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Neoclassical Economics K

#### The aff’s antitrust policy is invested in a vapid neoclassical paradigm

Paul ’21 [Sanjukta; September 27; Law Professor at Wayne State University; Michigan Law Review, “Charting the Reform Path,” https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3931868]

To the extent they take a position, the essays are also mostly, though not unanimously, united in their endorsement or acceptance of the ideal competitive market as the primary normative benchmark for law. The name of the conference from which the essays originate indicates this analytical perspective: “Unrigging the Market: Convening to Restore Competitive Labor Markets.”23 This name implies that the north star for evaluating policy is a “competitive labor market,” one in which wages are set “by the market” and “workers are … paid their marginal product or their economic value to the company.”24 The lead essays (particularly the economists’ essays) are quick to point out that the actual existence of such a labor market is “wildly implausible.” 25 Despite this, the editors seem to hold such a market out as the basic normative benchmark for evaluating and thinking about labor market policy.

At the broadest level the volume describes, but does not resolve, a choice between two distinct and ultimately incompatible possibilities: on one hand, the *restoration* of a competitive labor market, and on the other, articulated much more faintly and implicitly, exposing the “*myth*” of this very goal, 26 which in turn would imply the need to construct an entirely new normative benchmark. The editors and contributors in this volume largely seem to espouse the goal of restoring a “competitive market,” describing desired reforms in these terms. But a few essays do point in another direction—toward a vision of markets and the economy that acknowledges that there are a variety of markets constructed by a variety of moral, political and social choices; that prices and wages are always a result of these moral, political and social choices rather than value-neutral, impersonal market forces independent of those choices; and that, as a result, we cannot circumvent such moral decision-making by appeal to “market prices” or “market wages.”27 Some essays advocate primarily for a specific policy reform on the basis that it hurts workers, or argue that a specific practice that reduces real-world competition (notably, noncompete provisions in employment contracts, or collusion between employers as to hiring or wages) also hurts workers.28 Importantly, this latter type of empirical argument does not at all require or imply a neoclassical picture of competition: it is perfectly consistent to view certain forms of real-world competition as healthy and beneficial, without committing to neoclassical competition either descriptively or as normative benchmark for policy.

II. COMPETITIVE MARKETS: THE VERY IDEA

The concerns and arguments contained in Inequality and the Labor Market can be roughly divided into two categories. In one category, the book highlights certain legal strategies, policies, and reforms that would (presumably) help workers. These include concrete enforcement actions available (or plausibly available) under antitrust law as currently constituted; policies cast as increasing competition in labor markets (whether enacted through antitrust or another area); and proposed changes to antitrust law. In the second category, the book urges an analytical reframing of several roughly adjacent law and policy areas—based on a neoclassical imperfect competition vision of labor markets—that serves as a new, potentially more authoritative and ‘scientific’ justification for policies benefitting workers and worker organization. The first category of arguments do not require welfare economics’ modeling of markets; they simply require a commitment to the betterment of workers’ position and a willingness to look at empirical evidence regarding the effects of certain practices and policies. The second category of arguments, on the other hand, entail significant, contested choices about the analytical lens through which we ought to understand the world and respond to it. For the most part, however, the editors and contributors do not really acknowledge these choices at all. Instead, to the extent they do acknowledge and describe an alternative to neoclassical imperfect competition, that alternative is the picture of perfectly competitive labor markets that they point out has long formed the basis for policy thinking. As such, the editors often endorse, tacitly or expressly, the rates of pay and other outcomes produced by perfect or “natural[]” competition as the underlying normative benchmark for regulation.29

Both lead chapters by economists—one by Nobel laureate Joseph Stiglitz and one coauthored by Treasury Secretary counselor Benjamin Harris and long-time Biden economic advisor (and current member of the White House Council of Economic Advisors) Jared Bernstein— emphasize the mounting empirical evidence for “limited competition in labor markets.”30 The independent evidence offered for this proposition is mainly of two types. The first is the body of empirical research documenting increasing concentration in labor markets, and the causal relationship between such concentration and certain outcomes, including lower wages. The second is the growing body of empirical research showing that minimum wage increases do not automatically lead to increased unemployment, as perfect competition models would predict. 31 While both of these challenge conventional policy thinking in very important ways, neither is in fact evidence for welfare economics’ version of imperfect competition over a legal-institutionalist picture of markets.32 Let’s take each set of arguments in turn.

First, several chapters of Inequality and the Labor Market highlight empirical evidence of growing labor market concentration and evidence of its causal connection to lower wages and other poorer outcomes for workers.33 As a logical matter, neither of these important empirical propositions, on their own, requires acceptance of the neoclassical picture of markets. One may recognize the importance of real-world outside options for workers34 and the causal impact (other things equal) of market concentration on wages, without positing a ‘competitive rate’ that uniquely awards each worker her economic contribution as a normative benchmark for policy. This much is perfectly consistent with a legal-institutionalist or a “moral economy” view of markets.35 On this alternative approach, the ubiquity of economic coordination, the variety of market coordination mechanisms, and the essential role of law in selecting among them, together refocus our attention from a fictional competitive rate given by social science toward straightforward normative criteria by which we may judge economic processes and outcomes: are processes sufficiently democratic? Are outcomes sufficiently egalitarian? Does the organization of production or distribution minimize waste of real resources (whether that is labor effort or something else)? One can answer these questions by (among other things) embracing decentralized markets and the existence of healthy economic rivalry, without embracing neoclassical competition at all.

A brief aside regarding moral economy and welfare economics. One typical concern of moral economy is fair or just price: the social coordination of prices is acknowledged, and the goal of this process is understood to be expressly ethical.36 At a deeper level, this is actually a point of overlap with welfare economics: the idea that everyone ought to get their due through the ‘right’ price is part of the powerful intuitive appeal of the neoclassical picture of markets as well. 37 Yet in terms of mapping the theoretical “marginal product of labor”38 onto a concept we should actually care about, it is far from clear how we would tease out a worker’s true economic contribution, even in principle. In some contexts, such as professional or other services provided on an individual basis, this mapping can at least seem theoretically possible. However, complexities can arise even there—is one worker relying on know-how picked up from others, while another is not? Do the services provided rely on tools created by others’ efforts? In more complex or interdependent enterprises or productive chains, the problems seem almost insuperable. After going through this set of problems, economist Amartya Sen pointed out that, even putting them aside, a basic conceptual problem remains: “Marginal product accounting, when consistent, is useful for deciding how to use additional resources so as to maximize profit, but it does not “show” which resource has “produced” how much of the total output.” 39 In other words, a rate of pay that corresponds to the “marginal product of labor” bears no obvious correspondence to a worker’s real contribution to an enterprise, even assuming that this contribution could actually be individuated and specified in principle.

The second type of evidence often proffered for imperfect competition or monopsony, in Inequality and the Labor Market and in the broader debate, is the empirical research on effects of minimum wage rises upon employment. 40 Perfect competition models of labor markets, which the book’s contributors point out have dominated policy thinking in recent decades, imply that a policy setting a wage floor above the ‘market-clearing’ rate, ceteris paribus, will lead to a decrease in employment.41 The reason for this is simple: while the slope of the demand curve may vary somewhat depending upon features of the particular market (e.g., a particular set of firms’ demand for labor may be especially inelastic), generally speaking demand curves slope downward, meaning that as the price of labor increases, the total demand for labor correspondingly decreases. For this proposition to have any practical salience, three things must be true: a) raising the wage above a unique, market-clearing rate must reduce demand for labor in a predictable, law-like way, 42 b) actual wages, prior to imposition of the price floor, must be at (or above) that theoretical market-clearing rate, and c) the mandated price floor must be higher than both the market-clearing rate and the status quo rate. 43 In other words, the theory goes that if a new wage floor raises actual wages, and actual wages are already at or above the competitive rate, then demand for labor will fall, increasing unemployment.

The essential disagreement between the central claim advanced in Inequality and the Labor Market—that “employers have the market power to depress wages below competitive levels”44—and the ‘textbook model’ that the volume as a whole contests revolves around proposition (b) above. The claim that labor markets are not competitive usually implies that status quo wages are below the competitive rate—and that raising the price floor (or enacting other policies) such that actual wages go up will thus often “restore” the competitive rate, rather than raising wages above it.45 If this is true, then of course the disemployment effects just described will not follow. It is for this reason that advocates of monopsony models argue that empirical evidence from recent research on local minimum wage policies provides evidence for their position. Raising status quo wages in a perfectly competitive market would lead to noticeable disemployment effects; we have strong evidence that disemployment has not followed from minimum wage rises or living wage policies in many labor markets; ergo, labor markets are usually not perfectly competitive, specifically in the direction of buyer power.

However, the empirical evidence at issue is equally explicable by denying proposition (a) as by denying proposition (b): in other words, we might expect to see an absence of disemployment effects if there is no unique, market-clearing wage such that raising the wage above it would reduce demand for labor in a predictable, law-like way. Put another way, the lack of evidence for disemployment effects is equally well-explained by the lack of a law-like relationship between price and demand as it is by the existence of monopsony or imperfect competition that subverts that lawlike relationship.

It may be logically possible to explain these empirical observations by denying proposition (a), but is there any motivation for doing so? One reason to at least begin to question the relevance of a ‘competitive rate’ as a normative and analytical benchmark is the ubiquity, the variety, and the legal and social construction of economic coordination. As Nathan Tankus and Luke Herrine have recently argued, even commodities exchanges, typically taken to be among the closest approximations of perfect competition, are coordinated at both the formal level (the rules and customs of the exchange itself) and the informal level (insofar as traders rely on historical pricing patterns and dealers tend to “carefully manage[] [spot prices] because of their reverberating impact on price setting processes in related and connected markets”).46 Such coordination, including price coordination, likely exists in all markets in some form or another. 47 Importantly, the character and content of this price coordination is itself contingent: it could be done in some other way, resulting in different prices and other outcomes, and both it and the negative space it implies—the coordination that *doesn’t* take place—is reliant upon and shaped by (again, contingent) *legal* choices.48 A unique competitive rate, which the book describes as corresponding to the marginal product of labor and thus to workers’ real economic contribution, assumes a multitude of economic organizations in competition with one another: coordination between competitors cannot persist in such conditions.49 And yet, such coordination is ubiquitous, even if it is tacit. And because that coordination is conditioned by *law*, it is not obvious how the theoretical apparatus of a unique competitive rate (which will be derived from actual conditions in some way or another) is able to serve as an independent guide *for* law.

