## 1NC

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#### Interpreation, the affirmative is a separation, not a prohibition

Khan 18. Lina M. Khan “The Separation Of Platforms And Commerce” <https://columbialawreview.org/content/the-separation-of-platforms-and-commerce/>

This Article argues that these combined problems of discrimination and information appropriation invite recovering common carriage’s forgotten cousin: structural separations. Structural separations place clear limits on the lines of business in which a firm can engage. **Rather than prohibit particular business practices**, **separations proscribe certain organizational structures**. In antitrust, **structural remedies are contrasted with behavioral ones**: Whereas behavioral remedies seek to prevent firms from engaging in specific types of conduct, structural remedies seek to eliminate the incentives that would make that conduct possible or likely in the first place.18

#### Business practices are business actions to reach objetives

Financial Dictionary ND “Business Practice” https://financial-dictionary.thefreedictionary.com/Business+Practice

Business Practice

Any tactic or [activity](https://financial-dictionary.thefreedictionary.com/activity) a business conducts to reach its objectives. Ultimately, a business's objective is to make [money](https://financial-dictionary.thefreedictionary.com/money).**Business practices are the ways it attempts to do so in the most cost effective way**. A company may have rules for business practices to ensure that its [employees](https://financial-dictionary.thefreedictionary.com/employee) are efficient in their work and abide by applicable laws. See also: [Business ethics](https://financial-dictionary.thefreedictionary.com/business+ethics).

#### Violation – the affirmative proscribes organization structures rather than prohibiting particular business practices

#### Vote neg for limits and ground – there are infinite organizational structures the government can proscribe which also deck ground because 1AC’s can force companies to be more efficient by outlawing other organizations

### Core CP

#### TEXT: The United States federal government should:

#### prohibit further expansions of the scope of its core antitrust laws

#### pass a statute which adopts the principle of separating platforms from commerce for platforms in the private sector.

#### It’s competitive---the CP doesn’t expand existing antitrust laws, bans the aff, and establishes a new law that regulates anticompetitive conducts

#### Relying on core antitrust statutes provides a room for the courts to assert its common law-making power---banning core antitrust law is key to strip this power

Crane 21 (Daniel A. Crane, Frederick Paul Furth, Sr. Professor of Law, University of Michigan, Antitrust Antitextualism, 96 Notre Dame L. Rev. 1205, y2k)

Even where reform statutes are textually honored in their immediate aftermath, history shows a creeping judicial tendency to begin integrating the reform statutes into the mainstream of antitrust jurisprudence within a few decades. This has been the fate of the four major antitrust reform statutes - the FTC, Clayton, Robinson-Patman, and Celler-Kefauver Acts - each of which was meant to rein in capital in ways that the Sherman Act did not. In all four instances, however, the courts incrementally began mainstreaming the statutes into Sherman Act precedent, creating a homogenous antitrust jurisprudence that read the textual distinctiveness out of the reform statutes. Thus, today, cases under the FTC Act, section 3 of the Clayton Act, and the Robinson-Patman Act are largely indistinct from Sherman Act cases, and merger cases have been rolled into the same modes of price-theoretic analysis that would be employed in a Sherman Act case. Given that neither [\*1252] statutory text nor legislative history seems to have deterred the courts from this process within a few decades after the passage of the statutes, there is little reason to believe that a "this time we mean it" statutory reform would not meet the same fate. If the courts continue to understand aspects of the antitrust statutes as aspirationally motivated and operationally impracticable, the previously observed pattern is likely to continue.

Again, it would be an overstatement to claim that statutory words have no consequences or that antitrust reform statutes are doomed ab initio to judicial culling. But the courts' pattern of antitrust antitextualism and their perennial insistence that the antitrust statutes are delegations of common-law power rather than textually actionable injunctions in all of their particulars provide a cautionary tale for future legislatures: the dynamic of antitrust legislation, enforcement, and adjudication plays out against a longstanding backdrop of contestation over bigness, power, and efficiency that has muted the ordinary importance of statutory language. Writing more definite statutes will not necessarily curb these habits of mind.

#### New statutory framework solves the aff---it doesn’t require expanding existing antitrust jurisprudence under core antitrust laws and allows for more direct regulations of anticompetitive practices

Paquette 17 (Jenny Paquette Associate Attorney at Narayan Travelstead PC. Kessler Topaz Meltzer & Check, LLP, Temple University - James E. Beasley School of Law, OLD IS NOT ALWAYS WISE: THE INAPPLICABILITY OF THE SHERMAN ACT IN THE AGE OF THE INTERNET, 89 Temp. L. Rev. Online 2, y2k)

II. DISCUSSION

The Sherman Act is outdated for purposes of attempting to regulate search engines. However, it is still applicable to industries that use business models [\*30] similar to those used at the time of its enactment. The Sherman Act is not a good fit for newer industries, but antitrust regulation is still needed for consumer protection. As such, a new statutory framework is needed.

To provide the necessary flexibility to handle new and evolving industries, an industry-specific framework should be enacted. Intellectual property law, which includes several doctrines tailored to fit particular needs but connected by one unifying purpose, provides an instructive framework on which Congress should model such a new statutory framework. A divided framework would allow for an individualized statutory framework and unique handling of Internet businesses. Under such a proposed new system, courts would have the flexibility to allow Google the freedom to act in a manner that benefits consumers. Additionally, such a new framework would allow courts to step in to halt Google's actions if they ever lead to anticompetitive harms that outweigh consumer benefits.

A. Competition is Good, But Chaos is Not: Why We Still Need Antitrust

Though the Sherman Act may not be a workable option for combatting anticompetitive actions in Internet companies, it is still applicable for traditional industries. Additionally, the general purpose of antitrust law is still applicable for all industries. Consumers are still consuming, so there is still a need for their protection as they do so. While antitrust generally is still needed, the Sherman Act as a specific framework is outdated.

The Act predates much of the current technology, and thus many of the related industries, that operate in the world today. When the Act was enacted in 1890, the United States was in the midst of a massive expansion of its industries, [\*31] which were primarily manufacturing, agriculture, and railroads. Since the Sherman Act's enactment, the advent of airplanes has drastically increased the globalization of commerce. Changes in communication technology have also altered the development of commerce as we increasingly rely on computers and the Internet. As the first home Internet connection came a century after the Sherman Act was enacted, it's impossible to fathom that the drafters imagined the state of commerce as it exists today.

Regardless of the possible legislative intent that existed at the time of its enactment, the Sherman Act has since been used as a consumer protection statute. Although commerce has evolved, many of the same concerns regarding consumer protection remain. Cartelization, price fixing, horizontal agreements, and other anticompetitive behaviors are still possible, and the Sherman Act is still competent to address these issues in traditional industries. Even some industries [\*32] relying on newer technology are suitable for analysis under the Sherman Act as the business models remain largely similar to those that existed in 1890.

Antitrust law must be changed in order for it to apply to nontraditional industries that use business models unsuitable for a Sherman Act analysis. This area of law cannot be abandoned altogether, as some scholars have suggested. Some of today's most profitable industries, such as Internet search engines, did not even exist in the most fledgling fashion when the Sherman Act was enacted. As the business models of some new industries are vastly different from what existed in 1890, the potential for consumer harms also differs. The scope of markets and what constitutes an "anticompetitive act" in such nontraditional industries can vary greatly from what is seen in traditional industries.

Attempting to apply an outdated statutory framework comes with a risk of inapplicability. The FTC's 2012 investigation of Google did not culminate in a lawsuit because the FTC found that Google only disadvantaged its competitors, [\*33] not competition. While this was the correct outcome, even if it were not, there was no appropriate alternative. Even if the FTC found that Google was acting in an anticompetitive manner, it is unlikely that a lawsuit against Google would have prevailed due to a lack of evidence of consumer harm. If a court found that Google was intentionally disadvantaging its rivals, it would be appropriate to hold Google liable under a traditional antitrust analysis. However, because Google was acting with the pro-consumer purpose to improve its search engine, such a holding would have been contrary to the goals of promoting consumer welfare.

Due to the multisided structure of a search business model, any action taken by Google potentially impacts users, advertisers, and Google's competitors simultaneously. As such, Google may help one of these groups while also harming another without incurring liability. Ignoring potential harms to competition renders an antitrust framework underinclusive and inapplicable to a goal of promoting competition. However, holding against Google for actions harming competitors would be overinclusive as it would thwart actions that benefit consumers. For antitrust to apply to search engines and other nontraditional industries, a more flexible antitrust framework is needed to avoid such issues of overinclusiveness and underinclusiveness.

B. Divide and Conquer: An Industry-Specific Approach to Antitrust

To create an antitrust system that is applicable to a vast array of businesses, it is necessary to create several doctrines that are able to evolve independently of one another. This will accommodate the great variations between industries. A multipart framework should be created for antitrust analysis of modern businesses. This framework should also permit the creation of additional categories as needed for unforeseen developments in technology.

Most businesses can be lumped into industry categories. Examples include energy (including oil and gas), industrial goods and services, consumer goods, [\*34] consumer services (such as media, food service, and travel), health care, financial services, information services, telecommunication services, and the Internet. An exact list of industries that should be considered in an antitrust framework is beyond the scope of this paper. However, it is necessary to consider a split that looks something like this to solve the shortcomings of a regime based on the Sherman Act. Congress should determine the appropriate industry list, since it is able to employ the assistance of various experts from different fields.

Perhaps the most suitable model for a new antitrust statutory framework can be found in intellectual property. Similar to antitrust, intellectual property necessarily seeks to strike a balance between consumer protection and incentives to promote a healthy marketplace. However, while intellectual property has a fairly uniform set of policy goals focused on encouraging investment and innovation, the various areas covered within it require different, though partially overlapping doctrines to achieve these objectives. As a result, intellectual property exists in the separate, but related, areas of patents, copyrights, and trademarks, as well as a few others. Each of these areas requires a different legal approach to best achieve the common goals of intellectual property. Each area has its own statutory framework that has been updated periodically to expand and keep pace with changes in technology and society.

[\*35] Patent law, while also part of intellectual property law as a whole, focuses on protecting inventions. It is based in the United States Patent Act (Patent Act). Congress enacted the first iteration of the Patent Act in 1790 under the power granted in Article I, Section 8 of the Constitution. Throughout the nineteenth and twentieth centuries, as the types of inventions being produced expanded and changed, patent law expanded accordingly. For example, patent law was expanded to include industrial designs in 1842, plants in 1930, and surgical procedures in the 1950s. The Supreme Court first held that computer software was patentable in its 1981 decision, Diamond v. Diehr. Over time, the courts have adjusted their interpretations of patent laws to allow or deny patents as needed to compensate for changes in technology and the needs of society.

Copyright law provides protection for "original forms of expression," and is governed by the United States Copyright Act (Copyright Act). Like the Patent Act, the Copyright Act has gone through several versions. Congress adopted the original Copyright Act in 1790. Since that time, there have been changes in copyright law which have altered the duration of protection afforded to authors, expanded the types of works covered, and improved the rights of copyright holders. For example, musical recordings and photographs, neither of which existed at the time the first Copyright Act was enacted, are both afforded protection under its current iteration. Computer software is also protected under the Copyright Act. As technology has evolved to allow for the creation of new types of work, copyright doctrine has expanded accordingly.

[\*36] Trademark law protects the symbols and words used to identify the source of goods and services. Trademark protection initially appeared in the United States as a common law development in the mid-nineteenth century. In 1946, Congress enacted the Lanham Act, which allows for federal statutory protection of trademarks and provides for remedies against infringement. In its early existence, trademark protection was only available for trademarks that included the name of the manufacturer. Over time, the protection has expanded to include a vast array of terms and product designs, and has even evolved to include protection against the trademark being diluted or tarnished.

Intellectual property law is most instructive to engineering a new antitrust framework because of the way its doctrines have adjusted in reaction to society. Through the nineteenth century, the economy in the United States evolved from one that was heavily dependent upon agriculture to one increasingly dependent upon industry. In the twentieth century, the economy again shifted with the emergence of information technology. As the economy has evolved, the need for intellectual property rights has evolved with it. As a result, the doctrines of intellectual property have remained useful and relevant in a way that antitrust has not.

Courts and lawmakers can increase the flexibility and efficacy of antitrust law by dividing it in a fashion similar to intellectual property. In applying the Sherman Act to evolving industries and society over time, the courts have necessarily jumped through analytical hurdles and created numerous exemptions. As such, an analysis under the Sherman Act requires a number of steps--and added steps mean added opportunities for error and oversight. Under a divided antitrust scheme, Congress could correct court errors through updated legislation for specific affected industries, similar to updates to the Patent and Copyright Acts. As it currently exists, correcting an error through legislation would require a complex analysis of how the full antitrust framework may be impacted.

[\*37] Dividing antitrust into more closely tailored frameworks for various industries may not fully eliminate the need for judicially created exemptions. However, it is likely that fewer exemptions would be needed, as the frameworks would be more closely tailored to fit each industry. As a result, antitrust would be simplified and the application of it would be more straightforward. More bright-line rules could be created, rather than the vague standards that exist under the Sherman Act. Any necessary exemptions could additionally be broad enough to apply throughout an industry without the risk of affecting future cases in other industries.

To emulate the split framework of intellectual property for use in antitrust, Congress should enact separate statutes for each industry category, similar to the Patent Act, Copyright Act, and Lanham Act. These statutes should include similar provisions to the Sherman Act, stating the general types of behaviors that are anticompetitive. Unlike the Sherman Act, the specific purpose of the statutes--consumer protection--should be made clear. Each statute should also be made more specific, including in its text behaviors by firms that are known in that industry to result in consumer harms. Over time, the statutes should be updated as necessary, which will ideally result in frameworks that work separately by industry, but still achieve a unified goal of consumer protection.

C. The Internet Industry and What it Might Look Like

To best address consumer harms that may result from the business models of online-only products, a separate antitrust approach should be used for the Internet. The Internet industry should include only businesses whose offered products or services are digital in nature, rather than tangible goods and services that can be purchased through online channels. An Internet industry would [\*38] necessarily need to include the variety of online offerings we are accustomed to today, as well as have room to accommodate rapid innovation. As such, an ideal statutory framework must accommodate various business models used for online products, which may harm consumers in different ways. To provide this flexibility, an Internet antitrust statute should include factors to be weighed by courts in determining whether a firm's pro-consumer actions outweigh potential harms.

To further accommodate various online business models, as well as the evolution of society toward a web-based center, the Internet industry should be further divided. An ideal statute should divide the Internet into market types, each of which raises its own unique concerns in how to define the relevant market, how competition may be thwarted, and how consumers may be impacted. For example, the business model of an information website that users mainly access to read content may be very different from a social media platform with the primary purpose of facilitating interactions between users.

Statutory provisions should be included for specific handling of search engines, social media, information websites, email and communication services, streaming media, and software. While all of these categories involve paid advertising as part of their business models, the advertising appears differently and interacts with consumers in various ways. The ways in which a consumer may be harmed by targeted advertising differs--depending on how that advertising is targeted, what information is involved in the behind-the-scenes processes that result in these ads being served up to the user, and the ways these ads may differently affect the competitors of the firm operating the service on which the ad appears. As such, a holding of liability against a firm for consumer harms in one area could erroneously thwart pro-consumer actions in another area, simply because both utilize paid advertising. By maintaining separate statutory provisions for each, such effects could be minimized.

[\*39] While each Internet subcategory presents its own concerns, many of these services are interconnected in ways that are unprecedented in any prior market. Companies like Google, Yahoo!, and Microsoft operate in more than one of these areas and offer services that link their product offerings together for ease of use by consumers utilizing more than one product. For example, Google offers Internet search, advertising, email services, a social media platform, YouTube, and even its own browser, Google Chrome. This unique situation can be best handled by viewing each of these products separately, while also balancing the effects each has on the others.

Aside from the interconnection of products that exist online, there are other concerns which affect the function of an antitrust framework and they vastly differ from what has been seen in traditional industries. As market definition, market stability, and the cross-elasticity of demand differ greatly from traditional industries, an analysis of market power should likewise look different. As the factors impacting a firm's ability to thwart competition and harm consumers do not exist in the same way online, the traditional analysis does not apply. If courts attempt to apply the Sherman Act to the search engine industry, they risk setting precedent that will make it less applicable to traditional industries, where it is still useful. Instead, an Internet antitrust statute should include each of these differences in guidelines for analyzing a firm's behavior to ensure each aspect is appropriately considered.

To include all of the above-mentioned concerns, I propose an Internet antitrust act similar to the following:

Section 1: Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of online trade or commerce among the several States, or with foreign nations, with a likely result of harm to consumers, shall be illegal.

[\*40] Section 2: (a) Any person or persons who shall (i) monopolize, (ii) attempt to monopolize, or (iii) combine or conspire with any other person or persons, to monopolize any part of the online trade or commerce among the several States, or with foreign nations, with a likely result of harm to consumers, shall be deemed guilty of a felony. (b) Such a violation shall require a finding that (i) the person or persons possess monopoly power in the relevant market, determined by their ability to control market activities; and (ii) the person or persons intentionally acted to acquire or maintain this power, as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.

Section 3: This statute shall apply to all businesses providing products or services that exist solely online and in no tangible form.

