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#### The United States federal government should establish a Digital Platform Agency to regulate public interest expectations that promote fair market practices pertaining to digital technology, including portability, interoperability, and privacy regulations.

#### Digital Platform Agency solves effective tech regulation---makes Big Tech sustainble

Wheeler et al. 20 [Tom Wheeler is the former Chairman of the Federal Communications Commission, Phil Verveer has served at the Antitrust Division of the Justice Department, the State Department, and the FCC, and Gene Kimmelman served in antitrust positions in both the Congress and Department of Justice, authors are all Senior Fellows at Harvard Kennedy School’s Shorenstein Center and recently published a report titled “New Digital Realities; New Oversight Solutions,” “The need for regulation of big tech beyond antitrust,” September 23, 2020, https://www.brookings.edu/blog/techtank/2020/09/23/the-need-for-regulation-of-big-tech-beyond-antitrust/]

Without a doubt, Big Tech has delivered wonderous new capabilities. However, the “move fast and break things” mantra of Silicon Valley has meant that digital companies move fast and make their own rules. Antitrust statutes reflect a time when markets were relatively stable because technology was relatively stable. Today, the rapid pace of digital technology means companies can move rapidly to advantage themselves by exploiting consumers and eliminating potential competition.

Regulation, done with agility, can be an important refinement to the blunt force of the antitrust laws while being able to protect competition and consumers alike. It is not enough, however, to re-task industrial era federal agencies to oversee the digital giants. These agencies are full of dedicated professionals, but they operate on precedents and procedures built for another era when technology and innovation moved at a slower pace. In place of such industrial era muscle memory, we need a purpose-built federal agency with digital DNA.

Congress has traditionally created new expert agencies to oversee new technology platforms. Whether the Interstate Commerce Commission (railroads), Federal Communications Commission (broadcasting), Federal Aviation Administration (air transport), Consumer Financial Protection Bureau (finance), or any other of the alphabet agencies, the precedent is clear: new technologies require specialized oversight. In our report, “New Digital Realities; New Oversight Solutions” we conclude such regulation in the digital era warrants creation of a Digital Platform Agency to establish public interest expectations that promote fair market practices while being agile enough to deal with the rapid pace of digital technology.

Such an agency should be governed by a new congressionally established digital policy built on three pillars:

Risk management rather than micromanagement: rigid industrial era utility-style regulation is incompatible with today’s rapid pace of technological change. Regulation should be based on risk-targeted remedies focused on market outcomes.

Restoration of common law principles: for hundreds of years common law has required those providing services to anticipate and mitigate harmful effects (a “duty of care”), as well as providing access to essential services (a “duty to deal”). Oversight of Big Tech need do nothing more than reinstate such expectations.

Agile regulation: in lieu of top-down dictates, the new agency should be the forum to involve the industry in developing enforceable behavioral standards similar to fire and building codes. Such codes introduce innovation-promoting agility to the oversight process while protecting consumers and competition.

The existing agencies of government are based on statutes and structures that reflect the relatively stable markets and relatively stable technology of the late industrial era. These policies and procedures, however, have been ambushed by the digital future.

The solution to the public interest challenges posed by Big Tech is to embrace its differences and enable subject matter experts to substitute the public interest for corporate interests. While antitrust enforcement is important, the companies can no longer be permitted to make their own rules. It is time for purpose-built federal oversight of the dominant force in our lives and our economy.

#### Expanding antitrust beyond consumer welfare wrecks the airline industry --- consolidation’s key to withstand demand shocks

Longe 21 [Edward Longe, “Why the Consumer Welfare Standard Must Remain the Bedrock of U.S. Antitrust Law,” March 10, 2021, https://www.theamericanconsumer.org/2021/03/airlines-show-why-the-consumer-welfare-standard-must-remain-the-bedrock-of-u-s-antitrust-law/]

Despite a growing hostility toward big tech, the consolidation of the airlines between 2000 and 2010 serves as a clear example of why the consumer welfare standard should remain the basis for U.S. antitrust law.

Before 1974, U.S. antitrust law was governed by the Sherman Act (1890) and the Clayton Act (1917). The Sherman Act outlawed “monopolization, attempted monopolization, or conspiracy or combination to monopolize.” Most significantly, the Act also gave the federal government the power to break up large monopolies. The Clayton Act expanded the Sherman Act, creating the Federal Trade Commission and prohibiting anti-competitive acquisitions. Unifying both was a presumption that big companies are anticompetitive and intrinsically antithetical to consumer welfare.

The 1970s saw a significant change in how the federal government approached antitrust enforcement with the creation of the consumer welfare standard. In 1974, the Supreme Court ruled, “Statistics concerning market share and concentration, while of great significance, are not conclusive indicators of anticompetitive effects.” In essence, the Supreme Court told antitrust enforcers that they could not ban mergers because it would create a monopoly. Instead, they should consider if the proposed merger harms or benefits consumers. In essence, proponents of the consumer welfare standard believed”antitrust law should serve consumer interests and that it should protect competition rather than individual competitors.”

Since 1974, the consumer welfare standard has allowed mergers that would have been prohibited under the Sherman and Clayton Acts. Despite creating larger companies, the result has only enhanced consumer welfare.

Between 2000 and 2010, a number of mergers took place following the dual crisis of September 11, 2001 and the 2008 financial crisis. Both events severely reduced demand for air travel, leading to industry losses of around $35 billion and a need to restructure the industry to remain solvent. Over that same decade, 30% of U.S. airlines filed for bankruptcy protection. The period 2001-2010 was so damaging to airlines that it was routinely referred to as the industry’s lost decade.

In response to the lost decade, airlines merged and consolidated into fewer but larger companies. Most notably, Trans World Airlines was acquired by American Airlines for $1.5 bn in 2001, America West was bought by U.S. Airways in 2005 for $1.5 bn, and Delta acquired Northwest Airlines in 2008 for $2.6bn. Under the traditional approach to antitrust, these mergers would have been prohibited under the theory they lessened competition, would raise prices, and lower service standards.

Despite these mergers creating large, increased concentration was allowed to occur because the Department of Justice employed the consumer welfare standard, not a reflexive hostility to large companies. An advanced quantitative study by the DoJ’s Antitrust Division found that these mergers could “produce substantial and credible efficiencies that will benefit U.S. consumers and are not likely to substantially lessen competition.”

In particular, the DoJ noted that airline mergers “will result in efficiencies such as cost savings in airport operations, information technology, supply chain economics, and fleet optimization that will benefit consumers. Consumers are also likely to benefit from improved service made possible by combining under single ownership the complementary aspects of the airlines’ networks.”

When defending the mergers to Congress, airline executives pointed out that they would not be able to maintain services to rural communities unless they could merge and return to profitability. In his testimony to the U.S. Senate in 2007, Gerald Grinstein, former Chief Executive Officer at Delta, warned that unless mergers were allowed to occur, there would be “a loss of service to small communities” and higher airfares for consumers.

As a result of these mergers, consumer welfare was enhanced. Not only were carriers able to continue service to small communities that would otherwise be unprofitable, but prices fell significantly. The result of this was more Americans flying between 2010 and 2019.

When considering the example of the airline mergers between 2000 and 2010, it becomes clear that the creation of large companies does not necessarily harm consumers. The example of airline mergers should also serve as a reminder to legislatures seeking to change how federal agencies approach antitrust cases that large companies can substantially enhance consumer welfare. Returning to a ‘big is bad’ mentality to antitrust risks denying consumers benefits they would otherwise derive from large companies’ existence.

#### The impact is airpower

**Hunter 20** [Andrew Hunter, “COVID-19 is attacking our defense supply chains and our nation's security,” March 25, 2020, https://thehill.com/opinion/national-security/489375-covid-19-is-attacking-our-defense-supply-chains-and-our-nations]

The damage happening today in the aviation sector is highly likely to spill over into the defense industrial base through defense supply chains. Recognizing and addressing this reality is essential to avoid profound long-term damage to national security.

The economic effect right now on aerospace and defense might seem like a tale of two cities, with defense doing much better than commercial aviation. Escalating travel bans and travelers’ reluctance to fly have dramatically curtailed air travel, hitting commercial aviation with a massive demand shock. The most recent assessment of the International Air Transport Association is that air travel will decline about 19 percent in 2020, and this estimate may be conservative. At the same time, commercial aviation is suffering a supply shock, with massive disruptions of its workforce as social distancing and quarantines affect operations.

Most aviation-related businesses run at tight margins in the best of times, so these shocks aren’t readily absorbed. The current crisis also comes at a time when aviation manufacturing is struggling due to the separate curtailment of 737 airliner production at Boeing. Parts suppliers, component assemblers, airlines and plane manufacturers were already absorbing losses as aircraft production lines slowed and delivered aircraft sat idle. In addition, the entire supply chain is absorbing significant costs reconfiguring to remove all components produced by Huawei by this summer, as mandated by law. Taken together, the cumulative impact of these factors on aviation is crushing, and few if any industry players have the financial resources to ride out the crisis without help.

On the surface, the U.S. defense industry would seem to be in a much better position than commercial aviation. While the defense industry is dealing with the supply shock that comes with social distancing measures, as well as disruptions in supply chains from both domestic and overseas suppliers, the Department of Defense (DOD) is a stable customer.

Ironically, the department’s very stability is a bit of a problem. While defense supply chains are struggling with the supply shock of disruptions in labor and parts, their contractual requirements to deliver to the military continue, and companies cannot lightly stiff the government. Industry is looking for clear guidance on providing paid leave for the contracted workforce and some relief on delivery requirements where contract schedules simply can’t be met. The DOD is working to provide that guidance through its contracting officers and to delegate the right authorities to them to modify contracts. It looks like government and industry can work through these issues, which should make the defense industry a relative source of strength in the immediate future.

But this surface view is deceptive because there are immense interlinkages between commercial aviation and the defense industrial base.

While there are high-profile companies active in both sectors, such as Boeing, General Electric and United Technologies, the main link is the supply chain. Big manufacturers in aerospace and defense pass about 70 cents out of every $1 they earn to their supply chain, to pay for the parts and components that go into their products. Much of this supply chain is common between defense and aviation. In fact, it is typical for companies in the supply chain to earn most of their revenue though commercial work, and a lesser share from defense. These firms will be hit hard. While their defense work is a potential source of strength, there is also substantial risk that they will fail and be unable to meet their defense obligations.

A slew of business failures in the aviation sector inevitably will lead to massive defense industry disruption. Such failures not only will damage national security, they will hit the American workforce hard. The aerospace and defense sector provides high-paying manufacturing jobs with quality benefits, many of which are unionized. Politicians of all stripes work to create these jobs because they can support a family in a comfortable, middle-class life. The industry also is an export all-star that brings in large orders from overseas for goods produced primarily in the United States.

#### Global nuclear war

Pfaltzgraff 10 [Dr. James Pfaltzgraff, Robert L, Shelby Cullom Davis Professor of International Security Studies at. The Fletcher School of Law and Diplomacy and President of the Institute for Foreign Policy Analysis, et al., Final Report of the IFPA-Fletcher Conference on National Security Strategy and Policy, “Air, Space, & Cyberspace Power in the 21st-Century,” 2010, p. xiii-9]

THE UNITED STATES AS AN AEROSPACE NATION: CHALLENGES AND OPPORTUNITIES

In his address opening the conference, General Norton A. Schwartz, Chief of Staff of the Air Force (CSAF), pointed out how, with its inherent characteristics of speed, range, and flexibility, airpower has forever changed warfare. Its advent rendered land and maritime forces vulnerable from the air, thus adding an important new dimension to warfare. Control of the air has become indispensable to national security because it allows the United States and friendly forces to maneuver and operate free from enemy air attack. With control of the air the United States can leverage the advantages of air and space as well as cyberspace. In these interdependent domains the Air Force possesses unique capabilities for ensuring global mobility, long-range strike, and intelligence, surveillance, and reconnaissance (ISR). The benefits of airpower extend beyond the air domain, and operations among the air, land, maritime, space, and cyber domains are increasingly interdependent.

General Schwartz stated that the Air Force’s challenge is to succeed in a protracted struggle against elements of violent extremism and irreconcilable actors while confronting peer and near-peer rivals. The Air Force must be able to operate with great precision and lethality across a broad spectrum of conflict that has high and low ends but that defies an orderly taxonomy. Warfare in the twenty-first century takes on a hybrid complexity, with regular and irregular elements using myriad tools and tactics. Technology can be an enabler but can also create weaknesses: adversaries with increased access to space and cyberspace can use emerging technologies against the United States and/or its allies. In addition, the United States faces the prospect of the proliferation of precision weapons, including ballistic and cruise missiles as well as increasingly accurate mortars, rockets, and artillery, which will put U.S. and allied/coalition forces at risk. In response to mounting irregular warfare challenges American leaders have to adopt innovative and creative strategies. For its part, the USAF must develop airmen who have the creativity to anticipate and plan for this challenging environment. Leadership, intellectual creativity, capacity, and ingenuity, together with innovative technology, will be crucial to addressing these challenges in a constrained fiscal environment.

System Versatility

In meeting the broad range of contingencies – high, low, regular, irregular, and hybrid – the Air Force must maintain and develop systems that are versatile, both functionally (including strike or ISR) and in terms of various employment modes, such as manned versus remotely piloted, and penetrating versus stand-off systems. General Schwartz emphasized the need to be able to operate in conflict settings where there will be demands for persistent ISR systems able to gain access to, and then loiter in, contested or denied airspace. The targets to be identified and tracked may be mobile or deeply buried, of high value, and difficult to locate without penetrating systems. General Schwartz also called attention to the need for what he described as a “family of systems” that could be deployed in multiple ways with maximum versatility depending on requirements. Few systems will remain inherently single purpose. Indeed, he emphasized that the Air Force must purposefully design versatility into its new systems, with the majority of future systems being able to operate in various threat environments. As part of this effort further joint integration and inter-service cooperation to achieve greater air-land and air-sea interoperability will continue to be a strategic necessity.

Space Access and Control

Space access, control, and situational awareness remain essential to U.S. national security. As potential rivals develop their own space programs, the United States faces challenges to its unrestricted access to space. Ensuring continuing access to the four global commons – maritime, air, space, and cyberspace – will be a major challenge in which the USAF has a key role. The Air Force has long recognized the importance of space and is endeavoring to make certain that U.S. requirements in and for space are met and anticipated. Space situational awareness is vital to America’s ability to help evaluate and attribute attacks. Attribution, of course, is essential to deterrence. The USAF is exploring options to reduce U.S. dependence on the Global Positioning System (GPS), which could become vulnerable to jamming. Promising new technologies, such as “cold atoms,” pseudolites, and imaging inertial navigation systems that use laser radar are being investigated as means to reduce our vulnerability.

Cyber Capabilities

The USAF continues to develop cyber capabilities to address opportunities and challenges. Cyber threats present challenges to homeland security and other national security interests. Key civilian and military networks are vulnerable to cyber attacks. Preparing for cyber warfare and refining critical infrastructure protection and consequence management will require new capabilities, focused training, and greater interagency, international, and private sector collaboration.

Challenges for the Air Force

General Schwartz set forth a series of challenges for the Air Force, which he urged conference participants to address. They included:

• How can the Air Force better address the growing demand for real-time ISR from remotely piloted systems, which are providing unprecedented and unmatched situational awareness?

• How can the USAF better guarantee the credibility and viability of the nation’s nuclear forces for the complex and uncertain security environment of this century?

• What is the way ahead for the next generation of long-range strike and ISR platforms? What trade-offs, especially between manned and unmanned platforms, should the USAF consider? How can the USAF improve acquisition of such systems? How can the USAF better exploit the advantage of low-observables?

• How can the Air Force better prepare itself to operate in an opposed network environment in which communications and data links will be challenged, including how to assure command and control (C2) in bandwidth-constrained environments?

• In counter-land operations, how can the USAF achieve improved target discrimination in high collateral damage situations?

• How should the USAF posture its overseas forces to ensure access? What basing structure, logistical considerations, andprotection measures are required to mitigate emerging anti-access threats?

• How can the Air Force reduce its reliance on GPS to ensure operations in a GPS-denied environment?

• How can the USAF lessen its vulnerability to petroleum shortages, rising energy prices, and resulting logistical and operational challenges?

• How can the Air Force enhance partnerships with its sister services and the interagency community? How can it better collaborate with allies and coalition partners to improve support of national security interests?