To take a specific instance of this dilemma that is especially salient to our current world, consider firms and their boundaries. In our actual legal system and economy, as well as in the conventional theoretical apparatus we rely upon to describe and understand markets, we largely normalize business firms as the paradigmatic sites of economic coordination, such that economic coordination that takes place inside the boundaries of the firm is not only normalized and sanctified but, often, practically erased.50 The neoclassical picture of markets assumes firms in competition with each other as its units of analysis; it treats firms as black boxes that choose output levels (and in some circumstances where market failures create space for strategic behavior, prices) and does not explain the internal organization of those units.51 The branch of standard theory that does seek to explain firms and internal organization relies on a notion of “transaction costs” that—while it also makes reference to prices set by perfect competition—is not derivable from neoclassical price theory and instead defines the key problems of economic coordination in empirical, normative, social and sometimes psychological terms, and then posits empirically contingent solutions to those problems.52 Interestingly, the definition of these key problems of economic coordination, as well as their solutions, revolve to a great degree around work and workers.53

Key changes in antitrust law that have made the “fissured workplace” possible in the first place were accomplished in part in reliance upon transaction cost theory. 54 By liberalizing the permission of vertical control beyond firm boundaries, courts influenced by Chicago School thought made the “control” component of the “control without responsibility” formula familiar to students of present-day industrial relations possible.55 These courts relied on the notion that permitting economic coordination through vertical control would on the whole minimize transaction costs— just as firms themselves do, indirectly justifying a tolerant attitude toward larger firms and thus toward mergers and market concentration—and that these costs would be passed onto consumers. Importantly, mid-century antitrust law largely did not permit this species of economic coordination, partly on grounds of promoting competition but also on independent grounds of promoting nondomination. 56 In fact, mid-century antitrust law’s policing of vertical control beyond firm boundaries (whether cognized as an aspect of Section 1 of the Sherman Act concerning general restraints of trade, or as an aspect of Section 2 concerning monopolization, or other provisions of law) would make many contemporary business models that we today associate with the “fissured workplace” difficult or impossible.57

David Seligman’s helpful chapter on the fissured workplace points out that lead firms’ current ability to control pricing and many other decisions by less-powerful firms in their orbits, while disavowing responsibility for these decisions and weaponizing anti-coordination legal norms against countervailing coordination by those less-powerful firms or actors, is a form of ‘having one’s cake and eating it too.’58 But it is not clear that this intuitive tension actually registers within the framework of imperfect competition defined by welfare economic theory, as the volume often seems to suggest, instead of on a prior and broader conceptual ground upon which legal principles are worked out. 59 The definition of firms and their legal boundaries, and indeed of the forms of coordination beyond firm boundaries that are permitted, prohibited, favored or disfavored, is among the fundamental decisions about coordination rights that, I would argue, constitute particular markets. These definitions create and distribute economic power. We can certainly revise them because we decide that the distributions and relationships of economic power they create are not ones that are fair, good, or socially beneficial. It is not at all clear, however, that when we revise them, what we are doing is restoring “competitive markets” abstracted from such moral and political judgments (or the wage rates and other outcomes prescribed by a competitive market, abstracted from these judgments).

The analytical framework that is foregrounded in Inequality and the Labor Market seems to assume that the legal allocation of economic coordination rights is something that follows the diagnosis of market power, as a means of correcting it, rather than always existing as a primary and foundational element of constituting markets.60 This conceptualization of workers’ coordination— potentially non-employee workers, but also unions themselves—entails that such coordination is a “second best” (where the first best would presumably be individual workers competing with each other for jobs at firms under conditions of perfect competition). 61 Aside from the hesitation that many may feel about characterizing democratic worker organization as a “second best” to theoretical perfect competition, it is not even clear that this framework is analytically coherent62 or provides a superior guide for assessing policy. In fact, most actual economic studies comparing actual rates of pay to the rates that would obtain in a hypothetical, preferred market do make assumptions about the legal allocation of coordination rights. For instance, in a powerful forthcoming analysis demonstrating the interracial transfer of wealth from college football and basketball athletes to coaches, administrators, and others under current market conditions organized by the NCAA, Hal Singer and Ted Tatos use a unionized hypothetical market as the normative benchmark for comparison.63 I would argue that this choice of a benchmark, ultimately shaped by contingent value judgments about fairness and democratic voice, is entirely appropriate—but it is shaped by these value judgments, from which the intellectual groundwork of neoclassical imperfect competition does not provide an escape.

Finally, on this view, even if labor markets are always monopsonized (a proposition that numerous economists will object to, and whose objections are likely to be persuasive to many judges and policy-makers), there are nevertheless presumably degrees of monopsony or market power. From this, it is plausible to argue that the degree of workers’ organizing rights ought to be keyed to the degree of employers’ market power in that instance. 64 This is probably not the view of most of the worker advocates who contributed to this book. Yet it is really not obvious how one is to forestall such inferences and the resulting debates. It is worth noting in this respect that these debates are not entirely new. While the editors point out that perfectly competitive labor markets have long been the assumption of standard economic policy thinking, this was not always the case. Economist Harold Botwinick has described the debates between advocates of imperfect competition models (in labor markets and beyond) that enjoyed wide currency in the post-war period and advocates of perfect competition who successfully pushed back on these approaches, often by pointing out their logical lacunae. 65

I have not focused primarily here upon the many fine, specific policy prescriptions contained in this volume, and that is largely because I read the major purpose for the volume as framing the “intellectual groundwork” for these various worker-protective prescriptions as restoring outcomes that would obtain under “naturally competitive” conditions.66 A primary purpose of this Review is therefore to urge caution about embracing neoclassical imperfect competition as the intellectual groundwork not only for antitrust’s application to labor markets but for work law more generally. At a minimum, there ought to be a pause in which we acknowledge that this is not an inevitable path prescribed by a univocal, external social science, but instead relies on a particular set of views *within* social science, which cannot ultimately be extricated from contested assumptions of law.

III. FIRST STEPS ON AN ALTERNATE PATH

This Review is not the place to set out and defend an alternative approach to thinking about competition, economic dominance, and labor markets, but it is important to at least note that there are alternatives. A growing literature highlights contingent decisions about market coordination, and the essential role of law in making or mediating those choices, as partially determinative of key outcomes including prices. 67 A ‘moral economy’ approach to market regulation would then center the moral and normative choices that are unavoidably implicated by making these choices.68 As an initial matter, note that there are concerns about dominant firms’ impact on workers and labor markets that are not straightforwardly cognizable in an imperfect competition framework, but may be captured through an alternative path.

Footnote 67:

67 Paul, supra note 10, at 382-401, 413-29; Tankus and Herrine, supra note 53, at p. 4-6; William Boyd, Ways of Price Making and the Challenge of Market Governance in US Energy Law, 105 MINN. L. REV. 739 (2020); Frederic S. Lee and TaeHee Jo, MICROECONOMIC THEORY: A HETERODOX APPROACH (2018); Neil Fligstein, THE ARCHITECTURE OF MARKETS (2001); Hockett & Kreitner, supra note Error! Bookmark not defined., 782-83 (“Prices do not ‘just happen’ in a completely decentralized and uncoordinated manner. Markets have to be made, infrastructures supplied, units of account determined and managed, rules established as to what counts as property . . . . Market creation and market maintenance are the products not of spontaneous genesis, but of institutional design, legislative action, and judicial decision. Even more importantly, they do not set an immutable baseline leaving disorganized parties to play a game of price with eternally fixed rules. Instead, collective, organizational [and public] decisions play a central role in manufacturing and moving prices . . . Less obviously yet more pervasively, the price system cannot actually circumvent inherently contestable valuation, because money itself is disseminated and managed via centralized decisions that directly affect prices.”); Robert C. Hockett & Saule T. Omarova, Private Means to Public Ends: Governments as Market Actors, 15 THEORETICAL INQ. L. 53, 62-65 (2014); Tae-Hee Jo, What If There Are No Conventional Price Mechanisms?, 50 J. ECON. ISSUES 327 (2016); Duncan Kennedy & Frank Michelman, Are Property and Contract Efficient?, 8 HOFSTRA L. REV. 711, 716 n.7 (1980).

Footnote 67 ends:

First, predatory pricing or below-cost pricing is a traditional antitrust concern that directly implicates wages and the organization of labor markets. But we hear little or nothing about it in Inequality and the Labor Market nor in other influential accounts of antitrust and labor markets that emphasize neoclassical imperfect comeptition. Below-cost pricing was one of the primary concerns of Louis D. Brandeis, one of the major antimonopoly figures of the Progressive era and one of the inspirations in its revival today.69 Predatory pricing was a central tactic of the original trusts70 and it continues to be a major threat to independent and small producers and merchants.71 More generally, below-cost pricing tends to drive down wages and is ultimately unsustainable for any business that is not either being subsidized by another division or product line, or by an external financing source. A dramatic example of this dynamic has been the competition between global, venture capital-backed tech firms and local working-class entrepreneurs in taxi or ride-share markets.72 It is not that predatory pricing cannot be cognized within a welfarist framework at all,73 but that the lack of focus on internal pricing decisions in the neoclassical framework tends to shift attention away from costbased pricing. On the other hand, in a framework in which external competitive forces are part of the picture but not the whole of it, cost-based pricing becomes highly salient both as a descriptive matter—in terms of how businesses, embedded in broader networks and institutions, seek to reproduce themselves—and as a normative matter, in determining what types of competition one wishes to encourage.

Another long-running antitrust concern that is not obviously squared with the imperfect competition framework is the outsized political influence of large, powerful firms. Examples of such political influence harming workers are common: one prominent recent example is Uber’s sponsorship, spending, and media management leading up to ballot Proposition 22.74 This concern, in fact, correlates less with market concentration, and more with absolute measures of a firm’s economic power outside particular product or labor markets—for instance, its absolute size or wealth as measured by its total assets or by its annual revenue.75 A focus upon absolute firm size or assets is more easily cognizable in a broader legal-institutionalist view of markets than in a focus upon imperfect competition.

From a moral economy perspective, these concerns are straightforwardly cognizable as, variously, destabilizing; undermining fair prices and wages; and promoting economic and political domination. These concerns present directly, instead of being first funneled through the theoretical intermediary of deviations from perfect competition. This same principle would then apply to assessing other rules, policies, or institutional changes. For example, corporate mergers and acquisitions’ effects on workers might be evaluated directly through business plans, testimony, and perhaps binding promises, rather than through speculation about whether they will reduce competition in a given labor market. Unions would not second-best alternatives to a fictive “free market” (that can never be specified in the absence of legal determinations of coordination rights) but rather, one possible market coordination mechanism among others. Indeed, a union itself can serve as an agent of market stabilization that benefits the small firms in a decentralized market while also managing wages and working conditions.76

From this perspective, real-world economic competition, channeled in socially beneficial ways, is a crucial element of a healthy economy that, at its best, spurs innovation and technological efficiency, and encourages us all to do our best. It ensures that both consumers and workers have reasonable outside options, creating a check on bureaucratic power. The existence of competition, in the sense of numerosity of decision-makers, also ensures some level of power distribution in the economy—though it is not sufficient to do so on its own. Block and Harris’ volume affirms these important values by encouraging a focus on market concentration, on oppressive contractual terms of various sorts, and on non-compete agreements and collusion among employers to suppress wages or limit worker mobility.

