# 1NC

## 1NC — Off

### 1NC — T

#### The” refers to a group as a whole

Webster’s 5 (Merriam Webster’s Online Dictionary, http://www.m-w.com/cgi-bin/dictionary)

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

#### Private sector means all non-governmental persons or entities, including non-profits

Senate Report 95 (Senate Report. 104-1, “UNFUNDED MANDATE REFORM ACT OF 1995,” <https://www.congress.gov/congressional-report/104th-congress/senate-report/1> , date accessed 9/10/21)

"Private sector" is defined to cover all persons or entities in the United States except for State, local or tribal governments. It includes individuals, partnerships, associations, corporations, and educational and nonprofit institutions.

#### Topical affs must change a universally-applied standard, like the CWS [Consumer Welfare Standard]

Phillips 18, commissioner on the Federal Trade Commission. (Noah J. November 1, 2018, Before the Federal Trade Commission, “Competition and Consumer Protection in the 21st Century,” <https://www.ftc.gov/system/files/documents/public_events/1415284/ftc_hearings_session_5_transcript_11-1-18_0.pdf>)

Our second topic today is the consumer welfare standard. And I think most folks even out in the public know, this is the standard that we use across the board, mergers and conduct in courts and at agencies, to judge anticompetitive conduct. It is not only a standard that we in the U.S. apply, it is a standard that is used by competition agencies around the world. It is an economically-grounded standard, and it requires that there be harm to consumers for conduct to be condemned. Mere harm to competitors is considered insufficient. So let me repeat that again. There has to be harm to consumers, not just competitors. The reason that is so, the reason harm to competitors is considered insufficient is because sometimes a less-efficient firm losing sales or market share to a cheaper, more innovative or efficient rival, can be and often is consistent with vibrant competition and with outcomes that benefit consumers. Courts and agencies have embraced this standard for decades. Today, there are two very important discussions going on about the consumer welfare standard, and they are happening simultaneously. And I think it is important that we understand that there are two conversations going on. One is a continuing discussion about how we apply the standard, regarding whether enforcement is at the appropriate level, whether it is properly targeted. This is an introspective question on some level, in which scholars, economists, practitioners, and enforcers all ask ourselves, are we bringing the right kinds of cases? Are we using the right kinds of evidence? Should we be doing more or less in certain places? The antitrust bar, the business community, and others benefit from this ongoing and active analysis. The second discussion happening now, and the one on which today’s consumer welfare standard panels will focus, is whether the standard is itself the right metric we ought to use in antitrust enforcement and in antitrust law; some argue that enforcement under the consumer welfare standard has failed because of the law, and accordingly, that we should reform the law.

#### Violation: the aff applies exclusively to conduct in a specific segment of the private sector.

#### Vote neg:

#### FIRST---limits and ground---the number of potential subsets is infinite---any industry, product, single companies, individuals---undermines clash. Only big affs have link uniqueness.

#### SECOND----precision---our interp has intent to define, exclude and is in legislative context.

#### THIRD---new affs are bad---it’s key to pre-round prep which is necessary for fairness and clash---their model justifies all forms of misdisclosure---at least be neg leaning on generic links

### 1NC — K

#### Anti-trust reform is based in free market logics of upholding competition which strengthens free enterprise and saves capitalism.

Parakkal & Bartz-Marvez 13, Raju Parakkal: Assistant Professor of International Relations, Philadelphia University. Sherry Bartz-Marvez: Visiting Assistant Professor, Department of Economics, University of Miami (Capitalism, democratic capitalism, and the pursuit of antitrust laws, *The Antitrust Bulletin*, Vol. 58, No. 4, Winter 2013, DOI: 10.1177/0003603X1305800409)

Antitrust laws have historically been associated with countries that possess a free-market capitalist economy, which is understood as an economic system in which competition and the market forces of demand and supply determine economic outcomes. This historical association between capitalism and antitrust laws is evident from the fact that the countries that first adopted national antitrust laws, such as Canada, the United States, and the countries of Western Europe, are countries that have long embraced a market economy. On the contrary, the statist economies of the erstwhile Soviet bloc and many developing countries, for the most part, did not institute antitrust laws of the type associated with free market economies.

Notwithstanding these country examples, which indicate a positive association between a capitalist economic system and antitrust laws, there exist arguments that both support and oppose antitrust laws for a capitalist economy. Arguments in support of antitrust laws for a capitalist economy begin with the fundamental understanding that the most important ingredient of a capitalist system is market competition. The presence of a competitive market is vital to achieving the efficiency levels that a capitalist economy seeks. Therefore, competitive forces need to be protected to discipline the market players, especially the dominant ones. By preventing and punishing anticompetitive practices by market players, an antitrust law protects and promotes market competition. 1

In the United States, which is commonly understood to be the leading bastion of free-market capitalism and one of the first countries to enact an antitrust law, the role of antitrust legislation in preserving the capitalist character of its economic system is underscored by the near-constitutional status accorded to its antitrust statues by the U.S. Supreme Court. 2 The Court described these statutes as “the Magna Carta of free enterprise” and “as important to the preservation of economic freedom and our free enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.”3 Such a sentiment is appropriate, given that the American antitrust law, the Sherman Act, was passed in 1890 to protect economic competition from rapidly-growing “trusts.”4

While the social and political zeitgeist has changed considerably since the passing of the Sherman Act, the fact remains that antitrust is perceived as key to “protecting consumers against anticompetitive conduct that raises prices, reduces output, and hinders innovation and economic growth.”5 Moreover, it is understood that “competition is a public good, and society cannot expect the victims of anticompetitive conduct to protect themselves.”6 The implication therefore is that government power, through the enforcement of antitrust statutes, is critical to reining in corporate power in order to protect economic competition and capitalism.

Taking a global perspective, the idea that antitrust laws serve as a legislative bulwark against anticompetitive practices is not exclusive to the regulatory environment of the United States. Many other countries have adopted antitrust laws for the same goal, among others. And for the many developing and transition countries that adopted antitrust laws in recent decades, these laws are viewed as tools to promote economic development as well.

The view that antitrust laws are required to protect and promote competition has, however, been seriously contested, especially since the publication in 1978 of The Antitrust Paradox: A Policy at War with Itself by law professor and federal appellate court judge Robert Bork. 7 The subtitle to Bork’s highly influential book sums up the critique commonly leveled against antitrust laws: “[C]ertain of its doctrines preserve competition, while others suppress it, resulting in a policy at war with itself.”8 The fundamental problem stems largely from the difficulty in deciding which values should be ultimately promoted through the application of antitrust laws—consumer welfare or business efficiency? If the answer is both, then how much emphasis should be placed on each? Even if the goals are unambiguously certain and universally agreed upon, the question still remains as to what body of knowledge the courts can use consistently to adjudicate antitrust cases. 9

#### The affirmative’s constant push for competitiveness is simply a smokescreen and band-aid for capitalism’s constant and never-ending crisis

Bieler 18 — Andreas Bieler (Professor of Political Economy, University of Nottingham); “Agency and the Power Resources Approach: Asserting the Importance of the Structuring Conditions of the Capitalist Social Relations of Production;” Global Labour Journal, 2018, Vol. 9, No. 2, pg. 245-246 \*\*edited for gendered language, brackets denote change

The Agency of Resistance and the Structuring Conditions of Capitalism

We cannot conceptualise agency and its strategies of resistance without due regard to the structuring conditions of the social relations of production. As Karl Marx famously said,

~~Men~~ [People] [sic] make their own history, but they do not make it as they please; they do not make it under circumstances chosen by themselves, but under circumstances directly encountered, given and transmitted from the past. The tradition of all the dead generations weighs like a nightmare on the brains of the living (Marx, 1852/1984: 10).

In his critical engagement with the PRA, and here especially the ambiguous role of institutional power resources, Alexander Gallas has already attempted to combine a focus on agency with an emphasis on the structural setting. In his reflections on a strategic-relational model of class power, he argues that power resources depend on the strategic environment and the strategies adopted. “What is needed”, he argues, “is a conjunctural analysis of strategies and relations for forces. ‘Conjuncture’ here refers to a concrete constellation of strategies and relation of forces at a given time in a given space…” (Gallas, 2016: 305). Nevertheless, while he does incorporate a focus on the “relations of forces” between trade unions and employers’ associations as well as on the wider institutional setting underpinning labour relations and particular forms of state including political parties and government composition, he still overlooks the more fundamental structuring conditions of the capitalist social relations of production, resulting from the way in which production is set up.

Because of the way capitalist production is organised around wage labour and the private ownership of the means of production, three structuring conditions can be identified. First, it is not only workers who compete with each other for employment, but equally companies are in constant competition with each other over market share. Hence, there is an emphasis on competitiveness and the related pressure for further technological innovation in a relentless struggle for ever higher profit levels. As Marx (1867/1990: 381) noted, “under free competition, the immanent laws of capitalist production confront the individual capitalist as a coercive force external to him”. Nevertheless, what is logical for the individual capitalist is problematic for capital as a whole. When every capitalist attempts to produce more goods with fewer workers through the application of new technology, there will be fewer and fewer people who can actually buy those goods. Thus, there is a situation of a surplus of both capital and labour, which can no longer be brought together in a productive way within the capitalist social relations of production – a “state of overaccumulation” (Harvey, 1985: 132). It is this crisis tendency of capitalism which can be identified as the second structuring condition of capitalism. Finally, in order to overcome crisis, there is a structuring condition of constant outward expansion by capitalism, either in order to capture new markets or cheaper labour abroad or to re-commodify areas which had been moved outside the capitalist market, such as health services in many industrialised countries (Bieler and Morton, 2018: 38–41).

#### That culminates in extinction from climate change, nuclear war, extreme inequality, and perpetual exploitation of the Global South

Foster 19, Sociology Professor @ Oregon (John Bellamy, February 1st, “Capitalism Has Failed—What Next?” *The Monthly Review*, Volume 70, Issue 9, <https://monthlyreview.org/2019/02/01/capitalism-has-failed-what-next/>, Accessed 06-30-2021)

Less than two decades into the twenty-first century, it is evident that capitalism has failed as a social system. The world is mired in economic stagnation, financialization, and the most extreme inequality in human history, accompanied by mass unemployment and underemployment, precariousness, poverty, hunger, wasted output and lives, and what at this point can only be called a planetary ecological “death spiral.”1 The digital revolution, the greatest technological advance of our time, has rapidly mutated from a promise of free communication and liberated production into new means of surveillance, control, and displacement of the working population. The institutions of liberal democracy are at the point of collapse, while fascism, the rear guard of the capitalist system, is again on the march, along with patriarchy, racism, imperialism, and war.

To say that capitalism is a failed system is not, of course, to suggest that its breakdown and disintegration is imminent.2 It does, however, mean that it has passed from being a historically necessary and creative system at its inception to being a historically unnecessary and destructive one in the present century. Today, more than ever, the world is faced with the epochal choice between “the revolutionary reconstitution of society at large and the common ruin of the contending classes.”3

Indications of this failure of capitalism are everywhere. Stagnation of investment punctuated by bubbles of financial expansion, which then inevitably burst, now characterizes the so-called free market.4 Soaring inequality in income and wealth has its counterpart in the declining material circumstances of a majority of the population. Real wages for most workers in the United States have barely budged in forty years despite steadily rising productivity.5 Work intensity has increased, while work and safety protections on the job have been systematically jettisoned. Unemployment data has become more and more meaningless due to a new institutionalized underemployment in the form of contract labor in the gig economy.6 Unions have been reduced to mere shadows of their former glory as capitalism has asserted totalitarian control over workplaces. With the demise of Soviet-type societies, social democracy in Europe has perished in the new atmosphere of “liberated capitalism.”7

The capture of the surplus value produced by overexploited populations in the poorest regions of the world, via the global labor arbitrage instituted by multinational corporations, is leading to an unprecedented amassing of financial wealth at the center of the world economy and relative poverty in the periphery.8 Around $21 trillion of offshore funds are currently lodged in tax havens on islands mostly in the Caribbean, constituting “the fortified refuge of Big Finance.”9 Technologically driven monopolies resulting from the global-communications revolution, together with the rise to dominance of Wall Street-based financial capital geared to speculative asset creation, have further contributed to the riches of today’s “1 percent.” Forty-two billionaires now enjoy as much wealth as half the world’s population, while the three richest men in the United States—Jeff Bezos, Bill Gates, and Warren Buffett—have more wealth than half the U.S. population.10 In every region of the world, inequality has increased sharply in recent decades.11 The gap in per capita income and wealth between the richest and poorest nations, which has been the dominant trend for centuries, is rapidly widening once again.12 More than 60 percent of the world’s employed population, some two billion people, now work in the impoverished informal sector, forming a massive global proletariat. The global reserve army of labor is some 70 percent larger than the active labor army of formally employed workers.13

Adequate health care, housing, education, and clean water and air are increasingly out of reach for large sections of the population, even in wealthy countries in North America and Europe, while transportation is becoming more difficult in the United States and many other countries due to irrationally high levels of dependency on the automobile and disinvestment in public transportation. Urban structures are more and more characterized by gentrification and segregation, with cities becoming the playthings of the well-to-do while marginalized populations are shunted aside. About half a million people, most of them children, are homeless on any given night in the United States.14 New York City is experiencing a major rat infestation, attributed to warming temperatures, mirroring trends around the world.15

In the United States and other high-income countries, life expectancy is in decline, with a remarkable resurgence of Victorian illnesses related to poverty and exploitation. In Britain, gout, scarlet fever, whooping cough, and even scurvy are now resurgent, along with tuberculosis. With inadequate enforcement of work health and safety regulations, black lung disease has returned with a vengeance in U.S. coal country.16 Overuse of antibiotics, particularly by capitalist agribusiness, is leading to an antibiotic-resistance crisis, with the dangerous growth of superbugs generating increasing numbers of deaths, which by mid–century could surpass annual cancer deaths, prompting the World Health Organization to declare a “global health emergency.”17 These dire conditions, arising from the workings of the system, are consistent with what Frederick Engels, in the Condition of the Working Class in England, called “social murder.”18

At the instigation of giant corporations, philanthrocapitalist foundations, and neoliberal governments, public education has been restructured around corporate-designed testing based on the implementation of robotic common-core standards. This is generating massive databases on the student population, much of which are now being surreptitiously marketed and sold.19 The corporatization and privatization of education is feeding the progressive subordination of children’s needs to the cash nexus of the commodity market. We are thus seeing a dramatic return of Thomas Gradgrind’s and Mr. M’Choakumchild’s crass utilitarian philosophy dramatized in Charles Dickens’s Hard Times: “Facts are alone wanted in life” and “You are never to fancy.”20 Having been reduced to intellectual dungeons, many of the poorest, most racially segregated schools in the United States are mere pipelines for prisons or the military.21

More than two million people in the United States are behind bars, a higher rate of incarceration than any other country in the world, constituting a new Jim Crow. The total population in prison is nearly equal to the number of people in Houston, Texas, the fourth largest U.S. city. African Americans and Latinos make up 56 percent of those incarcerated, while constituting only about 32 percent of the U.S. population. Nearly 50 percent of American adults, and a much higher percentage among African Americans and Native Americans, have an immediate family member who has spent or is currently spending time behind bars. Both black men and Native American men in the United States are nearly three times, Hispanic men nearly two times, more likely to die of police shootings than white men.22 Racial divides are now widening across the entire planet.