These issues were addressed in subsequent conference sessions. The opening session focused on the multidimensional and dynamic security setting in which the Air Force will operate in the years ahead. The session included a discussion of the need to prioritize necessary capabilities and to gauge “acceptable risks.” Previous Quadrennial Defense Reviews (QDRs) rested on the basic assumption that the United States would be able to support operations simultaneously or nearly simultaneously in two major regional contingencies, with the additional capacity to respond to smaller disaster-relief and/or stability operations missions. However, while the 2010 QDR1 maintains the need for U.S. forces to operate in two nearly simultaneous major wars, it places far greater emphasis on the need to address irregular warfare challenges. Its focus is maintaining and rebalancing U.S. force structure to fight the wars in which the United States is engaged today while looking ahead to the emerging security setting. The

QDR further seeks to develop flexible and tailored capabilities to confront an array of smaller-scale contingencies, including natural disasters, perhaps simultaneously, as was the case with the war in Afghanistan, stability operations in Iraq, and the Haiti relief effort.

The 2010 QDR highlights important trends in the global security environment, especially unconventional threats and asymmetric challenges. It suggests that a conflict with a near-peer competitor such as China, or a conflict with Iran, would involve a mix, or hybrid, of capabilities that would test U.S. forces in very different ways. Although predicting the future security setting is a very difficult if not an impossible exercise, the 2010 QDR outlines major challenges for the United States and its allies, including technology proliferation and diffusion; anti-access threats and the shrinking global basing infrastructure; the possibility of weapons of mass destruction (WMD) use against the U.S. homeland and/or against U.S. forces abroad; critical infrastructure protection and the massed effects of a cyber or space attack; unconventional warfare and irregular challenges; and the emergence of new issue areas such as Arctic security, U.S. energy dependence, demographic shifts and urbanization, the potential for resource wars (particularly over access to water), and the erosion or collapse of governance in weak or failing states.

TECHNOLOGY DIFFUSION

Technology proliferation is accelerating. Compounding the problem is the reality that existing multilateral and/or international export regimes and controls have not kept pace with technology, and efforts to constrain access are complicated by dual-use technologies and chemical/biological agents. The battlefields of the future are likely to be more lethal as combatants take advantage of commercially based navigation aids for precision guidance and advanced weapons systems and as global and theater boundaries disappear with longer-range missile systems becoming more common in enemy arsenals. Non-state entities such as Hezbollah have already used more advanced missile systems to target state adversaries. The proliferation of precision technologies and longer-range delivery platforms puts the United States and its partners increasingly at risk. This proliferation also is likely to affect U.S. operations from forward operating locations, placing additional constraints on American force deployments within the territories of allies. Moreover, as longer-range ballistic and cruise missiles become more widespread, U.S. forces will find it increasingly difficult to operate in conflicts ranging from irregular warfare to high-intensity combat. As highlighted throughout the conference, this will require that the United States develop and field new-generation low-observable penetration assets and related capabilities to operate in non-permissive environments.

PROLIFERATION TRENDS

The twenty-first-century security setting features several proliferation trends that were discussed in the opening session. These trends, six of which were outlined by Dr. Robert L. Pfaltzgraff, Jr., President of the Institute for Foreign Policy Analysis, and Shelby Cullom Davis Professor of International Security Studies, The Fletcher School, Tufts University, framed subsequent discussions.

First, the number of actors–states and armed non-state groups–is growing, together with strategies and capabilities based on more widely available technologies, including WMD and conventional weapons. This is leading to a blurring of categories of warfare that may include state and non-state actors and encompass intra-state, trans-state, and inter-state armed conflict as well as hybrid threats.

Second, some of these actors subscribe to ideologies and goals that welcome martyrdom. This raises many questions about dissuasion and deterrence and the need to think of twenty-first-century deterrence based on offensive and defensive strategies and capabilities.

Third, given the sheer numbers of actors capable of challenging the United States and their unprecedented capabilities, the opportunity for asymmetric operations against the United States and its allies will grow. The United States will need to work to reduce key areas of vulnerability, including its financial systems, transportation, communications, and energy infrastructures, its food and water supply, and its space assets.

Fourth, the twenty-first-century world contains flashpoints for state-to-state conflict. This includes North Korea, which possesses nuclear weapons, and Iran, which is developing them. In addition, China is developing an impressive array of weaponry which, as the Commander of U.S. Pacific Command stated in congressional testimony, appears “designed to challenge U.S. freedom of action in the region and, if necessary, enforce China’s influence over its neighbors – including our regional allies and partners’ weaponry.”2 These threats include ballistic missiles, aircraft, naval forces, cyber capabilities, anti-satellite (ASAT) weapons, and other power-projection capabilities. The global paradigm of the twenty-first century is further complicated by state actors who may supply advanced arms to non-state actors and terrorist organizations.

Fifth, the potential for irregular warfare is rising dramatically with the growth of armed non-state actors. The proliferation of more lethal capabilities, including WMD, to armed non-state actors is a logical projection of present trends. Substantial numbers of fractured, unstable, and ungoverned states serve as breeding grounds of armed non-state actors who will resort to various forms of violence and coercion based on irregular tactics and formations and who will increasingly have the capabilities to do so.

Sixth, the twenty-first-century security setting contains yet another obvious dimension: the permeability of the frontiers of the nation state, rendering domestic populations highly vulnerable to destruction not only by states that can launch missiles but also by terrorists and other transnational groups. As we have seen in recent years, these entities can attack U.S. information systems, creating the possibility of a digital Pearl Harbor.

Taken together, these trends show an unprecedented proliferation of actors and advanced capabilities confronting the United States; the resulting need to prepare for high-end and low-end conflict; and the requirement to think of a seamless web of threats and other security challenges extending from overseas to domestic locales.

Another way to think about the twenty-first-century security setting, Dr. Pfaltzgraff pointed out, is to develop scenarios such as the following, which are more illustrative than comprehensive:

• A nuclear Iran that engages in or supports terrorist operations in a more assertive foreign policy

• An unstable Pakistan that loses control of its nuclear weapons, which fall into the hands of extremists

• A Taiwan Straits crisis that escalates to war

• A nuclear North Korea that escalates tensions on the Korean peninsula

What all of these have in common is the indispensable role that airpower would play in U.S. strategy and crisis management.

## 2

#### The fifty states and relevant subnational entities mandate data portability and interoperability for social media platforms.

#### State coordination solves---multistate litigation and enforcement bureaus overcome deficits.

Arteaga ’21 [Juan and Jordan Ludwig; January 28; former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, J.D. from Columbia Law School; partner in the Antitrust and Competition Group at Crowell and Moring firm, J.D. from Loyola Law School; Global Competition Review, “The Role of US State Antitrust Enforcement,” <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement>]

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

Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition.[[2]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-126) In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions.[[3]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-125) This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage.[[4]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-124) Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.[[5]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-123)

In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process.[[6]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-122) As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States.[[7]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-121) This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.[[8]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-120)

In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring parens patriae suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations.[[9]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-119) Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices.[[10]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-118) These laws had their intended effect of reinvigorating state antitrust enforcement.

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints.[[11]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-117) The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’.[[12]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-116) No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications.[[13]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-115) To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.[[14]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-114)

## 3

#### Infrastructure will pass through legislative acrobatics. Partisan goals will exhaust political capital.

Stokols ’21 [Eli and Jennifer Haberkorn; August 6; White House and Congressional reporters respectively, citing statements by lawmakers; LA Times, “Why McConnell, GOP may give Biden a bipartisan win on infrastructure,” https://www.latimes.com/politics/story/2021-08-06/bidens-bipartisan-bet-on-infrastructure-could-pay-off]

Senate Minority Leader Mitch McConnell has said he is “100%” focused on stopping President Biden’s agenda — and yet he voted with every Senate Democrat last week to set the stage for passing a bipartisan infrastructure bill that would be a major political win for the White House.

He wasn’t alone. Sixteen other Republicans opted to advance the legislation — in the face of multiple missives from former President Trump urging them to block it.

At a moment of such intense partisanship, this momentary alignment of incentives for Democrats and Republicans, set to vote in the coming days to pass the approximately $1-trillion package out of the Senate, is the Washington equivalent of a total eclipse. However rare and fleeting, Republicans and Democrats believe they are serving their own self-interests, not just the president’s, in voting to pass a bipartisan bill to improve roads, bridges, rail lines, water pipes and broadband networks.

“Every incumbent benefits from the sense that the Congress can figure out how to get important things done,” said Sen. Roy Blunt (R-Mo.).

Unsurprisingly, lawmakers don’t expect the conviviality to last long.

Upon passing the bipartisan plan as soon as this weekend, Democrats hope to soon approve the framework for a second bill, a sweeping Democratic proposal that includes massive subsidies and tax breaks for working families, free preschool and community college, a large expansion of Medicare and other tax cuts. Knowing no Republicans will support that measure, Democrats plan to utilize a process known as reconciliation, which requires just 50 votes for passage.

After Trump failed to achieve infrastructure legislation — his repeated efforts to promote “Infrastructure Week” became a running Washington joke — Biden has sought to leverage his 36 years of experience in the Senate to pursue a domestic program modeled after President Franklin Roosevelt’s New Deal.

Taking office amid the COVID-19 pandemic, Biden and Democrats brushed aside Republican opposition in March to enact a $1.9-trillion relief bill. But the decision to pivot to infrastructure, according to multiple administration officials, was based on a view that legislation focused on economic recovery was the logical next step and provided Biden an opportunity to notch a bipartisan achievement.

“The president always felt like this is a bill that’s going to get Republican support because these are issues that have always been bipartisan,” said Anita Dunn, counselor to the president, in an interview. “We haven’t had a major infrastructure bill in this country for a long time, and there’s desperate need for it.”

President Obama, who provoked strong reactions from the GOP base, exhausted precious political capital in his first two years in office on a more ideological push for healthcare reform. Conversely, Republicans have struggled to negatively define Biden, and his prioritization of infrastructure legislation has maintained broad public support and generated little political backlash.

“It’s not like we’re asking people to vote for unpopular things,” Dunn said. “We’re asking them to vote for popular things.”

Seven in 10 Americans back the bipartisan infrastructure proposal, according to a Monmouth University poll that the White House cited in a memo to lawmakers this week. The initiative also has the backing of the U.S. Chamber of Commerce and other trade groups, as well as the country’s largest labor unions.

With both parties looking ahead at the 2022 midterm election that will decide control of Congress, several Republicans have calculated there’s more risk in outright obstinacy than occasionally meeting the president in the middle.

“If you’re a Republican, you want to prove that you’re not just here to completely block and stop the entire agenda,” said Sen. John Thune of South Dakota, the No. 2 Republican in the Senate. “It’d be good maybe for the administration and they probably need a win right about now, but I also think that there are benefits politically to members on both sides.”

Biden’s push for bipartisan legislation has required persistence, flexibility and legislative acrobatics. After talks with Republicans faltered in early June, Biden encouraged his team to engage with a bipartisan group of senators drawing up their own infrastructure plan. After agreeing to a basic framework, Biden nearly torpedoed the effort by saying he wouldn’t sign it until Democrats passed their own companion bill — a likely $3.5-trillion package through the budget reconciliation process.

Though Biden quickly walked back that comment, his blunt assertion underlined his pursuit of a two-track approach that has proven — so far— to be politically shrewd.

The two bills, in theory, placate both ends of the president’s party: moderates craving a return to bipartisan deal-making and progressives eager to enact a broader agenda — giving Democrats, as some Republicans have argued, a chance to have it both ways.

“If you can get major legislation through with support from both parties, in Washington right now, that is a major accomplishment,” said Mike DuHaime, a GOP strategist in New Jersey. “He’s giving cover to a lot of Democrats in swing districts who need it. And it does give him freedom to go in a more partisan direction on other things.”

But the bifurcated approach also benefits Republicans. By backing the bipartisan bill, they can showcase a willingness to work with a Democratic administration to advance shared goals, while vehemently opposing the Democrats’ second bill, a release valve for the partisan steam that animates the party’s base.

“For Republicans, it’s a two-fer,” said Whit Ayres, a GOP pollster. “There’s lots to like in both positions.”

Sen. Kevin Cramer (R-N.D.), who has supported the bipartisan bill while opposing the Democrats’ reconciliation measure, is OK giving the president a bipartisan “win,” believing GOP lawmakers will benefit from delivering their voters long-needed improvements and projects.

“Not every transaction requires a winner and a loser,” Cramer said. “Some transactions can have winners on both sides. I think infrastructure along with national defense are the policy issues that provide opportunities for us to do the right thing.”

Republicans also feel confident that any bipartisan credit Biden receives from the deal will come crashing down when Democrats turn to the partisan proposal.

“The problem he’s going to have is he’s going to shift within minutes of passage of this bipartisan bill into a hyper-partisan bill,” Cramer said. “He will in that moment, I think, squander all the goodwill he would rightfully deserve.”

Biden is trying to work with Republicans while keeping Democrats united. It’s a tricky balancing act, but he has the experience to pull it off.

Republicans plan to attack Biden for ramming through a costly partisan bill immediately after reaching across the aisle. They have already warned that Democrats will attempt to raise taxes on higher earners to pay for the plan.

But drawing a clear distinction between the two bills could be something of a challenge. Republicans “want to be sure voters understand the difference in this bill and the next bill,” said Blunt, the Republican senator from Missouri. “And it is a fairly hard sell.”

To that end, McConnell and other Republican leaders, such as Sen. Rob Portman of Ohio, who led negotiations on the bipartisan proposal, have stressed to their colleagues in closed-door lunches that the two bills are separate — that backing the infrastructure plan doesn’t amount to enabling the Democrats’ larger agenda.

Many Democrats believe the tangible benefits for Americans in their go-it-alone measure — and potential tax hikes on people earning more than $400,000 a year that would pay for the new programs — are popular, setting up their 2022 campaigns to draw sharp distinctions with their GOP opponents.

“I look forward to running on both bills,” said Sen. Michael Bennet (D-Colo.), who is up for reelection next year. “After years and years of obstruction, years and years of just partisan warfare that hasn’t delivered much for the American people, we now, with these two bills, are going to deliver quite a lot.”

#### Antitrust reform requires PC and trades off with other legislative priorities

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

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.

#### PC key.

Morrison & Foerster ’21 -- International law firm representing investment funds and startup companies. [“Antitrust Update: Up and Down the Avenue,” *Morrison & Foerster,* 3-22-2021, <https://www.mofo.com/resources/insights/210322-atr-update.html>] KS

The path for meaningful legislative reform remains extremely complicated. The prospect for reform depends significantly on whether members of Congress, congressional leadership, and the Biden administration are willing to expend the time and political capital necessary to pass a reform bill (which also assumes the relevant parties can agree on what should be included—or, perhaps more importantly, excluded—from that bill). In light of competing priorities, the absence of key personnel, and the already narrowing congressional calendar (major non-appropriations legislation typically will not move after July in an election year (2022)), those prospects appear to be slim. In the meantime, we expect that Congress will continue to focus attention on these issues with more hearings and new legislative proposals, but it remains to be seen when attention will become action.

#### Key to prevent infrastructure disaster – Texas is part one.

PPG, 3/4/2021 (MAR 4, 2021 9:00 PM, Pittsburgh Post-Gazette Editorial Board. Invest in infrastructure. March 4, 2021. <https://www.post-gazette.com/opinion/editorials/2021/03/05/Invest-in-infrastructure/stories/202102270028>, recut by JMP)

Now is the time for a reckoning, a realization: While it’s important to study the past to avoid repeating the same mistakes, the country must also look to its future and see the obvious — that America’s infrastructure as a whole needs some serious upkeep.

Democrats and Republicans alike have flirted with the idea of a sweeping infrastructure bill in recent years, and President Joe Biden’s team is working to outline such legislation. These efforts should proceed swiftly — now is the time for Congress to invest in infrastructure, not only to help prevent crises, but also to jump-start an economy mired in the coronavirus pandemic.

Despite being one of the richest countries in the world, the U.S. seems constantly to hover on the edge of disaster, with news of natural forces smashing through power grids and levies and fire prevention strategies on a yearly or monthly basis. Texas is only the most recent state to have been pushed over the edge.

The American Society of Civil Engineers just this week gave America’s infrastructure an overall grade of C-minus in its quadrennial report card. The last grade was D-plus and that report cited decades of underfunding and unheeded recommendations. C-minus is an improvement but deserves not just federal attention but actual intervention. The report notes “we are heading in the right direction, but a lot of work remains.”

