# 1nc

## 1

***Next off – Section 5:***

Text:

#### The FTC should issue clear enforcement guidance that the presently-existent phrase “unfair methods of competition in or affecting commerce” in Section 5 of the FTCA includes actions that would disincentivize mergers, increase local competition and reduce discriminatory practices.

The FTC should release a policy statement and data sets that reflects this and enforce accordingly.

**The cplan solves. It also competes – the FTC interprets current authority, instead of creating new prohibitions.**

**Kahn ‘21**

et al; This is a recent joint statement released by the five Federal Trade Commissioners. The Chair of the Federal Trade Commission is Lina Khan - an Associate Professor of Law at Columbia Law School. Also on the Commission is Rohit Chopra – who was previously The Assistant Director of the Consumer Financial Protection Bureau, as well as Rebecca Slaughter - an American attorney who was previously the acting chair of the Federal Trade Commission. Two others also sit on the Commission. “STATEMENT OF THE COMMISSION On the Withdrawal of the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act” - July 9, 2021 - #E&F – modified for language that may offend - https://www.ftc.gov/system/files/documents/public\_statements/1591706/p210100commnstmtwithdrawalsec5enforcement.pdf

**Section 5** of the **F**ederal **T**rade **C**ommission **A**ct **prohibits** “unfair methods of competition in or affecting commerce.”1 In 2015, the Federal Trade Commission under Chairwoman Edith Ramirez published the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act (hereinafter “2015 Statement”), which established principles to guide the agency’s exercise of its “standalone” Section 5 authority.2 Although presented as a way to reaffirm the Commission’s preexisting approach to Section 5 and preserve doctrinal flexibility,3 the 2015 Statement contravenes the text, structure, and history of Section 5 and largely writes the FTC’s standalone authority out of existence. In our ~~view~~ (perspective), the 2015 Statement abrogates the Commission’s **congressionally mandated duty** to use its expertise to identify and combat unfair methods of competition even if they do not violate a separate antitrust statute. Accordingly, because the Commission intends to restore the agency to this critical mission, the agency withdraws the 2015 Statement.

I. Background

On August 13, 2015, the Federal Trade Commission issued the 2015 Statement, which announced that the Commission would apply Section 5 using “a framework similar to the rule of reason,” by only challenging actions that “cause, or [are] likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications[.]”4 The 2015 Statement advised that the Commission is “less likely” to raise a standalone Section 5 claim “if enforcement of the Sherman or Clayton Act is sufficient to address the competitive harm.”5

In a statement accompanying the issuance of these principles, the Commission explained that its enforcement of Section 5 would be “aligned with” the Sherman and Clayton Acts and thus subject to “the ‘rule of reason’ framework developed under the antitrust laws[.]”6 In a speech announcing the statement, Chairwoman Ramirez noted that she favored a “common-law approach” to Section 5 rather than “a prescriptive codification of precisely what conduct is prohibited.”7 She also acknowledged that the Commission’s policy statement was codifying an interpretation of Section 5 that is more restrictive than the Commission’s historic approach and more constraining than the prevailing case law.8 She added, “[W]e now exercise our standalone Section 5 authority in a far narrower class of cases than we did throughout most of the twentieth century.”9

With the exception of certain administrative complaints involving invitations to collude, the agency has pled a standalone Section 5 violation just once in the more than five years since it published the statement. 10

II. The Text, Structure, and History of Section 5 Reflect a Clear Legislative Mandate Broader than the Sherman and Clayton Acts

By tethering Section 5 to the Sherman and Clayton Acts, the 2015 Statement negates the Commission’s core legislative mandate, as reflected in the statutory text, the structure of the law, and the legislative history, and undermines the Commission’s institutional strengths.

In 1914, Congress enacted the **F**ederal **T**rade **C**ommission **A**ct to reach beyond the Sherman Act and to provide an alternative institutional framework for **enforcing** the **antitrust** laws. 11 After the Supreme Court announced in Standard Oil that it would subject restraints of trade to an open-ended “standard of reason” under the Sherman Act, lawmakers were concerned that this approach to antitrust delayed resolution of cases, delivered inconsistent and unpredictable results, and yielded outsized and unchecked interpretive authority to the courts.12 For instance, Senator Newlands complained that Standard Oil left antitrust regulation “to the varying judgments of different courts upon the facts and the law”; he thus sought to create an “administrative tribunal … with powers of recommendation, with powers of condemnation, [and] with powers of correction.”13 Likewise, a 1913 Senate committee report lamented that the rule of reason had made it “impossible to predict” whether courts would condemn many “practices that seriously interfere with competition, and are plainly opposed to the public welfare,” and thus called for legislation “establishing a commission for the better administration of the law and to aid in its enforcement.”14 **These concerns spurred the passage of the FTC A**ct, which created an administrative body that could police unlawful business practices with **greater expertise** and **democratic accountability** than courts provided.15

**At the heart of the statute was Section 5,** which declares “unfair methods of competition” **unlawful**.16 By proscribing conduct using this new term, rather than codifying either the text or judicial interpretations of the Sherman Act, the plain language of the statute makes clear that Congress intended for Section 5 to reach beyond existing antitrust law. The structure of Section 5 also supports a reading that is not limited to an extension of the Sherman Act. Notably, the FTC Act’s remedial scheme differs significantly from the remedial structure of the other antitrust statutes. The Commission cannot pursue criminal penalties for violations of “unfair methods of competition,” and Section 5 provides **no private right of action**, shielding violators from **private lawsuits** and treble damages. In this way, the institutional design laid out in the FTC Act reflects a basic tradeoff: Section 5 grants the Commission extensive authority to shape doctrine and reach conduct not otherwise prohibited by the Sherman Act, but provides a more limited set of remedies.17

The legislative debate around the FTC Act makes clear that the text and structure of the statute were intentional. Lawmakers chose to **leave it to the Commission** to determine which practices fell into the category of “unfair methods of competition” rather than attempt to define through statute the **various unlawful practices**, given that “there were too many unfair practices to define, and after writing 20 of them into the law it would be quite possible to invent others.”18 Lawmakers were clear that Section 5 was designed to extend beyond the reach of the antitrust laws. 19 For example, Senator Cummins, one of the main sponsors of the FTC Act, stated that the purpose of Section 5 was “to make some things punishable, to prevent some things, that cannot be punished or prevented under the antitrust law.”20

The Supreme Court has repeatedly affirmed this view of the **agency’s Section 5 authority**, holding that **the statute**, **by its plain text**, does not limit unfair methods of competition to practices that violate other antitrust laws. 21 The Court, recognizing the Commission’s expertise in competition matters, has given “deference”22 and “great weight”23 to the Commission’s determination that a practice is unfair and should be condemned.

## 2

**FTC independence in the US key to *global norms* that support agency independence. Vital for *free trade* and *GLO*.**

* United States’ FTC practices are modeled *by several nations* – including South Korea – and *will continue to be modeled* by nations that are still amid transitions towards industrialization;
* Global attentiveness to the United States’ FTC practices *remains ongoing* and - “*to this day*” - are a *central obstacle* to aspired free trade norms;
* The root of the loss of the global public’s confidence in free trade stems from the success of zero-sum strategies. *The root of that* is an interpretation of the FTCA that permits politicized intervention;
* Ambiguity in the United States’ FTCA permit the Act to be exercised *EITHER with a great deal of agency discretion* – *OR* alternatively, *with the perceived influence of external political branches*;
* Current US FTC practices lean away agency independence – and that’s *a central obstacle* to international agencies countering the growth of protectionist mercantilist norms
* More broadly, this hampers *general support for internationalism/GLO*

**Nam ‘18**

Steven S. Nam - Distinguished Practitioner, Center for East Asian Studies, Stanford University. Steven is also a Commission member of the Model International Mobility Treaty Commission under Columbia University's Global Policy Initiative. He is a member of the Antitrust Section of the American Bar Association and earned his B.A. at Yale and his J.D. and M.A. degrees at Columbia – “OUR COUNTRY, RIGHT OR WRONG: THE FTC ACT’S INFLUENCE ON NATIONAL SILOS IN ANTITRUST ENFORCEMENT” – University of Pennsylvania Journal of Business Law, Vol. 20, No. 1, 2018 - #E&F – No text omitted – but the Table of Contents – which comes after the Abstract - was not included – modified for language that may offend - https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1555&context=jbl

ABSTRACT:

The Federal Trade Commission Act of 1914 (“**FTC A**ct”), **a model** for **many other countries** that set up their **own** competition agencies, combines the **control** afforded by presidential appointment and removal powers over FTC commissioners with an **exceedingly discretionary** mandate. This Article contends that the FTC Act’s outmoded openness to **strong presidential direction**, **where adapted abroad**, has helped detract from **antitrust regulator independence.** Even advanced players in the liberal international economic order **such as South Korea** have made use of the United States’ original blueprint for unitary **executive-stamped** **antitrust** enforcement without sharing a long historical evolution of counterbalancing regulatory norms, e.g. the judicial check that was Humphrey’s Executor v. United States, 295 U.S. 602 (1935).

Strong executive direction **in antitrust enforcement** is particularly suited to capitalist economies helmed by administrations with mercantilist policies, **given their belief that the state and big business must coop**erate in the face of zero-sum international competition. South Korean President Lee MyungBak’s term (2008-2013) serves as an apt recent case study, featuring dirigiste calibration of antitrust enforcement against a backdrop of global recession. This Article examines the parallels between the FTC Act and the South Korean Monopoly Regulation and Fair Trade Act (“MRFTA”) before scrutinizing the enabled silo-like enforcement patterns of the Korean Fair Trade Commission under the Lee administration. Increasingly widespread erosion of public confidence in free and competitive trade demands a better understanding of the forces **preventing global convergence** in antitrust enforcement, and of their **roots.**

We have created, in the Federal Trade Commission, a means of inquiry and of accommodation in the field of commerce which ought both to coordinate the enterprises of our traders and manufacturers and to remove the barriers of misunderstanding and of a too technical interpretation of the law. —President Woodrow Wilson, September 1916

[Our companies] are fighting with unfavorable conditions amid competition in the global economy. To do so, they must be allowed to escape various regulations. Let’s take just a half step forward to move beyond the pace of change in the global economy. —South Korean President Lee Myung-bak, March 2008

It is clear that, at the beginning of the 21st century, we cannot afford to operate, to enforce our competition laws, in national or regional silos. We must not remain isolated from what happens in other jurisdictions. Even if markets often remain regional or national in terms of competitive assessment, fostering global convergence in our legal and economic analysis is essential to ensuring effectiveness of our enforcement and creating a level playing field for businesses across our jurisdictions. —Joaquín Almunia, Vice-President of the European Commission for Competition Policy, April 2010

The [U.S.] Agencies do not discriminate in the enforcement of the antitrust laws on the basis of the nationality of the parties. Nor do the Agencies employ their statutory authority to further nonantitrust goals. —The U.S. Department of Justice and the Federal Trade Commission, April 1995

INTRODUCTION

The International Competition Network’s founding in October 2001, with the aim of “formulat[ing] proposals for procedural and substantive convergence” among its stated goals,5 sought to usher in a future with more cosmopolitan and coherent global antitrust enforcement. Although U.S. regulatory leadership maintained that “consistently sound antitrust enforcement policy cannot be defined and decreed for others by the U.S., the EU, or anyone else,” many countries (turned) ~~looked~~ to the U.S. **as a role model** while developing their **competition** regimes.6 It is ironic, **then,** that **to this day** a **central obstacle** to the aspired international “culture of competition” **can be found in none other than the influence of the U.S.’s own FTC A**ct.7

American **antitrust** priorities around the time of the legislation’s passage oscillated between tempering trusts and shepherding business to further national economic strength, all towards the domestic interest. They shaped a regulatory environment that **would reemerge abroad** in **many** later-developing countries.

The deepening global retreat from **internationalism** ***and*** free market principles in the present day, with the specter of **trade wars looming**, is exacerbated by nationalist competition regimes that **are derivative of a U.S. model** predating the modern world economy. Domestic critics of open markets often overlook the U.S.’s own past vis-à-vis protectionist governments today. Illiberal or nominally liberal, they walk the kind of dirigiste path once treaded by the American School through the early twentieth century.8

**Globally, independence of antitrust agencies will prove key – checks spiraling economic nationalisms that’ll crush liberal peace.**

**Nam ‘18**

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National antitrust silos are not a novel phenomenon. Former European Commissioner for Competition Joaquín Almunia warned of them years ago,152 and scholarship touching upon the furtherance of nationalist goals by various antitrust agencies dates back decades.153 However, a **creeping** loss of public confidence in open markets—**coupled with** the obstacles to coherent global antitrust enforcement that bear the FTC Act’s influence, **as illustrated in this Article**—risks amplifying the problem. As anti-free trade agendas continue to garner more mainstream popularity for formerly counter-establishment parties, a proliferation of **protectionist** silos could tempt even governments that, for the most part, had moved past them. Why, American officials may ask, should the U.S. continue championing the liberal international economic order when an illiberal China or an ostensibly liberal South Korea bends regulatory rules to disadvantage American companies, workers, and consumers? Skepticism towards a liberal democratic “end of history”154 in general, and failures of economic liberalism in particular, are threatening to motivate political circles accordingly. Even **perennial norms** and conventions of **the U.S. competition regime** which evolved to safeguard regulator independence at home are no longer above disruption; the ambiguous statutory articulations that **carried over abroad** to empower strong executives are likewise playing a paper tiger role domestically of late.155

Protectionist policies designed to compromise market competition—for all its documented excesses and inadequacies—would sap its creative vitality and the concurrent **liberal peace**156 **often taken for granted**. Economic liberalism ails not so much from the intrinsic failings of core tenets, but from their more egregious nation-state and corporate violators. Proposals for greater accountability and harmonization have ranged from presumption of an underlying coordination scheme in antitrust investigations of a culpable country’s companies,157 to an international competition regime binding on member states in at least some areas of antitrust.158 Each has associated costs, but their very debate harnesses polycentric dialogue lacking in nationalist regulatory agendas and calls for “our country, right or wrong” protectionist silos. It should be emphasized to policymakers and politicians collectively that lasting convergence in antitrust enforcement is unachievable without global coherence in regulator autonomy, and the FTC Act’s **formative influence** is not above scrutiny or reproach. **Still-elusive** realization of the liberal economic international order’s intended form will **require** an expanded constellation of **independent competition regulators** empowered to enforce antitrust laws consistently.

**Global free trade reversals will cause *multiple existential impacts*.**

* Arctic conflict
* Space conflict;
* Global nuclear prolif;
* Structural wars;
* Climate;
* Geo-engineering;

**Langan-Riekhof ‘21**

et al; Maria Langan-Riekhof is the Lead Author and is the new Director of the Strategic Futures Group at the National Intelligence Council, leading the Intelligence Community’s assessment of global dynamics and charged with producing the quadrennial Global Trends product for the incoming or returning administration. She has spent more than 27 years in the intelligence community as both a senior analyst and manager, serving at the CIA and on the NIC. She brings a background in Middle East studies and has spent more than half her career analyzing regional dynamics. Her leadership roles include: Chief of the CIA’s Red Cell, founder and director of the CIA’s Strategic Insight Department, and research director for the Middle East. She was one of the DNI’s Exceptional Analysts in 2008-09 and the Agency’s fellow at the Brookings Institution in 2016-17. She is a member of the Senior Analytic Service and the Senior Intelligence Service and hold degrees from the University of Chicago and the University of Denver - National Intelligence Council - Global Trends 2040 – Form the section: “Scenario Four – Separate Silos” - MARCH 2021 - #E&F - https://www.dni.gov/files/ODNI/documents/assessments/GlobalTrends\_2040.pdf

With the trade **and financial** connections that defined the prior era of globalization disrupted, economic and security blocs formed around the United States, China, the EU, Russia, and India. Smaller powers and other states joined these blocs for protection, to pool resources, and to maintain at least some economic efficiencies. Advances in AI, energy technologies, and additive manufacturing helped some states adapt and make the blocs economically viable, but prices for consumer goods rose dramatically. States unable to join a bloc were left behind and cut off.

Security links did not disappear completely. States threatened by powerful neighbors sought out security links with other powers for their own protection or accelerated their own programs to **develop nuclear weapons**, as the ultimate guarantor of their security. Small conflicts occurred at the edges of these new blocs, particularly over scarce resources or emerging opportunities, like **the Arctic** and **space**. Poorer countries became increasingly unstable, and with no interest by major powers or the United Nations in intervening to help restore order, **conflicts became endemic**, exacerbating other problems. Lacking coordinated, multilateral efforts to mitigate emissions and address **climate changes**, little was done to slow greenhouse gas emissions, and some states experimented with **geoengineering with disastrous consequences**.

