundreds of thousands more would evacuate to locations far from their jobs. Many places of employment would have to be abandoned because of the radioactive fallout. Insurance companies would reel under the losses; but at the same time, many insurance policies exclude the effects of nuclear attacks—an item insurers considered beyond their ability to cover—so the owners of thousands of buildings would not have the insurance payments needed to cover the cost of fixing them, thousands of companies would go bankrupt, and banks would be left holding an immense number of mortgages that would never be repaid. Consumer and investor confidence would likely be **dramatically affected**, as worried people slowed their spending. Enormous new homeland security and military investments would be very likely. If the bomb had come in a shipping container, the targeted country—and possibly others—might stop all containers from entering until it could devise a system for ensuring they could never again be used for such a purpose, throwing a wrench into the gears of global trade for an extended period. (And this might well occur even if a shipping container had not been the means of delivery.) Even the far smaller 9/11 attacks are estimated to have caused economic aftershocks costing almost $1 trillion even excluding the multi-trillion-dollar costs of the wars that ensued. The cost of a terrorist nuclear attack in a major city would likely be many times higher. The most severe effects would be local, but the effects of trade disruptions, reduced economic activity, and more would reverberate around the world. Consequently, while some countries may feel that nuclear terrorism is only a concern for the countries most likely to be targeted—such as the United States—in reality it is a threat to everyone, everywhere. In 2005, then-UN Secretary-General Kofi Annan warned that these global effects would push “tens of millions of people into dire poverty,” creating “a second death toll throughout the developing world.” One recent estimate suggested that a nuclear attack in an urban area would cause a global recession, cutting global Gross Domestic Product by some two percent, and pushing an additional 30 million people in the developing world into extreme poverty. Desperate dilemmas. In short, an act of nuclear terrorism could rip the heart out of a major city, and cause ripple effects throughout the world. The government of the country attacked would face desperate decisions: How to help the city attacked? How to prevent further attacks? How to respond or retaliate? Terrorists—either those who committed the attack or others—would probably claim they had more bombs already hidden in other cities (whether they did or not), and threaten to detonate them unless their demands were met. The fear that this might be true could lead people to flee major cities in a large-scale, uncontrolled evacuation. There is very little ability to support the population of major cities in the surrounding countryside. The potential for widespread havoc and economic chaos is very real. If the detonation took place in the capital of the nation attacked, much of the government might be destroyed. A bomb in Washington, D.C., for example, might kill the President, the Vice President, and many of the members of Congress and the Supreme Court. (Having some plausible national leader survive is a key reason why one cabinet member is always elsewhere on the night of the State of the Union address.) Elaborate, classified plans for “continuity of government” have already been drawn up in a number of countries, but the potential for chaos and confusion—if almost all of a country’s top leaders were killed—would still be enormous. Who, for example, could address the public on what the government would do, and what the public should do, to respond? Could anyone honestly assure the public there would be no further attacks? If they did, who would believe them? In the United States, given the practical impossibility of passing major legislation with Congress in ruins and most of its members dead or seriously injured, some have argued for passing legislation in advance giving the government emergency powers to act—and creating procedures, for example, for legitimately replacing most of the House of Representatives. But to date, no such legislative preparations have been made. In what would inevitably be a desperate effort to prevent further attacks, traditional standards of civil liberties might be jettisoned, at least for a time—particularly when people realized that the fuel for the bomb that had done such damage would easily have fit in a suitcase. Old rules limiting search and surveillance could be among the first to go. The government might well impose martial law as it sought to control the situation, hunt for the perpetrators, and find any additional weapons or nuclear materials they might have. Even the far smaller attacks of 9/11 saw the US government authorizing torture of prisoners and mass electronic surveillance. And what standards of international order and law would still hold sway? The country attacked might well **lash out militarily** at whatever countries it thought might bear a portion of responsibility. (A terrifying description of the kinds of discussions that might occur appeared in Brian Jenkins’ book, Will Terrorists Go Nuclear?) With the nuclear threshold already crossed in this scenario—at least by terrorists—it is **conceivable** that some of the **resulting conflicts might escalate to nuclear use**. International politics could become more brutish and violent, with powerful states taking unilateral action, by force if necessary, in an effort to ensure their security. After 9/11, the United States led the invasions of two sovereign nations, in wars that have since cost hundreds of thousands of lives and trillions of dollars, while plunging a region into chaos. Would the reaction after a far more devastating nuclear attack be any less?

**Specific for fintech---acquisitions are still high---but, when material antitrust changes occur, mergers will be chilled**

* Biden’s XO was perceived, but material action hasn’t occurred yet, which has driven of rush of M&A now

**Trivedi 21** – Associate Editor for Payments Dive

Vaidik Trivedi, "Payments M&A is hot, but deals could face antitrust scrutiny," Payments Dive, 7-26-2021, https://www.paymentsdive.com/news/payments-ma-is-hot-but-deals-could-face-antitrust-scrutiny/603818/

Dive Brief:

* The fintech industry is set to go through “a **wave of consolidation**” for the remainder of 2021 and 2022, according to a July 21 report that analyzed fintech deals, including those in the payments industry, between January 2020 and March 31, 2021.The report was published jointly by the research firm S&P Global Market Intelligence, the law firm Shearman & Sterling and British banking company Barclays.
* Despite a global healthcare crisis and economic hurdles in 2020, **major acquisitions** in the payments industry **materialized**, like Worldline’s $8.6 billion acquisition of Ingenico, American Express’ acquisition of FinTech lender Kabbage for an undisclosed amount and Intuit’s $7 billion acquisition of Credit Karma.
* “The payments sector is one of the **brightest parts** of the larger fintech ecosystem,” Mark Chorazak, a Shearman & Sterling partner in the global Financial Institutions Advisory & Financial Regulatory practice said in an email. “Digital commerce and electronic payments, including digital wallet adoption, are almost certain to have an **upward trajectory** in the next several years.”

Dive Insight:

The pandemic ushered in an era of **mass digital adoption** as consumers looked to fight off the chances of contracting the virus. Digital payments volume and “the number of digital accounts **increased significantly** in 2020 as online commerce represented a larger share of overall commercial activity,” the report said.

This year, Bill.com, an expense management software company, acquired the company now known as DivvyPay Inc. for $2.5 billion while Tyler Technologies Inc. acquired government payments company NIC Inc. for $2.3 billion, the report said.

Major payments companies like PayPal and Square are adding new features to their offerings "as a growth strategy, breaking away from their traditional role as peer-to-peer or contactless payment providers into broader financial ecosystems,” the report stated.

PayPal launched crypto trending and transferring services along with deferred payments and QR code based payments as a contactless option. The San Jose, California-based based company also launched its hardware point-of-sale iZettle in the U.S. this past month.

As payments and banking get more digital, **tech companies might have an edge** over incumbent financial institutions that are still using legacy systems, CB Insights Analyst Elif Yayla said in an email last month.

Financial institutions are taking a mixed approach to digitizing their legacy systems. Some regional banks are looking to buy fintechs while others seek partnerships with younger fintech startups to digitize their products and build fees income.

Major financial institutions “are approaching payments in numerous ways, from acquisitions of certain payments platforms to partnerships to greater investment in their own payments infrastructure,” Chorazak said.

“The pandemic has demonstrated the importance and unique role of technology in responding effectively to new challenges,” the report cited U.S. Federal Reserve Governor Michelle Bowman as saying. “In the financial sector, I believe we may be seeing a quantum leap in the use of digital deposit, digital payments and online lending.”

Regulatory scrutiny

As the fintech industry matures, **regulators are keeping a close eye** on the industry. Regulators will watch “**M&A in the FinTech sector**, particularly when it involves incumbent players with large market shares and nascent competitors with the ability to innovate and disrupt a market,” the report said.

The U.S. Department of Justice’s antitrust investigation into Visa acquisition of Plaid led to the companies abandoning the merger.

“The payments and banking industries can expect **increased antitrust scrutiny**, particularly in light of the Biden Administration’s executive order calling for dozens of interagency actions to scrutinize consolidation activity,” Chorazak said. “Consumer protection issues, including rules governing financial data access rights for consumers of fintechs and banks, will be in focus as well. “

**Non-financial firms** like Walmart are also looking to **penetrate the fintech space** and have been active in the payments sector as well. Last month, Walmart announced its partnership with bill payment fintech PayNearMe to enable its customers to pay their bills in cash at its stores starting this August.

**Action now throws the system into chaos---it’s a bolt out of the blue that firms weren’t expecting in the short-term, and signals a novel, economy-wide shift in governmental approach that fundamentally changes the game**

**Tyler 21** – Senior Legal Analyst at Bloomberg Law

Eleanor Tyler, "ANALYSIS: The Very Purpose of Antitrust Law Is At Issue in 2022," Bloomberg Law, 11-1-2021, <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-the-very-purpose-of-antitrust-law-is-at-issue-in-2022>

**New Laws, Old Power Struggles**

While antitrust has become a hot topic in the past few years, this year saw big legislative pushes in a number of key jurisdictions to revise or reform antitrust/competition law itself. Behind those proposed changes is a **fundamental debate** about what the laws **should do** and **where the balance of power lies** between lawmakers, enforcers, and courts.

Laws applicable to tech platforms have occupied most of the antitrust news headlines this year, but the new measures that enforcers are considering—or, in some cases, implementing—will often apply **much more broadly** (including the proposed U.S. legislation). And more importantly, the changed approach to market regulation reflected in these laws has policy **implications for everyone**. **Antitrust is one of the few areas** in U.S. law that **talk openly about market power**; attitudes about the balance of power between consumers and enterprises, big and small businesses, and government and private businesses are **all involved** in the debate.

Some laws will make it through the legislative gauntlet, and they will **fundamentally shift investment patterns**, and may even shift entrenched power in a few big markets. The **long game of interpreting any new laws in the courts will begin shortly thereafter**. All of that means **uncertainty** for market participants and enforcers alike.