But while competition is an important element *of* a healthy economy, it can never be the primary organizing principle *for* an economy. Instead, those organizing principles are supplied by us, collectively, in good part through our representative law-makers. We can make different choices about the organizing principles, but we cannot choose to abdicate decision-making about how to structure markets altogether. The key is that law as a whole, and antitrust law itself, already makes decisions about what forms of economic coordination it will permit, prohibit, discourage, or encourage.77 It also makes decisions about the terms on which competition will proceed:78 will firms compete by aspiring to quality, technical efficiency, and being good to their customers and workers? Or will they compete by gobbling up other firms, by dominating counter-parties and subjecting them to extractive contracts, and by imposing sweatshop wages and working conditions? There is no escaping these choices. Status quo antitrust law encourages economic coordination through powerful firms that are largely unaccountable to the public and are minimally constrained in their ability to impose terms on others. If we are going to replace that status quo with something else, we have to replace it with alternate, more democratic forms of economic coordination, and with fair competition—not just with competition in the abstract, and not just with limited or conditional democratic coordination as a “second best” to perfect competition.

CONCLUSION

The conversation about competition, labor markets, and antitrust law is a rapidly evolving one, and Block and Harris’ volume is a valuable contribution to it. It is important to note that the analytical frameworks I have described in this Review are sometimes messy and overlapping; moreover, much of this overlap and common ground is likely to persist even in case of the methodological shifts I have tried to motivate here. Even now, there are some who theorize labor markets in terms of imperfect competition who also espouse or at least have sympathy for a legalinstitutionalist or moral economy view of markets,79 while others may not. Constructing a new sort of law and economics is not an overnight project. Both tributaries of this interdisciplinary project are essential to it: one tending to emphasize the legal rules and institutional structures that form markets, the other tending to emphasize identifiable, emergent patterns of market dynamics that may arise across types of markets. The suggestion I make here is simply to caution against prematurely taking the precepts of neoclassical economic theory as primary, and as a stable and independent basis from which to derive the rules of law. Instead, I suggest that we re-center law within “law and economics.”

The abstract ideal of competitive markets will not organize a market or an economy on its own. It will always invite tacit, ad hoc policy preferences—whether those preferences tend egalitarian and democratic, or inegalitarian and hierarchical—that cannot really be derived from its abstractions. Building an egalitarian and democratic policy program on top of this ideal is tempting because of its generality, its apparent neutrality, and its current epistemic prestige. But logically speaking, there is ultimately no avoiding institutional specificity and direct engagement with moral values, even if doing so requires bucking an intellectual paradigm that can seem inescapable. We may as well get to the task sooner than later.

#### That causes extinction---climate catastrophe, inequality, democratic recession, AND civil strife.

Purdy ’20 [Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman; April; William S. Beinecke Professor of Law at Columbia Law School; Professor of Law at Berkeley Law School; Professor of Law at Yale Law School; and Associate Professor of Law at Brooklyn Law School; the Yale Law Journal, “Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis,” vol. 129, no. 6]

We live in a time of rolling political, economic, social, and ecological crises. In the United States and across the world, income inequality has returned to the levels of the Gilded Age.1 Conventional monetary policy seems unable to generate the stable and shared growth that previous generations of economists and policymakers took for granted.2 Factors such as the weakness of labor unions,3 the increasing concentration of industry,4 and the degradation of social insurance schemes5 have contributed to inequality and intensified precarity.6 Markers of despair, including early death, are on the rise for young and middle-aged adults in the United States.7

This economic crisis is creating a crisis of care and social reproduction.8 Low wages mean longer work hours, high rents mean longer commutes, and unaffordable childcare and weakening social-insurance schemes mean heavier burdens on caregivers.9 These trends are intensified, particularly among the poor and people of color, by mass incarceration,10 misdemeanor-control policies,11 penal welfare,12 and penal debt.13 Racialized violence and structural inequity pervade the American social order, even the physical structure of our cities, and foster unequal vulnerability to environmental problems, economic exploitation, and physical insecurity.14

Climate change threatens to exacerbate all of these crises. It challenges our way of life so fundamentally that it is hard to adequately conceptualize the potential harms in relation to current institutions and intellectual frameworks.15 The model of economic growth and resource extraction at the heart of today’s capitalism is on a collision course with human existence as we have known it.16 Even short of widespread catastrophe, the costs of climate disruption will fall on those least able to bear them.17

The political response to these problems has proven insufficient. Our democratic structures of decision-making are hollowed out.18 Government enacts the policy preferences of the rich over those of the majority19: political scientists studying the problem have deemed money itself “the root of representational inequality.”20 Citizen frustration with this intertwined and increasing concentration of economic and political power is visible on the right in the rise of the Tea Party and the election of Donald Trump and on the left in social movements such as Occupy and Black Lives Matter and in growing calls by prominent parts of the Democratic Party for socialism or renewed social democracy. All of these movements express deep dissatisfaction with political elites. They manifest ordinary people’s anger at their limited influence over both their individual lives and our collective political future.

Together, these developments pose a deep challenge to prevailing models of legal thought and scholarship, which have been profoundly shaped by a misconception of the relationship between politics and the economy. That misconception inhibits our ability to address urgent problems of distribution, democracy, and ecology. Indeed, legal discourse has helped consolidate these problems by serving as a powerful authorizing terrain for a set of “neoliberal”21 political projects that have fueled these same crises.

Footnote 21:

21. As used in this Feature, “neoliberalism” is “a set of recurring claims made by policymakers, advocates, and scholars in the ongoing contest between the imperatives of market economies and nonmarket values grounded in the requirements of democratic legitimacy.” David Singh Grewal & Jedediah Purdy, Introduction: Law and Neoliberalism, 77 LAW & CONTEMP. PROBS. 1, 2-3 (2014). Neoliberalism is a mode of governance and legitimation that enforces specific distributions and configurations of “market discipline” that support profits and managerial power over democratically determined social guarantees—for instance, labor market “liberalization,” erosion of unions’ role in the economy, and rollbacks of social provision. See id.

Footnote 21 ends:

Although a full defense of these claims will take many pages, any first-year law student can appreciate the problem’s basic contours. She may begin her education imagining it as an invitation to ask fundamental questions concerning justice and power. But she is likely to “learn” quickly that serious legal thought in areas such as contracts and property prizes a certain version of efficiency over all else. Meanwhile, constitutional law advances visions of equality and liberty that leave many forms of unequal power and vulnerability unchallenged or even enshrined as constitutionally fundamental. Upper-level courses such as antitrust and antidiscrimination law extend and consolidate the same lessons. To enter law school today—particularly the elite law schools that send the most students into powerful legal and political positions—is to join a conversation shaped by the depoliticization and naturalization of market-mediated inequalities.22

The sum of these parts is a division of labor among legal fields that we dub the “Twentieth-Century Synthesis.”23 It rests upon two interrelated developments. First, some legal subfields have been reoriented around versions of economic “efficiency.” These are the fields in which law and economics has become dominant and which are generally considered to be “about the market”: contracts, property, antitrust, intellectual property, corporate law, and so on. Here, efficiency analysis anchors both the descriptive framing and the normative assessment of law. Efficiency itself is typically defined—in practice if not always in theory—as a kind of “wealth maximization” that works to structurally prioritize the interests of those with more resources.24 This methodological approach offers no framework for thinking systematically about the interrelationships between political and economic power. Its commitment to summative conceptions provides it no means to analyze, let alone counter, contemporary concentrations of wealth and power, except insofar as they interfere with overall efficiency.25

Footnote 25:

25. Antitrust law and theories of monopoly provide no exception, because they too have been reworked to focus on narrow conceptions of efficiency. See infra text accompanying notes 60- 63 (discussing evolution in the domain of antitrust theory).

#### Rejecting the paradigm of market-failure reinvigorates our collective choices about the purpose of economic activity - the alternative utilizes a paradigm of mission-oriented economics to replace antitrust regulation with democratically planned socialism

Massucato ’16 [Mariana and Michael Jacobs; 2016; Professor of Economics of Innovation at the University of Sussex and Visiting Professor of Public Policy at University College London; in *Rethinking Capitalism: Economics and Policy for Sustainable and Inclusive Growth* eds. Michael Jacbos & Mariana Mazzucato]

Beyond market failure: towards a new approach

Each chapter of the book approaches its subject in a different way. In commissioning them we wanted to reflect a variety of perspectives, both on the nature of the problems of modern capitalism and in the economics required to address them. The authors are responsible only for their own chapters: we did not seek, and do not claim, that they all agree with one another.

Nevertheless, their critiques have many elements in common. Each challenges an important aspect of orthodox economic theory and policy prescription. By ‘orthodox’ we mean the view that dominates public debate about economic policy. Within the academic discipline of economics there are lively arguments about many aspects of theory and policy. But mainstream economic discourse rests to a powerful extent on a very simple underlying conception of how capitalism works. This is that capitalism is an economic system characterised by competitive markets.

In these markets privately owned companies, seeking to make profits for their shareholders, compete with one another to supply goods and services to other businesses and freely choosing consumers. In individual markets, neoclassical theory (on which the orthodox view is based) holds that such competition drives economic efficiency, which in turn maximises welfare. Markets are assumed to tend towards equilibrium, while businesses are assumed to be fundamentally alike, analysed as ‘representative agents’ constrained to act in the same ways by the external pressures of the market. At the level of the economy as a whole, it is competition between firms which is believed to generate innovation, and therefore leads to long-run economic growth.

The orthodox model understands that markets do not always work well. It therefore uses the concept of ‘market failure’ to explain why suboptimal outcomes occur and how they can be improved. Markets fail under various circumstances: when firms have monopolistic power which restricts competition; when there are information asymmetries between producers and consumers; when there are ‘externalities’ or impacts on third parties which are not properly reflected in market prices; and where public and common goods exist whose benefits cannot be captured by individual producers or consumers.36 The propensity of real-world markets to fail in these various ways means that ‘free’ markets do not maximise welfare. So the theory of market failure provides a rationale for government intervention. Public policy should seek to ‘correct’ market failures—for example by promoting competition; by requiring information about goods and services to be more widely available; by forcing economic actors to pay for externalities through means such as pollution taxes; and by providing or subsidising public goods.