Section 4: Whether a harm to consumers is a likely result of the actions of a person or persons shall be determined by weighing such potential harms against the potential benefits of such actions. This analysis should include, but should not be limited to, the following factors:

(a) whether the product in question is a search engine, social media platform, email or communication service, streaming media service, or software product;

(b) whether consumers pay for the use of the product or service;

(c) whether the person or persons gain revenue from advertising targeted to consumers as part of the product or service;

(d) any barriers to entry that exist or are lacking in the relevant market for the product or service;

(e) the relative ease or difficulty of consumers to switch to an alternative product or service and the time and monetary cost to the consumer of engaging in such a switch;

(f) the amount of time for which the person or persons has held, or is likely to hold, a market share of a sufficient size to control any market activity; and

(g) whether, and to what degree, the product or service in question is connected to another product or service controlled by the same person or persons.

In addition to the above text, such a statute should likely include sections specifying appropriate criminal penalties and civil sanctions. However, such considerations are beyond the scope of this paper and best left to the legislature.

[\*41] D. An Analysis of Google

Under the proposed new framework, a court should analyze Google and other search engines with consumer interests in mind. As David Balto states in the opening line of his article in support of Google, "[i]t's about the consumer, stupid." To best protect consumers, antitrust regulation should tread carefully in the area of search. An application of antitrust law that would force Google to cease functioning as it currently does could have massive detrimental effects on the everyday lives of most Americans. While competition is necessary to incentivize continued innovation, ceasing any actions of Google to help its competitors may be unwise.

Focusing on Google's search engine, the relevant consumer for an antitrust analysis should be the end user. The relevant market should include not only competing search engines, but all search services that are publicly available at no cost to the consumer, excluding only specialty paid search services. This market should be viewed as a two-sided market with advertising. Advertising should include all online ads that are targeted to the user's preferences or information, including display ads on webpages and search ads tied to query terms. Additionally, users may access websites through other channels, such as clicking links in emails or typing a URL directly into the navigation bar of their browser. Such channels should be considered when discussing the relevant market and a search engine's share in it.

In applying the above-proposed statutory framework, an analysis of Google's search engine would weigh in favor of greater latitude to maximize the [\*42] potential benefits to consumers than a Sherman Act analysis would allow. In considering factors (b) and (c) of Section 4 of the proposed statute, users do not pay for the use of Google search and Google's revenue is gained through targeted advertising. Thus, potential harms to consumers would likely stem from manipulation of search results to favor these paid ads. The barriers to entry for competition are very low in search engines, which weighs against a finding that consumer harms are likely under factor (d). Likewise, under factor (e), the relative ease and lack of cost for users to switch to an alternative search engine or access information in another way weighs against a finding of likely consumer harms. As Google is unlikely to maintain a strong enough market share to control market activity over an extended time, factor (f) also weighs against antitrust liability under the proposed framework.

Factor (g), whether the product or service in question is connected to another product or service, is more complex. The balancing concern for this factor is whether such connections serve to benefit the consumer, or if the connections create a barrier against competitors from entering the market. Google offers all of the services listed in Section 4(a), which work together to provide integrated services to consumers. This list does not address Google's vertical search services, which include shopping, Google Maps, local results, flight planning, and will certainly include a host of new services in the near future. This also excludes the many areas in which Google is currently investing time and money, such as augmented reality and driverless cars. As long as an investigation into these services shows they potentially benefit consumers more than they potentially harm competition, this factor should also weigh in favor of Google.

Google, to date, has provided users with benefits that far outweigh any potential harms. Search engines generally create the enormous social benefit of connecting content providers with users in a mutually beneficial manner. [\*43] However, as a result of having such power, search engines do have the potential to inflict massive harm on both sides of this relationship. Thus, antitrust policy should carefully consider allowing the necessary freedoms to maximize these benefits while still exercising sufficient control when harms are recognized. So long as other search engines are staying in business against Google to maintain some form of competition, there is no reason for regulators or courts to hinder Google's freedom to innovate. Under the proposed statutory framework, if Google's actions begin to harm competition more than they benefit consumers, such actions could be stopped. In short, so long as Google is not blatantly acting with the intention to harm competition or consumers, it should be left to innovate as best it can.

III. CONCLUSION

The Sherman Act, over its long history, has served America's consumers well. If treated properly, it may continue to do so well into the future. If it is allowed to be picked apart, piece by piece by stretched precedents and exceptions, it will eventually fall apart. In an ever-changing technological landscape, we cannot afford to let the legal frameworks protecting us go stale. However, we must treat innovation and technology with the same respect, rather than suffocating it with outdated law.

#### Common law-oriented antitrust undermines *stare decisis*---collapses business confidence and rule of law

Tracer 13 (Daniel M. Tracer, Attorney, United States Department of Justice, Antitrust Division, Stare Decisis in Antitrust: Continuity, Economics, and the Common Law Statute, 12 DEPAUL Bus. & COMM. L.J. 1 (2013), y2k)

B. Stare Decisis's Diminished Role in Antitrust

In the wake of recent antitrust case law,3' scholars now take for granted the fact that stare decisis plays a diminished role in the area of antitrust.32 In particular, the Supreme Court has understood the Sherman Act to implement a common law approach whereby antitrust law can adapt and change course as needed.33 Scholars thus assume that stare decisis is simply not as big of an obstacle to change in the antitrust context as it is in other legal contexts. 34 For instance, it is understood that antitrust precedent may not survive as long and that antitrust legal tests may frequently change.35 Indeed, because of the widespread belief that antitrust's legal doctrine can and will be overruled and repealed as appropriate, scholars frequently attempt to predict which formerly binding rules of law will be abandoned next and which, if any, have staying power.36 To be sure, the diminished function of stare decisis in antitrust is a welcome development in the eyes of some. Those who subscribe to this understanding primarily highlight the flexibility that results from a weaker version stare decisis.37 Accordingly, antitrust law is thought to benefit from the Court's ability to more easily abandon precedent that no longer fits with contemporary economic views and the Court's ability to keep the antitrust laws up-to-date with economic thinking. In other words, this trend marks a triumph of economic reality over legalistic formality in the antitrust realm. Of course, one serious consequence of a weaker version of stare decisis is that the antitrust practitioner must also be an economist. 38 Thus stated, this view of stare decisis would hardly surprise students of the Chicago School and its understanding of antitrust law as nothing more than a branch of applied microeconomics. 39 In contrast, a somewhat more dominant view of stare decisis takes a negative attitude of such a state of affairs. As an initial matter, scholars have criticized the predominance of economic theory over traditional legal reasoning in antitrust law due to a concern that judges may lack the proper expertise to fully base their decision on economic analysis. This concern goes beyond a judge's possible lack of formal economic training, taking into account the institutional impediments of a court in deciding economic matters and the lack of consensus among economic scholars themselves on the costs and benefits of various business practices. 40 Moreover, to the extent that the Court's antitrust decisions are in tension with stare decisis, the Court's tendency to overrule antitrust precedent goes against the Court's function to interpret law rather than promulgate policy. 41 The consequences of failing to abide by stare decisis, especially in economic matters, include the following: the inability of businesspeople to confidently transact under the assumption of settled law,4 2 diminished public confidence in the Court,43 and a lack of fairness or evenhandedness in the way justice is administered, which tends to undermine the concept of the rule of law. 4 4 In other words, many of the benefits associated with stare decisis may be lacking in antitrust law. One final perspective that has gained traction in recent years is the notion that weaker stare decisis in the field of antitrust flows-or ought to flow-from the regulatory nature of the antitrust laws.4 5 Under this view, it is assumed that regulatory agencies, as opposed to courts, tend to change the rules and doctrines they apply very quickly, often reflecting shifting policies and priorities of incoming executive administrations as well as the technical expertise of the agency involved.46 Thus, if one assumes there is some carryover in the way that courts and the Antitrust Division of the Department of Justice (DOJ) and the Federal Trade Commission (FTC) are involved in the interpretation and enforcement of the antitrust laws, it may be somewhat less surprising that stare decisis should play a less pronounced role. 4 7

#### Global rule of law solves extinction

Feldman 8 (Noah, Professor of Law – Harvard University School of Law, "When Judges Make Foreign Policy", New York Times, 9-28, Lexis)

Why We Need More Law, More Than Ever

So what do we need the Constitution to do for us now? The answer, I think, is that the Constitution must be read to help us remember that while the war on terror continues, we are also still in the midst of a period of rapid globalization. An enduring lesson of the Bush years is the extreme difficulty and cost of doing things by ourselves. We need to build and rebuild alliances — and law has historically been one of our best tools for doing so. In our present precarious situation, it would be a terrible mistake to abandon our historic position of leadership in the global spread of the rule of law.

Our leadership matters for reasons both universal and national. Seen from the perspective of the world, the fragmentation of power after the cold war creates new dangers of disorder that need to be mitigated by the sense of regularity and predictability that only the rule of law can provide. Terrorists need to be deterred. Failed states need to be brought under the umbrella of international organizations so they can govern themselves. And economic interdependence demands coordination, so that the collapse of one does not become the collapse of all.

From a national perspective, our interest is less in the inherent value of advancing individual rights than in claiming that our allies are obligated to help us by virtue of legal commitments they have made. The Bush administration’s lawyers often insisted that law was a tool of the weak, and that therefore as a strong nation we had no need to engage it. But this notion of “lawfare” as a threat to the United States is based on a misunderstanding of the very essence of how law operates.

Law comes into being and is sustained not because the weak demand it but because it is a tool of the powerful — as it has been for the United States since World War II at least. The reason those with power prefer law to brute force is that it regularizes and legitimates the exercise of authority. It is easier and cheaper to get the compliance of weaker people or states by promising them rules and a fair hearing than by threatening them constantly with force. After all, if those wielding power really objected to the rule of law, they could abolish it, the way dictators and juntas have often done the world over.

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### States CP

#### The attorney generals of 50 states and relevant territories, through the National Association of Attorneys General’s Multistate Antitrust Task Force, should adopt the principle of separating platforms from commerce for platforms in the private sector.

#### A multistate AG antitrust enforcement over state antitrust statutes solves the aff---causes federal follow-on

Artega 19 (Juan A. Arteaga is an experienced antitrust attorney and a former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, The Role of US State Antitrust Enforcement, Global Competition Review, 11-19, <https://www.lexology.com/library/detail.aspx%3Fg%3Dd423301d-f4d1-4550-a99c-1880869e67e7+&cd=11&hl=en&ct=clnk&gl=us>, y2k)

In the United States, competition laws have been implemented and enforced through a dual system where the state and federal governments play distinct, yet complementary, roles in regulating the competitive process. While the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) are widely viewed as the stewards of US antitrust laws, state attorneys general have long played an important, albeit varying, role within the United States’ antitrust enforcement regime. This has been especially true during the past 30 years because state attorneys general have become much more effective at coordinating their antitrust enforcement efforts to ensure that they have a meaningful seat at the table in any actions brought jointly with their federal counterparts or are able to bring their own actions when the DOJ and FTC decide not to do so.

Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition. In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions. This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage. Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.

In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process. As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States. This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.

In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring *parens patriae* suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations. Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices. These laws had their intended effect of reinvigorating state antitrust enforcement.

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints. The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’. No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications. To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.

Since the reawakening of state antitrust enforcement nearly 30 years ago, state attorneys general have continued to play an important role in the enforcement of both state and federal antitrust laws. During periods of lax federal antitrust enforcement, state attorneys general have often ramped up their enforcement activity in order to protect consumers from anticompetitive transactions and business practices. During periods of vigorous federal antitrust enforcement, they have often served as strong partners for the DOJ and FTC by, among other things, offering valuable insights about competitive dynamics in local markets, assisting with obtaining information from key market participants (including state governmental entities that are direct purchasers of goods and services), and helping develop and implement litigation strategies for cases being tried before federal judges presiding in their states.

Since January 2017, state attorneys general have increasingly played a leading and independent antitrust enforcement role. State antitrust enforcers have significantly increased their enforcement activity and willingness to act separately from their federal counterparts because many of them believe that there has been ‘under-enforcement’ by the DOJ and FTC. State antitrust enforcers have also been able to enhance their influence over key competition policy issues and the antitrust enforcement agenda within the United States because there appears to have been a significant decline in the coordination and relationship between the DOJ and FTC.

In once again flexing their enforcement muscle, state attorneys general have shown a willingness to publicly disagree with the DOJ and FTC on both policy and enforcement decisions, and have also sought to pressure their federal counterparts into more aggressively policing certain industries. Recent examples of the increased independence and assertiveness of state antitrust enforcers include:

In their joint investigation into the T-Mobile/Sprint merger, nearly 20 state attorneys general have sued to block the transaction even though the DOJ, along with seven state attorneys general, have approved the deal after securing certain structural and behavioural remedies. After the DOJ announced its proposed settlement with the companies, the Attorney General for New York, who has been leading the states’ challenge to the merger, issued a press release dismissing the adequacy of the remedies negotiated by the DOJ: ‘The promises made by [the divestiture buyer] and [the merging companies] in this deal are the kinds of promises only robust competition can guarantee. We have serious concerns that cobbling together this new fourth mobile [phone] player, with the government picking winners and losers, will not address the merger’s harm to consumers, workers, and innovation.’

The DOJ, FTC and several state attorneys general have been actively investigating and prosecuting ‘no-poach’ agreements (i.e., where competitors for employees agree not to recruit or hire each other’s employees)in recent years. However, the DOJ and state attorneys general have taken directly opposing positions in private litigation challenging the legality of ‘no-poach’ clauses in corporate franchise agreements. The DOJ has argued that courts should review these clauses under the rule of reason whereas various state attorneys general have argued that these clauses should be deemed per se unlawful.

None of the more than 20 state attorney general offices that actively investigated the AT&T/Time Warner merger joined the DOJ’s unsuccessful challenge to the transaction despite the DOJ’s concerted effort to secure their support. In fact, nine state attorneys general filed an amicus brief opposing the DOJ’s appeal of the trial court’s decision.

After the FTC declined to seek any Colorado-related remedies in connection with Optum’s acquisition of DaVita Medical Group, the Attorney General for Colorado required the merging companies to lift the exclusivity provisions in contracts with certain healthcare providers and to extend their existing contracts with certain health insurers. In announcing this settlement, the Colorado Attorney General stated: ‘I recognize that this case marks an important step in state antitrust enforcement . . . . I am committed to protecting all Coloradans from anticompetitive consolidation and practices, and will do so whether or not the federal government acts to protect Coloradans.’

After voicing displeasure with federal antitrust enforcement in the technology sector, numerous state attorneys general launched their independent investigations into ‘Big Tech’ companies even though the DOJ and FTC have ongoing investigations into these companies.

Given that companies will increasingly have to engage with state attorneys general in a meaningful manner with respect to antitrust matters, this chapter discusses key issues related to state antitrust enforcement in the United States. Specifically, this chapter discusses:

the federal and state antitrust laws under which state enforcers operate;

the processes through which state enforcers coordinate with each other and their federal counterparts;

the opportunity for coordination and conflict between state enforcers and private counsel during litigation;

strategic and practical considerations when engaging with state attorneys general; and

certain noteworthy enforcement actions that state enforcers have recently prosecuted.

Statutory regime governing US state antitrust enforcement

Civil enforcement of federal antitrust laws

Enforcement actions on behalf of state governmental entities

Under the federal antitrust laws, state attorneys general have the express authority to bring civil actions on behalf of their state, municipalities, and governmental entities for harm suffered when directly purchasing goods or services. In bringing such actions, state attorneys general can seek monetary (treble damages) and injunctive relief, as well as their costs and reasonable attorney’s fees.

In actions seeking monetary relief, state attorneys general typically allege that the state plaintiffs were forced to pay higher prices by an unlawful horizontal conspiracy, such as a price-fixing or bid-rigging scheme, and seek to recover the overcharges. In some cases, state attorneys general have sought to recover damages arising out of anticompetitive unilateral conduct, such as overcharges paid by state governmental entities due to a defendant’s actual or attempted monopolisation of a specific market.

In seeking injunctive relief, state attorneys general often argue that such relief is proper because the business practice or transaction in question – in addition to harming the state plaintiffs – has or will cause injury to the state’s general economy. While general harm to a state’s economy can serve as a basis for injunctive relief, state attorneys cannot base their request for damages on such harm.

Parens patriae enforcement actions

A well-settled principle in the United States’ legal system is that ‘the States have a quasi sovereign interest in protecting their citizens from ongoing economic harm’. Consequently, the federal antitrust laws expressly authorise state attorneys general to file parens patriae actions in federal court that seek to redress the harm suffered by their citizens due to federal antitrust violations. In providing state attorneys general with parens patriae authority, the federal antitrust laws permit state antitrust enforcers to seek monetary (treble damages) and injunctive relief, as well as their costs and reasonable attorney’s fees. State attorneys general have been empowered to seek such broad and substantial relief on behalf of their citizens to allow them ‘to deter further economic harm and to obtain relief for the injury inflicted on their economies and their citizens’.