Violence against women and the expropriation of their unpaid labor, as well as the higher level of exploitation of their paid labor, are integral to the way in which power is organized in capitalist society—and how it seeks to divide rather than unify the population. More than a third of women worldwide have experienced physical/sexual violence. Women’s bodies, in particular, are objectified, reified, and commodified as part of the normal workings of monopoly-capitalist marketing.23

The mass media-propaganda system, part of the larger corporate matrix, is now merging into a social media-based propaganda system that is more porous and seemingly anarchic, but more universal and more than ever favoring money and power. Utilizing modern marketing and surveillance techniques, which now dominate all digital interactions, vested interests are able to tailor their messages, largely unchecked, to individuals and their social networks, creating concerns about “fake news” on all sides.24 Numerous business entities promising technological manipulation of voters in countries across the world have now surfaced, auctioning off their services to the highest bidders.25 The elimination of net neutrality in the United States means further concentration, centralization, and control over the entire Internet by monopolistic service providers.

Elections are increasingly prey to unregulated “dark money” emanating from the coffers of corporations and the billionaire class. Although presenting itself as the world’s leading democracy, the United States, as Paul Baran and Paul Sweezy stated in Monopoly Capital in 1966, “is democratic in form and plutocratic in content.”26 In the Trump administration, following a long-established tradition, 72 percent of those appointed to the cabinet have come from the higher corporate echelons, while others have been drawn from the military.27

War, engineered by the United States and other major powers at the apex of the system, has become perpetual in strategic oil regions such as the Middle East, and threatens to escalate into a global thermonuclear exchange. During the Obama administration, the United States was engaged in wars/bombings in seven different countries—Afghanistan, Iraq, Syria, Libya, Yemen, Somalia, and Pakistan.28 Torture and assassinations have been reinstituted by Washington as acceptable instruments of war against those now innumerable individuals, group networks, and whole societies that are branded as terrorist. A new Cold War and nuclear arms race is in the making between the United States and Russia, while Washington is seeking to place road blocks to the continued rise of China. The Trump administration has created a new space force as a separate branch of the military in an attempt to ensure U.S. dominance in the militarization of space. Sounding the alarm on the increasing dangers of a nuclear war and of climate destabilization, the distinguished Bulletin of Atomic Scientists moved its doomsday clock in 2018 to two minutes to midnight, the closest since 1953, when it marked the advent of thermonuclear weapons.29

Increasingly severe economic sanctions are being imposed by the United States on countries like Venezuela and Nicaragua, despite their democratic elections—or because of them. Trade and currency wars are being actively promoted by core states, while racist barriers against immigration continue to be erected in Europe and the United States as some 60 million refugees and internally displaced peoples flee devastated environments. Migrant populations worldwide have risen to 250 million, with those residing in high-income countries constituting more than 14 percent of the populations of those countries, up from less than 10 percent in 2000. Meanwhile, ruling circles and wealthy countries seek to wall off islands of power and privilege from the mass of humanity, who are to be left to their fate.30

More than three-quarters of a billion people, over 10 percent of the world population, are chronically malnourished.31 Food stress in the United States keeps climbing, leading to the rapid growth of cheap dollar stores selling poor quality and toxic food. Around forty million Americans, representing one out of eight households, including nearly thirteen million children, are food insecure.32 Subsistence farmers are being pushed off their lands by agribusiness, private capital, and sovereign wealth funds in a global depeasantization process that constitutes the greatest movement of people in history.33 Urban overcrowding and poverty across much of the globe is so severe that one can now reasonably refer to a “planet of slums.”34 Meanwhile, the world housing market is estimated to be worth up to $163 trillion (as compared to the value of gold mined over all recorded history, estimated at $7.5 trillion).35

The Anthropocene epoch, first ushered in by the Great Acceleration of the world economy immediately after the Second World War, has generated enormous rifts in planetary boundaries, extending from climate change to ocean acidification, to the sixth extinction, to disruption of the global nitrogen and phosphorus cycles, to the loss of freshwater, to the disappearance of forests, to widespread toxic-chemical and radioactive pollution.36 It is now estimated that 60 percent of the world’s wildlife vertebrate population (including mammals, reptiles, amphibians, birds, and fish) have been wiped out since 1970, while the worldwide abundance of invertebrates has declined by 45 percent in recent decades.37 What climatologist James Hansen calls the “species exterminations” resulting from accelerating climate change and rapidly shifting climate zones are only compounding this general process of biodiversity loss. Biologists expect that half of all species will be facing extinction by the end of the century.38

If present climate-change trends continue, the “global carbon budget” associated with a 2°C increase in average global temperature will be broken in sixteen years (while a 1.5°C increase in global average temperature—staying beneath which is the key to long-term stabilization of the climate—will be reached in a decade). Earth System scientists warn that the world is now perilously close to a Hothouse Earth, in which catastrophic climate change will be locked in and irreversible.39 The ecological, social, and economic costs to humanity of continuing to increase carbon emissions by 2.0 percent a year as in recent decades (rising in 2018 by 2.7 percent—3.4 percent in the United States), and failing to meet the minimal 3.0 percent annual reductions in emissions currently needed to avoid a catastrophic destabilization of the earth’s energy balance, are simply incalculable.40

Nevertheless, major energy corporations continue to lie about climate change, promoting and bankrolling climate denialism—while admitting the truth in their internal documents. These corporations are working to accelerate the extraction and production of fossil fuels, including the dirtiest, most greenhouse gas-generating varieties, reaping enormous profits in the process. The melting of the Arctic ice from global warming is seen by capital as a new El Dorado, opening up massive additional oil and gas reserves to be exploited without regard to the consequences for the earth’s climate. In response to scientific reports on climate change, Exxon Mobil declared that it intends to extract and sell all of the fossil-fuel reserves at its disposal.41 Energy corporations continue to intervene in climate negotiations to ensure that any agreements to limit carbon emissions are defanged. Capitalist countries across the board are putting the accumulation of wealth for a few above combatting climate destabilization, threatening the very future of humanity.

#### The alternative is a global socialist movement.

Moghadam 20, Professor of Sociology and International Affairs at Northeastern University, and former Director of the International Affairs Program (Valentine, April, Planetize the Movement! *Great Transition Initiative*, https://greattransition.org/images/Planetize-Movement-Moghadam.pdf)

The moment is ripe for an alternative. Labor unrest has grown around the world, encompassing industrial workers, teachers, health workers, janitors, and others across the Middle East and North Africa, in Latin America, and even in the US. Indeed, we may be nearing a classic Leninist “revolutionary situation,” which could be the culmination of “the world revolution of 20xx.”4 If so, the Global Left should be better prepared to meet the challenge.

The good news is that there is a “new Global Left” that enjoys a multitude of emerging movements, including climate justice groups led by young people.5 The rich array of activist groups and the dynamism and passion they display excite a sense of possibility. However, the very diversity of movements and their weak interconnection could constrain the Global Left’s ability to achieve meaningful change.6 Without consensus around a common agenda, how are we to make the great transition from an entrenched global system based on capitalist profit, top-down decisionmaking, war, and environmental degradation to a world where people and the planet take center stage in politics and policy? Surely we need not only resistance on a multiplicity of grounds, but also agreement on a clear, coherent, and feasible alternative to the unjust, undemocratic, and unsustainable status quo.

A Missing Global Actor The socialist and communist movements and parties of the nineteenth and twentieth centuries pinned their hopes on the capacity of a united working class, defined as a largely male industrial laboring class (“the proletariat”), to tame and challenge capitalism. In the latter part of the twentieth century and into the twenty-first, the nature of that class changed, now encompassing a broader spectrum of working people, such as those in public and private services (including care workers) who labor under the supervision of highly paid managers and administrators, along with the precariat and gig economy workers. On the Left, however, many do not regard that more inclusive working class as a central actor, despite its composition spanning race, ethnicity, religion, national origin, and gender.7 Instead, today’s movements—certainly in the US—seem to define actors based on particular identities and interests. Rather than the singular actor of yore (the working class), today there is a multiplicity of actors across numerous movements. The question arises as to whether such a multiplicity of actors can generate the necessary coordination and craft a strategy to challenge the powers-that-be—economic and political elites situated in national governments; in the financial, corporate, and military sectors; and in institutions of global governance. If those elites are so well connected, why is it so difficult for our numerous movements to coalesce around a shared identity and agenda? In my estimation, the Left has lost sight of the proverbial forest for the proverbial trees. It has gotten far too caught up in culture wars and battles over identity, forgetting the centrality of political economy to the hidden injuries not only of class, but also of race and ethnicity, women’s subordination, the destruction of the commons, and inter- and intra-state rivalries, violence, and war. This strategic shift away from political economy has removed the Left’s traditional constituency—the working class in all its breadth and diversity—from a meaningful role. The shift also has confused the Left’s priorities. For instance, we cannot truly address the problems of racism and discrimination without giving urgent attention to the systemic problems of class: low-income communities devastated by precarious employment, the loss of public investment, dirty air and water, poor-quality schooling, and bad health. The politics of class cannot be divorced from those of race and of sex, because class is imbued with race and sex, and race and sex are themselves imbued with class. Under patriarchal and racist capitalism, there is no class exploitation without racial and sexual oppression. The separation of the three intersecting dimensions across unconnected movements—often lacking in understanding of and solidarity with each other—is among the unfortunate outcomes of our times, caused to some degree by partial, segmented internal politics, but largely by the relentless and effective political, cultural, and ideological campaigns of the ruling elites.

Catalytic Action Now

In the wake of the global financial crisis, it became clear that the world needed a new economic system. Change did not come about, however. To offer a viable alternative to financialization and runaway “shareholderism,” movements need to stand for workplace democracy and shared management, and for long-term rational and people-oriented planning over short-term profit. Although breaking up huge corporations should be the goal, taxing them adequately and using the revenue for societal needs and rights, not for continued militarism, can steer society in the right direction in the interim.

At the same time, we also need to think bigger. Contrary to the conventional wisdom that socialist and communist experiments all ended in failure, I believe that there is a lot we can learn from them. Indeed, this “failure literature” lacks balance and historical accuracy. The great socialist, communist, and liberation movements of the past may not have accomplished all that they could have or intended to, but they were very effective providing education and culture for the poor and imparting the legacy of equality, economic justice, and women’s advancement. The Communist movement had its shortcomings, but it promoted women’s equality and racial equality, supported numerous liberation movements, and checked capitalist and imperialist expansion.

In contrast, our recent movements have failed even in the short run. They may have changed the subject—certainly OWS highlighted the problem of income inequalities and helped reintroduce capitalism and its flaws into the national conversation in the US—but they could not compel change of the system itself, much less dislodge its major actors and beneficiaries. Unlike the progressive movements of the late nineteenth century and much of the twentieth century that gave us socialism and social democracy, an end to British colonialism, Third World development, and the demise of authoritarianism in southern Europe, the movements of the twenty-first century have not been able to make headway in structural or systemic terms. Instead, the collapse of world communism—celebrated across the globe—actually generated new crises and chaos.

One response to the crisis has been the new municipalism, which aims to implement localized democratic practices and people-oriented resource allocation. In one promising example, the administration of the Communist mayor of Santiago, Chile, has created a “people’s pharmacy,” offered cheap eye-care and glasses, increased public housing, and embraced leftist approaches to community safety, among other progressive people-oriented initiatives.8 But localism is not enough, as many of our problems are global in nature. The recklessness of the financial sector has had ripple effects across borders; the obsession with economic growth and capital accumulation has generated a massive, global environmental crisis. That brilliant experiment in radical democratic feminist municipalism—Rojava in northern Syria—was overturned in October 2019 by a brutal Turkish invasion facilitated by the Trump administration. Thus, we must heed Dr. King’s message to “take the nonviolent movement international” and to planetize it.

The Global Left and its infrastructure remain fragmented and disconnected, except for periodic mass rallies against the most egregious actions of global capitalism and imperial states. But it wasn’t always so. Once, vibrant Internationals were organized to guide and promote a worldwide movement. The influential First International, initially called the International Workingmen’s Association, was formed in 1864, but contention between the anarchist and socialist wings led to its demise in the late 1870s. Its successor, the Second International, had great success, but fractured in the run-up to World War I. The Third International formed after the Russian revolution to unite socialist and communist groups from across Europe and Asia, but later, under Stalin, became corrupted into the highly centralized Comintern.9

Both the successes and the failures of these Internationals offer vital lessons: a powerful worldwide movement could be premised on both a global political organization with a strategy for change and the strength of plural and diverse movements that call the status quo into question. To move forward, we need to look back at the old Internationals and, at the same time, not give up on the World Social Forum. The crises and injustices of our times call for both a coordinated “united front” and a loosely aligned “popular front.”

Some say the language of the past—socialism, communism, planning—is outmoded and unlikely to resonate. And yet, many young people embrace the term socialism; in the US, they rallied around Bernie Sanders’s call for “democratic socialism,” and in the UK, they coalesced around the Labour Party’s left-wing faction, Momentum, and its leader, Jeremy Corbyn. In Tunisia, where young people are losing hope in capitalist democracy because of high unemployment and other economic difficulties, the left-wing student union UGET and the many young supporters of the Front Populaire call for planning and a strong welfare state. Around the world, women have come together around a more inclusive, transformative vision of feminism, which some call “feminism for the 99%.”10 The “left nationalism” of Scotland, Northern Ireland, and the Kurds is also part of the new Global Left and could help constitute a global movement against capitalism, militarism, and oligarchic states.

The world’s injustices as well as new possibilities for alliance have inspired calls for coordinated forms of organizing. The late Egyptian Marxist economist Samir Amin, for instance, called for a Fifth International.11 But to balance the complementary needs of global coordination and plural autonomy, two Internationals may be needed, one that remains horizontally based—the movement of movements—and the other vertically organized, drawing inspiration and lessons from the old Internationals.

What might this mean in practical, strategic terms? To start, we should revitalize the World Social Forum.12 It encompasses diverse grievances, identities, and interests; it remains the site for dialogic discussion and the cultivation of solidarity across movements; and it has resisted the authoritarian impulses and practices of capital and the state. It can remain an open space for dialogue among place-based and identity-expressive movements. Building up the Global Left and helping advance a Great Transition, however, requires a global political organization to do the necessary crossmovement “translation” work and deliver a plan for structural change at national, regional, and global levels. Accomplishing this will be an arduous task, but we can’t afford to wait.

Whether it is called the Fifth International, the United Front, the Progressive International, or the World Party, such an organization would be vertically organized, along the lines of the earlier Internationals but with the involvement of anti-imperialist feminist groups such as Code Pink, the Women’s International League for Peace and Freedom, Marche Mondiale des Femmes, and the new Feminist Foreign Policy Project. This planetized formation would encompass progressive parties, anti-neoliberal unions, and anti-war movements across the globe. It would practice democratic decision-making and offer a clear vision and mission of an alternative system of production, social reproduction, trade, and international relations. It would revive the 2011 Arab Spring call, “The people want the fall of the regime,” and create a powerful message demanding a re-enactment of what occurred in 1989/1990, but in reverse: “The people want the fall of the ruling capitalist elites.”