**Antitrust changes are uniquely harmful----automatic treble damage provisions mean legislative expansion overdeters and prevents beneficial conduct**

**Muris**, George Mason University Foundation Professor of Law, served from 2000-2004 as Chairman of the Federal Trade Commission, **‘21**

(Timothy J., “Private Antitrust Remedies: An Argument Against Further Stacking the Deck,” <https://instituteforlegalreform.com/research/private-antitrust-remedies-an-argument-against-further-stacking-the-deck/>)

**Overdeterrence** is a particular concern in antitrust doctrine because the **line** separating lawful from unlawful conduct can be **blurred** and much of the conduct falling on the lawful side of the line is socially beneficial. As economists William Baumol and Alan Blinder explain: One problem that haunts most antitrust litigation is that vigorous competition may **look very similar to acts that undermine competition** …. The **resulting danger** is that courts will **prohibit**, or the antitrust authorities will prosecute, acts that appear to be anticompetitive but that really are the opposite. The difficulty occurs because effective competition by a firm is always tough on its rivals.27

For example, excessive antitrust remedies for predatory pricing may not only deter firms from engaging in conduct that would ultimately be deemed unlawful, but also induce them to keep prices well above their costs and, in effect, hold a price umbrella over smaller, potentially litigious rivals. Such a regime would result in less competition and higher prices for consumers—the very outcomes the antitrust laws are designed to prevent. **Proposals to slap another layer of deterrence** on top of existing private remedies are particularly perverse because, as discussed above, the current U.S. regime is already overdeterrent, in that it subjects firms to unusually severe liability risks even for overt conduct subject to the rule of reason. **If anything**, Congress should consider aligning private antitrust remedies with remedies for analogous common law torts by, for example, **limiting treble damages** and one-way fee-shifting to cases involving hard-core violations that may elude detection, such as price-fixing cartels. In all events, Congress should not make **a bad situation worse** by ratcheting up **the level of overdeterrence**.

**It ensures procompetitive deals never leave the boardroom**

**Dushnitsky 21** – Gary Dushnitsky is an associate professor of Strategy and Entrepreneurship at London Business School. He also serves as a senior fellow at the Mack Institute for Innovation Management at the Wharton School of the University of Pennsylvania. Daniel Sokol is a professor of Law and affiliate professor of Business at the University of Florida

(Gary Dushnitsky and Daniel Sokol, “Competition laws could be a death knell for startup mergers and acquisitions,” 7/22/2021, The Hill, https://thehill.com/opinion/white-house/564321-competition-laws-could-be-a-death-knell-for-startup-mergers-and?rl=1)

Technology entrepreneurs and innovations **yet to be imagined** are in the crosshairs of **misguided antitrust legislation**. Antitrust policy is under the microscope from both political parties.

The Biden administration’s Executive Order on Promoting Competition in the American Economy lays the groundwork for the first-ever antitrust regulations for technology companies and internet platforms, and proposed legislation by Sens. Amy Klobuchar (D-Minn.) and Josh Hawley (R-Mo.) would rewrite antitrust law. Both bills and the order seek to **limit merger activity** focused on **acquisitions** **of smaller companies** by larger technology companies, with their proposals ranging from presuming anticompetitive effects to **outright prohibitions**.

However, these proposals likely will have **unintended consequences** that would **hamper innovation and entrepreneurship**. The result is that certain potential deals will **never leave the boardroom** and **others will be abandoned** because the **risks of antitrust** intervention are **too high**.

For deals that do move forward, many will be **challenged** under more **stringent merger laws**. Such a change in the law will **fundamentally alter the ability** of U.S. **companies to innovate** in the technology sector, and result in **collateral damage** across a **wide range of traditional industries** such as biotech, consumer goods and finance, along with sustainability-focused or previously neglected sectors.

**[A]---Our argument is not that tech giants make their own cryptocurrencies, but rather that they use a blockchain ledger system to streamline financial transactions---those are two distinct things**

**Sharma ND** – Blockchain Researcher, Developer & Consultant, part of the Forbes Asia 30 Under 30 Enterprise Tech List in 2018

Toshendra Kumar Sharma, "Some Common Myths About Blockchain," Blockchain-council, No Date, <https://www.blockchain-council.org/blockchain/some-common-myths-about-blockchain/>

Most Common Blockchain Myths You Should Know

Here is a list of the most common myths and misconceptions related to Blockchain technology.

Blockchain and Cryptocurrencies are Same

The majority of the crowd still believes that Blockchain and Cryptocurrencies mean the same thing, and therefore they use these terms interchangeably. One of the reasons for this myth is because of the fact that they both became famous around the same time. To **distinguish** both these terms, cryptocurrencies like Bitcoin are **digital assets** used as a **medium of exchange**. In fact, you can say that cryptocurrency is **one** of the applications of Blockchain. Here it is important to note that **not all** cryptocurrencies use Blockchain. IOTA is one such exceptional case.

Blockchain is basically a **decentralized distributed ledger technology** that **stores records** of transactions, maintained throughout **different computers** linked to each other through a **P2P network**.

**[B]---Their offense doesn’t apply---unlike traditional cryptocurrencies, blockchain tech created by big tech won’t be open-access, and the transparency of ledgers allows coordination with regulators**

**Zuluaga 19** – Former associate director of financial regulation studies, center for monetary and financial alternatives

Diego Zuluaga, "Of Libras and Zebras: What Are the True Financial Risks of the Facebook‐​Led Digital Currency? (Part III: National Security Risk)," Cato Institute, 7-17-2019, <https://www.cato.org/blog/libras-zebras-what-are-true-financial-risks-facebook-led-digital-currency-part-iii-national>

\*\*Libra = Facebook developed semi-cryptocurrency\*\*

National security risk

Even those who welcome the potential transaction-cost reductions and increased opportunities for peer-to-peer exchange that cryptocurrencies promise have **expressed concerns** about their use for criminal purposes. Such worries are understandable: Between 2011 and 2013, Bitcoin was the preferred medium of exchange on Silk Road, the online marketplace notorious for facilitating illicit drug purchases. And just this weekend the New York Times reported that Russian operatives working to undermine the 2016 Democratic presidential campaign used bitcoin to pay for some of their purchases.[1]

Criminals can attempt to use cryptocurrency, just as they can attempt to do so for their malicious activities.

But the **anecdotal evidence overstates** the degree to which cryptocurrencies **facilitate crime**. While the pseudonymous nature of cryptocurrency transactions disguises the identity of the people involved, most cryptocurrencies are a **poor instrument** for nefarious activities. This is because the transaction ledger, the blockchain, is **publicly accessible** and includes information about the **origin and destination** of cryptocurrency payments. Firms like Chainalysis (whose co-founder the Times article cited) and Elliptic have in fact made it their business to **pore through blockchains** on behalf of clients, **including the U.S**. government, **to combat fraud** and aid the pursuit of crime.

Libra seems even **less likely** to appeal to crooks. Unlike Bitcoin and Ethereum, the largest cryptocurrencies in circulation, Libra **will not** be an **open-access network** where **anyone** can purchase units of Libra, and generate new units, without going through an intermediary. Rather, the Libra Association expects the 100 members it hopes to have by 2020 to process Libra transactions through their own “validator nodes.” Sales of Libra to the public will take place through “authorized resellers,” which David Marcus, in his testimony Tuesday to the Senate Banking Committee, described as “a geographically distributed network of regulated custodians with investment-grade credit ratings.”

Both resellers and validators will act as intermediaries and be **subject to** prudential and consumer protection **rules**. Furthermore, digital wallet providers – who will support the applications people use to make and receive Libra payments – will collect personal information from Libra users to **comply with regulations** against **money-laundering** and **financial crime** in the jurisdictions where the user lives. For example, Calibra, Facebook’s own digital wallet subsidiary, has registered as a money services business with the Financial Crimes Enforcement Network (FinCEN) at the **U.S. Treasury**. Calibra also holds eight state money transmitter licenses as of July 16. From Marcus’ testimony, it seems Calibra would like to have **licenses in all U.S. jurisdictions** – states and territories – before Libra launches in 2020. Marcus also stated the Libra Association will register with FinCEN, despite being a Swiss-based foundation.

**Bank collapse is unique---triggers the cessation of modern life and total economic collapse---no possibility for an ’08 recovery**

**Partnoy 20** – Law professor at UC Berkeley, international research fellow at Oxford University, member of the Financial Economists Roundtable

Frank Partnoy, "Will the Banks Collapse?," The Atlantic, July/August 2020, https://www.theatlantic.com/magazine/archive/2020/07/coronavirus-banks-collapse/612247/

You can perhaps guess much of the rest: At some point, rumors will circulate that one major bank is near collapse. Overnight lending, which keeps the American economy running, will **seize up**. The Federal Reserve will try to arrange a bank bailout. All of that happened last time, too.

But this time, the bailout proposal will likely face **stiffer opposition**, from both parties. Since 2008, populists on the left and the right in American politics have grown suspicious of handouts to the big banks. Already irate that banks were inadequately punished for their malfeasance leading up to the last crash, critics will be outraged to learn that they so egregiously flouted the spirit of the post-2008 reforms. Some members of Congress will question whether the Federal Reserve has the authority to buy risky investments to prop up the financial sector, as it did in 2008. (Dodd-Frank limited the Fed’s ability to target specific companies, and precluded loans to failing or insolvent institutions.) Government officials will hold frantic meetings, but to no avail. The faltering bank **will fail, with others lined up behind it.**

And then, sometime in the next year, we will all stare into the **financial abyss**. At that point, we will be **well beyond the scope** of the previous recession, and we will have either **exhausted the remedies** that spared the system last time or found that they **won’t work this time** around. What then?

Until recently, at least, the U.S. was rightly focused on finding ways to emerge from the coronavirus pandemic that prioritize the health of American citizens. And economic health cannot be restored until people feel safe going about their daily business. But health risks and economic risks must be considered together. In calculating the risks of reopening the economy, we must understand the true costs of remaining closed. At some point, they will become more than the country can bear.

The financial sector isn’t like other sectors. If it fails, **fundamental aspects of modern life** could fail with it. We could lose the ability to get loans to buy a house or a car, or to pay for college. Without reliable credit, many Americans might struggle to pay for their daily needs. This is why, in 2008, then–Treasury Secretary Henry Paulson went so far as to get down on one knee to beg Nancy Pelosi for her help sparing the system. He understood the alternative.

**Trade doesn’t solve war – latest studies.**

**van de Haar 20** [Edwin van de Haar, formerly a visiting fellow and lecturer in political theory at John Tomasi’s Political Theory Project at Brown University, a lecturer in international relations and political economy at the Institute of Political Science at Leiden University, and a lecturer in international relations at the European Studies Program at Ateneo de Manila University, “Free trade does not foster peace,” 2020, *Economic Affairs*, Vol. 40, Issue 2, pp. 281-286, https://doi.org/10.1111/ecaf.12405, EA]

Trade is **unable to foster peace**, because it is **unable to overcome** many **causes of war**. Think about **cultural** and **religious** **differences, geopolitical causes** such as the fight for **natural resources**, including increasingly **rare** raw **materials**, or more **traditional wars between great powers** or their proxies over a border dispute. States may also act against their economic interest for **some** perceived **higher goal** (Coker, 2014). The causes of war are often **multifaceted** and **complex**. Wars happen because people have reasons to fight, in the form of goals and grievances, and possess enough resources and resolve (Ohlson, 2009). Trade relations are **just one factor** in the mix of causes of war, which include such **coincidental** **factors** as chance, luck, or reckless behaviour by individuals who happen to influence public policy. International commerce is **simply not a “perfectly effective antiwar device”** (Suganami, 1996, pp. 153–210). The best one can say is that the protection of trade relations is sometimes one of the factors in the decision not to wage war. Nothing less, nothing more.