In exercising their parens patriae authority, state attorneys general have often sought to protect their citizens and state economies from the harm caused by anticompetitive business practices. For example, in the e-Books Litigation, 33 state attorneys general alleged that Apple, Inc and various book publishers unlawfully conspired to fix the prices of electronic books, which resulted in their citizens paying higher prices and harm to their states’ general economies. Ultimately, these state attorneys general, working alongside private class counsel, secured settlements from the defendants that provided nearly US$600 million in direct refunds to their citizens. In a pending lawsuit brought against various manufacturers of generic pharmaceuticals, 44 state attorneys general have alleged that the defendants unlawfully conspired to fix the prices for numerous generic drugs, which forced their states and citizens to pay billions of dollars in overcharges, as well as significantly harmed their states’ general economies.

State attorneys general have also invoked their parens patriae authority to protect their citizens and state economies from the harm caused by anticompetitive transactions. For instance, in their pending challenge to T-Mobile’s proposed acquisition of Sprint, nearly 20 state attorneys general have alleged that the transaction will result in their residents paying higher prices for lower quality mobile phone services as well as harm to their states’ general economies. Likewise, the state attorneys general that joined the DOJ’s successful challenges to the proposed Anthem/Cigna and Aetna/Humana mergers alleged that these mergers would have harmed their citizens and the general economies of their states by reducing the number of large health insurance providers from five to three.

There are, however, important limitations on the parens patriae authority conferred to state attorneys general under the federal antitrust laws. For instance, the monetary relief sought by state attorneys general must: (1) arise out of a Sherman Act violation; (2) have been incurred by natural persons residing in their states (i.e., the losses suffered by business organisations cannot be included in the alleged damages); (3) exclude harm suffered by indirect purchasers of the goods and/or services in question; (4) avoid the risk of multiple recoveries by excluding amounts previously awarded for the same injuries; and (5) arise out of actual financial losses rather than general harm to their state’s economy. Moreover, state attorneys general must provide their residents with adequate notice of the lawsuit and a meaningful opportunity to opt out of the litigation.

In seeking to prove the monetary harm suffered by their citizens, state attorneys general can employ many of the same methods utilised by private plaintiffs. In price-fixing cases, for example, state attorneys general can prove the claimed aggregate damages by utilising ‘statistical or sampling methods’, ‘comput[ing[ [the] illegal overcharges’, or relying on any other methodology deemed ‘reasonable’ by the court. In addition, a number of state antitrust laws authorise their state attorney general to hire private lawyers to handle parens patriae actions, which the state attorneys general challenging the T-Mobile/Sprint merger have done.

Civil enforcement of state antitrust laws

Most states have enacted state antitrust laws that are comparable to Sections 1 and 2 of the Sherman Act. In addition, some states have passed antitrust laws that are similar to Sections 3 and 7 of the Clayton Act and the Robinson-Patman Act. These state antitrust laws typically contain provisions expressly requiring that ‘they be construed in conformity with comparable [f]ederal antitrust statutes’.

State antitrust statutes typically provide state attorneys general with broad authority to investigate possible violations, including the power to ‘issue civil investigative demands compelling oral testimony, the production of documents, and responses to written interrogatories to individuals and corporations’. Like the federal antitrust laws, most state antitrust laws authorise state attorneys general to file civil lawsuits on behalf of their states and state governmental entities whenever a violation has caused them to suffer harm in their capacity as direct purchasers of goods or services, as well as parens patriae actions on behalf of their citizens.

#### Multistate rulemaking solves

Snow 18 (Aaron Snow is the Executive Director and a co-founder of 18F, the consultancy inside the U.S. Government's General Services Administration, an honors graduate of Harvard College and Columbia Law School, where he was Technology Editor for the Columbia Law Review, Multistate Rulemaking, 10-7, <https://web.law.columbia.edu/sites/default/files/microsites/career-services/Multistate%20Rulemaking.pdf>, y2k)

Note: the date for the article was found in this URL: http://www.administrativelawreview.org/wp-content/uploads/2019/07/71.1\_Green\_Final.pdf

It is a well-understood strength of multistate litigation1 that together, state attorneys general can influence corporate business practices in ways one state acting alone cannot. But multistate litigation is not a perfect enforcement mechanism, and legitimate criticisms can be made, especially regarding the vagaries of the process by which settlements (for multistate litigation nearly always results in settlement) are reached. Since the advent of modern multistate litigation in the last twenty years, state attorneys general have coordinated their substantive work almost exclusively in the pursuit of litigation. But attorneys general have other tools in their belts: In addition to litigation and prosecution powers, many, in certain spheres, also have substantial rulemaking authority. One such sphere is that of unfair and deceptive trade practices, or “UDAP,” statutes, which are the statutory basis of much multistate litigation.2

### Ptx

#### PC is key to reconciliation---plan’s distraction foils it and causes defection---it’s laser-thin

Elliot 9-16 (PHILIP ELLIOTT, Staff writer @ Times, Democrats Face a Grueling Two Weeks as Infighting Erupts Over Infrastructure, <https://time.com/6098810/house-democrats-reconciliation/>, y2k)

House Democrats yesterday finished penning a 2,600-page bill that finally outlines the specifics of their ambitious “soft” infrastructure plan that won’t attract a single Republican vote. But no one was really rushing to Schneider’s for bottles of bubbly. For a party ready to spend $3.5 trillion to fund its social policy agenda, there were plenty of glum faces on Capitol Hill.

In fact, one key piece of the legislation—a deal that would finally let Medicare negotiate lower prices with drug companies—fell apart in the Energy and Commerce Committee when three Democrats voted against it. It found resurrection a short time later when Leadership aides literally plucked it from the Energy and Commerce team and delivered it to the Ways and Means Committee for its approval instead. Even there, though, one Democrat voted against it, saying the threat it posed to pharmaceutical companies’ profits would doom it in the Senate. “Every moment we spend debating provisions that will never become law is a moment wasted and will delay much-needed assistance to the American people,” Rep. Stephanie Murphy of Florida later argued.

Put another way? Brace for some nasty politics over the next two weeks as House Speaker Nancy Pelosi tries to get this bill to a vote before the budget year ends on Sept. 30. And those 2,600 pages had better be recyclable.

Democrats can only afford three defectors if they want to usher this bill into law, and they’re perilously close to failure. So far, five centrist Democrats in the House have said they prefer a scaled-back version of the Medicare component. But if Pelosi gives the five centrists that win, she risks losing the support of progressives who are already sour that things like a punitive wealth tax and the end to tax loopholes aren’t present in the current version of the bill.

As it stands now, letting Medicare negotiate drug prices would save the government about $500 billion over the next decade. The scaled-back version doesn’t have an official cost, but a very similar version got its score in the Senate last year: roughly $100 billion in savings. Because Democrats are using a budgeting loophole to help them avoid a filibuster and pass this with bare majorities, that $400 billion gap matters a lot more than on most bills. Scaling back the Medicare savings means they would also have to scale back their overall spending on the bill—a big line in the sand for progressives who say they’ve already compromised too much.

All of this, of course, comes as President Joe Biden and his top aides in the White House have been trying to get Senate centrists onboard. Just yesterday, he met separately with Sens. Kyrsten Sinema and Joe Manchin, fellow Democrats who have expressed worries about the $3.5 trillion price tag but have been vague about what exactly they want to cut back on. With the Senate evenly divided at 50-50, and Vice President Kamala Harris in position to break the ties to Democrats’ victories, any shenanigans from those two independent thinkers scrambles the whole package.

Oh, and that other bipartisan infrastructure plan that carries $550 billion in new spending? It’s still sitting on the shelf in the House. Pelosi said she’d bring it to the floor only when the bigger—and entirely partisan—bill was ready. And there’s plenty of grumbling about that package, too.

If this is all beginning to sound like a scratched record that keeps repeating, it’s because this has become something of a pattern here in Washington. Things look pretty grim for legislation in town these days, despite Democrats controlling the House, the Senate and the White House. Their margin for error is literally zero, and so hiccups from a half-dozen centrists can forewarn a doomed agenda.

So far, Pelosi has been a master of holding the line on crucial votes and has managed to maneuver her team to victories, including on an earlier pandemic relief package that passed with only Democratic votes. Now she’s trying again, but the clock is ticking, and $3.5 trillion is an eye-popping sum of money that rivals the spending the United States unleashed to close out World War II.

#### Antitrust trades-off with Biden’s priorities

Carstensen 21 (Peter C. Carstensen, Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST, <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en>, y2k)

Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities.

Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate!

In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Reconciliation solves climate

Sobczyk 9-15 (Nick Sobczyk, E&E News, Infrastructure Bill Could Cut Carbon Emissions By Nearly a Gigaton, <https://www.scientificamerican.com/article/infrastructure-bill-could-cut-carbon-emissions-by-nearly-a-gigaton/>, y2k)

The reconciliation bill working its way through Congress could cut U.S. greenhouse gas emissions by nearly a gigaton by 2030, according to a new report.

The analysis, released today by the Rhodium Group, an independent research firm, offers a first look at how the sprawling suite of climate policies Democrats are considering as part of their $3.5 trillion package could overhaul energy and contribute to President Biden’s Paris Agreement emissions-cutting pledge.

The bill could ultimately include dozens of different climate and energy provisions. But the report examined six of the biggest proposals currently in the mix: clean energy and electric vehicle tax credit expansions, a methane fee, funding for rural electric cooperatives, money for agriculture and forestry carbon capture programs, and the proposed Clean Electricity Performance Program (CEPP).

Those policies alone would reduce greenhouse gas emissions by 830 million to 936 million tons by 2030 compared with current trajectories, the report found. The CEPP — which would pay power providers to deploy more clean energy, with the goal of hitting 80 percent clean energy by 2030 — would account for the bulk of those reductions.

That would amount to “easily the biggest thing to pass Congress when it comes to climate,” said John Larsen, a director at the Rhodium Group and one of the report’s authors. “It's highly likely that the total impact is bigger — potentially substantially bigger — than what we found simply because we didn't count everything,” he said.

#### Extinction

David Spratt 19, Research Director for Breakthrough National Centre for Climate Restoration, Ian Dunlop, member of the Club of Rome, formerly an international oil, gas and coal industry executive, chairman of the Australian Coal Association, May 2019, “Existential climate-related security risk: A scenario approach,” https://docs.wixstatic.com/ugd/148cb0\_b2c0c79dc4344b279bcf2365336ff23b.pdf

An existential risk to civilisation is one posing permanent large negative consequences to humanity which may never be undone, either annihilating intelligent life or permanently and drastically curtailing its potential. With the commitments by nations to the 2015 Paris Agreement, the current path of warming is 3°C or more by 2100. But this figure does not include “long-term” carbon-cycle feedbacks, which are materially relevant now and in the near future due to the unprecedented rate at which human activity is perturbing the climate system. Taking these into account, the Paris path would lead to around 5°C of warming by 2100. Scientists warn that warming of 4°C is incompatible with an organised global community, is devastating to the majority of ecosystems, and has a high probability of not being stable. The World Bank says it may be “beyond adaptation”. But an existential threat may also exist for many peoples and regions at a significantly lower level of warming. In 2017, 3°C of warming was categorised as “catastrophic” with a warning that, on a path of unchecked emissions, low-probability, high-impact warming could be catastrophic by 2050. The Emeritus Director of the Potsdam Institute, Prof. Hans Joachim Schellnhuber, warns that “climate change is now reaching the end-game, where very soon humanity must choose between taking unprecedented action, or accepting that it has been left too late and bear the consequences.” He says that if we continue down the present path “there is a very big risk that we will just end our civilisation. The human species will survive somehow but we will destroy almost everything we have built up over the last two thousand years.”11 Unfortunately, conventional risk and probability analysis becomes useless in these circumstances because it excludes the full implications of outlier events and possibilities lurking at the fringes.12 Prudent risk-management means a tough, objective look at the real risks to which we are exposed, especially at those “fat-tail” events, which may have consequences that are damaging beyond quantification, and threaten the survival of human civilisation. Global warming projections display a “fat-tailed” distribution with a greater likelihood of warming that is well in excess of the average amount of warming predicted by climate models, and are of a higher probability than would be expected under typical statistical assumptions. More importantly, the risk lies disproportionately in the “fat-tail” outcomes, as illustrated in Figure 1.

### Adv 1

#### Anti-trust enforcement hamstrings military AI acquisition

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”)

In the early 1980s, Steve Jobs assumed leadership of the group of engineers and designers tasked with developing the Apple Macintosh computer. Despite Apple’s rapid growth at the time, Jobs refused to expand the size of his team. Jobs had a rule: there could never be more than 100 people working on the Mac.1 He believed large organizations were “bureaucratic and ineffective,”2 hindering innovation. In fact, he once proposed breaking the different divisions of Apple into separate corporations so as to retain the features of smaller companies.3

Today, lawmakers and policymakers, rather than corporate leaders, contemplate breaking up Apple and other tech giants. Rising concerns about the concentration of economic and political power, anticompetitive behavior, and consumer protection have elevated antitrust enforcement in the national discourse. As of early 2020, Apple, Amazon, Google, Microsoft, and Facebook had a combined value of $5.5 trillion4—an amount equivalent to the combined value of the S&P 500’s bottom 282 companies5—and dominated sectors including cloud computing, digital advertising, and internet search.

Some politicians and users argue that the scale and market power of these companies lets them collect and exploit massive quantities of personal data with minimal oversight. In turn, tech giants insist a break-up will make the United States less secure and competitive.6 As Alphabet CEO Sundar Pichai has stated, “There are many countries around the world which aspire to be the next Silicon Valley. And they are supporting their companies, too. So we have to balance both. This doesn’t mean you don’t scrutinize large companies. But you have to balance it with the fact that you want big, successful companies as well.”7 Some policymakers agree. Senator Mark Warner (D-VA) recently stated that he was not ready to support a break-up, as companies like Facebook and Google might be “replaced by an Alibaba, Baidu or Tencent model, where there is no ability to have...controls.”8 Others disagree, noting vigorous federal enforcement of antitrust laws against tech giants such as IBM, AT&T, and Xerox in the 1970s and 1980s. These companies remained successful in spite of regulation; some even argue federal enforcement helped establish the modem market, online networking, and new, innovative companies like CompuServe and AOL.

Understanding AI Innovation

The debate over breaking up Big Tech has profound national security implications. The Pentagon maintains that the innovation and acquisition of AI technologies is critical to America’s national security.17 Defense Secretary Mark Esper recently called AI the most significant emerging technology for warfare, predicting that “whoever masters it first will dominate on the battlefield for many, many, many years.”18 Although others within and beyond the Pentagon stress the limits of AI,19 its potential is widely acknowledged.20 In order to develop and deploy new, strategically decisive AI tools, the Pentagon must rely on an AI innovation ecosystem in which large private-sector companies play a critical role. At the same time, the Department of Justice, the Federal Trade Commission, Congress, and state attorneys general have targeted many of the private sector’s largest and most innovative AI companies in ongoing antitrust probes.21

To be sure, AI innovations take many forms, not all of which hinge on Big Tech. For example, researchers across academia, government, and the private sector continue to push the conceptual bounds of AI, developing new theories and mathematical frameworks that could yield significant technical and commercial benefits down the road. In other cases, AI advances through smaller, practical steps that indirectly support its development—for example, as companies develop more efficient ways to clean and sort data for use in machine learning models.

While important, these theoretical efforts and incremental AI innovations are beyond our scope. We instead focus on AI tools and methods resulting from the integration of basic research with systems of production and deployment, and those with practical, foreseeable implications for AI end users. We assume innovations of this sort would most directly and significantly affect national security and strategic competition.

Today, the private sector dominates this domain of AI innovation. Other actors, including government funders and academic researchers, play an important role—especially in basic research—but at the application stage, the private sector generally consolidates critical inputs of data, computing power, and human capital, then applies them to real-world needs. In some cases, such as with Project Maven—where Google built AI-enabled image recognition programs for the Pentagon—the Pentagon is the customer; more often, AI products and conceptual breakthroughs developed by the private sector, from autonomous vehicles to image and speech recognition platforms, are (or could be) adapted for national security use.

Because most U.S. AI innovation currently occurs in the private sector, and at least some of this innovation pertains to the Pentagon, the Pentagon needs the private sector.22 Large tech companies, from Google, Apple and Amazon to slightly lower-profile giants such as IBM, Intel and Qualcomm, form the foundation of the private-sector AI innovation ecosystem.i For example, Google, Facebook, Microsoft, Apple, and Amazonii generate the most AI patents with a “significant competitive impact” worldwide, according to analysis by economic consultancy EconSight.23 The McKinsey Global Institute reports that large, digitally oriented tech companies worldwide spent $20-$30 billion on AI in 2016, 90 percent of which went toward R&D and deployment; for comparison, the Pentagon plans to spend $4 billion on AI and machine learning R&D in FY2020.24 Private-sector AI companies are especially dominant in applied research and experimental development.25 AI innovation would presumably continue in some form without Big Tech, but the data indicates that breaking up the largest tech companies would fundamentally change the broader AI innovation ecosystem. Such action would create unpredictable, but likely significant, trickle-down effects on AI applications in specific domains, including national security.