## 3

#### Biden’s PC is key to swing 10 Reps to pass debt ceiling in the CR

Everett et al 9-16-21 (John Burgess Everett, co-congressional bureau chief for POLITICO, specializing in the Senate, BA journalism, University of Maryland College Park; and Laura Barrón-López, White House Correspondent for POLITICO, formerly covered Democrats for the Washington Examiner, Congress for HuffPost, and energy and environment policy for The Hill, BA political science, California State University, Fullerton; “Dems call in big gun as they face huge Hill tests,” POLITICO, 9-16-2021, https://www.politico.com/news/2021/09/16/biden-influence-capitol-democrats-511952)

The next few months will push President Joe Biden to wield every drop of his influence over Congress.

Democrats are plunging into messy internal debates over social programs from child care to drug pricing as they try to beat back GOP resistance on voting rights while steering the United States away from economic catastrophe. And in order to avert a government shutdown, avoid a debt default and fight ballot access restrictions passed in some GOP states, Democratic lawmakers are urging Biden to get more directly involved.

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

Biden appears to be answering the call. The president is getting increasingly involved in Congress’ chaotic fall session as he battles sagging approval ratings, heightened concerns around the pandemic and some internal criticism over his withdrawal from Afghanistan.

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

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

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

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

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

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

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

“People think they like the reconciliation package, but they really don't know what's in it,” said Lake, who added that her polling shows popularity for the measure, particularly among women and seniors.

The coming months will also challenge Biden’s relationship with Republicans, who are threatening to block a debt limit hike after many of them supported a suspension or increase three times under former President Donald Trump. Biden campaigned as a Democrat who could work with Republicans, and he succeeded this summer by rounding up 19 Senate GOP votes for a $550 billion infrastructure bill.

Yet he’s running into a brick wall in convincing Senate Minority Leader Mitch McConnell to provide at least 10 GOP votes to lift the nation's borrowing limit. Republicans say Biden’s dip in the polls isn’t driving their strategy on the debt ceiling. But it’s not helping either.

“I don’t think anything in the last month has increased the likelihood that he can now create an atmosphere of: Let’s work together,” said Sen. Roy Blunt (R-Mo.), who voted for the infrastructure bill and debt ceiling increases under Trump.

The White House is, so far, sticking by its plan to try and call McConnell’s bluff. Aides in the West Wing consider attaching a debt ceiling suspension or increase to a government funding measure the best way to pressure Republicans on the routine step required by law. Should that approach fail, they may be forced to separate the two fiscal measures to avert a shutdown.

On the debt limit, congressional Democrats are in lockstep with the administration's strategy. But they're looking for Biden to exhibit more of his arm-twisting and back-slapping skills on their social spending plan and their bid to shore up voting rights protections.

Biden “knows better than anyone the power of the United States [presidency] in persuading and sometimes cajoling the key members of Congress, when push comes to shove,” said Sen. Richard Blumenthal (D-Conn.).

#### Plan necessarily drains PC – trading off with unrelated agenda items.

Carstensen ‘21

Peter C. Carstensen - Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, M.A., Yale University; LL.B., Yale Law School; former attorney at the Antitrust Division of the United States Department of Justice, where one of his primary areas of work was on questions of relating competition policy and law to regulated industries. He is a Senior Fellow of the American Antitrust Institute – “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST” – Concurrences – #1 - Feb 15, 2021 - #E&F - https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#carstensen

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

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

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

#### Collapses dollar heg

White 9-13-21 (Martha C. White, NBC News contributor who writes about business, finance and the economy, graduate of Princeton University; **internally citing Mark Zandi, chief economist at Moody’s Analytics**; “America's creditworthiness — and your 401(k) — are on the line until lawmakers approve a new debt ceiling,” NBC News, 9-13-2021, https://www.nbcnews.com/business/business-news/america-s-creditworthiness-your-401-k-are-line-until-lawmakers-n1279079)

“Every time the debt ceiling comes up, it's an exercise in political jostling,” said Peter Essele, head of portfolio management for Commonwealth Financial Network.

Despite the saber rattling, Essele argued that politicians in both parties have too much to lose to play chicken with the nation’s credit rating.

“It's essentially a self-inflicted wound in the middle of a pandemic. During a period when we’re seeing slowing growth and above-average inflation, it would be political suicide for both parties,” he said. “There's certainly a situation where they could put us on the verge, but ultimately, it's in the best interests of politicians to have something worked out.”

Some market observers worry, though, that a miscalculation — or even a procedural roadblock if Congress takes the fight down to the wire — could trigger just that kind of a collapse. The U.S. debt was downgraded from AAA to AA+ by Standard & Poor's in 2011. Further black marks on the nation’s credit rating would have greater consequences.

“If you go down a couple more notches, that will get people's attention,” Martin said. “If the extraordinary measures are exhausted and something gets missed, I think that gets people's attention.”

Beyond the ratings agencies, the U.S. would lose — perhaps permanently — its credibility on the global financial stage, Zandi warned. “It would also further start to undermine the viability of the dollar as a reserve currency, as a foundation of the global financial system,” he said.

“Treasuries are the bedrock of the entire financial system. If there's any major disruption to the risk-free rate, the whole house of cards would basically collapse at that point,” Essele said. “The aftermath of that would basically be scorched earth in Washington.”

**Extinction**

Zoffer 20 --- Joshua Zoffer, writing on U.S. economic leadership has appeared in the Financial Times, Foreign Affairs, and The National Interest., Law Student @ Yale, “To End Forever War, Keep the Dollar Globally Dominant”, Feb 3rd 2020, https://newrepublic.com/article/156417/end-forever-war-keep-dollar-globally-dominant

Yet in their recent article in The New Republic, David Adler and Daniel Bessner argue the U.S. should abandon these advantages. In their view, the dollar’s role has encouraged American militarism and should be relinquished to curb such behavior. Dollar hegemony is not without cost, but to renounce it would be a profound mistake. Adler and Bessner’s view neglects the sizable economic benefits the dollar’s role confers on the U.S., as well as its possible use as an antidote to military adventurism. It ignores the enormous good that can be done with deficit spending, much of which has gone to the American military but could instead fund progressive programs. And it elides the inability of the U.S. and its global trading partners to shift away from dollar dominance without creating worldwide financial distress. Adler and Bessner are right that the U.S. has misused its privilege, but Washington should not abandon it; rather, American leaders should seek to transform it.

Generations of American policymakers have been right to protect the dollar’s key currency role for economic reasons. Most notably, dollar hegemony affords the U.S. the ability to run large and prolonged budget and balance-of-payments deficits. The dollar represents 62 percent of allocated foreign exchange reserves, is used to invoice and settle roughly half of world trade, and accounts for 42 percent of global payments. Because governments, banks, and businesses worldwide need lots of dollars, the world market always stands ready to absorb new U.S.-dollar-denominated debt without charging higher interest rates.

Adler and Bessner correctly point out that the rest of the world considers the dollar’s role as the world’s reserve currency to be an “exorbitant privilege,” a term coined in the 1960s by then French Finance Minister Valéry Giscard D’Estaing. The ability to spend beyond its means has enabled the U.S. to fund its impressive military might, whether one views that power as the fountainhead of Pax Americana or the source of illegitimate military adventurism.

But these economic benefits go beyond just deficits. The demand for dollars also pushes up the dollar’s value against other currencies, enhancing American purchasing power and offering consumers access to imports on the cheap. The dollar’s role also means American firms rarely need to do business in foreign currencies, reducing transaction costs and exchange-rate risks.

More broadly, America’s central economic role gives it outsize influence at crucial moments. At the height of the financial crisis that began in 2008, the Federal Reserve was able to inject vital liquidity into the global financial system by selectively offering dollar swap lines to trusted foreign central banks. Dollar hegemony enabled the U.S. to act swiftly, effectively, and on its own terms.

In addition, the dollar’s role offers a potent alternative to kinetic military action as a means of pursuing foreign policy objectives. The dollar’s broad use means access to dollar liquidity—which in turn requires access to the U.S. financial system—is essential for foreign governments and businesses. For foreign banks, especially, being cut off from dollar access is essentially a death sentence. That makes sanctions that do so a powerful tool in the international arena.

In 2005, for example, the U.S. used the dollar to strike a devastating blow against North Korea without firing a single shot or even formally enacting sanctions. Using authority provided by Section 311 of the Patriot Act, the Department of the Treasury crippled Banco Delta Asia, a bank accused of facilitating illegal activity by the North Korean government, by merely threatening to cut off its access to the American financial system. Deposit outflows began within days; within weeks the bank was placed under government administration to avoid a full collapse. Pyongyang was hit hard, as other banks ceased their business with it to avoid meeting the same fate.

Similarly, though the Trump administration has worked hard to undo it, the Joint Comprehensive Plan of Action with Iran to limit the development of nuclear weapons was made possible, in part, by painful dollar sanctions that brought Iran to the table. Far from being a proximate cause of military conflict, the dollar’s central global role has often been used to contain adversaries without military intervention.

Still, skeptics are right to point out that the dollar’s role has indirectly funded American interventionism and that dollar sanctions have been overused, provoking the ire of American allies. But these facts suggest we should use our dollar power to forge a more progressive U.S. order, not abandon the advantage altogether. America’s exorbitant privilege need not fund warships and missiles: The same low-interest borrowing could be used to fund a new universal health care system, expand access to higher education, or pursue any number of large-scale social policy objectives, including financing global public goods that no other country or consortium of countries is prepared to fund, such as climate change mitigation.

## 4

#### The United States Federal Government should implement Medicare for all.

#### That solves

Kemp no date – [Eagan Kemp - expert in health care policy, including single-payer systems, private health insurance, Medicare, Medicaid, the Children’s Health Insurance Program, the Veterans Health Administration, the U.S. Food and Drug Administration, social determinants of health, mental health and drug shortages, “Why Medicare for All, Not a Public Option, Is the Best Solution”, https://www.citizen.org/article/why-medicare-for-all-not-a-public-option-is-the-best-solution/]

Americans know that our health care system is broken, but they are often misled by competing claims about which reforms would improve their health care without increasing their costs or exploding the country’s health care spending. The reality is that Medicare for All is the only solution that guarantees care for everyone in the U.S., brings down costs for working families and generates savings for the country as whole. A public option would allow companies to continue profiting off the sick. Too many lesser reforms, including public options or buy-ins, would mean that millions would remain uninsured or underinsured and subject to unnecessary out-of-pocket costs, including copays and deductibles. Public option proposals, including Medicare for America, would leave more than 100 million Americans at the whim of private for-profit insurance corporations, meaning they would continue to face rising out-of-pocket costs and premiums, as well as narrowing networks and the constant fear of disruption when their employer changes plans or they lose or change jobs. Small businesses would also continue to struggle with whether they could afford to provide insurance to their employees. Public option or buy-in plans would further entrench the power of for-profit insurers. Insurance works by including sick and healthy people in the same pool to spread the costs over everyone. If the for-profit insurers can cherry-pick healthier Americans through seemingly more favorable plans (while they are healthy), then the public option could become overly burdened and unsustainable. In terms of political feasibility, there is the perception that less comprehensive reforms could have an easier chance of passing. However, the companies that profit off our health care system have shown they are just as opposed to the most basic public option proposal as they are to Medicare for All. Both the Partnership for America’s Health Care Future and Coalition Against Socialized Medicine—which strongly oppose Medicare for All as well as a public option or Medicare buy-in—have shown they will not compromise on behalf of their corporate backers. A public option would leave millions uninsured or underinsured. Only Medicare for All would mean no GoFundMe for health care costs, no more debt from medical care and no more medical bankruptcies. More than 40 million Americans are underinsured, meaning they are unable to afford to use their for-profit insurance. Because of this, far too many Americans must depend on GoFundMe or other forms of public begging to afford lifesaving care. Further, around 30 million Americans remain uninsured, meaning they likely have unmet health care needs and face the risk of medical debt or bankruptcy when they get sick. A public option would leave millions still uninsured or unable to afford the care they need. For-profit insurance company waste would continue under a public option, but not Medicare for All. Unlike a public option or a Medicare buy-in, Medicare for All would eliminate the need for the wasteful and unnecessary insurance companies that are focused on profiting from illness instead of keeping enrollees healthy. Hundreds of insurance companies and plans spend time and resources on denying coverage for needed care. Patients, providers and hospitals fight to get care – even crucial cancer treatments – covered. This wasteful system is a key reason administrative costs in the U.S. are more than double the average in other wealthy countries, with between a quarter and a third of our health care dollars spent on administrative functions. Under Medicare for All, doctors would provide the care a patient needs and then send the bill to Medicare. There would be no more patients or doctors haggling with insurers about what’s covered and what isn’t. Given that Medicare already has a track record for keeping administrative costs down – even as private insurance costs rise – Medicare for All could save more than $500 billion a year. Coverage under Medicare for All would be guaranteed and more comprehensive than under a public option. Most Americans agree that we need major changes to our health care system. But a competing public option and buy-in proposals would leave more than a 100 million Americans at the mercy of for-profit insurers. By building on the promises of the Affordable Care Act and incorporating the lessons learned from decades of public programs like Medicare and Medicaid, Medicare for All would ensure that everyone has access to the care they need, including primary care, reproductive health, mental health services, dental, vision and long-term care. Only Medicare for All can make that guarantee. Medicare for All would guarantee access to home and community-based care for everyone. Americans struggle to afford long-term care, especially for home-based services. Seniors who need long-term care are forced to prove they are already in poverty or must spend down their assets until they are in poverty to qualify for Medicaid, and many of states force Americans into nursing homes, limiting their choices and autonomy. Medicare for All would allow seniors and people with disabilities to get the care they need in the setting of their choice, without out-of-pocket costs. Coverage for long-term care varies under different public option proposals, but none would guarantee access without out-of-pocket costs. There would be no more price gouging by pharmaceutical companies under Medicare for All. Merely bringing U.S. prices in line with other rich countries – which Medicare would be able to do through price negotiations – would save $200 billion annually of the nearly $500 billion total spent on pharmaceuticals annually. Too many Americans go without the medicine they need because drug companies constantly raise prices, extend patents unnecessarily and focus on extracting as much profit as they can get away with. Recent studies have found that Americans pay much more for the same drugs than consumers in other countries. For example, the price of Lantus (a medicine for treating diabetes), $186 per month, was more than double the average price across comparable countries, $78 per month. Similarly, Advair (a medicine to treat asthma) was $155 per month, more than double the $64 per month average for the other wealthy countries. Approaches to control drug prices vary across different proposals, but none ensure that all medically necessary drugs would be available without a copay, as Medicare for All would. Under Medicare for All, the U.S. no longer would be the only major country that doesn’t guarantee health care. In 2016, the U.S. spent 17.8% of its gross domestic product (GDP) on health care, while the average spending level among all high-income countries was 11.5% of GDP. In fact, on a per capita basis, U.S. public spending on health care – Medicare, Medicaid, etc. – is higher than what nearly every other wealthy country pays for its entire universal health care system. Conclusion Nearly half of all Americans report that they avoided going to the doctor when sick or injured in the past year due to cost, meaning that many Americans put off care rather than risk medical debt and even bankruptcy just to get the care they need. Earlier treatment would reduce the need for more expensive care later. All this is possible without paying more for health care than we currently do. Even the Koch-funded Mercatus Institute estimates that Medicare for All would save $2 trillion over a decade. The Political Economy Research Institute (PERI) at the University of Massachusetts Amherst found the U.S. could reduce total health spending over a 10-year period by more than $5 trillion. Some additional taxes would be needed to pay for Medicare for All, but most Americans would pay less in such taxes than they currently do on health insurance premiums, copays, deductibles and out-of-pocket health care costs. While a public option may sound “reasonable,” it wouldn’t come close to matching Medicare for All. Whether it is savings for families, savings for the country or ensuring that everyone in the country has guaranteed access to medically necessary care, only Medicare for All would create the health care system we need.