Such a plan calls for a renewed emphasis on the working class, expansively defined and represented. Unions could organize the unorganized, carry out the necessary political education work among their members, and create broad coalitions with progressive political parties and unions across borders.13 It is worth noting that unions of teachers and nurses have been taking to the streets and making demands in Morocco, Iran, Iraq, Tunisia, Chile, and France, as well as in the US. Such parallel developments are ripe for cross-fertilization and coordination.

We should take the best from the past—planning, coordinating, internationalism, and action— and move forward with a common agenda for systemic transformation. To move forward with an International, veterans of past, more centralized movements and organizations might take the lead in organizing an initial meeting, to convene in a country that has felt the devastating effects of neoliberalism, such as Argentina or Greece. Another venue could be Tunisia—now the only genuinely democratic country in the Middle East/North Africa region. Our movements need to coalesce to make the present moment of populism and hegemonic decline an advantageous one for a Great Transition—this time toward a global socialist-feminist democracy built through the synergy of a new International and a revitalized WSF.

### 1NC — DA

#### Status quo cooperation coming now is necessary to prevent runaway global warming

Balmer 20 Paul Balmer is an associate in Tonkon Torp’s Litigation Department. He graduated from the University of California, Berkeley, School of Law in 2020, where he was the Senior Articles Editor of Ecology Law Quarterly and Treasurer of the Election Law Society, ARTICLE: COLLUDING TO SAVE THE WORLD: HOW ANTITRUST LAWS DISCOURAGE CORPORATIONS FROM TAKING ACTION ON CLIMATE CHANGE, 47 Ecology L. Currents 219 Export Citation 2020 Reporter 47 Ecology L. Currents 219 \*

When President Trump announced his intentions to formally withdraw the United States from the Paris Climate Accord, dozens of major companies stepped into the breach, promising to still work toward meeting the Paris emissions [\*221] targets. 5 Such a position--business leaders joining concerted international action in rebuke of a sitting President--was once unprecedented. Milton Friedman, the influential architect of free market economic theory, warned that business leaders should not act as "unwitting puppets of the intellectual forces" that promote desirable social ends, such as pollution reduction. 6Corporate executives were supposed to ignore "the catchwords of the contemporary crop of reformers" and instead focus on "mak[ing] as much money as possible." 7This shareholder profit paradigm persisted for decades, fueling the conditions that led to the Great Recession 8and even making for-profit companies liable for not putting shareholder profits above all else. 9But now that obligation is changing, and not a moment too soon. By the time the Business Roundtable, an association of major company executives, formally acknowledged that corporate purpose needed to consider benefits to communities and employees in addition to shareholders, 10 the writing had been on the wall for quite some time. Corporations were speaking up in previously unexpected ways and focusing on more than just profit, encouraged by major voices in the business community. 11For example, major tech companies leapt into action when Indiana passed a 2015 bill widely seen as discriminatory against LGBT persons, denouncing the law and threatening boycotts of the state. 12The cloud-computing giant Salesforce, which had between 2,000 and 3,000 employees in Indiana, 13exerted significant leverage in forcing an amendment to the law by cancelling all company programs in and travel to Indiana. 14More corporate boycotts greeted North Carolina and Georgia [\*222] when they passed similar anti-LGBT legislation. 15Additionally, in the wake of recent mass shootings, Dick's Sporting Goods 16and Walmart 17cut back sales of certain firearms and ammunition, arguably doing more in a single decision to address the gun violence epidemic than Congress has been able to do in decades. 18 The growth of corporate activism can be traced to broader societal changes, such as the increased connectivity of people and markets in the Internet age. 19At the same time, governmental gridlock and increasing political polarization have undermined the capacity of government institutions to function efficiently and greatly weakened public trust in government. 20 Corporations are filling this gap as traditional government services become increasingly privatized. 21The growing corporate role in society has fed on itself, with increased stakes and visibility of corporate activism resulting in outsized political power and legal rights. Corporate-associated spending on politics has reached unprecedented, jaw-dropping levels. 22 It is increasingly clear that America cannot address the existential reality of climate change without corporate buy-in, if not corporate leadership. It is beyond the scope of this Article to discuss the extent of the climate crisis or the necessary corporate response; it is enough to say that each passing week brings bad news about the extent of already irreversible damage from climate change. 23 While the future costs of climate change will be immense, the costs of acting now to limit warming to habitable levels are also significant, on the measure of $ 3.5 trillion a year. 24While governments around the world are expected to lead the necessary spending, a large portion of those costs will inevitably fall on [\*223] companies, either through direct taxes like a carbon tax or increased costs of compliance, such as ending reliance on coal. 25Even as global governmental efforts falter, 26 corporations are committing to act, both together 27 and independently. 28The high costs of corporate climate engagement, both to the companies themselves and to our society, 29have to be worth the last best chance to mitigate catastrophic climate change.

#### BUT perceptions of new unpredictable, antitrust prohibition will crush cooperation essential to stop runaway climate

ICC 20 International Chamber of Commerce, COMPETITION POLICY AND ENVIRONMENTAL SUSTAINABILITY1 26 November, 2020, <https://iccwbo.org/content/uploads/sites/3/2020/12/2020-comppolicyandenvironmsustainnability.pdf>

The solution to sustainability “collective action” problems is appropriate coordination.10 Coordination may be most efficient if in the form of environmental (or social) regulations, carbon emissions taxes, emission rights trading systems, rules for responsible sourcing and support for innovation including permanent extraction of carbon from the atmosphere. The problem is that regulation and taxation are often politically controversial, uncoordinated amongst governments, delayed, inadequate, or ineffective. For instance, environmental taxes are less than the net present social costs of pollution, and emission rights trading systems for the time being exist only in a limited number of jurisdictions, cover only a small portion of the economy, and are traded at a price well below the social cost of carbon. 3.2. In this light, if we want to have a chance to limit the temperature increase to 1.5 degrees Celsius above the pre-industrial level (as per the objective at the United Nations Framework Convention on Climate Change in 2015 i.e. the Paris Agreement) or to achieve the UN SDGs, the private sector must do its part, and cooperate where appropriate. Many firms will be reluctant to cooperate for fear of running foul of competition law or for fear of restrictive or unpredictable enforcement of competition law.

#### There is no fear now BUT that is predicated off of the federal judiciary consistently and predictably reducing antitrust prohibition now

Crane 21 Daniel A. Crane Frederick Paul Furth, Sr. Professor of Law, University of Michigan 1-28-2021 Antitrust Antitextualism, 96 Notre Dame L. Rev. 1205 (2021) https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr

In sum, from the courts’ earliest forays into interpreting the Sherman Act up through contemporary antitrust jurisprudence, the courts have manifested a systematic tendency to interpret the substantive antitrust statutes contrary to their texts, legislative histories, and often their spirit.236 Sometimes, as with the rule of reason and labor exemption, the judicial disregard of text and purpose has occurred fairly immediately. In other cases, as with the Robinson-Patman and Celler-Kefauver Acts, an initial period of statutory fidelity has slipped gradually into a period of statutory infidelity. In some cases, as with respect to section 5 of the FTC Act and section 3 of the Clayton Act, the courts continue to proclaim their fidelity after they functionally move to infidelity. In many cases, the courts stop pretending after a while and admit quite candidly that they are taking liberties with the statute. If this antitrust antitextualism is merely the product of common-law methodology, one would expect to see movement away from the statute’s text in both permissive and restrictive directions, or, to put it more crassly, both in favor of big capital and against it. But the movement has all been in one direction: loosening a congressional check on big capital. Thus, the rule of reason allowed courts to bless large combinations of capital that the courts deemed reasonable; narrowing the labor exemption frustrated labor’s ability to countervail capital’s power; restricting the private right of action for treble damages significantly curtailed the private-litigation check on business; judicial narrowing of the Clayton Act’s exclusive dealing and tying restrictions allowed (mostly big) firms to exploit market power; reading “unfair” out of the FTC Act eliminated section 5 as a check on business morality; eviscerating the Robinson-Patman Act protections for small and independent businesses favored large and powerful businesses; and requiring proof of likely price increases and technical relevant market definition in merger cases immunized many large-scale mergers from legal challenge. Throughout the history of American antitrust law, the courts have shown a systematic tendency to read down the antitrust statutes in favor of big capital.

#### Warming causes extinction — it’s a conflict multiplier.

Kareiva 18, Ph.D. in ecology and applied mathematics from Cornell University, director of the Institute of the Environment and Sustainability at UCLA, Pritzker Distinguished Professor in Environment & Sustainability at UCLA, et al. (Peter, “Existential risk due to ecosystem collapse: Nature strikes back,” *Futures*, 102)

In summary, six of the nine proposed planetary boundaries (phosphorous, nitrogen, biodiversity, land use, atmospheric aerosol loading, and chemical pollution) are unlikely to be associated with existential risks. They all correspond to a degraded environment, but in our assessment do not represent existential risks. However, the three remaining boundaries (climate change, global freshwater cycle, and ocean acidification) do pose existential risks. This is because of intrinsic positive feedback loops, substantial lag times between system change and experiencing the consequences of that change, and the fact these different boundaries interact with one another in ways that yield surprises. In addition, climate, freshwater, and ocean acidification are all directly connected to the provision of food and water, and shortages of food and water can create conflict and social unrest. Climate change has a long history of disrupting civilizations and sometimes precipitating the collapse of cultures or mass emigrations (McMichael, 2017). For example, the 12th century drought in the North American Southwest is held responsible for the collapse of the Anasazi pueblo culture. More recently, the infamous potato famine of 1846–1849 and the large migration of Irish to the U.S. can be traced to a combination of factors, one of which was climate. Specifically, 1846 was an unusually warm and moist year in Ireland, providing the climatic conditions favorable to the fungus that caused the potato blight. As is so often the case, poor government had a role as well—as the British government forbade the import of grains from outside Britain (imports that could have helped to redress the ravaged potato yields). Climate change intersects with freshwater resources because it is expected to exacerbate drought and water scarcity, as well as flooding. Climate change can even impair water quality because it is associated with heavy rains that overwhelm sewage treatment facilities, or because it results in higher concentrations of pollutants in groundwater as a result of enhanced evaporation and reduced groundwater recharge. Ample clean water is not a luxury—it is essential for human survival. Consequently, cities, regions and nations that lack clean freshwater are vulnerable to social disruption and disease. Finally, ocean acidification is linked to climate change because it is driven by CO2 emissions just as global warming is. With close to 20% of the world’s protein coming from oceans (FAO, 2016), the potential for severe impacts due to acidification is obvious. Less obvious, but perhaps more insidious, is the interaction between climate change and the loss of oyster and coral reefs due to acidification. Acidification is known to interfere with oyster reef building and coral reefs. Climate change also increases storm frequency and severity. Coral reefs and oyster reefs provide protection from storm surge because they reduce wave energy (Spalding et al., 2014). If these reefs are lost due to acidification at the same time as storms become more severe and sea level rises, coastal communities will be exposed to unprecedented storm surge—and may be ravaged by recurrent storms. A key feature of the risk associated with climate change is that mean annual temperature and mean annual rainfall are not the variables of interest. Rather it is extreme episodic events that place nations and entire regions of the world at risk. These extreme events are by definition “rare” (once every hundred years), and changes in their likelihood are challenging to detect because of their rarity, but are exactly the manifestations of climate change that we must get better at anticipating (Diffenbaugh et al., 2017). Society will have a hard time responding to shorter intervals between rare extreme events because in the lifespan of an individual human, a person might experience as few as two or three extreme events. How likely is it that you would notice a change in the interval between events that are separated by decades, especially given that the interval is not regular but varies stochastically? A concrete example of this dilemma can be found in the past and expected future changes in storm-related flooding of New York City. The highly disruptive flooding of New York City associated with Hurricane Sandy represented a flood height that occurred once every 500 years in the 18th century, and that occurs now once every 25 years, but is expected to occur once every 5 years by 2050 (Garner et al., 2017). This change in frequency of extreme floods has profound implications for the measures New York City should take to protect its infrastructure and its population, yet because of the stochastic nature of such events, this shift in flood frequency is an elevated risk that will go unnoticed by most people. 4. The combination of positive feedback loops and societal inertia is fertile ground for global environmental catastrophes Humans are remarkably ingenious, and have adapted to crises throughout their history. Our doom has been repeatedly predicted, only to be averted by innovation (Ridley, 2011). However, the many stories of human ingenuity successfully addressing existential risks such as global famine or extreme air pollution represent environmental challenges that are largely linear, have immediate consequences, and operate without positive feedbacks. For example, the fact that food is in short supply does not increase the rate at which humans consume food—thereby increasing the shortage. Similarly, massive air pollution episodes such as the London fog of 1952 that killed 12,000 people did not make future air pollution events more likely. In fact it was just the opposite—the London fog sent such a clear message that Britain quickly enacted pollution control measures (Stradling, 2016). Food shortages, air pollution, water pollution, etc. send immediate signals to society of harm, which then trigger a negative feedback of society seeking to reduce the harm. In contrast, today’s great environmental crisis of climate change may cause some harm but there are generally long time delays between rising CO2 concentrations and damage to humans. The consequence of these delays are an absence of urgency; thus although 70% of Americans believe global warming is happening, only 40% think it will harm them (http://climatecommunication.yale.edu/visualizations-data/ycom-us-2016/). Secondly, unlike past environmental challenges, the Earth’s climate system is rife with positive feedback loops. In particular, as CO2 increases and the climate warms, that very warming can cause more CO2 release which further increases global warming, and then more CO2, and so on. Table 2 summarizes the best documented positive feedback loops for the Earth’s climate system. These feedbacks can be neatly categorized into carbon cycle, biogeochemical, biogeophysical, cloud, ice-albedo, and water vapor feedbacks. As important as it is to understand these feedbacks individually, it is even more essential to study the interactive nature of these feedbacks. Modeling studies show that when interactions among feedback loops are included, uncertainty increases dramatically and there is a heightened potential for perturbations to be magnified (e.g., Cox, Betts, Jones, Spall, & Totterdell, 2000; Hajima, Tachiiri, Ito, & Kawamiya, 2014; Knutti & Rugenstein, 2015; Rosenfeld, Sherwood, Wood, & Donner, 2014). This produces a wide range of future scenarios. Positive feedbacks in the carbon cycle involves the enhancement of future carbon contributions to the atmosphere due to some initial increase in atmospheric CO2. This happens because as CO2 accumulates, it reduces the efficiency in which oceans and terrestrial ecosystems sequester carbon, which in return feeds back to exacerbate climate change (Friedlingstein et al., 2001). Warming can also increase the rate at which organic matter decays and carbon is released into the atmosphere, thereby causing more warming (Melillo et al., 2017). Increases in food shortages and lack of water is also of major concern when biogeophysical feedback mechanisms perpetuate drought conditions. The underlying mechanism here is that losses in vegetation increases the surface albedo, which suppresses rainfall, and thus enhances future vegetation loss and more suppression of rainfall—thereby initiating or prolonging a drought (Chamey, Stone, & Quirk, 1975). To top it off, overgrazing depletes the soil, leading to augmented vegetation loss (Anderies, Janssen, & Walker, 2002). Climate change often also increases the risk of forest fires, as a result of higher temperatures and persistent drought conditions. The expectation is that forest fires will become more frequent and severe with climate warming and drought (Scholze, Knorr, Arnell, & Prentice, 2006), a trend for which we have already seen evidence (Allen et al., 2010). Tragically, the increased severity and risk of Southern California wildfires recently predicted by climate scientists (Jin et al., 2015), was realized in December 2017, with the largest fire in the history of California (the “Thomas fire” that burned 282,000 acres, https://www.vox.com/2017/12/27/16822180/thomas-fire-california-largest-wildfire). This catastrophic fire embodies the sorts of positive feedbacks and interacting factors that could catch humanity off-guard and produce a true apocalyptic event. Record-breaking rains produced an extraordinary flush of new vegetation, that then dried out as record heat waves and dry conditions took hold, coupled with stronger than normal winds, and ignition. Of course the record-fire released CO2 into the atmosphere, thereby contributing to future warming. Out of all types of feedbacks, water vapor and the ice-albedo feedbacks are the most clearly understood mechanisms. Losses in reflective snow and ice cover drive up surface temperatures, leading to even more melting of snow and ice cover—this is known as the ice-albedo feedback (Curry, Schramm, & Ebert, 1995). As snow and ice continue to melt at a more rapid pace, millions of people may be displaced by flooding risks as a consequence of sea level rise near coastal communities (Biermann & Boas, 2010; Myers, 2002; Nicholls et al., 2011). The water vapor feedback operates when warmer atmospheric conditions strengthen the saturation vapor pressure, which creates a warming effect given water vapor’s strong greenhouse gas properties (Manabe & Wetherald, 1967). Global warming tends to increase cloud formation because warmer temperatures lead to more evaporation of water into the atmosphere, and warmer temperature also allows the atmosphere to hold more water. The key question is whether this increase in clouds associated with global warming will result in a positive feedback loop (more warming) or a negative feedback loop (less warming). For decades, scientists have sought to answer this question and understand the net role clouds play in future climate projections (Schneider et al., 2017). Clouds are complex because they both have a cooling (reflecting incoming solar radiation) and warming (absorbing incoming solar radiation) effect (Lashof, DeAngelo, Saleska, & Harte, 1997). The type of cloud, altitude, and optical properties combine to determine how these countervailing effects balance out. Although still under debate, it appears that in most circumstances the cloud feedback is likely positive (Boucher et al., 2013). For example, models and observations show that increasing greenhouse gas concentrations reduces the low-level cloud fraction in the Northeast Pacific at decadal time scales. This then has a positive feedback effect and enhances climate warming since less solar radiation is reflected by the atmosphere (Clement, Burgman, & Norris, 2009). The key lesson from the long list of potentially positive feedbacks and their interactions is that runaway climate change, and runaway perturbations have to be taken as a serious possibility. Table 2 is just a snapshot of the type of feedbacks that have been identified (see Supplementary material for a more thorough explanation of positive feedback loops). However, this list is not exhaustive and the possibility of undiscovered positive feedbacks portends even greater existential risks. The many environmental crises humankind has previously averted (famine, ozone depletion, London fog, water pollution, etc.) were averted because of political will based on solid scientific understanding. We cannot count on complete scientific understanding when it comes to positive feedback loops and climate change.