Shifting Incentives

In order to use AI for America’s strategic advantage, the Pentagon requires more than an innovative private sector. It must induce private companies to build defense-relevant AI products, acquire those AI innovations through procurement, and prevent those same products from diffusing to U.S. adversaries. In other technological domains, such as aerospace, the Pentagon has long relied on the private sector for procurement and holds significant leverage over industry. Its sheer scale and budget make it the defense industry’s primary consumer. In 2017, for example, 70 percent of Lockheed Martin’s sales went to the U.S. federal government.26 Historically, this financial leverage has incentivized companies to meet the Pentagon’s demands and build to its requirements.27

But these incentives do not exist with AI: while AI is a priority for the Pentagon, the Pentagon is not a priority for AI companies. In general, the largest U.S. tech companies do not rely on government contracts and have relatively little need for Pentagon funding.28 As a result, their research and products do not reflect defense priorities, and they have relatively little incentive to engage deeply in the government procurement process. Even in a future, AI-centric world, we expect large-scale, commercially oriented tech companies to play a critical role in AI innovation, and the Pentagon to remain a minor customer. As such, the Pentagon may rely on other firms —from defense-focused startups to traditional defense contractors—to translate general AI advances into defense-relevant products.

The Pentagon’s access to these cutting-edge, national security-relevant AI products hinges on private sector cooperation. This willingness will drive whether it sells to the Pentagon, shapes its technologies in accordance with DOD priorities, and complies with DOD terms of acquisition—including, potentially, by safeguarding the same products from U.S. competitors and adversaries.29 We need to understand how antitrust enforcement might affect these dynamics, as well as private-sector innovation more broadly.

#### Russian AI advancements are scaled quickly—only maintaining a large edge solves

Polyakova 18 (Alina, Former Brookings Expert President and CEO - Center for European Policy Analysis “Weapons of the weak: Russia and AI-driven asymmetric warfare”, https://www.brookings.edu/research/weapons-of-the-weak-russia-and-ai-driven-asymmetric-warfare/#cancel)

Three threat vectors in particular require immediate attention. First, advances in deep learning are making synthetic media content quick, cheap, and easy to produce. AI-enabled audio and video manipulation, so-called “deep fakes,” is already available through easy-to-use apps such as Face2Face,[31] which allows for one person’s expressions to be mapped onto another face in a target video. Video to Video Synthesis[32] can synthesize realistic video based a baseline of inputs. Other tools can synthesize realistic photographs of AI-rendered faces, reproduce videos and audio of any world leader,[33] and synthesize street scenes to appear in a different season.[34] Using these tools, China recently unveiled an AI made news anchor.[35] As the barriers of entry for accessing such tools continue to decrease, their appeal to low-resource actors will increase. Whereas most Russian disinformation content has been static (e.g., false news stories, memes, graphically designed ads), advances in learning AI will turn disinformation dynamic (e.g. video, audio). Because audio and video can easily be shared on smart phones and do not require literacy, dynamic disinformation content will be able to reach a broader audience in more countries. For example, in India, false videos shared through Whatsapp incited riots and murders.[36] Unlike Facebook or Twitter, Whatsapp (owned by Facebook) is an end-to-end encrypted messaging platform, which means that content shared via the platform is basically unmonitored and untraceable. The “democratization of disinformation” will make it difficult for governments to counter AI-driven disinformation. Advances in machine learning are producing algorithms that “continuously learn how to more effectively replicate the appearance of reality,” which means that “deep fakes cannot easily be detected by other algorithms.”[37] Russia, China, and others could harness these new publicly available technologies to undermine Western soft power or public diplomacy efforts around the world. Debunking or attributing such content will require far more resources than the cost of production, and it will be difficult if not impossible to do so in real time. Second, advances in affective computing and natural language processing will make it easier to manipulate human emotions and extract sensitive information without ever hacking an email account. In 2017, Chinese researchers created an “emotional chatting machine” based on data users shared on Weibo, the Chinese social media site.[38] As AI gains access to more personal data, it will become increasingly customized and personalized to appeal to and manipulate specific users. Coupled with advances in natural learning processing, such as voice recognition, this means that affective systems will be able to mimic, respond to, and predict human emotions expressed through text, voice, or facial expressions. Some evidence suggests that humans are quite willing to form personal relationships, share deeply personal information, and interact for long periods of time with AI designed to form relationships.[39] These systems could be used to gather information from high value targets—such as intelligence officers or political figures—by exploiting their vices and patterns of behavior. Advances in affective computing and natural language processing will make it easier to manipulate human emotions and extract sensitive information without ever hacking an email account. Third, deep fakes and emotionally manipulative content will be able to reach the intended audience with a high degree of precision due to advances in content distribution networks. “Precision propaganda” is the set of interconnected tools that comprise an “ecosystem of services that enable highly targeted political communications that reach millions of people with customized messages.”[40] The full scope of this ecosystem, which includes data collection, advertising platforms, and search engine optimization, aims to parse out audiences in granular detail and identify new receptive audiences will be “supercharged” by advances in AI. The content that users see online is the end product of an underlying multi-billion dollar industry that involves thousands of companies that work together to assess individuals’ preferences, attitudes, and tastes to ensure maximum efficiency, profitability, and real-time responsiveness of content delivery. Russian operations (as far as we know), relied on the most basic of these tools. But, as Ghosh and Scott suggest, a more advanced operation could use the full suite of services utilized by companies to track political attitudes on social media across all congressional districts, analyze who is most likely to vote and where, and then launch, almost instantly, a customized campaign at a highly localized level to discourage voting in the most vulnerable districts. Such a campaign, due to its highly personalized structure, would likely have significant impact on voting behavior.[41] Once the precision of this distribution ecosystem is paired with emotionally manipulative deep fake content delivered by online entities that appear to be human, the line between fact and fiction will cease to exist. And Hannah Arendt’s prediction of a world in which there is no truth and no trust may still come to pass. RESPONDING TO AI-DRIVEN ASYMMETRIC WARFARE Caught by surprise by Russia’s influence operations against the West, governments in the United States and Europe are now establishing processes, agencies, and laws to respond to disinformation and other forms of state-sponsored influence operations.[42] However, these initiatives, while long overdue, will not address the next generation of ADAW threats emanating from Russia or other actors. So far, Western attempts to deter Russian malign influence, such as economic sanctions, have not changed Russian behavior: cyber-attacks, intelligence operations, and disinformation attacks have continued in Europe and the United States. To get ahead of AI-driven hyper war,[43] policymakers should focus on designing a deterrence strategy for nonconventional warfare.[44] The first step toward such a strategy should be to identify and then seek to remedy the information asymmetries between policymakers and the tech industry. In 2015, the U.S. Department of Defense launched the Defense Innovation Unit (DIU) to fund the development of new technologies with defense implications.[45] DIU’s mission could be expanded to also focus on pilot AI research and development into tools to identify and counter dynamic disinformation and other asymmetric threats. The U.S. Congress established an AI Caucus co-chaired by Congressman John Delaney and Congressman Pete Olsen. The Caucus should make it a priority to pass legislation to set the U.S. government’s strategy on AI, much like China, France, and the EU have done. The Future of Intelligence Act, introduced in 2017, begins this process, but it should be expanded to include asymmetric threats and incorporated into the broader national security strategy and the National Defense Authorization Act. Such legislation should also mandate an immediate review of the current tools the U.S. government has to respond to an advanced disinformation attack. Part of the review should include a report, in both classified and unclassified versions, on investments in AI research and development across the U.S. government and the preparedness of various agencies in responding to future attacks. As attribution becomes more difficult, such a report should also recommend a set of baselines and metrics that warrant a governmental response and what the nature of such a response would be. Step two toward a deterrence strategy would involve informing the Russian government and other adversarial regimes of the consequences for deploying AI-enabled disinformation attacks. Such messaging should be carried out publicly by high-level cabinet officials and in communications between intelligence agencies. Deterrence can only be effective if each side is aware of the implications of its actions. It also requires a nuanced understanding of the adversary’s strategic intentions and tactical capabilities – Russian strategic thinking will be different than Chinese strategic thinking. Deterrence is not a one size fits all model. Policymakers will need to develop a more in-depth understanding of Russian (or Chinese) culture, perceptions, and thinking. To that end, the U.S. government should reinvest, at a significant level, into cultivating expertise and training the next generation of regional experts. Inevitably, policy will not be able to keep pace with technological advances. Tech companies, research foundations, governments, private foundations, and major non-profit policy organizations should invest in research that will assess the short- and long-term consequences of emerging AI technologies for foreign policy, national security, and geopolitical competition. Research and strategic thinking at the intersection of technology and geopolitics is sorely lacking even as Russia—a country identified as a direct competitor to the United States in the 2017 National Security Strategy —prioritizes expanding its capacities in this area. The United States is still far ahead of its competitors, especially Russia. But even with limited capabilities, the Kremlin can quickly gain comparative advantage in AI-driven information warfare, leaving the West to once again be caught off guard.

#### Extinction

Beebe 19 (George, vice president and director of studies at the Center for the National Interest, a nonpartisan think tank in Washington. He is also the former head of Russia analysis at the CIA, “We’re More at Risk of Nuclear War With Russia Than We Think,” Politico, 10/7/19, https://www.politico.com/magazine/story/2019/10/07/were-more-at-risk-of-nuclear-war-with-russia-than-we-think-229436)

In the 1950s and 1960s, Americans genuinely and rightly feared the prospect of nuclear war with the Soviet Union. Schoolchildren regularly participated in air raid drills. Federal, state and local governments prepared for operations in the event of a nuclear emergency. More than a few worried citizens built backyard bomb shelters and stockpiled provisions.

Today, that old dread of disaster has all but disappeared, as have the systems that helped preclude it. But the actual threat of nuclear catastrophe is much greater than we realize. Diplomacy and a desire for global peace have given way to complacency and a false sense of security that nuclear escalation is outside the realm of possibility. That leaves us unprepared for—and highly vulnerable to—a nuclear attack from Russia.

The most recent sign of American complacency was the death, a few weeks ago, of the Intermediate-Range Nuclear Forces Treaty—a pivotal 1987 agreement that introduced intrusive on-site inspection provisions, destroyed an entire class of dangerous weaponry, and convinced both Washington and Moscow that the other wanted strategic stability more than strategic advantage. The New START treaty, put in place during the Obama administration, appears headed for a similar fate in 2021. In fact, nearly all the key U.S.-Russian arms control and confidence-building provisions of the Cold War era are dead or on life support, with little effort underway to update or replace them.

Meanwhile, U.S. officials from both parties are focused not on how we might avoid nuclear catastrophe but on showing how tough they can look against a revanchist Russia and its leader, Vladimir Putin. Summit meetings between White House and Kremlin leaders, once viewed as opportunities for peace, are now seen as dangerous temptations to indulge in Munich-style appeasement, the cardinal sin of statecraft. American policymakers worry more about “going wobbly,” as Margaret Thatcher once put it, than about a march of folly into inadvertent war. President Donald Trump’s suggestion that the United States and Russia might explore ways to manage their differences diplomatically has produced mostly head-scratching and condemnation.

In my more than 25 years of government experience working on Russia matters, I’ve seen that three misguided assumptions underlie how the United States got to this point.

The first is that American policymakers think that because neither side wants nuclear war, then such a war is very unlikely to occur. Russia would be foolish, we reason, to cross swords with the powerful U.S. military and risk its own self-destruction, and many Americans find it hard to imagine that modern cyber duels, proxy battles, information operations and economic warfare might somehow erupt into direct nuclear attacks. If the Cold War ended peacefully, the thinking goes, why should America worry that a new shadow war with a much less formidable Russia will end any differently?

But wars do not always begin by design. Just as they did in 1914, a vicious circle of clashing geopolitical ambitions, distorted perceptions of each other’s intent, new and poorly understood technologies, and disappearing rules of the game could combine to produce a disaster that neither side wants nor expects.

In fact, cyber technologies, artificial intelligence, advanced hypersonic weapons delivery systems and antisatellite weaponry are making the U.S.-Russian shadow war much more complex and dangerous than the old Cold War competition. They are blurring traditional lines between espionage and warfare, entangling nuclear and conventional weaponry, and erasing old distinctions between offensive and defensive operations. Whereas the development of nuclear weaponry in the Cold War produced the concept of mutually assured destruction and had a restraining effect, in the cyber arena, playing offense is increasingly seen as the best defense. And in a highly connected world in which financial networks, commercial operations, media platforms, and nuclear command and control systems are all linked in some way, escalation from the cyber world into the physical domain is a serious danger.

Cyber technology is also magnifying fears of our adversaries’ strategic intentions while prompting questions about whether warning systems can detect incoming attacks and whether weapons will fire when buttons are pushed. This makes containing a crisis that might arise between U.S. and Russian forces over Ukraine, Iran or anything else much more difficult. It is not hard to imagine a crisis scenario in which Russia cyber operators gain access to a satellite system that controls both U.S. conventional and nuclear weapons systems, leaving the American side uncertain about whether the intrusion is meant to gather information about U.S. war preparations or to disable our ability to conduct nuclear strikes. This could cause the U.S. president to wonder whether he faces an urgent “use it or lose it” nuclear launch decision. It doesn’t help that the lines of communication between the United States and Russia necessary for managing such situations are all but severed.

A related, second assumption American policymakers make is seeing the Russian threat as primarily a deterrence problem. The logic goes something like this: Wars often happen because the states that start them believe they can win, but the United States can disabuse a would-be aggressor of this belief through a show of force, thus deterring conflict. Indeed, Washington seems convinced that showing the Kremlin it will punish Russian transgressions—through toughened economic sanctions, an enhanced military posture in Europe and more aggressive cyber operations—is the best path to preserving peace.

#### Chinese-US AI entanglement is good---severing research ties doesn’t change Chinese behaviors so it takes out the aff BUT it undermines the US access to Chinese research and talent pool which kill cooperative innovation

Piper 19 (Kelsey Piper, Vox Staff Writer, internally citing Jeffery Ding, PhD Candidate, Oxford University; Centre for the Governance of AI, FHI, Why an AI arms race with China would be bad for humanity, 8-10, <https://www.vox.com/future-perfect/2019/8/10/20757495/peter-thiel-ai-arms-race-china>, y2k)

But the op-ed resonated nonetheless. Why? Well, because members of the global AI community are grappling with the powerful technology they’re developing. And when it comes to China, they are grappling in particular with the ways that government has embraced the technology to increase authoritarian control of the population and commit atrocities like the mass internment of Uighurs.

So there are real reasons to be concerned about the progress of AI in China, and to wonder if US companies have made principled decisions about what research they’re conducting and sharing.

But Thiel’s take misses the point — dangerously so. Its focus on condemning all research conducted in China, its insistence that AI is a military technology, and its choice of a Cold War, us-against-them framing will make the situation worse for the development of safe AI systems, not better. And because safe, cautious AI development is one of the biggest challenges ahead of us, those mistakes could be costly.

The state of AI in China

The Chinese government and Chinese companies are tremendously invested in, and intrigued by, AI. In surveys, Chinese CEOs and policy thinkers consistently give AI much more weight than their Western counterparts do.

Analysts have called AlphaGo China’s “Sputnik moment,” comparing how it galvanized Chinese researchers to how Americans were deeply affected by the successful Soviet launch of the world’s first artificial satellite. When AlphaGo crushed human experts, China ramped up its investment in AI.

Despite this increased investment, experts agree that the US and the West are still at the forefront of AI research. More machine learning papers are published in China than in the United States, but the cutting-edge innovations of the machine learning era have come from the West — so far. Many of them have come from Google, either via DeepMind, a London-based AI startup acquired by Google’s parent company Alphabet five years ago, or via Google’s own AI division.

That’s not to say there isn’t a tremendous AI talent pool in China. Many leading American AI researchers are foreign-born. What has given the US its AI advantage has been, in significant part, the fact that the US attracts AI talent from all over the world. While America is a much smaller country than China, it’s drawing on what is effectively a much larger talent pool, including attracting many top Chinese researchers.

But there’s a deep talent pool in China too. And American tech giants from Google to Amazon to Microsoft have opened up research departments in China and elsewhere in Asia in order to attract that talent pool.

“These efforts to create talent bases in other countries could potentially be good for US innovation and expanding our lead in these areas,” Jeffrey Ding, a China AI policy expert at Oxford’s Center for the Governance of AI, told me. “A lot of our technological advantage comes from our ability to adapt. Having these R&D centers in China allows us to not only get the best and brightest from China but also serves as a listening post, an absorption channel of sorts, a way to be kept up to date on the Chinese ecosystem.”

Thiel argues that operating such centers is, effectively, giving away advanced US AI secrets to America’s enemies. While he exaggerates this risk, it isn’t invented — some researchers at Google or Microsoft labs in China go on to work for the Chinese military, taking their expertise with them. Occasionally research is outright leaked, which, while not great, is certainly not reason enough to curtail research.

But the picture Thiel paints is incomplete, Ding says.

For one thing, the talented Chinese researchers who are working right now for US companies wouldn’t go away if US companies stopped hiring them; they’d instead work for other Chinese companies or for the Chinese military. “Either we try to get the best and brightest, or they have other options,” Ding told me. If we’d rather someone work for Microsoft than the Chinese military, why take away the option of working for Microsoft?