There is opportunity in the recent economic and environmental devastation that grabs headlines and breaks hearts. In the aftermath of the Great Depression, the government put millions to work improving parks and building roads and bridges and airports. President Dwight Eisenhower’s interstate highway system remains the life veins of interstate travel.

A new and vigorous infrastructure package for America would fix what needs to be fixed and offer the promise of an economic boon.

The purpose of the federal government is to address the needs of American society in a way that can’t be tackled by states in a piecemeal fashion. What has happened in recent days within The Lone Star State demonstrates keenly that this is the time — actually past the time — that our federal leaders must shore up the foundations of our federation. Congress should act swiftly to lead states in reversing the entropy chewing away at America’s foundations. Until this happens, society stands on shifting sands.

#### Grid collapse causes extinction.

Greene ’19 [Sherrell R.; Nuclear Engineering M.S. degrees from the University of Tennessee, recognized subject matter expert in nuclear reactor safety, nuclear fuel cycle technologies, and advanced reactor concept development, worked at the Oak Ridge National Laboratory (ORNL) for over three decades, as Director of Research Reactor Development Programs and Director of Nuclear Technology Programs; “Enhancing Electric Grid, Critical Infrastructure, and Societal Resilience with Resilient Nuclear Power Plants (rNPPs),” Nuclear Technology 205(3), https://ans.tandfonline.com/doi/pdf/10.1080/00295450.2018.1505357?needAccess=true]

There are a variety of events that could deal crippling blows to a nation’s Grid, Critical Infrastructure, and social fabric. The types of catastrophes under consideration here are “very bad day” scenarios that might result from severe GMDs induced by solar CMEs, HEMP attacks, cyber attacks, etc.5

As briefly discussed in Sec. III.C, the probability of a GMD of the magnitude of the 1859 Carrington Event is now believed to be on the order of 1%/year. The Earth narrowly missed (by only several days) intercepting a CME stream in July 2012 that would have created a GMD equal to or larger than the Carrington Event.41 Lloyd’s, in its 2013 report, “Solar Storm Risk to the North American Electric Grid,” 42 stated the following: “A Carrington-level, extreme geomagnetic storm is almost inevitable in the future…The total U.S. population at risk of extended power outage from a Carrington-level storm is between 20-40 million, with durations of 16 days to 1-2 years…The total economic cost for such a scenario is estimated at $0.6-2.6 trillion USD.” Analyses conducted subsequent to the Lloyd’s assessment indicated the geographical area impacted by the CME would be larger than that estimated in Lloyd’s analysis (extending farther northward along the New England coast of the United States and in the state of Minnesota),43 and that the actual consequences of such an event could actually be greater than estimated by Lloyd’s.

Based on “Report of the Commission to Assess the Threat to the United States from Electromagnetic Pulse (EMP) Attack: Critical National Infrastructures” to Congress in 2008 (Ref. 39), a HEMP attack over the Central U.S. could impact virtually the entire North American continent. The consequences of such an event are difficult to quantify with confidence. Experts affiliated with the aforementioned Commission and others familiar with the details of the Commission’s work have stated in Congressional testimony that such an event could “kill up to 90 percent of the national population through starvation, disease, and societal collapse.” 44,45 Most of these consequences are either direct or indirect impacts of the predicted collapse of virtually the entire U.S. Critical Infrastructure system in the wake of the attack.

Last, recent analyses by both the U.S. Department of Energy46 and the U.S. National Academies of Sciences, Engineering, and Medicine47 have concluded that cyber threats to the U.S. Grid from both state-level and substatelevel entities are likely to grow in number and sophistication in the coming years, posing a growing threat to the U.S. Grid.

These three “very bad day” scenarios are not creations of overzealous science fiction writers. A variety of mitigating actions to reduce both the vulnerability and the consequences of these events has been identified, and some are being implemented. However, the fact remains that events such as those described here have the potential to change life as we know it in the United States and other developed nations in the 21st century, whether the events occur individually, or simultaneously, and with or without coordinated physical attacks on Critical Infrastructure assets.

## 4

#### The United States Federal Government should create a new antitrust law, delineated by industry, that blocks megamergers.

[does the plan’s expansion of the scope of antitrust law AND the plan’s increase of prohibitions on anticompetitive business practices by the private sector].

#### Creating new antitrust statutes solves --- the aff lacks a “core”-key warrant

**Paquette 17** [Jenny Paquette, J.D. from Temple University, 2017, “ARTICLE: OLD IS NOT ALWAYS WISE: THE INAPPLICABILITY OF THE SHERMAN ACT IN THE AGE OF THE INTERNET,”, 89 Temp. L. Rev. Online 2, lexis]

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

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

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

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

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

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

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

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

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

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

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

#### But only the CP preserves the effective enforcement of antitrust in traditional industries

**Paquette 17** [Jenny Paquette, J.D. from Temple University, 2017, “ARTICLE: OLD IS NOT ALWAYS WISE: THE INAPPLICABILITY OF THE SHERMAN ACT IN THE AGE OF THE INTERNET,”, 89 Temp. L. Rev. Online 2, lexis]

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

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

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

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

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

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

#### Traditional antitrust jurisprudence key to US energy dominance

**Gray 20** [Mr. Gray has served as White House counsel, U.S. ambassador to the European Union, and as U.S. special envoy to Europe for Eurasian energy, “Banks' Energy Boycott Is an Antitrust Problem,” 15 July 2020, The Wall Street Journal, Factiva]

America's largest financial institutions are picking winners and losers in the energy sector for political reasons -- even while the Covid-19 crisis has reduced global oil demand and a price war between Russia and Saudi Arabia has flooded global markets with crude. Under pressure from environmental activists, banks are withholding desperately needed capital from oil and gas companies. In doing so, they put millions of jobs at risk and may even be violating federal antitrust law.

To protect consumers, antitrust laws prohibit unreasonable agreements in restraint of trade. Anticompetitive conduct enriches the few -- members of the cartel -- at the expense of everyone else, especially the consumers who end up paying higher prices. Agreements among competitors to fix prices, divide markets or engage in certain forms of group boycott prevent competition and are therefore illegal.

Normally, banks compete to lend to corporate customers. That competition ensures that worthwhile projects can gain access to capital and use it to bring products to consumers at affordable prices. But Citibank, Goldman Sachs, JPMorgan Chase, Morgan Stanley and Wells Fargo have started moving in parallel to cut off liquidity and capital to America's energy sector. More specifically, these ostensible competitors have announced promises to stop lending money in support of Arctic oil drilling and coal mining.

BlackRock, the world's largest investment firm, announced in January that it would divest from companies deriving more than 25% of their revenue from thermal coal and has joined a pact called "Climate Action 100+" with more than 450 global investors. "Banks are increasingly using environmental, social and governance factors when underwriting corporate borrowing," Barron's reports, such that according to one survey, "half the lending assets covered by 182 banks" were screened for ESG risks.

These announcements look a lot like invitations to collude on a boycott of a critical segment of the U.S. economy. The Federal Trade Commission has maintained that such invitations -- even if they go unheeded -- can violate federal antitrust law. As the FTC and the Department of Justice reiterated in April, "Even absent a collusive agreement," antitrust enforcers may "pursue a civil enforcement action against companies and individuals that invite others to collude." If made with an intent to invite or signal competitors to join a group boycott, these announcements could violate the law.

Federal antitrust law also prohibits boycott agreements instigated by a third party to prod firms that compete with each other into unreasonably restraining market competition. In these "hub and spoke" conspiracies, competitors may violate the law without communicating with each other, and even though the relevant agreements they make are with a third party, not a competitor.

Pressure campaigns by activist groups (possible hubs) -- followed by the pattern of announcements and parallel conduct by banks (possible spokes) -- present more evidence of potential conspiracies. For example, Green America proclaims it "is pressuring banks world-wide to stop funding fossil fuels" as part of the "Fossil Banks, No Thanks" campaign, which aims "to stop large commercial banks from financing the fossil fuel industry." The Sierra Club shares the same goal and even reports that it has "met with representatives from major banks to discuss . . . why action by the financial industry is necessary." As a result, five of the six largest banks in the United States will no longer finance oil and gas drilling in the Arctic National Wildlife Refuge. Bank of America is the lone holdout.

Activist investors have also joined the pressure campaign, encouraged by business leaders' embrace of "stakeholders" over shareholders. Any of this third-party activity could be the hub for tacit collusion between the spokes -- i.e., banks collectively boycotting certain energy projects.

The U.S. does a lot for its banks, which have long been heavily subsidized and backed by government interventions. The Federal Deposit Insurance Corp. guarantees deposits, and other programs have been set up whenever banks face a crisis. The Covid-19 pandemic is no exception: Congress routed its Cares Act relief efforts to businesses through banks, which are rewarded with fat fees. Meanwhile, bank executives are turning their backs on the very companies that keep the lights on.

When America's financial industry starves the energy sector of capital, that isn't fair, free-market competition. It's a subsidized industry barreling toward collusion at the invitation of radical third-party intermediaries -- and inviting billions of dollars in antitrust liability.

#### US energy dominance solves global threat escalation and great power war

**Yergin 20** [Daniel Yergin, BA Yale, PHD intl history from Cambridge, American author, speaker, energy expert, and economic historian, “The new map: energy, climate, and the clash of nations,” chapter 8, New York: Penguin Press, 2020]

For four decades, U.S. energy policy was dominated—and its foreign policy hobbled—by the specter of shortage and vulnerability, going back to the 1973 oil embargoes and then the 1979 Iranian Revolution, which toppled the shah and brought the Ayatollah Khomeini to power. But no longer. The shale revolution “affords Washington,” observed Thomas Donilon, national security advisor to President Obama, “a stronger hand in pursuing and implementing its international security goals.” Secretary of State Mike Pompeo would subsequently put it differently—that the shale revolution has provided the United States with a flexibility in international affairs that it had not had for decades.1 For more than a century, energy—its availability, access, and flows—has been intertwined with security and geopolitics. As a Brookings Institution study put it, “In the modern era, no other commodity has played such a pivotal role in driving political and economic turmoil, and there is every reason to expect this to continue.”2 The Middle East has been central to world oil, the security of its supplies crucially important to the world economy and a top priority for U.S. foreign policy. At the beginning of the Cold War in 1950, with Saudi oil exports starting to flow, President Harry Truman extended an explicit American security guarantee to King Ibn Saud. “No threat to your Kingdom,” the president wrote, “could occur which would not be a matter of immediate concern to the United States.”3 That commitment, at the time aimed at preventing those resources from falling into Soviet hands, continued after the Cold War. The current extensive U.S. security engagement with the Arab Gulf countries is represented in a multitude of agreements, arms deals, exchanges, and a series of bases and facilities for air, ground, and sea forces. An important element in the world oil market is “spare capacity.” This is production capacity—that is, oil wells—that are not actually in operation, but can be swiftly brought on line if prices spike or if a disruption knocks out supply elsewhere. Today, most of the world’s spare capacity is in Saudi Arabia, with some in the United Arab Emirates and Kuwait. That, combined with the size of its oil reserves and its ability to quickly increase or decrease output, makes Saudi Arabia the balancer in the world market. Sometimes it is described as the “central bank” of world oil. The nature of the U.S. commitment to Persian Gulf security, the scale of the U.S. engagement, and the size of the region’s resources led to a widespread view that the United States itself was heavily dependent on the Mideast. Yet in 2008, even before shale oil, imports from the Gulf amounted to less than 20 percent of total U.S. oil imports. As already noted, oil sands in the province of Alberta had made Canada the largest supplier of U.S. imports by far. In 2019, only about 11 percent of U.S. imports came from the Persian Gulf. For their part, Gulf producers are focused on Asia as their most important market. The U.S. commitment to the region has endured not because specific barrels of oil are departing Saudi Arabia or Kuwait or the UAE for U.S. refineries, but rather because these resources are central to the overall world economy and critical for America’s most important allies and trading partners. Disruptions of supply affect the global system into which America is so integrated—with almost 30 percent of U.S. GDP and close to 40 million jobs resulting from trade with the rest of the world. Even if the U.S. is not importing much Middle Eastern oil, a supply disruption would drive up global prices, including in the United States.4 How has the shale revolution changed geopolitics? Case study number one is Iran and the 2015 nuclear agreement. In 2012, sanctions were applied on Iranian oil exports and finance. The aim was to force Iran to the negotiating table, as we shall see later. But it wasn’t obvious that these sanctions would work. The expected shortfall in world supplies would drive prices up, hitting oil-importing countries, causing the sanctions to crumble. Certainly that is what Tehran expected as it confidently proclaimed the new sanctions “doomed to fail.” But increasing U.S. production offset the reduction in Iranian exports. As we shall see later, the oil sanctions held, buttressed by financial sanctions; and the economic pressure on Iran led finally to the 2015 agreement that constrained Iran’s nuclear program in exchange for the removal of sanctions.5 Case number two is Europe and relates back to Putin’s angry rejoinder at St. Petersburg. The rise of shale has been one of the keys to diversifying the European gas market and enhancing energy security. When European leaders talk about energy security, they are often less focused on oil and more on natural gas—and in particular the degree of reliance on Russian gas. As Europe’s top supplier of gas, Russia had, in the minds of some in the European Union and many in Washington, the ability to use gas supply as leverage for political objectives. This concern was magnified by the reliance on pipelines with their inherent inflexibility. Enter U.S. shale gas. First it eliminated the need for LNG in the United States, leading exporters to redirect some of their LNG to Europe. Then the export of LNG from the United States reinforced the shift toward competition in Europe—with U.S. gas, along with other LNG supplies, competing head-to-head with Russian gas. European buyers now had multiple options and choices, which meant diversification of supply—the keystone of energy security. “We have had many historical challenges with Russia,” said Lithuania’s energy minister. But now, as a result of the opening of the country’s LNG importing facility, he continued, “gas supply has been depoliticized.”6 — In March 2016, a supertanker filled with oil left the U.S. Gulf Coast and crossed through the Panama Canal into the Pacific. Its destination was China. The customer was Sinopec, one of China’s two major oil companies and one of the world’s largest buyers of oil. “U.S. crude oil exports are positive news for the global market and make it possible for Asia-Pacific refiners to diversify their supply,” said a Sinopec executive. A few months later, another tanker unloaded at Shenzhen the first shipment of U.S. LNG to China. These voyages demonstrated that the supposed zero-sum life-and-death competition between China and the United States for access to constrained energy, so vividly imagined just a few years earlier, was not going to happen. Global energy supplies are ample, and China and the United States can interact through the global marketplace to mutual benefit. The shale revolution removed at least one major area of contention in U.S.-Chinese relations, creating a new commonality of interests between the nations—trade wars and contention over the coronavirus permitting. Because of shale, the United States is “present” in Asia in a new and strategically important way for many countries. It adds to diversification, moderating dependence on the Middle East and the Strait of Hormuz and providing options on LNG. While the United States is only one among several suppliers of oil and LNG to India, this growing trade has brought the two nations closer together and added an important positive new dimension to a relationship that had been more contentious in the past.

## 5

#### The FTC will enforce ‘right to repair’ now---it spurs growth and innovation, particularly in agriculture.

Minter ’21 [Adam; July 11; Columnist and author; Bloomberg, “Americans Must Reclaim Their Right to Repair,” <https://www.bloomberg.com/opinion/articles/2021-07-11/americans-must-reclaim-their-right-to-repair>]

When the Apple II personal computer was shipped in 1977, it came with a [detailed manual](https://archive.org/details/Apple_II_Mini_Manual/page/n49/mode/2up) for upgrading and repairing the device. Parts were readily available from Apple Inc. (and, later, other manufacturers), and if Apple owners didn’t want to fix or upgrade at home, they could find plenty of small, competitive repair businesses to do the work for them.

That was then. These days, Apple’s products arrive sealed shut, often with [proprietary screws](https://www.ifixit.com/News/9905/bit-history-the-pentalobe). Service manuals, circuit-board schematics and repair parts are [reserved](https://www.ifixit.com/News/43179/apple-endangers-our-business-model-gets-a-repairability-point-for-it) for Apple’s technicians, shops and a handful of “authorized” partners. With no access to parts, manuals or indie repair shops, consumers pay much more to keep their devices running.