## 5

#### Antitrust enforcement resources determine commitment to ongoing GAFA litigation – plan’s broadened agenda fatally overstretches

Kantrowitz 20 (Alex Kantrowitz, journalist covering Big Tech, Founder at Big Technology, independent newsletter and podcast, former Senior Technology Reporter at BuzzFeed, BA Industrial and Labor Relations, Cornell University, Special Student, Political Science and International Relations, Boğaziçi University, Istanbul; **internally citing former DOJ and FTC employees**; “‘It’s Ridiculous.’ Underfunded FTC and DOJ Can’t Keep Fighting the Tech Giants Like This,” Big Technology, 9-17-2020, - #E&F - https://bigtechnology.substack.com/p/its-ridiculous-underfunded-us-regulators)

“The agencies are severely resource-constrained,” Michael Kades, an-ex FTC trial lawyer who spent 11 years at the agency, told Big Technology.

The Federal Trade Commission and Department of Justice’s antitrust division have a combined annual budget below what Facebook makes in three days. The FTC runs on less than $350 million per year, the DOJ’s antitrust division on less than $200 million. Facebook made $18 billion last quarter alone.

The funding disparity between the tech giants and their regulators leads to an unbalanced fight, current and ex-staffers said: The agencies can’t investigate the tech giants to the extent they’d like. They might shy away from complex cases fearing a resource-draining battle. And when they investigate the tech giants, they often see former colleagues with intricate knowledge of their strategy and ability to act (or lack thereof) representing these companies. Without significant budget increases, the tech giants may well continue to act unrestrained with little fear of repercussions.

“DOJ is under-resourced, FTC it’s ridiculous,” one ex DOJ-staffer told Big Technology.

This doesn’t mean these agencies are entirely hamstrung; they can typically marshall the resources to bring a clear-cut case. “They want to win,” one ex-FTC official said. “If it's really egregious, and they find that in discovery, the attorneys are going to put a case together and go after it.” But when you can only take up a limited number of cases due to resource constraints, things inevitably slip through.

“When I was there, the privacy wing had maybe 50 people, and that's probably generous. That's lawyers, support staff, everyone,” Justin Brookman, the former policy director at the FTC’s office of technology research and investigation, told Big Technology. “If they were to bring a case, that would tie up half the resources of the group. And they had two litigations ongoing and that took up most of everyone's time.” The agency’s budget has barely increased since Brookman left in 2017, while the tech giants have added trillions of dollars to their market caps.

Inside the FTC and DOJ, employees are aware of the tech giants’ ability to fight, and the corporations’ budgets tend to live inside their heads. “Facebook will have the ability to raise every single issue, if they want to,” Kades said. “It doesn't have to be a winner, doesn't have to be close to winner. If they wanted to take this position in litigation, they can make every procedural maneuver difficult, they can not cooperate on discovery, they can fight on scheduling, they don't have to win even half of those, but it would just suck up resources.” The ability to do this, not even the action itself, can impact regulators’ thinking.

Agency staffers are typically mission-driven and knowingly work for salaries below private-sector rates, but the resource-rich tech giants are now poaching directly from agencies at a rate remarkable even for Washington’s revolving door between the private and public sector.

Kate Patchen, a DOJ antitrust chief, went directly to Facebook in 2018. Bryson Bachman, a high-ranking attorney in the DOJ's antitrust division, became a senior counsel at Amazon in 2018. Scott Fitzgerald, who worked in the DOJ’s antitrust division for nearly 13 years, became a corporate counsel working on regulation for Amazon this May. At the FTC, senior attorney Laura Berger moved to Microsoft in 2018 to become a privacy director for LinkedIn. And Nithan Sannappa, a well-regarded attorney in the agency’s division of privacy and identity protection left for Twitter in 2017 and is now a lawyer for Google.

The FTC declined to comment. The DOJ did not respond to an inquiry.

Hiring this type of talent gives the tech giants a major advantage in their effort to fend off regulation. Ashkan Soltani, a former chief technologist at the FTC, recalled agency lawyers hugging a former colleague who was working for the tech giants as an outside counsel as they prepared to face off in court. “They would have a really personal relationship with staff, which is kind of awkward,” he said. “And they'd know, in detail, all of the cases that the agency has currently and would be able to advise their clients whether to push hard on an issue or not.”

#### Healthcare sector enforcement is particularly likely to overstretch resources

Abbott 21 (Alden Abbott, Senior Research Fellow focusing on anti-trust issues at the Mercatus Center, former General Counsel at the Federal Trade Commission, former adjunct professor at George Mason’s Antonin Scalia Law School, JD Harvard Law School, MA economics, Georgetown University; **internally citing then-FTC Acting Chair Rebecca Kelly Slaughter**; “Lack of Resources and Lack of Authority Over Nonprofit Organizations Are the Biggest Hindrances to Antitrust Enforcement in Healthcare,” testimony before the US House Committee on the Judiciary, Subcommittee on Antitrust, Commercial, and Administrative Law, 4-29-2021, https://www.mercatus.org/publications/antitrust-and-competition/lack-resources-and-lack-authority-over-nonprofit)

Appropriate federal antitrust and consumer protection enforcement is good for the American economy. It promotes enhanced competition and consumer welfare. Regrettably, however, the effectiveness of federal enforcement in achieving these benefits is threatened by insufficient resources. As FTC Acting Chair Rebecca Kelly Slaughter explained in her April 20 testimony before the US Senate Committee on Commerce, Science, and Transportation, FTC employment has remained flat despite a growing workload, with merger filings doubling in recent years. Lauren Feiner reports on that testimony:

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

I can attest to the accuracy of Slaughter’s observation, based on my experience as FTC general counsel in the Trump Administration. During my tenure, the FTC did indeed have to contend with resource limitations that adversely affected merger enforcement decision-making.

The problem of resource constraints is particularly acute in the case of healthcare merger reviews, given the increasing consolidation of healthcare institutions. As one noted healthcare scholar stated in 2019, “The Affordable Care Act did not start the consolidation rapidly occurring with hospitals/health systems and medical groups, but it most definitely accelerated the movement to combine. In the last five years, the number and size of consolidations have been at an all-time high.”

Moreover, according to health policy analyst Brian Miller and coauthors, “experts have expressed concern regarding a new merger wave due to pandemic-induced financial distress driven by the temporary cessation of profitable elective care and decreased hospital use.” Antitrust enforcers will need additional resources to ensure that this trend does not yield mergers that undermine the competitive process and harm consumers.

#### Winning GAFA breakups is key to transatlantic tech alliance

Muscolo et al 21 (Gabriella Muscolo, Commissioner, Italian Competition Authority, Rome, Fellow of the Centre of European Law of King's College London, lecturer of Company Law at the School of Specialization for Legal Professionals at the University of Rome – La Sapienza; and Alessandro Massolo, Economic advisor of Commissioner Gabriella Muscolo, Italian Competition Authority, Rome, teaching assistant at Luiss University of Rome, PhD Law and Economics, Luiss University, MA European Law and Economic Analysis, College of Europe; “WILL THE BIDEN PRESIDENCY FORGE A DIGITAL TRANSATLANTIC ALLIANCE ON ANTITRUST?“ Concurrences, #1, February 2021, - #E&F - https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#muscolo)

1. After the Trump era and in the midst of the Covid-19 pandemic, the Biden presidency will inherit a country that—as the recent riot on the US Capitol building harshly demonstrated—is politically divided, weakening and, most importantly and consequently, in danger of losing its global leadership to China.

2. Indeed, the international community expects the Biden administration to re-establish the USA’s political and economic global leadership, especially in international fora such as the World Health Organization or the Paris Climate Agreement, as it did after the Second World War.

3. The pillars of Biden’s foreign policy can be summed up by three Ds: Domestic, Deterrence and Democracy. [246] As to the first, in order to revive the US economy and catch up on high technology, Biden’s policy cannot deviate much from that of Trump’s “America First.” Thus, massive investment is also expected in infrastructure, innovation, technology and education.

4. At the same time, US foreign policy will be guided by the principle of deterrence which characterized the Cold War period. This policy will have to be adapted to the new context and, especially, to the strategies adopted by the United States’ main counterparts such as China, Russia, North Korea and Iran, which no longer rely on missiles but on the information and communication technologies (ICTs).

5. Finally, the deterrence principle will catalyse the third pillar. Democracy will in fact be the main criterion for choosing US partners in order to consolidate the West against the expansion of the East.

6. Within this context, the digital economy represents an extremely important battlefield for the US to regain world leadership. The USA is well placed when it comes to digital competition—indeed, almost all the prominent Western online platforms are American.

7. However, over the last decade, Google, Amazon, Facebook, Apple and Microsoft (hereinafter “GAFAM”) have come under severe antitrust and regulatory scrutiny, starting in the European Union and ending in the United States. A “break-up” sentiment is spreading on both sides of the Atlantic and this will certainly represent one of the main issues on Biden’s agenda. Indeed, GAFAM’s huge market power is perceived as a threat to Western democracies and has been accused of hampering competition and innovation. Both the USA and the EU know that it is fundamental to shape global standards in order to face security and privacy concerns posed by the rise of Eastern tech giants. [247] Moreover, there is a growing feeling that the growth of big tech, combined with non-democratic governments, could lead to “techno-authoritarianism.” [248]

8. Therefore, will there be a transatlantic unity when clamping down on online giants in the name of protecting and strengthening Western “techno-democracies?” A digital transatlantic alliance shall not be taken for granted.

9. Indeed, over the last decade, the EU has markedly shaped its own way of building a European data market and of facilitating the emergence of European tech companies.

10. The White Paper on Artificial Intelligence and the Communication on data strategy have made it clear that the EU has put its own digital infrastructure and assets in place, catching up with international competition in order to become one of the leaders in the digital realm. This aim is the result of a long stream of actions which started in the second half of the 1990s with the need to tackle more specific and disparate needs, such as guaranteeing that consumer data is processed fairly, lawfully and with a specific purpose [249]; providing legal protection to databases, such as copyright protection and sui generis rights. [250]

11. Furthermore, at the beginning of the new century, the European Union issued the e-Commerce Directive [251] with the aim of removing obstacles to cross-border online services in the EU. Indeed, since 2010, there has been a significant change of pac e; due to the evolution of the digital paradigm, the European Union started to adopt a more strategic view. In that year, the European Commission launched its Digital Agenda, which, among other things, gave birth to the creation of a Digital Single Market that aimed primarily to promote e-commerce within the EU.

12. In 2015, the EU made it clear that the EU Digital Single Market was a priority and released a new strategy aiming at improving access to digital goods and services, building an environment where online networks and services could prosper, exploiting it as a driver for growth.

13. A well-functioning and dynamic data economy requires the flow of data in the internal market to be enabled and protected. This is why the European Union issued the 2016 General Data Protection Regulation and developed the “European data economy strategy.” Through the latter, the European Commission proposed a series of policies and legislative initiatives to unlock the potential for re-use of different types of data and create a common European data space. In particular, it adopted the measures put forward in the European Commission’s 2018 communication Towards a common European data space, in which it proposed: (i) a review of the Directive on the re-use of public sector information (PSI Directive); (ii) an update of the 2012 Recommendation on access to and preservation of scientific information; (iii) guidance on sharing private sector data in B2B and B2G contexts. A new EU Regulation on the free flow of non-personal data was also adopted.

14. Moreover, in 2019, in order to foster the growth of the EU Digital Single Market, the European Union published another regulation in order to promote fairness and transparency for business users of online intermediation services. [252]

15. The long European legislative excursus described above concluded with the latest new regulatory package published by the European Commission at the end of 2020. The package included the Data Governance Act (DGA), [253] the Digital Services Act (DSA) [254] and the Digital Markets Act (DMA). [255] Regarding the former, the European Commission aims to provide a legal framework in order to unlock unused data, increase data accessibility and share data. The DSA builds on the e-Commerce Directive and provides a set of rules for digital service providers in order to guarantee transparency and accountability and advocates for effective obligations to tackle illegal content online. As for the DMA, it is the result of a decade of EU antitrust public enforcement and EU studies on the digital economy.

16. Indeed, the European Commission has launched several cases against online giants. Suffice it now to mention the Google saga (i.e., Google Shopping, Android and AdSense cases) and the ongoing Amazon ones. These lawsuits were all abuses of dominant positions characterized mainly by self-preferencing conducts. Despite the high sanctions imposed, the Google cases were criticized because of the lengthy and complex investigations and ineffective remedies imposed. [256]

17. This contributed to fuelling scepticism that competition law alone would not be sufficient to restore competition within digital markets. [257] As a matter of fact, the European Commission issued the DMA in order to restore contestability and fair play in EU digital markets .

18. In a nutshell, the DMA identifies a list of “core platform services” which are characterized, among other things, by extreme economies of scale, strong network and lock-in effects, almost zero marginal costs and lack of multi-homing. For instance, online search engines and social networking services can be considered core platform services.

19. The DMA defines “gatekeepers” as large online platforms which provide these kinds of services and other specific criteria. Due to their strong economic and/or intermediation position, which is entrenched and durable, gatekeepers must comply with a list of “dos” and “don’ts.” For instance, gatekeepers shall “allow third parties to inter-operate with the gatekeeper’s own services in certain specific situations” and “their business users to access the data that they generate in their use of the gatekeeper’s platform.” If the gatekeepers do not comply with these obligations, they may incur fines (up to 10% of the worldwide turnover) or periodic fines (up to 5% of the average daily turnover). In case of systematic infringement, additional remedies may be imposed. If necessary and as a last resort, non-financial penalties can be imposed, which may include behavioural and structural measures, e.g., the divestiture of (parts of) a business.

20. Thus, following these new regulations, it seems that GAFAM—who are, indeed, the main providers of core platform services in the EU digital markets—will most likely be under the European spotlight in the coming years.

21. Besides antitrust and regulations, the EU has also demonstrated its strong desire for digital independency by taking the decisive step of setting its own agenda for transatlantic cooperation, even before Biden has been sworn in. [258] Indeed, the agenda proposes a tech alliance to shape technologies, their use and their regulatory environment. In particular, on data governance, the European Union advocates cooperation “to promote regulatory convergence and facilitate free data flow with trust on the basis of high standards and safeguards.” [259] Furthermore, as for online platforms, the European Union suggests strengthening cooperation between competent authorities for antitrust enforcement in digital markets, particularly, by setting common views in market distortions. Therefore, the European Union seems to be putting itself forward as a “worldwide factory of digital rules.” [260]

22. However, this may not necessarily mean a strengthening of the digital industry in Europe. For instance, Europe’s financial system appears to be biased towards bank lending rather than equity capital, which should be more suitable for risky tech start-ups. [261

23. Moreover, the “Brussels’ effect” should not be taken for granted either. Indeed, even if the European Union confirms its new regulatory proposal, especially the DMA, GAFAM still earn 51% of their revenues in America versus 25% in Europe. Therefore, they may most likely prefer to run their European branches under local rules instead of adopting EU rules globally. [262]

24. On the other side of the Atlantic, the strategy against online behemoths seems narrower and backwards-looking. [263] Indeed, as we have introduced, in the USA we are witnessing a “Sherman Act momentum” [264] strongly advocated by the new Brandeis movement. [265]

25. During the Trump administration, GAFAM were scrutinized by American antitrust authorities. Indeed, the Department of Justice (DoJ) filed a civil antitrust lawsuit in the US District Court for the District of Columbia to prevent Google from unlawfully maintaining monopolies through anticompetitive and exclusionary practices in the internet searches and search advertising markets and to remedy competitive harm. Furthermore, the Federal Trade Commission (FTC) has also filed a lawsuit against Facebook accusing it of engaging in a systematic strategy to eliminate threats to its monopoly. [266]

26. In both cases, reference is made to possible “break-ups.” In particular, in the DoJ’s case, the deputy attorney general made specific reference to historic antitrust cases such as Standard Oil (1911) and AT&T (1982), and in the FTC’s case, permanent injunctions are explicitly advanced which require, inter alia, the divestiture of Facebook’s assets, including Instagram and WhatsApp.