To sum up, many of Adam Smith's arguments still stand, and are confirmed or complemented by modern research. There is **no** solid **ground** for the expectation that trade **promotes**, **fosters**, or **leads** **to** **peace**. Generally, international economic interests are **not** the **crucial factors** in decisions over war and peace. **Too many other factors** come into play. To believe that trade fosters peace was folly even hundreds of years ago. To still think so is to believe in fairy tales, to be ~~blinded~~ by the correlates computed by limited yet available datasets, or both.

## Adv CP

**Tax code reform and directing that revenue towards social programs directly combats inequality on a far larger scale than the aff – the aff is insufficient because it doesn’t redistribute wealth OR make a dent in hedge funds – that also means they cant solve any modeling claims because other countries would still see the US as fundmentally unequal**

**PIIE ’20** – Peterson Institute for International Economics, think tank based in DC

“How to Fix Economic Inequality? An Overview of Policies for the United States and Other High-Income Economies” <https://www.piie.com/sites/default/files/documents/how-to-fix-economic-inequality.pdf>

TAX POLICIES

Expand the Child Tax Credit (CTC) and the Earned Income Tax Credit (EITC).

The Child Tax Credit provides a $2,000 per child tax credit for parents but excludes the lowest earners, i.e., those with the smallest tax bills, from receiving the full credit. Parents without taxable income cannot claim this refund.

Making the CTC fully refundable would allow the lowest earning families, including those without an income, to claim the full imbursement. Such a change would function as a child allowance available to those with earnings under a certain threshold. This step would be an effective way of reducing childhood poverty.

The Earned Income Tax Credit is calculated based on the number of dependents (children) and work status. It has been effective at reducing poverty since its enactment in 1975. Periodic increases in the program’s disbursements have improved child educational and health outcomes and increased employment among single parents. Expanding the program would further reduce poverty while encouraging work.

Hilary Hoynes (University of California Berkeley) **estimates** in a National Academy of Sciences **report that an investment of $90 billion** to $100 billion a year **in expanding existing policies**—such as EITC, Child and Dependent Care Tax Credit, housing vouchers, and food assistance—**would cut child poverty in half.**

Shift taxes toward capital and away from labor to encourage hiring workers.

Laura D’Andrea Tyson (University of California Berkeley) suggests reducing payroll taxes to ease the burden on workers and taxing capital gains (profit from the sale of an asset like a stock or bond) at the same rate as personal income or higher. She also suggests that local governments agree not to compete against each other in a race to provide ever more expensive tax breaks for corporations to locate there. There are also growing calls for crosscountry coordination to tax “mobile” stateless capital income.

Create a wealth tax.

Adjusting the top marginal tax rate alone would not increase the effective tax rate on the superrich, argues Gabriel Zucman (University of California Berkeley). Incomes are only a very small fraction of their wealth. Many billionaires accumulate their wealth through shares and other assets, which are subject to capital gains taxes, rather than income taxes.

Two former 2020 presidential candidates, Senators Elizabeth Warren and Bernie Sanders, backed taxing wealth directly. Their wealth tax plans sought to tax the net wealth, the assets held minus debts, of the richest citizens on an annual basis. Supporters of a wealth tax, including Emmanuel Saez (University of California Berkeley) and Zucman, contend that **it would curtail the power of the superrich while funding valuable programs to help those in need.** Other experts, such as Lawrence Summers (Harvard University), argue it is impractical because calculating individual wealth (real estate, possessions) is problematic, and wealth can be shifted abroad. Still others say a wealth tax may be unconstitutional and note that it has been difficult to implement in Europe.

Keep the estate tax.

Taxing inheritances with an estate tax has been a feature of US tax policy since the Civil War. Proponents of the tax, which is levied on the wealth of the deceased (including real estate, stocks and bonds, cash, and other assets) before it is passed on to their heirs, see it as a tool to address inherited economic inequality and incentivize spending over holding wealth. Opponents deride it as a “death tax” that prevents family farms and small businesses from being transferred to heirs.

Stefanie Stantcheva (Harvard University) finds the estate tax is often misunderstood. The American public vastly overestimates how many families are over the exemption threshold— that is, how many families actually pay the estate tax. The exemption threshold has been raised over the years (from $3.5 million in 2009 to $11.58 million in 2020), so in reality only 1 in 1,000 US households have estates above the exemption level. Stantcheva suggests that informing the public about the threshold and the small number of estates that would be taxed would increase support for the estate tax.

Impose a value-added tax (VAT).

Many advanced industrial economies impose a value-added tax (VAT), which is like a retail sales or consumption tax but collected at each stage of production of goods and services and harder to evade. VATs raise significant revenue in countries that use it, but the financial costs are borne more heavily by low-income consumers since they spend a higher percent of their income on taxable goods. To combat inequality, advocates say that products that take up a larger share of low-income family expenditures, like food, should be exempted from the VAT. Also, **revenues generated from the tax could be used for government aid programs or direct cash transfers.**

Create automatic tax cuts and unemployment benefits.

Policymakers should set up automatic tax cuts and benefits, known as automatic stabilizers, in the United States that kick in when the unemployment rate rises above a certain threshold in a given time period, instead of having to draw up new legislation that has to pass through Congress every time there is a downturn. Unemployment benefits could also start automatically during recessions.

Provide tax credits for more research and development (R&D)

Support for R&D, in the form of investment or tax credits, would spur job creation and raise wages through increased productivity. As new fields emerge there will be more training opportunities. Federal R&D could be more directed away from military and toward economic development. **Climate change has been identified as a national security threat and defense spending could be invested in R&D to combat and/or adapt to climate change**, which would create jobs as well.

**Education reform lifts the country out of poverty and democratizes society – the plan doesn’t address overwhelming causes of personal debt AND fails to provide paths for social mobility – those both directly implicate their ability to solve any advantage**

**PIIE ’20** – Peterson Institute for International Economics, think tank based in DC

“How to Fix Economic Inequality? An Overview of Policies for the United States and Other High-Income Economies” <https://www.piie.com/sites/default/files/documents/how-to-fix-economic-inequality.pdf>

EDUCATION POLICIES

Provide universal early childhood education and increase support for childcare.

Government-provided universal preschool education and childcare could financially benefit low-skilled and low-income workers and help keep women in the workforce. The COVID-19 crisis has heightened the need for sustained, increased public investment in childcare, as many working women disproportionately have left the workforce to take on care responsibilities. Investing in and increasing publicly funded childcare is also a way to create jobs that cannot be automated.

Improve access to quality higher education.

Making quality public higher education more accessible to more people is one important way to boost incomes. Many policies have been put forward to address this: tax credits to offset college costs; expanding grants and providing reduced or free tuition for low-income students (i.e. Pell grants); a national service program to allow students to earn money that can be put toward education; canceling outstanding loans based on income, time passed, or amount repaid; providing grants to colleges and universities to give more scholarships; or even cancelling tuition entirely. The debate continues over which schools any of these policies should apply to—community colleges and other 2-year degree programs, all public colleges, all 2- and 4-year programs, private schools, etc.

Germany has made almost all programs at public universities tuition-free for domestic and international students.

Provide more job training.

Improving access to low-tuition and tuition-free community colleges and vocational and apprenticeship programs would help prepare young people for new jobs in technology, health care, and other expanding fields that require learned skills. Sectoral training programs can raise earnings 20 to 40 percent, says Lawrence Katz (Harvard University). State and local governments can supplement federal programs in this area: 11 states in the United States have already implemented tuition-free community college, says Laura D’Andrea Tyson (University of California Berkeley). Programs must combine on-the-job training with more general occupation-specific knowledge to build a flexible workforce that can adapt to changing technologies and is receptive to retraining.

Implement talent discovery and matching programs.

Identifying talent in low-income areas and giving them access to educational and training opportunities would improve social mobility. Talent matching programs could link people with a specific set of skills with jobs they can pursue in the long term.

**Federal labor reform fills in massive gaps left by the aff – GOP states circumvent the aff by keeping wages low, plaintiffs still lack monetary resources to win antitrust cases, jobs lost to automation cant be recovered by the aff, CEOs and courts will continue to discriminate – federal job guarantee overcomes all of those**

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LABOR POLICIES

Raise the federal minimum wage and wages for essential low-paying jobs

**Raising the federal minimum wage would help the lowest paid workers in states that have not already introduced their own higher minimum wages**. Opponents say raising the minimum wage would burden employers and reduce the number of jobs available, but several studies find there is little effect on employment.

Jobs in childcare, nursing, elder care, food service, and healthcare are vital to society, but they pay poorly with little to no opportunities for advancement. **Workers** in these fields **need higher wages** and career progression opportunities **to raise social mobility.** These jobs are also less susceptible to automation.

Enforce existing minimum wage laws.

Some employers evade minimum wage laws by classifying employees as independent workers, deducting company costs from wages (for example, taking the cost of a uniform from an employee’s pay), failing to pay overtime, and through other forms of wage theft.

One study suggests that the total wages US employers steal by violating minimum wage and other labor laws exceeds $15 billion each year. More resources to combat wage theft and incentives for compliance would help.

Increase government investment in job creation programs

Fiscal and monetary stimulus—more government investment in job-creating projects—can be more effective than specific government transfer programs to spur a “hot economy” that pushes wages up faster than prices, according to Jason Furman (PIIE). **Governments can** also **spend** on infrastructure or other programs **to generate employment** (which was done during 2009-10), supplement worker income, or train workers for jobs, as programs did during the Great Depression.

Give employees more bargaining power at companies.

Richard Freeman (Harvard University) calls **trade unions the one “institutional force that fights against inequality.”** Several experts point out that as US union membership has fallen, **worker bargaining power has declined**. As a result, growth in labor productivity has benefitted mainly top wage earners. Easing restrictions on the formation of unions would help. Daron Acemoglu (MIT) says **corporations should have nonexecutive workers serve on their boards**, the way some German companies do.

Many experts advocate for empowering unions to bargain for better compensation, benefits, access to training, and education. A recent Business Roundtable initiative recommends that big companies make commitments to all stakeholders, including workers and customers, not just investor shareholders.

Protect workers in the “gig economy” and other alternative work arrangements.

Shifts in technology and labor arrangements, such as temporary, part-time, on-call, and selfemployment jobs, have sometimes disadvantaged workers. Firms are incentivized to hire or classify existing workers as independent contractors because they do not have to provide them with traditional labor protections and worker benefits. The **government can develop universal and portable systems that give social protections** and benefits **for** these **workers** and prevent worker misclassification.