President Joe Biden’s new executive order to promote competition encourages the Federal Trade Commission to end such anti-competitive repair monopolies. It’s a contentious move. Apple and the makers of other technological products from farm tractors to [35mm cameras](https://www.ifixit.com/News/1349/how-nikon-is-killing-camera-repair) argue that their repair monopolies are good for consumers. But as these monopolies have grown, their toll on consumers, the environment and American productivity and innovation has risen. Biden’s recognition of a “right to repair” can help lower these costs and, at the same time, spur new kinds of growth across the economy.

Repair has always been a part of American life. The first prairie farmers had no option but to repair their own carts and plows. When mechanization came along, farmers became expert technicians — so skilled that companies often consulted them on tractor designs. During the past 15 years, as computers have been integrated into expensive farm equipment, that relationship has broken down. The handful of remaining implement manufacturers make sure that only dealerships, with specialized software tools, can diagnose problems. Those same tools are often also needed to install parts and authorize repairs.

The costs to farmers can be significant. Paying a Deere & Co dealership to plug in a computer to clear an error code on a tractor or combine can cost [hundreds of dollars](https://www.vice.com/en/article/xykkkd/why-american-farmers-are-hacking-their-tractors-with-ukrainian-firmware) — not including transporting the tractor to the dealership. Worse, by limiting access to crucial diagnostic and repair tools, manufacturers cause significant delays during harvest, planting and other busy periods. At certain times, a piece of equipment immobilized for even a few hours can cost a farmer thousands of dollars.

As farmers lose money, farm manufacturers with parts and service businesses [profit handsomely](https://uspirg.org/feature/usp/deere-headlights). From 2013 to 2019, Deere & Co annual sales of new equipment declined 19%, to $23.7 billion, while sales of parts increased 22%, to $6.7 billion. Harvester manufacturers aren’t the only ones who’ve spotted a growth market in restricting access to repair. In 2019, Apple’s Tim Cook [conceded](https://www.apple.com/newsroom/2019/01/letter-from-tim-cook-to-apple-investors/) that lower-cost iPhone battery replacements had negatively impacted new iPhone sales. More expensive repairs, on the other hand, lead customers to think they may as well buy a new phone.

That’s bad for the buyers of Apple’s expensive new phones and even worse for lower-income consumers who rely on secondhand devices. Lack of competition in repair markets raises the cost of owning older devices, and ultimately accelerates their untimely, wasteful disposal.

The first calls to roll back manufacturer restrictions on repair, in the early 2010s, were focused on cars. But the problem now encompasses everything from phones to farm equipment. Since 2014, [32 states](https://www.repair.org/legislation) have considered so-called Fair Repair bills. Earlier this year, the New York legislature became the [first](https://states.repair.org/states/newyork/) to pass one.

But manufacturers have pushed hard to defeat such legislation. In 2017, Apple warned Nebraska lawmakers that Fair Repair “would make it very easy for hackers to relocate to Nebraska.” [TechNet](http://technet.org/), a trade group that represents Apple, Amazon Inc. and Google, has [warned](https://www.bloomberg.com/news/articles/2021-05-20/microsoft-and-apple-wage-war-on-gadget-right-to-repair-laws) several states that Fair Repair legislation would somehow jeopardize the safety of devices. (TechNet did not respond to requests for examples of such consumer safety threats.)

The federal government has not bought these arguments. In May, the Federal Trade Commission [reported](https://www.ftc.gov/news-events/blogs/business-blog/2021/05/nixing-fix-report-explores-consumer-repair-issues) that “many of the explanations manufacturers gave for repair restrictions aren’t well-founded.” Biden’s executive order now encourages the FTC to “limit powerful equipment manufacturers from restricting people’s ability to use independent repair shops or do DIY repairs.”

#### The plan trades off.

Nylen ’20 [Leah; December 10; Antitrust journalist; Politico, “FTC suffering a cash crunch as it prepares to battle Facebook,” <https://www.politico.com/news/2020/12/10/ftc-cash-facebook-lawsuit-444468>]

The agency that just launched a landmark antitrust suit to break up Facebook is so strapped for cash that its leaders have discussed shrinking their staff and warned against taking on more cases.

In a series of emails to all Federal Trade Commission staff, obtained by POLITICO, Executive Director David Robbins said the agency would face a period of “belt tightening” to cut costs — and that filing fewer cases and trimming litigation expenses must be on the table.

“[W]e will either need to bring fewer expert intensive cases or significantly decrease our litigation costs (e.g. experts, transcripts, litigation support contractors, etc.),” Robbins said in an Oct. 29 email.

The emails offer an increasingly dire portrait of the money woes facing the FTC, which has launched a record amount of litigation in the past year even as the pandemic has caused a sharp reduction in the corporate merger filing fees that normally supply about half its budget. The crunch also raises the possibility that the FTC may not have the cash it needs to win its case against Facebook, which is gearing up for an expensive fight, or to take on additional companies like Amazon.

#### Extinction.

Castellaw ’18 [John; March 14; Lieutenant General in the United States Marine Corps, member of the Center for Climate and Security’s Advisory Board, teaching fellow in the College of Business and Global Affairs at the University of Tennessee; Senate Committee on Foreign Relations, “Why Food Security Matters,” <https://www.foreign.senate.gov/imo/media/doc/031418_Castellaw_Testimony.pdf>]

Food Security Is Critical to Our National Security

The United States faces many threats to our National Security. These threats include continuing wars with extremist elements such as ISIS and potential wars with rogue state North Korea or regional nuclear power Iran. The heated economic and diplomatic competition with Russia and a surging China could spiral out of control. Concurrently, we face threats to our future security posed by growing civil strife, famine, and refugee and migration challenges which create incubators for extremist and anti-American government factions. Our response cannot be one dimensional but instead must be nuanced and comprehensive, employing “hard” as well as “soft” power in a National Security Strategy combining all elements of National Power, including a Food Security Strategy.

An American Food Security Strategy is an imperative factor in reducing the multiple threats impacting our National wellbeing. Recent history has shown that reliable food supplies and stable prices produce more stable and secure countries. Conversely, food insecurity, particularly in poorer countries, can lead to instability, unrest, and violence. Food insecurity drives mass migration around the world from the Middle East, to Africa, to Southeast Asia, destabilizing neighboring populations, generating conflicts, and threatening our own security by disrupting our economic, military, and diplomatic relationships. Food system shocks from extreme food-price volatility can be correlated with protests and riots. Food price related protests toppled governments in Haiti and Madagascar in 2007 and 2008. In 2010 and in 2011, food prices and grievances related to food policy were one of the major drivers of the Arab Spring uprisings.

These conclusions are based on my decades of experience while serving as a Marine around the world and from a lifetime as a steward of the soil on my family farm in Tennessee. I see food security strategy in military terms as either being “defensive” or “offensive”. “Defensive” includes those actions we take to protect our agricultural infrastructure including crops, livestock and the food chain here in the United States. Conversely, the “Offensive” side of food security takes the initiative to deal with food security issues overseas and this is where I will spend most of my time today.

There is a good reason for our success on the “defensive” here at home in ensuring our own food security. As my good friend and former Tennessee Deputy Agriculture Commissioner Louis Buck points out to me, American agriculture has always been about public/private enterprise. The Morrill Act of 1862 – showing our Country’s foresight and confidence in the future even in the dark days of our Civil War – created our Land Grant University model of teaching, research and extension. And equally importantly, we have a private sector that values individual initiative, unleashing an unparalleled vitality. With that vitality driving innovation, our farmers and ranchers leverage the expertise and information from the public sector to manage risks and seek profits from deployed capital. But above all, American farmers and ranchers are our “citizen soldiers” on the front lines here at home fighting to guarantee our food security.

America is also blessed with fertile soil, water availability, moderate climate, and the advanced technology to successfully utilize our abundance. Whether I walk the corn fields of Indiana or the cotton fields of Tennessee, I see agricultural technology in use that is amazing. Soon after I retired from the Marines and came home to the family farm, I climbed into the cab of a self-propelled sprayer. Settling into the seat was like strapping into the cockpit of one of the aircraft I flew, except the sprayer had more computing power and better data links. All these factors, public and private, natural and manmade, hard work and innovation, combine to provide the American people with the widest choices in the world of wholesome foods to eat and clothes to wear.

## Case

#### Court circumvention – they ignore intent and plain meaning, reject lit bias towards optimism

Crane 21 [Daniel A Crane. Frederick Paul Furth, Sr. Professor of Law, University of Michigan. I am very grateful for many helpful comments from Tom Arthur, Jonathan Baker, Steve Calkins, Dale Collins, Eleanor Fox, Rebecca Haw, Hiba Hafiz, Jack Kirkwood, Bob Lande, Christopher Leslie, Alan Meese, Steve Ross, Danny Sokol, and other participants at the University of Florida Summer Antitrust Workshop. "ANTITRUST ANTITEXTUALISM." https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr]

This view is so widely entrenched in the legal profession’s understanding of the antitrust laws—including, it must be admitted, this author’s—that it seems presumptuous to claim that the conventional wisdom is wrong, or at least significantly overstated. But it is. While the antitrust statutes may be lacking in some important particulars, they present a readily discernable meaning on many others. As Daniel Farber and Brett McDonnell have argued, “For the conscientious textualist, the statutory texts [of the antitrust laws] have considerably more specific meaning than the conventional wisdom would suggest.”5 And it is not simply the case that the meaning of the statutory texts could be rendered through ordinary methods of statutory interpretation but the courts have failed to see it. Rather, the courts frequently acknowledge that the statutory texts have a plain meaning, and then refuse to follow it.

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

#### Clarifying the scope and meaning of vague language doesn’t solve – courts ignore, Congress backs down, it’s already very clear

Crane 21 [Daniel A Crane. Frederick Paul Furth, Sr. Professor of Law, University of Michigan. I am very grateful for many helpful comments from Tom Arthur, Jonathan Baker, Steve Calkins, Dale Collins, Eleanor Fox, Rebecca Haw, Hiba Hafiz, Jack Kirkwood, Bob Lande, Christopher Leslie, Alan Meese, Steve Ross, Danny Sokol, and other participants at the University of Florida Summer Antitrust Workshop. "ANTITRUST ANTITEXTUALISM." https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr]

This Article has shown that, historically, the judiciary has treated the antitrust statutes as broad delegations to the courts to create a pragmatic common law of competition, even when the statutes plainly said something more specifically prohibitory. What, then, are the strategies available to a reformist Congress seeking to rein in business power through remedial antitrust legislation?

The one strategy that does not seem especially promising is simply writing clearer statutes. The antitrust statutes that the courts wrote down in favor of big business did not suffer from a lack of clarity or, if they did, not in the textual implications the courts chose to ignore. Strikingly, the courts continue to insist that the antitrust statutes are indeterminate delegations of common-law power, even while admitting in candor that they have simply chosen to ignore the statutes’ plain meaning in favor of a common method of deciding antitrust cases. For instance, in Professional Engineers, Justice Stevens remarked for the Court that “the language of § 1 of the Sherman Act . . . cannot mean what it says” and therefore that Congress must not have intended “the text of the Sherman Act to delineate the full meaning of the statute or its application in concrete situations,” thus justifying the courts in shaping the “statute’s broad mandate by drawing on common-law tradition.”255 Given over a century’s tradition of interpreting antitrust statutes as invitations to continue a common-law process whatever else is suggested by the statute’s text, it is difficult to see how simply accumulating stern new language in new texts would lead to a different result.

Even where reform statutes are textually honored in their immediate aftermath, history shows a creeping judicial tendency to begin integrating the reform statutes into the mainstream of antitrust jurisprudence within a few decades. This has been the fate of the four major antitrust reform statutes— the FTC, Clayton, Robinson-Patman, and Celler-Kefauver Acts—each of which was meant to rein in capital in ways that the Sherman Act did not. In all four instances, however, the courts incrementally began mainstreaming the statutes into Sherman Act precedent, creating a homogenous antitrust jurisprudence that read the textual distinctiveness out of the reform statutes. Thus, today, cases under the FTC Act, section 3 of the Clayton Act, and the Robinson-Patman Act are largely indistinct from Sherman Act cases,256 and merger cases have been rolled into the same modes of price-theoretic analysis that would be employed in a Sherman Act case.257 Given that neither statutory text nor legislative history seems to have deterred the courts from this process within a few decades after the passage of the statutes, there is little reason to believe that a “this time we mean it” statutory reform would not meet the same fate. If the courts continue to understand aspects of the antitrust statutes as aspirationally motivated and operationally impracticable, the previously observed pattern is likely to continue.

#### Pandemics won’t cause human extinction

Sebastian **Farquhar 17**. Director at Oxford's Global Priorities Project, Owen Cotton-Barratt, a Lecturer in Mathematics at St Hugh’s College, Oxford, John Halstead, Stefan Schubert, Haydn Belfield, Andrew Snyder-Beattie, 01-23-17, "Existential Risk Diplomacy and Governance", GLOBAL PRIORITIES PROJECT 2017, https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf

1.1.3 Engineered pandemics For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.38 None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic. One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39

#### Global backsliding is an alt cause or its resilient

Anna **Lührmann et al,** 6-26-20**17**, (Anna Lührmann is a postdoctoral research fellow at the V-Dem Institute at the University of Gothenburg. From 2002 to 2009, she was a member of the German National Parliament. Valeriya Mechkova is a PhD candidate at the V-Dem Institute/University of Gothenburg. Matthew Wilson is an assistant professor at West Virginia University and will be a visiting researcher at the V-Dem Institute in 2018."Analysis," Washington Post, https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/26/is-democracy-on-the-decline-not-as-much-as-some-pundits-want-you-to-believe//)

Clearly liberal democracy is facing challenges in some countries — in particular in the United States. Therefore, U.S. political scientists are right to be on alert and continuously monitor the weak points of their democracy. In some places, it is even worse: Countries such as Turkey or Venezuela have experienced serious breakdowns. But the V-Dem data suggests that alarmist reports about a global demise of democracy are not yet warranted. For one, the average level of democracy in the world is still close to the highest recorded level, even if a slight decline is detectable over the last few years. And there are real success stories, like in Tunisia, even if those do not make as many headlines. Although the declines in democracy in places such as Europe and the United States deserve our attention, the V-Dem data suggest that political institutions in these countries are relatively resilient. Recent examples include the electoral victory of Emmanuel Macron against Marine Le Pen in France and judicial challenges to the immigration ban proposed by President Trump.