For another, the vast majority of the research happening at these labs isn’t of any interest to the Chinese military — it’s work like trying to improve Microsoft’s chatbot or voice recognition. There’s no obvious route for that work to cause problems. After Thiel raised the alarm about Google’s activities earlier this month, the Trump administration looked into it. Treasury Secretary Steve Mnuchin said later, “We’re not aware of any areas where Google is working with the Chinese government in any way that raises concerns.”

Overall, Ding argues, “you’re not going to be able to stop or slow down Chinese AI progress by stopping these labs.”

Thiel is right, though, to express grave reservations about China’s use of AI. Recent research found there was a sudden increase in facial recognition research in China’s AI research community shortly before the government began its frightening crackdown on Uighur Muslims, interning more than a million of them, most of whom have not been heard from since. AI researcher or not, we should be sickened by totalitarian abuses like these.

And AI likely will have some military applications, which China, like the US, is no doubt exploring. With many US foreign policy experts concerned about China’s increasing influence in Africa and toward its neighbors — including suspected violent intervention in peaceful protests in Hong Kong — no one finds the idea of increasing Chinese military capabilities appealing. The question is whether combating civilian AI collaborations does anything to stop it.

To do AI right, we need to think about AI accurately

Thiel has a long history of involvement with AI development. But in the editorial, he mischaracterizes the way AI works and the key drivers of AI innovation — and that inaccurate picture makes it harder to address the real problems he mentions.

Even if US companies shut down their research centers in China, it will take much more than that to stop Chinese researchers from using information from recent advances in AI. That’s because lots of AI research is currently published in open access journals online, including enough detail and data to replicate the results of the papers.

Let’s be clear: That’s a good thing. Openness is good for science, and openness in AI has been good for the field. It allows people to try to replicate papers, learn things, test claims in published research, and stay abreast of the field even if they’re not at an elite institution. Ceasing to publish research would be a huge step, and it’s one the community is understandably resistant to.

That said, many AI researchers are increasingly realizing that the heyday of AI openness, where nearly all research is published for anyone in the world to explore, can’t last forever. AI research will probably have to go behind paywalls at some point. AI systems are getting more powerful, and that makes us more vulnerable to malicious misuses. And if, as some experts suspect, artificial general intelligence — an AI system that exceeds human capabilities across many domains — is achievable, then it would have to be developed extremely carefully to avoid catastrophic errors.

As a result, some leading AI labs have explored delays in publishing their research to address security and public interest concerns. As AI grows more powerful, more will join them. There’s absolutely space for a conversation about how to ensure that AI research is transparent, collaborative, and careful when it cannot all be published openly, and about whether policy in China is conducive to cautious progress on advanced technology.

But so far, the way people concerned about China have approached that conversation hasn’t been very productive. “There seems to be this trend to label tech companies who operate research and development labs in China as anti-American,” Ding told me, “and I think that’s dangerous.”

And that’s not the only dangerous element of Thiel’s characterization. Thiel writes that “A.I. is a military technology,” and that “the first users of the machine learning tools being created today will be generals rather than board game strategists.”

If you’ve checked out the tools to make fake faces of people who don’t exist, played Starcraft against a bot, read bot-created poetry, or interacted with a personal assistant like Alexa, Siri, or Google Assistant, then you’re a living disproof of Thiel’s claim.

Contra Thiel, AI is not primarily a military technology, though it will have military applications. Helen Toner, an analyst at Georgetown’s Center for Security and Emerging Technology, has argued that a better comparison than the atom bomb is electricity. Is electricity a military technology? No. Does our military use electricity? Yes, of course. But it’s not primarily that the military uses electric bombs; instead, electricity affects so many of our tools, and so much about how we interact with the world, that of course it affects our military as well.

Because Thiel’s company Palantir sells the US military AI technology, some critics saw the editorial as a marketing pitch, “speaking directly to government officials responsible for billions in defense contracting” to make the case that AI is crucial military technology they need to buy from Palantir. A more generous take might be that to Thiel, the military applications and implications of AI are the most salient ones.

But to face the real challenges that will accompany emerging transformative AI, we should have a more accurate picture of what AI actually is and does. Exaggerated comparisons to the atom bomb will make it harder to reason about the real, complex challenges that AI poses. Lots of the risks from AI are not risks that the wrong people will get it first, but that even well-intentioned people will accidentally design something with unpredictable behavior once it’s sufficiently capable.

And while an AI arms race, where the US closes itself off technologically and races to achieve AI before China does, might make sense if AI were like the atom bomb, it is deeply ill-advised for a technology with significant risks from human error — and significant gains to be had from cooperation, transparency, and civilian rather than military control.

None of this, of course, should let China off the hook. The atrocities being committed against minority populations in China are horrific, and the US is not doing enough to condemn and address them. There are tools in the US’s diplomatic toolbox — offering asylum to persecuted religious minorities in China, sanctions, development of tools Chinese citizens can use to circumvent controls on their internet and on their speech — that can and should be deployed to push back against Chinese human rights abuses.

But targeting AI labs that hire Chinese nationals is the wrong way to punish China — and the wrong way to understand the implications of AI for national security.

### Adv 2

#### FTC rulemaking fails---it inevitably requires judicial proceedings because no rules can be produced ex ante---that inevitably gets re-litigated

Werden 21 (Greg Werden is the former Senior Economic Counsel, Antitrust Division, U.S. Department of Justice, Can the FTC Turn Back the Clock? <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3909851>, y2k)

In an earlier article, Ms. Khan had suggested that the FTC could use its rulemaking power to preclude the owners of Internet platforms from doing business on their own platforms.61 Based on her work on the October 2020 report issued by the House Subcommittee on Antitrust, Commercial and Administrative Law,62 she might be contemplating a rulemaking to declare selfpreferencing an unfair method of competition when done by a dominant Internet platform. The fundamental problem the FTC would confront is that no two of the potentially dominant platforms are alike. What self-preferencing means differs across platforms, as does its impact, so any specific self-preferencing remedies should be the product of adjudicative proceedings. Chair Khan will have to move expeditiously if the Supreme Court is to review her initiatives while she remains chair. The Court likely would be unanimous in holding that harm to competition must be what makes a practice an unfair method of competition, 63 and it might be prepared to hold the FTC unconstitutional,64 so Ms. Khan should take care. All Chair Khan should ask from the courts is reasonable leeway on proof of harm to competition, especially as to likelihood and immediacy. And the Department of Justice should have just as much leeway because the Sherman Act directed the Attorney General to institute proceedings to “prevent” violations. 65 Chair Khan’s writings before becoming chairman place her in the vanguard of a populist movement advocating radical reform, but a radical agenda as FTC Chair could be stymied by the courts. The best approach is likely to be incremental change through fact-based FTC decisions focused on competitive effects.

#### Alt causes---countries other than the US dominates

Kwet 20 (Michael Kwet is a Visiting Fellow of the Information Society Project at Yale Law School, A Digital Tech New Deal to break up Big Tech, 10-26, <https://www.aljazeera.com/opinions/2020/10/26/a-digital-tech-new-deal-to-break-up-big-tech>, y2k

After “restoring competition” to the tech economy, those who will dominate as “new market entrants” on the “open” internet will still be companies from richer countries: the US, European powers, China, etc, not low-income countries like Zimbabwe, Bolivia or Cambodia. And within low-income countries, the well-resourced classes will capture any new market opportunities that an antitrust push in the US may open.

#### Plan doesn’t solve digital divide

UW 20 (University of Washington, The Digital Divide: Gender and technology in an unequal world, 11-6, <https://depts.washington.edu/urbanuw/news/the-digital-divide-gender-and-technology-in-an-unequal-world/>, y2k)

All over the world, digital literacy and access to technology are commonly divided along gender and racial lines. During a global pandemic that has forced an even stronger reliance on technology than before, the disproportionate and inadequate access that lower-income women of color face is clear, both around the United States and in the Global South. Many women in cities across the Global South rely on the informal marketplace to buy and sell goods, from soap and toilet paper to clothing and fresh fruit. Access to mobile phones and the internet can provide necessary channels for women to access mobile money for their entire family, as well as emotional support as they shoulder more work in the household (World Bank [web], Feb 2020). With strict lockdowns and restrictions in place during the pandemic, these financial avenues and support systems have been slashed. In the Global South, barriers to digital equity are exacerbated by the availability, or lack thereof, of technological infrastructure, financial constraints, and cultural or institutional norms. In a world where women are commonly disenfranchised, “the digital divide could increasingly prevent women from accessing life-enhancing services for education, health, and financial inclusion in a world that has become virtual overnight” (World Bank [web], June 2020). Stronger and more efficient technological infrastructure in cities across the world will allow anyone, but especially women, to connect to much needed social and financial services, especially during the COVID-19 pandemic.

#### Their internal link to liberal order cites SO many things they don’t solve

Wong ’20 [Johnson; Graduate School of Public and International Affairs @ UOttowa; “Digital Divide: Geotechnology, Politics and the International System”; <https://ruor.uottawa.ca/bitstream/10393/41017/1/WONG%2C%20Johnson%2020205.pdf>; AS]

Despite the power of institutions and the strength of international organizations to resolve conflicts, the digital divide brought on by technology, economic self-interest, and centuries of culture, will necessarily disrupt the existing international system. Even within Western liberal democratic countries, there continues to be significant systemic confrontations as long-running grievances remain unresolved, such as historical racial divisions, the surge in right-wing populism, and a growing inequality gap. Internationally, there is a shift in the character and ability of international institutions themselves to resolve disputes through existing mechanisms, such as the ABM treaty, the CFE treaty, and the INF treaty. These are a few examples of the breakdown of existing international constructs (Hall, 2019, 4). At the same time, China will continue to offer, in partnership with its Russian and other Eurasian allies, an alternative political model that will emphasize the values and qualities which are important to those societies: social stability, economic prosperity, and national strength. Zhao summarizes this argument “In the final analysis, there is a choice between a Confucius capitalist China that is trying to integrate with a socially and ecologically unsustainable planetary capitalist order and a renewed socialist China that is leading a post-capitalist and post-consumerist, sustainable developmental path as part and parcel of an alternative globalization” (Zhao, 2013, 27). The separation between capitalism and political liberalism is an intentional strategy meant to demonstrate that state governance can be effective without political change. The Chinese model will also emphasize regional strength while avoiding ideas about global tyranny so long as the US continues to be portrayed as an international bully and troublemaker that acts with impunity. On the character about the Internet itself, the seeds of doubt had already been made in various forums: “At the Forum of Independent Local and Regional Media in 2014, Putin labeled the Internet ‘a special CIA project’, adding that the United States wanted to retain their monopoly over it” (Budnitsky and Jia, 2018, 607). The digital divide will become another point of division to separate the global community this century, and as a means for authoritarians to consolidate power. While military conflict may be avoidable, cyberconflict and the use of hybrid warfare – involving careful coordination between state and non-state actors – may take place more often as state forces engage online in efforts to upset the new status quo. The benefits of technology, such as 5G and beyond, may also challenge trends and perspectives about values and culture on both sides as societies and the role of technology to support individual, corporate or state interests evolve.

#### China captures the market

UN News 19 (‘Digital divide’ will worsen inequalities, without better global cooperation, 9-4, <https://news.un.org/en/story/2019/09/1045572>, y2k)

US and China pull ahead, Africa and Latin America trail behind

The United States and China create the vast majority of wealth in the digital economy, the study reveals, and the two countries account for 75% of all patents related to blockchain technologies, 50% of global spending on the “Internet of Things” (IoT), more than 75% of the cloud computing market, and as much as 90% per cent of the market capitalization value of the world’s 70 largest digital platform companies.

The rest of the world, particularly countries in Africa and Latin America, are trailing considerably behind, and this trajectory is likely to continue, further contributing to rising inequality, said UN Secretary-General António Guterres, in a foreword to the report.

“We must work to close the digital divide” he writes, “where more than half the world has limited, or no access to the Internet. Inclusivity is essential to building a digital economy that delivers for all”.

We must work to close the digital divide, where more than half the world has limited or no access to the Internet António Guterres, UN Secretary-General

Massive increase in data on the horizon

Despite the impact that digital data has already had, the world is still in the early days of the data-driven economy, according to the study, which forecasts a dramatic surge in data traffic in the next few years.

This reflects the growth in the number of people using the Internet, and the uptake of frontier technologies such as blockchain, data analytics, artificial intelligence, 3D printing, IoT, automation, robotics and cloud computing.

Platforms to rule the world

Wealth and power in the digital sphere are increasingly being held by a small number of so-called “super platforms”, comprising the seven global brands Microsoft, Apple, Amazon, Google, Facebook, Tencent and Alibaba.

## 2NC

### CP

#### Follow on

Nolette 11 (Paul Brian Nolette, PhD, Assistant Professor, Marquette University, Department of Political Science, ADVANCING NATIONAL POLICY IN THE COURTS: THE USE OF MULTISTATE LITIGATION BY STATE ATTORNEYS GENERAL, a dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, Boston College, The Graduate School of Arts and Sciences, Department of Political Science, <https://core.ac.uk/download/pdf/151481511.pdf>, y2k)

To some degree this is a constraint on SAG multistate litigation – it suggests that if an argument is too far outside the political mainstream, SAGs may not be interested in litigating. This may be one reason why litigation concerning fatty foods and lead paint, for example, never flowered into multistate campaigns. From the perspective of the broader effort for social reform, however, this constraint is likely fairly easy to overcome. Litigation, far from being an isolated strategy, is coupled with efforts to gain support in Congress and within executive agencies. Even if these congressional and executive efforts had previously failed to produce new policies – as occurred in various campaigns explored in this dissertation – they may generate interest in the issues within Congress and among other actors, including the SAGs. Once these efforts spur at least some support in Congress – though still far from majority support – it paves the way to successfully employ multistate litigation. At that point, the litigation itself may help generate further support within Congress – as the AWP litigation did in transforming congressional views of settled pricing practices into fraudulent behavior.

#### This applies to the aff---the fed has to prosecute conducts that occur nationally---1AC proves there’s no risk

HLR 20**.** Harvard Law Review. 6-10-20. “Antitrust Federalism, Preemption, and Judge-Made Law" https://harvardlawreview.org/2020/06/antitrust-federalism-preemption-and-judge-made-law/

Like the patchwork regime critique, the overdeterrence critique is weakened if the federal regime has failed to achieve proper balancing. Many antitrust regimes around the globe adopt different balances than the United States does. The European Union, for example, differs from the United States on remedial structure, the standard for illegal unilateral conduct, and market definition, among other issues.68 Moreover, **many scholars argue** **that the U.S. antitrust balance is off** **and that more enforcement is needed**.69 Even if U.S. antitrust policies are getting the balance generally right, **it is unlikely that the federal regime is so finely tuned** **that any added deterrence will destroy the balance.**

#### CP establishes a uniform state antitrust law---any solvency deficit applies to the aff because there’s no “perfect” uniformity

Sandeen 17 (Sharon K. Sandeen, Robins Kaplan LLP Distinguished Professor in Intellectual Property Law and Director of IP Institute, Mitchell Hamline School of Law, THE MYTH OF UNIFORMITY IN IP LAWS, 24 J. Intell. Prop. L. 277, y2k)

All the foregoing rationales for federal uniformity seem good on paper, but as noted previously, for a variety of legal and practical reasons, federal uniformity is difficult to achieve even when a detailed federal law is written. Moreover, the perceived legitimacy of federal law over state law could easily be applied to a wide variety of state laws, such as commercial law, but no one is clamoring to supplant the Uniform Commercial Code with a federal law. In fact, if anything, our system of federalism establishes both a Constitutional and [\*300] institutional preference for the application of state substantive law over federal substantive law.

While policymakers and lobbyists are apt to trot out the rhetoric of uniformity whenever they wish to enact a new federal law, because the desired uniformity does not always result, it is important to focus on other possible rationales for new federal laws. One such rationale is that a federal law is needed to fill a gap that exists in state law, for instance the legal vacuum that was created in unfair competition law following the Supreme Court's decision in *Erie*. 105 However, in such cases, the gap might also be filled by a uniform state law, as was the case with the Uniform Trade Secrets Act, 106again raising the important question why a federal law would be better.

Sometimes a new federal law is justified by changes in technology that require a response that is quicker than either the common law or the drafting and adoption of a uniform law can provide. Both the Digital Millennium Copyright Act 107and the Computer Fraud and Abuse Act 108are examples of this approach, but they also reveal that a rush to enact federal legislation can result in legislation being enacted before all the problems are known. Related to this rationale is the fact that a federal statute (or a uniform state law) can often be used to speed-up or fix the development of common law in a certain area, as was the case with the Uniform Trade Secrets Act. 109

Most arguments in favor of federal uniformity focus on the asserted benefits of uniformity but fail to explore the reasons why Congress does not act to further uniformity in all areas of law. This underscores the weakness of the uniformity argument because it shows that there is no general interest in the uniformity of legal principles, only an interest in federal uniformity with respect to those areas of law over which Congress wishes to assert control. Whether explained as respect for states' rights or an inability to get legislation passed, the simple fact is that the benefits of federal uniformity are often not enough to motivate the enactment of a federal law, even when there are numerous conflicting state laws on the subject. Privacy laws governing the protection of personally identifiable information and rights of publicity laws provide two IP-related [\*301] examples of laws that have been left to the states despite the benefits of federal uniformity.