**Create a federal job guarantee**.

The federal government can become the employer of “last resort” through a National Investment Employment Corps spending $750 billion to $1.5 trillion while eliminating the need for some antipoverty programs, argues William Darity Jr. (Duke University). A federal job guarantee **would cut inequality** by lifting the lowest earners and **protecting employment opportunities for groups subject to discrimination**.

Richard Freeman (Harvard University) maintains that a federal job guarantee could have been effective at managing the economic shock of the COVID-19 crisis. It could have put newly unemployed workers to work on critical government projects, such as contact tracing, at a wage above the poverty level. As economies rebuild, the federal government can facilitate access to labor through job programs that expand during periods of economic slowdown and shrink during periods of private sector job growth. The same can be said of the need for climate-related labor—federal governments can provide jobs to work on critical green projects.

Expand Trade Adjustment Assistance beyond trade-affected workers.  
Trade Adjustment Assistance (TAA) is much criticized as ineffective, but those who received training through the program enjoyed substantial increases in earnings. **The program falls short because** of its limited scope—**it only helps workers demonstrably hurt** by trade, **not by technology or other factors beyond their control**. Removing the conditions and expanding the TAA program to include workers displaced by automation and other factors would deliver the program’s benefits to a wider group of recipients.

## Adv 2

**[1]---Inequality is statistically insignificant – there’s zero need for antitrust.**

**Wright et. al ‘19** [Joshua D., Elyse Dorsey, Jonathan Klick, and Jan M. Rybnicek; University Professor and Executive Director, Global Antitrust Institute at Scalia Law School; Attorney Advisor to Commissioner Noah Joshua Phillips, United States Federal Trade Commission; Professor of Law, University of Pennsylvania; Counsel in the antitrust, competition, and trade practice of Freshfields, Bruckahus Deringer LLP; Arizona State Law Review, “REQUIEM FOR A PARADOX: The Dubious Rise and Inevitable Fall of Hipster Antitrust,” vol. 51; KP]

2. The **Empirical Evidence**: Is Inequality **Really Growing**?

All of the papers discussed above assume that **inequality** has **increased** in recent years. This view is fairly common among economists and would seem to be borne out as seen in Figure 2 below, which presents the **Gini coefficient** for U.S. incomes for the last fifty years.166

Chart, line chart

Description automatically generated

Figure 3, which plots the ratio of the share of US income among the fifth quintile of income-earning households to the share among the first quintile of households167 tells a similar story.

Chart, line chart

Description automatically generated

Robert Kaestner and Darren Lubotsky underscore the point that inequality measures can be **significantly affected** by a failure to account for **government transfers** and **employee benefits** that presumably **substitute** for **cash income**.168 Given that healthcare costs have grown faster than inflation in recent years, a **failure** to account for **health insurance benefits** could significantly affect economic inequality measures. Reviewing estimates from the literature, Kaestner and Lubotsky find that including health insurance **substantially reduces** the **gap** between incomes at the high end of the distribution and those at the low end.169 Interestingly, however, the authors find that there is still an **upward trend** in inequality over time when the cash equivalent of health insurance and government transfers are included.170 The trend, **however**, is **substantially muted**.171 Specifically, including government transfers and the **imputed value** of employer subsidized health insurance, Kaestner and Lubotsky indicate that the ratio of income between households at the ninetieth percentile and the tenth percentile was about **five** in 1995, growing to **5.2** in 2004 and to **5.6** in 2012.172

Although yearly estimates of this more complete measure of income inequality are not available, and the time series span is somewhat limited, another approach might be to examine consumption inequality since consumption will be a function of effective income, and consumption data are more readily available. Also, consumption might be a better measure of welfare as argued by Bruce Meyer and James Sullivan.173 When determining the desirability of **antitrust enforcement** to address economic inequality, presumably one not only wants to examine the **indirect effects** on people’s **incomes** and **wealth**, but also the direct effect on consumer welfare, for which consumption might be a useful proxy.

Considering the arguments raised above regarding the desirability of using antitrust to fight inequality, one might reason that **higher prices** coming from increased concentration make both the well-off investors and executives and the lowly consumer **worse off**, **but** the investors and executives are **compensated** through high incomes due to their **monopoly profits**. Under these arguments, we should see an **upward trend** in the consumption ratio between the haves and the have-nots. Figure 4, which uses data on average consumption by households in the various income quintiles from the Bureau of Labor Statistics Consumer Expenditure Survey,174 shows that while the ratio has grown over time, the growth is **much smaller** than that found for **income** itself. Further, unlike income, the growth is **not nearly as consistent** with periods of **increasing inequality** and **decreasing inequality** alike.

Chart, line chart

Description automatically generated

Based on potentially better (i.e., more complete) measures of income and better metrics of welfare (i.e., consumption), perhaps the **concerns** raised in the papers discussed above are a little **overblown**. If so, perhaps the calls for a ramp-up of antitrust enforcement are not justified (at least on inequality grounds). That said, even by these measures, it appears inequality is growing, albeit slightly; therefore, it is worth discussing whether there is any association between antitrust enforcement and inequality.

**[2]---Concentration down and no impact to ‘market power’.**

**Atkinson ‘10/18** [Robert; 10/18/21; Founder and President of the Information Technology and Innovation Foundation, Ph.D. in City and Regional Planning from the University of North Carolina; "No, Monopoly Has Not Grown," <https://www.nationalreview.com/2021/10/no-monopoly-has-not-grown/>]

Over the past several years, advocates of much **stricter antitrust** laws and enforcement have grounded their case on a **simple** claim: U.S. industry concentration (**monopoly**) has **increased** to crisis proportions and the only solution is a radical overhaul of our nation’s **antitrust laws**, imposing much stricter **limits** on mergers and breaking up leading companies.

There is only one problem: Concentration has **not increased**, even though the “fact” of rising concentration has been picked up by a large number of pundits and commentators. The Economist got the ball rolling in 2016, concluding that two-thirds of the economy’s roughly 900 industries had become more concentrated between 1997 and 2012. Paul Krugman writes that “growing monopoly power is a big problem for the U.S. economy.” The anti-business advocacy group Open Markets refers to “America’s concentration crisis.” And now leading **politicians parrot** the claims. Senator Amy Klobuchar (D., Minn.), chair of the Senate Subcommittee on Competition Policy, Antitrust, and Consumer Rights, states: “We are seeing higher levels of market concentration across our economy.” Congressman David Cicilline (D., R.I.), chair of the House Antitrust Subcommittee, warns that America has a “monopoly problem.” And new Federal Trade Commission chair Lina Khan alleges that the United States faces a “sweeping market power problem.”

You’d think that **pundits**, **advocates**, and **public officials** would make some attempt to **rely on data**. But alas, that is not the case. The definitive source of data to measure economic concentration comes from the U.S. Census Bureau’s newly released 2017 Economic Census data for over 850 industries, from cane-sugar manufacturing to cable-TV providers. Comparing data from 2017 (the most recent year for which figures are available) and 2002 shows what has really happened with industry concentration. And the **data** are quite **clear**: This is much ado about little.

Just **35 of 851** industries are highly concentrated, with the top four firms’ sales accounting for more than 80 percent of industry sales (this is called the C4 ratio). In 2002, 62 percent of industry output was from industries with low levels of concentration (a C4 ratio below 50 percent), but by 2017, 80 percent of industries had low concentration. Moreover, of the 115 industries with a C4 ratio of 60 percent or more in 2002, the majority **got less concentrated**. Overall, the average C4 ratio for American industry increased only slightly, from 34.3 percent to 35.3 percent.

In addition, many highly concentrated industries, such as luggage and leather-goods stores (a C4 ratio of 81 percent), performing-arts companies, geothermal power generation, and paint and wallpaper stores, all face **significant competition** from firms in **other industries**, such as movie theaters, department stores, and natural-gas power generation. Moreover, over those 15 years, **imports** as a share of GDP have **increased**, adding even **more competition**

in many sectors. And technology has created **new competitors** in **different industries**. Satellite radio and smartphones now compete with over-the-air radio stations, for example.

Anti-corporate populists have taken particular aim at “Big Tech.” However, of the 135 advanced-technology industries, only eight have C4 ratios above 80, with a **majority of sectors** becoming **less concentrated** by 2017. And most sectors still face **tough competition**. For example, even with the rise of Amazon, the C4 ratio of electronic shopping and mail-order houses increased, but only from 24 percent to 37 percent.

Finally, even in sectors where concentration grew to high levels, **consumers** usually **benefited**. The C4 ratio in the wireless-telecommunications industry increased from 63 percent to 86 percent. But industry productivity grew 84 percent faster than economy-wide productivity, while **capital-investment rates doubled** and **nominal prices fell** by 31 percent from 2011 to 2020.

But surely firms in the few concentrated industries must be making huge profits and jacking up prices, right? In fact, prices rose less from 2002 to 2017 in industries with higher levels of concentration than did the overall producer price index. And looking at the 80 industries for which both IRS profit data and Census Bureau concentration data were available, it turns out that there is **no statistical relationship** between **profits** and **concentration**. This is consistent with the finding that U.S. non-financial domestic business profits were **no higher** in the few years before COVID than in the late 1970s, when antitrust regulations were supposedly more vigorously enforced.

As Daniel Patrick Moynihan once famously stated, everyone is entitled to his own opinion, but not his own facts. It is time for the **debate** about “monopoly” and industry concentration to be **grounded in** facts.

**[3]---Wages are at historic highs.**

**Domm ’21** [Patti; May 22; CNBC Markets Editor, responsible for news coverage of the markets and economy; CNBC; “Workers’ wages are rising at the fastest pace in years. Companies’ profits could take a hit,” <https://www.cnbc.com/2021/05/22/wages-rise-at-the-fastest-pace-in-years-firms-profits-could-take-a-hit.html>; KP]

Workers are getting **higher wages**, but at some point that could bite into companies’ profits.

As the economy reopens, **costs are climbing** for everything from packaging and raw materials to shipping. In addition to these expenses, companies are also **paying more** to get workers to **come in the door**.

But the disparity between labor costs and profits has been so wide for so long, that employers should be able to **increase pay** if they can **raise prices** for **goods and services** or improve productivity.

McDonald’s said last week that it was boosting wages for the 36,500 hourly workers at company-owned stores by 10%, and Chipotle announced it will raise wages to an average of $15 an hour by the end of June. Bank of America said it would raise minimum wages for its hourly workers to $25 an hour, from the current $20, by 2025.

Sports equipment company Under Armour also announced it would boost the minimum hourly wage for its retail and distribution workers to $15 from $10.

“It’s some of the **strongest wage growth** we’ve seen in a **quarter century**,” said Mark Zandi, Moody’s Analytics chief economist. He said the 3% wage growth for private workers in the first quarter was the **strongest** since the **1990s** and **productivity** has **picked up** at the same time.