At the same time, the orthodox view emphasises that it is not only markets which fail; governments do too. Even well-meaning ones can intervene badly, creating outcomes worse than if they had left markets alone—not least because private actors often adjust their behaviour to compensate. And public institutions are never disinterested —they develop goals and incentives of their own which may not reflect the general welfare of society as a whole. So public policy interventions always have to balance the goal of correcting market failures with the risk of generating government failures which outweigh them.37

Broadly speaking, it is this general model of capitalism which underpins most public economic commentary and policymaking today. And it leads to some familiar policy conclusions. Chief among these is that markets generally produce positive outcomes which increase welfare, and should therefore be allowed to operate without much interference wherever possible. A basic regulatory framework of employment, consumer and environmental protection is required to correct for clear externalities and information asymmetries; but governments should not seek to direct markets or shape the businesses which operate in them. The ‘invisible hand’ of the market knows best, generating the highest welfare-producing activities where firms seek to maximise value for their shareholders. Even where the market might seem to get it wrong, governments cannot presume to know better. So governments should be extremely wary of seeking to ‘pick winners’ through industrial and innovation policy; of seeking to push banks and other financial institutions to make specific forms of investments; or of investing in the private economy themselves.

Public investment—particularly if funded by borrowing— will simply ‘crowd out’ private investment. Governments should seek to use competitive private enterprise to deliver public utilities and services wherever possible. Getting the public finances into balance should be the overwhelming priority of fiscal policy. Taxation is necessary; but because it tends to disincentivise wealth creation and work, it should be kept as low as possible. Within each of these propositions lurks many a disagreement among academic economists, often informed by subtly complex theory and detailed empirical evidence. But it is not hard to find these views expressed in public debate; and they have dominated the practice of policy-making over recent years.

The orthodox model provides an attractively simple framework for thinking about economics and policy. It combines the mathematical elegance of neoclassical microeconomics with plausible claims about the macroeconomy. The fact that many of the policy prescriptions which follow from it favour those in positions of incumbent economic power has given it a powerful grip on public discourse. But it’s not an adequate model for understanding how capitalism works. For markets are not simple structures which behave in the ways set out in economics textbooks; and ‘market failure’ is not a helpful concept for analysing capitalism’s major problems or how to address them. These idealised theories assume away many of capitalism’s key features, or treat them as ‘imperfections’ rather than structural, systemic characteristics. They ignore much of the evidence on how different economies actually function, and when and why they have performed well or badly. None of the key problems which Western capitalism has experienced over recent decades—weak growth and financial instability, declining investment and financialisation, the stagnation of living standards and rising inequality, dangerous environmental risk—are explained by them.

Capitalist economies are not theoretical abstractions but complex and dynamic systems, embedded in specific societies, as well as in natural environments governed by biophysical laws. They are formed of multiple relationships between real and heterogeneous economic actors whose behaviour is not that of idealised ‘representative agents’, but arises from their particular characteristics and choices in different circumstances. These relationships give rise not to equilibrium, but to dynamic patterns of growth and change. The macroeconomic outcomes they generate are more than simply the sum of their microeconomic parts. Their problems are not failures of markets which ‘normally’ succeed, but arise from fundamental characteristics and structures. So to understand how they work, and to explain how policy can help them work better, we need a much richer approach.

Fortunately, there are plenty of resources within economics with which to do this. For these characteristics of capitalist economies are hardly revelatory. They have been analysed in theory and documented in practice for more than a hundred years of economic scholarship. They underlie the work of some of the greatest economists of the past century—such as Karl Polanyi, Joseph Schumpeter and John Maynard Keynes— and of the more recent schools of evolutionary, institutional and post-Keynesian economics. As the separate chapters in this book show, analysis based on these foundations can generate searching critiques of current policy, and powerful alternative perspectives.

Three key insights underpin a rethinking of capitalism in these ways.

First, we need a richer characterisation of markets and the businesses within them. It is not helpful to think of markets as pre-existing, abstract institutions which economic actors (firms, investors and households) ‘enter’ to do business, and which require them, once there, to behave in particular ways. Markets are better understood as the outcomes of interactions between economic actors and institutions, both private and public. These outcomes will depend on the nature of the actors (for example, the different corporate governance structures of firms), their endowments and motivations, the body of law and regulation and cultural contexts which constrain them and the specific nature of the transactions which take place. Markets are ‘embedded’ in these wider institutional structures and social, legal and cultural conditions.38 In the modern world, as Polanyi pointed out, the concept of a ‘free’ market is a construct of economic theory, not an empirical observation.39 Indeed, he observed that the national capitalist market was effectively forced into existence through public policy—there was nothing ‘natural’ or universal about it.40

The orthodox notion of competition between firms is equally misleading. Many of the most important markets in modern capitalism are oligopolistic in form, characterised by economies of scale and ‘network effects’ that lead to concentration and benefit incumbents. But even where there is greater competition, capitalist businesses are not all the same, forced to behave in similar ways by the external forces of ‘the market’. On the contrary, as Lazonick shows, what we actually observe is persistent heterogeneity, both in businesses’ internal characteristics and in their reactions to different market circumstances. Given that they must compete through innovation, this is hardly surprising. As evolutionary economics has emphasised, this heterogeneity is not a short-run transition towards a world of similar actors, but a long-run feature of the system.41 Different norms and routines combine to generate different behaviours and outcomes.

In fact, the evidence shows the particular importance of ownership and governance structures. Over the past thirty years the orthodox view that the maximisation of shareholder value would lead to the strongest economic performance has come to dominate business theory and practice, in the US and UK in particular.42 But for most of capitalism’s history, and in many other countries, firms have not been organised primarily as vehicles for the short-term profit maximisation of footloose shareholders and the remuneration of their senior executives. Companies in Germany, Scandinavia and Japan, for example, are structured both in company law and corporate culture as institutions accountable to a wider set of stakeholders, including their employees, with long-term production and profitability their primary mission. They are equally capitalist, but their behaviour is different. Firms with this kind of model typically invest more in innovation than their counterparts focused on short-term shareholder value maximisation; their executives are paid smaller multiples of their average employees’ salaries; they tend to retain for investment a greater share of earnings relative to the payment of dividends; and their shares are held on average for longer by their owners. And the evidence suggests that while their short-term profitability may (in some cases) be lower, over the long term they tend to generate stronger growth.43 For public policy, this makes attention to corporate ownership, governance and managerial incentive structures a crucial field for the improvement of economic performance.

In short, markets are not idealised abstractions, but concrete and differentiated outcomes arising from different circumstances. Contrary to the claims of orthodox economists that ‘the laws of economics are like the laws of engineering: one set of laws works everywhere’,44 there are in fact many different kinds of market behaviour, and several varieties of capitalism.45

The second key insight is that it is investments in technological and organisational innovation, both public and private, which are the driving force behind economic growth and development. The diffusion of such innovations across the economy affects not just patterns of production, but of distribution and consumption. It has been the primary source of improvements in productivity, and consequent rises in living standards, for the past 200 years.46 Thus a theory of how capitalist economies work must include at its centre the dynamics of innovation, understanding both the specific nature of the investments needed and the turbulent, non-equilibrium outcomes that result. But this requires a much more dynamic and accurate understanding of how innovation occurs than is provided by the orthodox economic theories of imperfect competition. Drawing on Schumpeter’s original analysis of the processes of ‘creative destruction’,47 modern evolutionary economics has done much to explain how firms operate with bounded rationality in circumstances of uncertainty, where markets tend towards disequilibrium and change is path-dependent. Growth results from the coevolution of technologies, firms and industry structures and the social and public institutions which support them, connected by complex feedback processes.48

Promoting innovation therefore requires attention to be paid to each of these elements. The economy needs firms with risk taking management cultures and incentives which reward long-run perspectives, rather than those, as Haldane notes, focused largely on short-term financial returns. Innovation requires very specific forms of finance: patient, long-term and committed. As Griffith-Jones and Cozzi argue, this creates a particular role for public banks, able to steer finance towards long-run projects, leverage private capital and stimulate multiplier effects.

Taxation policies need to incentivise long-term investment. Critically, as Mazzucato shows, innovation also needs well-funded public research and development institutions and strong industrial policies. These need to be directed across the entire innovation chain, not only in the classic ‘public good’ area of basic science. A crucial recognition is that innovation has not only a rate, but also a direction.49 Historically, that direction has often been determined by ‘mission-oriented’ public policies, which have steered both public and private investments into new fields. During the mass production era, as Perez notes, it was policies around suburbanisation that allowed the new technologies of mass production to be fully diffused and deployed.

Mazzucato observes that public funding drove both the IT revolution and other fields such as bio- and nanotechnologies and today’s green technologies.50 Each of these has involved both supply-side and demandside policies, in which new markets as well as new products have been created and public investment has ‘crowded in’ private.

By setting societal missions, and using their own resources to co-invest with long-term capital, governments can do far more than ‘level the playing field**’**, as the orthodox view would allow. They can help tilt the playing field towards the achievement of publicly chosen goals. Just as the creation of the welfare state in the postwar period, and the information technology revolution in the decades around the turn of the century, unleashed new waves of economic growth and widened prosperity, so new missions today have the potential to catalyse new innovation and investment. Foremost among them must be the transformative challenge of reducing and eventually eliminating greenhouse gas emissions to limit dangerous climate change, and of constraining the economy’s wider environmental impacts within biophysical boundaries. As Perez argues, there is particular potential for such a ‘green’ direction, allied to the continuing development of information and communications technologies, to drive a new wave of structural transformation and growth.

Recognition of the role of the public sector in the innovation process informs the third key insight. This is that the creation of economic value is a collective process. Businesses do not create wealth on their own. No business today can operate without the fundamental services provided by the state: schools and higher education institutions, health and social care services, housing provision, social security, policing and defence, the core infrastructures of transport, energy, water and waste systems.

These services, the level of resources allocated to them and the type of investments made in them, are crucial to the productivity of private enterprises. The private sector does not ‘create wealth’ while taxpayer-funded public services ‘consume’ it. The state does not simply ‘regulate’ private economic activity. Rather, economic output is co-produced by the interaction of public and private actors—and both are shaped by, and in turn help to shape, wider social and environmental conditions.

### 1NC---OFF

T Subsets

#### ‘Core antitrust laws’ must be economy wide---the aff only effects a subset

Gerber ’20 [David; October; Distinguished Professor of Law at Chicago-Kent College of Law, Illinois Institute of Technology; Oxford Scholarship Online, Competition Law and Antitrust, “What is It? Competition Law’s Veiled Identity,” Ch. 1, p. 14-15]

C. A Core Definition

The Guide uses the terms “competition law” and “antitrust law” to refer to a general domain of law whose object is to deter private restraints on competitive conduct. We look more closely at the terms:

1. “General”—The laws included are those that are applicable throughout an economy and thereby provide a framework for all market operations (there are always some exempted sectors). Laws dealing only with specific markets (e.g., telecommunication) do not play that role.

2. “Domain of Law” here refers to a politically authorized set of norms and the institutional arrangements used to enforce them.

Is it law—or is it policy? The relationship between “competition law” and “competition policy” is not always clear. Often the terms are used interchangeably, but there can be important differences between them. Both can refer to norms used to combat restraints on competition, but they represent two different ways of looking at the relevant laws, and the differences can influence how norms are interpreted and applied. “Law” implies that established methods of interpretation are used to interpret and apply the norms and that established procedures are the sole or primary means of enforcing and changing the norms. In this view, the norms are a relatively stable component of a legal system. Thinking of those same norms as “policy,” on the other hand, implies that they are a tool of whatever government is in power and that it can use and modify them as it wishes.