27. Most recently, the Texas attorney general filed a lawsuit, accusing Google of entering into an unlawful agreement that gave Facebook special privileges in exchange for promising not to support a competing ad system in the online advertising markets. [267]

#### Only way to avoid existential risks from hegemonic competition, democratic backsliding from BOTH techno-authoritarianism AND racial capitalism, failing multilateral coop, splinternet, and unregulated AI and quantum computing

Kop 21 (Mauritz Kop, Stanford Law School TTLF Fellow, Managing Partner at AIRecht, technology consultancy firm, studied intellectual property law, labor law, and contract law at Stanford Law School, Maastricht University and VU University Amsterdam, “Democratic Countries Should Form a Strategic Tech Alliance,” Stanford - Vienna Transatlantic Technology Law Forum, Transatlantic Antitrust and IPR Developments, Stanford University, Issue No.1, 2021, https://www-cdn.law.stanford.edu/wp-content/uploads/2021/04/Mauritz-Kop\_Democratic-Countries-Should-Form-a-Strategic-Tech-Alliance\_Stanford.pdf)

Just like we embed our own values in our hi-tech systems, the authoritarian regimes do the same. With authoritarianism I mean autocratic governments that have a culture with less political participation, less checks and balances and less civil liberties.15 Societies with social norms, democratic standards and ethical priorities that are incompatible with our own system.

Subsequently, the regimes export their undemocratic ideology to our society through the construction, dissemination and functionality of their technology. 16 Main contributors to this spread of culture and ideology through technology are the Belt & Road Initiative, Confucius Institutes and Chinese multinationals. 17 I am referring here to central 4IR technologies such as 5G infrastructures, AI, big data and quantum computing. 18 Excesses involve automated social profiling systems that monitor and hinder online dissidence. This process of exporting an incompatible political ideology through technology holds the danger of permanently weakening the health of our democracy, including the rights and freedoms we care so deeply about. We should prevent that from happening.

It is important to note that we do not intend to exclude the people who are living in authoritarian or even totalitarian regimes such as China, Russia, Iran and North Korea, nor the companies that are willing to abide to democratic technological standards. Instead, our strategy should be to avoid the ideas of the regimes that are incorporated in their technology, which is never neutral.

3. The Response

What needs to be done and who should do it?

Democratic Countries Should Form a Strategic Tech Alliance. That’s the first, foundational step. The US and its democratic allies should establish a strong, broadly scoped Strategic Tech Alliance with countries that share our digital DNA. An Alliance built on strategic autonomy, mutual economic interests and shared democratic & constitutional values. Main purpose of the Strategic Tech Alliance is to win the race / stay ahead of the competition.

Multilateral cooperation with any country that has matched concerns about the outcome of the race for AI & quantum dominance in view of democratic values, is paramount. A natural starting point for a geopolitical dialogue on disruptive technology that is also in the focus of President Biden, is Transatlantic cooperation.19 In addition to the US, EU, UK & Canada, countries such as India, Israel, Japan, South-Korea, Taiwan and Australia would be great candidates to join the cause. The Strategic Tech Alliance could also connect with existing structures such as NATO.

Moreover, it is crucial and urgent that democratic countries set worldwide technology standards together. This includes the development of globally accepted benchmarks and certification. Standards based on safety, security and interoperability, with respect for our common Humanist moral values.20 Values in which the rule of law and human dignity play a leading part.

Consequently, AI & quantum products and services made within the territory of the Strategic Tech Alliance or elsewhere in the world, should adhere to specific safety and security benchmarks, before they qualify for market authorization. These should follow the high technical, legal and ethical standards that reflect Responsible, Trustworthy AI & quantum technology core values. Ex ante certification comparable to the USA Compliance Marking or the European CE-marking should be mandatory before AI and quantum infused products and services are eligible to enter the Transatlantic markets.21

In this vision, the Strategic Tech Alliance should regulate transformative technology in a harmonized way across member countries. Using a risk-based approach that incentivises sustainable innovation. For example, the Strategic Tech Alliance would share core horizontal rules that govern the production and distribution of transformative tech systems. Think of universal, overarching guiding principles of Trustworthy and Responsible AI & quantum technology that are in line with the distinctive physical characteristics of quantum mechanics.22 Technology that gained the trust of the general public has significant marketing advantages.

To preserve pre-pandemic life as we knew it, we must bake our norms, standards, principles and values into the design of our advanced hi-tech-systems.23 From the first line of code. We can accomplish this by pursuing responsible, Trustworthy tech: by actually building socially & ethically aligned AI and quantum architectures and infrastructures. 24 We should incorporate our values en bloc and make our uniform design standards and (inter)operational requirements mandatory by law. A Strategic Tech Alliance could be the engine.

4. Political Feasibility

Let us discuss arguments against the formation of a democratic, value-based Strategic Tech Alliance that will set global technology standards. First, is establishing an Alliance that opposes the authoritarian tech agenda a realistic, politically feasible scenario or mere naive utopian thinking? Will the ambition of harmonized, global technology standards be limited by a cold shorter-term sum of costs and benefits? Will Realpolitik make it fade away in beauty?

Let’s start with the United States. After the Democrats recently recaptured Senate majority, progressive policies might regain momentum. But still, forming an Alliance and setting joint tech governance goals would require a bipartisan, bicameral effort. It would require large majorities to prevent legislative filibusters. Moreover, President Biden’s primary policy objectives are battling COVID-19 together with relief measures, Medicare for All, rebuilding the country’s infrastructure and fighting climate change. Regulating Big Tech and its impact on society might have less priority. However, winning the race for AI & quantum ascendancy should be high on any president’s agenda.25

Then the EU. In recent years, the European Commission has been very active and progressive in the field of legal-ethical frameworks for emerging tech, including the conception of responsible AI and data governance models. Since it has become clear that MAGA (Make America Great Again) will no longer be the leading ideology in America for the next 4 years, Ursula von der Leyen’s Team has not missed a single opportunity to strengthen transatlantic ties and inject political momentum into the relationship. With the main goal of implementing a mutual tech governance agenda, and jointly managing the geopolitics of exponential technology.

An exception to this rule was the recent EU-China deal, which raised quite a few eyebrows in Washington.26 This trade deal makes clear that economic interests of Western democratic countries in China, in this case prompted by commercial interests of the German car industry and the Silk Road Initiative, may stand in the way of the targeted team effort needed to achieve the envisaged Strategic Tech Alliance.27 As of 2020, the EU has surpassed the US as China's largest trading partner (numbers). The economic interests are gigantic and vary widely from one Member State to another.28 For example, the Netherlands, a country of 17 million people, has an annual trade deficit with China of no less than 70 billion euros. Therefore, one might think that the EU will be less likely to ‘turn away’ from China and choose sides.

It is to be hoped that Europe has not been lulled into blissful sleep by the Chinese Siren Song of smart partnerships, better working conditions, respect for intellectual property and fair trade & investment opportunities.29 The idea that the Chinese Party apparatus will allow more openness is a strategic misconception.30 The opposite of openness, reliability, honesty and a fair level playing field happens every day before our eyes in Hong Kong.31 And it doesn't get any better. Entirely in line with the autocratic paradigms of systematic repression, inequality, arbitrariness, state surveillance and control. 32 It is not expected that the political situation and civil liberties & human rights in China will change in the short or medium term. We are competing with a political ideology that is fundamentally at odds with our own system.33

In addition, internal divisions within the EU Member States may delay the rollout of progressive political initiatives.34 Facing the portrayed challenges, Europe should speak with one voice. Further, it is to be hoped that European ambitions towards strategic autonomy and data sovereignty will not stand in the way of transatlantic partnerships in the field of AI and quantum computing, quantum sensing and the quantum internet.

Second, is there sufficient political will, enough common ground between the various continents and countries to forge such an Alliance, comparable to the foundation of the United Nations in 1945 after World War II? There currently seem to be diverging opinions between the US and the EU on antitrust, digital tax and digital trade35, and consensus on IP policy, ethics, cybersecurity and the need for global value-based standards that respect democratic freedoms, human rights and the rule of law. On the other hand, it can be quite healthy to have mutual differences, and a varied pallet of perspectives within a partnership.

Moreover, who are we to pursue worldwide, culturally sensitive norms and standards? Could this be perceived by other countries as undesirable technologically expansionist behaviour? Will excessive standardization, certification and benchmarking have ramifications on rapid innovation, global competition and consumer welfare?

Brexit has made it painfully clear how difficult it is to agree on even the most trivial affairs. The question is whether the barriers to cooperation will be removed, just because a new wind is blowing from White House.36

In conclusion: political support to realize our ideal is a precondition for success. Preferably not in a weakened compromise form, but in a manner that reflects the power of the technology and the interests at stake. Instead of an isolationist MAGA approach, policy makers on both sides of the spectrum need to see the bigger picture and the urgency of the issues at hand. And reach out to nations that historically share our values and that demonstrably meet the democratic conditions set by the Alliance to qualify for membership.

With existential challenges ahead of us, normative choices must be made. We cannot get there with transactional politics and trade deals alone. We have to bring the best of both worlds together. A combination of normative choices - which are contextual, culturally sensitive and in constant flux - and Realpolitik is the key. Making the right choices today can result in the lasting partnerships we need to respond to the big questions we face. Partnerships based on mutual trust, strategic autonomy and shared sovereignty.37 Partnerships that acknowledge the need for regulatory cooperation and a values-based approach.

5. Are We Democratic Enough Ourselves?

Let's see if we can approach this matter from other, sociocritical perspectives.

First, are the Chinese the real threat, or is it us? Are we really democratic enough ourselves?38 Is making the distinction between the democratic and the authoritarian model the correct line of thinking, the proper approach for our proposed response to the identified challenges? Are technology and data capitalism coupled with the wrong kind of self-regulation causing filter bubbles, fake news and racial bias?39 In other words, could technology that originated from Western online platforms such as Facebook, Amazon, Google and Twitter be the real source of danger? Are the behemoth platforms, with market dominance and lobbying power greater than countries, menacing our democracy? In general, absent regulation, the tech platforms have corporate social responsibility and should adopt an Apollonian mindset towards responsible entrepreneurial ideology, world view and philosophy of life, instead of a Dionysian attitude. 40

One can argue whether the harmful societal influence of the social platforms was caused by naive idealism from Silicon Valley, or by unrealistic price and profit expectations of Wall Street.41 Or by a combination thereof. In this view, the algorithms42 have become less democratic not so much as a consequence of the wrong corporate ideology, but because of the increasing pressure that shareholders are putting on tech companies.43 Thus, the system is to blame.

But can you be a role model for the rest of the world this way? Are the dangers of our privatized technology governance model not as threatening, or even more dangerous to our society than the predictable authoritarian technology governance model could ever be? Is there an enemy within, that stands at the cradle of excesses like the Capitol Insurrection? 44 Is the privatized power over the digital world a similar existential challenge, for which solutions must be developed? The answer appears to be in the affirmative. Democratic countries themselves have serious internal problems.

Moreover, there is no empirical evidence that AI will endanger democracy and reinforce authoritarianism, totalitarianism or even fascism, since AI is ideologically neutral.45 That said, shouldn’t we better use machine values instead, since human values create biases in data and algorithms, fake news and conspiracy theories?46

Be that as it may, from a higher level, a strategic democratic alliance can provide a counterbalance to both the free-market capitalism based privatized digital governance model, and the authoritarian model. In the duel for AI dominance and the battle to be the first to build a functioning multi-purpose quantum computer, the West desperately needs the Tech Giants from the Silicon Valley and Massachusetts innovation clusters.

6. Two Dominant Tech Blocks

Currently, two dominant tech blocks exist: the US and China. The blocks have incompatible political systems. It is a battle between ideologies.47 Liberal democracy versus authoritarianism. Free market capitalism versus surveillance capitalism. Europe stands in the middle, championing a legal-ethical approach to tech governance. Its Member States often divided when it comes to Beijing: 12 of them participate in Xi Jinping’s Belt and Road program.

It is of crucial strategic importance to proactively consider potential alternative scenarios.48 Future scenarios in which our desired coalition of democratic countries did not materialize for whatever reason. We can use scenario planning for this. Scenario planning, or scenario analysis, is the development, comparison and anticipation of probable future scenarios, together with short- and longer-term transitions. 49 Impending scenarios meant to be used as thinking instruments.

Alternatives to the creation of a strong democratic Strategic Tech Alliance are no alliance or different alliances. Each scenario could bring both (trade) war and peace to the world. Please note that establishing a league of like-minded democratic countries does not guarantee winning the race for AI and quantum supremacy. Moreover, competition and rivalry between blocks could incentivize exponential innovation. The race for AI supremacy is not a zero-sum game.

Does one rule out the other? Could the US or the EU be both a partner and rival of China through smart partnerships? In theory, it is a position that both the US and the EU could take. In tandem with bolstering alliances with our allies, we should -to a certain extent- be open to dialogue and cooperation with the regimes. We also have to consider an unthinkable alliance of EU-China-Russia ‘against’ a pact between countries like US/Canada/UK/Israel/Australia/India/South-Korea/Japan.50

Another scenario is a protracted Cold War for AI Supremacy with no winner between the US and China.51 A no winner takes all scenario would eventually mark the Splinternet.52 On the one hand a China led internet, characterized by a top-down approach to tech. It would comprise of countries that adopt Chinese apps. Its rival would be a US influenced internet, including countries that adopt US built platforms and apps. From the server level, cloud computing and AI all the way down to the phone operating system level. Cyberbalkanization could result in two parallel worlds, each with distinct divisions regarding technology, trade and ideology. In practice, this implies two opposing ecosystems would exist, each using its own standards and architectures that are incompatible with one other.

In the event China wins the race for AI and quantum, it will have the power to overthrow the EU and the US.53 The world would see a new era of authoritarian surveillance capitalism. In the case that a strategic partnership of democratic countries led by the US and the EU will prevail, it may well coerce China to adopt Humanist values.

To prevent China Standards 2035, 54 we need a coalition of democratic countries that bakes its values into its technology and that sets worldwide interoperability standards for telecommunications, AI & quantum infrastructures.

7. Harms of Doing Nothing

The described advantages of the establishment of an alliance must be weighed against disadvantages, unintended consequences and the harms of doing nothing.

First, no alliance means fragmentation and division, without synergetic effects. A lack of action entails less chance of winning the race for tech dominance and securing the chance to set and control global standards. Standards that preserve democratic values. The danger of global autocratic values in technology and infrastructure increases in this analysis, because there is no en bloc counterbalance to emerging countries such as China, the country of the large numbers of consumers, hordes of AI talent, and huge amounts of machine learning training data, regurgitated by labelling farms. China has massive government budgets for the development of smart algorithms and quantum technology applications. Currently it’s everybody for himself; that won’t help us win the race. We need an alliance instead of division.

Second, quantum technology enhances AI. Together with blockchain it promises machine learning on steroids. Quantum and AI hybrids will give to the world a new perspective of science itself. In this context, it is crucial to raise awareness of their incredible potential for good, and their anthropogenic risks. The Fourth Industrial Revolution will bring about a world in which anything imaginable to improve, or worsen the human condition, can be built in reality.

Authoritarian countries obtaining this powerful technology and using it against us, poses serious national cybersecurity (cyberwarfare, hacking) threats.55 More importantly, the regimes would have the ability to impose their non-democratic values on us through technological expansionism. From our liberal-democratic viewpoint, this could lead to a dystopian scenario. AI driven facial recognition systems used for shadowing and social credit systems would become the standard. Surveillance machines are a dictator’s dream. Authoritarian a-moral machina sapiens will take over creation and invention. Privacy, mental security and freedom of thought will become a distant memory.

Our society will be better off when we forge Democratic Alliances. A united democratic tech block has a greater chance of winning the race for AI & quantum dominance.

Third, long term risks of underinvesting in 4IR technology are no less than existential. The US needs to invest heavily in safe & responsible AI and quantum. The market cannot pull this off on its own. The state should take the lead and launch a mission oriented, 2030 US Standards plan, backed by large-scale funding. 56 This plan should be sharply demarcated, and executed by golden triangle, public-private partnerships. These partnerships can be based on the triple helix innovation model, which guarantees synergistic effects between government, academia and business.

The portrayed advantages of bolstering an alliance, and actively shaping technology for good evidently outweigh the harms of remaining passive or indecisive. It is critical that the US does not hang back in a never-ending balancing of stakeholder concerns but that it is confident in formulating a vision and focussed in accomplishing its well defined national and global policy objectives. By doing nothing the US will fall behind economically. The US and the EU should set out the path along transatlantic lines and guide their democratic allies toward a Strategic Tech Alliance.57

## ADV 1

### Adv

#### They don’t solve this – people can’t afford health care either way. If anything they might increase costs of HC, b/c companies will pass anti-trust costs over to the consumer.