### Adv. 1

#### transaction costs are too high AND no political will

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

#### cash—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.

#### No correlation between concentration and business establishments

Robert D. Atkinson and Caleb Foote 20. Robert D. Atkinson is the founder and president of ITIF. Caleb Foote is a research assistant at the Information Technology and Innovation Foundation. 8-3-20. “Monopoly Myths: Is Concentration Leading to Fewer Start-Ups?” https://itif.org/publications/2020/08/03/monopoly-myths-concentration-leading-fewer-start-ups

WHAT IS REALLY GOING ON WITH START-UPS? There is no doubt start-ups have fallen. Of the 259 four-digit NAICS code industries with relevant data, 206 saw fewer start-ups in 2016 than in 2006, and only 53 saw increases.14 Overall, the number of start-ups grew from 523,720 in 1997 to 564,888 in 2006, but fell to 438,867 in 2016—a decline of 84,853 over two decades.15 These numbers are even starker given the United States has grown, and with it the number of businesses that exist and workers who could create start-ups. In fact, establishments grew 14 percent from 1997 to 2016, from 6 million to 6.7 million in 2006 and to 6.9 million in 2016. New start-ups as a share of all establishments fell from 12.9 percent in 1997 to 12.3 percent in 2006 to only 10.2 percent in 2016. And concentration has increased, although by less than many people imagine.16 First, according to data from the Census Bureau's Economic Census, in about 40 percent of industries at the 4-digit NAICS code level concentration has not been increasing, and most of the remaining 60 percent are substantially unconcentrated, with their top 8 firms commanding less than 30 percent of their respective markets. So, on the face of it, increasing concentration does not seem sizeable enough to affect the rate of start-ups.17 Moreover, there have been almost no studies that empirically examine the relationship between these two things. Rather, neo-Brandeisians simply assert that increasing concentration is the cause. The argument modern champions of the antimonopolist tradition make is simple: Concentration has gone up and start-ups have gone down, so the former has caused the latter. As a Brookings Hamilton Project report describes it: “A range of data show both increases in concentration in various industries and a decline in the number and activity of start-ups.”18 But this is a bit like implying the number of movies Nicholas Cage appears in is causally corelated to the number of people who drown by falling into a pool each year.19 These two datasets are in fact correlated, but neither causes the other. Indeed, as one learns in any introductory statistics class, correlation does not mean causation. To actually understand the relationship, it’s important to look at concentration and start-ups by industry. In looking at the relationship between the change in the rate of new establishments between 2006 and 2016 and the rate of change in concentration ratios from 2007 to 2012, **there is essentially no relationship**. The more-accurate measure would be change in new firms, rather than establishments.20 But the Census Bureau only reports on establishments. There is, however, a close relationship between new firms and new entablements, with about 33 percent more establishments than firms. Moreover, for concentration, the Census Bureau only reports data every five years, with the latest available being through 2012 (2017 data has not yet been released). When looking at the relationship between new establishments as a share of total establishments in a particular year at the four-digit NAICS code level and the change in industrial concentration in the industry, **there is no relationship**. **When looking at** the change in the **C4 ratio** (the market share of an industry by the largest 4 firms) **and** the change in total number of **start-ups** for 257 industries, the **correlation coefficient** **is** in fact negative (more concentration leads to fewer start-ups), but **very small**: -0.05. When looking at the more-accurate measure of change in the number of start-ups as a share of total firms in the industry, the relationship between change in concentration and start-ups is actually positive, but still very small: 0.05. In other words, more concentration leads to more start-ups. The relationship with change in the C8 ratio is similar: -0.04 for raw number of start-ups and 0.04 for percent change. These relationships are so miniscule that none are anywhere close to being statistically significant.21 When using a regression equation to measure the relationship, it is even weaker: around 0. When outliers are excluded (industries with change in start-ups that are beyond 1.5 times the interquartile range), the results are essentially the same: absolutely no correlation. This is why there are many industries wherein both concentration ratios and start-ups have fallen. Between 2006 and 2016, in the depository credit industry (banks), the C4 ratio fell 5.7 percent, the C8 ratio fell 5.2 percent, and the C20 ratio fell 5.4 percent, yet start-ups fell 72 percent. The C4 ratio in the alumina and aluminum production and processing industry fell 12.3 percent, yet start-ups fell 44 percent. The C4 ratio fell 35 percent in the computer and peripheral equipment manufacturing sector, while start-ups fell 40 percent. In contrast, there are numerous industries wherein both start-ups and concentration increased over the same time period. Start-ups increased 38 percent in the electronic shopping and mail-order houses industry, while the C4 ratio increased 9 percent. Beverage manufacturing start-ups increased 36 percent, while the C4 ratio increased 9.4 percent. And health- and personal-care store start-ups increased 12 percent, while the C4 ratio increased 3.6 percent.

#### 2. Tech start ups high, retail establishment low

Robert D. Atkinson and Caleb Foote 20. Robert D. Atkinson is the founder and president of ITIF. Caleb Foote is a research assistant at the Information Technology and Innovation Foundation. 8-3-20. “Monopoly Myths: Is Concentration Leading to Fewer Start-Ups?” https://itif.org/publications/2020/08/03/monopoly-myths-concentration-leading-fewer-start-ups

THE CASE OF HIGH-GROWTH START-UPS If the decline in start-ups is really mostly about a decline in the entry of small retailers, then the story of high-growth, high-tech start-ups—the ones that really matter to innovation and future prosperity—is very different. One reason this debate has become so muddled is too many pundits and advocates conflate start-ups whose owners have no intention of growing with the much smaller number of start-ups that seek to grow their companies to be the next big thing. There is no relationship between “subsistence” firms and economic growth. For example, a person opening a new pizza parlor usually hopes to hire at most a few workers. MIT's Catherine Fazio and coworkers found that “quantity-based measures of entrepreneurship have little relationship to GDP growth. Yearly fluctuations in counts of firm births appear to hold little relationship to medium-term measures of economic performance.”38 This is because if one person doesn’t start that pizza parlor, then someone else will. And in the long-run, small firms on average pay workers less than large firms do, are less productive, and provide fewer stable jobs with fewer benefits.39 To assess whether the overall slowdown in new firm formation is really a problem, we also need to look carefully at the types of firms that are being started. As Antoinette Schoar wrote, It is crucially important to differentiate between two very distinct sets of entrepreneurs: subsistence and transformational entrepreneurs. Recent evidence suggests that people engaging in these two types of entrepreneurship are not only very distinct in nature but that only a negligible fraction of them transition from subsistence to transformational entrepreneurship. These individuals vary in their economic objectives, their skills, and their role in the economy.40 Schoar also found, [T]he founders of venture-backed start-ups in the majority were previously employed at larger technology firms such as Microsoft, Intel, or similar firms. An alternative group of founders of transformational entrepreneurs were serial entrepreneurs who had previously started a high-growth firm. In contrast, almost none of them were running small subsistence businesses before they started a high-growth business.41 This difference in the kind of new firm start-ups is why dire claims that the sky is falling on new business formation can exist parallel to claims that we are living in a time of robust innovation and entrepreneurship, with Silicon Valley and other tech hubs throughout the nation enjoying frothy and dynamic innovation. As Silicon Valley venture capitalist Marc Andreessen tweeted, “There’s too much entrepreneurship: Disruption running wild!” He added, “There’s too little entrepreneurship: Economy stalling out!”42 A big reason for this contradiction is that the above studies reporting gloom don’t differentiate between lifestyle businesses that stay small (mostly in the retail sector) and growth businesses that don’t. What really matters is how high-growth, innovation-based start-ups are doing (think: biotech or robotics start-ups, not owner-operated pizza parlors). **And here, things are healthy**. 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**.43 They also found that even after controlling for the size of the U.S. economy, the second highest rate of high-growth entrepreneurship occurred in 2014.44 This research indicates that the entrepreneurial potential (successful start-ups as a share of gross domestic product (GDP)) by founding year hit its low point in 1990, peaked in 2000 at almost twice as high, fell after the dot-com bust, then rose to 2007, fell again with the global recession of 2008–2009, but then bounced back to almost record highs by 2014. As Fazio and colleagues have noted, “Quantity-based measures document a troubling, three-decade-long decline in the U.S. rate of entrepreneurship…. **Conversely**, **outcome-based measures indicate** that the rate of **entrepreneurship is rising**. Early-stage angel and **v**enture **c**apital **financing** of new ventures **has been on a significant upswing** over the past several years.”45 And when the Information Technology and Innovation Foundation (ITIF) examined data on more than 5 million **technology-based start-ups** in the United States, it found that the number **had grown 47 percent** over the last decade.46 For example, from 2007 to 2015, **software-firm start-ups increased 20 percent**. And there were more software firms in 2016 than in 2007. Their five-year survival rate in 2011 was 17 percentage points higher than in 1999. CONCLUSION New firm formation is important to the extent it injects into the sinews of the economy new product and process technologies and new business models. But simply adding small start-ups that don’t do that—and that are on net less productive and innovative than larger firms and pay their workers less—is not a goal the nation should ascribe to. New business for new business’s sake is not the right goal. And so much of the concern about the national crisis of fewer new firms being formed is, while sometimes well intentioned, largely misplaced. Not only is there is absolutely no correlation between the change in industry concentration and the change in the number of start-ups**, the lion’s share of the decline in start-ups is in one sector**: **mom-and-pop retail**. The rate of real entrepreneurial start-ups is healthy. Policymakers should move on to other problems and stop hand-wringing about monopoly and start-ups.

#### Killer Acquisitions are good

Joe Kennedy 20. Senior fellow at ITIF, Previous positions include chief economist with the U.S. Department of Commerce and general counsel for the U.S. Senate Permanent Subcommittee on Investigations. 11-9-2020. “Monopoly Myths: Is Big Tech Creating “Kill Zones”?” <https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones>

**Acquisitions Provide a Needed Exit Route** The knowledge of possibly being acquired can also spur entrepreneurial activity and investment. As the report for the European Commission notes: Simultaneously, the chance for start-ups to be acquired by larger companies is an important element of **v**enture **c**apital markets: **it is among the main exit routes for investors** **and** it **provides an incentive** **for** the private financing of **high-risk innovation**.43 This argument was echoed by James Pethokoukis of the American Enterprise Institute: Not every founder starts a company intending for it become Amazon. **Often future acquisition is the** **goal**. Then the entrepreneur can go on to start another firm or become an investor in other aspirational startups working on risky new ideas. Same goes for the investors in the acquired firm. What’s more, these purchases are often “acquisition-by-hire” situations where the prize is talent rather than the Next Big Thing. And when an upstart firm has a valuable idea, acquisition can be the fastest way to get it to users.44

#### Startups are the worst offenders!

Kagan et al 21 (Rebecca Kagan Rebecca Gelles Zachary Arnold, Center for Security and Emerging Technology, “From China to San Francisco: The Location of Investors in Top U.S. AI Startup”, https://cset.georgetown.edu/wp-content/uploads/CSET-From-China-to-San-Francisco-The-Location-of-Investors-in-Top-U.S.-AI-Startups.pdf)

U.S. artificial intelligence startups are raising billions of dollars from private investors both domestic and abroad. Chinese investors in U.S. startups have attracted particular scrutiny due to concerns related to technology transfer, and yet there is little systematic analysis of foreign investment in U.S. AI startups, or the location of investors into U.S. AI startups more broadly. By analyzing thousands of U.S.-based startups and their investors, we find:

• China is the top location for foreign investors into top U.S. AI startups, with 5 percent of total investors. Foreign investors as a whole make up 24 percent of the investors into top U.S. AI startups.

• Chinese investors are more likely to invest in U.S. AI startups than in other industries. Top U.S. AI startups are likely to have a greater number of Chinese investors than startups in other industries.

• 20 percent of top U.S. AI startups have at least one Chinese investor, despite the fact that Chinese investors only make up 5 percent of investors into top U.S. AI startups.

• About $3B (15 percent) of the $21B raised by top U.S. AI startups was raised in rounds involving at least one Chinese investor.

• Domestically, the San Francisco Bay Area is central to the AI startup scene—49 percent of U.S. investors in top U.S. AI startups are located there, and 95 percent of top U.S. AI startups have at least one investor from the Bay Area

### Adv 2

#### Developing countries are uninterested in competition policy

Frederic Jenny 20—Professor Of Economics, Essec Business School, Paris, France; Chair Oecd Competition Committee. ("An Essay: Can Competition Law and Policy Be Made Relevant for Inclusive Growth of Developing Countries?," 1-22-2020, from SAGE Journals, https://journals.sagepub.com/doi/full/10.1177/0003603X19898621

The question then is whether and through which process the changes necessary to establish strong and independent competition authorities backed by effective legal provisions allowing them to control or denounce the worst governmental restrictions benefiting politically powerful lobbies or abuses by state-owned firms will take place, as one can doubt that the powerful beneficiaries of the status quo in those countries will have much appetite to adopt competition law frameworks that will reduce their ability to grant protection for political gains and to benefit from corrupt practices. The authors acknowledge the weak interest of governments in Sub-Saharan African nations for the adoption of competition laws. The authors refer to this dilemma (p. 28) when they state (while discussing the West African situation):

In the 1990s, responding to the World Bank conditionality, the West African states eased regulations and began to make laws concerning pricing and firms behavior more market-friendly. The States passed competition laws and established competition authorities. These laws were designed to remove obstructions to competition (…) and to let the market work to get better products and prices. But the national governments were reluctant to relinquish their regulatory roles. They did not want to just stand by when they thought prices were too high. They could not resist intervention. Thus they did not provide much support for independent competition authorities. The colonial history kept its grip and the remnants of French dirigisme hindered a shift to markets. This halting move to markets does much to explain the patterns and trends of West African competition law and policy.

# 1NR

## Impact

### 2nc—overview

#### Disruption cascades.

Steven **Ferrey 14**, Professor of Law at Suffolk University Law School and served as a Visiting Professor of Law at Harvard Law School in 2003, has been a primary legal consultant to the World Bank and the U.N. Development Program on their renewable energy and climate control policies in developing countries, having worked extensively in Asia, Africa, and Latin America, holds a Bachelor of Arts in Economics, a Juris Doctor, a Master's Degree in Regional Planning, and between his two graduate degrees, was a post-doctoral Fulbright Fellow at the University of London, “ARTICLE: BROKEN AT BOTH ENDS: THE NEED TO RECONNECT ENERGY AND ENVIRONMENT,” 65 Syracuse L. Rev. 53, Lexis

Reliable electricity supply requires a constant, second-by-second simultaneous balancing of power generation supply to meet demand on the utility grid. 3 The United States electric grid will collapse within approximately four seconds if sufficient generation of power is not constantly supplied to meet fluctuating consumer demand. 4 Either too [\*55] much or too little power causes system instability, 5 and a loss of power would disrupt communication, transportation, heating and water supplies, hospitals, and emergency rooms. 6 According to Kirchoff's Law, 7 power moves almost at the speed of light on an energized grid. 8 If power supply does not constantly balance instantaneous demand, the grid can blackout large areas, 9 as happened to the Northeast United States population on August 14, 2003, 10 and subsequently with rolling blackouts in Texas. 11 The 2003 blackout affected fifty million people and caused a loss of six billion dollars. 12 During this blackout, production was lost at approximately half of the Chrysler plants, a Ford plant was lost for a week of repairs, oil refineries shut down, one chain of 237 drugstores in New York City was forced to close, major urban airports closed causing more than a thousand flights to be cancelled, and frozen and perishable foods were lost. 13

#### Destroys everything.

Alice **Friedemann 16**, Transportation expert, founder of EnergySkeptic.com and author of “When Trucks Stop Running, Energy and the Future of Transportation,” worked at American Presidential Lines for 22 years, where she developed computer systems to coordinate the transit of cargo between ships, rail, trucks, and consumers, “Electromagnetic pulse threat to infrastructure (U.S. House hearings)”, Energy Skeptic, http://energyskeptic.com/2016/the-scariest-u-s-house-session-ever-electromagnetic-pulse-and-the-fall-of-civilization/

Modern civilization cannot exist for a protracted period without electricity. Within days of a blackout across the U.S., a blackout that could encompass the entire planet, emergency generators would run out of fuel, telecommunications would cease as would transportation due to gridlock, and eventually no fuel. Cities would have no running water and soon, within a few days, exhaust their food supplies. Police, Fire, Emergency Services and hospitals cannot long operate in a blackout. Government and Industry also need electricity in order to operate. The EMP Commission warns that a natural or nuclear EMP event, given current unpreparedness, would likely result in societal collapse.