**Their evidence does not demonstrate that enforcement causes a reduction in inequality – the entire advantage is at best speculative**

**Wright et al.**, J.D., PhD, University Professor and Executive Director, Global Antitrust Institute at Scalia Law School, former FTC Commissioner, **‘18**

(Joshua, Elyse Dorsey, Attorney Advisor to Commissioner Noah Phillips, United States Federal Trade Commission, Jonathan Klick, Professor of Law, University of Pennsylvania, and Jan M. Rybniek, : Senior Associate, Freshfields, Bruckahus Deringer LLP, “Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust,” August 10, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3249524>)

As discussed, Furman & Orszag take a more empirical approach, arguing that “a rising share of firms are earning super-normal returns on capital…workers at those firms are both producing and sharing in those super-normal returns, **driving up wage inequality**…the high returns to labor and capital at those firms reduces labor mobility by discouraging workers from leaving firms that earn higher rents.”134 In support, Furman & Orszag provide evidence that returns of S&P 500 firms have become more skewed over time. Furman & Orszag also outline that the return on invested capital has also become highly skewed at least since the 1990s. While such evidence suggests some implications, there is no implication of antitrust concerns because these results could be indicative of firms engaging in greater risk-taking or the presence of superior products.135 Furman & Orszag use metrics that **bear little resemblance** to **actual antitrust markets**, and **do not provide any evidence** that increases in antitrust enforcement **would actually reduce these metrics**, much less have any **discernable effect** on levels of economic inequality.

Marc Jarsulic et al. also point out that income inequality is rising. They argue that firms with “dominant market power” raise prices and earn supra-normal economic rents while simultaneously lower the real incomes of consumers.136 Jarsulic et al. argue that rent extraction in the U.S. economy is on the rise because of “unchallenged market power.”137 Jarsulic et al. outline other undesirable results, including higher barriers to entry for new firms, stifled innovation, degraded product quality, reduced prices paid to workers and suppliers, and increased influence with government officials.138 To reverse these effects, the authors argue that the antitrust laws can be employed, but have not been deployed vigorously enough over the last few decades.

Sean F. Ennis, Pedro Gonzaga, and Chris Pike take a calibration approach to examine the effect of increasing concentration on inequality.139 Their calibration model makes the following assumptions: 1) “Market power for each country can be approximated by the difference between the average mark-up (across all sectors) in the country and a minimum mark-up that reflects the best-practices of most competitive economies”; (2) “The marginal propensity to save from increased income arising from lower prices is constant across wealth groups.”140 The authors assert that “this assumption simplifies the solution to the model, but does not prevent the average saving rate from varying across wealth groups”; (3) “Market power gains are distributed in proportion to the current net wealth distribution.” According to Ennis et al., “this reflects the observations that corporate income and capital gains are distributed via business ownership, so that those with the largest wealth shares…will, in proportion, receive the largest share of the profits”; and (4) “The price of different baskets of goods will be inflated by market power in an equal percentage.”141 According to the authors, “this implies that product for the poor and products for the wealthy will be equally affected by market power. To the extent that the poor are more exposed to monopolization, the model provides conservative, lower-bound estimates.”142

Based on their study, Ennis et al., conclude that market power may contribute significantly to economic inequality; “violations of competition law, government-created barriers to entry or natural monopolies may be significant sources of market power”; the authors “do not suggest that competition law and policy should specifically target inequality” instead they “suggest that reduced inequality is a beneficial by-product of government actions and policies to reduce illegitimate market power.”143

Although these commentators uniformly suggest that increased antitrust enforcement could have beneficial effects on inequality, **none directly examine this proposition using empirical data.** The underlying economic logic of the claims that lax antitrust has resulted in increased inequality is fairly simple. In the absence of antitrust enforcement, firms gain market power, reduce output, raise prices, and generate monopoly profits, which enrich shareholders. Because shareholders tend to live in the top end of the wealth and income distributions, inequality increases. Further, because of rising prices, those in the lower end of the distributions (where a greater fraction of income and wealth are devoted to consumption) are made relatively worse off, increasing welfare inequality as well.

The question is whether this simple account of the problem **is correct**. **There is little systematic empirical evidence of a link between antitrust enforcement and inequality**. Below are some preliminary empirical analyses of the effect of antitrust enforcement on measures of inequality. Regardless of whether we examine income, wealth, or (in our view, the more relevant) consumption distribution, **there is no evidence that metrics of enforcement are related to inequality**. While these results do not guarantee that increased antitrust enforcement could not affect inequality, they do suggest that proposals for increased enforcement to address inequality concerns are **premature and potentially misguided.**

**The most DIRECT empirical evidence demonstrates no relationship**

**Wright et al.**, J.D., PhD, University Professor and Executive Director, Global Antitrust Institute at Scalia Law School, former FTC Commissioner, **‘18**

(Joshua, Elyse Dorsey, Attorney Advisor to Commissioner Noah Phillips, United States Federal Trade Commission, Jonathan Klick, Professor of Law, University of Pennsylvania, and Jan M. Rybniek, : Senior Associate, Freshfields, Bruckahus Deringer LLP, “Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust,” August 10, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3249524>)

In Table 1 below, we focus on merger investigations, given the focus on increasing market concentration in the papers calling for increased antitrust enforcement. Again, the enforcement data determine our sample period which covers 1984-2016. Our outcome variable is the ratio of average consumption expenditures among those in the 5th income quintile to the consumption expenditures of those in the 1st income quintile.155 This ratio appears to be AR(1) so we allow for a one period autoregressive term in each of the regressions.156 Presumably past enforcement is as important or more important than current enforcement, so we provide distributed lag specifications.157

Although the merger investigations are uniformly negative, **in no case are they statistically significant** (individually or jointly).

In Table 2, we control separately for a linear trend to account for non-enforcement factors involved in pushing inequality up over the period.

We repeat these exercises using total investigations to allow for a more general measure of enforcement.

Distinct from the merger investigation results, which were uniformly negative though insignificant, in the specifications using total investigations the sign of the effect of investigations on the ratio of quintile 5 consumption to quintile 1 consumption switches from lag to lag.

To unpack these results, Table 5 presents the effect of investigations on real average consumption expenditures for the 1st and 5th quintile households by income. For brevity, we only present the specifications with 2 lags and the time trend estimates from an AR(1) distributed lag model examining the effects of DOJ investigations, both merger specific and total, on the income shares received by those individuals in the first quintile and the fifth quintile, while also controlling for a background linear trend.

As with consumption measures, there is generally no statistically significant effect (individually or jointly) **of current or past investigations** (regardless of whether we focus on merger-specific or total investigations) on the **income shares of those at the bottom or the top of the income distribution**. Putting aside statistical significance, while past investigations are associated with increases in the income share received by those at the bottom of the distribution, **current investigations have the opposite effect**. Further, many of the investigation coefficients are positive for the fifth quintile income share as well. If we examine combined ratios of the shares as we did with the consumption data, we still find **no support for the assumption** that **an increase in antitrust enforcement has any systematic effect on inequality**.161

Lastly, in Table 7, we examine similar relationships using wealth data in case the relevant effect of antitrust enforcement on inequality operates on a stock measure of welfare rather than on flows like consumption or income. Using data collected by Emmanuel Saez and Gabriel Zucman who examined wealth inequality since the beginning of the 20th Century,162 we again examine the period beginning in 1984 due to the limitations in our enforcement data, but we are required to stop the sample in 2012 since that is the final year of data provided by Saez and Zucman.163

Again, in addition to finding **no statistically significant effects** (individually or jointly) from **any of the enforcement variables** (i.e., current year or lagged enforcement; merger-specific or total), even the signs are **inconsistent with a simple story** that **more enforcement leads to more equality**.

Further, **to the extent** there is a subset of antitrust enforcement likely to **unequivocally raise income for households** in the lower quintiles of the income distribution, it is enforcement aimed at public restraints and government-imposed barriers to entry at the state and local level. For example, antitrust enforcement efforts and competition advocacy have been influential in targeting anticompetitive occupational licensure schemes. For example, the FTC has recently focused upon occupational licensing reform in an effort to inform and assist state legislators when making decisions on licensing requirements to avoid unnecessary restrictions on competition.164 Thus, regulations promulgated at the state-level that are often anticompetitive may be cont**ributing to increasing economic inequality, not lax antitrust enforcement.**165

# 1NR

**Adv 1**

**Big firms are the largest contributors to R&D spending, anticipate new competition, and create new markets**

Jan **Rybnicek 20**—Antitrust Attorney, former Advisor at FTC, Editor for the Antitrust Law Journal. ("Innovation in the United States and Europe," November 11, 2020, from The Global Antitrust Institute Report on the Digital Economy 13, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3733698>) edited for ableist language

A key indicator of a vibrant economy that is characterized by **vigorous competition** and **intense innovation** is high levels of spending on **r**esearch and **d**evelopment. **R**esearch **and** **d**evelopment fuels **economic growth**, **job creation**, and **competition** by allowing **researchers** and **entrepreneurs** to discover **new tech**nologies, **design new products**, **tap new markets**, and **improve efficiency** and **enhance performance**. Critics of U.S. competition policy have argued that today’s **large**st firms have become so large that they are untouchable by competition from current or future rivals and, as a result, have lost the incentive to innovate that once may have been part of their core identity as scrappy upstarts but that has since faded as they rest on their laurels, happy in their dominant positions.37 They further argue that dominant firms snuff out **would-be entrants** that otherwise would be devoting capital to research and development initiatives to build competing offerings for consumers.38 These critics allege that this purported dampening in the incentive to innovate has deprived consumers of better products and services that would otherwise arise through the **push and pull of competition**.

But the actual **data tell a different story** about the state of **r**esearch **and** **d**evelopment in the United States and how it compares to its counterparts in Europe. In fact, companies in the **U**nited **S**tates lead the world in **r**esearch **and** **d**evelopment. As shown in Figure 6, out of the top companies globally investing in research and development spending, 11 out of the top 20 (55 percent) and **seven** out of the **top 10** (70 percent) are based in the **U**nited **S**tates as of 2018.39 By comparison, only six of the top 20 are located in Europe (30 percent), and only two find themselves in the top 10 (20 percent). The remaining firms on the list based on research and development spend are based in Asia.