#### No causal relationship between democracy and peace---best studies.

Michael **Mousseau 18**. Professor of International Relations Theory at the University of Central Florida. 2018, "Grasping the scientific evidence: The contractualist peace supersedes the democratic peace," SAGE Journals, https://journals-sagepub-com.libproxy2.usc.edu/doi/abs/10.1177/0738894215616408, accessed 3-4-2019//JDi

No one has challenged the multiple reports that contractualist economy is the strongest nontrivial predictor of peace both within (Mousseau, 2012b) and between nations (Mousseau, 2013; see also Nieman, 2015). The only matter in controversy is whether democracy has any impact on peace after consideration of contractualist economy. I investigated all five reasons offered in the literature (excluding already-refuted arguments) to think democracy causes peace, and found no support for any of them. The correlation of democracy with peace is zero regardless of how contractualist economy or interstate conflict is measured; the disaggregation of the data yields no support for a causal interaction of democracy with contractualist economy, and the state of knowledge offers no evidence of causation from democracy to contractualist economy and peace. While some correlation of democracy with peace appears in analyses of all disputes (at the 0.10 level), this appears to be a statistical artifact, since democracy is near zero in analyses of wars, fatal-only disputes (Mousseau, 2009, 2012a, 2013 and above), and militarized crises (Mousseau et al., 2013a, b). Analyses of all-disputes are less accurate than those of fatal disputes and crises because they are more likely to include events that are not state-to-state confrontations, and more likely to under-report events occurring in clientelist dyads. We saw that clientelist democracies tend to be geographically dispersed, and this may account for the non-fatal peace, which does not exist in bordering dyads where everyone has an equal chance to fight. The non-fatal correlation of democracy with peace is also marginal, as we saw in Table 4 that it includes only 27% of dyads and only 50% of joint-democratic dyads. This study largely investigated unsupported assertions of fact and showed them to lack support: neither DOR nor Ray (2013) properly supported their claims that multiple imputation, the treatment of ongoing dispute years, an interaction, the adoption of an alternative measure for contractualist economy, or reverse causality actually restore the evidence for the democratic peace. In this way this study merely corroborated what was already the state of knowledge, and it would be a mistake to think there are continuing factual differences in this controversy. I cannot promise that the analyses herein are error free, and I fully expect defenders of the democratic peace to carefully scrutinize them for errors, but no claim of error should be perceived as resurrecting the correlation of democracy with peace unless it is also shown to change results. Nor has anyone disputed the overturning of the democratic peace as reported in two studies (Mousseau, 2009, 2012a). While DOR (205) assert that the analyses in Mousseau (2009) are based on a misinterpreted interaction term, there is no such interaction term in Mousseau (2009). The only evidence-based defense of the democratic peace that exists today comes from DOR’s 120 regressions, 101 of which are invalid. Of the 19 valid ones, only 15 are of fatal disputes that count, and every one of these 15 regressions is mired by one of two questionable practices: five include control for the DemocracyH term that is said to artificially inflate the democracy coefficient; 10 are irrelevant because they include the inconsequential interaction term additionally calculated at the misleading 75th percentile of contractualist economy. If there is a correlation of democracy with peace, why cannot this be shown in a clear-cut regression? Beyond the facts, scientific assessment calls for acknowledgment of the imbalance of theory in this controversy. Economic norms theory does not deny the correlation of democracy with peace, and thus all prior evidence for it; rather, it offers a specific and falsifiable explanation for the correlation that identifies it as spurious. Defenders of the democratic peace are not putting forth a competing explanation for the correlation; rather, they simply oppose the idea that democracy does not independently cause peace, with no reason given for this opposition. However, democracy is not a random variable, so there are no scientific grounds that prohibit us from seeking to explain it, and there are no scientific grounds that preclude that whatever explains democracy cannot also explain the peace. Causality, not statistics, lies at the core of this controversy, and causality cannot be directly seen: it can only be theorized and corroborated. Yet defenders of the democratic peace have not addressed any of the extensive corroborations of economic norms theory accrued in studies of civil conflict and insurgency (Mousseau, 2012b), terrorism (Meierrieks 2012; Boehmer and Daube, 2013; Krieger and Meierrieks, 2015), democratization (Aytacx et al., 2016), and human rights (Mousseau and Mousseau, 2008). The weight of evidence for economic norms theory overwhelms any theory of democracy causing peace (Ungerer, 2012), yet defenders of the proposition have sought only to report some statistically significant correlation of democracy with peace, as if correlation equals causation (Dafoe, 2011; Dafoe and Russett, 2013; DOR; Ray, 2013; Russett, 2010). Nor is there any scientific basis for concluding that this controversy is ultimately unresolvable because the factors are closely related, as is frequently asserted without support (e.g. DOR: 203). The relevant factors are not closely related: contractualist economy is only moderately correlated with trade interdependence (0.31), income (0.71/0.56), and democracy (0.47) (Mousseau, 2013: 191–193). That contractualist nations are almost always democratic does not mean that democratic nations are almost always contractualist, and the majority 57% of democracies had clientelist economies from 1950 to 2010. The notion that democracy, market development, and trade are synonymous is rooted in ignorance, and ignorance cannot justify discarding, after the fact, our carefully constructed measures and datasets.13 The implications of this study are far from trivial: the democratic peace, defined as democracy causing peace, lacks the evidentiary core on which it is based; the observation of democratic peace is best explained by contract norms. If our field is to abide by scientific rules of evidence, then our scholars must stop describing democracy as a ‘‘known’’ cause, or correlate, of peace, and we must stop tossing in a variable for democracy, willy-nilly, in quantitative analyses of international conflict. The variable to replace it is contractualist economy, which not only subsumes democracy but is now the most powerful non-trivial factor in the study of international conflict, whose impact is more than 10 times that which we once thought democracy had. No historical study is immune to criticism, but the progress of knowledge will not be furthered with another (third) round of ardently asserted claims of error that are not shown to change results. I understand the prior view of democratic peace is known and intuitive and the contractualist peace is less so, and unsupported assertions are enough for many to believe in already-known claims. However, the purpose of science is to promote rather than stifle innovation, and to differentiate good ideas from bad ones. Better yet are new ideas that can help make the world a better place, and economic norms theory is clear on that: if the wealthy market-oriented nations wish to advance democracy and peace around the world, the way to do that is to promote economic opportunity.

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## CP

#### Adding the fed causes overlapping mandates.

Kovacic ’12 [William; 2012; Global Competition Professor of Law and Policy at George Washington University, former member of the Federal Trade Commission; Michigan Law Review, “The Institutions of Antitrust Law: How Structure Shapes Substance,” vol. 110]

III. The Federal Antitrust Agencies

Overlapping authority is common in the federal government. Pick any area of federal endeavor and you are likely to find two or more agencies that occupy the same policy domain or share (and contest) jurisdictional boundaries. Even when related functions are housed inside a single institution, severe rivalries can emerge. The Air Force, Army, Marine Corps, and Navy all reside within the Department of Defense, yet they compete fiercely for resources and missions.5 4 As Institutional Structure points out, an unusual feature of the duality of federal antitrust enforcement is its deliberateness (pp. 27-28). Core elements of the common antitrust tenancy of the DOJ and the FTC arose through conscious legislative choice, not by accident. In 1914, Congress expressly gave the DOJ and the new Commission authority to enforce the Clayton Act and prescribed no principle or process for allocating tasks between the two institutions to carry out this mandate. By the mid-twentieth century, the breadth of the jurisdictional duality was complete, following Supreme Court rulings that the FTC's power to proscribe unfair methods of competition encompassed the ability to prosecute conduct that would constitute an infringement of the Sherman Act.56

#### It causes duplicative and rivalrous cases, crushing solvency.

Chance ’18 [Clifford; May 2018; International law firm, ranking in the top ten globally on revenue and employment-based metrics; Clifford Chance, “DOJ Announces Policy to Discourage Law Enforcement Agencies and Regulators from ‘Piling On’ Duplicative and Parallel Penalties,” <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2018/05/doj-announces-policy-to-discourage-law-enforcement-agencies-and-regulators-from-piling-on-duplicative-and-parallel-pen.pdf>]

What Is “Piling On”?

In the law enforcement context, "piling on" refers to multiple law enforcement agencies issuing their own independent penalties for the same corporate conduct. Piling on most typically comes about as the result of overlapping mandates for law enforcement and regulatory bodies, each with an interest in targeting a particular course of conduct. In his announcement, Rosenstein analogized "piling on" to football, where a player "piles on" by jumping on other tacklers after the opponent is already down. To proponents of the new DOJ policy, duplicative penalties from multiple law enforcement agencies are like "piling on" in football: they are unnecessary and unfair.

The notion of law enforcement “pile on” has received attention in recent years. DOJ components typically have enforcement mandates focusing on particular types of conduct (e.g. the Fraud Section, the Antitrust Division), regardless of market context. By contrast, other federal regulators have statutory oversight of particular sectors or markets (e.g. the Securities and Exchange Commission (the "SEC"), the Commodity Futures Trading Commission (the "CFTC")). Additionally, the enforcement mandates of federal regulators often function in tandem, and sometimes overlap, with the enforcement mandates of state, local, and foreign regulators. "Piling on" comes about most frequently when a challenged course of conduct falls within the mandates of (a) multiple conduct-oriented DOJ components; or (b) one or more DOJ components and another regulator with broad oversight of the market where the challenged conduct took place. In the United States, DOJ investigations are commonly conducted in parallel with investigations by other regulators, both at the federal and state level. When conduct also occurs outside the United States, DOJ penalties are also often coupled with the imposition of penalties by foreign regulators.

In the wake of the 2008 financial crisis, the practice of multiple law enforcement agencies issuing duplicative penalties against the same acts of corporate misconduct has been common in the United States, and indeed, around the world. For example, numerous regulators at the federal and state levels and abroad imposed billions of dollars in penalties on financial institutions in connection with guilty pleas to both fraud and antitrust crimes concerning alleged manipulation of the foreign exchange markets ("FX"). In the FX investigations, the Fraud Section of the DOJ Criminal Division used its mandate to target FX manipulation internal to the financial institutions themselves, while the Antitrust Division targeted the same conduct as engaged in between the financial institutions and their horizontal competitors (a per se violation of the Sherman Act). DOJ received parent-level guilty pleas from five financial institutions and more than $2.5 billion in criminal penalties.4 Meanwhile, also at the federal level, the CFTC pursued enforcement actions against the financial institutions under the theory that the foreign exchange benchmarks were "commodities in interstate commerce" subject to the antimanipulation provisions of the Commodity Exchange Act and the Federal Reserve used its authority under the Federal Deposit Insurance Act to issue sanctions. In addition, at the state level and abroad, the New York State Department of Financial Services, and foreign regulators such as the UK's Financial Conduct Authority, each imposed hefty sanctions pursuant to their respective mandates to prosecute violations of New York and UK law.

#### States will apportion litigation expenses, draw money from existing antitrust funds, AND winning the case pays for itself.

Arteaga ’21 [Juan and Jordan Ludwig; January 28; former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, J.D. from Columbia Law School; partner in the Antitrust and Competition Group at Crowell and Moring firm, J.D. from Loyola Law School; Global Competition Review, “The Role of US State Antitrust Enforcement,” <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement>]

To help cover the cost of prosecuting contested enforcement actions, the participating states typically enter into cost-sharing agreements. These cost-sharing agreements usually provide that common litigation expenses, such as expert and vendor fees, shall be apportioned based on the participating states’ population, thereby requiring larger states to cover a larger portion of the costs. As a result, larger states, such as New York and California, have recently begun advocating for the adoption of a hybrid cost-sharing model that determines each state’s contribution based on a pro rata formula and population figures. In certain instances, the cost-sharing agreements will also specify how any settlement or judgment shall be allocated among the participating states once any common litigation expenses have been paid.

In addition to cost-sharing arrangements, state antitrust enforcers sometimes seek to fund enforcement actions through grants from the NAAG’s ‘milk fund’, which was established in 1989, and helps cover expert fees in antitrust investigations and litigation. This fund was set up using portions of the settlements that were secured in a series of bid-rigging cases involving school milk contracts in New York.[[76]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-052) Over the years, the NAAG has maintained the ‘milk fund’ by requiring the repayment of grants provided to enforcement actions that result in a settlement or judgment and by obtaining contributions from recoveries obtained in other antitrust enforcement actions.[[77]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-051) More recently, state attorneys general have also sought to help finance multistate antitrust investigations and enforcement actions through the NAAG’s ‘Volkswagen fund’, which was established in 2017 following settlements that state attorneys general reached with Volkswagen for emissions standards violations.[[78]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-050)

#### It’s remedied by interstate cooperation AND wrong---states are laboratories of democracy.

HLR ’20 [Harvard Law Review; June 10; Legal journal published by the Harvard Law Review Association at Harvard University, ranked number one in law journal citations; Harvard Law Review, “Antitrust Federalism, Preemption, and Judge-Made Law,” vol. 133]

A. The Patchwork Regime Problem

First, critics of the status quo argue that a patchwork regime of state antitrust laws can make it expensive for companies that operate across state borders to comply. State and federal regimes share similar philosophies regarding most of antitrust law.31 But state antitrust laws do not perfectly mirror their federal counterparts — and the antitrust laws of the different states are heterogeneous themselves.32 Disputes are concentrated in a few areas of the doctrine, like vertical restraints and mergers.33 For example, states often focus on damage to intrabrand competition when enforcing limits on vertical restraints, whereas federal antitrust law focuses primarily on interbrand competition.34 Additionally, state merger guidelines often materially differ from federal guidelines,35 and states are likelier to define markets “more narrowly,” “refus[e] to consider efficiencies” favored by federal agencies, and show a concern for local jobs and competitors that does not “enter . . . the [federal] calculus.”36 An inconsistent antitrust regime that may conflict between states could cause economic inefficiency, for example by discouraging companies from undertaking what might otherwise be an economically efficient merger.37

This critique relies in part on the federal government having a better approach to vertical restraints and mergers, and that is anything but clear. The classic federalism argument that states function as laboratories of democracy 38 applies here: antitrust law is far from settled, and having multiple regimes allows for testing different theories. For example, some scholars argue that the states are correct to consider intrabrand competition’s effects on price, especially in certain markets.39 Similarly, in the merger context, there is support for both the states’ refusal to consider only economic efficiency40 and their push for heightened antimerger enforcement.41 Of course, the laboratories of democracy might not work so well in the antitrust context: because of the interwoven economic effects of federal and state antitrust laws and enforcement in an interconnected national economy, determining the effects of one state’s slightly different antitrust regime would be difficult.42 But federalism can still offer benefits by breaking the antitrust orthodoxy: by putting different policies on the table, a multilevel regime reminds us both that there are different possible “best” antitrust policies and that antitrust law has a variety of potential goals.43

#### Litigation will be coordinated through multistate task forces---that solves.

Arteaga ’21 [Juan and Jordan Ludwig; January 28; former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, J.D. from Columbia Law School; partner in the Antitrust and Competition Group at Crowell and Moring firm, J.D. from Loyola Law School; Global Competition Review, “The Role of US State Antitrust Enforcement,” <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement>]

Coordination in multistate investigations and litigation

Coordination among state antitrust enforcers

State attorneys general often coordinate their investigation and prosecution of antitrust matters with their counterparts in other states.[[66]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-062) To help ensure that these coordinated efforts are conducted in an efficient and effective manner, the NAAG has created an Antitrust Committee, which ‘is responsible for all matters relating to antitrust policy’.[[67]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-061) This committee is comprised of 12 state attorneys general [[68]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-060) and is responsible for promoting effective state antitrust enforcement by developing the NAAG’s antitrust policy positions and by facilitating communications among state enforcers regarding investigations, litigation, legislative matters and competition advocacy initiatives, among other things.[[69]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-059)

In 1983, the NAAG established a Multistate Antitrust Task Force that is ‘comprised of state staff attorneys responsible for antitrust enforcement in their states’.[[70]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-058) This task force ‘recommends policy and other matters for consideration by the Antitrust Committee, organizes training seminars and conferences, and coordinates multistate investigations and litigation’.[[71]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-057) The task force is chaired by a person appointed by the head of the NAAG’s Antitrust Committee[[72]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-056) and has a representative from each NAAG member state.[[73]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-055) The chair of the task force serves as ‘the principal spokesperson for the states on antitrust enforcement’.[[74]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-054)

The NAAG’s Multistate Antitrust Task Force does not handle actual investigations or litigation. Instead, such coordination usually occurs through working groups established by the states involved in an investigation or litigation. In most multistate investigations, the working group will designate a state responsible for leading the investigation. The lead state is often a state that has the most relevant experience and can dedicate the appropriate level of resources to the investigation, and has a sufficient interest in ensuring that the investigation is handled in an effective and efficient manner (i.e., the transaction or business practice in question could potentially impact a significant number of consumers or commerce within its state). (If an investigation is sufficiently large or complex, such as a mega-merger involving numerous markets, the states may create an executive committee that oversees the working group as well as designate multiple lead states.)

#### It spills up to federal policy AND innovates the best version of the plan.

Spiegel ’21 [Julia; March 3; Deputy County Counsel in the Santa Clara County Counsel’s Office and Lecturer in International Policy Studies and Law at Stanford University, J.D. from Yale University, M.P.A. from the Princeton School of Public and International Affairs; Lawfare, “Embracing Foreign Affairs Federalism in a Post-Trump Era,” <https://www.lawfareblog.com/embracing-foreign-affairs-federalism-post-trump-era>]

When Others Have Failed to Act. In the current political climate, a more common scenario is when the federal government and/or global bodies have failed to act in response to a crisis. The global community’s halting response to the coronavirus pandemic is now the paradigmatic example. The absence of national and global action is a form of [quiescence](https://www.law.cornell.edu/supremecourt/text/343/579)—when national governments and global bodies effectively abdicate power—and localities should seize it.

Local to corporate and local to global action would be particularly impactful in the absence of national and global action or guidance. Such local initiatives could play a significant role in places like the [Rust Belt](https://www.forbes.com/sites/adammillsap/2017/01/09/the-rust-belt-didnt-adapt-and-it-paid-the-price/?sh=47b8b6787a3d), where many communities have felt that foreign affairs issues like global trade have failed to serve their interests. A more assertive approach to foreign affairs—driven by localities—could help to shift that dynamic. While this approach could create a “[patchwork](https://www-nejm-org.stanford.idm.oclc.org/doi/full/10.1056/NEJMp2006740)” of local responses, patchworks and coordination are not mutually exclusive. And innovation at the local level often spawns more robust and meaningful action at the federal and multilateral levels.