3. “Restraint” refers to any limitation imposed by one or more private actors that reduces the intensity of competition in a market.

4. “Competition” refers to a process by which firms in a market seek to maximize their profits by exploiting market opportunities more effectively than other firms in the market.

#### Voting issue---creates a moral hazard to rush to small non-controversial tweaks that shreds limits and ground

### 1NC---OFF

T Prohibit

#### ‘Prohibitions’ must outlaw anticompetitive behavior---the aff only *disincentivizes* it

Broaddus ’50 [James; February 6; Judge on the Kansas City Court of Appeals, Missouri; Westlaw, “City of Meadville v. Caselman,” 240 Mo. App. 1220]

‘Under power conferred on cities of the fourth class ‘to regulate and license’ dramshops, there is no authority to wholly prohibit or suppress. Where there is mere power in a municipality to regulate in a state, with a general policy of conducting licensed saloons, authority to prohibit is excluded. ‘The difference between regulation and prohibition is clear and well marked. The former contemplates the continuance of the subject-matter in existence or in activity. The latter implies its entire destruction or cessation.’' (Citing text writers and cases.)

#### Substantial means in totality of circumstances

U.S. First Circuit Court of Appeals ’98 [United States Circuit Court; August 25; Federal Appeals Court of the First Circuit; Southwestern Learning, “Court Uses ‘Totality of Circumstances’ for Test of Substantial Abuse by Debtor,” http://www.swlearning.com/blaw/cases/court\_uses.html]

Decision Affirmed. The court joins other circuits in adopting the "totality of the circumstances" test as the measure of substantial abuse under the Bankruptcy Code. This is a flexible standard adopted by Congress to allow bankruptcy courts to consider the factors involved in each case and to prevent abuse of Chapter 7 filings. When there is evidence that the consumer can pay their debts, there is likely to be found substantial abuse.

#### Voting issue---allows minor tweaks that explode limits and moot access to high quality ground

### 1NC---OFF

Adv CP

#### The United States federal government should require large digital platforms to:

#### integrate non-shareholder members into ownership and management;

#### limit acquisition of intellectual property;

* have the CFIUS block transactions between technology companies and the Chinese government that harm national security;
* enact Bazel III regulations for platforms, including prohibiting them from centralizing essential services and enforcing transparency requirement;
* develop risk mitigation measures, including grid and reactor resilience, moderation of cyber-attack response, and promotion of internet openness; and

#### invest in global digital inclusion.

#### Structural separation fails. Pro-competitive requirements retain integration but diminish

Hovenkamp ’21 [Herbert; June; Law Professor at the University of Pennsylvania; Yale Law Journal, “Antitrust and Platform Monopoly,” vol. 130, no. 8]

One reason divestiture has performed so poorly as an antitrust remedy is that it has been overly focused on the dismantling of assets whose effects on scale or scope are often harmful. We should be paying more attention to remedies that permit firms to perform better rather than worse, but in more competitive environments. One possibility is to transfer firms’ internal decision making to groups of participants that can be subjected to antitrust control under section 1 of the Sherman Act. As markets become more competitive, their aggregate output increases. Another possibility is to administer interconnection rules that serve to increase rather than diminish the positive network effects that are ubiquitous in digital platforms. The first of these might work best in a platform such as Amazon, in which competitive sales of traditional physical products are made on the same platform. The second is more appropriate for platforms such as Google or Facebook, which involve large databases of digitized information.

#### CFIUS stops big tech from colluding with China.

Phillips ’20 [Noah Joshua; December 8; former Commissioner for the Federal Trade Commission and served as Chief Counsel to U.S. Sen. John Cornyn, of Texas, on the Senate Judiciary Committee; The Hudson Institute, “Championing Competition: The Role of National Security in Antitrust Enforcement,” <https://www.ftc.gov/system/files/documents/public_statements/1584378/championing_competition_final_12-8-20_for_posting.pdf>; KP]

National security best left for national security laws, not antitrust ones

So should we use antitrust to pursue national security goals, or forbear in enforcing it because of them? As the U.S. Constitution itself makes clear, there is no responsibility more essential for a government than the protection of its citizens. My humble premise is that, like other non-competition considerations, antitrust is an imperfect tool. And, when it comes to national security, the U.S. government has other tools. We have, for example, separate and distinct systems requiring mergers to be notified to one set of enforcers who monitor antitrust concerns and to another set of government officials responsible for national security review. This is not a bug, but a feature, of our government and economic policies more generally.

The Committee on Foreign Investment in the United Stated (CFIUS) is authorized to review national security implications of certain cross-border transactions.23 Note that CFIUS is not an antitrust tool, but a national security one. And a very effective one at that. Look no further than Broadcom’s recent (unsuccessful) bid for Qualcomm.

Broadcom, the eighth-largest chipmaker in the world, formerly named Avago, is the product of numerous acquisitions, most notably its $37 billion acquisition of California-based Broadcom in 2016.24 Avago was incorporated in Singapore, but the majority of its personnel and facilities were in the United States.25 On November 2, 2017, Broadcom CEO Hock Tan stood in the Oval Office alongside President Trump and announced Broadcom’s plan to redomicile in the United States from Singapore.26 Within days, Broadcom disclosed a hostile bid for Qualcomm.27 Qualcomm requested that CFIUS review the bid, which CFIUS did.28 And, on March 5th, 2018, CFIUS expressed several concerns with the transaction that it believed warranted a full investigation: primarily, that (i) Broadcom would drastically cut Qualcomm’s investment in 5G wireless technology research and development, opening the door to Chinese dominance; and (ii) a potential disruption in supply to critical Department of Defense and other government contracts.29 One week later, after CFIUS had met with Broadcom, the President issued an order blocking the transaction, one of only five such orders ever and the first one in which a transaction was blocked before an agreement was even entered into.30

Even the threat of a CFIUS action can scuttle a deal that is problematic for national security, as it did in 2005, when China National Offshore Oil Company (CNOOC) proposed to acquire Unocal31; or in 2006, when Dubai Ports World considered purchasing the right to operate six major U.S. ports, including terminals in the New York/New Jersey area, Philadelphia, and New Orleans.32

CFIUS is effective and efficient, and Congress—led by my former boss, U.S. Senator John Cornyn—added to the quiver in August 2018 with the Foreign Investment Risk Review Modernization Act (FIRRMA). FIRRMA broadened CFIUS’s jurisdiction to include investment in a U.S. business that “maintains or collects personal data of United States citizens that may be exploited in a manner that threatens national security.”33 In the spring of last year, CFIUS informed the Chinese company Kunlun that its ownership of the popular gay dating app, Grindr, constituted a national security risk, prompting Kunlun to divest the app.34 CFIUS was apparently motivated by concerns that the Chinese government could blackmail individuals with security clearances or use its location data to help unmask intelligence agents.35

The U.S. government has other tools beyond CFIUS to address national security risks in the private sector. On August 6, 2020, President Trump signed an executive order banning China’s TikTok and WeChat services from mobile app stores in the U.S.36 The order relied upon the International Emergency Economic Powers Act and the National Emergencies Act.37 And earlier this year, we all saw the Defense Production Act being put into use on multiple occasions in response to the COVID-19 pandemic.38 The DPA can be used under certain circumstances to allow other-wise illegal coordination by companies, in the service of national defense.39 Critically, the DPA also provides for oversight of agreements among companies by the antitrust agencies, an important input to ensure that national security needs account for competition.

The U.S. government is equipped with tools to monitor and, if need be, take action with respect to national security goals as they arise the private sector. I am glad it has these tools, to provide for the national defense. I am also glad that the national security experts are in charge of these processes, and that they are politically-accountable for their decisions. Charging antitrust authorities with vindicating national security goals would undermine both.

#### Regulations solve. They can reinforce society AND prevent platforms from being able to cause extinction in the first place.

Bohn ’20 [Stephan, Nicolas Friederici, and Ali Aslan Gümüsay; August 11; PhD in organization studies from the Friedrich Schiller University Jena, Germany, project leader at the Humboldt institute for Internet and Society; postdoctoral researcher at the Oxford Internet Institute, Senior Researcher and Lead of the Platform Alternatives and DaPla projects at HIIG; Head of the Innovation, Entrepreneurship & Society Research Group at the Humboldt Institute for Internet and Society, Postdoctoral Researcher at the University of Hamburg, DPhil from Saïd Business School, University of Oxford; Internet Policy Review, “Too big to fail us? Platforms as systemically relevant,” https://policyreview.info/articles/news/too-big-fail-us-platforms-systemically-relevant/1489]

Of course, the idea that digital platforms need to be regulated is not new (Gorwa, 2019). Latest since the tech lash, it has become something of a received wisdom that digital platforms are “big, anti-competitive, addictive, and destructive to democracy” (The Economist, 2018), as they engage in “harmful, extractive, and monopolistic business practices” (Nachtwey & Seidl, 2020, p. 2). But these legal debates – whether focusing on antitrust, labour protection, or tax issues – maintain a perspective on platforms that sees them rather as private entities separate from society and off limits for collective governance (see van Dijck, Poell, & de Waal, 2018; Kenney, Bearson, & Zysman, 2019).

We feel that the current crisis forces us to take platforms’ far-reaching infrastructural character more seriously than the different prevailing national regulations have done until now. We argue that we can productively employ the idea of systemic relevance to determine platforms’ policy relevance and appropriate responses. The pithy notion of banks becoming “too big to fail” led to Basel III, the most recent European banking regulation. In the case of the financial sector, regulation was introduced to prevent systemic collapse with the help of a two-step procedure. First, Basel III defined which banks are systemically relevant on the global and national level, assessing five characteristics: size, cross-border activities, intertwining, substitutability, and complexity. Second, organisations meeting these criteria are more closely monitored and regulated. For example, they must have additional capital buffers; as soon as the buffers fall below a certain level, automatic restrictions apply.

We can treat platforms similarly. COVID-19 is an example of a socio-economic shock triggered by a deadly infectious disease: ‘after’ this crisis will be ‘before’ the next crisis. The systemic centrality of platforms and their evolving role before, during, and after crisis should thus be taken into account in policy regulation. In particular, we can distinguish between pre-crisis and in-crisis regulation of systemically relevant platforms.

Pre-crisis regulation may ensure that private platforms do not become essential infrastructures to begin with, or that they are already regulated for public benefit as they become more essential. To prepare platform regulation for the next crisis, we need a Basel III for platforms. In contrast to banks, however, systemically relevant platforms would not aim at capital buffers but would have to commit themselves to more transparency, for example by setting up API interfaces, disclosing algorithms, making filter decisions transparent, or sharing findings from the analysis of user data, also and especially with competitors.