#### nuclear winter theory false

McDonald ‘19 (Samuel Miller McDonald is a writer and geography PhD student at University of Oxford studying the intersection of grassroots movements and energy transition; 1/4/19; “Deathly Salvation”; *The Trouble*; https://www.the-trouble.com/content/2019/1/4/deathly-salvation)

A devastating fact of climate collapse is that there may be a silver lining to the mushroom cloud. First, it should be noted that a nuclear exchange does not inevitably result in apocalyptic loss of life. Nuclear winter—the idea that firestorms would make the earth uninhabitable—is based on shaky science. There’s no reliable model that can determine how many megatons would decimate agriculture or make humans extinct. Nations have already detonated 2,476 nuclear devices. An exchange that shuts down the global economy but stops short of human extinction may be the only blade realistically likely to cut the carbon knot we’re trapped within. It would decimate existing infrastructures, providing an opportunity to build new energy infrastructure and intervene in the current investments and subsidies keeping fossil fuels alive. In the near term, emissions would almost certainly rise as militaries are some of the world’s largest emitters. Given what we know of human history, though, conflict may be the only way to build the mass social cohesion necessary for undertaking the kind of huge, collective action needed for global sequestration and energy transition. Like the 20th century’s world wars, a nuclear exchange could serve as an economic leveler. It could provide justification for nationalizing energy industries with the interest of shuttering fossil fuel plants and transitioning to renewables and, uh, nuclear energy. It could shock us into reimagining a less ~~suicidal~~ civilization, one that dethrones the death-cult zealots who are currently in power. And it may toss particulates into the atmosphere sufficient to block out some of the solar heat helping to drive global warming. Or it may have the opposite effects. Who knows? What we do know is that humans can survive and recover from war, probably even a nuclear one. Humans cannot recover from runaway climate change. Nuclear war is not an inevitable extinction event; six degrees of warming is.

### at: doesn’t solve warming

#### The $3.5 trillion bill is the last, best chance to prevent catastrophic warming

Ella Nilsen 9/14—Climate reporter at CNN. ("Biden's spending bill could be Democrats' last hope of achieving meaningful climate action as crisis worsens," September 14, 2021, from CNN, https://www.cnn.com/2021/09/14/politics/biden-budget-congress-climate-action/index.html)

After decades of inaction from the United States on climate, President Joe Biden and congressional Democrats face a reckoning.

Biden has big climate ambitions, vowing in April to cut greenhouse gas emissions in half by 2030. The world is watching closely to see whether the US will deliver on that promise, as the President's climate envoy, John Kerry, prepares to meet with global leaders in November for the United Nations climate summit.

Jonathan Pershing, one of Kerry's senior advisers, recently told lawmakers the US needs to "walk the talk" to regain its climate credibility on the world stage. What's not clear is whether the President has the votes in Congress — even within his own party — to get it done.

As the drought and extreme weather intensify, Democrats view the massive budget bill and its significant climate provisions as their last, best hope to achieve something meaningful on climate as the crisis worsens. In August, global scientists reported the planet is quickly approaching the critical warming threshold of 1.5 degrees Celsius above pre-industrial levels, below which they say the planet must stay in order to avoid the worst consequences.

Within the US, pressure is mounting after a series of climate disasters this summer, including record-breaking wildfires, deadly heat, water shortages and a disastrous hurricane that's expected to cost the US economy billions.

"Scientists have been warning us for years that extreme weather is gonna get more extreme. We're living it in real time now," Biden said Monday as he toured wildfire damage in California.

Touting the budget and infrastructure bills, the President urged people to "think big."

"Thinking small is a prescription for disaster," Biden said. "We're gonna get this done, this nation's gonna come together and we are going to beat this climate change."

Congressional leaders have set an end-of-September deadline in the House to pass their massive budget bill alongside a separate bipartisan infrastructure bill. Together, the packages contain hundreds of billions of new climate investments, which Senate Majority Leader Chuck Schumer argued will get the US most of the way to hitting Biden's fossil-fuel emissions target of 50-52% below 2005 levels by 2030.

With a razor-thin majority in both the House and Senate, this is Democrats' only shot at passing a substantial climate bill before world leaders meet in November. But there's at least one prominent Senate Democrat who could thwart those plans.

Sen. Joe Manchin of West Virginia, Senate Democrats' key swing vote, wants to pare down the overall size of the bill, and he has said he has concerns about what the climate provisions could mean for a fossil-fuel producing state like West Virginia. As chair of the Senate Energy and Natural Resources Committee, the senator will have a large hand in shaping Democrats clean electricity program.

Sen. Sheldon Whitehouse of Rhode Island told CNN negotiations with Manchin are ongoing — but he was optimistic the West Virginia senator would understand the gravity of a fast-warming climate and its impacts.

"At the end of the day, we're all answerable to the future to get the job done right," Whitehouse said. "I don't think [Manchin] wants to be on the wrong side of that future."

How the bill would tackle the climate crisis

After years of inaction in the White House and Congress, Biden's budget bill represents decades worth of policy in a single bill. Experts told CNN it represents a paradigm shift in how to tackle climate change — moving the entire economy away from fossil fuels and toward clean energy.

"Moving the US economy is equivalent of changing the direction of an enormous ocean liner," Josh Freed, founder of the Climate and Energy Program at the center-left think tank Third Way, told CNN. "It takes time to do but once you have it going in the right direction it can pick up steam and get going quickly."

After re-entering the US into the Paris Climate Accord in January, Biden announced a target to reduce greenhouse gas emissions by 50% to 52% relative to 2005 levels by 2030.

That target could be met in part through federal regulations restricting emissions from vehicles and power plants. A White House spokesperson told CNN the Biden administration sees its climate actions coming both from Congress and executive action.

"We also believe that there exists a number of paths to meeting our emission goals and targets," the spokesperson said. "The Biden climate agenda doesn't hinge on reconciliation or the infrastructure package alone. Rather, it is integrated throughout both — and it is a key part of everything we do in the whole of government effort launched on day one."

But experts told CNN that Biden needs Congress to pass massive investments in renewable energy, electric vehicles and other green programs to truly make a dent in US carbon emissions.

A clean electricity program is Democrats' cornerstone climate initiative in the massive budget bill. It would promote a transition away from fossil fuels by paying electric utilities who increase the amount of renewables and other forms of clean power and penalizing those who don't meet clean targets.

Generating electricity from non-fossil fuel sources like wind, solar and nuclear is a critical to Democrats' climate strategy.

"I see the [clean electricity program] as the lynchpin or the foundation piece for this bold action on climate," Democratic Sen. Tina Smith, who is a lead proponent of the provision, told CNN.

The bill also contains measures to create a job-generating Civilian Climate Corps; tax credits and grants for clean energy, renewables and electric vehicles; new polluter fees for methane and carbon; and consumer rebates to electrify and weatherize homes. What is yet to be finalized is how much funding each program gets.

Schumer's office recently put out an analysis showing the bipartisan infrastructure bill and $3.5 trillion budget bill combined could meet the majority of Biden's target to slash emissions by the end of the decade — putting the US on track to reduce its greenhouse gas emissions by approximately 45% below 2005 levels by 2030.

"When you add administrative actions being planned by the Biden Administration and many states — like New York, California, and Hawaii — we will hit our 50% target by 2030," Schumer wrote in a letter accompanying the analysis.

### Impact

#### Climate change turns every impact and causes extinction.

Torres, 16 – affiliate scholar at the Institute for Ethics and Emerging Technologies (Phil, Op-ed: Climate Change Is the Most Urgent Existential Risk, <http://ieet.org/index.php/IEET/more/Torres20160807>)

Humanity faces a number of formidable challenges this century. Threats to our collective survival stem from asteroids and comets, supervolcanoes, global pandemics, climate change, biodiversity loss, nuclear weapons, biotechnology, synthetic biology, nanotechnology, and artificial superintelligence. With such threats in mind, an informal survey conducted by the Future of Humanity Institute placed the probability of human extinction this century at 19%. To put this in perspective, it means that the average American is more than a thousand times more likely to die in a human extinction event than a plane crash.\* So, given limited resources, which risks should we prioritize? Many intellectual leaders, including Elon Musk, Stephen Hawking, and Bill Gates, have suggested that artificial superintelligence constitutes one of the most significant risks to humanity. And this may be correct in the long-term. But I would argue that two other risks, namely climate change and biodiveristy loss, should take priority right now over every other known threat. Why? Because these ongoing catastrophes in slow-motion will frame our existential predicament on Earth not just for the rest of this century, but for literally thousands of years to come. As such, they have the capacity to raise or lower the probability of other risks scenarios unfolding. Multiplying Threats Ask yourself the following: are wars more or less likely in a world marked by extreme weather events, megadroughts, food supply disruptions, and sea-level rise? Are terrorist attacks more or less likely in a world beset by the collapse of global ecosystems, agricultural failures, economic uncertainty, and political instability? Both government officials and scientists agree that the answer is “more likely.” For example, the current Director of the CIA, John Brennan, recently identified “the impact of climate change” as one of the “deeper causes of this rising instability” in countries like Syria, Iraq, Yemen, Libya, and Ukraine. Similarly, the former Secretary of Defense, Chuck Hagel, has described climate change as a “threat multiplier” with “the potential to exacerbate many of the challenges we are dealing with today — from infectious disease to terrorism.” The Department of Defense has also affirmed a connection. In a 2015 report, it states, “Global climate change will aggravate problems such as poverty, social tensions, environmental degradation, ineffectual leadership and weak political institutions that threaten stability in a number of countries.” Scientific studies have further shown a connection between the environmental crisis and violent conflicts. For example, a 2015 paper in the Proceedings of the National Academy of Sciences argues that climate change was a causal factor behind the record-breaking 2007-2010 drought in Syria. This drought led to a mass migration of farmers into urban centers, which fueled the 2011 Syrian civil war. Some observers, including myself, have suggested that this struggle could be the beginning of World War III, given the complex tangle of international involvement and overlapping interests. The study’s conclusion is also significant because the Syrian civil war was the Petri dish in which the Islamic State consolidated its forces, later emerging as the largest and most powerful terrorist organization in human history. A Perfect Storm The point is that climate change and biodiversity loss could very easily push societies to the brink of collapse. This will exacerbate existing geopolitical tensions and introduce entirely new power struggles between state and nonstate actors. At the same time, advanced technologies will very likely become increasingly powerful and accessible. As I’ve written elsewhere, the malicious agents of the future will have bulldozers rather than shovels to dig mass graves for their enemies. The result is a perfect storm of more conflicts in the world along with unprecedentedly dangerous weapons. If the conversation were to end here, we’d have ample reason for placing climate change and biodiversity loss at the top of our priority lists. But there are other reasons they ought to be considered urgent threats. I would argue that they could make humanity more vulnerable to a catastrophe involving superintelligence and even asteroids. The basic reasoning is the same for both cases. Consider superintelligence first. Programming a superintelligence whose values align with ours is a formidable task even in stable circumstances. As Nick Bostrom argues in his 2014 book, we should recognize the “default outcome” of superintelligence to be “doom.” Now imagine trying to solve these problems amidst a rising tide of interstate wars, civil unrest, terrorist attacks, and other tragedies? The societal stress caused by climate change and biodiversity loss will almost certainly compromise important conditions for creating friendly AI, such as sufficient funding, academic programs to train new scientists, conferences on AI, peer-reviewed journal publications, and communication/collaboration between experts of different fields, such as computer science and ethics. It could even make an “AI arms race” more likely, thereby raising the probability of a malevolent superintelligence being created either on purpose or by mistake. Similarly, imagine that astronomers discover a behemoth asteroid barreling toward Earth. Will designing, building, and launching a spacecraft to divert the assassin past our planet be easier or more difficult in a world preoccupied with other survival issues? In a relatively peaceful world, one could imagine an asteroid actually bringing humanity together by directing our attention toward a common threat. But if the “conflict multipliers” of climate change and biodiversity loss have already catapulted civilization into chaos and turmoil, I strongly suspect that humanity will become more, rather than less, susceptible to dangers of this sort. Context Risks We can describe the dual threats of climate change and biodiversity loss as “context risks.” Neither is likely to directly cause the extinction of our species. But both will define the context in which civilization confronts all the other threats before us. In this way, they could indirectly contribute to the overall danger of annihilation — and this worrisome effect could be significant. For example, according to the Intergovernmental Panel on Climate Change, the effects of climate change will be “severe,” “pervasive,” and “irreversible.” Or, as a 2016 study published in Nature and authored by over twenty scientists puts it, the consequences of climate change “will extend longer than the entire history of human civilization thus far.” Furthermore, a recent article in Science Advances confirms that humanity has already escorted the biosphere into the sixth mass extinction event in life’s 3.8 billion year history on Earth. Yet another study suggests that we could be approaching a sudden, irreversible, catastrophic collapse of the global ecosystem. If this were to occur, it could result in “widespread social unrest, economic instability and loss of human life.” Given the potential for environmental degradation to elevate the likelihood of nuclear wars, nuclear terrorism, engineered pandemics, a superintelligence takeover, and perhaps even an impact winter, it ought to take precedence over all other risk concerns — at least in the near-term. Let’s make sure we get our priorities straight.

## Uniqueness

### Will Pass---OV---2NC

#### 1---Even if there’s opposition, PC really does solve

Everett 9-16 (Burgess Everett, staff reporter @ Politico, Dems call in big gun as they face huge Hill tests, <https://www.politico.com/news/2021/09/16/biden-influence-capitol-democrats-511952>, y2k)

Senate Majority Whip Dick Durbin said that Biden, “more than anyone,” maintains sway over his caucus’s 50 members: “There is no comparable political force to a president, and specifically Joe Biden at this moment.”

Biden appears to be answering the call. The president is getting increasingly involved in Congress’ chaotic fall session as he battles sagging approval ratings, heightened concerns around the pandemic and some internal criticism over his withdrawal from Afghanistan. On Thursday, he'll speak to Senate Majority Leader Chuck Schumer and Speaker Nancy Pelosi ahead of a critical week for funding the government and lifting the debt ceiling.

Rebounding as the midterms draw nearer will depend on whether his big social spending ambitions are realized and if his party can dodge a government shutdown and credit default. But even if he has success on those fronts, he still needs to maintain momentum on Democrats’ elections legislation, which Republicans look certain to torpedo.

“I have full faith and confidence in Joe Biden in all of this,” said House Majority Whip Jim Clyburn, who's pressed Biden to endorse a filibuster carve out for voting rights legislation. “He is working this … and that’s how it should be.”

Biden met with two key Democratic holdouts on his domestic spending agenda on Wednesday, part of a sustained push to keep Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) on board with his legislative program. Biden’s met with Sinema four times this year, in addition to telephone calls made between the two, and has spoken to Manchin a similar number of times.

“Now is the time” for Biden to jump full-force into the reconciliation conversation, said Sen. Tim Kaine (D-Va.). And the White House made clear that Biden is diving into the series of tricky issues.

Andrew Bates, a spokesperson for Biden, said that Biden and his administration "are in frequent touch with Congress about each key priority: protecting the sacred right to vote, ensuring our economy delivers for the middle class and not just those at the top, and preventing needless damage to the recovery from the second-worst economic downturn in American history.”

To help corral all 50 Senate Democrats for the social spending bill, the president and his party need to create an “echo chamber” around its substance, said Celinda Lake, a pollster on Biden’s campaign. But that won't be easy. Manchin has told colleagues he’s worried about whether the bill’s safety net, climate action and tax reforms will be popular in his state, according to one Senate Democrat. He's also said he won't support a measure at the current spending level: $3.5 trillion.

If Biden can hammer home the popular aspects of the spending plan, it may help assuage Manchin and improve his whip count in Congress. Underscoring the degree to which he's become the face of the multi-trillion dollar reconciliation bill, a Democratic aide said the party is increasingly seeking to frame it as Biden’s agenda, not that of Sen. Bernie Sanders (I-Vt.) or any single Democrat.

#### 2---Prefer predictive uniqueness---despite challenges, it will eventually pass

Jaacobson 9-10 (Louiis Jacobson, correspondent @ Politifact, The Democrats’ reconciliation bill: What you need to know, <https://www.politifact.com/article/2021/sep/10/democrats-reconciliation-bill-what-you-need-know/>, y2k)

How serious are the centrists and progressives about derailing the process if they don’t get their way?

Experts said it’s certainly possible that either centrists or progressives would tank the bill if they can’t get everything they want, though such a course would be risky since the Democrats are at risk of losing their slim majorities in the 2022 midterm elections.

"It may be too early to be talking about a snowball’s chance in Hades, but the intraparty heat in the Democratic caucuses has already set off the pre-melt warning sirens," Wolfensberger said.

Goldwein said that while the factions’ positioning is deeply felt, he added that there’s a good chance that Democrats want to get to yes. "I think the leadership and the administration will lead them to a deal," he said.

#### 3---Aff evidence is all rhetoric

Greve 9-7 (Joan E Greve, Guardian staff, Joe Biden to referee Democrats in brewing battle over $3.5tn budget bill, <https://www.theguardian.com/us-news/2021/sep/07/biden-democrats-brewing-battle-budget-bill>, y2k)

With his entire economic agenda hanging in the balance, Biden will need to convince the two fractious wings of his party to come together and pass a comprehensive spending package. And given Democrats’ extremely narrow majorities in both the House and the Senate, there is virtually no room for error.

Despite warning signs of intra-party friction over the cost of the budget bill, congresswoman Suzan DelBene, who chairs the centrist New Democrat Coalition, said the House’s focus right now should still be on the content of the legislation.

“I think discussion of a number is more distracting when the focus really needs to be on, what is the substance going to be of this legislation?” DelBene told the Guardian. “If we have strong legislation the people support, I think we can find the path forward.”