There may be instances where the patchwork creates competing outcomes or confusion with global partners over who represents America’s interests. But, due in part to globalization’s reach, a multifaceted approach to foreign affairs is already a feature of the American political landscape, as California’s shaping of the global car market has shown. The U.S. has more to gain by embracing this reality than by fighting it.

## Case

#### American democracy is resilient.

**Allard 18** Nicholas Allard, Law Professor at Brooklyn. [People are saying US democracy is falling apart — but it's actually working like the Constitution intended it to, 9-21-2018, https://www.businessinsider.com/us-democracy-is-not-at-risk-constitution-2018-9]//BPS

Is our beloved USA about to fall like ancient Rome, where the emperor and patricians distracted the common people from the loss of their rights with free bread, gladiator fights, and circuses? No. Thankfully and emphatically, no! What we are observing is our constitution working as intended, methodically, fairly, and purposefully — though often slowly. We can take comfort and pride in our brilliantly engineered complex legal system founded on the will of the people and their consent to be governed; not by authoritarian rulers, oligarchs, or bosses of criminal enterprises — but by the rule of law. All the bad news is in reality the good news that over the long-term, our system of equal justice under law protects our people. Our Constitution is designed to outlast misdeeds and shocks to the body politic. It has lasted longer than any democracy in history. It is designed to outlast us all. It is counterintuitive, but the steady drumbeat of news about illegality by powerful influential people is really emblematic of how effective the Constitution is at providing different ways for citizens to stand up to power. The Constitution assures that everyone is subject to the rule of law. Every grade school student in the United States learns about the three separate co-equal branches of government: the Legislative Branch, the Executive Branch, and the Judicial Branch. That is American Constitutional Law — American Law 101. However, what we all know about the three co-equal branches of the federal government is just the beginning of the brilliance of our constitutional system and separation of powers. Power also resides in several other reservoirs within the Constitution in order to hold government accountable, and to check abuse of power in order to make sure American remains a government "of the people, by the people, and for the people." At this historic moment, it seems as if two of the three branches are sputtering, if not completely broken: The White House and Congress. In contrast, the Judiciary, despite ideological differences and room for improvement, seems to be functioning well. Judges, lawyers, and juries are doing their part to preserve and protect equal justice and fairness according to our agreed upon rules of law. And these three branches are really but three of at least six very powerful engines that drive our ship of state. So, there is plenty of power to keep us moving until the broken branches recover. democracy When government is unresponsive to the peoples’ needs, then the people can take back their inalienable rights Drew Angerer/Getty Images What I mean by that is, for starters, the fourth engine is the states collectively and individually. We are a federal system with both federal and state governments, including state executives, legislators, judges, and prosecutors. The state governments form a very independent and strong power base that counter-balances the federal government. And, they do go their own way. Recent examples include issues such as immigration, environment, e-commerce, privacy, and prosecutions of violations of state law. The fifth powerful engine is made up by the constitutionally protected institutions, which are designed to hold government accountable. The reason for the First Amendment freedom of the press and religion is not simply to give these interests a protected way to endure. The press and religious communities have a job to do. The job for the press is to pursue truth, inform the public, and hold the government accountable for its policies and actions. Our religious and spiritual leaders and institutions are protected so that people can freely adhere to, observe, and express their personal beliefs. They are the living example of the moral and ethical path they expect government to follow. The sixth and the most powerful engine of all is the nuclear option for effecting change: the people. Our system of government is supposed to be limited. The people hand power to the government, only for it to be doing what the people need to be done that they cannot do for themselves. But when government is unresponsive to the peoples' needs, then the people can take back their inalienable rights. The peoples' free speech, association and petition rights, and other rights in the Bill of Rights and 14th Amendment are their shield and sword to combat authoritarianism. And yes, protecting the right to vote and the legitimacy of elections matter. Our democracy is imperfect and messy, but it is a thing of beauty. So, in the end, all of us can faithfully execute the role of United States citizen, and can to the best of our ability, preserve, protect, and defend the Constitution of the United States.

#### Democratic peace theory is false--limited sample size, disproven by historic examples, does not account for the effects of nationalism

Dr. Daniel **Larison**, senior editor, "Democratic Peace Theory Is False," AMERICAN CONSERVATIVE, 4—17—**12**, www.theamericanconservative.com/larison/democratic-peace-theory-is-false/, accessed 7-2-18.

Rojas’ claim depends entirely on the meaning of “genuine democracy.” Even though there are numerous examples of wars between states with universal male suffrage and elected governments (including that little dust-up known as WWI), the states in question probably don’t qualify as “genuine” democracies and so can’t be used as counter-examples. Regardless, democratic peace theory draws broad conclusions from a short period in modern history with very few cases before the 20th century. The core of democratic peace theory as I understand it is that democratic governments are more accountable to their populations, and because the people will bear the costs of the war they are going to be less willing to support a war policy. This supposedly keeps democratic states from waging wars against one another because of the built-in electoral and institutional checks on government power. One small problem with this is that it is rubbish. Democracies in antiquity fought against one another. Political equality and voting do not abolish conflicts of interest between competing states. Democratic peace theory doesn’t account for the effects of nationalist and imperialist ideologies on the way democratic nations think about war. Democratic nations that have professional armies to do the fighting for them are often enthusiastic about overseas wars. The ConservativeUnionist government that waged the South African War (against two states with elected governments, I might add) enjoyed great popular support and won a huge majority in the “Khaki” election that followed.

## Disease

#### Err against disease impacts---tech and bias ensure they’re overestimated

**Pinker 18** Steven Arthur Pinker is a Canadian-American cognitive psychologist, Professor at Harvard University. [Enlightenment Now: The Case for Reason, Science, Humanism, and Progress, Viking, Penguin Group]//BPS

And crucially, advances in biology work the other way as well: they also make it easier for the good guys [public protectors] (and there are many more of them) to identify pathogens, invent antibiotics that overcome antibiotic resistance, and rapidly develop vaccines.63 An example is the Ebola vaccine, developed in the waning days of the 2014–15 emergency, after public health efforts had capped the toll at twelve thousand deaths rather than the millions that the media had foreseen. Ebola thus joined a list of other falsely predicted pandemics such as Lassa fever, hantavirus, SARS, mad cow disease, bird flu, and swine flu.64 Some of them never had the potential to go pandemic in the first place because they are contracted from animals or food rather than in an exponential tree of person-to-person infections. Others were nipped by medical and public health interventions. Of course no one knows for sure whether an evil genius will someday overcome the world’s defenses and loose a plague upon the world for fun, vengeance, or a sacred cause. But journalistic habits and the Availability and Negativity biases inflate the odds, which is why I have taken Sir Martin up on his bet. By the time you read this you may know who has won.65

# 1NR

## CP

#### Even including the word “antitrust” undermines regulation, ensures sector creep, and is likely to cause more panic than the CP alone

Singer 21 [Hal Singer, managing director of Econ One and an adjunct professor at Georgetown’s McDonough School of Business, “Fixing a Broken Antitrust Regime,” May 26, 2021, https://promarket.org/2021/05/26/amy-klobuchar-antitrust-monopoly-ovation-review/]

Antitrust Isn’t The Only Tool in the Competition Toolkit

The book concludes with a Top-25 list of things Congress and the White House can do to solve America’s monopoly problem. The first 18 prescriptions track her latest legislative proposal, and fall under the domain of antitrust. There are many good ideas here, as well as some important omissions, as noted by Eric Posner, including the failure to overturn Supreme Court cases that established limitations on antitrust liability and enforcement. To her credit, Klobuchar also calls for policies outside of antitrust, such as protecting workers by restricting the use of non-competes agreements and forced arbitration clauses.

Klobuchar’s 24th suggestion, my personal favorite, is to “stop using the word antitrust and start calling it competition policy.” Alas, she only spends one paragraph on this proposal. It would have been an ideal place to note that sector-specific regulation can complement antitrust in hard-to-reach areas, where antitrust can’t easily recognize the (non-price) harm, or where antitrust can’t provide relief in time to spare innovation at the edges of the platforms. The book repeatedly calls for the restoration of net neutrality rules, an admission that antitrust isn’t the only tool in the competition toolkit.

#### Perm causes plan to vacated

Shelanski 18[Howard Shelanski, Professor of Law, Georgetown University; Partner, Davis Polk & Wardwell LLP, “Antitrust and Deregulation,” Yale Law Journal 127:7, May 2018]

The effect of Trinko and Credit Suisse was to render antitrust and regulation more like substitutes and less like complements. The competitive practices, market structure, and market performance of regulated industries are thus more likely to develop without the constraints of antitrust, reflecting instead the potentially different requirements and prohibitions of a regulatory agency's competition-related rules. With antitrust less able to act in parallel or as a complement, the enforcement of competition in regulated industries will depend on the nature of the relevant rules, the agency's commitment to enforcement, and the kinds of sanctions the agency can impose. As agencies repeal such rules or back off from actively administering them, the resulting competition enforcement gap could be greater because antitrust has been sidelined as an available supplement or complement. The doctrinal shift in the relationship between antitrust and regulation that resulted from Trinko and Credit Suisse therefore magnifies the competition enforcement consequences of strong deregulatory cycles.

[\*1944] A strong reading of Trinko and Credit Suisse could lead to significant displacement of antitrust enforcement by regulation or perhaps by the mere existence of a statute that authorizes competition-related regulation. 93 By contrast, a narrow, pragmatic reading of the cases could still leave reasonable scope for complementary antitrust enforcement in regulated markets. Wherever courts eventually draw the complement/substitute line between antitrust and regulation, however, the Supreme Court's decisions create a doctrinal mechanism through which federal courts reduce the availability of antitrust actions when regulation comes into the market. During cycles of increased regulation, therefore, courts and defendants will push antitrust in the countercyclical direction of less enforcement. On the other hand, during a deregulatory cycle in which rules go dormant or disappear, it is up to the antitrust agencies themselves to identify and counter potential enforcement gaps.

#### New regulatory agency to limit anticompetitive actions in the tech sector ensures maximally predictable rules and goldilocks competitive balance

Robb 20 [Greg Robb, “The U.S. government needs a new agency to regulate Big Tech, former Obama economist declares,” Oct 26, 2020, https://www.marketwatch.com/story/the-u-s-needs-a-new-agency-to-regulate-big-tech-former-obama-economist-declares-11603728230]

The next U.S. president should create a new federal regulatory agency to police the biggest tech companies, a former top economist with the Obama White House said Monday.

“The digital sector is a special case where a pro-competition regulator … would be a welcome addition to the U.S. policy landscape,” Jason Furman, a professor at Harvard University and chairman of the Council of Economic Advisers in the Obama administration, said during an event at the Peterson Institute for International Economics.

Furman is helping the U.K. establish a Digital Markets Unit. Similar regulatory bodies are also being set up in France, Germany and Australia, he noted. The U.S. has to play “catch-up,” he said. The agency would develop standards, rules and a “code of conducts” that would only apply to the biggest platforms that have “a gateway bottleneck power” for the system, Furman said.

In a letter setting out task-force recommendations for the U.K. regulator, Furman said the agency should “create and enforce a clear set of rules to limit anticompetitive actions by the most significant digital platforms while also reducing structural barriers that currently hinder effective competition.”

Fears of a Balkanized regulatory environment are misplaced, Furman said in his talk at Peterson — regulatory approaches across the major economies would actually give companies the predictability they need to operate around the world while also protecting consumers. He pointed to the global antitrust rules as an example of how it might work.

#### Privacy, portability, and interoperability regs solve the aff---but successful antitrust application to tech ensures the link to bizcon

Shapiro 18 [Carl Shapiro, Professor at the Haas School of Business, University of California, Berkeley, United States, “Antitrust in a time of populism,” International Journal of Industrial Organization, Elsevier, vol. 61(C), pages 714-748, 2018]

4.6. Regulating dominant firms

Regulation is an alternative way of controlling monopoly power. Historically, price regulation has been reserved for natural monopolies such as the local distribution of electricity or local telephony. Price regulation is notoriously messy, but it can limit the ability of a firm with durable monopoly power to exploit that power. Antitrust is not well suited to preventing the exploitation of monopoly power, especially since “merely” charging a monopoly price is not an antitrust violation in the United States.

While some are calling to regulate today's dominant technology companies, price regulation tends to work rather poorly in industries experiencing technological change. Furthermore, it is well understood that industry-specific regulators are often subject to regulatory capture. For both of these reasons, I suspect there will be relatively little interest in setting up specialized agencies to prevent today's dominant technology companies from exploiting their market power by regulating the prices they can charge. However, regulations relating to privacy, data ownership and portability, or open interfaces and interconnection may attract widespread support. The substantive rules governing such regulations, and the institutions created to implement such regulations, will matter a great deal to their efficacy.

5. Economic populism as an opportunity and a threat

Antitrust was born and then fortified during a period of populism in the United States in the late 19th and early 20th centuries. Likewise, today's populist sentiments–by which I mean the widespread and bipartisan concern that the deck is stacked in favor of large powerful firms–represent an opportunity, indeed a plea, to strengthen antitrust enforcement.

The empirical evidence supports moving in the direction of stronger merger enforcement. The empirical evidence also supports increased vigilance in preventing dominant firms with durable market power from engaging in business practices that exclude their actual and potential rivals. In this article, I have offered a number of constructive proposals along these lines. Rather than repeat those proposals, I close with a word of caution.

Today's populist sentiments pose a threat as well as an opportunity for antitrust. The danger to effective antitrust enforcement is that today's populist sentiments are fueling a “big is bad” mentality, leading to policies that will slow economic growth and harm consumers. The rest of this article is devoted to identifying this threat and discussing how such an error can be avoided.

I take as my starting point the core principle guiding antitrust enforcement in the United States that has served us well for so many years: antitrust is about protecting the competitive process so consumers receive the full benefits of vigorous competition. None of the empirical evidence relating to growing concentration and growing corporate profits, which I have discussed at length in this article, provides a basis for abandoning this core principle.

Applying this core principle, we understand quite well how to use antitrust to protect competition and consumers, at least conceptually. This enterprise centers on the economic notion of market power, and relies heavily on industrial organization economics. Of course, there is always room for improvement in practice, and right now that means stricter merger enforcement and vigilance regarding acts of monopolization, as already discussed.

The fundamental danger that 21st century populism poses to antitrust in that populism will cause us to abandon this core principle and thereby undermine economic growth and deprive consumers of many of the benefits of vigorous but fair competition. Economic growth will be undermined if firms are discouraged from competing vigorously for fear that they will be found to have violated the antitrust laws, or for fear they will be broken up if they are too successful.

Populism poses this danger in part because today's populism is in many ways animated more by concerns about the political power of large corporations than by concerns about their economic power. In this sense, there is a mismatch between 21st century populism and modern antitrust. More specifically if antitrust policy is altered to serve goals other than the economic goals of promoting competition and protecting consumers, the core principle articulated above would have to be modified or abandoned. Examples of alternative goals for antitrust are the goal of having more small local businesses, the goal of raising wages or employment, and the goal of reducing the political power of large businesses.

#### Regulation manages to moderate most externalities of big tech without eviscerating innovation

Jacob Beaupre 20, Currently Associate Attorney at the Hunt Law Group, Formerly Judicial Extern in the United States Court of Appeals for the Seventh Circuit, J.D. Candidate at the University of DePaul College of Law, 2020, Big Is Not Always Bad: The Misuse of Antitrust Law to Break Up Big Tech Companies, 18 DePaul Business & Commercial Law Journal, Winter 2020, Nexis Uni

iii. Regulation, not Antitrust

Regulating the tech giants would be more in line with the goals outlined by those who are concerned about the influence of Big Tech. Opponents of Big Tech cite fears of data privacy, the spread of misinformation, and data misuse. Much of Big Tech's opposition comes from fears about data concerns. Roughly half of Americans do not trust the government or social media sites to protect their data. Because of these increasing concerns, companies like Apple already expect to be regulated by the government. However, the FTC does not have much enforcement power in the protection of online privacy. Internet companies have disputed the FTC's authority to regulate data privacy practices. To solve this problem the FTC has requested [\*45] Congress create internet privacy and security laws. Regulating Big Tech would be a more narrowly-tailored way to deal with the power and size of tech companies.