Contrary to critics’ claims, there is no lack of **r**esearch **and** **d**evelopment in the **U**nited **S**tates, and U.S. firms continue to **outpace** global counterparts in investing in **new tech**nologies and products. The reality is that companies in the United States invest **in a broad range** of research and development initiatives despite the presence of **large**, successful tech companies. Unsurprisingly, just as no one today would invest in developing a new combustion engine-powered car that would have to compete against established and mature competitors that have considerable expertise in the market, it would be unwise to try to compete against any of the large tech companies with a “**me too**” product. Instead, innovators (and, as discussed below, the **venture capital** and other sources of capital that fund them) devote resources to discovering **new and different solutions** that may indirectly replace incumbents by **disrupting** old markets and **creating new** ones. Indeed, this how many of today’s most successful tech firm achieved success— by building new products and **creating new markets**, not by mimicking yesteryear’s giants, such as IBM, Microsoft, and Intel.

A closer look at research and development investment in the United States further shows that tech firms are leading the way. In fact, many of the tech firms that have allegedly contributed to the decline of **competition** and innovation in the United States are the **biggest spenders**. As shown in Figure 7, **Amazon**, **Alphabet**, **Intel**, **Microsoft**, and **Apple** comprise the nation’s topic five spenders, with investments totaling more than $75 billion in 2018.40 These companies are **pouring money into innovation** not because they have nothing else to do with it but because they are attempting to **stay ahead of the competition** in their core markets by introducing even **better products** and services, and to **break into adjacent markets** where they see opportunities to use their expertise to be disruptive forces.

**True for AI – size limits gut. deep learning**

**Foster 20** (Dakota Foster is a graduate student at Oxford University and a former visiting researcher at the Center for Security and Emerging Technology. “Antitrust investigations have deep implications for AI and national security”, https://www.brookings.edu/techstream/antitrust-investigations-have-deep-implications-for-ai-and-national-security/)

Changes to firms’ scale also may impact their access to data, another key resource required for AI innovation. Studies have linked the performance of deep learning models **to the quantity of data fed into them**. At present, tech giants have access to unprecedented volumes of data about their users. Google, for example, can harness data from Google Search, Maps, YouTube, Gmail, and other sources. If antitrust enforcement leads to divestment or broader break-ups, **access to data may diminish, lessening innovation.**

**Incentive is backwards---acquisitions allow innovation in adjacent markets.**

Thomas A. **Lambert 20**, Wall Chair in Corporate Law and Governance and Professor of Law at the University of Missouri School of Law, J.D. from the University of Chicago, “The Case Against Legislative Reform of U.S. Antitrust Doctrine,” University of Missouri School of Law Legal Studies Research Paper No. 2020-13, 05-12-2020, https://ssrn.com/abstract=3598601

Reduced Investment in Innovation? Proponents of reforming the antitrust laws have also pointed to reductions in the level of venture capital investment as indicative of a market power crisis in the U.S. Such investment slowed somewhat after 2015 (though it appears to have rebounded),27 and some venture capitalists have referred to a “kill zone” around dominant technology firms.28 The claim is that big technology firms either usurp small firms’ innovations or use their power over platforms to force smaller firms that need access to those platforms to sell out at a bargain price. Venture capitalists are less inclined to invest if such outcomes are likely, and innovation therefore suffers.

The **ev**idence, however, **does not support the view that lax** U.S. **antitrust is reducing innovation.** Eleven of the top sixteen global spenders on **r**esearch **and d**evelopment are U.S. firms,29 and six of those—Amazon, Alphabet, Intel, Microsoft, Apple, and Facebook—are “Big Tech” firms that have been accused of acting like monopolists. Moreover, **the U.S. is home to half** (178 of 356) **of** the world’s so-called “**unicorn” companies**—i.e., private companies valued at greater than $1 billion. China ranks second with 90, and all of Europe contains a fraction of that number. The U.S. also far outpaces Europe in terms of **v**enture **c**apital spending, with 10,777 investments in 2019 worth $136.5 billion compared to Europe’s 5,017 deals worth $36.3 billion. Finally, the fact that large American **tech**nology firms are purchasing smaller producers of complementary products or technologies **in no way implies that the incentive to innovate is thereby reduced**. Many **start-ups are organized with the goal of being bought out by a larger firm**; a buy-out option allows the initial investors in a company to enjoy a return on their investment without the company’s having to incur the significant cost of a public offering.

1. **Data disproves killer acquisitions. Duplication is wrong, limiting acquisitions reduce innovation VARIETY.**

**Kennedy ’20** [Joe; November 9; former chief economist for the U.S. Department of Commerce, Economics PhD from George Washington University, J.D. from the University of Minnesota; Information Technology and Innovation Foundation, “Monopoly Myths: Is Big Tech Creating “Kill Zones”?” https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones]

So-Called Kill Zones Could **Maximize** Welfare and Innovation

To the extent established companies are conducting research in a narrow market, it makes sense for entrants to **avoid head-on competition** and **instead exploit complementary markets**. This is almost as likely to be true whether the industry is dominated by one firm or five. Breaking into an industry with relatively mature technology dominated by large players is never easy. That is why many industries have gone through periods of heavy investment in the early stages of an industry as companies try to become one of the dominant players. Once the industry has matured to achieve economies of scale or network effects, new entrants tend to focus on complementary technology rather than trying to challenge the larger companies head-on.

Few complained after the 1930s automobile-sector start-ups declined precipitously. By the 1930s, it made little sense to invest in new automobile companies when it was clear the technology system (internal combustion engine) and major players (American Motors, Chrysler, Ford, and GM) had already been established. Investment to create new entrants would have represented a waste of societal resources. Instead, funding went to emerging industries such as radios, chemicals, and machine tools.

Today is no different. The technology and business models for search, social networks, and Internet retailing are **relatively mature**; society is better off if entrepreneurs and venture capitalists focus on other areas. Indeed, to the extent investors may be focusing their capital outside a few areas where large firms have established positions in what are somewhat mature technologies, it is arguably a good thing because it means there is more capital for other promising areas. Hathaway, in fact, acknowledged the possibility that “venture capital investment may have increased in non-tech sectors too, so that the tech giants have simply diverted the flow of capital to other areas.”25 The is buttressed by an **earlier study** by Oliver Wyman, which shows that **acquisitions** by Facebook, Google, and Amazon have not had a **negative effect** on the amount of **venture capital** flowing into tech industries.26 (See figures 1 and 2.)

Acquisitions Often Increase Innovation

There is often an assumption that acquisitions decrease innovation, but a **number of studies** suggest **the opposite**. A Dutch study looks at acquisitions in the manufacturing sector, which includes technology companies, and finds that **both acquisitions and divestitures** are **positively correlated** with **increased innovation**.27

Likewise, a paper by Igor Letina, Armin Schmutzler, and Regina Seibel argues that prohibiting killer acquisitions **strictly reduces** the **variety of innovation projects** in an industry because it **deters innovation**.28 They built a model in which prohibiting acquisitions has a positive effect on consumer surplus only if the bargaining power of the entrant is small and competition in the industry is not too intense, because both raise the incentives for an incumbent to do its own innovation rather than purchasing that of others. They cautioned:

While prohibiting acquisitions always has a strictly negative innovation effect in the case without commercialization (i.e. for killer acquisitions), it is not necessarily true for acquisitions with commercialization. Thus, even though killer acquisitions may appear to be particularly problematic, the case for prohibiting them is not necessarily stronger than for acquisitions with commercialization if one takes ex-ante innovation incentives into account.29

Moreover, Will Rinehart of the Center for Growth and Opportunity wrote that the **large majority of acquisitions** are motivated by the desire to purchase either the **technology or** the **talent** of the specific firm, rather than to stifle a **potential rival**.30 Sometimes termed “acqui-hires,” these acquisitions refer to when a company is acquired largely as a means to hire its workforce, and the newly hired team is often more productive after acquisition, in part because of economies of scope and increased resources.31 These acquisitions also often benefit **both parties** by integrating new technology into a **broader network** and helping the new firm **scale up**. They also benefit consumers by **disseminating innovations more broadly**. Rinehart related how Facebook’s purchase of Instagram was frequently mocked at the time. Since the purchase, Facebook has helped Instagram become a widely used platform.

Likewise, when Google purchased the start-up Keyhole, an innovative digital mapping company, (at the request of Keyhole founders), Google invested billions to improve and expand the mapping coverage. Bill Kilday, one of the founders of Keyhole, wrote that Google “gave them zero direction [and] unlimited resources.”32 In Keyhole’s early days, Kilday talked with someone who had an idea to do street-level mapping, complete with pictures. He estimated that because of the vast scale of it, coupled with an uncertain business model, it was essentially science fiction, not likely to be seen in his lifetime. Google, with its Street View project, did it in less than five years, providing it to consumers for free. Moreover, by acquiring Keyhole to help it create Google maps, Google disrupted an incumbent duopoly (MapQuest and TeleAtlas) that was charging for their products.

Moreover, the assumption there are many killer acquisitions does not seem to be borne out. One reason is they are **seldom profitable**. A mathematical model developed by Pehr-Johan Norbäck, Charlotta Olofsson, and Lars Persson predicts that companies will **only purchase a new technology** in order to kill it if the **quality of the invention** is **small**, otherwise the **profit** from **introducing the technology** is **higher** than the value of deterring its use.33 This incentive to acquire also falls when intellectual property rights are strong, thereby increasing the entrant’s commercial value. Likewise, a paper by Axel Gautier and Joe Lamesch that surveyed acquisitions by Google, Amazon, Facebook, Microsoft, and Apple finds that out of **175 acquisitions** in the 2015–2017 period the paper surveys, **only one** qualified for being **a potential “killer” acquisition**: Facebook’s acquisition of a photo-sharing app called Masquerade, which had raised just $1 million in funding before being acquired.34

1. **They provide a safe exit option and encourage *more innovation***

Jennifer **Huddleston &** Juan **Londoño 21**—Director of Technology and Innovation Policy at the American Action Forum; Technology & Innovation Policy Analyst at the American Action Forum. ("Technology and Telecommunications Policy in the Executive Order on “Promoting Competition in the American Economy”," July 12, 2021, from AAF, https://www.americanactionforum.org/insight/technology-and-telecommunications-policy-in-the-executive-order-on-promoting-competition-in-the-american-economy/)

This argument provides an extremely limited vision of the dynamics and the benefits of mergers for both big and small players, but, more important, for consumers. For **entrepreneurs** and **innovators**, mergers and acquisitions provide an **exit option** when they lack of financial **resources**, marketing **power**, **regulatory burdens**, or a desire for expansion becomes a barrier for further **growth**. Merging or being acquired allows these innovators to **receive compensation** for their idea and can result in teams that may be able combine talents more easily. Mergers also allow those innovators who desire to move on and **start another innovative product** to do so with **valuable seed capital** from a prior acquisition. For their part, big companies receive valuable talent and product improvements. But it is not just the businesses that benefit from mergers and acquisitions. Consumers benefit from having access to better products and services that could possibly not exist had the merger not taken place. The focus of merger analysis should remain on the impact on consumer welfare, not on a belief that a certain number of competitors determined by policymakers rather than the market is ideal.