### 1NC — CP

#### Text: The 50 United States and relevant subnational entities should adopt the principle of separating platforms from commerce for nearly all platforms in the private sector.

#### State antitrust is enforceable and solvent.

Lange et al. 21, \*Perry A., JD, antitrust lawyer, vice-chair of the ABA Antitrust Section’s Joint Conduct Committee. \*Brian K. Mahanna, JD, former chief of staff and deputy attorney general in the Office of the New York State Attorney General, \*Nicole Callan, JD, vice chair of the Civil Practice and Procedure Committee of the American Bar Association (ABA)'s Section of Antitrust Law, \*Álvaro Mateo Alonso, LLM, Law Degree, antitrust lawyer. (3-5-2021, "Developments in Antitrust Law: Keep an Eye on New York", *WilmerHale*, Full report accessible at: https://www.wilmerhale.com/en/insights/client-alerts/20210305-developments-in-antitrust-law-keep-an-eye-on-new-york)

Although much attention recently has been focused upon debates in Congress, potential legislative changes to U.S. antitrust law are not limited to proposals at the federal level. Many states are considering changes to their own antitrust laws, which usually can be enforced by state attorneys general and private plaintiffs. Importantly, New York legislators have introduced two bills that propose sweeping changes to the State’s antitrust law, the Donnelly Act, building on measures introduced in New York’s last legislative session.

These proposals, if enacted, would make New York’s single firm conduct statutory provisions the most aggressive in the United States and would give the New York Attorney General a more prominent role in reviewing transactions—including by creating a first-of-its-kind state merger notification requirement. These changes would allow New York’s antitrust law to reach a range of conduct not actionable under any existing federal or state antitrust law, and would introduce European-style antitrust standards to New York. Accordingly, this reform would create considerable new compliance challenges and risk for companies potentially subject to New York antitrust law, whether or not those companies are located in New York.

Other U.S. states and territories are considering antitrust law changes, but the New York proposals are the most significant. Although much of the conversation concerning developments in antitrust law has focused on “Big Tech” companies, these proposals would affect businesses across all sectors of the economy. This alert discusses these legislative proposals and key implications for businesses.

### 1NC — CP

#### The United States federal government should:

#### boost the STEM talent pipeline through investments in education and workforce training

#### simplify the existing tax code and lighten regulatory requirements for startups

#### modernize trade deals to expand markets for US companies.

#### Solves tech supremacy.

Chambers 18 –– John Chambers; contributor. (“Now more than ever, the US must reclaim leadership in tech” The Hill. April 8, 2018. <https://thehill.com/opinion/technology/382163-now-more-than-ever-the-us-must-reclaim-leadership-in-tech>) //LFS—SR

If we want to maintain our competitive edge in today’s global innovation race, Congress and the administration should commit to advancing several key pro-innovation policies during these last nine months of 2018:

We must win the global competition for talent.

This requires a two-pronged policy approach: the U.S. needs to boost its STEM talent pipeline through investments in STEM education and workforce training for Americans. The Immigration Innovation (“I-Squared”) Act of 2018 [serves as a great launchpad](http://technet.org/press-release/technet-i-squared-legislation-will-boost-innovation-growth-job-creation-in-u-s), creating the largest workforce education and training fund in our nation’s history to boost STEM investments for U.S. students and workers.

At the same time, we need urgently to fix our high-skilled immigration system so that businesses can recruit the best qualified people for currently unfilled jobs without harming U.S. workers. The high-skilled labor shortage is only getting worse and by 2020, there will be one million more computing jobs nationally than there will be graduates to fill them, according to the Texas Computer Education Association. If we don’t fix our H-1B visa application process, the brightest minds in tech will go to countries like France, that created the [French Tech Visas](https://visa.lafrenchtech.com/4/french-tech-visa-for-employees) to lure the best talent around the globe.

Second, the U.S. must keep up the tax reform momentum.

The enactment of the new tax law in December 2017 should be properly implemented so it can continue to promote economic growth, job creation, and opportunities in the tech sector. But, we can’t rest on our laurels. We must remain vigilant about how other countries respond and continue promoting tax policies that help the U.S. be as globally competitive as possible. The U.S. can start by simplifying the existing tax code for startups, so they can take full advantage of the provisions intended to benefit them.

Rather than imposing administration burdens for job creators, we should work to ensure that tax policies affecting the gig economy provide clarity and promote opportunities in this growing segment of the economy.

Third, we must modernize trade deals to increase access to new markets.

Improving the ability for U.S. companies to sell to more markets and customers abroad is critical for economic growth and job creation. I believe the U.S. should expand its market access for trade in services, including those that are digitally delivered. With growing concerns over the impending trade war and its potential harm to U.S. consumers and workers, we must continue to promote and defend the benefits of fair and transparent trade. This means ensuring protections for the free flow of data across borders, strong protections for intellectual property and safeguards against intermediary liability.

And last but far from least, we must fuel our startup engine by boosting entrepreneurship.

A strong startup economy is the key to driving GDP growth and job creation. Yet new businesses spent an average of [$83,019 dealing with regulations](https://www.forbes.com/sites/robbmandelbaum/2017/01/24/the-83000-question-how-much-do-regulations-really-cost-small-business/#689baee51b25) in their first year. Small businesses owners are facing similar challenges, spending at least $12,000 each year dealing with regulations, which can greatly inhibit their hiring process. That’s why we need policies in place that encourage the risk-taking needed today to help young entrepreneurs and their companies scale to become tomorrow’s global business leaders. If we lighten the regulatory requirements or create special loan programs for entrepreneurs, we will make the U.S. the most attractive place in the world for anyone to start a company, grow their business, and take it public.

### 1NC — DA

#### Extraterritorial enforcement decimates nonproliferation efforts.

Arnold and Salisbury ‘19 [Aaron and Daniel\*; Fellow at the Harvard Kennedy School's Belfer Center for Science and International Affairs, Research Fellow at the Centre for Science and Security Studies within the Department of War Studies at King's College London\*; 3-25-2019; "Going it alone: The causes and consequences of U.S. extraterritorial counterproliferation enforcement"; Contemporary Security Policy, Volume 40, Issue 4; https://kclpure.kcl.ac.uk/ws/files/107585005/Going\_it\_alone\_ARNOLD\_Publishedonline25March2019\_GREEN\_AAM.pdf; Accessed 12-21-2020; LR]

Extraterritorial use of legal and regulatory tools to disrupt illicit procurement networks requires a broad interpretation of jurisdiction. In some respects, this has had the unintended effect of reducing cooperative nonproliferation efforts. China, for example, has consistently opposed U.S. unilateral actions against its citizens. After the designation and asset forfeitures against Karl Li in 2014, a spokesman for China’s Foreign Ministry chided the United States for its actions and suggested it would harm future joint nonproliferation efforts between the two countries (Gladstone, 2014). In August 2017, when the Trump administration imposed sanctions against a number of Chinese and Russian individuals and companies responsible for facilitating North Korea’s access to the international financial system, Chinese officials issued a statement that, “China opposes unilateral sanctions out of the U.N. Security Council framework, especially the ‘long-arm jurisdiction’ over Chinese entities and individuals exercised by any country in accordance with its domestic laws” (Morello & Whoriskey, 2017). In the case of ZTE Corp., China warned that it was “prepared to take action to protect the interests of Chinese firms” (Freifeld & Jiang, 2017; Stecklow, Freifeld, & Jiang, 2018). Perversely, countries that would stand to benefit most from cooperation and capacity building are also the most likely targets of expanded U.S. unilateral disruption efforts—potentially compounding this inherent tension in the U.S. approaches.

In 2017, the Chinese government adopted new, national-level export control laws that address many of the gaps the country has been criticized for in the past—including, establishing national enforcement mechanisms and delineating the differences between proliferation-sensitive dual-use goods and technologies. Interestingly, the text of the export control law seemingly addresses China's frustrations with foreign states' extraterritorial practices. The law articulates explicitly the right to retaliate against foreign states that take “discriminatory measures” against Chinese businesses and interests (“China prepares for new export control law,” 2017). Clearly, “overuse” of unilateral tactics to disrupt illicit WMD procurement may expose U.S. economic and political interest to foreign retribution—ultimately undermining the capability to use them in the future, either through making the tools less effective or raising the political costs of their use. Furthermore, continued unilateral counterproliferation efforts may comprise existing political will to cooperate with the U.S. on future nonproliferation

MARKED

efforts, increases the potential for retribution by foreign states, and diminishes the utility of the tool itself—that is, the more these tools are used, the less useful they can become.

Over the last decade, U.S. policymakers have increasingly viewed sanctions and other extraterritorial actions as cost-effective, low-risk, and reproducible policy instruments while ignoring inherent hazards. These hazards become significant when extraterritorial enforcement actions are carried out without broad international consensus on the larger objectives. In effect, extraterritorial enforcement unmitigated economic coercion policies muddy the waters—making each practically indistinguishable from one another and sending confusing signals to allies.

Consequently, states have become increasingly alarmed at the expansion of U.S. extraterritoriality and politicization of the international financial system. The Obama Administration's "whisper campaign" among European banks to isolate Iran was effective because the United States made clear that pressuring Iran was part of a broader engagement strategy to achieve a diplomatic resolution to the Iranian nuclear crisis. By contrast, the Trump administration has exhibited a strong preference for unilateralism in its foreign policy, such as its withdraw from the Joint Comprehensive Plan of Action— the 2015 agreement between the P5+1 (the United States, United Kingdom, France, China, Russia, and Germany) and Iran, which limited Iran’s nuclear program in exchange for lifting international sanctions. In re-imposing financial and economic sanctions, President Trump has threatened to use secondary sanctions against European allies who do not end their business ties with Iran. This has prompted a series of political responses from European leaders, suggesting the need to insulate the European Union's economic interests and activities from American extraterritoriality.16

Although the reach of U.S. extraterritorial enforcement is significant, countries are not without options to resist. In recent years, several states have moved to insulate themselves against exposure to U.S. sanctions. China and Russia, for example, have each developed alternative payment systems in order to avoid dollar-dominated systems. Global companies are also seeking to limit their exposure to U.S. sanctions by exiting high-risk jurisdictions that may incur additional scrutiny by the United States— a process dubbed "de-risking." The risk that U.S. countermeasures will eventually undermine U.S. credibility and weaken extraterritorial enforcement is not insignificant.