In-crisis regulation can add stronger direct interventions in platform governance, making sure that platforms’ centrality is not misused. For example, it would then be necessary to ensure that obvious misinformation, as in the case of COVID-19 and social media, could be effectively filtered because it is a matter of life and death. Or to use the example of Uber, supply and demand should no longer be allocated according to pure market criteria, but should also include social or health issues e.g., in emergency situations when driving to the doctor or for persons with disabilities. Similarly, food delivery platforms can be subsidised and turned into universal service providers at city level, ensuring that the elderly or poor people receive food during lockdowns.

#### Solves the dependency trap.

Runde ’21 [Daniel, Romina Bandura, and Sundar Ramanujam; March 30; director of the Office of Global Development Alliances at the U.S. Agency for International Development (2005-2007); M.P.A. in international development from Harvard University’s Kennedy School of Government; research associate with the Project on Prosperity and Development at CSIS; Center for Strategic and International Studies, “The United States Has an Opportunity to Lead in Digital Development,” https://www.csis.org/analysis/united-states-has-opportunity-lead-digital-development]

Without significant leadership and investment from the United States, low- and lower middle-income countries find themselves drawn toward alternative digital models offered by China and other more authoritarian-minded actors. These models subvert civil liberties such as the rights to privacy and free expression, undermine the rule of law, and enable social oppression. Moreover, these forms of digital infrastructure often come with strings attached, which not only undermines the sovereignty of countries but also incentivizes them to pursue a model of development that does not serve the strategic and security interests of the United States and its allies. The United States has an opportunity to engage in—even lead—the digital financial and ID infrastructure space, helping countries unlock their full economic and social potential. At the same time, investments abroad can help the United States achieve its own national security priorities while creating new markets for U.S. goods and services.

Global Benefits of Investing in Digital Financial and ID Infrastructure Systems

Investing in safe and secure digital financial and digital ID infrastructure can have substantial positive economic and social impacts in the developing world. As the world becomes increasingly digital, secure infrastructure can significantly expand access to capital and information, both of which are critical for the sustained growth of markets. It will also be catalytic in achieving the United Nations’ Sustainable Development Goals (SDGs) by 2030.

### 1NC---OFF

States CP

#### The fifty states and relevant subnational entities should adopt the principle of separating platforms from commerce for platforms in the private sector

#### States can aggressively invoke against Big Tech---litigation is fast, empirically successful, AND better resourced---unifying state claims is key to expansive and coherent antitrust.

Huddleston ’20 [Jennifer; December 18; Director of Technology and Innovation Policy at the American Action Forum, J.D. from the University of Alabama; American Action Forum, “Antitrust Actions Beyond the Federal Government: The Potential Impact of State and Private Litigation,” <https://www.americanactionforum.org/insight/antitrust-actions-beyond-the-federal-government-the-potential-impact-of-state-and-private-litigation/>]

Introduction

Recently the Federal Trade Commission (FTC) and Department of Justice (DoJ) brought antitrust claims against Facebook and Google respectively, but calls to “break up Big Tech” are coming from far more than federal policymakers, and so too are the antitrust claims. Eleven Republican attorneys general joined the DoJ antitrust case against Google and 48 state and district attorneys general filed an antitrust case against Facebook on the same day as the FTC. Additionally, nine other states joined Texas in filing [additional antitrust claims against Google](https://www.reuters.com/article/us-tech-antitrust-google/texas-nine-u-s-states-accuse-google-of-working-with-facebook-to-break-antitrust-law-idUSKBN28Q2RL#:~:text=in%205%20hours-,Texas%2C%20nine%20U.S.%20states%20accuse%20Google%20of%20working,Facebook%20to%20break%20antitrust%20law&text=WASHINGTON%20(Reuters)%20%2D%20Texas%20and,already%2Ddominant%20online%20advertising%20business.) concerning advertising, 38 states, districts, and territories have joined a [case led by Colorado](https://coag.gov/app/uploads/2020/12/Colorado-et-al.-v.-Google-PUBLIC-REDACTED-Complaint.pdf) claiming Google engages in self-dealing to preserve its dominance in search and search ads, and a [case filed by Epic Games](https://www.nytimes.com/2020/08/13/technology/apple-fortnite-ban.html) alleges that Apple is engaging in anticompetitive behavior with its app store practices. While observers have largely focused on the federal level—both the proposed changes to federal antitrust standards and the results of federal antitrust actions—states and private litigants also have a substantial ability to impact both the technology industry and the trajectory of competition law as a whole.

State Antitrust Investigations and Complaints

In addition to the federal investigations, groups of state attorneys general have investigated potential antitrust violations against Google and Facebook. The states’ investigation into Facebook resulted in a separate complaint from the FTC’s. While some states joined the DoJ complaint against Google, more investigations by state attorneys general are ongoing meaning additional cases from these states are also likely to come later. But we are seeing a proliferation of multi-state litigation separate from the federal actions regarding antitrust claims against tech giants. . While states can provide additional resources for antitrust investigations and have their own interests in consumer protection, the current state-level cases alleging antitrust violations by “Big Tech” do not reveal a strong argument of monopolistic behavior and, like the federal cases, could create more disruption to both competition policy and innovation than benefits to consumers.

This is not the first time the states have been involved in antitrust investigations or calls to break up tech companies. During the 1990s, a group of 20 states, joined the DoJ in the investigation and an antitrust case against Microsoft After just over 3 years of litigation and following the Court of Appeals for the D.C. Circuit overturning a lower court’s ruling against Microsoft, Microsoft and the federal government settled. While this settlement avoided some of the potentially concerning penalties and interference in a competitive market that the courts could have brought, it still had an impact both on Microsoft’s opportunities in certain emerging areas such as mobile and in the overall competitive landscape. Nevertheless, some states felt the settlement was insufficient. Massachusetts led a group of nine states that argued the judge’s agreement of the settlement did not adequately address Microsoft’s monopolization or resolve the anti-competitive behavior related to tying, but they failed to convince the court.

States are once again taking an aggressive view on antitrust in the tech industry, but the divergence in arguments could lead to more confusion and disruption in an industry that has provided consumers with beneficial and free services. Currently, the attorneys general of many states disagree with one another and the federal government regarding the nature of anticompetitive behavior and consumer harm by the tech giants’ actions. As we are starting to see with the new claim led by Texas Attorney General Ken Paxton, this split is likely to result separate cases with different theories of antitrust that seek not to apply current standards but embrace more expansive policy uses of this powerful tool. Often the animus behind these claims is not clear evidence of anti-competitive behavior but a desire to solve other concerns regarding tech policy, such as data privacy or alleged anti-conservative bias. This desire to solve non-competition-related issues could give rise to divergent theories of antitrust action that are incompatible with one another and not based in the traditional elements of consumer welfare and competition policy.

### 1NC---OFF

Infrastructure DA

#### Biden’s effectively leveraging political capital to pass infrastructure and social spending.

Romm et al. ‘10/28 [Tony; 10/28/21; congressional news reporter at the Washington Post; "Biden unveils revised spending plan, exhorts Democrats to back it," https://www.washingtonpost.com/politics/biden-to-announce-democratic-agreement-on-social-spending-deal/2021/10/28/2781863c-37d3-11ec-91dc-551d44733e2d\_story.html]

President Biden on Thursday unveiled a new $1.75 trillion package to overhaul the country’s health-care, education, climate and tax laws, muscling through a slew of policy disagreements and internecine political feuds that had stalled his economic agenda for months.

The announcement marked a critical moment in Biden’s tenure, prompting the president to pay a visit to Capitol Hill and call on Democrats to adopt the spending along with a second, roughly $1.2 trillion package to improve the country’s roads, bridges, pipes, ports and Internet connections.

“We spent hours and hours and hours over months and months working on this,” Biden said in televised remarks. “No one got everything they wanted, including me, but that’s what compromise is. That’s consensus, and that’s what I ran on.”

Biden’s moves reflected a pivotal decision to assume ownership of the sweeping safety-net proposal in a new way. He is investing enormous political capital in the new plan, following days of intensive, secretive meetings with key lawmakers, and ratcheting up his warnings that gun-shy Democrats risk damaging him and the party if they do not get on board.

“I don’t think it’s hyperbole to say that the [Democratic] House and Senate majorities — and my presidency — will be determined by what happens in the next week,” he told House Democrats in a closed-door meetings, according to one person in the room, who spoke on the condition of anonymity because of the sensitivity of the discussions.

The president added that he expected the framework to gain the Democrats’ support, emphasizing the framework had 50 votes in the Senate and telling reporters, “Everyone’s on board,” as he arrived on Capitol Hill.

The call to action appeared to galvanize some Democrats, and the $1.75 trillion framework soon generated praise — crucially from the party’s moderate and liberal ranks. Even former president Barack Obama, who has largely stayed out of the day-to-day political battles, put out a statement in support of the framework, calling it a “giant leap forward.” One of the longtime holdouts, Sen. Kyrsten Sinema (D-Ariz.), quickly offered positive comments about the deal, but without committing to vote for it.

“After months of productive, good-faith negotiations with President Biden and the White House, we have made significant progress on the proposed budget reconciliation package,” Sinema said in a statement. “I look forward to getting this done, expanding economic opportunities and helping everyday families get ahead.”

Sen. Joe Manchin III (D-W.Va.), the other centrist holdout, similarly offered little comment, saying only, “In the hands of the House” when asked about the new framework in the Capitol on Thursday.

The proposal did contain some longtime Democratic priorities, including universal prekindergarten, new sums to combat climate change and additional taxes on the ultrawealthy. But it jettisoned other items, including a plan to provide paid leave to millions of Americans. The president made the cuts to satisfy Sinema and Manchin, who were concerned about overspending, though some liberal Democrats later said they had not given up fighting for those items.

#### Antitrust shreds PC, knocking out competing domestic initiatives

Carstensen ’21 [Peter; February 2021; Fred W. & Vi Miller Chair in Law Emeritus at the University of Wisconsin Law School; Concurrences, “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#carstensen>]

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

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

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

#### Infrastructure passage solves existential climate change

Bordoff ’21 [Jason; March 15; J.D. from Harvard Law School, co-founding dean of the Columbia Climate School, Professor of Professional Practice in International and Public Relations at Columbia University; Foreign Policy, “The Time for a Green Industrial Policy Is Now,” https://foreignpolicy.com/2021/03/15/biden-climate-energy-transition-green-new-deal-industrial-policy/]

Now that U.S. President Joe Biden’s $1.9 trillion plan for economic stimulus and pandemic relief has become law, his administration will turn its attention to a multitrillion-dollar plan to rebuild the United States’ ailing infrastructure. Its scope goes far beyond roads and bridges. Viewed in combination with other parts of Biden’s economic agenda, it reflects a new openness on both sides of the aisle to what has traditionally been known as industrial policy. Critics deride industrial policy as protectionist and as the government picking “winners,” but when it comes to clean energy—a top priority for Biden—a push by his administration to build new and innovative clean energy sectors using industrial policy may actually be the greatest contribution it can make to combating climate change.