The reasoning for allowing challenge of past mergers often focuses on whether mergers such as Instagram and Facebook or Google and DoubleClick received the appropriate scrutiny. But focusing on past unchallenged **mergers** could also impact future, consumer-benefitting mergers by **deter**ring **risky acquisitions** harming small developers in the process. The counterfactual of how a company would have evolved without a merger is often difficult to know and will have to rely on multiple assumptions that would be difficult to prove with any empirical evidence.

**Even if small businesses innovate, they rely on bigger firms to compete**

Joshua D. **Wright &** Jan M. **Rybnicek 21**—Law professor at George Mason University, executive director of the Global Antitrust Institute, former member of the Federal Trade Commission; Antitrust Attorney, former Advisor at FTC, Editor for the Antitrust Law Journal. ("A Time for Choosing: The Conservative Case Against Weaponizing Antitrust," Summer 2021, from National Affairs, https://nationalaffairs.com/time-choosing-conservative-case-against-weaponizing-antitrust)

But that is only part of the story. These major tech firms not only directly employ Americans, but through their **investment** and **innovation**, they have created **entirely new markets** that **also** have created **millions of jobs**. Take for instance the app economy—a more than $1 trillion global industry—that has created millions of U.S. jobs since Apple’s iPhone launched in 2007. According to one estimate, the U.S. had more than two million app-related jobs as of April 2019.[xvii] America’s large tech companies also **benefit small businesses** in yet another way: by connecting **them to new markets** that they could not access before. Today small businesses are able to take advantage of the major tech firms’ **size and scale** to grow **domestically** and **compete globally** with affordable and secure services.

**That only applies to small firms---transaction costs and politics.**

**Foster & Arnold 20** (Dakota Foster, Visiting Researcher at Georgetown’s Center for Security and Emerging Technology (CSET). She is a graduate student in the Department of War Studies at King’s College London, where she is studying the Third Offset Strategy and the national security implications of changing innovation patterns between the public and private sectors. Previously, she has conducted research on terrorism and U.S. national security policy for the U.S. military, the House Foreign Affairs Committee, and the Washington Institute. She holds a B.A. from Amherst College and is an incoming student at the University of Oxford. Zachary Arnold, Research Fellow at Georgetown’s Center for Security and Emerging Technology (CSET), where he focuses on AI investment flows and workforce trends. His writing has been published in the Wall Street Journal, MIT Technology Review, Defense One and leading law reviews. Before joining CSET, Zach was an associate at Latham & Watkins, a judicial clerk on the United States Court of Appeals for the Fifth Circuit and a researcher and producer of documentary films. He received a J.D. from Yale Law School, where he was an editor of the Yale Law Journal, and an A.B. (summa cum laude) in Social Studies from Harvard University, “Antitrust and Artificial Intelligence: How Breaking Up Big Tech Could Affect the Pentagon’s Access to AI”)

Breaking up large tech firms would scatter the inputs to AI innovation, such as datasets, computing power, and human talent, across more companies. However, these same inputs could be reconsolidated through joint ventures, data sharing agreements, industry consortia, and other forms of collaboration between smaller post-breakup companies. If reasonably easy to implement and sustain, interfirm cooperation could drive innovation as effectively as intrafirm coordination pre-breakup, or even more so. In fact, this sort of cooperation is already emerging in the market. Microsoft and Graphcore, for example, just announced the development of Graphcore Intelligence Processing Units, designed to support machine learning.83 Recent DARPA challenges, like the Spectrum Collaboration Challenge, also indicate that the Pentagon values a collaborative approach to AI.84

In practice, though, cooperation is not always easy.85 When different parties supply set components for larger products, the end product can suffer because no entity has high-level, comprehensive control over it. 86 Similarly, existing research suggests that cooperation driven by vague or short contracts often falls short for “projects involving advanced innovation.”87 Greater reliance on contractual relationships and collaboration for critical inputs like data and compute **could also make AI firms more vulnerable to supply shocks.**

Finally, a more collaborative environment also raises questions of integration. Instead of drawing on central, intrafirm sources, companies will have to leverage diverse inputs from multiple vendors, which could complicate coding, cleaning, and sorting data. Although contracts could serve as substitutes for intrafirm resources, negotiating and enforcing contractual relationships entails potentially **significant transaction costs**; large firms can avoid this inefficiency and accelerate innovation by bringing inputs together under one roof, making contracts unnecessary.88

activity,161 yet “Defense Technology” and “Information and Communication Technology” are two of six industries identified by the National Counterintelligence and Security Center as the most likely targets for foreign intelligence collectors.162

**US will remain leader in AI---funding and quality advantages secure a tentative lead.**

**Savage '20** [Neil; 12/9/20; science writer for Nature; "The race to the top among the world’s leaders in artificial intelligence," https://www.nature.com/articles/d41586-020-03409-8/]

For the **near future**, Ding says, the US is likely to **remain** the **world leader** in AI. “Though China has some exceptional universities, such as Tsinghua University, the US dominates in terms of maybe the **top 20 universities** doing AI research, and that is reflected in the **quality** of the papers. It’s **very unlikely** that China will become the **singular innovation** centre by 2030.”

Many countries see AI as providing a **competitive edge**, not only **economically**, but **militarily**, says Husain. He likens the competition in AI to the Space Race of the mid-twentieth century, in which the US and the Soviet Union vied to be the first to achieve milestones in space travel. “The Space Race yielded **contributions** that differentiated the American **technological ecosystem** from all others **for decades** to come,” says Husain. “If a country **invests heavily** in this area, it will **yield technologies** that will form the **pillar** of **defence capability** and **economic differentiation** for the rest of the century.”

Technologies that can be developed based on AI will indeed have both economic and military benefit, says Daniel Araya, a policy analyst at the Center for International Governance Innovation, a think tank in Ontario, Canada. “We’re talking **new weapons**, data-driven **innovation** for **industry** and **automation**, and **redesigning** how our **society** works from the ground up.”

**U.S. innovation is high and globally dominant---big business is key.**

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

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

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

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

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

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

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

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

**Companies are big because they innovate---lack of innovation is from corporate failure or gross missteps.**

Robert D. **Atkinson 21**, President of the Information Technology & Innovation Foundation, founding member of the Polaris Council who advices the U.S. Government Accountability Office’s Science, Technology Assessment, and Analytics team, Ph.D. in City and Regional Planning from the University of North Carolina, Chapel Hill, “How Progressives Have Spun Dubious Theories and Faulty Research Into a Harmful New Antitrust Doctrine,” Information Technology & Innovation Foundation, 03-10-2021, https://itif.org/publications/2021/03/10/how-progressives-have-spun-dubious-theories-and-faulty-research-harmful-new

Over the past few decades, many firms have gained market share in their industries, so much so that they have been coined “superstar” firms. This phenomenon has been especially true in digital markets wherein the nation’s largest Internet firms have created the platforms that are fueling rapid growth, but it has also occurred across many industries.

Neo-Brandeisians have latched on to this development to allege that the firms’ growing market share is largely due to anticompetitive conduct, rather than inherently superior business performance. They argue that this market power in turn has allowed firms to raise margins and profits, cut spending on innovation, and unfairly preempt competitive challenges. Even when firms have grown due to superior performance, these advocates warn that the firms often preserve their advantage by adopting a variety of anticompetitive practices.

This market power explanation of superstar firms appears to be flawed. Although some firms have gained even more market share, this has generally not been because the firms used market power to succeed, nor does it suggest reduced economic welfare. Rather, in this environment, a few firms appear to have figured out how to be much **more innovative and competitive**, and have acted effectively on those insights, enabling them to outperform laggard firms. Indeed, there appears to be something about the nature of **current process** and product **tech**nologies and global market operations that enables some firms to perform better than others, creating **more public value** in the process. Rather than decry this development and attempt to hold back successful firms, advocates should be celebrating it and identifying ways to help lagging firms do better. If there is a policy problem, it is not due to the success of superstar firms. Instead, it is either the failure of laggards to catch up or some gross mistakes, such as BlackBerry’s persistence on smartphones with keyboards paving the way for Apple and Google’s successes.

**Particularly in tech.**

Robert D. **Atkinson 21**, President of the Information Technology & Innovation Foundation, founding member of the Polaris Council who advices the U.S. Government Accountability Office’s Science, Technology Assessment, and Analytics team, Ph.D. in City and Regional Planning from the University of North Carolina, Chapel Hill, “How Progressives Have Spun Dubious Theories and Faulty Research Into a Harmful New Antitrust Doctrine,” Information Technology & Innovation Foundation, 03-10-2021, https://itif.org/publications/2021/03/10/how-progressives-have-spun-dubious-theories-and-faulty-research-harmful-new

Neo-Brandeisians have argued that market concentration has grown, and that this has caused a precipitous decline in the number of business start-ups. In this narrative, “monopoly” is a sclerotic scourge, **rob**bing the economy of its traditional dynamism—which is largely wrong.

This claim is based on correlation. Concentration has increased while the number of start-ups has fallen; therefore, they argue, concentration caused the decline. In fact, **there is no statistical relationship between** changes in **concentration and changes in new firm formation**. Moreover, all the net decline in new firm formation is in one major sector—retail—wherein the results of increasing retail firm size have been superior productivity growth, higher wages for workers in larger stores, and significant consumer benefit in the form of lower prices and broader selection. (See figure 3.)

And when it comes to the most important kind of start-ups—potentially high-growth start-ups, especially in **tech**nology sectors—**there has been no decline**. When MIT professors Jorge Guzman and Scott Stern looked at trends in high-growth entrepreneurship for 15 large states from 1988 to 2014, they found that even after controlling for the size of the U.S. economy, **the second-highest rate of high-growth entrepreneurship occurred in 2014**.21

Chart, waterfall chart

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**Superstar firm thesis is true.**

**Kennedy ’21** [Joe; January 11; former chief economist for the U.S. Department of Commerce, Economics PhD from George Washington University, J.D. from the University of Minnesota; Information Technology and Innovation Foundation, “Monopoly Myths: Are Superstar Firms Stifling Competition or Just Beating It?” https://itif.org/publications/2021/01/11/monopoly-myths-are-superstar-firms-stifling-competition-or-just-beating-it]

Luckily, there is another explanation for why some companies outperform others. A number of **studies** find that **technological change**, **integrated global markets**, and **low interest rates** have **disproportionately benefitted** firms that have been able to take advantage of this new operating environment. The increased importance of intangible assets, including research, software, marketing, training, and business model development, has also helped, giving an advantage to firms that can leverage them over a larger market. But large firms that fail to invest and change typically fall behind their more innovative rivals.