#### OR If it’s true that they could lower the price of medicine that much, then they’d wreck all of pharma innovation.

#### Competition and R&D is high and growing --- but plan crushes innovation incentive

Atkinson & Ezell 21 --- Robert D. Atkinson, PhD, President Information Technology and Innovation Foundation, Atkinson serves on the UK government’s Place Advisory Group to advise the Minister for Science, Research and Innovation on how policy can drive innovation , Stephen Ezell is vice president, global innovation policy, at the Information Technology and Innovation Foundation (ITIF), “Five Fatal Flaws in Rep. Katie Porter’s Indictment of the U.S. Drug Industry “, May 20, 2021, https://itif.org/publications/2021/05/20/five-fatal-flaws-rep-katie-porters-indictment-us-drug-industry

False Claim #2: Drug Companies Are Cutting R&D to Boost Profits for Shareholders

The report goes on to assert that drug companies have little incentive to invest in R&D and new drug development. This is an odd assertion given that in 2020, an estimated 66 drugs went off-patent and were available to be produced by generic companies.8 Without new drugs to replace those going off-patent, non-generic drug companies would soon be out of business.

Yet, the report argues, “Pharmaceutical companies have little incentive to invest in innovative new medicine without the threat of competition. Instead, they are free to devote their considerable resources to merging with or acquiring companies that might otherwise force them to compete.”9 As noted, competition has not materially diminished in the last 15 years; if anything, it has gotten more intense, with new biologics producers challenging traditional small molecule drug producers.

The report also cites a Roosevelt Institute report that states, “Yet, as prices have skyrocketed over the last few decades, these same companies’ investments in research and development have failed to match this same pace.”10 The report argues that “R&D has not matched price increases.” In reality, from 2012 to 2016, drug sales increased $5.8 billion a year, while R&D actually increased $6.8 billion a year.11

Drug companies in America are incredibly R&D intensive and have become even more so, with their R&D-to-sales ratio increasing from 11 percent in 2006 to 20 percent in 2018.12 The ratio for the top 20 U.S. companies increased from 15 percent in 2006 to 23.6 percent.13 Further, while drug revenues increased 56 percent from 2006 to 2018 (in nominal dollars), R&D increased by 85 percent.14

The report asserts that small firms invest more in R&D and that big firms use their revenue for other purposes, such as paying excessive CEO compensation. Actually, in 2016, the top 20 firms globally accounted for 66.5 percent of global sales yet made 64 percent of R&D investment.15 In 2018, the R&D intensity of the largest 4 firms was 26 percent, of the top 8 was 25 percent, and of the top 20 was 22 percent, with the entire industry at 20 percent.16 In reality, it is the largest firms, not the smallest, that are the most R&D intensive.

The Porter report complains that “the fraction of pharmaceutical sales revenue devoted to total R&D is generally under 20 percent.”17 Is 20 percent a lot, or a little? It turns out, a lot. The U.S biopharmaceutical industry is the world’s most R&D-intensive industry, with firms in the United States investing over 21 percent of sales in R&D, while accounting for 23 percent of total domestic R&D funded by U.S. businesses—more than any other sector.18 Over the last decade, biopharmaceutical companies in the United States have invested over half a trillion dollars in R&D, while more than 350 new medicines have been approved by the FDA.19 The industry reinvested 43.8 percent of value added (value sales minus purchased inputs) into research in 2014, more than any other industry in any country. (See figure 1.)

The Porter report asserts that “the share spent on the basic research that often generates truly innovative new compounds is estimated to be far smaller [than total R&D].” In fact, companies’ share of R&D classified as basic (14.3 percent) is higher than any other U.S. industry—and more than twice as high as the U.S. industry average (6.4 percent).20

Even though the U.S. industry invests more in R&D than any other industry in the world, the report implies that the industry is still too profitable. It cites a study that claims, “Pharma would still be the most profitable industry sector—even if it lost $1 trillion in sales,” implying that the industry could lose $1 trillion in sales a year through price controls and still be very profitable.22 This would be difficult, given global sales were around $1.3 trillion in 2019, and the top 10 pharma companies earned $392.5 billion.23

Actually, the study referenced refers to $1 trillion over nine years, or $110 billion per year. But even this amount is misleading. First, the authors use return on invested (ROI)capital as their measure of profitability. However, there are numerous metrics that can measure profitability, and this one poorly reflects the profitability of R&D-intensive industries since R&D is not capitalized but expensed.24 As a result, this measure overstates the industry’s profit advantage over less-R&D intensive industries. Data from New York University Professor Aswath Damodaran shows that in 2015, pharmaceutical return on equity (ROE) was 15.2 percent, while biotechnology ROI was 22.3 percent, compared with overall market profits of 10.8 percent.25 But when this measure is adjusted for R&D spending, the delta is significantly less, with pharmaceutical ROE being 11.1 percent and biotechnology ROI 13.9 percent, compared with overall market-adjusted ROE of 9.9 percent.26 Updated industry ROE data from Damodaran in 2021 finds that the traditional pharmaceutical industry ranks in the lower one-third of profitable U.S. industries.27

But these figures are only for survivors, and do not include all the biopharma companies that went bankrupt because their discoveries did not pan out.28 In 2016, of the top 659 companies globally, only one-third (259) even made a profit.29

Moreover, even these modestly higher returns should not be cause for concern. As a study from the former Congressional Office of Technology Assessment finds, “Pharmaceutical R&D is a risky investment; therefore, high financial returns are necessary to induce companies to invest in researching new chemical entities.”30 Likewise, as Harvard economist Frederick M. Scherer wrote, “Had the returns to pharmaceutical R&D investment not been attractive, it seems implausible that drug-makers would have expanded their R&D so much more rapidly than their industrial peers.”31

Further, the report attacks the industry for engaging in stock buybacks, writing, “In 2018, the year that Donald Trump’s tax giveaway to the wealthy went into effect, 12 of the biggest pharmaceutical companies spent more money on stock buybacks than on research and development.”32 But stock buybacks were high that year because tax changes enabled companies to bring back repatriated profits from overseas to the United States, which is what many industries did. In fact, as one study notes, “In the United States, massive distributions of cash to shareholders are not unique to pharmaceutical companies.”33

The Porter report also argues that drug price controls would not [reduce] ~~retard~~ innovation because profits are so large. Not only are drug industry profits not excessive but most academic studies find that drug price controls will harm drug development.34 In large part, this is because, as the Organization for Economic Cooperation and Development (OECD) noted, “There exists a high degree of correlation between pharmaceutical sales revenues and R&D expenditures.”35 In addition, the Congressional Budget Office (CBO) examined the potential impact of the proposed House legislation H.R.3, which among other provisions would require drug companies to negotiate lower prices with the government. It concluded that reducing manufacturers’ revenues by between $500 billion and $1 trillion over the next decade could result in 8 to 15 fewer new drugs coming to market.36

#### Merger scrutiny is goldilocks now --- Changing it one year after published guidelines would CRUSH innovation and block procompetitive acquisitions

Portuese 21 --- Aurelien Portuese doctor in law from the University of Paris II (Sorbonne), is director of antitrust and innovation policy at ITIF. He leads ITIF’s Schumpeter Project on Competition Policy for the Innovation Economy, “Pharmaceutical Consolidation & Competition: A Prescription for Innovation”, June 25, 2021 , https://www2.itif.org/2021-pharmaceutical-task-force.pdf

Historically, pharmaceutical innovation took place through established companies capable of developing complex lines of diversified products. Pharmaceuticals companies could frequently diversify through mergers?1 Pharmaceutical consolidations through mergers enable the merged entities to have a steady throughput in production facilities and to benefit from more intensive use of the joint facilities and skills.52

Today, the need to reach sufficient size remains acute in the global competition amongst pharmaceutical chemical makers—i.e., Contract Development Manufacturing Organizations (CDMOs).53 Indeed, pharmaceutical companies increasingly seek to vertically integrate their services to best control the production line—from inventing with raw materials up to marketable drugs. Against this background, vertical mergers by pharmaceutical companies with CDMOs may result from three market rationales.

First, consolidation among CDMOs increases their bargaining power at the expense of their direct purchasers—namely, pharmaceutical companies. CDMOs increasingly appear to compete with pharmaceutical companies. Indeed, Albert Baehny, the CEO of Lonza,, the market leader among CDMOs, recently recognized that the “only gap” in their portfolio is the “fill-and-finish area, where the active ingredients are mixed with other solutions to produce the finished drug and filled under sterile conditions.”54 He added “although we offer this on a small scale, large batches are still outside our area of expertise. This is a capability we would like to have.” Asked how he thinks his company could develop such capability, Baehny categorically replied that it “can only be done through acquisitions.” The external growth of CDMOs that compete with pharmaceutical companies puts considerable pressure on the market positions of pharmaceutical companies. These companies must in turn react to CDMOs’ mergers and market entry.

Second, a vertical integration counter-balances chemicals’ consolidation to recalibrate bargaining positions. Vertical integration between pharmaceutical companies and CDMOs may benefit consumers by avoiding the so-called “double marginalization problem.” By minimizing transaction costs, consumers may benefit from the avoidance of the double marginalization problem. One illustration is Pfizer’s recent acquisition of Hospira: While the pharmaceutical industry’s reaction to the announcement was minimal, this acquisition shook the CDMO industry/5

Finally, and most strategically, a rationale for vertical mergers between CDMOs and pharmaceutical manufacturers reverts to the urgent need to better integrate the supply chain. With the CO VID-19 pandemic, supply bottlenecks for active ingredients from China prevented Western companies from having optimal supplies.56 As a central part of the pharmaceutical industry, regulators need to allow pharmaceutical companies to achieve functioning supply chains for the benefit of citizens.

In conclusion, there are mixed effects of mergers and acquisitions in the pharmaceutical industry on innovation and efficiency. Contrary to conventional wisdom that may equate pharma mergers with anticompetitive conduct/intent, these mixed effects are obvious, as recapped by Ornaghi who analyzed pharma mergers between 1988 and 2004.

Therefore, the economics of pharma mergers reveals complex implications in terms of innovation incentives, efficiencies, and competition. Indeed, “it’s hard (and somewhat futile) to say whether existing tools are fit to meet a problem without knowing whether that problem exists.”58

Consequently, the implications for antitrust enforcement and reforms suggest an inevitable complementarity between an optimal antitrust enforcement policy and other regulation areas. In so doing, the stated objectives of lowering drug prices and increasing pharmaceutical innovation may be reached by maximizing consumer benefits without deterring pharmaceutical innovation.

THE CURE

Should The Law Be Changed?

Current merger review enables antitrust authorities to challenge any merger according to policy preferences. Proposed open-textured theories of harm would conflict with case law, increase legal uncertainty, and stifle innovation due to the regulatory ambiguity of the proposal.

Antitrust approach to pharma mergers may embrace so-called “new theories of competitive harm.” As expressed in the FTC’s press release, “new or expanded theories of harm” may seem attractive to the FTC. These new and shallow theories of harm may however increase legal uncertainty, disincentivizing innovation due to non-administrable merger review in the industry. For the less than five percent of allegedly killer acquisitions, new theories of harm would ultimately harm consumers for missed reductions of drug prices with an across-the-board presumption of illegality of mergers. Antitrust laws and doctrines should not be changed. Killer acquisitions are challengeable under current antitrust laws with a straightforward generalization of the rule of reason.59

Because the pharmaceutical industry is about human health, antitrust agencies need to carefully scrutinize the rate of innovation pre- and post-merger. Indeed, the health care industry calls for “special attention” because “diminished [health care] innovation” raises a “central antitrust question.”60

Section 7 of the Clayton Act only condemns those mergers which “may be substantially to lessen competition.” The Clayton Act requires the merging firms to notify the FTC whenever the total assets or annual sales of the acquiring company amount to $100 million or more, or the acquired company has assets or annual sales of $10 million or more. Initially, Section 7 of the Clayton Act banned only mergers effected through stock transfers, and later courts further limited the ban’s scope. However, because of the government’s loss in United States v. Columbia Steel Co and the 1948 FTC Report, since 1950 all types of acquisitions fall within the ambit of Section 7 of the Clayton Act, provided the transaction meets the thresholds.61

To successfully challenge a merger under Section 7, an antitrust agency must show that the acquired firm “probably would have entered” the market “within a reasonable period of time” absent the merger.62 In addition, the Hart-Scott-Rodino Act requires merging parties above a specific size to provide advanced notice to the Antitrust Division of the DOJ and the FTC before merging. Typically, the FTC does not review sub-$200 million acquisitions—thereby paving the way for the killer acquisition theory to unfold.

Yet, the prospects of killer acquisitions seem relatively small: The incumbent’s desire to shut down a potential rival will arguably be the very rationale for current merger law to block a merger rather than for that merger to go unnoticed. Therefore, the prospect of challenge may be real—albeit not “easy.”63 However, can we reasonably expect antitrust agencies to easily block mergers involving nascent companies which have a very limited chance of competing with the acquirer? Such prospect of easy merger opposition should instead lead to caution.

Current antitrust laws enable antitrust authorities to challenge and block mergers because that level of innovation post-merger would decline. Section 7 of the Clayton Act is flexible enough to challenge most pharma mergers as illustrated by the recent Illumina-Grail merger controversy. The only requirement is that agencies need to demonstrate that the merger may create a risk of higher prices. 64

Vigorous antitrust enforcement against pharma mergers takes place regularly. Divestitures have historically been central to a vigorous pharma merger review. For instance, the FTC required that Wellcome divest Zoming to Zeneca for Wellcome to merge with Glaxo.65 Subsequently, both Glaxo and Zeneca continued to fiercely compete against one another, thereby illustrating the ability of the law to ensure both consolidations for innovation purposes with effective competition. Additionally, further mergers involving Glaxo also included divestitures.66 Divestitures are standard practices and do not suggest an under-enforcement of merger law by the antitrust agencies.

Indeed, the FTC has recently found, on a unanimous basis, that a consummated merger of microprocessor prosthetic knee company was anticompetitive.67 The FTC investigated in September 2017 Otto Bock’s acquisition of FIH Group Holdings (Freedom) after the merger was consummated. Otto Bock, the leading supplier of microprocessor prosthetic knees, could not acquire Freedom because the combined firm would hold more than 80 percent of the relevant market. In December 2020, the FTC approved divestitures.68

Another recent case illustrating vigorous antitrust enforcement on pharma mergers is provided with the BMSICelgene merger.69 The FTC required divesture by BMS of Celgene’s Otezla. Commentators have considered that the divesture of BMS’s Phase 3 oral product to treat psoriasis demonstrates vigorous antitrust enforcement with firm spinoff commitments. This divestiture accounted for $13.4 billion, the largest divestiture ever required in a merger case.

Thus, how can we explain the current fear and claims that some detrimental pharmaceutical mergers are unscrutinized by antitrust authorities? Since Gilbert and Sunshine’s article in 1995, antitrust analysis has increasingly considered the nonprice aspects of competition in merger review.70 The argument that some mergers go unnoticed is hardly demonstrated. Parties notify mergers, and if antitrust agencies do not challenge them, it is undoubtedly because the procompetitive effects of the proposed merger outweigh its possible anticompetitive effects. Merger approvals cannot be proxies for the claims that mergers go unnoticed.

Again, current antitrust laws fully provide for adequate antitrust scrutiny among vertical and conglomerate mergers without resorting to dubious theories of harm. The Vertical Merger Guidelines (VMGs), released on June 30, 2020, have recently updated the approach on this area.71 This “long-needed revision” came to clarify how the Clayton Act applies to vertical mergers in light of the challenges brought about by today’s economy. 72The VMGs “are intended to assist the business community and antitrust practitioners by increasing the transparency of the analytical process underlying the Agencies’ enforcement decisions.”73 To envisage changing the approach for vertical mergers less than a year after these new guidelines were adopted would frustrate the VMGs’ stated objectives of increased transparency and assistance to the business community. The VMGs provide for a coherent, administrable approach.74

Hovenkamp considers that the “2020 Vertical Merger Guidelines are not perfect, but they are a significant step in the right direction.” Indeed, by considering the upstream market and the downstream market of the vertical relationship as the “relevant market,” the VMGs appraise the merging parties’ bargaining power. The VMGs also address conglomerate mergers (i.e., complement and diagonal mergers) while remaining consistent with the traditional theory of consumer harm.

Vertical mergers can be anticompetitive according to either unilateral effects—namely foreclosure and raising rivals’ costs—or coordinated effects—namely, post-merger collusion.75 Also, the 2020 VMGs represent a moderate and sound approach to vertical and conglomerate mergers in general. This should apply without special treatment to pharma mergers. Indeed, the other theories of harm mentioned in the FTC’s press release—namely the theory of competitive harm applied to conglomerate mergers—would treat legitimate cost efficiencies (such as elimination of the double-marginalization problem) as presumptively unlawful. Therefore, there is no need to change the merger law for an ill-defined economic problem. Nevertheless, it does not prevent actionable steps from being adopted to incentivize pharmaceutical innovation while enhancing consumer benefits with lower drug prices.