Industrial policy, long anathema to mainstream economic policymakers in Washington, is back in vogue. The Biden administration’s Build Back Better economic plan includes targeted support for specific industries to make them more competitive with Asia and Europe and government procurement provisions to boost domestic manufacturing with “Buy America” requirements. As White House economist Jared Bernstein wrote in Foreign Policy, “the rationale for industrial policy is as strong as ever.” Biden’s national security advisor, Jake Sullivan, similarly wrote in Foreign Policy that “advocating industrial policy … should be considered something close to obvious.” Even Republicans, such as Sen. Marco Rubio, have been willing to deviate from the free-market’s gospel by endorsing industrial policy.

The push for industrial policy has been particularly strong for clean energy—as a way to combine battling climate change with building strategically important parts of the economy. The Green New Deal in 2019 drew the link between achieving net-zero emissions and creating millions of jobs by investing in the “industry of the United States.” Biden’s top economic advisor, Brian Deese, said, “some of the biggest opportunities” in climate policy right now are “what some people would call straight-out industrial policy.”

Industrial policy is a phrase used to mean different things. Broadly speaking, it refers to government intervention in the economy to promote and protect targeted sectors, often those considered strategically important. The term is therefore instinctively distasteful to those schooled in the laissez-faire, free-market orthodoxy of Adam Smith’s “invisible hand.” They worry about a creeping state capitalism that favors well-connected companies, stifling innovation and competition.

In reality, of course, the energy sector has never been free of government intervention. Nearly every source of energy receives some degree of favorable tax treatment. Nuclear energy receives government liability protection. Government investment and research gave rise to the shale revolution. As Robert McNally points out in his book, Crude Volatility: The History and the Future of Boom-Bust Oil Prices, the Texas Railroad Commission was the most successful oil cartel in history in setting prices, and even a Republican president like Dwight D. Eisenhower protected the domestic oil industry from the threat of imported oil.

To be fair, there are good reasons for government intervention in the energy market. Energy use and production can impose harm on others, such as through air pollution and carbon emissions. Energy innovation delivers benefits to all of us beyond the economic gains the innovator can capture. Energy infrastructure investment, such as pipelines, transmission lines, and electric vehicle chargers, may be hampered if any one firm’s investments benefit all their competitors or if it risks monopolistic market power of energy delivery mechanisms.

The argument for government’s role in the energy sector is even stronger today. First, the world faces an existential threat from climate change. With time running short to begin sharply curbing emissions, market forces will not deliver the pace of transition needed without robust government intervention. Second, the scale of that transition creates enormous economic opportunity to build new energy sectors. With the economy in a deep hole from the pandemic, leading in these new sectors can spur significant job growth. Finally, given the strategic importance of energy—critical to every citizens’ economic and physical well-being and safety, as the recent crisis in Texas reminded us—there is a strong national security rationale to develop these technologies and capabilities in the United States. As the energy system transitions to cleaner alternatives, there will be new risks associated with the critical minerals’ supply chains required for renewable energy and batteries, cybersecurity, and global trade chokepoints, which argues for reinforcing the domestic U.S. industrial base in these technologies.

To tackle the problem of climate change, Sullivan and Biden’s China advisor, Kurt Campbell, persuasively argued that the United States must pursue not only cooperation but also economic competition with China, for example. Noting that both Democrats and Republicans “are making a convincing case for a new U.S. industrial policy,” they called for more government investment in infrastructure and research in clean energy, among other areas, to confront such a “challenging economic competitor” as China.

The argument against industrial policy to combat climate change is that the government cannot anticipate which technologies will deliver the cheapest solutions. Yet, as the International Energy Agency explained, most of the key technologies the energy sector needs to reach net-zero emissions are known today. Market forces are still powerful—when properly directed by a carbon price—to give firms and consumers the right incentives to adopt and develop those technologies and to determine which ones emerge as the best solutions in different energy sectors.

Moreover, critics of industrial policy argue that if the goal is to reduce emissions as fast as possible, it should matter less whether the technology is made in the United States than whether it is as cheap as possible so more people will adopt it. Germany’s Energiewende, a comprehensive plan to shift the country to renewable energy, has been criticized for its high cost per ton of emissions avoided, which economists have estimated to be between $600 and $1500, much costlier than most other policy interventions. (To put the German numbers in context: The Obama administration estimated the total harm caused by one ton of carbon dioxide to be around $50, although there are good arguments to revise that figure higher.) Jason Furman, a Harvard professor and former Obama administration economic advisor, said “if you think climate change is the biggest challenge facing the country … you should want to make sure a lot of solar and wind energy is produced in the United States. You shouldn’t care nearly as much where panels and turbines are produced.”

Furman’s view is correct if the goal is to cut emissions in the United States as fast as possible. But what if the goal is to decarbonize the entire world’s emissions as fast as possible? What if the goal is to show climate leadership by helping all nations achieve net-zero emissions? In that case, the measure of U.S. climate policy should be less about how fast it brings down domestic emissions, only 15 percent of the world’s annual total, than about how fast it brings down the cost of clean technologies needed for the rest of the world to decarbonize.

Some clean energy technologies, such as solar and wind power or electric vehicles, are fairly cost competitive today relative to their carbon-intensive counterparts. Yet as Bill Gates explained in his new book, the cost difference between carbon-emitting and carbon-free production—what he calls the “green premium”—remains exceptionally high for many sectors and technologies, such as cement and steel, air travel and shipping, long-duration energy storage to cope with the intermittency of renewable energy, and steady sources of electricity like nuclear power or natural gas with carbon capture and storage. These technologies may not be needed to make a large dent in emissions by 2030, but they will absolutely be needed to achieve net-zero emissions by mid-21st century. Consider that the largest source of global greenhouse gas emissions comes from what Gates calls “making things,” such as the production of cement, steel, and plastics—sectors that will almost certainly need nascent technologies to decarbonize.

To promote domestic industries developing technologies for such hard-to-decarbonize sectors, policies should boost demand for such products, spur their deployment, and lower production costs. As first U.S. Treasury Secretary Alexander Hamilton famously explained: “In matters of industry, human enterprise ought, doubtless, to be left free in the main, not fettered by too much regulation; but practical politicians know that it may be beneficially stimulated by prudent aids and encouragements on the part of the Government.”

What might such a clean energy industrial policy look like? Dramatically increasing clean energy research and development funding can accelerate needed innovation. Subsidies can lower the cost of clean energy technologies, and a carbon price can increase the cost of carbon-intensive alternatives. The government can use its procurement power to create more demand or reduce risk for developers by signing long-term energy purchase agreements or guaranteeing them a certain price by paying the difference to prevailing market prices (the “contract for difference” model used in the United Kingdom). Low-cost loans and loan guarantees can support projects by lowering the cost of capital and the barriers to accessing private capital because of perceived technological risk. Infrastructure investment and streamlined permitting can boost demand and overcome chicken-and-egg problems. For example, there may be little incentive to develop zero-carbon hydrogen or install carbon-capture technology on power plants if there are no pipelines to transport fuel or carbon dioxide—but firms will not build the infrastructure until the new technology is commercialized. Trade and economic policy can align U.S. competitiveness with a global clean energy transition, such as through export finance to help clean energy companies compete with Chinese and other competitors in emerging markets. Some argue industrial policy should also protect U.S. firms through import tariffs or “Buy America” provisions, but such protectionist tools risk backfiring if retaliatory measures by other countries close export markets to these new domestic industries.

There are three reasons a U.S. clean energy industrial policy makes particular sense today. First, the technologies needed for sectors that are hard to decarbonize also offer many of the biggest economic opportunities for growth. According to the International Energy Agency, almost half of the cumulative emission reductions needed to achieve net-zero emissions by 2050 come from technologies that are not yet commercially available. China already dominates the market for solar panels and batteries, a result of government decisions taken more than a decade ago, so it would be very difficult for the United States to displace China in these technologies, which China already produces very cheaply. By contrast, the United States is well-positioned to build a strong industrial base to produce and export zero-carbon energy in the form of hydrogen and ammonia, fuel cells to produce zero-carbon electricity, or carbon-capture and removal technologies.

Second, these technologies will be needed to decarbonize globally, and by bringing the cost of these technologies down through government investments, Washington can help accelerate their deployment outside the United States as well. In this way, a U.S. industrial policy to promote clean energy can serve not as protectionism but as one of the country’s greatest contributions to global efforts to combat climate change. In the future, roughly 95 percent of all greenhouse gas emissions will come from outside the United States. Yet developing market countries, which are poorer and use much less energy per capita than developed countries do, will not adopt low-carbon solutions unless they are affordable.

Third, industrial policy that drives down the cost of clean energy “green premiums” while also putting U.S. citizens to work can be among the most effective ways to account for the United States’ historic responsibility for the climate change problem. Climate change results from the cumulative total of all carbon emissions over time, and as of 2019, the United States has contributed 25 percent. By contrast, the entire continent of Africa represents only 2 percent. One way to address this inequity is for wealthy countries to send cash to poorer countries. For example, the Biden administration has pledged that the United States will fulfill its 2014 commitment to provide climate-related assistance to poorer countries, of which $2 billion is still outstanding. But making it affordable for developing countries to grow their energy use and prosperity in climate-friendly ways can be a far greater contribution.

At present, U.S. climate policy ambition is being framed around what commitment Biden will make to reduce domestic emissions by 2030. Yet the steps the Biden administration takes to invest in nascent clean energy technologies and research can be even more important to long-term temperature stabilization goals, even if most of the dividends come after 2030 because of the time it takes for hydrogen, long-duration power storage, carbon capture, advanced nuclear power, and other emerging technologies to scale.