**Proliferation goes nuclear**

**Cimbala 15** (Stephen J. Cimbala, Ph.D. in Political Science @ the University of Wisconsin, Madison, is a professor of Political Science @ Penn State Brandywine. “Nuclear Weapons and Anticipatory Attacks: Implications for Russia and the United States,” 16 March 2015, http://www.tandfonline.com/doi/full/10.1080/13518046.2015.998121)

If the possibility existed of a mistaken preemption during and immediately after the Cold War, between the experienced nuclear forces and command systems of America and Russia, then it may be a matter of even more concern with regard to states with newer and more opaque forces and command systems. In addition, the Americans and Soviets (and then Russians) had a great deal of experience getting to know one another’s military operational proclivities and doctrinal idiosyncrasies, including those that might influence the decision for or against war. Another consideration, relative to nuclear stability in the present century, is that the Americans and their NATO allies shared with the Soviets and Russians a commonality of culture and historical experience. Future threats to American or Russian security from weapons of mass destruction may be presented by states or non-state actors motivated by cultural and social predispositions **not easily understood by those in the West** **nor subject to favorable manipulation during a crisis**. The spread of nuclear weapons in Asia (including those parts of the Middle East with geostrategic proximity or reach into Asia) presents a complicated mosaic of possibilities in this regard. States with nuclear forces of variable force structure, operational experience, and command-control systems will be thrown into a matrix of complex political, social, and cultural cross-currents contributory to the possibility of war. In addition to the existing nuclear powers in Asia, others may seek nuclear weapons if they feel threatened by regional rivals or hostile alliances. Containment of nuclear proliferation in Asia is a **desirable political objective** for all of the obvious reasons. Nevertheless, the present century is **unlikely to see the nuclear hesitancy or risk aversion** that marked the Cold War, in part because the military and political discipline imposed by the Cold War superpowers no longer exists but also because **states in Asia have new aspirations** for regional or global respect.6 The spread of ballistic missiles and other nuclear-capable delivery systems in Asia, or in the Middle East with reach into Asia, is **especially dangerous** because plausible adversaries **live close together** and are **already engaged in ongoing disputes** about territory or other issues. The Cold War Americans and Soviets required missiles and airborne delivery systems of intercontinental range to strike at one another’s vitals, but short-range ballistic missiles or fighter-bombers suffice for India and Pakistan to launch attacks at one another with potentially ‘strategic’ effects. China shares borders with Russia, North Korea, India, and Pakistan; Russia, with China and North Korea; India, with Pakistan and China; Pakistan, with India and China; and so on. The short flight times of ballistic missiles between the cities or military forces of contiguous states means that **very little time will be available** for warning and attack assessment by the defender. Conventionally armed missiles could **easily be mistaken for a tactical nuclear first use.** Fighter-bombers appearing over the horizon could just as easily be carrying nuclear weapons as conventional ordnance. In addition to the challenges posed by shorter flight times and uncertain weapons loads, potential victims of nuclear attack in Asia may also have first-strike vulnerable forces and command-control systems that increase decision pressures for **rapid**, and **possibly mistaken**, **retaliation**. This potpourri of possibilities challenges conventional wisdom about nuclear deterrence and proliferation on the part of policy makers and academic theorists. For policy makers in the United States and NATO, spreading nuclear and other weapons of mass destruction in Asia could profoundly shift the geopolitics of mass destruction from a European center of gravity (in the 20th century) to an Asian and/or Middle Eastern center of gravity (in the present century).7 This would profoundly shake up prognostications to the effect that wars of mass destruction are now passé, on account of the emergence of the ‘Revolution in Military Affairs’ and its encouragement of information-based warfare.8 Together with this, there has emerged the argument that large-scale war between states or coalitions of states, as opposed to varieties of unconventional warfare and failed states, are exceptional and potentially obsolete.9 The spread of WMD and ballistic missiles in Asia could **overturn these expectations for the obsolescence or marginalization of major interstate warfare**. For theorists, the argument that the spread of nuclear weapons might be fully compatible with international stability, and perhaps even supportive of international security, may be less sustainable than hitherto.10 Theorists optimistic about the ability of the international order to accommodate the proliferation of nuclear weapons and delivery systems in the present century have made several plausible arguments based on international systems and deterrence theory. First, nuclear weapons may make states more risk averse as opposed to risk acceptant, with regard to brandishing military power in support of foreign policy objectives. Second, if states’ nuclear forces are second-strike survivable, they contribute to reduced fears of surprise attack. Third, the motives of states with respect to the existing international order are crucial. Revisionists will seek to use nuclear weapons to overturn the existing balance of power; status quo-oriented states will use nuclear forces to support the existing distribution of power, and therefore slow and peaceful change, as opposed to sudden and radical power transitions. These arguments, for a less alarmist view of nuclear proliferation, take comfort from the history of nuclear policy in the ‘first nuclear age’ roughly corresponding to the Cold War.11 Pessimists who predicted that some 30 or more states might have nuclear weapons by the end of the century were proved wrong. However, the Cold War is a **dubious precedent** for the control of nuclear weapons spread outside of Europe. The military and security agenda of the Cold War was dominated by the United States and the Soviet Union—especially with regard to nuclear weapons. Ideas about mutual deterrence based on second-strike capability and the deterrence ‘rationality’ according to American or allied Western concepts might be **inaccurate** guides to the avoidance of war elsewhere.12 In addition, powers favoring nuclear containment in general may fall short of disagreement in specific political cases. As Patrick M. Morgan has noted, there is ‘**insufficient agreement** among states on how serious it (nuclear proliferation) is and on what to do about it’.13

## 1NC — Competitiveness

### 1NC — SD

#### No one would actually follow on the aff — courts take years, political will, Biden won’t, etc.

Hirsh 21 — Michael Hirsh (Senior Correspondent, Foreign Policy); “Big Talk on Big Tech—but Little Action;” Foreign Policy; April 6th, 2021; <https://foreignpolicy.com/2021/04/06/big-tech-regulation-facebook-google-amazon-us-eu/>

Problem is, that’s just about where the consensus ends. And even if you add more lawyers, antitrust cases move glacially, and federal judges are extremely cautious about punishing behavior deemed anti-competitive, especially in an era when antitrust experts disagree vehemently about remedies. Plus, now every case faces the prospect of being squelched by a very conservative Supreme Court.

Despite the documented actions of Facebook and other companies in crushing would-be competitors, there is also good reason for judicial caution. Consider the irony that Microsoft—itself the target of a major antitrust action a quarter century ago—now considers itself the aggrieved party in the recent Department of Justice case against Google, since it is trying to raise the profile of its Bing search engine, which has a meager 2.5 percent of the market. Or that Facebook’s own dominance may someday fall victim—without any help from government at all—to new blockchain technology that could allow users to run their own web services and applications. (Ironically, among the key innovators pushing for that are Zuckerberg’s old antagonists from Harvard University, Tyler and Cameron Winklevoss, who [famously claimed](https://www.forbes.com/sites/michaeldelcastillo/2021/04/05/revenge-of-the-winklevii-facebook-winklevoss-bitcoin-nft-billionaire-revenge/?sh=543f9e791572) that he stole the social network idea from them.) Even today, many antitrust experts say it’s probably a judicial and legislative bridge too far for the government to try to proactively promote competition in the tech world; let the markets take care of that instead.

But so changed is the political environment that U.S. President Joe Biden and some of his top regulators, such as Lina Khan, a Yale Law School wunderkind who was recently nominated to the FTC, might seek to break up the big tech firms. Biden, on the campaign trail, said that breaking up tech quasi-monopolies such as Facebook is “something we should take a really hard look at.”

That is almost certainly not going to happen: The political will simply isn’t there, even among many Democratic legislators influenced by Khan and other progressive thinkers.

“I don’t think Biden has the stomach for that,” said Herbert Hovenkamp, an antitrust expert at the University of Pennsylvania. The reason is simple: Today’s monopolistic abuses are quite unlike the monopoly power of old, when big cartels like John D. Rockefeller’s Standard Oil inflicted predatory high prices on consumers and political will was high to “bust trusts.” On the contrary: Most consumers love the fact that they can buy all kinds of inexpensive stuff on Amazon and have it delivered the next day, and that Facebook doesn’t charge them a cent, even as it makes a mint selling their private information to advertisers and market manipulators.

“The Democrats need to be cautious here,” Hovenkamp said. “Consumers are their constituency. And these companies are among the biggest producers of growth in the U.S. Biden certainly doesn’t want to ruin that.” Instead, the administration may well decide to focus more on smaller fish in other industries, as the FTC did last week by [challenging](https://www.barrons.com/articles/ftcs-challenge-of-illumina-is-a-boost-for-rivals-in-cancer-test-race-51617228262) Illumina’s $7 billion purchase of cancer test developer Grail. In a sign of how aggressive the FTC might be under Biden, it was the first time in decades that the commission sought to block a so-called vertical merger, alleging that ownership of Grail would incentivize Illumina, a gene-sequencing company, to raise costs on Grail’s competitors.

#### Firms ignore the aff.

Chang & Sokol 20, \*Professor, Department of Agricultural Economics, National Taiwan University; \*\*Professor, University of Florida Levin College of Law and Senior Advisor, White & Case LLP; (\*Hung Hao, \*\*D. Daniel, 2020, “Advocacy Versus Enforcement in Antitrust Compliance Programs”, *Journal of Competition Law & Economics*, doi:10.1093/joclec/nhaa002, pg. 57-58)

Firms that are involved in an antitrust case investigation may not have a complete picture of compliance programs because such firms are reacting to an investigation rather than planning how best to implement compliance going forward. As a result, the firms involved in a case that are interested in creating immediate adoption are more likely to focus on the fundamental parts of a compliance programs, such as the establishment of the compliance department and the creation of internal control systems.46 Firms under investigation have a strong incentive to address the specific issues of the investigation. Rolling out a more robust compliance program takes additional time. Such a rollout may potentially extend an investigation (or uncover additional problems), which corporate boards are often hesitant to do because a longer investigation period creates greater uncertainty and potential liability for the firm.

### 1NC — I/L

#### Emerging tech won’t tip the balance of power.

Gilli 19, Senior Researcher in the Research Division, NDC. (Andrea, Feb. 2019, “Preparing for ‘NATO-mation’: the Atlantic Alliance toward the age of artificial intelligence”, *NDC Policy Brief*, No. 4, pg. 3, Accessible at: http://nato-70.upt.pt/wp-content/uploads/2019/04/Preparing\_NATO\_mation.pdf)

Military transformation and emerging technologies

A second, and related, issue is the risk that, in the age of intelligent machines, AI, ML and BD may easily enable any actor to catch up, or even outpace, its adversaries in military terms. Here too, skepticism is warranted. First of all, these two concerns logically contradict each other. If we are witnessing a military transformation based on dual-use, general-purpose technologies such as AI, ML and BD that can be easily exploited in battle, then no actor can achieve a significantly enduring military advantage – at the tactical, operational or strategic level – as competitors can quickly catch up or deploy effective counter-systems.8

Next, military power is more than hardware. Tactical fluency and operational competence are in fact extremely important for victory on the battlefield – along with other variables. There is no reason to believe that this will change anytime soon, as warfare, war and by extension strategy are inherently adversarial: winners succeed because they defeat their adversaries – i.e., they neutralize enemy counter-measures, tactics, systems and innovations. Possessing capable hardware is thus, per se, not sufficient and, at times, not even necessary for winning. Commercial technologies offer great potential but are easily vulnerable to even basic counter-measures as they are not designed for combat.

By the same token, emerging technologies – whether developed for commercial or military applications – face performance trade-offs that constrain their immediate military utility. The French Marine Nationale’s mid-19th century bid to offset British naval superiority is telling: the steam engine granted independence from wind but suffered from limited endurance; iron hulls could not keep afloat when hit; and, explosive shells had shorter ranges than solid shots. When mature, these technologies ultimately transformed naval warfare, but it took almost a century for this to happen.9

There is no reason to believe that with AI, ML and BD things will be different. When it comes to software, in fact, even subtle and apparently minor details lead to catastrophic failure: because of simple mistakes in data gathering or processing such as automatic path control, military platforms may end up exceeding their maximum depth or altitude ceilings and thus expose themselves to almost certain mission failure. Software already represents the primary source of procurement delays and cost overruns. As software becomes more central in weapon systems, the problems it creates can only exponentially increase. Additionally, through generative adversarial networks (GNAs), actors can increasingly feed compromised data into enemy systems to negatively affect tactical performance or operational success. Competent armed forces will thus deploy intelligent machines only in so far as the risks, problems and constraints they face are, slowly and progressively, addressed.

This brings us to a final consideration. In order to address these very risks, problems and constraints, investments in a broad range of fields are also needed so as to counterbalance investments by enemies and adversaries. Improving all the underlying technologies related to AI, ML and BD, learning about their potential, integrating them into existing military platforms and exploiting them for maximum strategic, operational or tactical effectiveness require time, human capital, institutional backing, technological competence and financial resources. In other words, the idea that countries can quickly exploit the technologies of the fourth Industrial Revolution for building military power seems exaggerated.10

#### Hypersonics & 3D printing thump — KU reads blue

1AC Kroenig ’18 [Matthew; 11/12/18; Deputy Director for Strategy @ Scowcroft Center for Strategy and Security, Associate Professor of Government and Foreign Service @ Georgetown University; “Will disruptive technology cause nuclear war?”; https://thebulletin.org/2018/11/will-disruptive-technology-cause-nuclear-war/]

Recently, analysts have argued that emerging technologies with military applications may undermine nuclear stability (see here, here, and here), but the logic of these arguments is debatable and overlooks a more straightforward reason why new technology might cause nuclear conflict: by upending the existing balance of power among nuclear-armed states. This latter concern is more probable and dangerous and demands an immediate policy response.

For more than 70 years, the world has avoided major power conflict, and many attribute this era of peace to nuclear weapons. In situations of mutually assured destruction (MAD), neither side has an incentive to start a conflict because doing so will only result in its own annihilation. The key to this model of deterrence is the maintenance of secure second-strike capabilities—the ability to absorb an enemy nuclear attack and respond with a devastating counterattack.

Recently analysts have begun to worry, however, that new strategic military technologies may make it possible for a state to conduct a successful first strike on an enemy. For example, Chinese colleagues have complained to me in Track II dialogues that the United States may decide to launch a sophisticated cyberattack against Chinese nuclear command and control, essentially turning off China’s nuclear forces. Then, Washington will follow up with a massive strike with conventional cruise and hypersonic missiles to destroy China’s nuclear weapons. Finally, if any Chinese forces happen to survive, the United States can simply mop up China’s ragged retaliatory strike with advanced missile defenses. China will be disarmed and US nuclear weapons will still be sitting on the shelf, untouched.

If the United States, or any other state acquires such a first-strike capability, then the logic of MAD would be undermined. Washington may be tempted to launch a nuclear first strike. Or China may choose instead to use its nuclear weapons early in a conflict before they can be wiped out—the so-called “use ‘em or lose ‘em” problem.

According to this logic, therefore, the appropriate policy response would be to ban outright or control any new weapon systems that might threaten second-strike capabilities.

This way of thinking about new technology and stability, however, is open to question. Would any US president truly decide to launch a massive, bolt-out-of-the-blue nuclear attack because he or she thought s/he could get away with it? And why does it make sense for the country in the inferior position, in this case China, to intentionally start a nuclear war that it will almost certainly lose? More important, this conceptualization of how new technology affects stability is too narrow, focused exclusively on how new military technologies might be used against nuclear forces directly.

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

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

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

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

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

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

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

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

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

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

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

#### Breaking up Facebook collapses Western social media access to Asia, cementing WeChat’s dominance — that enhances and ensures Chinese digital authoritarianism and undermines democracy

Matthew Smith 19, fellow at Harvard’s Carr Center for Human Rights Policy, CEO at Fortify Rights, a human rights organization in Southeast Asia, 12/11/2019, “The American Antitrust Breakup of Facebook and the Dangers of China’s WeChat,” <https://gjia.georgetown.edu/2019/12/11/antitrust-breakup-of-facebook-and-dangers-of-wechat/>

However, in all the discourse on breaking up the tech giant, not a single candidate has focused on the effect it might have overseas. In principle, Senator Warren and Mr. Yang’s analysis that there are “[absolutely excesses](https://thehill.com/policy/technology/466008-democrats-wrangle-over-whether-to-break-up-big-tech-in-debate-first)” in Big Tech is spot on, but we suggest caution and careful thinking in the presidential candidates’ desire to break up Facebook.

While such divestments may make sense in a U.S.-centric analysis, there could be [serious](https://www.technologyreview.com/s/613962/how-wechat-censors-private-conversations-automatically-in-real-time/) [unintended](https://techcrunch.com/2018/04/30/chinese-government-admits-collection-of-deleted-wechat-messages/) [consequences](https://www.mmtimes.com/news/cbm-extends-wechat-pay-pilot-phase-three-months.html) for the rest of the world—particularly the developing world, which is more vulnerable to a mixture of incitement to violence, monitoring of user data, and government-sponsored censorship through Facebook’s ecosystem of apps, as has been shown in [Myanmar](https://www.nytimes.com/2018/10/15/technology/myanmar-facebook-genocide.html), [Sudan](https://www.npr.org/2019/06/26/735883899/why-facebook-wont-kick-off-a-warlord), [Sri Lanka](https://www.nytimes.com/2018/04/21/world/asia/facebook-sri-lanka-riots.html), and [India](https://www.nytimes.com/interactive/2018/07/18/technology/whatsapp-india-killings.html).