#### Extinction

**Bryden 17 –** John Bryden, Professor at the Norwegian Institute of Bioeconomy Research, “Inclusive Innovation in the Bioeconomy: Concepts and Directions for Research”, Innovation and Development, Volume 7, http://www.tandfonline.com/doi/full/10.1080/2157930X.2017.1281209

In this introduction to the special issue on inclusive innovation in the bioeconomy, the authors highlight inclusive innovation’s significance to economies that provide the vital resources of food, water, and energy. Innovation in the bioeconomy raises questions of environmental sustainability, human survival, social justice, and human rights. This article thus emphasizes, especially, the roles that institutions play regarding innovation in the bioeconomy. The authors suggest that inclusive innovation be defined as new ways of improving the lives of the most needy. They outline research implications of this definition, and relate these implications to debates about the modes and ethics of innovation. They argue that innovation systems’ design affects these systems’ potential for inclusiveness as well as their value premises. Finally, the contributions to this special issue are introduced and discussed in light of the special issue’s overall purpose and framework.

1. The significance of inclusive innovation in the bioeconomy

This special issue is about inclusive innovation in the ‘bioeconomy’, generally conceived as an economy based on land and marine-based natural resources including **eco-systems services** and **bio-waste**. The bioeconomy produces the most vital goods: **food**, **drinking water**, **breathable air**, and **energy**. Increasingly, the bioeconomy is also seen as offering a green alternative to the fossil fuel-based economy that is largely responsible for climate change. The transition from the fossil fuel economy to the bioeconomy is a large and growing field for all forms of technical and institutional innovation. The cases discussed in this volume all deal with aspects of what is now termed the ‘bioeconomy’ and the related transitions to it.

In this introduction to the special issue we highlight inclusive innovation’s significance to the growing debate about the bioeconomy. We link our topic to the pathbreaking work that has been done by previous researchers on inclusive innovation, and we present our view on two much-debated topics in the inclusive innovation literature: the definition of ‘inclusive innovation’ and the definition’s implications for research. We also wish to stimulate discussion about innovation’s (often tacit) normative premises. It is argued in this special issue that normative premises guide both conventional and alternative notions of innovation, and that different modes of innovation have different normative implications regarding, for example, who’s interests and knowledge count as being significant. We thus wish to contribute in this special issue to the more general debates about innovation’s purposes, innovation’s actors, and the institutional preconditions for innovation’s ability to improve people’s lives. Finally, in the light of these general questions we introduce the papers in this special issue. Thereby, we hope to create useful pointers for future work on inclusive innovation and innovation in the bioeconomy

Newby (1991 Newby, H. 1991. “The Social Sciences and the Environment”, Robbins Lecture, University of Stirling, November.

)11. Howard Newby, one of the UK’s foremost social scientists, was then Chairman of the UK Economic and Social Research Council.

View all notes

noted, in a critical assessment of the science and technology focused first Intergovernmental Panel in Climate Change (IPCC), that ignoring the interplay between technology and people and ignoring the need for public support for changes in policies and lifestyles, would lead policies astray. Arguably, Newby’s position is transferable to the bioeconomy’s resource base in general: land, the marine environment, and water, are vital to human subsistence, limited in supply, and they cannot be reproduced solely by technical means. Importantly, these resources’ primary functions can be easily damaged by misuse.

These characteristics of the bioeconomy’s resource base – that the supply of each resource is limited, sensitive to human misuse, and necessary for subsistence – means that choices between alternative uses becomes a critical issue. Market principles prescribe either a market-based ‘cascading principle’22. Cascading principle means that the highest (social) value uses of biomass should be the first choice, and the lowest value uses the last choice. Different interpretations of ‘value’ in this context tend to be taken by environmentalists, economists, and social scientists.

View all notes

or surrogate pricing (e.g. through environmental taxes) to make such choices. However, given the unequal distribution of purchasing power, market principles prioritize use of these resources for those with the greatest purchasing power, and leave the poorest with no, or short, supplies. Consequently, poor people’s access to vital natural resources can often be ensured only by **institutional means**. It is against this background that we devote this special issue to the topic of inclusive innovation in the bioeconomy. We wish to address, in particular, the roles that institutions play in securing innovation’s inclusiveness in the bioeconomy.

However, the bioeconomy, as a provider of **vital subsistence resources**, urges scholars and policy-makers, as argued by Bryden and Gezelius in this volume, to consider the fundamental institution of the human rights regime, which makes access to food, shelter, and clean water, among other things, a basic right. Ethical and legal issues are thus deeply enshrined in the choices to be made in the bioeconomy. Simultaneously, the bioeconomy, with its territorial nature, is deeply embedded in the communities and other social systems that inhabit its territories. These social systems are often very long standing and cannot be easily changed. They depend on natural resources that have many social and cultural uses, including subsistence, recreation, tourism, landscapes, biodiversity, carbon absorption, and others commonly summed up as ‘eco-system services’. Altering any or all of these social and biological systems to ‘grow the new bioeconomy’, therefore, has **significant social and human implications** that scientists and policy-makers will **ignore at their peril**, including, of course, the risk of fuelling popular opposition. Social scientists, therefore, have a key role to play in bringing implicit institutional preconditions and value premises to light, discussing them critically, and offering alternatives. Highlighting this role is one of the tasks in this special issue.

**Medical innovation turns cost savings—it keeps people healthy.**

**Paranicas 14** — Dean J. Paranicas, president and Chief Executive Officer of HealthCare Institute of New Jersey, 12-18-2014 (“THE VALUE OF MEDICAL INNOVATION: SAVING LIVES, SAVING MONEY”, *HINJ*, Accessed Online at http://hinj.org/the-value-of-medical-innovation-saving-lives-saving-money/)

Medical Innovation’s Overlooked Benefit

With these medical innovations, past and future, comes an often-overlooked benefit: the incalculable billions of dollars in savings to patients, their families, insurers, employers, governments and hospitals in avoided medical expenses associated with keeping people healthy or curing them of a life-long, chronic condition.

Certainly, these medicines, therapies, medical technologies, devices and diagnostic tools keep people healthier. They limit the need for frequent visits to the doctor. They help to avoid costly hospital stays. They help patients avoid expensive surgeries.

Unfortunately, these tremendous cost savings often go unrecognized. Instead, we hear frequent reports about the high cost of medicine or about new technologies or diagnostic tools being deemed “too expensive” or “unnecessary.” We hear that medical innovation is a cost-driver, not a cost-saver.

The reality is quite to the contrary. Medications, therapies and medical technologies and devices not only save lives — they save money.

By eradicating a disease, people no longer need to seek or spend money on treatment. By better managing and preventing more serious complications from an existing disease, people avoid more costly medical care. By discovering a new treatment or cure, the costs that would have been incurred in addressing a patient’s ongoing medical issues can be avoided entirely.

Therefore, developing new treatments, cures and health technologies is one of the most important steps we can take — not only to save lives and improve the quality of life, but also to avoid the expenditure of enormous amounts of health care dollars.

How much savings does medical innovation produce? There is not one, simple answer to that question. However, there are numerous academic and government statistics that point to the economic benefits of innovation in the health-care marketplace.

In a paper published by the Journal of Political Economy in 2006, it was estimated that over the preceding 50 years, medical innovation had been the source of nearly half of all economic growth in the United States.

Impressively, for every dollar spent on innovative medicines, total healthcare spending is reduced by $7.20, according to an NBER paper.

## ADV 2

### Adv 2

#### High magnitude, low probability first – extinction eliminates future potential and math swamps appeals to low risk – no bias – uncertainty can artificially deflate risk – discount appeals to empirics because of the nature of \*new\* risks

Bostrom 13 ---- Nick, Philosopher and professor (Oxford), Ph.D. (LSOE), director of The Future of Humanity Institute and the Programme on the Impacts of Future Technology, “Existential Risk Prevention as Global Priority,” Global Policy, Vol 4, Issue 1, <http://www.existential-risk.org/concept.html>

1. The maxipok rule 1.1. Existential risk and uncertainty An existential risk is one that threatens the premature extinction of Earth-originating intelligent life or the permanent and drastic destruction of its potential for desirable future development (Bostrom 2002). Although it is often difficult to assess the probability of existential risks, there are many reasons to suppose that the total such risk confronting humanity over the next few centuries is significant. Estimates of 10-20% total existential risk in this century are fairly typical among those who have examined the issue, though inevitably such estimates rely heavily on subjective judgment.1 The most reasonable estimate might be substantially higher or lower. But perhaps the strongest reason for judging the total existential risk within the next few centuries to be significant is the extreme magnitude of the values at stake. Even a small probability of existential catastrophe could be highly practically significant (Bostrom 2003; Matheny 2007; Posner 2004; Weitzman 2009). Humanity has survived what we might call natural existential risks for hundreds of thousands of years; thus it is prima facie unlikely that any of them will do us in within the next hundred.2 This conclusion is buttressed when we analyze specific risks from nature, such as asteroid impacts, supervolcanic eruptions, earthquakes, gamma-ray bursts, and so forth: Empirical impact distributions and scientific models suggest that the likelihood of extinction because of these kinds of risk is extremely small on a time scale of a century or so.3 In contrast, our species is introducing entirely new kinds of existential risk — threats we have no track record of surviving. Our longevity as a species therefore offers no strong prior grounds for confident optimism. Consideration of specific existential-risk scenarios bears out the suspicion that the great bulk of existential risk in the foreseeable future consists of anthropogenic existential risks — that is, those arising from human activity. In particular, most of the biggest existential risks seem to be linked to potential future technological breakthroughs that may radically expand our ability to manipulate the external world or our own biology. As our powers expand, so will the scale of their potential consequences — intended and unintended, positive and negative. For example, there appear to be significant existential risks in some of the advanced forms of biotechnology, molecular nanotechnology, and machine intelligence that might be developed in the decades ahead. The bulk of existential risk over the next century may thus reside in rather speculative scenarios to which we cannot assign precise probabilities through any rigorous statistical or scientific method. But the fact that the probability of some risk is difficult to quantify does not imply that the risk is negligible. Probability can be understood in different senses. Most relevant here is the epistemic sense in which probability is construed as (something like) the credence that an ideally reasonable observer should assign to the risk's materializing based on currently available evidence.4 If something cannot presently be known to be objectively safe, it is risky at least in the subjective sense relevant to decision making. An empty cave is unsafe in just this sense if you cannot tell whether or not it is home to a hungry lion. It would be rational for you to avoid the cave if you reasonably judge that the expected harm of entry outweighs the expected benefit. The uncertainty and error-proneness of our first-order assessments of risk is itself something we must factor into our all-things-considered probability assignments. This factor often dominates in low-probability, high-consequence risks — especially those involving poorly understood natural phenomena, complex social dynamics, or new technology, or that are difficult to assess for other reasons. Suppose that some scientific analysis A indicates that some catastrophe X has an extremely small probability P(X) of occurring. Then the probability that A has some hidden crucial flaw may easily be much greater than P(X).5 Furthermore, the conditional probability of X given that A is crucially flawed, P(X|¬A), may be fairly high. We may then find that most of the risk of X resides in the uncertainty of our scientific assessment that P(X) was small (figure 1) (Ord, Hillerbrand and Sandberg 2010).

#### “Probability first” inverts the error – has its own biases, fails to teach about worst case scenarios, ignores trends towards disasters/population concentration, and struggles to be applied to governments

Clarke 8 ---- Lee, member of a National Academy of Science committee that considered decision-making models, Anschutz Distinguished Scholar at Princeton University, Fellow of AAAS, Professor Sociology (Rutgers), Ph.D. (SUNY), “Possibilistic Thinking: A New Conceptual Tool for Thinking about Extreme Events,” Fall, Social Research 75.3, JSTOR \*\*\*Modified for ableist language

In scholarly work, the subfield of disasters is often seen as narrow. One reason for this is that a lot of scholarship on disasters is practically oriented, for obvious reasons, and the social sciences have a deep-seated suspicion of practical work. This is especially true in sociology. Tierney (2007b) has treated this topic at length, so there is no reason to repeat the point here. There is another, somewhat unappreciated reason that work on disaster is seen as narrow, a reason that holds some irony for the main thrust of my argument here: disasters are unusual and the social sciences are generally biased toward phenomena that are frequent. Methods textbooks caution against using case stud- ies as representative of anything, and articles in mainstreams journals that are not based on probability samples must issue similar obligatory caveats. The premise, itself narrow, is that the only way to be certain that we know something about the social world, and the only way to control for subjective influences in data acquisition, is to follow the tenets of probabilistic sampling. This view is a correlate of the central way of defining rational action and rational policy in academic work of all varieties and also in much practical work, which is to say in terms of probabilities. The irony is that probabilistic thinking has its own biases, which, if unacknowledged and uncorrected for, lead to a conceptual neglect of extreme events. This leaves us, as scholars, paying attention to disasters only when they happen and doing that makes the accumulation of good ideas about disaster vulnerable to issue-attention cycles (Birkland, 2007). These ~~conceptual blinders~~ [myopic approaches] lead to a neglect of disasters as "strategic research sites" (Merton, 1987), which results in learning less about disaster than we could and in missing opportunities to use disaster to learn about society (cf. Sorokin, 1942). We need new conceptual tools because of an upward trend in frequency and severity of disaster since 1970 (Perrow, 2007), and because of a growing intellectual attention to the idea of worst cases (Clarke, 2006b; Clarke, in press). For instance, the chief scientist in charge of studying earthquakes for the US Geological Service, Lucile Jones, has worked on the combination of events that could happen in California that would constitute a "give up scenario": a very long-shaking earthquake in southern California just when the Santa Anna winds are making everything dry and likely to burn. In such conditions, meaningful response to the fires would be impossible and recovery would take an extraordinarily long time. There are other similar pockets of scholarly interest in extreme events, some spurred by September 11 and many catalyzed by Katrina. The consequences of disasters are also becoming more severe, both in terms of lives lost and property damaged. People and their places are becoming more vulnerable. The most important reason that vulnerabilities are increasing is population concentration (Clarke, 2006b). This is a general phenomenon and includes, for example, flying in jumbo jets, working in tall buildings, and attending events in large capacity sports arenas. Considering disasters whose origin is a natural hazard, the specific cause of increased vulnerability is that people are moving to where hazards originate, and most especially to where the water is. In some places, this makes them vulnerable to hurricanes that can create devastating storm surges; in others it makes them vulnerable to earthquakes that can create tsunamis. In any case, the general problem is that people concentrate themselves in dangerous places, so when the hazard comes disasters are intensified. More than one-half of Florida's population lives within 20 miles of the sea. Additionally, Florida's population grows every year, along with increasing development along the coasts. The risk of exposure to a devastating hurricane is obviously high in Florida. No one should be surprised if during the next hurricane season Florida becomes the scene of great tragedy. The demographic pressures and attendant development are wide- spread. People are concentrating along the coasts of the United States, and, like Florida, this puts people at risk of water-related hazards. Or consider the Pacific Rim, the coastline down the west coasts of North and South America, south to Oceania, and then up the eastern coast- line of Asia. There the hazards are particularly threatening. Maps of population concentration around the Pacific Rim should be seen as target maps, because along those shorelines are some of the most active tectonic plates in the world. The 2004 Indonesian earthquake and tsunami, which killed at least 250,000 people, demonstrated the kind of damage that issues from the movement of tectonic plates. (Few in the United States recognize that there is a subduction zone just off the coast of Oregon and Washington that is quite similar to the one in Indonesia.) Additionally, volcanoes reside atop the meeting of tectonic plates; the typhoons that originate in the Pacific Ocean generate furiously fatal winds. Perrow (2007) has generalized the point about concentration, arguing not only that we increase vulnerabilities by increasing the breadth and depth of exposure to hazards but also by concentrating industrial facilities with catastrophic potential. Some of Perrow's most important examples concern chemical production facilities. These are facilities that bring together in a single place multiple stages of production used in the production of toxic substances. Key to Perrow's argument is that there is no technically necessary reason for such concentration, although there may be good economic reasons for it. The general point is that we can expect more disasters, whether their origins are "natural" or "technological." We can also expect more death and destruction from them. I predict we will continue to be poorly prepared to deal with disaster. People around the world were appalled with the incompetence of America's leaders and orga- nizations in the wake of Hurricanes Katrina and Rita. Day after day we watched people suffering unnecessarily. Leaders were slow to grasp the importance of the event. With a few notable exceptions, organi- zations lumbered to a late rescue. Setting aside our moral reaction to the official neglect, perhaps we ought to ask why we should have expected a competent response at all? Are US leaders and organiza- tions particularly attuned to the suffering of people in disasters? Is the political economy of the United States organized so that people, espe- cially poor people, are attended to quickly and effectively in noncri- sis situations? The answers to these questions are obvious. If social systems are not arranged to ensure people's well-being in normal times, there is no good reason to expect them to be so inclined in disastrous times. Still, if we are ever going to be reasonably well prepared to avoid or respond to the next Katrina-like event, we need to identify the barriers to effective thinking about, and effective response to, disas- ters. One of those barriers is that we do not have a set of concepts that would help us think rigorously about out-sized events. The chief toolkit of concepts that we have for thinking about important social events comes from probability theory. There are good reasons for this, as probability theory has obviously served social research well. Still, the toolkit is incomplete when it comes to extreme events, especially when it is used as a base whence to make normative judgments about what people, organizations, and governments should and should not do. As a complement to probabilistic thinking I propose that we need possibilistic thinking. In this paper I explicate the notion of possibilistic thinking. I first discuss the equation of probabilism with rationality in scholarly thought, followed by a section that shows the ubiquity of possibilis- tic thinking in everyday life. Demonstrating the latter will provide an opportunity to explore the limits of the probabilistic approach: that possibilistic thinking is widespread suggests it could be used more rigorously in social research. I will then address the most vexing prob- lem with advancing and employing possibilistic thinking: the prob- lem of infinite imagination. I argue that possibilism can be used with discipline, and that we can be smarter about responding to disasters by doing so.