Over in the Senate, majority leader Chuck Schumer is attempting to advance the bill using reconciliation, meaning Democrats do not need any Republican support to pass the legislation. But the 50-50 split in the upper chamber means that every single Democratic senator must be on board to get the bill approved.

Schumer has been clear-eyed about the challenges ahead for the legislation. Shortly after the Senate approved the blueprint for the bill in a party-line vote last month, Schumer told reporters, “We’ve labored for months and months to reach this point, and we have no illusions – maybe the hardest work is yet to come.”

Manchin proved Schumer’s point last Thursday, when he wrote a Wall Street Journal op-ed calling for a “strategic pause” in advancing the spending package.

“While some have suggested this reconciliation legislation must be passed now, I believe that making budgetary decisions under artificial political deadlines never leads to good policy or sound decisions,” Manchin said in the op-ed. “I, for one, won’t support a $3.5tn bill, or anywhere near that level of additional spending, without greater clarity about why Congress chooses to ignore the serious effects inflation and debt have on existing government programs.”

Bernie Sanders, the leftwing chairman of the Senate budget committee, responded to Manchin’s warning in kind, threatening to torpedo the bipartisan infrastructure bill if the spending package is not approved.

“Rebuilding our crumbling physical infrastructure – roads, bridges, water systems – is important,” Sanders said on Twitter. “Rebuilding our crumbling human infrastructure – healthcare, education, climate change – is more important. No infrastructure bill without the $3.5tn reconciliation bill.”

Progressive groups have echoed Sanders’s argument, insisting that every component of the $3.5tn legislation is vital. Sanders had initially called for spending $6tn on the budget bill, so progressives already view the current price tag as a concession.

“We’re in a moment of crisis. Is this really the time for the Senate to press pause?” Ellen Sciales, the communications director of the climate group Sunrise Movement, said in a statement.

She added: “If the Senate can’t pass an incredibly popular climate and jobs plan during a summer of unprecedented, fatal climate disasters, and an economy reeling from a global pandemic, we must abolish the Senate. $3.5tn was the compromise.”

Natalia Salgado, the director of federal affairs for the Working Families Party, noted that some progressive economists have suggested the US needs to spend $10tn over 10 years to meet its obligations in the Paris Climate Agreement.

“We’re going to come nowhere near that,” Salgado said. “So we can’t afford to lose a single cent in this $3.5tn. Every single penny will count.”

Despite the war of words between moderates and progressives, the White House has continued to express confidence that Congress will ultimately reach an agreement on the legislation.

“The president and his whole team are proud of and fighting for the substance of his Build Back Better agenda,” a White House official said in a statement. “These are complex processes, but as recent weeks have demonstrated, leaders in Congress and the President know how to move them forward.”

#### 4---Biden is super confident

Bose 9-16 (Nandita Bose, Biden expects Congress to approve spending, infrastructure bills, <https://www.reuters.com/world/us/biden-says-he-expects-congress-deliver-spending-infrastructure-bills-2021-09-16/>, y2k)

U.S. President Joe Biden on Thursday expressed confidence that Congress will pass both a bill funding infrastructure investments and a supplementary spending bill as Democrats seek to infuse trillions of dollars into the U.S. economy.

### Will Pass---AT: Spending

#### PC solves spending concerns---democrats can entertain proposals like taxing stock buybacks---it fully offsets the bill and makes it difficult for the centrists to backlash

Sargent 9-7 (Greg Sargent, columnist @ Washington Post, Opinion: How Democrats can make it harder for centrists to downsize Biden’s agenda, <https://www.washingtonpost.com/opinions/2021/09/07/manchin-sinema-spending-stock-buybacks/>, y2k)

When Sen. Joe Manchin III shook up Democrats by demanding a “pause” on President Biden’s $3.5 trillion “human infrastructure” package, he took refuge behind platitudes about limiting its spending to what America “can afford and needs to spend.”

The West Virginia Democrat did not specify what he views as the amount that we truly can “afford” and “need” to spend. Similarly, Sen. Kyrsten Sinema (D-Ariz.) has said she won’t support that level of spending, without saying what the right amount should be.

But such arguments should get a lot harder to sustain, once the political world starts focusing seriously on the details of the corporate tax hikes in the package.

Case in point: Two progressive senators are set to unveil a new plan to tax stock buybacks, in which corporations purchase back shares in themselves as a way to channel additional money to shareholders.

The details of the plan are as yet unknown, but the office of Sen. Sherrod Brown (D-Ohio) confirms to me that it will be revealed this week. Brown will champion the plan with Sen. Ron Wyden (D-Ore.), who as chairman of the Finance Committee is assembling the corporate tax increases for the $3.5 trillion bill, which Democrats hope to pass by the simple-majority “reconciliation” process.

The plan to tax stock buybacks is one of numerous proposals Democrats are considering to offset the reconciliation bill’s spending, Bloomberg News reports. These proposals are expected to include an increase in the corporate tax rate, an effort to capture more revenue from multinational corporations that shelter profits abroad, taxing capital gains like regular income, and more.

If and when this proposal gets debated, it will be harder for centrist Democrats to hide behind platitudinous objections to spending. That’s because specific proposals can both generate revenue and have policy value of their own, and centrists will have to say which of these they oppose and why.

Stock buybacks occur when companies purchase back stocks, which transfers money to wealthy shareholders and in the short term might raise the price of stocks still on the market, enriching shareholder value more.

Many tax experts see these as problematic. Some say they decrease the amount available for productive investments, including wage increases to workers. Others argue they are not taxed the way shareholder dividends are, costing us revenue and starving public investment.

The new proposal from Democrats will address these things. It’s not clear how yet — they will either seek to apply an excise tax on buybacks, or treat them as taxable dividends to shareholders — but that’s the general goal.

In a statement sent to me, Brown said the fundamental goal is to tax corporations when they “transfer wealth to Wall Street” by using accounting trickery unavailable to working people. As he put it: “Corporate greed is fundamental to the Wall Street business model.”

With stock buybacks soaring, this would be another way to bring in revenue to offset the spending in the reconciliation package, which will include investments in child care, family supports, education and combating climate change, among many other things.

“The fact that we can raise billions through a small tax on share buybacks just goes to show that there’s no excuse for congressional Democrats to shortchange the critical investments in the reconciliation bill,” Seth Hanlon, a senior fellow at the Center for American Progress, told me. He estimates this could raise as much as $150 billion or more over 10 years.

The key point here is that when proposals like this one start to get debated in earnest, it will be much harder to oppose the reconciliation bill’s spending levels in an abstract way.

### Thumpers---AT: Afghanistan---2NC

#### Democrats are key to infrastructure---Afghanistan only matters for the GOP, not Democrats

Al Jazeera 9-13 (Democrats shift blame for Afghanistan withdrawal chaos to Trump, <https://www.aljazeera.com/news/2021/9/13/democrats-shift-blame-for-afghanistan-withdrawal-chaos-to-trump>, y2k)

As Democrats in the United States scramble to defend the Biden administration against growing criticism for the country’s chaotic withdrawal from Afghanistan, a new tactic is emerging: highlighting former President Donald Trump’s role.

At a congressional hearing on Monday, US Secretary of State Antony Blinken stressed that President Joe Biden inherited a Trump agreement with the Taliban that stipulated that all US troops would leave Afghanistan by May of this year.

The US withdrawal at the end of August, shortly after the Taliban took control of the country, turned into a crisis for Biden, who faced widespread condemnation from Republicans and media commentators, as well as calls for his resignation.

Now the president’s supporters in Congress are mounting a defence focused on the previous administration’s policies towards the Taliban.

While Republicans lambasted Blinken and the current administration in Monday’s hearing, Democratic legislators focused their questions and remarks on Trump’s talks with the Taliban.

#### Biden exited Afghanistan to prioritize infrastructure---the decision preserves PC

Nomikos 9-1 (William G. Nomikos is assistant professor of political science at Washington University in St. Louis and director of the Data-driven Analysis of Peace Project, Everyone has an opinion on Afghanistan — Do voters care? https://thehill.com/blogs/congress-blog/politics/570422-everyone-has-an-opinion-on-afghanistan-do-voters-care, y2k)

Biden’s political calculation

Voters are not closely engaged with current events, often seeking to avoid politics altogether. Humanitarian disasters quickly disappear from headlines. Consider that less than a week after the Taliban overtook Kabul, news from Afghanistan did not make the front page of newspapers is several major cities.

On the flip said, the potential costs of staying in Afghanistan would be enormous. Currently, President Biden is focused on getting Congress to pass a $1 trillion infrastructure bill and a $3.5 trillion budget reconciliation bill that, together, would comprise much of his first term agenda. Given the importance of these domestic issues to voters relative to foreign policy, passing the bills through Congress will be the most important politically for Biden.

According to estimates, the war in Afghanistan alone has already cost American taxpayers more than $2.2 trillion. Concerns about the combined price tag of Democrats’ legislative agenda have triggered concerns about federal spending and inflation. More spending on Afghanistan would make Biden and his fellow Democrats even more vulnerable to such attacks.

The slim margins in Congress suggests that Biden must reserve his political capital to maintain the existing coalitions to pass these two bills, not a new war effort. Doing so would also offer the Democrats the best chance for retaining control of Congress in the 2022 midterm elections.

## Links

### Links---Big Tech---Dem Unity---2NC

#### Big tech antitrust splits the party---it’s divisive

Nylen 6-23 (LEAH NYLEN , Politico staff, Progressives, moderate Democrats tussle over tech antitrust package, <https://www.politico.com/news/2021/06/23/democrats-tech-antitrust-package-495644>, y2k)

A package of antitrust bills to rein in the biggest U.S. tech companies is proving divisive not just for Republican lawmakers, but also for Democrats who are split on whether the legislation goes too far.

The six bills being marked up Wednesday by the House Judiciary Committee speak to an oft-repeated goal of many Democrats: curbing the power of Silicon Valley. Four of the bills would zero in on Apple, Amazon, Facebook, Google and Microsoft for greater regulation, limiting their ability to buy up promising startups that could grow into rivals and prohibiting them from using their platforms to discriminate against competitors.

The push to crack down on those tech giants has drawn support from a broad coalition of lawmakers fed up with Silicon Valley, from progressive leaders like Reps. Pramila Jayapal (D-Wash.) and David Cicilline (D-R.I.) to outspoken allies of former President Donald Trump like Reps. Ken Buck (R-Colo.) and Matt Gaetz (R-Fla.). On the Republican side, it has also prompted public rebukes by party detractors who call the legislation an affront to conservative values.

But a growing number of moderate Democrats are also voicing concern about the proposals under consideration this week, which they warn could have a vast impact on the U.S. economy. That includes at least two key California Democrats that sit on Judiciary, Zoe Lofgren and Lou Correa, who will have a say Wednesday on which bills make it out of the panel and which don’t.

#### Plan would publicly divide the party---it decks dem unity

Klar 6-24 (Rebecca Klar, California Democrats clash over tech antitrust fight, <https://thehill.com/policy/technology/560140-california-democrats-clash-over-tech-antitrust-fight?rl=1>, y2k)

“There has been concern on both sides of the aisle about the consolidation of power of the tech companies and this legislation is an attempt to address that in the interest of fairness, in the interest of competition, in the interest of meeting needs of people who are whose privacy whose data and all the rest is at the mercy of these tech companies,” Pelosi said.

She also dismissed concerns raised by the tech companies lobbying against the legislation. The New York Times reported earlier this week that Apple CEO Tim Cook called Pelosi and other members warning that the bills were being rushed and could end up hurting consumers. Pelosi said Thursday that she told Cook to put forth any “substantive concern” as Congress moves ahead with the proposals.

“They can put forth what they want to put forth, but we’re not going to ignore the consolidation that has happened and the concern that exists on both sides of the aisle,” Pelosi said.

Lawmakers on both sides of the aisle in support of the bills, including the unlikely allies of Jayapal, Gaetz and Antitrust Subcommittee Chairman David Cicilline (D-R.I.), have dismissed arguments that the legislation was rushed in any way, pointing to the 16-month bipartisan investigation into the market power of the four tech giants.

“I urge my colleagues to read the report,” Cicilline said.

He also called for members to read the “pleas from small businesses” that are “begging them to do something.”

It’s unclear when the bills will head to the House floor for a vote, but centrist Democrats are already putting pressure on Pelosi to pump the brakes and have the committee hold hearings before proceeding to a House vote. Opposition from moderate Democrats along with members of the California delegation could prove problematic and risk dividing the party publicly in a floor vote.

#### Industry will target centrists in lobbying against the plan

CNT 7-1 (California News Times, Big Tech lobby banks on moderate Democrats to defeat new regulation, <https://californianewstimes.com/big-tech-lobby-banks-on-moderate-democrats-to-defeat-new-regulation/421555/>, y2k)

This move is part of a broader push to enact the most important changes to US competition law of the generation. But industry lobbyists are targeting centrist Democrats, especially California Democrats, because they’re trying to thwart the most radical steps.

#### There’s a growing disagreement

Newston 6-24 (Casey Newston, the Verge stsaff, WHY THE TECH ANTITRUST REFORM BILLS ARE STRUGGLING TO MOVE FORWARD, <https://www.theverge.com/2021/6/24/22548317/tech-antitrust-reform-bills-congress-democrats-republicans-editorial>, y2k)

I mean, the Democrats aren’t exactly all in agreement, either.

There is a split between progressive and moderate Democrats in just how far these bills should go to reshape the economy. And some bills go quite far — Rep. Pramila Jayapal’s Ending Platform Monopolies Act would permit the government to sue big platforms to break them up — Amazon could be forced to divest itself of its logistics network and of Amazon Web Services, for example; Facebook could have to spin out Instagram and WhatsApp.

That has made some Democrats uneasy, as Leah Nylen and Cristiano Lima reported Wednesday in Politico:

A growing number of moderate Democrats are also voicing concern about the proposals under consideration this week, which they warn could have a vast impact on the U.S. economy. That includes at least two key California Democrats that sit on Judiciary, Zoe Lofgren and Lou Correa, who will have a say Wednesday on which bills make it out of the panel and which don’t.

#### Empirically---it causes intra-party fights

Scher 7-19 (Bill Scher, the host of the history podcast "When America Worked" and the co-host of bipartisan online show and podcast, A Short History of Democrats and Antitrust

Biden’s war against corporate gigantism is good policy and better politics. <https://washingtonmonthly.com/2021/07/19/a-short-history-of-democrats-and-antitrust/>, y2k)

Biden’s revival of antitrust isn’t just good policy; it’s also good politics. That’s because it can bridge ideological tensions between the party’s younger left flank and its older centrists. Antitrust has appeal to both factions. Talk of restoring competition may upset a handful of giant corporations, but not the wider swath of smaller businesses and entrepreneurs. Socialists may not love capitalism but it’s hard to see them getting too mad at moderate Democrats who draw real corporate blood in the name of repairing capitalism.

Yet intra-party tensions remain. During a recent Congressional Progressive Caucus conference call, a heated dispute broke out as Congresswoman Zoe Lofgren criticized the authors of aggressive antitrust legislation for hasty work, and Congressman David Cicilline accused Lofgren of shilling for Silicon Valley. If Biden is to succeed where his predecessors fell short, he will need to be mindful of his party’s history.

### Links---Agencies---2NC

#### Agencies link---this is true for antitrust

Jones 20 (Alison Jones, Professor of Law, King's College London, Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy, 3-20, The Antitrust Bulletin. 2020;65(2):227-255. doi:10.1177/0003603X20912884, y2k)

D. Political Backlash

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125

The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

Imagine, for a moment, that the DOJ and the FTC launch monopolization cases against each of the GAFA giants. Among other grounds, these cases might be premised on the theory that the firms used mergers to accumulate and protect positions of dominance. The GAFA firms have received unfavorable scrutiny from legislators from both political parties over the past few years, but the current wave of political opprobrium is unlikely to discourage the firms from bringing their formidable lobbying resources to bear upon the Congress. It would be hazardous for the enforcement agencies to assume that a sustained, well-financed lobbying campaign will be ineffective. At a minimum, the agencies would need to consider how many battles they can fight at one time, and how to foster a countervailing coalition of business interests to oppose the defendants.

#### FTC rulemaking in tech sector causes backlash from Congress

Speegle 12 (Adam Speegle, J.D. Candidate, May 2012, Antitrust Rulemaking as a Solution to Abuse of the Standard-Setting Process, 110 Mich. L. Rev. 847, y2k)

Another concern regards the political implications of the FTC invoking its antitrust rulemaking authority. One of the benefits often cited by proponents of rulemaking is that the rulemaking process, through notice and comment procedures, often brings important topics to Congress's attention. 159 There is, however, a corresponding risk that Congress may grow concerned about the FTC's increasing intervention in the technology sector. In the 1970s and 1980s, the FTC experienced backlash from Congress due to its activism in the consumer protection arena. 160 As a result, the FTC's authority and resources were curtailed, and procedures for promulgating rules under the consumer protection prong of Section 5 became so burdensome that they rendered FTC-initiated consumer protection rulemaking an impractical and rarely used tool. 161 With an approach based on the "unfair methods of competition" prong, there may be a concern that FTC intervention in the technology sector could trigger a similar response from Congress.