With his proposed global blockchain currency, Libra, Facebook CEO Mark Zuckerberg is clearly [orienting](https://www.nytimes.com/2019/03/07/technology/facebook-zuckerberg-wechat.html)the platform toward an outright emulation of China’s WeChat, as other observers have [noted](https://www.economist.com/business/2019/04/30/mark-zuckerberg-wants-to-build-wechat-for-the-west). Owned by Chinese conglomerate Tencent, WeChat provides social media, messaging, and mobile payment functions to over a billion users. An antitrust breakup of Facebook that does not consider WeChat’s growing dominance in Asia would be shortsighted.

One of us was an antitrust lawyer when the [Facebook-Instagram acquisition](https://about.fb.com/news/2012/04/facebook-to-acquire-instagram/) was under anti-trust scrutiny by the press and regulators, and believed at the time that the U.S. government should have blocked the acquisition. Yet, American antitrust law [approves](https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf) almost all mergers that result in [lower prices for consumers](https://www.law.uchicago.edu/news/reassessing-chicago-school-antitrust-law). However, the cost of providing your personal data for free to Facebook, and Facebook’s ability to leverage that data into a significant competitive ad-vantage over would-be competitors, especially in this new era of artificial intelligence where having lots of user data for training A.I. models is key, are not included in its otherwise “free” platform.

Facebook leverages your personal user data to make money in the form of highly targeted digital ads. These ads constitute a whopping 98 percent of Facebook’s total revenues as of Q1 2019. Facebook’s digital advertising in the West has subsidized essentially all of the platform’s global expansion, including its presence in Asia, where we live and work. The Economist has reported that [Facebook earns a mere $11 per user in Asia annually](https://www.economist.com/leaders/2019/06/08/the-second-half-of-humanity-is-joining-the-internet), an order of magnitude less than the $112 per user it earns annually in North America. While Instagram is [starting](https://finance.yahoo.com/news/facebook-fb-q2-earnings-beat-140602133.html) to earn revenues from mobile ads, most of that ad revenue is presumably in the West. WhatsApp hardly [earns](https://blog.whatsapp.com/615/Making-WhatsApp-free-and-more-useful) any revenue at all.

Thus, if antitrust regulators were to force a Facebook breakup, a newly separated Instagram, Messenger, and WhatsApp might face cost pressures, since they would no longer have Face-book’s behemoth advertising revenues to subsidize them. Instagram, Messenger, and WhatsApp would likely have to reduce their presence in Asia, or exit the region entirely, in order to preserve cash flows.

This is concerning. If Instagram, Messenger, and Whatsapp exit several Asian countries, WeChat will very likely fill the void. That’s a human rights problem.

According to [U.N. Special Rapporteur David Kaye](https://www.dropbox.com/s/li0m7mw52bz0r1p/David%20Kaye%20Facebook%20Hate%20Speech%20Report%20%28April%202018%29.pdf?dl=0), Tencent’s WeChat has significantly more problematic policies than Facebook. WeChat freely gives user data to the Chinese government and employs overbroad censorship rules in line with Chinese laws and regulations limiting freedom of expression – as WeChat has shown by[blocking Hong Kong-related discussions](https://www.theverge.com/platform/amp/2019/11/25/20976964/chinese-americans-censorship-wechat-hong-kong-elections-tiktok) by both Chinese nationals and Chinese Americans. The company routinely conducts [unlawful surveillance](https://www.wsj.com/articles/jailed-for-a-text-chinas-censors-are-spying-on-mobile-chat-groups-1512665007) in China and monitors and censors political content, infringing on users’ right to freedom of expression.

This is not to say Facebook’s hands are clean. However, if Instagram, Messenger, or WhatsApp were effectively pushed out of Asia, thereby leading to a WeChat takeover, multiple countries would become vassals of a Chinese surveillance state. First, WeChat would funnel user data, including conversations, to the governments of China and Myanmar, as well as sovereigns with weaklegislative and judicialsystems. Second, WeChat would employ a broad censorship regime that chills freedom of speech and expression. In Southeast Asia, for example, coordinated propagandists and violent actors are not as constrained by civil liberties laws and norms as they are in the United States. Thus, it is not difficult to imagine WeChat funneling user data to rights-violating government actors, who would in turn use the data to crack down on human rights defenders, dissidents, and ethnic, religious, and LGBTQ minorities.

Our organizations, [Koe Koe Tech](https://koekoetech.com/) and [Fortify Rights](http://www.fortifyrights.org/), regularly engage Facebook on these is-sues. Currently, Facebook appears to be chastened by its failures, especially in Myanmar. A 441-page [report](https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf) by a U.N. fact-finding mission on Myanmar concluded that Facebook was used to incite violence that amounted to genocide against Rohingya Muslims, in which more than 800,000 were forcibly displaced to Bangladesh. Facebook [admitted](https://www.nytimes.com/2019/11/11/world/asia/myanmar-rohingya-genocide.html) as much and, in response, the company has been working to improve its hate-speech detection and increase its interactions with civil society. The company recently [hired](https://about.fb.com/news/2018/08/update-on-myanmar/) more than 100 content reviewers with facility in Myanmar languages and, in the last year, it [took down](https://about.fb.com/news/2019/08/more-cib-myanmar/) more than 200 pages, accounts, and groups originating in Myanmar for engaging in “coordinated inauthentic behavior,” [defined](https://www.cnbc.com/2019/10/04/facebook-removes-coordinated-fake-accounts-in-uae-egypt-nigeria-and-indonesia.html) by the company as occurring “when groups of pages or people work together to mislead others about who they are or what they’re doing.”

Was this enough? Not by a longshot. Major problems with misuse of the platform in Myanmar persist, which is particularly concerning ahead of contentious 2020 national elections in the country. The company has taken steps in the right direction, though.

Moreover, a profit-maximization juggernaut running scared is an insufficient response to the problem. More robust measures are needed. U.S. legislators, led by Senator Markey (D-Mass.), are currently [working](https://www.markey.senate.gov/news/press-releases/senator-markeys-amendment-urging-facebook-to-improve-efforts-to-tackle-hate-speech-in-burma-passes-out-of-key-committee) on draft legislation that could help mitigate hate speech on social media platforms, while being mindful of First Amendment protections of free speech in the United States. The draft legislation would compel Facebook to resolve the issue of online hate speech inciting offline violence, enact privacy protections for users—with the U.S. Federal Trade Commission’s [recent fine of approximately $5 billion](https://www.nytimes.com/2019/07/12/technology/facebook-ftc-fine.html) against Facebook for mishandling personal data of users as a first salvo—and cultivate legitimate freedom of speech and expression for users.

Such regulatory moves are sound and good, but again, potential antitrust regulations may be disastrous if not well thought out.

Antitrust Alternatives

A [central piece](https://medium.com/@teamwarren/heres-how-we-can-break-up-big-tech-9ad9e0da324c) of Senator Elizabeth Warren’s presidential campaign is to divest advertisement exchanges from Big Tech, and those advertisement exchanges [constitute](https://s21.q4cdn.com/399680738/files/doc_financials/2019/Q1/Q1-19-Press-Release.pdf) a whopping 98 percent of Facebook’s total revenues. Senator Warren and other American politicians should carefully consider the global implications of these divestments. Paving the way for a WeChat takeover will almost certainly lead to a degradation in freedoms of speech and expression in Southeast Asia.

The U.S. legal academy remains fixated on the advertisement exchanges. Several legal academics from the top law schools in the country tell us that they do not believe the business models of social media companies should be based on advertising. Maybe so, but if this business mod-el were split up today or in the near future, [Facebook’s revenues would crater](https://www.newyorker.com/magazine/2019/12/02/big-techs-big-defector), likely forcing their exit from many countries. Countries that generate low revenues for Facebook would be first on the list; those same countries already suffer from weak rule of law and widespread mis-use of social media, including by state actors.

A viable alternative could be to compel Facebook to divest Instagram while allowing it to retain its advertisement exchange. Whatsapp, which earns hardly any revenue, needs to be divested carefully, if at all, with regulators considering how it would be financially sustainable without Facebook’s advertisement revenues subsidizing it. A possible path forward could be divesting Whatsapp pursuant to a consent decree—that is, an agreement with no admission of guilt—with the U.S. government recruiting new investors in Whatsapp on the condition that they comply with the consent decree’s requirements to institute content moderation and social media monitoring of hate speech and misinformation.

Ultimately, an antitrust breakup of Facebook may make sense, but regulators, legal academics, and presidential candidates should proceed with grave caution. At the very least, they should take careful measures to ensure that any antitrust breakup of Facebook will not further erode the rights to freedom of speech and expression for hundreds of millions of users in Asia.

### 1NC — !

#### **No US-China war.**

Lei 20, PhD and MA in International Politics, associate research fellow with the China Institute of International Studies. (Cui, 7-24-2020, "Despite heated talk, risk of a US-China hot war is small", *South China Morning Post*, https://www.scmp.com/comment/opinion/article/3094121/why-risk-us-china-hot-war-small-despite-heated-talk)

Many observers are pessimistic about deteriorating US-China relations and believe the two countries are heading towards a cold war. Even worse, some argue that the situation might be more dangerous than the US-Soviet Union Cold War, and that a hot war might break out between the two. This argument is unconvincing. First of all, deterrents to a flare-up are much stronger in US-China relations than in US-Soviet relations. Although economic and people-to-people ties between China and the US are declining, they are still close compared to US-Soviet ties. It is hard to decouple two closely intertwined economies and societies. Take two examples. China is expected to become the world's largest consumer market, a temptation hard to resist for exporters, including those from the US. And in education, more than 300,000 Chinese students study in the US, bringing in huge revenues for the US education industry. Many universities go to great lengths to woo international students. Recently Harvard and the Massachusetts Institute of Technology even sued the government over its new visa restrictions, now aborted, on international students. Second, even if there is decoupling, the pain would not be too great and can be kept out of the national security sphere if properly handled. In fact, for national security reasons, a modest degree of isolation will make both sides more secure and comfortable. For instance, if China’s information technology equipment cannot capture Western markets, the US will be more relaxed. If China cannot get advanced technologies from the US and its technological progress slows down, the US will be less anxious. In the same vein, China feels assured knowing that if the Trump administration does impose a travel ban on Communist Party members, it would be abandoning one of the tools available to the US to promote “peaceful evolution” in China. Economic decoupling is undeniably more painful for China than for the US. But unlike Japan during WWII, which was hit hard by the US oil embargo because of its lack of natural resources, China has no such problems. Given its large domestic market, losing the US as a major customer is not a disaster for China, and can be compensated through more dynamic economic activities at home. China can also make up for being freezed out of technological exchanges by turning to indigenous innovation. As for the US, it can import goods from other developing countries, albeit less cheaply. The relative loss is acceptable when weighed against the heightened perception of economic independence and security. Third, the ideological confrontation between China and the US is less intense than that during the Cold War. Unlike the obsession with ideology in those days, the line between capitalism and socialism is blurred today. The market economy has become universally recognised as the best way to promote economic growth and, politically, many countries have embraced democracy. Even North Korea calls itself the Democratic People’s Republic of Korea. Although ideological hawks in the US still long for the day when the beacon of freedom will light up the world, after many years of fighting bloody wars overseas, most American people are not interested in promoting democracy abroad. Meanwhile, China just wants to preserve its political system and has no interest in exporting it to other countries, as the Soviet Union did. Thus, ideological antagonism in China-US relations can easily be eased by calculations of realistic interests, which create conditions for compromise and cooperation. Fourth, both China and the US have many options other than war to achieve their policy goals. While they have no allies to serve as a buffer, given the nature of the potential conflict in the South China Sea or Taiwan Strait, both countries are adept at operating in grey zones and fighting psychological, public opinion or diplomatic warfare below the threshold of war. The forced closure of the Chinese consulate in Houston by the US government is just the latest act of brinkmanship. In addition, given China’s huge economic and financial interests in the US, the latter can wield the stick of sanctions when use of force is highly risky or not worth it. When both sides have many tools and options, why would they rush to war to achieve their goals? Last but not least, the imbalance of power will act as a deterrent. Some say the US and Soviet Union did not fight a hot war because they were evenly matched. It was not the case, actually. At the beginning of the Cold War, the Soviet Union was at a relative military disadvantage. Moreover, a country needs the will to fight before going to war, even if it is stronger militarily than its adversary. Having fought years of meaningless wars, the US is weary of war. China, too, abhors war. Having a clear understanding of US strength, especially when its own economy is slowing down and it is facing various domestic challenges, China would not wish to recklessly start a war with the US. In summary, the possibility of a hot war between China and the US is very small. The greatest danger for China is not a cold or hot confrontation with the US, but policymakers’ interpretation of the momentary hostility towards Beijing of a portion of the American population and the larger world. An erroneous interpretation could end China’s march to further opening up, and see it turn instead towards self-isolation.