SUPERSTARS RESULT FROM SUPERIOR PERFORMANCE

As early as 1981, economist Sherwin Rosen wrote about the fact that better professionals, including comedians, athletes, singers, attorneys, and doctors, were commanding larger audiences and much higher incomes than others, including those who were only slightly “less good.”21 He attributed this partially to new technologies that reduced the cost of entertainment services and allowed individuals to reach a much wider audience, allowing the best to operate on a national or even international scale. In other words, the ability to reach a larger customer base gave rise to **“superstar” characteristics**.

We see this dynamic in basketball. Bill Russell, inarguably one of the greatest basketball players of all time, earned only about $600,000 per year at his peak (in current dollars).22 Compare that with Golden State Warrior guard Stephen Curry, who brings in more than $40 million per year.23 Larger markets—the NBA is global due to satellite technology—play a key role in that increase. The ability to reach those larger markets, in part due to IT and global integration, plays a similar role in industry.

But why does Stephen Curry make more than his team’s bench players? He is a better player. That dynamic also applies in industry. **A recent study** by the Organization for Economic Cooperation and Development (OECD) attributes the **rise of concentration** in a **number of sectors** in the United States to a **small share of firms** that have become **more productive than their peers**. The study points to investment in a combination of IT and intangible assets, thereby creating a better business model.24

OECD looked at the relationship between spending on intangible assets and concentration (measured by the market share of the top eight groups of jointly owned companies) between 2002 and 2014. The data covered manufacturing and non-financial market services in nine countries, including the United States. Concentration increased in about 70 percent of country-industry pairs. The average increase was around 5 percentage points (from 39 percent to 44 percent of the industry, or an average of 0.5 percentage points per firm).25 A 10 percentage point increase in intangible investment within an industry (measured by patents) was associated with 1.5 to 2.2 percentage points more concentration over four years. The linkage was strongest for industries that were more digitized, open to trade, and more concentrated to start with. It was also strongest for investments in innovative property such as patents, research and development (R&D), and new products and systems. The authors summarized that the results “suggest that [increased concentration] may be mostly of the ‘**good**’ variety in the sense that it was associated with **investment in innovative assets** and **new intangible business models** rather than anti-competitive forces.”26

A subsequent OECD study finds differences in multifactor productivity between companies, looking specifically at the dynamics within both the top and bottom half of companies across 34 industries between 2000 and 2015. Using cross-country data on both productivity dispersion within industries and levels of intangible investment, it concluded that a 10 percentage point increase in intangible investment within an industry is associated with a 1.5 percentage point increase in the dispersion between firms at the 90th and the 10th percentile of the productivity distribution.27

Different forces were operating in the top and bottom halves of the market. Again, industries with higher levels of intangible investment experienced higher increases in productivity dispersion between firms. The dispersion in productivity at the top of the market was associated with the ease of extending intangible capital to other parts of a firm since bigger firms can spread these costs out over a larger volume of production. However, dispersion at the bottom half was linked to synergies between intangible capital and factors such as digital intensity, exposure to trade, and the availability of venture capital. Laggard firms seem to have difficulty effectively making the complementary intangible investment needed to fully exploit digital technologies. Unlike the earlier OECD study, the authors found that the most important type of intangible investment was in economic competencies (branding, market research, employer training, and organizational structure) rather than innovative property such as patents. These are the costs that Eggertsson et al. omitted, arguing that they only diverted sales from one company to another.

A team led by David Autor of MIT tried to explain another problem commonly attributed to a lack of competition: the decline in the share of national income going to labor, especially low-skilled workers. Using micro-panel data on six sectors (manufacturing, retail trade, wholesale trade, services, utilities, and transportation) from the U.S. Census going back to 1982, the authors concluded that globalization and technology were **increasing competition** and **pushing sales** toward **the most productive firms** within each industry.28

This finding seems to explain the growing concentration in a number of four-digit NAICS industries that neo-Brandeisians attribute to unfair competition. But it also explains some facts that the neo-Brandeisians cannot, such as industries experiencing the **greatest concentration** also have **faster productivity growth and innovation** (measured by **patents** and **value added per worker**) and similar patterns exist in other nations that have very different approaches to antitrust enforcement. They also found that both the fall in labor share and the rise in margins occurred mainly in the firms that grew the most. The average among all firms in an industry remained relatively flat. This is less likely to be the case if a lack of competition is driving profits up across an industry because even smaller companies would benefit from a general increase in prices or markups. As the authors stated:

If a change in the economic environment advantages the most productive firms in an industry, product market concentration will rise and the labor share will fall as the share of value added generated by the most productive firms (superstars) in each sector, those with above-average markups and below-average labor shares, grow. Such a rise in superstar firms would occur if consumers have become more sensitive to quality-adjusted prices due to, for example, greater product market competition (e.g. though globalization) or improved search technologies (e.g. greater availability of price comparisons on the internet…).29

The study points to a number of structural changes that could give larger, more innovative firms an edge in the market. These include a decline in trade barriers allowing more competitive companies to expand overseas, an increase in consumer price sensitivity, the rise of Internet platforms that benefit from network effects, and the growing importance of efficiencies of scale. If the margins of the most productive companies are increasing because costs are falling rather than because of higher prices, consumers will not be harmed and society will benefit. As economist James Bessen stated:

[I]f proprietary IT allows some firms to become more productive than others in the same industry . . . then the more productive firms can earn quasi-rents. These would also be reflected in higher operating margins. Even in a competitive market, more productive firms could sell at the market price but profit from lower costs.30

These profits not only benefit shareholders, including pension funds, but society as a whole in that a share of these profits is paid in taxes.

**The international scope** of these changes has led the authors to believe that **lax antitrust policy** is an **unlikely primary explanation**. Interestingly, with the exception of a few companies, most firms are becoming more concentrated in their primary lines of business but less integrated across other activities. A key concern of Neo-Brandeisians has been that firms would use market power in one industry to expand into others, thereby increasing the damage to competitive markets. But this seems not to be happening.

The vast majority of changes in markups and labor shares are due to reallocation between firms toward larger, more productive and profitable firms. Most U.S. firms have seen either no increase or a fall in both measures.

Chang-Tai Hsieh and Esteban Rossi-Hansberg argued that the rise in national industry concentration between 1977 and 2013 was driven entirely by a revolution in three particular non-traded sectors: services, retail, and wholesale (they pointed out that concentration in manufacturing has fallen). Expansion was entirely driven by the number of small markets served by each firm. Thus, as national concentration was growing, local concentration (which is more relevant in non-traded sectors) was falling. This expansion was enabled by fixed-cost technologies, particularly software and related IT systems, that allow adopters to produce at lower marginal cost in all local markets in which they have a presence.31 Top firms have increasingly specialized in these sectors, while exiting others. **The net effect** is there was **no change in concentration** by the top firms in the economy as a whole, and “top firms are **now more specialized**, are **larger in the chosen industries**, and these are **precisely** the industries that have experienced concentration growth.”32 The authors noted that quality improvement due to firm entry in these markets is not captured by government statistics, resulting in an under estimate of productivity growth.

A recent paper by economist Sharat Ganapati strengthens the argument that the growth of many large firms has been driven largely by better performance. Looking at industry-level data, he showed that **rising concentration** is correlated with **productivity and real output growth**, but **not** with price increases: “Productive industries (with growing oligopolists) expand **real output** and **hold down prices**, raising consumer welfare, while maintaining or reducing their workforces, lowering labor’s share of output.”33 A 10 percent increase in the market share of the top four firms is accompanied by a 1 percent increase in real output and a 2 percent rise in productivity. The decline in labor share is due to the fact that top companies hire fewer, but higher-paid, workers. These relationships, however, are not true of every industry. Antitrust action may be needed in markets wherein increased concentration does not produce overall economic benefits of productivity and innovation.

**Maximizing concentration is the only way to beat China.**

**Atkinson ’20** [Robert; January 2; Founder and President of the Information Technology and Innovation Foundation, Ph.D. in City and Regional Planning from the University of North Carolina; ITIF; “How to Implement CFIUS to Support U.S. Competitiveness,” <https://itif.org/publications/2020/01/02/how-implement-cfius-support-us-competitiveness>; KP]

This is particularly true given that a core component of China’s industrial strategy is to build up **very large firms**, backed by massive amounts of cash and other subsidies, enabling them to “go out” and take market share around the world. We see that in many industries. In the biopharmaceuticals industry the Chinese government has put in place a strategy to weed out hundreds of small and mid-sized generic drug makers in order to establish a small number of large, robust national champions to sell drugs around the world. In high-speed rail, China’s government required the merger of China’s top two high-speed rail firms into the Chinese Railway Construction Corporation (CRCC). By 2016, CRCC had over two-thirds of global deliveries, taking significant market share away from the two other, now smaller leading firms, Alstom and Siemens.

There are only four **ways** to compete with these and other Chinese **juggernauts**. The first is to close markets in the rest of the world to them. While the Trump administration’s tariffs have limited some Chinese exports, it is not likely that U.S. tariffs will expand, nor is it likely that our allies will go down that path. And, indeed, resorting to having to apply such tariffs represents a non-optimal path for the U.S., and global, economy.

The second is for governments in advanced economies to create their own **national champions**. But this is difficult, if not impossible. Western governments rightly do not have the legal authority to force firms to **merge**. They could provide subsidies to enable firms to get much bigger, but few Western governments have either the inclination nor the budgets to do this at the requisite scale. And in the United States, not only budget limits but also an aversion to such activist industrial policy, makes this possibility nil.

This leaves only two possible approaches. The first is for U.S. firms **lacking the scale** needed to **compete globally** to go out of business. That **might be okay** if one believes in the “**potato chips**, **computers chips**; what’s the difference” theory of economic policy—in other words, that it makes no difference if the U.S. economy is home to advanced **technology** production or not. But **thankfully** across the political spectrum the view that America can give up on its advanced technology industries without paying a steep price is a **shrinking minority**.

So, the **only real option** is to let firms **combine** to get **needed scale** (while continuing to advocate for a global economic system predicated on private enterprise-led, market-based, rules-governed trade.) As my colleague Mike Lind and I point out in our book **Big Is Beautiful**: Debunking the Myth of Small Business, large firms are on average more **productive**, more **innovative**, pay **higher wages**, and export more. And sometimes the best, and often only, potential acquirer is a foreign firm from an allied nation. As such, as the Trump administration administers the newly reformed CFIUS it will be important that it clearly treats investments from adversaries, especially China, differently from investments from allies. We must recognize that, in China, America faces a geostrategic **competitor** that uses a mercantilist, state-led economic development strategy as a key means of statecraft and for the purpose of **accumulating** both **economic** and national security **advantage**. The countries in the latter case fundamentally do not operate their economies in this way, and so the **presumption** should be in favor of the investment/**acquisition** in the U.S. economy.