As of now, there is only a "patchwork" of existing regulations that apply to issues like data use and privacy. To give consumers the information and transparency they want, the U.S. Congress should draft legislation outlining what can and cannot be done with consumers' data. Legislation should clearly outline consent, access, portability of information, and erasure of personal information. Additionally, policymakers should look to the European Union's General Data Protection Regulations ("GDPR") or the California Consumer Privacy Act. The GDPR protects all personal online data, regardless of who collects it or how it is processed. Under the GDPR, companies are required to notify users of a data breach within 72 hours of discovering a data breach and companies must request user consent in a clear and accessible way. Additionally, the GDPR allows users to stop third party access or to delete their data. The GDPR imposes a fine of up to 4 percent of annual global revenue for noncompliance. Regulations, like the GDPR, could serve as a template to give consumers greater control over their data.

The GDPR is not the only law regulating the tech industry and reforming data privacy. The California Consumer Privacy Act, which will take effect on January 1, 2020, will likely transform data privacy law. Once enacted, California will have the strictest data privacy laws in the nation. The Act will apply to companies serving California residents, which is impactful due to California's economic presence and large population. Due to California's economic impact and large population, almost all companies will ultimately serve California residents. The law not only compels companies to disclose data collection [\*46] in their privacy policies, but also to company users on request. The Act also allows users to delete their data and to "opt out" of having their data sold. Additionally, it is illegal for companies to discriminate against consumers for exercising their privacy rights under the Act. The Act is primarily geared toward consumers as it governs consumer privacy rights and disclosures made to consumers. These protections only apply to California residents, but few companies are "likely to devote the resources necessary to provide the Act's opt-out options to a user visiting a Web site from an IP address in California, while providing a Web site without those features to residents of the other 49 states." As written, the law has expansive consumer protections, which could soon become the model that other states and the federal government follow.

Policymakers could consider other measures to regulate Big Tech without breaking up Big Tech. For instance, policymakers could mandate that Big Tech companies share their data with smaller tech companies. Amassing data is the key to innovation and Big Tech companies maintain their competitive advantage from the vast amount of data they possess. To increase competition, Professor Viktor Mayer-Schonberger, a professor of internet governance at the Oxford Internet Institute, advocates that large tech companies be mandated to share anonymized data with less powerful competitors. Doing so would allow start-ups to have more of an opportunity to succeed because innovation tends to require access to more data. This would prevent the drawbacks that breaking up a tech company like Google would create. Reducing the amount of data a company can use reduces anyone's ability to use the data collected and prevent innovation. Breaking up a company like Google could make its services less reliable because sharing data between a service like Google Search and Google Maps creates reliability and improves consumer [\*47] services. Further, Big Tech could be regulated by preventing Big Tech from favoring their own platforms and services. Hal Singer, a senior fellow at the George Washington Institute of Public Policy, argues that companies like Google defeat competitors by their services special treatment, even when they are not as good as a competitor's. To prevent this problem, Singer proposes regulating tech companies like cable companies by preventing tech companies from using its platform to "artificially give a leg up to [its] own affiliated properties." Smaller companies could then bring complaints to a neutral arbiter. This could help alleviate one of the biggest concern that small businesses will not have power to take on companies like Google and Facebook.

There are ways of regulating Big Tech without requiring the drastic steps of a break-up. Regulatory measures could alleviate some concerns that antitrust advocates have. Additionally, stricter privacy laws would give consumers' protection they seek, as well as simplify compliance by establishing a national baseline.

IV. Conclusion

The big four technology companies should not be broken up under antitrust law. Antitrust law has an uneasy fit with internet-based businesses because is difficult to discern how to judge when an internet company has become a monopoly since the internet is so vast, changes so quickly, and has many sectors to it. The internet's nature is disruptive and because of the pace of technological change, it is important that antitrust policy take into account how breaking up an internet company may have negative effects on the American economy and on the development of technology.

Businesses who create the best products and do the most research should not be interfered with so long as the companies are not stifling competition and are not monopolies under the legal definitions. Certainly, antitrust law could be applied if Google hypothetically bought Facebook, Netflix, and Twitter since Google would control an outsized market share and would have an intent to monopolize the internet. But this is not what is occurring at this juncture. The big four technology companies record profits and are indisputably large and powerful [\*48] corporations. Nevertheless, antitrust law should not be applied because the whims of the populist mob do not like tech companies' size and influence.

It is rational to worry about Big Tech's outsized influence on the American economy. However, simply targeting the big four tech companies because of their record earnings and increasing size is counter to the intent of the antitrust acts. If those feel that these companies have too much unchecked power, policymakers and officials should consider regulatory action. There are good and well-reasoned arguments for regulating these tech giants given the recent string of controversies regarding data privacy, but antitrust law is not the avenue to check tech giants' power. The antitrust laws cannot be used simply to satisfy the populist furor over corporate earnings and power, as the antitrust acts only apply if a company is stifling or intending to stifle competition and innovation. Regulatory actions or new legislation policing data use and privacy, cybersecurity, foreign interference in elections, and other issues are a better fit than simply breaking up an entire large business.

Right now, consumers are receiving great benefits because of the big four tech companies' dominance. Consumers have a near limited array of options on the internet and there is no shortage of innovation. With new issues arising as a result from changing pace of technology and the economy, the American legal system should let the market run its course, albeit with some regulation on the industry, unless these tech giants begin to take drastic steps to monopolize and engage in predatory behavior. The populism behind these arguments to break up the tech giants is not grounded in antitrust law nor the policy behind it.

#### Know your customer” regs, as well as portability requirements, ensure privacy concerns are mitigated

Singer 18 [Hal Singer, managing director of Econ One and an adjunct professor at Georgetown’s McDonough School of Business, April 2, 2018, “The Cambridge Affair Exposed Facebook's Dark Arts. Here's A Counterspell That Doesn't Kill Tech,” Forbes]

These are all thoughtful solutions that warrant further study and cost-benefit analysis. If I could write the legislation, I would begin with some form of the EU’s General Data Protection Regulations (“GDPR”), in which consumers will “gain the right to access data companies store about them, the right to correct inaccurate information, and the right to limit the use of decisions made by algorithms.” While preventing the sale of Facebook data to third parties such as Cambridge for targeting without explicit user consent, GDPR-style protections won't prevent abuse of subscriber-usage information entirely because they still allow first-party use of data. Put differently, adopting GDPR-style protections in the United States, while a healthy improvement over the status quo, will not prevent Facebook from exploiting its users’ data for targeting for its own purposes. Facebook, Google, and others likely will work around any strong privacy regulations to lock in their advantages and profit.

Thus, in addition to the opt-in privacy protections, I would layer on some version of the “Digital EPA/Data Rights Board/Net Tribunal” to regulate the dealings between third parties and dominant tech platforms. As an extra layer of protection, I would add a “Know Your Customer” requirement for all advertising-driven websites, similar to those used for foreign wireless providers and U.S. banks, to prevent one person with twenty aliases indiscriminately spreading lies across the Internet and to confirm human (as opposed to bot-driven) audience size for ad buyers and trend watchers.

There are more radical interventions. To wit: Facebook could be forced to port its users to a new service called “Facebook Basic”—a service that is free from advertising for at least three years; after that, a user could prepay a small fee to continue service, allowing her account to disappear if he or she doesn’t renew; if the user wants to keep the fancier bells and whistles, including curated content, he or she would have to accept ads and use of data. This is similar to Roose’s “automatic ‘self-cleaning’ option, which would regularly clear their profiles of apps they no longer used, friendships and followers they no longer interacted with, and data they no longer needed to store.”

A realistic short-term solution

Rather than shaming Zuckerberg, Congress should convene a hearing of true experts—in social media, economics, regulation, online advertising, and fake news—to solicit opinions on how to craft a new regulatory and privacy regime. In a well-functioning legislative branch, the best ideas would become law before the November elections. Given our dysfunctional Congress and likely court challenges under the First Amendment, however, this quick fix is unrealistic.

## DA

#### They’re litigating non-compliance and on drawing on resources throughout the agency.

FTC ’21 [Federal Trade Commission; July 2021; U.S. agency, tasked with enforcing antitrust and consumer protection law; Federal Trade Commission, “Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Manufacturers and Sellers,” <https://www.ftc.gov/system/files/documents/public_statements/1592330/p194400repairrestrictionspolicystatement.pdf>]

While unlawful repair restrictions have generally not been an enforcement priority for the Commission for a number of years,4 the Commission has determined that it will devote more enforcement resources to combat these practices.5 Accordingly, the Commission will now prioritize investigations into unlawful repair restrictions under relevant statutes such as the Magnuson-Moss Warranty Act6 and Section 5 of the Federal Trade Commission Act.7

First, the Commission urges the public to submit complaints and provide other information to aid in greater enforcement of the Magnuson-Moss Warranty Act and its implementing regulations. While current law does not provide for civil penalties or redress, the Commission will consider filing suit against violators of the Magnuson-Moss Warranty Act to seek appropriate injunctive relief. The Commission will also closely monitor private litigation to determine whether the Commission may wish to investigate a pattern of unfair or deceptive acts or practices or file an amicus brief. Further, the Commission will explore rulemaking, as appropriate.

Second, the Commission will scrutinize repair restrictions for violations of the antitrust laws. For example, certain repair restrictions may constitute tying arrangements or monopolistic practices—such as refusals to deal, exclusive dealing, or exclusionary design—that violate the Sherman Act.8 Violations of the Sherman Act also violate the prohibition on unfair methods of competition codified in Section 5 of the Federal Trade Commission Act.

Third, the Commission will assess whether repair restrictions constitute unfair acts or practices, which are also prohibited by Section 5 of the Federal Trade Commission Act. In addition, the Commission will analyze any material claims made to purchasers and users to ascertain whether there are any prohibited deceptive acts or practices, in violation of Section 5 of the Federal Trade Commission Act.

Finally, the Commission will bring an interdisciplinary approach to this issue, using resources and expertise from throughout the agency to combat unlawful repair restrictions. The FTC will also closely coordinate with state law enforcement and policymakers to ensure compliance and to update existing law and regulation to advance the goal of open repair markets.

### Link

#### Adding a single case takes up fifty percent of resources---there’s minimal slack now and Congress will deny requests.

Kantrowitz ’20 [Alex; September 17; Author and reporter, B.A. from Cornell University; Medium, “‘It’s Ridiculous’: Underfunded U.S. Regulators Can’t Keep Fighting the Tech Giants Like This,” <https://onezero.medium.com/its-ridiculous-underfunded-u-s-regulators-can-t-keep-fighting-the-tech-giants-like-this-3b57487b4d63>]

“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.”

Ultimately, Congress is responsible for funding these agencies, and its lack of action in this regard makes its hearings and tough questioning of tech giant CEOs a little hollow. Getting Bezos to sweat in a made-for-YouTube interrogation pales in comparison to Congress’s responsibility to properly fund the regulators. None of five members of Congress contacted for this story, including some of the most theatrical in the hearings, agreed to comment.

#### Litigation snowballs, dragging the FTC in protracted legal and hiring fights.

Burke ’21 [Andrea and Henry; May 28; B.A. in Political Science and Labor Studies from the University of California at Los Angeles; Research Assistant, B.A. in Economics from the University of Maryland; Revolving Door Project, “Hobbled FTC Lacks Budget to Combat Corporate Buying Spree,” <https://therevolvingdoorproject.org/hobbled-ftc-lacks-budget-to-combat-corporate-buying-spree/>]

According to Revolving Door Project’s analysis, FTC appropriations have consistently declined since 2010, when the agency’s discretionary budget authority was $205 million. In the following years the number declined significantly from $205 million in FY 2010 to $180 in FY 2015 and $168 in FY 2019. Accounting for inflation, the decrease between FY 2010 and FY 2019 funding for the FTC amounted to a cut in discretionary appropriations of 30%.

Despite the decrease in discretionary funding, the agency has seen its overall budget increase slightly as a result of the increased merger filing fees that it receives. These are not enough to keep pace with the massive increase in caseload for the agency from which they result. As the fee schedule was implemented in 2001, the filing fees for mergers are far too low to cover the cost of the FTC’s investigations. In a 2021 statement on filing fees, acting Chair Rebecca Kelly Slaughter and Commissioner Rohit Chopra [stated](https://www.ftc.gov/system/files/documents/public_statements/1587163/p859910_concurring_statement_of_ac_slaughter_and_c_chopra_re_revised_hsr_thresholds.pdf) that the mega-mergers regulated by the agency “require more resources and staff. For example, large retail or service mergers often require investigation into dozens of geographic markets and large pharmaceutical or industrial mergers often require investigation into a dozen or more product markets.”

The Democratic commissioners specifically identify the need for experts to carry out investigations and litigation, noting “the amount of money the FTC spends on expert costs has risen dramatically over the last several years.” As new technologies are developed, the FTC’s investigations are bound to become more complex, necessitating higher funding altogether for hiring more technologists, economists and other experts. Although the FTC is known for an aversion to costly litigation (a fact which corporations use to their advantage), increased funding would also allow the agency to hire more attorneys to carry out challenges in court.

However, due to declining discretionary funding and fees not keeping up with inflation, the FTC has been forced to expend far fewer resources on each investigation than it had in prior years. The appearance of a budget increase since 2010 needs to be reconciled with the reality that the agency has been crushed under an increased caseload many times larger than the nominal increase in budget.

#### Digital antitrust forces tradeoff---uniquely resource draining AND litigious---expanding budget doesn’t solve.

Chakravorti ’21 [Bhaskar; July 7; Dean of Global Business at Tufts University’s Fletcher School of Law and Diplomacy, founding Executive Director of Fletcher’s Institute for Business in the Global Context; Foreign Policy, “As FTC Chair, Lina Khan Has Her Own Antitrust Paradox,” <https://foreignpolicy.com/2021/07/07/ftc-lina-khan-regulate-tech-congress/>]

To be sure, antitrust lawsuits must meet high hurdles and take their time to wind through courts, but the speed of this rejection was stunning. Unsurprisingly, hopes are now pinned on Khan being precisely the person to take on the challenge—and advice is pouring in on how to go back for round two. Some have [argued](https://www.wired.com/story/ftc-antitrust-case-against-facebook-very-much-alive/) the agency just needs to be more explicit about its definition of the market and the data it is relying on.

It is useful to recall that, as the judge [threw out](https://www.nytimes.com/2021/06/28/technology/facebook-ftc-lawsuit.html) the complaint, [he also ruled that](https://storage.courtlistener.com/recap/gov.uscourts.dcd.224921/gov.uscourts.dcd.224921.73.0.pdf) “the FTC’s inability to offer any indication of the metric(s) or method(s) it used to calculate Facebook’s market share renders its vague ‘60%-plus’ assertion too speculative and conclusory to go forward.” Defining the “market” and “market share” as well as putting data against these are not straightforward in Facebook’s case.

Since access to the social media platform is free to users, figuring out the “market” might mean considering the advertising customers who actually pay for space there see. Here, Facebook’s share is as low as across all U.S. online advertising. The share climbs to [60 percent](https://www.economist.com/business/2021/07/03/is-facebook-a-monopolist) when limited to U.S. social media advertising but then drops away when the social media advertising market is considered globally. Moreover, “social networking” itself is a fluid category. A Facebook commissioned [study](https://link.mail.bloombergbusiness.com/click/24327894.162293/aHR0cHM6Ly9zMy5hbWF6b25hd3MuY29tL2ZpbGVzLmFwcGFubmllLmNvbS8rMjAyMTAzX1NpbWlsYXJfQXBwc19Vc2FnZV9UcmVuZHNfRmFjZWJvb2tfQXBwQW5uaWVfRU4ucGRm/5f500fcbdfe5b85e661bb3b8B370e8c9b) found that 90 percent of the people who use one of Facebook’s apps also use YouTube and 25 percent also use Twitter. To complicate matters further, in Apple’s App Store, Facebook is classified as “social networking,” but YouTube is “video, music, and live streaming” and Twitter is “news.” Other metrics, such as time spent on the apps or total user interactions, are [not regularly reported](https://www.bloomberg.com/news/articles/2021-06-30/ftc-revival-of-facebook-case-hinges-on-bolstering-monopoly-claim?utm_source=google&utm_medium=bd&cmpId=google). No matter how the FTC reframes the market and market share (and even if it is accepted by the judge), the definitions will be open to numerous challenges, which will surely lengthen the legal process, giving the defendant the upper hand.