## 1NC — LIO

### 1NC — Circumvention

#### Courts circumvent.

Newman 19, University of Miami School of Law professor and a former attorney with the U.S. Department of Justice Antitrust Division. (John, 4-5-2019, "What Democratic Contenders Are Missing in the Race to Revive Antitrust", *Atlantic*, https://www.theatlantic.com/ideas/archive/2019/04/what-2020-democratic-candidates-miss-about-antitrust/586135/)

But the federal courts represent a massive stumbling block for any progressive antitrust movement. Reformers have identified two paths forward; both lead eventually to the court system. The first is relatively moderate: appoint regulators who will actually enforce the laws already on the books. Warren’s plan rests in part on this straightforward idea. The second, more audacious path requires congressional action to amend and strengthen our current laws. Warren’s call for a new ban on technology companies’ buying and selling via their own platforms falls into this category. Klobuchar has also proposed new antitrust legislation that would make it easier to block harmful mergers and acquisitions. But no matter its content, enforcing a law requires persuading a judge. When it comes to U.S. antitrust laws, federal judges—not Congress, and not regulatory agencies—are the ultimate arbiters. The Department of Justice Antitrust Division, one of our two public enforcement agencies, files all its cases in federal courts. And although the Federal Trade Commission (the other) can decide cases internally, the inevitable appeals eventually end up in court as well. No matter how strongly worded a law may be, ideologically driven judges can usually find a way around enforcing it. The cyclical history of U.S. antitrust law is proof that judges wield nearly limitless institutional power in this area. Soon after Congress passed the Sherman Act in 1890, a conservative Supreme Court began to chip away at its effectiveness. Congress reacted in 1914 with the Clayton Act, which sought to ban anticompetitive mergers. In 1936, at the height of the New Deal era, Congress passed the Robinson-Patman Act, which prohibits price discrimination (charging different prices to different buyers for the same product). These laws were actively enforced for decades. But starting in the late 1970s, conservative judges began to erode the Clayton Act. Today, megamergers among competitors such as Bayer and Monsanto barely raise eyebrows. So-called vertical mergers, which combine suppliers and their customers, are now all but immune from antitrust enforcement—see the DOJ’s failed challenge to AT&T and Time Warner’s recent tie-up. Under the business-friendly Roberts Court, the Robinson-Patman Act has similarly been eviscerated. By the 2000s, the ideas of the conservative Chicago School had become mainstream in antitrust circles. Robinson-Patman, a law intended to protect small businesses, was an easy target for Chicago School critics narrowly focused on efficiency and low consumer prices. Their attacks found a receptive audience in the federal judiciary. Among insiders, Robinson-Patman is now known as “zombie law.” It remains on the books, but regulators no longer bother trying to enforce it. If Democrats want to change antitrust law, they will first and foremost need to change the judges who apply it. Yet none of the 2020 contenders championing antitrust reform have even mentioned the possibility of appointing progressive antitrust thinkers to the bench. Conservatives, on the other hand, have long recognized the centrality of antitrust to broader questions about the apportionment of power in society. In his seminal work, The Antitrust Paradox, Robert Bork called antitrust a “microcosm in which larger movements of our society are reflected.” Battles fought in this arena, Bork wrote, “are likely to affect the outcome of parallel struggles in others.” Strong antitrust enforcement keeps powerful monopolies in check. Toothless antitrust allows the unlimited accumulation of corporate power. Recognizing the high stakes, the Republican Party has gone to great lengths to appoint conservative antitrust experts to the federal judiciary. Bork was an antitrust professor at Yale Law School before becoming an appellate judge in 1982.\* Frank Easterbrook practiced and taught antitrust before donning the black robe in 1985. Douglas Ginsburg served as the head of the Justice Department’s Antitrust Division before he became a federal judge in 1986. None of the three managed to join the Supreme Court, but not for lack of trying. Reagan nominated both Bork and Ginsburg to serve as justices, though Ginsburg withdrew and Bork was famously rejected after a contentious Senate hearing. And whom did the GOP select as its very first U.S. Supreme Court nominee during the Trump Administration? None other than Neil Gorsuch, who practiced antitrust law for more than a decade before joining the Tenth Circuit. Even as a judge, Gorsuch continued to teach a law-school course on antitrust until his confirmation to the Supreme Court in 2017. Once upon a time, progressives demonstrated similar concern about judicial treatment of antitrust laws. Justice Stephen Breyer, for example, served as special assistant to the head of the DOJ Antitrust Division before his judicial appointment by President Jimmy Carter. Earlier still, Justice John Paul Stevens was an antitrust lawyer, scholar, and professor before his appointment to the bench. Today’s Democratic 2020 hopefuls seem to have forgotten the lessons of history. Their antitrust proposals focus exclusively on appointing the right regulators and amending our current statutes. These are right-minded ideas, but they overlook the central role judges play in our political system. There is an old saying in the legal community: “Hard cases make bad law.” That may be true, but it is just as often the case that bad judges make bad law. Real antitrust reform will require more than regulatory and legislative tweaks; it will require the right judges.

# 2NC

## T — Private Sector

#### Here’s just a short-list of the most notable industries (that certainly have advocates)

Select USA No Date (“INDUSTRIES”, <https://www.selectusa.gov/industries> , date accessed 9/11/21)

The United States is home to the most innovative and productive companies in the world, forming a diverse and competitive group of industry sectors. The U.S. industries highlighted here are exceptionally dynamic and represent key opportunities for global growth and success.

Aerospace

Agribusiness

Automotive

Biopharmaceuticals

Chemicals

Consumer Goods

Energy

Environmental Technology

Financial Services

Logistics and Transportation

Machinery and Equipment

Media and Entertainment

Medical Technology

Professional Services

Retail Trade

Software and IT Services

Textiles

Travel, Tourism, and Hospitality

#### There are 32 million businesses in the US

FedCommunities 9/9 (“Small-business owners: Share your experiences with credit access this past year” , <https://fedcommunities.org/data/2021-take-federal-reserve-small-businesses-credit-survey/> , September 9, 2021, date accessed 9/11/21)

There are 32.5 million small businesses in the United States. That’s 32.5 million stories of small-business ownership. Representative data drawn from these stories can shed light on more universal experiences.

#### 1.5 million non-profits

Candid Learning No Date (“How many nonprofit organizations are there in the U.S.?” , <https://learning.candid.org/resources/knowledge-base/number-of-nonprofits-in-the-u-s/> , date accessed 9/11/21)

According to the National Center for Charitable Statistics (NCCS), more than 1.5 million nonprofit organizations are registered in the U.S. This number includes public charities, private foundations, and other types of nonprofit organizations, including chambers of commerce, fraternal organizations and civic leagues.

#### Antitrust prohibitions can be global

Hamer et al 16 (Mark H. Hamer is a partner in Baker & McKenzie's Washington, DC office and Chair of the Firm’s North American Antitrust and Competition Practice Group. Celina Joachim is a partner in Baker McKenzie's Houston office and certified in labor and employment law by the Texas Board of Legal Specialization. She represents management in all aspects of labor and employment law, including employment arbitration, litigation, counseling, and traditional labor law. Cynthia Jackson is a partner in the Compliance Group in Baker & McKenzie's Palo Alto office. “US Federal Agencies Issue Joint Guidance for HR Professionals Warning of Criminal Liability for Wage-Fixing and No-Poaching Agreements” , <https://www.globalcompliancenews.com/2016/11/15/us-issues-guidance-for-hr-professionals-wage-fixing-20161110/> , NOVEMBER 15, 2016, date accessed 9/5/21)

US antitrust prohibitions can apply to global conduct when there is a negative effect on competition in the United States. For instance, agreements between non-US companies, or transactions driven outside of the US, that include US compensation data, wage or benefit sharing, and/or no-hire / no poach or wage fixing agreements which impact US workforces will be in violation of this new guidance and constitute unlawful antitrust agreements. Multinational employers should therefore be mindful of sharing data or entering into such restrictive agreements where they involve US workforces.

#### And cover specific products

Markham 11 (Jesse W. Markham, Jr-\* Marshall P. Madison Professor of Law, The University of San Francisco School of Law. “LESSONS FOR COMPETITION LAW FROM THE ECONOMIC CRISIS: THE PROSPECT FOR ANTITRUST RESPONSES TO THE “TOO-BIG-TO-FAIL” PHENOMENON” , FORDHAM JOURNAL OF CORPORATE & FINANCIAL LAW, Vol. 16, Issue 2, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1281&context=jcfl> , 2011, date accessed 9/11/21)

A merger is not the only setting in which antitrust champions scale efficiencies. At the retail level, economies of scale constitute a legitimate reason for a manufacturer to limit intrabrand competition by imposing vertical restraints.92 Antitrust law also generally tolerates combinations of competitors into joint ventures to achieve economies of scale, with the presence of such efficiencies removing a challenge from the application of per se condemnation and establishing a facially plausible justification for the concerted activity.93 Removing conduct from per se illegality comes close to legalizing it, given the rarity of plaintiff successes in challenging the conduct under the rule of reason.94

[[BEGIN FOOTNOTE 94]]

94. One rare successful challenge under the rule of reason is found in Polygram Holding, Inc. v. FTC, 416 F.3d 29 (D.C. Cir. 2005), a case that is indicative of the difficulties plaintiffs face under Post-Chicago School antitrust rules. In that case the FTC challenged an agreement between competing record companies to suspend advertising and discounting of two record albums temporarily during the launch period for a jointly-produced recording. The court affirmed the FTC’s application of the rule of reason to the challenged agreement, even though it involved competitors agreeing not to put specific products on sale for a period of time – a collusive restriction on price and advertising that in an earlier era probably would have met with per se condemnation.

#### Other parts of the US code concur

US Code 96 (United States Code, 2 U.S. Code § 658 – Definitions, <https://www.law.cornell.edu/uscode/text/2/658#9> , Section effective Jan. 1, 1996, date accessed 9/10/21)

(9) Private sector

The term ``private sector'' means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local, or tribal governments.

#### AND, policy analysts

Adler 99 – Senior Director of Environmental Policy, Competitive Enterprise Institute, Washington, D.C. (Jonathan, “WETLANDS, WATERFOWL, AND THE MENACE OF MR. WILSON: COMMERCECLAUSE JURISPRUDENCE AND THE LIMITS OF FEDERAL WETLAND REGULATION,” 29 Envtl. L. 1)

In discussions of environmental policy, it is traditional to equate environmental protection with environmental regulation. This connection is unfounded, however. Direct government regulation is only one means of addressing environmental problems. Other approaches include the use of fiscal instruments (for example, subsidies and taxes), direct government provision or purchase of public goods, and the creation or recognition of property rights in environmental resources. 404Link to the text of the note Fiscal instruments are typically used to modify behavior in the marketplace by changing the incentives faced by individuals and corporations. For example, providing a financial incentive to maintain habitat for endangered species will induce more landowners to protect species habitat than if the government had not provided an added incentive. Similarly, taxing certain activities, such as the emission or particular substances, will reduce those activities on the margin. 405Link to the text of the note In circumstances in which federal policymakers believe that the private sector will underprovide a public good, the federal government can provide the good directly. 406Link to the text of the note Federal agencies can, and do, purchase ecologically sensitive lands from private landowners and groups to ensure [55] their protection. 407Link to the text of the note In those cases where landowners are unwilling to sell, the Fifth Amendment to the Constitution allows the federal government to take land for public use so long as compensation is provided. 408Link to the text of the note Thus, the federal government can use the spending power to advance environmental goals where its regulatory powers are limited. Governments need not take direct action to facilitate conservation efforts. The creation of property interests empowers owners to act as stewards of environmental resources and facilitates conservation efforts in the private sector.

\*\*\*start 409\*\*\*

It should be noted that here the phrase "private sector" is used to encompass all nongovernmental institutions and undertakings, and not just for-profit corporations and profit- seeking individuals.

\*\*\*end 409\*\*\*

Thus, the recognition of conservation easements empowers conservation groups to purchase development rights from a given parcel of land and protect the present ecological values. 410Link to the text of the note Similarly, when states recognize property interests in instream water flows, a local environmental group can purchase instream flows to improve salmon habitat. 411Link to the text of the note Internationally, allowing the commercial utilization and quasi- ownership of elephants in Zimbabwe has led to larger herds and the devotion of greater acreage for wildlife habitat. 412Link to the text of the note In New Zealand the creation of fishing rights known as "individual transferable quotas" (ITQs) reduced overfishing and encouraged fishermen to support sustainable harvesting. 413Link to the text of the note The expansion of property rights in these areas further enhances the already substantial private conservation efforts going on today. 414Link to the text of the note

#### AND, international law

Avis 16 (Dr William Robert Avis-International Development Department Research Fellow @ University of Birmingham. “Private sector engagement in fragile and conflict-affected settings”, GSDRC Applied Knowledge Services Helpdesk Research Report , 13.01.2016 <http://unprmeb4p.org/wp-content/uploads/2018/10/Private-sector-engagement-in-fragile-and-conflict-affected-settings.pdf> , date accessed 7/19/21).

NOTE: \*DFAT is short for Department of Foreign Affairs and Trade, the department of the Australian federal government responsible for foreign policy and relations, international aid, consular services and trade and investment.

Whilst PSD is considered to have an important role to play in the field of economic development, there is much debate over what constitutes ‘best practice’ in PSD and what the term private sector encompasses. The private sector1 [[BEGIN FOOTNOTE 1]] DFAT use the term ‘private sector’ to refer to all commercial enterprises (businesses) and includes individual farmers and street traders, small and medium enterprises, large locally-owned firms and multinational corporations.[[END FOOTNOTE 1]] can include local formal, informal and illegal actors, diaspora communities and regional and multinational players (Peschka, 2010). This review adopts DFATs definition of private sector engagement which is characterised as a tool to achieve better development outcomes in private sector development and human development.

#### This is the most common usage

Your Dictionary No Date(“Private-sector” , <https://www.yourdictionary.com/private-sector> , date accessed 9/10/21)

Private-sector meaning

The part of the economy that is controlled by individuals or private organizations and is not funded by the government.

noun

(business) All organizations in an economy or jurisdiction that are not controlled by government, including privately owned businesses and not-for-profit organizations.

*After spending two decades at various government agencies, he returned to the private sector and took a job as a business consultant.*

Of or pertaining to the private sector.

Adjective

## CP — Adv

## DA — Prolif

## Adv — Competitiveness

# 1NR

## DA — Climate

#### Climate change linearly magnifies all structural violence and causes extinction

**Ahmad 20** – (Nadia Ahmad, Associate Professor of Law, Barry University Dwayne O. Andreas School of Law; B.A., University of California, Berkeley; J.D., University of Florida Fredric G. Levin College of Law; LL.M. in Natural Resources and Environmental Law and Policy, University of Denver Sturm College of Law; “Climate Cages: Connecting Migration, the Carceral State, Extinction Rebellion, and the Coronavirus through Cicero and 21 Savage”; SSRN; D.A. September 21st 2020, [Published 2020]; <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3657096>) //LFS—JCM [NOTE — Evidence cut from the ‘Abstract’ section]

This article addresses the unmapped linkage of mass incarceration and encagement as responses to climate change and the coronavirus. I coin the phrase, climate cages, to highlight how public policy responses to atmospheric dynamics limit mobility, worsen prison conditions, and increase carcerality. In this article, I use the song lyrics of 21 Savage’s “A Lot” and his subsequent arrest as an example to highlight the intersectionality of race, climate change, migration, protest movements, and COVID-19. Further, I reexamine Cicero’s adage of “summum ius summa iniuria” to show problematic configurations of the carceral state and the edifice of the law generally.

A warming planet has decreased available land, freshwater, and clean air to live and earn a livelihood. The world’s megacities from New Delhi to Houston are choking from air pollution of their vehicles, power plants, factories, and industrial facilities. Not even rural areas are immune from the impacts of chemicals from agricultural activities. These natural resource stresses have served as threat multipliers for conflict, compounding centuries of economic and racial inequality. Economic and environmental chokepoints are leading to migration, movement, and higher rates of mass incarceration. Currently, the level of income inequality is at its peak, and record high and low temperatures are becoming the norm. The governmental response from the halls of Congress to the desk of the Oval Office has not been to find solutions to the climate crisis, but to restrict mobility and incarcerate black and brown people to maximize available land and space for those who are either more affluent and/or of the more preferred race, religion, and national origin. While historically human hierarchies and caste systems have existed for thousands of years, the impacts of intensified global warming have correlated with the increased prison populations and worsening prison conditions in the age of the Anthropocene.

#### Courts provide a shield against antitrust prohibition now

Hanley 21 Daniel A. Hanley is a policy analyst at the Open Markets Institute. April 6, 2021, How Antitrust Lost Its Bite And how to give it teeth again., https://slate.com/technology/2021/04/antitrust-hearings-congress-legislation-bright-line-rules.html

Comprehensive empirical analysis has revealed that the rule of reason has been a rubber stamp for even the most egregious antitrust conduct. A 2009 analysis revealed that 97 percent of cases analyzed under the rule of reason result in victories for defendants. That means corporations are effectively shielded from most antitrust violations.