#### Utilitarianism should be your guiding impact filter—you should maximize the number of lives saved

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

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

#### Prefer our specific scenarios– their evidence can’t account our internal link chain and how it alters an otherwise peaceful realm

# 2nc

#### Involvement of external actors *that are political appointees* creates *perceptions* of external influence. That erodes the signal of FTC independence.

* The article outlines a difference between political appointees subject to *at-will* removal by POTUS (serve at the pleasure of the President – i.e. Solicitor General, AG, DOJ, etc) **VIS-A-VIS** *for-cause* agency Committee members. FTC Commissioners – an example in the article - operate on 7 year terms, spanning Administrations, and can solely be removed for-cause.

Kovacic ‘15

et al; William E. Kovacic - Global Competition Professor of Law and Policy, George Washington University Law School; Non-Executive Director, United Kingdom Competition and Markets Authority. From January 2006 to October 2011, he was a member of the Federal Trade Commission and chaired the agency from March 2008 to March 2009. - “The Federal Trade Commission as an Independent Agency: Autonomy, Legitimacy, and Effectiveness” - 100 Iowa L. Rev. 2085 (2015) - #E&F - https://ilr.law.uiowa.edu/print/volume-100-issue-5/the-federal-trade-commission-as-an-independent-agency-autonomy-legitimacy-and-effectiveness/

On March 16, 1915, the Federal Trade Commission (“FTC”) opened for business and began what has proven to be a uniquely compelling experiment in economic regulation. The FTC was the first law enforcement agency to be designed “from the keel up” as a competition agency. One vital consideration in forming the new institution was to define its relationship to the political process. Among other features in the original FTC Act, Congress provided that the agency’s commissioners would have fixed, seven-year terms and that a commissioner could be removed during his or her term only for cause.

Through these and other design choices, Congress created what would come to be known as the world’s first “independent” competition agency. The FTC’s degree of insulation from direct political control supplied an influential model of institutional design and contributed to the acceptance of a norm, evident in modern commentary about competition law, that public enforcement agencies should be politically independent. This Essay examines the relationship of competition agencies to the political process. We use the experience of the FTC to address three major issues. First, what does it mean to say that a competition agency is “independent”? Second, how much insulation from political control can a competition agency achieve in practice? Third, how is the pursuit of political independence properly reconciled with demands that a competition agency be accountable for its decisions—an important determinant of legitimacy—and with the need to engage with elected officials to be effective in performing functions such as advocacy?

In addressing these questions, we seek to develop themes we have addressed in earlier work involving the establishment and operations of the FTC. We approach the topic in the spirit of Professor Herbert Hovenkamp, whose work shows how historical research can improve our understanding of a competition system. Professor Hovenkamp’s scholarship has deeply influenced our approach to this field, and we are honored to participate in a symposium that celebrates his extraordinary contributions to competition law and policy.

II. The Relationship of the Competition Agency to the Political Process: Design Tradeoffs

The suggestion that competition agencies be independent reflects a desire to enable enforcement officials to make decisions without destructive intervention by elected officials or by political appointees who head other government departments. One method of providing the desired independence from these forms of interference is for the law to state that competition agency leaders can be removed by elected officials only for good cause. Political intervention undermines sound policy making when it causes the agency to bend the application of competition law to serve special interests at the expense of the larger society’s well being. As discussed below, because antitrust-relevant behavior (e.g., a merger) can involve large commercial stakes and affect the economic fortunes of individual firms and communities, the decisions of a competition agency can attract close scrutiny by heads of state, legislators, and cabinet officials.

The need for independence arguably varies according to the function that the competition agency is performing. In carrying out some functions, particularly certain law enforcement functions, the agency requires greater insulation from political pressure. For other functions, broader involvement by elected officials in setting the agency’s agenda and determining its choice of projects may be appropriate.

The utmost degree of independence is warranted when a competition agency functions as an adjudicative decisionmaker. Congress gave the FTC authority to use administrative adjudication to develop norms of business conduct. After the agency initiates a formal prosecution and functions as a trade court, the legitimacy of its decisions requires the highest degree of assurance that sound technical analysis, not political intervention, determined the outcome.

#### Turf war disad.

#### Aff solvency is a net benefit – CP alone has *better solvency* than the perm.

Hittinger ‘19

et al; Carl W. Hittinger is a senior partner and serves as BakerHostetler’s Antitrust and Competition Practice National Team Leader and the litigation group coordinator for the firm’s Philadelphia office. He concentrates his practice on complex commercial and civil rights trial and appellate litigation, with a particular emphasis on antitrust and unfair competition matters, including class actions. “Antitrust Agency Turf War Over Big Tech Investigations” – The Temple 10-Q - This article is reprinted with permission from the Oct. 4, 2019, edition of The Legal Intelligencer. #E&F - https://www2.law.temple.edu/10q/antitrust-agency-turf-war-over-big-tech-investigations/

As we discussed in June 2018, because the FTC and DOJ have concurrent civil antitrust jurisdiction, they rely on a clearance agreement to coordinate their authority. The current agreement’s Appendix A seeks to prevent disputes by assigning particular industries to each agency. The quasi-independent, consumer-protection-focused FTC generally monitors industries that, as Simons recently put it, “most directly affect consumers and their wallets.” By contrast, the DOJ, an executive branch law enforcement agency, generally oversees less consumer-facing industries and sectors impacting national defense. Because Appendix A is perfunctory, however, disputes frequently arise when a company targeted for investigation falls between Appendix A’s cracks or, more commonly, straddles more than one industry. The clearance agreement lists criteria for resolving these disputes. Emphasizing specialization and conservation of resources, it grants priority to the agency “with expertise in the product or similar products … gained through a substantial antitrust investigation … within the last seven years.” The agreement also enumerates a list of tie-breaking factors; for example, an agency gets more “expertise” credit if a case was litigated to verdict than if it was filed and later settled. While the vast majority of disputes are settled with Appendix A and the tie-breaking criteria, disagreements may also be settled through a neutral evaluator and, ultimately, upon elevation to direct discussion by the FTC chairperson and the assistant attorney general for the Antitrust Division of the DOJ.

Conflicts Over Investigations Into Big Tech:

The agencies’ turf war over Big Tech suggests they may be struggling to apply the aging clearance agreement to companies and business models that were somewhat embryonic when it was drafted in 2002. For example, social media is not explicitly addressed in the agreement, and there appears to be no obvious analogue to it in Appendix A. Although there are reports that the FTC and DOJ struck a new clearance deal concerning Big Tech, there are bound to be hiccups. U.S. Sen. Mike Lee, chairman of the Senate Subcommittee on Antitrust, Competition Policy, and Consumer Rights, said last month: “What’s evident from this latest institutional tug of war is that the Antitrust Division of the DOJ and the FTC are now actively battling each other to take the lead in pursuing Big Tech.”

However, the emergence of Big Tech does not fully explain the discord. This summer, the DOJ and FTC publicly clashed in the FTC’s monopolization case against cellular chipmaker Qualcomm—a quarter-century-old enterprise whose product seems to fit neatly within Appendix A’s framework. The case was filed by a divided FTC commission in the waning days of the Obama administration, alleging the company licensed standard essential patents in an anticompetitive fashion. The district court ruled in the FTC’s favor, but, on Qualcomm’s appeal, the DOJ filed an amicus brief siding with Qualcomm’s request for a stay of the lower court’s ruling. It argued: “Immediate implementation of the remedy could put our nation’s security at risk, which is vital to military readiness and other critical national interests.”

More importantly, because the standard for a stay requires a peek at the merits of Qualcomm’s appeal, the DOJ found itself in the unusual position of undermining the FTC’s case: “Qualcomm is likely to succeed on the merits because the district court’s decision ignores established antitrust principles and imposes an overly broad remedy.” The FTC responded in its opposition brief that the DOJ “mischaracterized” the district court’s analysis, that it offered “unsubstantiated concerns” about R&D, and that it essentially asserted that Qualcomm should be immune from antitrust scrutiny.

Given the current political emphasis on a variety of real or perceived controversial competition issues, it is no wonder the FTC and DOJ have prioritized investigatory action over fidelity to the clearance process. As Sen. Amy Klobuchar, ranking member of the Senate Subcommittee on Antitrust, Competition Policy, and Consumer Rights, said in a September hearing, “I’d rather have a split investigation between the DOJ and FTC than no investigation.” The clearance agreement itself says: “Each agency nevertheless retains full responsibility and authority for the discharge of its statutory duties.”

September’s Senate Antitrust Oversight Hearing:

As has been widely reported, Big Tech clearance disputes played a role in a Sept. 17 Senate oversight hearing held by the Senate Subcommittee on Antitrust, Competition Policy, and Consumer Rights, which was attended by Simons and Delrahim. In opening remarks, Sen. Mike Lee chastised the agencies: “In the past, the agencies have avoided too much mischief because they’ve generally played well together. Recently, this appears quite regrettably to have changed. From what I can tell, clearance disputes have become more frequent, more pronounced, and more prolonged.”

Lee asked Delrahim and Simons whether the FTC and DOJ were still operating under the “clearance system to avoid duplicative efforts or have things broken down on this front?” Simons responded, “for the vast majority of matters, we continue to operate under the existing clearance agreement,” but, upon further questioning, agreed with Lee that “things have broken down at least in part.” Delrahim added: “I cannot deny that there are instances where Chairman Simons’ and my time is wasted on those types of squabbles.”

Lee also quizzed the agency heads whether, hypothetically, if they were asked to provide “advice on setting up an antitrust regime in another country … that didn’t already have one, would you under any circumstances recommend that they follow the U.S. model and that they have two separate agencies responsible for civil antitrust enforcement?” Simons responded flatly: “No, I wouldn’t.” Delrahim remarked, “it would be hard to imagine a system being designed at the first instance like we have today.” He conceded: “It’s not the best model of efficiency.”

The Hazards of Clearance Disputes:

Disputes over clearance can have tangible adverse effects on enforcement. First, some have commented that delays caused by clearance disputes can narrow the efficacy of remedial options, particularly with mergers. As Sen. Richard Blumenthal has commented, “The Big Tech companies are not waiting for the agencies to finish their cases. They are structuring their companies so that you can’t unscramble the egg.” Structural remedies are favored by Delrahim, who has commented that alternative, behavioral remedies should be used sparingly: “The division has a strong preference for structural remedies over behavioral ones. … The Antitrust Division is a law enforcer and, even where regulation is appropriate, it is not equipped to be the ongoing regulator.”

Second, disputes over clearance and, more so, duplicative investigations waste agency resources, threaten to blunt their effectiveness, and can lead to inconsistent and confusing governmental positions. In the Sept. 17 oversight hearing, Simons and Delrahim were both criticized for requesting an increase in funding: “As you both acknowledged, both of you could use, and desperately need, more resources. That being the case, it makes no sense to me that we should have duplication of effort, when that has a tendency inevitably to undermine the effectiveness of what you’re doing.” Duplicative investigations dilute the specialization that is a principal goal of the agencies’ clearance agreement and raise the risk that one agency will take legal positions that undercut the other. No doubt the DOJ’s amicus brief in the Qualcomm case influenced the U.S. Court of Appeals for the Ninth Circuit’s decision to issue a stay pending appeal.

#### Turf wars also cause imposed re-structuring - crushing FTC independence.

Birnbaum ‘19

Internally quoting William E. Kovacic - Global Competition Professor of Law and Policy, George Washington University Law School; Non-Executive Director, United Kingdom Competition and Markets Authority. From January 2006 to October 2011, he was a member of the Federal Trade Commission and chaired the agency from March 2008 to March 2009. Emily Birnbaum is a Tech lobbying Reporter at Politico - “Antitrust enforcers in turf war over Big Tech” - The Hill - 09/17/19 - #E&F - https://thehill.com/policy/technology/461829-antitrust-enforcers-in-turf-war-over-big-tech

Typically during investigations, the FTC and DOJ will check in with each other and share resources to ensure there is no duplication. But experts are warning their disagreements could make the process more difficult.

Kovacic cautioned that both agencies had an interest in resolving those tensions.

“These kinds of tensions ... create an environment in which public officials begin to consider a basic restructuring of the U.S. system,” Kovacic said.

He said in that case, “Neither agency can be assured that it would be the survivor.”

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# Overreach

#### 1 – Link alone turns case – plan necessarily expands enforcement responsibility without a commensurate expansion in resources – agencies are NOT ONLY likely to reprioritize away from GAFA, BUT ALSO undercut plan’s implementation in an effort to mitigate the fallout

Kovacic and Hyman 13 (William E. Kovacic, Global Competition Professor of Law and Policy, Professor of Law, and Director of the Competition Law Center, at George Washington University Law School, former General Counsel, Commissioner, and Chairman of the Federal Trade Commission; and David A. Hyman, Chair in Law and Professor of Medicine, University of Illinois, former Special Counsel at the Federal Trade Commission; “Competition Agencies with Complex Policy Portfolios: Divide or Conquer?” GW Law Faculty Publications & Other Works, 631, 2013, https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1779&context=faculty\_publications)

3. Capacity and Capability

As described earlier, capacity refers to the pool of knowledge and resources that the agency can bring to bear, and capability refers to the range of policy levers and quality of the resulting decisions.

Throughout its history, the FTC has struggled to see that the commitments entailed by its multifaceted mandate do not outrun its capacity to deliver good policy results. Through most of its history, the Commission has suffered from a tendency to initiate ambitious programs without adequate attention to the basic prerequisites of effective implementation. These flaws played a major part in placing the agency in peril in the late 1970s and early 1980s.111 The agency’s extraordinary combination of competition and consumer protection measures elicited harsh political backlash and enmeshed the Commission in destructive turmoil with Congress. Although some FTC initiatives from this period (such as the Eyeglasses I rule and the beginnings of the antitrust health care program) succeeded splendidly, many litigation and rulemaking proceedings foundered in the courts.

The FTC’s performance on this score has improved greatly over the past 30 years. The agency has learned the hard way to ask basic questions about each new undertaking: How much will it cost? Who will do it? How long will it take? What do we expect to accomplish? What are the doctrinal, political, and management risks? How will we know if it’s working? The bruising experiences of the late 1970s and early 1980s inspired stronger attention to planning and program management. The matching of the FTC’s commitments to capabilities remains a massive challenge for the institution.

a. Chronic Underfunding of Mandates

Agencies seldom will receive the resources needed to fulfill all the regulatory commands assigned to them. This is the case of the modern FTC. In many instances, such as the automobile credit sales provision of Dodd Frank, Congress assigns major new responsibilities without providing resources to carry them out. The legislative process that generates new substantive legislation is detached from the process that appropriates funds. Thus, Congress rarely considers the resource implications of requirements that the agency enforce new laws, issue new rules, or prepare reports.