One might argue the conventional metrics for proving monopoly power—“market share” and related measures—are outmoded and a different approach is needed. The FTC might, instead, frame the complaint against Facebook differently: The company used its dominance to [play fast and loose](https://lawcat.berkeley.edu/record/1128876?ln=en) with user data. For such an argument to hold though, it needs to be linked to implications for consumer welfare—the prevailing [standard](https://www.jstor.org/stable/724991) for antitrust that has been applied since the 1960s. But how does one prove consumers are harmed by the fact that Facebook is collecting their data? Clearly, part of the data being collected gives users services tailored to their interests that many users find beneficial. This begs more questions: Are users being asked for more data than is strictly necessary? Is the information being collected in [intrusive or abusive ways](https://theconversation.com/7-in-10-smartphone-apps-share-your-data-with-third-party-services-72404)? Ultimately, the FTC and the courts would have decide if customers are getting a [good value](https://www.axios.com/mark-warner-josh-hawley-dashboard-tech-data-4ee575b4-1706-4d05-83ce-d62621e28ee1.html) in exchange for their data.

Regardless of how one discusses consumer welfare, Khan, especially, ought to resist being forced into this straightjacket; after all, she has [argued](https://www.yalelawjournal.org/note/amazons-antitrust-paradox) that antitrust standards based on consumer welfare are unfit to gauge competitiveness in the digital economy. To put her ideas into practice, she ought to have the freedom to bring a case that rests on the argument that a company’s impact on the market structure inhibits competition.

Since Khan has written forcefully about revisiting antitrust standards, it is natural to expect this case would be her chance to rewrite not only the charge against Facebook but to change those standards more broadly. There is little doubt this is where her mind is. The FTC under her leadership voted to [revoke](https://www.cnbc.com/2021/07/01/lina-khans-ftc-takes-first-step-to-expanding-antitrust-enforcement.html) a 2015 policy statement that limited the agency’s reach, giving it room to frame cases beyond the two foundational boundaries of antitrust in the United States: the Sherman Antitrust Act and the Clayton Antitrust Act.

But the FTC’s levers are limited.

Although Khan can reframe the fundamentals of the antitrust complaint, without adequate regulatory infrastructure—something only Congress can provide—there are likely to be unsurmountable obstacles as the chess game between the law and Facebook unfolds. No matter how brilliantly Khan’s FTC rewrites the case against Facebook, the agency’s powers, budget, and resources are still limited. Ad hoc adjustments to the FTC’s budget, as envisioned in one of the bills in Congress, and stopgap measures to expand its powers do not get around the fundamental fact that the FTC was not set up to pursue the breadth of novel issues and policy trade-offs that digital industries create.

Antitrust in digital industries cannot be considered in isolation. It is also quite different from antitrust in other industries because there are issues unique to the industry. A holistic view of digital antitrust means tying antitrust concerns with numerous broader questions, such as securing users’ data rights, the responsibilities platforms ought to have for the content they host, and criteria that helps demarcate the benefits of network effects from the abuses of network power. The FTC is too much of a general purpose entity to dive into these complexities. As former Federal Communications Commission chair Tom Wheeler [observed](https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/): “The vast scope of the FTC’s present responsibilities—as diverse as funeral director practices, robocalls, and labeling hockey pucks—means that the oversight of digital platform regulation must compete with the agency’s existing diverse responsibilities and limited resources.”

### I/L

#### Monopolization---it’ll crush revenue and crop growth---only ‘right to repair’ solves.

O’Reilly ’21 [Kevin; February 2021; Director of the Campaign for the Right to Repair at the United States Public Interest Group, B.S. and B.A. from the University of San Diego; U.S. PIRG, “Deere in the Headlights,” p. 3-19]

Executive Summary

On the farm, the fields must be plowed, planted or harvested whether or not your tractor or combine harvester is running. When their equipment does break down, generations of farmers have found a way to fix their equipment and get the job done. But now, equipment manufacturers refuse to give farmers all of the tools that they need to fix their stuff—especially the software tools to install replacement electronics— leading to delays of hours to weeks while the farmer waits for the dealership to make the repair.

Farm equipment, much like all of the devices and gadgets in our lives, is increasingly driven by software. While this software has increased the efficiency of some tasks, it has also allowed manufacturers to take increasing control of the repair process.1

The sensors and control systems that feed this software with data have been integrated into most of the functions of modern combine harvesters, tractors and other farm equipment.2 In cases where a mechanical issue engages safety or emissions control systems, or some part of those systems fail, the immobilizer is activated. 3 This sends the machine into “limp mode,” which disables most of the equipment’s functionality and only allows the machine to “limp” out of the way of other work until it is repaired and the error codes are cleared.4

Without the software tools needed to diagnose problems, install replacement parts and authorize repairs, the engagement or failure of any sensor or control system forces a farmer to either haul their machine into the nearest dealership or wait for a field technician to arrive to complete the repair.5

Farmers’ inability to repair software-connected systems without proprietary software is a glaring example of how farm equipment is engineered to be dependent on dealership support. Our research shows how prevalent this practice has become: U.S. PIRG Education Fund found as many as 125 sensors in a single combine. Each sensor is connected to a controller network. A problem with any one of those controller networks will require diagnostic tools not available to farmers, sending them back to the dealer for a repair. According to agricultural equipment experts, these sensors and their associated controller networks are now the highest point of failure on the product.6

When repair options are limited by software or other restrictions, it can create a de-facto repair service monopoly. Manufacturers’ monopoly on repair has a real impact on farmers’ livelihoods. Without independent repair shops or the ability to fix their own stuff, they are exposed to high repair costs and long wait times. This report describes some of these delays and the associated difficulties and expenses.

Manufacturers defend these behaviors by claiming that providing farmers with the repair resources available to dealerships would lead to illegal modifications that could override safety and environmental controls, 7 claims that this report shows are false. There is, however, a strong financial incentive to capture repair business. John Deere company filings pointed to trends that services and repair have been as much as three to six times as profitable as new equipment sales for John Deere and its dealerships. 8

There are many examples that demonstrate how farmers are frustrated by the challenges in maintaining equipment. Some are paying unprecedented prices for older tractors—like the 1980 John Deere 4440 that sold for $43,500 in Lake City, MN in April 20199—because they are actually fixable. Others, like Nebraska farmer Kyle Schwarting, 10 are hacking their tractors with versions of John Deere Service Advisor cracked and made available on torrent websites based in Eastern Europe. 11

Farmer organizations are increasingly supporting policy solutions to eliminate repair hurdles. The American Farm Bureau Federation, the National Corn Growers Association and the National Farmers Union submitted a public comment to the U.S. Copyright Office requesting, “exemption for agricultural vehicle owners to diagnose, repair, and lawfully modify the computer programs contained in and controlling the functioning of their mechanized agricultural vehicles,”12 in 2018 as a part of the triennial rulemaking process laid out by section 1201 of the Digital Millennium Copyright Act. Right to Repair legislation—which would provide farmers with access to the parts as well as the physical and software tools used to diagnose, calibrate and otherwise authorize repairs—is also gaining popularity amongst farmers. Over 30 states have considered these reforms, 13 the American Farm Bureau Federation adopted a pro-Right to Repair policy in 2020,14 and the Montana Farmers Union indicated a 2021 bill in its state is a top priority.15

This report outlines why farmers need the right to repair their equipment. Absent these reforms, farmers are reliant on dealerships for many fixes and are exposed to high costs and long wait times that cut into already thin profit margins. 16 Despite industry claims, Right to Repair legislation would not provide farmers with the ability to bypass safety or environmental controls, nor would it expose manufacturers to potential loss of intellectual property. It would, however, provide farmers with what they need to get back to work when their equipment goes down.

#### Link alone turns case, zeroing enforcement and encouraging anticompetitive behavior.

Baker et al. ’20 [Jonathan, Bill Baer, Michael Kades, Fiona Morton, Nancy Rose, Carl Shapiro, Tim Wu; November 19; Professor of Law at American University, former Director of the Bureau of Economics at the Federal Trade Commission, Ph.D. in Economics from Stanford University, J.D. from Harvard University; Visiting Fellow in Governance Studies, former Assistant Attorney General for Antitrust at the U.S. Department of Justice and Director of the Bureau of Competition at the Federal Trade Commission, J.D. from Stanford University; Director of Markets and Competition Policy at the Equitable Growth Foundation, J.D. from the University of Wisconsin; Professor of Economics at ale University, Ph.D. in Economics from the Massachusetts Institute of Technology; Professor of Applied Economics, Ph.D. in Economics from the Massachusetts Institute of Technology; Professor of Business Strategy at the University of California, Berkeley; Special Assistant to the President for Technology and Competition Policy in the National Economic Council, J.D. from Harvard Law School; Washington Center for Equitable Growth, “Restoring competition in the United States,” <https://equitablegrowth.org/research-paper/restoring-competition-in-the-united-states/>]

The need for more resources

The agencies lack the resources to fulfill their mission after a decade in which they have seen their budgets largely frozen. Increasing resources alone will not solve today’s manifest market power problems, but substantially increasing resources is an important part of the solution.

The agencies require a significant increase in appropriations to begin the process of more effectively deterring anticompetitive conduct and mergers. Agencies strapped for resources are less likely to investigate complex cases and more willing to accept flawed settlements. Corporations are more likely to pursue questionable mergers or undertake potentially anticompetitive conduct if they think the agencies have little or no capacity to bring additional enforcement actions.

#### It’s the most likely scenario for war---sparks nuke escalation in Asia and the Middle East.

Cribb ’19 [Julian; October 3; Principal of Julian Cribb & Associates, Fellow of the Australian Academy of Technological Sciences and Engineering, former Director of National Awareness at the Commonwealth Scientific and Industrial Research Organisation; Food or War, “Food as an Existential Risk,” Ch. 6]

Weapons of Mass Destruction

Detonating just 50–100 out of the global arsenal of nearly 15,000 nuclear weapons would suffice to end civilisation in a nuclear winter, causing worldwide famine and economic collapse affecting even distant nations, as we saw in the previous chapter in the section dealing with South Asia. Eight nations now have the power to terminate civilisation should they desire to do so – and two have the power to extinguish the human species. According to the nuclear monitoring group Ploughshares, this arsenal is distributed as follows:

– Russia, 6600 warheads (2500 classified as ‘retired’)

– America, 6450 warheads (2550 classified as ‘retired’)

– France, 300 warheads

– China, 270 warheads

– UK, 215 warheads

– Pakistan, 130 warheads

– India, 120 warheads

– Israel, 80 warheads

– North Korea, 15–20 warheads.11

Although actual numbers of warheads have continued to fall from its peak of 70,000 weapons in the mid 1980s, scientists argue the danger of nuclear conflict in fact increased in the first two decades of the twenty-first century. This was due to the modernisation of existing stockpiles, the adoption of dangerous new technologies such as robot delivery systems, hypersonic missiles, artificial intelligence and electronic warfare, and the continuing leakage of nuclear materials and knowhow to nonnuclear nations and potential terrorist organisations.

In early 2018 the hands of the ‘Doomsday Clock’, maintained by the Bulletin of the Atomic Scientists, were re-set at two minutes to midnight, the highest risk to humanity that it has ever shown since the clock was introduced in 1953. This was due not only to the state of the world’s nuclear arsenal, but also to irresponsible language by world leaders, the growing use of social media to destabilise rival regimes, and to the rising threat of uncontrolled climate change (see below).12

In an historic moment on 17 July 2017, 122 nations voted in the UN for the first time ever in favour of a treaty banning all nuclear weapons. This called for comprehensive prohibition of “a full range of nuclear-weapon-related activities, such as undertaking to develop, test, produce, manufacture, acquire, possess or stockpile nuclear weapons or other nuclear explosive devices, as well as the use or threat of use of these weapons.”13 However, 71 other countries – including all the nuclear states – either opposed the ban, abstained or declined to vote. The Treaty vote was nonetheless interpreted by some as a promising first step towards abolishing the nuclear nightmare that hangs over the entire human species.

In contrast, 192 countries had signed up to the Chemical Weapons Convention to ban the use of chemical weapons, and 180 to the Biological Weapons Convention. As of 2018, 96 per cent of previous world stocks of chemical weapons had been destroyed – but their continued use in the Syrian conflict and in alleged assassination attempts by Russia indicated the world remains at risk.14

As things stand, the only entities that can afford to own nuclear weapons are nations – and if humanity is to be wiped out, it will most likely be as a result of an atomic conflict between nations. It follows from this that, if the world is to be made safe from such a fate it will need to get rid of nations as a structure of human self-organisation and replace them with wiser, less aggressive forms of self-governance. After all, the nation state really only began in the early nineteenth century and is by no means a permanent feature of self-governance, any more than monarchies, feudal systems or priest states. Although many people still tend to assume it is. Between them, nations have butchered more than 200 million people in the past 150 years and it is increasingly clear the world would be a far safer, more peaceable place without either nations or nationalism. The question is what to replace them with.

Although there may at first glance appear to be no close linkage between weapons of mass destruction and food, in the twenty-first century with world resources of food, land and water under growing stress, nothing can be ruled out. Indeed, chemical weapons have frequently been deployed in the Syrian civil war, which had drought, agricultural failure and hunger among its early drivers. And nuclear conflict remains a distinct possibility in South Asia and the Middle East, especially, as these regions are already stressed in terms of food, land and water, and their nuclear firepower or access to nuclear materials is multiplying.

It remains an open question whether panicking regimes in Russia, the USA or even France would be ruthless enough to deploy atomic weapons in an attempt to quell invasion by tens of millions of desperate refugees, fleeing famine and climate chaos in their own homelands – but the possibility ought not to be ignored.

That nuclear war is at least a possible outcome of food and climate crises was first flagged in the report The Age of Consequences by Kurt Campbell and the US-based Centre for Strategic and International Studies, which stated ‘it is clear that even nuclear war cannot be excluded as a political consequence of global warming’. 15 Food insecurity is therefore a driver in the preconditions for the use of nuclear weapons, whether limited or unlimited.

A global famine is a likely outcome of limited use of nuclear weapons by any country or countries – and would be unavoidable in the event of an unlimited nuclear war between America and Russia, making it unwinnable for either. And that, as the mute hands of the ‘Doomsday Clock’ so eloquently admonish, is also the most likely scenario for the premature termination of the human species.

Such a grim scenario can be alleviated by two measures: the voluntary banning by the whole of humanity of nuclear weapons, their technology, materials and stocks – and by a global effort to secure food against future insecurity by diverting the funds now wasted on nuclear armaments into building the sustainable food and water systems of the future (see Chapters 8 and 9).

#### Food security accelerates U.S. growth---that deters great-power conflict.

Castellaw ’18 [John; March 14; Lieutenant General in the United States Marine Corps, member of the Center for Climate and Security’s Advisory Board, teaching fellow in the College of Business and Global Affairs at the University of Tennessee; Senate Committee on Foreign Relations, “Why Food Security Matters,” <https://www.foreign.senate.gov/imo/media/doc/031418_Castellaw_Testimony.pdf>]

Food Security Advances America’s Economic Interests

Food security is critical to reducing conflict, but it is also vital to establishing economic security. Almost no country – from South Korea to India to the United States – has achieved rapid economic development without first investing in agricultural development. And we know from our experience that smallholder farmers can become productive and escape poverty once they gain access to education, markets, and technologies.

That is also my personal story—in my family’s history this step enabled my grandparents and parents to rise from a lineage of small-acreage subsistence farmers to the American Middle Class, to feed and educate our family, and to live with dignity. American and world efforts to tackle global poverty have been successful. Since 1990, global extreme poverty has been more than halved with over a billion people lifted out of poverty.

These efforts pay dividends for the U.S economy. Today, 11 of our top 15 export markets, including Germany, Japan and South Korea, are former recipients of U.S. foreign assistance, as well as being among our staunchest allies. Many of the fastest growing economies reside in the developing world and those markets comprise almost 60 percent of global GDP, a threefold increase since 1990. These developing countries also account for more than half of all U.S. agricultural exports.

In 2016, the U.S. exported nearly $135 billion of agricultural products supporting 1.1 million full-time American jobs, making these developing markets an important source of our jobs and economic growth. When our economy is strong, it amplifies the awesome power of our military might while deterring our enemies from undermining America’s national security and economic interests abroad.