#### Per se uniqueness—courts do not expand per se now

Scott 16 Inara Scott, assistant professor specializing in business law at Oregon State University, Antitrust and Socially Responsible Collaboration: A Chilling Combination?, <https://onlinelibrary.wiley.com/doi/full/10.1111/ablj.12073>

Despite the seeming clarity of the per se rule, the Supreme Court has the ability to interpret and classify conduct in a manner to avoid per se determination, or indeed to change its mind regarding whether per se determination should be applied to a particular arrangement.107 In State Oil Company v. Khan, 108 despite settled precedent holding that price fixing is a per se violation, the Court refused to apply the per se rule to a maximum price fixing arrangement between an oil company and gas station operators, where it believed the agreement had the potential to result in lower prices for consumers.109 Today, the Court has stated a “reluctance” to apply the per se rule unless the impact of challenged activities is clear.110 A new “quick look” category of analysis has been described, whereby a court will conduct an abbreviated examination of the facts of a case before determining whether to categorize it as per se or not.111 However, courts have been clear that social welfare concerns cannot, in and of themselves, save a challenged practice, whether it is applying a per se analysis or the rule of reason.112

#### Its unique—Courts are moving away from use of per se categories now

Scott 16 Inara Scott, assistant professor specializing in business law at Oregon State University, Antitrust and Socially Responsible Collaboration: A Chilling Combination?, <https://onlinelibrary.wiley.com/doi/full/10.1111/ablj.12073>

After reviewing recent rule of reason jurisprudence, antitrust scholars have concluded that (1) there has been a trend away from per se analyses toward a rule of reason approach, and (2) “the Court can manipulate standards to remove the per se label.”129 This increased flexibility, however, does not come without a price. Professor Stucke argues the vagueness of the rule of reason approach leads to confusion in lower courts and changing notions of the policy objectives sought to be achieved by an application of antitrust policies.130 Judge Easterbrook of the Seventh Circuit Court of Appeals suggests that the reliance on a rule of reason approach puts courts in the position of judging the economic outcome of business practices, a role they are ill equipped to handle.131 For businesses, the increased reliance on the rule of reason could allow for the pursuit of agreements that would otherwise be prohibited under a per se approach. But for organizations seeking to avoid potential antitrust liability, the increased flexibility is unlikely to encourage more risky behavior.132

#### Link—Perception of stricter antitrust enforcement by courts will chill corporate climate activism

Balmer 20 Paul Balmer is an associate in Tonkon Torp’s Litigation Department. He graduated from the University of California, Berkeley, School of Law in 2020, where he was the Senior Articles Editor of Ecology Law Quarterly and Treasurer of the Election Law Society, ARTICLE: COLLUDING TO SAVE THE WORLD: HOW ANTITRUST LAWS DISCOURAGE CORPORATIONS FROM TAKING ACTION ON CLIMATE CHANGE, 47 Ecology L. Currents 219 Export Citation 2020 Reporter 47 Ecology L. Currents 219 \*

III. ANTITRUST SCRUTINY FRUSTRATES CORPORATE ACTION ON CLIMATE CHANGE, FROM DETERGENT TO CARS The chilling effect of looming antitrust scrutiny is especially concerning when it comes to climate change. Climate change is a unique problem, not only in that it requires uniform, ideally coordinated action, but the positive effects of addressing climate change are uniquely abstract, intangible, and distant. While the costs of climate change to business are not easily predicted, 52the benefits of slowing or stopping climate change are most easily understood as mitigating expected losses, not generating positive economic gains. For example, limiting carbon emissions does not directly result in cheaper goods, in general. 53This lack of clear consumer benefits leads to several distinct problems for corporate climate action. A 2011 European Commission case demonstrates the challenges facing firms that try to raise sustainability standards while still making a profit. 54Competitors Procter & Gamble (P&G) and Unilever were fined over €300 million for agreeing on price and market share for new, more environmentally sustainable laundry detergent products. 55The firms had launched a voluntary effort to reduce environmental impacts by reducing packaging material, size, and washing machine energy use by creating a concentrated detergent that worked well in cold water. 56Worried about a "first mover disadvantage" in a market where consumers did not necessarily understand the benefits of concentrated detergent, the companies coordinated on the new product launches and agreed on ideal pricing. 57Though reduced energy use and reduced packaging waste are facially beneficial for society, P&G and Unilever ran afoul of competition laws by trying to mitigate--not exploit for profit--the effects of the new products on the market. 58This example questions the exhaustive focus on consumer price. The P&G and Unilever judgment is an increasingly relevant example as [\*227] companies make investments and commitments--often with competitors--that raise their own costs even as they help the world address climate change. Will those companies be scrutinized for passing on some of those costs to consumers? Should they be? In 2019, four automakers--Ford, Volkswagen North America, Honda, and BMW--announced an agreement with California to continue to meet stringent fuel efficiency standards in the future, even as the Trump Administration mulled plans to roll back nationwide standards. 59California, which can set its own auto emissions standards, has eagerly used its position as a large consumer market with progressive values to advance climate change goals. 60According to the July 2019 deal, the automakers will produce fleets with an average fuel efficiency of fifty miles per gallon by 2026--nearly the target agreed to during the Obama Administration. 61The Trump Administration had previously announced plans to freeze fuel efficiency requirements at a thirty-seven miles per gallon fleet average in 2020, 62setting up a direct conflict. In September 2019, DOJ trumpeted an antitrust investigation into those four automakers, alleging that the agreement among rivals could violate competition law. 63Letters from the DOJ asked the four companies to meet with the Antitrust Division regarding the "formation" of the deal. 64Delrahim doubled down on the probe in congressional testimony 65and in a USA Today op-ed, insisted that the "moral aspirations" of an agreement among competitors do not matter if there are anticompetitive effects. 66Delrahim warned of consumer harm, via higher prices, that would result from the deal. 67And higher prices certainly seem like the necessary result of meeting the stricter efficiency standards, regardless of cost savings to the planet or even to the consumer over the long term. 68President [\*228] Trump also focused on consumer price, asserting that the new standards would raise the cost of a car by more than $ 3,000. 69 The DOJ probe was widely denounced as political retribution, with no legitimate antitrust case to be made. Nevertheless, the mere threat of antitrust scrutiny can have dangerous effects. Antitrust scholar Herbert Hovenkamp noted that the automaker deal could still constitute an "agreement" under the Sherman Act, even though DOJ would face "significant hurdles" in establishing an antitrust violation. 70If the automakers "had discussed the [fuel efficiency] standards with one another and then voted to implement them," that would satisfy the first element of an antitrust offense. 71There are strong arguments that such an agreement among competitors should be legal either as form of political advocacy 72or by virtue of the state action doctrine, which permits anticompetitive conduct that has been authorized and is supervised by a state. 73Hovenkamp argued that the automaker agreement would likely be legal because compliance would increase the costs for the firms to manufacture cars, but not increase consumer prices. 74But if the automakers were to instead pass that increased cost on to consumers, that could result in a finding of liability. It is all too easy to imagine that the four automakers would choose not to internalize the costs of compliance with the fuel efficiency standards, but instead would choose to raise car prices to commensurate with the increased manufacturing costs. 75And any agreement on car price--even to keep prices the same, as P&G and Unilever did--could easily be considered collusive price-fixing and per se illegal. The Supreme Court has been clear that the "reasonableness" of set prices cannot cure their illegality. 76Further, the agreement could have the result of deterring a "low-cost, high-emissions entrant [\*229] from entering the market," 77which could be considered a per se illegal exclusionary group boycott, even though the agreeing automakers lack market power to enforce a boycott. 78And even if analyzed under rule of reason, there is no guarantee that the agreement could be successfully defended on the grounds that reducing emissions are good for society. In fact, as explained above, such abstract and distant benefits are exactly the type of justifications courts reject as being too divorced from the goals of antitrust policy. Even though DOJ quietly dropped the investigation in February 2020, 79the market results of the probe itself were almost immediate and significant. In October 2019, just weeks after the antitrust investigation began, other major automakers joined the Trump Administration as parties in litigation over California's right to set its own vehicle emissions standards, 80even though automakers had once stood united behind the Obama Administration's higher fuel efficiency standards. 81DOJ's abandoned investigation had sent a clear message to automakers: do not collude on car standards that will raise prices for consumers, or you will be investigated. With the threat of antitrust enforcement off the table for now, the Trump Administration finalized its dramatically lower fuel efficiency rule in March 2020. 82 Despite the naked political motive and the arguably weak legal argument for antitrust enforcement against the four automakers in this case, the specter of antitrust liability will not be limited to the auto industry. At a time when companies are making serious commitments to address climate change, even the most progressive companies are likely to think twice about making commitments with competitors on any industry standard that could lead to higher consumer prices. Companies could be discouraged from moving forward on climate, at a time when bold action is needed most.

#### Fear of antitrust enforcement chills cooperation

ICC 20 International Chamber of Commerce, COMPETITION POLICY AND ENVIRONMENTAL SUSTAINABILITY1 26 November, 2020, <https://iccwbo.org/content/uploads/sites/3/2020/12/2020-comppolicyandenvironmsustainnability.pdf>

Fear of competition law certainly seems to be a factor which deters or chills collaboration in this area. For example, the Fairtrade Foundation published a set of interviews showing that business executives see competition law (and potential enforcement) as a barrier to sustainable collaborative efforts.33 As another example, several firms find it helpful to state that any sustainable activities involving cooperation occur only in a “pre-competitive” phase.34

#### A growing Fossil Fuel divestment movement is happening now but fear of antitrust enforcement could derail it

Scott 20 Inara Scott is the Gomo Family Professor, Oregon State University College of Business. “The Trouble with Boycotts: Can Fossil Fuel Divest Campaigns Be Prohibited?”, 57 Am. Bus. L.J. 537 Fall 2020, Lwxis/Nexis

In 2018, the fossil fuel divestment movement marked a number of impressive milestones. 1The European Investment Bank, the lending arm of the European Union and the largest multilateral financial institution in the world, 2committed to phasing out fossil fuel lending by 2021. 3The climate action organization 350.org reported in September 2019 that $ 11 trillion in funds had been committed to divestment from fossil fuels. 4Norway's sovereign wealth fund committed to withdrawing support for fossil fuel exploration, 5and the University of California system announced that both its endowment and its pension funds would eliminate fossil fuel investments. 6 The term "divestment" is generally used to refer to disassociation of pension funds from enterprises for noneconomic reasons, particularly [\*539] concerns that the enterprises cause social injury. 7While fossil fuel divestment efforts originally focused on this narrow goal, the new "divest movement," as I refer to it here, more broadly includes a variety of activities intended to persuade investment funds, insurers, corporations, and individuals to stop doing business with fossil fuel companies. 8A variety of divestment campaigns, targeting everyone from individuals to philanthropic charities to large commercial organizations actively seek to draw investment away from fossil fuels, using a variety of means. 9For example, climate activists recently began focusing efforts on convincing banks and lenders not to work with fossil fuel companies. 10As long-time climate activist Bill McKibben has noted, the power of banks and lending institutions are such that they may actually have the power both to impact the entrenched fossil fuel industry and to work at the speed [\*540] necessary to stop the worst effects of an already changing climate. 11A divestment campaign aimed at the insurance industry framed the issue in the following manner: "As the ultimate manager of risk, the insurance industry quietly shapes modern society, deciding what type of projects can be built and operated. Insure Our Future is holding insurers accountable for their continued support of fossil fuels." 12 A number of divest campaigns are more broadly aimed at undermining the long-term commercial viability of the fossil fuel industry. 13As the Fossil Free campaign stated, "Fossil Free entered a new phase of the campaign from early 2018, expanding beyond divestment to embrace new demands, tactics and tools, and the goal of stopping all new fossil fuel projects by 2020." 14Similarly, "[t]he goal of Unfriend Coal is to make coal uninsurable. Without insurance, few new coal plants can be built and existing projects have to be phased out." 15 As one might have expected, the fossil fuel industry has not taken this kind of global financial and political pressure lying down. 16In the United States, fossil fuel companies and their political supporters have [\*541] lobbied for government protection of their industries and relaxation of greenhouse gas regulation, 17and they have been successful in marshalling government forces on their behalf. 18For example, though its plan was ultimately rejected by the Federal Energy Regulatory Commission (FERC), the Trump administration proposed a plan to protect the financial returns of fossil fuel-based generating plants in cases where stockpiling coal and maintaining fossil fuel electric generation resources was deemed necessary to ensure the reliability of the electric grid. 19In Indiana, recently introduced legislation apparently intended to protect coal-powered plants would prevent utilities from retiring electric [\*542] generating facilities unless mandated to do so by federal law. 20In a move that appears directly related to the divest movement, a recent presidential order directed the Department of Labor (DOL) to review fossil fuel investment by government pension plans, and pushed back against efforts to consider environmental, social, and governance (ESG) issues in federal pension plan investments. 21 While it is impossible to predict what steps the fossil fuel industry and sympathetic politicians will take next, it appears unlikely that they will surrender in the face of concerted efforts to limit their access to capital and customers. It also seems likely that at some point, the fossil fuel industry will seek to limit the damage from public campaigns against their products--after all, the purpose of these movements is to shift public opinion toward taking action against fossil fuels. Protective government regulations can only prop up an industry if there is public support for that industry. This may well be why the head of the Organization of the Petroleum Eexporting Countries (OPEC) recently described attacks by climate activists--obliquely referring, perhaps, to teenage climate [\*543] activist and icon Greta Thunberg--as the "greatest threat" to the oil industry. 22 A problem for climate activists, however, is that divest campaigns may be characterized as boycotts, and commercial boycotts are particularly vulnerable--with a few notable exceptions--to regulation or injunction under antitrust law and a variety of tort actions. The goal of this article is to explore this vulnerability in the climate action movement and determine if and how divestment and related campaigns could be regulated or even prohibited at the state or federal level.

## Adv — LIO

#### They’ll read down the plan---statutory codification fails.

Crane 21, Frederick Paul Furth, Sr. Professor of Law, University of Michigan. (Daniel A., “Antitrust Antitextualism”, 96 Notre Dame L. Rev. 1205, pg. 1207, Accessible at: https://scholarship.law.nd.edu/ndlr/vol96/iss3/7/)

But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in one consistent direction—toward reading down the antitrust statutes in favor of big business. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and continues to this day. In brief: within their first decade of antitrust jurisprudence, the courts read an atextual rule of reason into section 1 of the Sherman Act to transform an absolute prohibition on agreements restraining trade into a flexible standard often invoked to bless large business combinations; after Congress passed two reform statutes in 1914, the courts incrementally read much of the textual distinctiveness out of the statutes to lessen their anticorporate bite; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that not one of the principal substantive antitrust statutes has been consistently interpreted by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has bent always in favor of capital.

Unlike in many debates over statutory interpretation, the issue in antitrust is not a contest between strict textualism and purposivism, including resort to legislative history.6 This Article uses “antitextualism” as a shorthand for the phenomenon of ignoring any bona fide construction of what a statute means, whether in the plain meaning of its words, linguistic or substantive interpretive canons, legislative history, or other ordinary markers of legislative meaning. Uninterested in these methods, the courts have treated the antitrust laws as a virtually unbounded delegation of common-law powers when, in important ways, the statutes quite clearly say something other than that.