Agencies respond to these imperatives in one of two ways, both of which undermine agency effectiveness. The first is to undertake programs that exceed the agency’s ability to execute them effectively. The agency will be tempted to cut corners by weakening internal quality control measures, understaffing ambitious projects, or assigning difficult litigation or rulemaking tasks to relatively inexperienced personnel. Even though senior personnel may recognize how much resource constraints limit agency capacity, they may still acquiesce in Congressional demands for the initiation of new projects. A short term political appointee may regard the initiation of a new measure as a credit-claiming event and may see the risk that an improvidently conceived project may fail as a cost that will be borne by future agency leaders and will not be attributed fully, or at all, to the appointee who originated it. Without an effective feedback mechanism that forces the incumbent appointee to internalize such costs, it is easy to begin such projects, even when they outrun the agency’s capacity.

A second mechanism is to fund new projects adequately by a relatively silent form of triage. This consists of draining resources away from other programs ostensibly designed to implement congressionally imposed duties. To support new programs in areas such as privacy, data protection, and mortgage lending fraud, the FTC over time has quietly abandoned other programs that used to be mainstays of enforcement. To some extent this is done with at least the implicit approval of Congress. Through official budget requests and oversight hearings, Congress is at least generally aware of how the Commission is spending its money. It can detect that some areas of policy responsibility seem to be inactive. Congress can observe, for example, that the FTC has brought two Robinson-Patman Act price discrimination cases in the past 23 years.112 This reliably indicates diminished attention to a statute whose enforcement in the 1960s yielded hundreds of cases. For the most part, the FTC has constructed or retooled major programs involving privacy, financial services, mergers, horizontal restraints, and single firm conduct by severely reducing outlays for the enforcement of the Robinson-Patman Act and consumer protection statutes dealing with fur and textile labeling.

#### Racism encoded in unregulated GAFA-developed AI, when coopted and exported by authoritarian regimes, empowers global genocides

Solon, 17—writer for The Guardian, citing Kate Crawford, founder of the AI Now Institute, originator of the Algorithmic Impact Assessment concept (Olivia, “Artificial intelligence is ripe for abuse, tech researcher warns: 'a fascist's dream',” <https://www.theguardian.com/technology/2017/mar/13/artificial-intelligence-ai-abuses-fascism-donald-trump>, dml)

As artificial intelligence becomes more powerful, people need to make sure it’s not used by authoritarian regimes to centralize power and target certain populations, Microsoft Research’s Kate Crawford warned on Sunday.

In her SXSW session, titled Dark Days: AI and the Rise of Fascism, Crawford, who studies the social impact of machine learning and large-scale data systems, explained ways that automated systems and their encoded biases can be misused, particularly when they fall into the wrong hands.

"Just as we are seeing a step function increase in the spread of AI, something else is happening: the rise of ultra-nationalism, rightwing authoritarianism and fascism," she said.

All of these movements have shared characteristics, including the desire to centralize power, track populations, demonize outsiders and claim authority and neutrality without being accountable. Machine intelligence can be a powerful part of the power playbook, she said.

One of the key problems with artificial intelligence is that it is often invisibly coded with human biases. She described a controversial piece of research from Shanghai Jiao Tong University in China, where authors claimed to have developed a system that could predict criminality based on someone's facial features. The machine was trained on Chinese government ID photos, analyzing the faces of criminals and non-criminals to identify predictive features. The researchers claimed it was free from bias.

"We should always be suspicious when machine learning systems are described as free from bias if it's been trained on human-generated data, Crawford said. "Our biases are built into that training data.'

In the Chinese research it turned out that the faces of criminals were more unusual than those of law-abiding citizens. "People who had dissimilar faces were more likely to be seen as untrustworthy by police and judges. That's encoding bias," Crawford said. "This would be a terrifying system for an autocrat to get his hand on."

Crawford then outlined the "nasty history" of people using facial features to "justify the unjustifiable". The principles of phrenology, a pseudoscience that developed across Europe and the US in the 19th century, were used as part of the justification of both slavery and the Nazi persecution of Jews.

With AI this type of discrimination can be masked in a black box of algorithms, as appears to be the case with a company called Faceception, for instance, a firm that promises to profile people's personalities based on their faces. In its own marketing material, the company suggests that Middle Eastern-looking people with beards are "terrorists", while white looking women with trendy haircuts are "brand promoters".

Another area where AI can be misused is in building registries, which can then be used to target certain population groups. Crawford noted historical cases of registry abuse, including IBM's role in enabling Nazi Germany to track Jewish, Roma and other ethnic groups with the Hollerith Machine, and the Book of Life used in South Africa during apartheid.

Donald Trump has floated the idea of creating a Muslim registry. "We already have that. Facebook has become the default Muslim registry of the world," Crawford said, mentioning research from Cambridge University that showed it is possible to predict people's religious beliefs based on what they "like" on the social network. Christians and Muslims were correctly classified in 82% of cases, and similar results were achieved for Democrats and Republicans (85%). That study was concluded in 2013, since when Al has made huge leaps.

Crawford was concerned about the potential use of AI in predictive policing systems, which already gather the kind of data necessary to train an AI system. Such systems are flawed, as shown by a Rand Corporation study of Chicago's program. The predictive policing did not reduce crime, but did increase harassment of people in "hotspot" areas. Earlier this year the justice department concluded that Chicago's police had for years regularly used "unlawful force", and that black and Hispanic neighborhoods were most affected.

Another worry related to the manipulation of political beliefs or shifting voters, something Facebook and Cambridge Analytica claim they can already do. Crawford was skeptical about giving Cambridge Analytica credit for Brexit and the election of Donald Trump, but thinks what the firm promises - using thousands of data points on people to work out how to manipulate their views - will be possible "in the next few years".

"This is a fascist's dream," she said. "Power without accountability.'

Such black box systems are starting to creep into government. Palantir is building an intelligence system to assist Donald Trump in deporting immigrants.

It’s the most powerful engine of mass deportation this country has ever seen," she said.

But what do you do if the system has got something wrong? What if it has incorrect data?

Crawford argues that we have to make these AI systems more transparent and accountable. “The ocean of data is so big. We have to map their complex subterranean and unintended effects.”

#### Resources have been carefully allocated to win existing cases – only plan’s fiat disrupts selectivity

Kantrowitz 20 (Alex Kantrowitz, journalist covering Big Tech, Founder at Big Technology, independent newsletter and podcast, former Senior Technology Reporter at BuzzFeed, BA Industrial and Labor Relations, Cornell University, Special Student, Political Science and International Relations, Boğaziçi University, Istanbul; **internally citing former DOJ and FTC employees**; “‘It’s Ridiculous.’ Underfunded FTC and DOJ Can’t Keep Fighting the Tech Giants Like This,” Big Technology, 9-17-2020, - #E&F - https://bigtechnology.substack.com/p/its-ridiculous-underfunded-us-regulators)

“DOJ is under-resourced, FTC it’s ridiculous,” one ex DOJ-staffer told Big Technology.

This doesn’t mean these agencies are entirely hamstrung; they can typically marshall the resources to bring a clear-cut case. “They want to win,” one ex-FTC official said. “If it's really egregious, and they find that in discovery, the attorneys are going to put a case together and go after it.” But when you can only take up a limited number of cases due to resource constraints, things inevitably slip through.

# PTX

#### All our ev explicitly assumes no-one wants a default – BUT describes how it could happen despite their intent simply by running out of time – AND merely running it down to the wire still triggers downgrade and our impacts

White 9-13-21 (Martha C. White, NBC News contributor who writes about business, finance and the economy, graduate of Princeton University; **internally citing Mark Zandi, chief economist at Moody’s Analytics**; “America's creditworthiness — and your 401(k) — are on the line until lawmakers approve a new debt ceiling,” NBC News, 9-13-2021, https://www.nbcnews.com/business/business-news/america-s-creditworthiness-your-401-k-are-line-until-lawmakers-n1279079)

“Every time the debt ceiling comes up, it's an exercise in political jostling,” said Peter Essele, head of portfolio management for Commonwealth Financial Network.

Despite the saber rattling, Essele argued that politicians in both parties have too much to lose to play chicken with the nation’s credit rating.

“It's essentially a self-inflicted wound in the middle of a pandemic. During a period when we’re seeing slowing growth and above-average inflation, it would be political suicide for both parties,” he said. “There's certainly a situation where they could put us on the verge, but ultimately, it's in the best interests of politicians to have something worked out.”

Some market observers worry, though, that a miscalculation — or even a procedural roadblock if Congress takes the fight down to the wire — could trigger just that kind of a collapse. The U.S. debt was downgraded from AAA to AA+ by Standard & Poor's in 2011. Further black marks on the nation’s credit rating would have greater consequences.

“If you go down a couple more notches, that will get people's attention,” Martin said. “If the extraordinary measures are exhausted and something gets missed, I think that gets people's attention.”

Beyond the ratings agencies, the U.S. would lose — perhaps permanently — its credibility on the global financial stage, Zandi warned. “It would also further start to undermine the viability of the dollar as a reserve currency, as a foundation of the global financial system,” he said.

“Treasuries are the bedrock of the entire financial system. If there's any major disruption to the risk-free rate, the whole house of cards would basically collapse at that point,” Essele said. “The aftermath of that would basically be scorched earth in Washington.”

#### Debt ceiling’s a higher priority for Biden

Stratas 9-9-21 (Stratas Foods, “Morning Market Comments,” Market News, Cheney Brothers Inc., 9-10-2021, https://www.cheneybrothers.com/newsletter/CHENEYBROTHERSMARKETNEWS.PDF)

Macroeconomics

Red across the board for the three major indices. The Dow dropped 69points to end at 35,031 while the S&P fell6 points to 4,514. The NASDAQ didn’t buck the trend of the other two and went red for 88 points to 15,286.

In the news, the Beige Book was re-leased and showed that growth in the American economy slowed along with the rise of the Delta variant. Moving forward the news clippings will be focused on the debt ceiling or more importantly the raising of the debt ceiling. The 3.5T infrastructure bill is a priority for the Biden administration after the debt ceiling discussions. Right now, the bill wouldn’t pass but the margin is close. If I was a betting man, I wouldn’t count on the full 3.5T passing but a pared down amount probably will.

#### AND, even if infrastructure’s NOT delayed, debt ceiling and CR still get a vote first anyway

Kilgore 9-11-21 (Ed Kilgore, former senior fellow at the Progressive Policy Institute, former policy director for the Democratic Leadership Council, political columnist for New York magazine, managing editor of the Democratic Strategist, “The Looming Government Shutdown and Debt Default ‘Cliffs’,” Intelligencer, New York Magazine, 9-11-2021, https://nymag.com/intelligencer/2021/09/government-shutdown-and-debt-default-cliffs-loom-ahead.html)

Even for an institution prone to let obligations pile up like the dirty laundry of procrastinating adolescents, Congress has outdone itself this year in creating an autumn logjam. There is, of course, House passage of the trillion-dollar infrastructure bill already cleared by the Senate, along with the multi-trillion dollar budget reconciliation bill to which it is inextricably linked, which must be enacted in both Houses. There is no immediate deadline for these all-important items, though Speaker Nancy Pelosi has promised to take up the infrastructure bill by September 27, which means steady progress first on the immensely complicated reconciliation bill so that one doesn’t pass while the other falls apart. There’s also a defense authorization bill due by the end of the month. And Pelosi wants a vote on a national abortion rights bill asap, so that it has time to go over to the Senate and die to a Republican filibuster.

The thing that must happen by the end of September is some action on appropriations to keep the federal government open, presumably by a stopgap “continuing resolution,” since Congress isn’t getting any of the 13 regular FY 2022 appropriations bills done when the new fiscal year begins on October 1. House Majority Leader Steny Hoyer has now told Members to expect a vote on a stopgap bill the week of September 20, extending current appropriations until December.

According to a previous decision by congressional Democrats, the plan is to connect an increase or suspension in the public debt limit to appropriations, nestling the unpopular debt measure into the must-pass spending bill. Since Treasury Secretary Janet Yellen told the world earlier this week that action on the debt limit had to happen before the end of October at the latest, that means the stopgap bill had better include it. Otherwise the federal government will default on its obligations and the world financial system will collapse, which would be unpleasant.

#### Regardless of whether you call it PC or simply getting shit done quickly, provoking a brand new partisan battle when the agenda for the next couple weeks is already maxed blows any chance of the debt ceiling – there’s no extra time nor energy

MIN News 9-16-21 (MIN News, up-to-the-minute news with a focus on global news with an impartial perspective, “The eve of the U.S. Riot,” 9-16-2021, https://min.news/en/world/fdc7c0db566ff0f75dadb19e71f8212b.html)

According to the latest media report on Wednesday (September 8), as US President Biden has no new measures to express the renewal, on September 6 this year, the government's fixed weekly aid payment of 300 US dollars has expired and the disbursement has been terminated. .

However, this Tuesday (September 7), the White House of the United States said that each state can consider whether to extend the grant period according to their own circumstances. If some states want to provide welfare payments to those in need, the White House will continue to support it.

In fact, the United States has also tried before the relief fund expires, but either the relief fund has a smaller scope of impact, or the new bill will be extended soon after it expires. The suspension of unemployment assistance has affected more than 11 million people in the country, including 4.2 million casual workers and 3.3 million long-term unemployed.

So why did the United States not introduce a new bill to extend the bailout when it expired? That's because the US government is working hard to promote the passage of the $1 trillion infrastructure bill and the $3.5 trillion budget to further boost the country's economy. In addition, the country is burdened with 28.7 trillion U.S. dollars in debt and is facing the risk of debt default. There is really no extra energy and money to solve the problem of unemployment assistance.

We must know that the current labor participation rate in the United States is sluggish. As of the end of June this year, there were 10.1 million employment gaps in the country. If relief payments continue, it will only further hinder the release of the country's labor force. It is reported that among the 50 states in the United States, 24 states have stopped distributing benefits.

However, this is not a good solution to the employment problem. If the more than 10 million employment gap can be filled by someone, it would have been filled long ago. Those in need of government relief do not have many labor skills. There are a large number of idlers, drug addicts and anti-social workers in the United States. These people are unwilling to go to work. They just ask for money from the government. Once this group of people cannot get relief from the government, they will naturally go to society to rob them. These poor Americans will have their lives left, and they will become Americans. Serious instability factors.

This is in sharp contrast to the Biden administration's attitude towards the “suspended deportation order” in early August. American housing tenants face the risk of being evicted from their housing if they default on rent. Since the outbreak of the coronavirus pandemic, a large number of tenants have struggled to pay rent on time. The Centers for Disease Control and Prevention (CDC) issued a "suspended eviction order" last September, saving millions of tenants from going out.

At the end of July this year, the "suspended deportation order" expired, and the progressives in the Democratic Party unanimously asked Biden to postpone. The Biden administration also made active efforts for the postponement and successfully extended it for two months. Although the Supreme Court ended the “suspended deportation order” with a 6-3 ruling at the end of August, the then Biden administration did at least make it as long as possible.

Since major states suspended relief payments, many U.S. citizens have expressed dissatisfaction, because there is a long transition period from looking for a job to getting a salary, and rushing to stop the relief payments is detrimental to the normal life of American citizens. Influence. Moreover, some American citizens, because of the sequelae of pneumonia, are unable to perform high-intensity work on their own and stop distributing relief funds. These citizens can only find unsafe jobs with salaries far below the cost of living.

In order to help American citizens through the embarrassing period, the major states have also given 30 days of transition time, but many people say that 30 days are not sufficient at all. Sometimes it may take two months to find a suitable job. During this period, the unemployed people who have no economic income will inevitably lose their income, which will have a serious impact on their lives. And they have to pay a lot of expenses in the past two months, not only for living expenses, but also for some mortgage payments. This government decision will destroy the lives of many people.

And now, the Biden administration must promote the smooth passage of the bipartisan cooperation infrastructure bill and the US$3.5 trillion budget before the end of September to boost Biden's repeated low support rates after the epidemic rebounded and Afghanistan's defeat. At the same time, the Democrats must negotiate with the Republicans in Congress to raise the debt ceiling and avoid government shutdowns. The tight timetable and severely shrinking political capital have made the Biden administration unable to open up a new battlefield on the issue of unemployment benefits.