### 1NC---OFF

Tech Leadership DA

#### **America's maintaining tech leadership now, but antitrust expansion cedes tech dominance.**

Abbott et al. '21 [Alden; 3/10/21; Senior Research Fellow, formerly served on the Federal Trade Commission’s General Counsel, J.D. from Harvard Law School, M.A. in Economics from Georgetown University; "Aligning Intellectual Property, Antitrust, and National Security Policy," https://regproject.org/wp-content/uploads/Paper-Aligning-Intellectual-Property-Antitrust-and-National-Security-Policy.pdf/]

The U.S. government has recognized that “5G is a critical strategic technology [such that] nations that master advanced communications technologies and ubiquitous connectivity will have a long-term economic and military advantage.”8 The U.S. has had a substantial technological edge over our military and intelligence rivals in foundational R&D for 5G and other next-generation technologies. U.S. companies have long been leaders in the development of previous generations of core mobile standards (2G, 3G, 4G, and LTE). This technological leadership has made it possible for U.S. companies to ensure the security and integrity of the hardware and software products that make up the backbone of the U.S. telecommunication systems. This leadership must continue for the U.S. government to more effectively anticipate potential security risks and take the necessary steps to protect national security.9

Despite this history of clear technological leadership, there are causes for concern. First, a very small number of U.S. companies have made the investments in the overwhelming majority of the R&D necessary to develop 5G.10 Historically, U.S. companies have heavily invested in R&D, which has propelled the U.S. into leadership positions in critical standard development organizations working on foundational next-generation technologies like 5G.11 U.S. companies like Qualcomm play a significant and important role in this process through innovation, patenting, and standard setting, but they are not alone in the global community of high-tech companies.12 Backed by their nations’ leadership, Chinese and Korean companies have also invested heavily in developing the core technologies for 5G.13

The willingness of U.S. companies to invest in R&D is threatened, however. The development of 5G is a bit like a race, with the companies who develop the best technology coming out ahead. While U.S. companies are savvy and talented competitors in this race, aggressive and unwarranted use of antitrust law by U.S. regulators, as well as by foreign antitrust authorities, threatens to put obstacles in these companies’ paths and hinder their ability to lead.

III. Overly Aggressive Antitrust Enforcement Hinders American Technological Leadership and Threatens National Security

As companies from around the world develop the technology and standards for 5G mobile devices and networks, American companies are under threat by aggressive antitrust enforcement that ultimately redounds to the benefit of these foreign companies, which are economic competitors in countries that are also military competitors of the U.S. Over the past five years, foreign governments, particularly in Asia, have subjected U.S. companies to antitrust investigations that failed to follow basic norms of the rule of law, such as providing basic due process protections.14 These antitrust investigations were a thinly-disguised effort by these countries to force the transfer of U.S. patented technology to their own domestic companies, or to insulate their domestic companies from American competition. In recent years, Chinese, Korean, and Taiwanese antitrust authorities have brought nearly 30 investigations against 60 foreign companies across a range of industries, including manufacturing, life sciences, and technology.15

Antitrust challenges undermine intellectual property rights by forcing companies to license their products on non-market-based terms. One prominent example in U.S. history is when the Department of Justice wrung a concession from AT&T to license royalty-free the entire portfolio of 8,600 patents held by Bell Labs in a 1956 antitrust consent decree with the company.16 Today, the White House Office of Trade and Manufacturing Policy has observed that “China uses the Antimonopoly Law of the People’s Republic of China not just to foster competition but also to force foreign companies to make concessions such as reduced prices and below-market royalty rates for licensed technology.”17 Companies have also complained about poor policy guidance and procedural protections under China’s competition laws.18 Others have complained about China’s use of its competition laws to promote policy objectives rather than protect competition and advance consumer welfare.19 In one example, companies raised concerns with Article 7 of China’s State Administration of Industry Commerce (SAIC) 2015 Rules on the Prohibition of Conduct Eliminating or Restricting Competition by Abusing Intellectual Property Rights.20 Under this provision, intellectual property constitutes an “essential facility,” which could allow parties to raise abuse of intellectual property rights claims against patent owners for a unilateral refusal to license their patents.21

Predatory antitrust enforcement actions threaten the ability of U.S. companies to continue to be leaders in 5G technological development. China and other nations with similarly restrictive regulatory frameworks can weaken the ability of the United States to compete in global markets by exacting high monetary penalties from U.S. intellectual property owners or forcing the transfer of their intellectual property to domestic commercial rivals. As a penalty for violations of its competition laws, China can impose exorbitant fines that range up to 10% of a foreign company’s entire revenue in the prior year.22 This is not a legal rule observed in the breach; it has already resulted in fines just shy of $1 billion.23

Another way in which courts in China and other foreign countries are harming U.S. companies is through the use of anti-suit injunctions. One example of this is in the recent patent infringement lawsuit brought by InterDigital, an American high-tech company that has developed key technologies in wireless telecommunication, against Chinese company Xiaomi. In June 2020, Xiaomi filed a lawsuit in the Wuhan Intermediate Court in China requesting that the court set global licensing rates for InterDigital’s patents on standardized technologies. In July 2020, InterDigital sued Xiaomi in India for infringement of InterDigital’s Indian patents. The Wuhan Intermediate Court then ordered InterDigital to stop its lawsuit with its request for an injunction in India. The Chinese court further prohibited InterDigital from suing Xiaomi and requesting an injunction or damages in the form of reasonable licensing rates, or even to enforce a previously-issued injunction, in any other country. If InterDigital does not comply with this worldwide injunction against pursuing legal relief for the violation of its patents in any other country, the company faces a significant fine in China. The type of judicial order issued by the Wuhan court is known as an anti-suit injunction and its purpose is to force an intellectual property dispute to play out solely in a Chinese court at the behest of the Chinese government. These court orders demonstrate China’s desire to become the source of 5G innovation and to dictate the licensing terms of the technology, and the anti-suit injunctions hamstring U.S. companies like InterDigital from enforcing their intellectual property rights anywhere in the world.

The unfair use of antitrust enforcement and related legal actions like anti-suit injunctions to weaken U.S. intellectual property rights around the world risks diminishing U.S. global competitiveness in critical technologies like 5G, and further empowers China and others to expand their influence over the evolving 5G technological ecosystem. To the extent the U.S. cedes its dominance in 5G standards development, China will continue its focused efforts to fill that void. Huawei, a China-based company, has increased its R&D spending while growing its share of patents on the standardized technologies comprising 5G.24 The President’s Council on Science and Technology issued a report concluding that Chinese actions in the semiconductor industry, which include a range of policies backed by over $100 billion in government funds, threaten U.S. leadership in the industry and present risks to U.S. national security.25 China’s “Made in China 2025” plan called for China to become a leader in 5G technology, including in the development of the standards for the technology, by 2020.26 The plan expressly favors Chinese domestic producers, calling for raising the domestic content of core components in high-tech industries like 5G to 70% by 2025.27

This issue, however, extends far beyond simply the ability and willingness of U.S. companies to engage in the requisite R&D to participate in the 5G race. Reduced U.S. influence on 5G standard-setting would force the U.S. government to rely on untrusted foreign companies for its 5G product supply. The Department of the Treasury has expressed concern about the “well-known” U.S. national security risks posed by Huawei and other Chinese telecommunications companies.28

#### Platform separation kills national security innovation. Google, Apple, Facebook, Amazon, and Microsoft (GAFAM) premise their models on platform integration, pollinating the highest rates of innovation.

Lopez-Galdos ’21 [Marianela; June 22; J.D. from George Washington University, LL.M. from Georgetown Law School and the College of Europe in Burges, Global Competition Counsel at the Computer & Communications Industry Association; “Tech Regulatory Overhaul Series: A Discrimination Bill Against Consumers,” <https://www.project-disco.org/competition/062221-tech-regulatory-overhaul-series-a-discrimination-bill-against-consumers/>]

It’s a ‘Break-up Bill’:

The text of the bill as introduced for mark-up includes a ‘conflict of interest’ provision that renders the entire bill futile given the discriminatory nature of its scope of application because it will demand a break up of ‘GAFAM’ before even applying such a list of obligations and prohibitions. As previously mentioned, the bill includes a list of obligations and prohibitions applicable to ‘GAFAM’ companies. However, in parallel, the bill suggests that structural separation should be mandated if the nature of the business model is not compatible with the enforcement of the discriminatory obligations and prohibitions because the company relies on running multiple lines of businesses and therefore conflict of interests exist. As a result, the list of prohibitions and obligations included in this bill are useless, because the bill will mandate digital service providers’ business models to be broken.

Indeed, in practice, the ‘conflict of interest’ provision means that the application of the list of discriminatory prohibitions and obligations will be the exception, and breaking up leading tech companies will be the norm.

As it is well known, digital services providers’ most common business models consist of integrated services and products that are offered to consumers for their benefit. In other words, the companies affected by this bill all have conflicts of interests when running their businesses according to the text of the bill, and as such should be broken into different companies.

Structural separation is not new to the U.S. legal system. In fact, the U.S. antitrust system foresees the possibility of imposing structural separation to remedy an anticompetitive conduct if harm to consumers is proven and such a remedy is the only alternative to fix the markets. But the ‘conflict of interest’ provision included in this bill is not akin to the structural separation remedial action available under antitrust laws. In fact, forcing leading tech companies to be broken into separate businesses will only harm consumers, and discriminate against U.S. competitiveness in favor of other jurisdictions.

In a world where the robustness of the tech industry is paramount to national security from a geopolitical perspective, introducing a bill that will run against the U.S. national interests is shortsighted. An analysis from a Realpolitik perspective informs that a nation with mini–Googles, Amazons, Facebooks, Apples and Microsofts won’t be sufficiently powerful to compete against mega-Tencent, Alibaba, Xiaomi, Baidu, and TikTok. As a result, not only will consumers be deprived from the benefits that integrated business models can offer, but the bill will grant market power to bigger foreign players that eventually will be able to offer better services and gain market power outside of their home countries.

It’s a ‘Free Ride Bill’:

Finally, the bill appears designed to transform ‘GAFAM’ companies into common carriers and impose on them obligations to deal with any other user or competitor that requests to do so. This is provided the conflict of interest clause is not preemptively applied first.

‘GAFAM’ companies are some of the most R&D intensive companies that exist across the economy. As a result, ‘GAFAM’ has introduced novel products and services that have transformed our societies. Can anybody imagine this pandemic without free connectivity services? But this bill fails to acknowledge that innovative solutions have been introduced thanks to the economic incentives that the U.S. has created for risk takers to innovate.

In fact, the bill runs against what has made the U.S. the number one place in the world to innovate and invest. Indeed, it is no secret why our digital services are some of the best in the world. But the reality is consistent with the adage, “to whom much is given, much is required.” And this applies for both digital services and for consumers. There is no free lunch, and companies invest in R&D to innovate and seek economic returns. This formula is applicable to any corporation whether it operates online or not. In contrast, policymakers behind this bill seem to want to holistically change the dynamics of the Internet and impose heavy duties on those companies that invest in innovation the most. As a result, becoming a successful digital service provider will automatically transform your business into a not for profit, and you will be forced to share your investments as well as the return of those investments with the rest of the online players.

By shifting online market dynamics and inverting the formula whereby a company invests with the incentive to profit in return, those incentives will be destroyed. Eventually these services won’t keep up with innovation and consumers will be deprived from enjoying the outcomes of the competitive process.

Furthermore, in a digital economy that heavily relies on innovation, the obligations to deal and share technology as included in this bill will give a blank check to competitors, including foreign market players. As such, leading U.S. tech companies will be forced, subject to exorbitant penalties, to distort the markets and subsidize those companies that did not invest in R&D, or were not successful in carrying out business in a manner that would benefit consumers. This bill will essentially change the competition rules in the online services markets, and eliminate the competitive process as we know it for companies operating online, creating negative incentives for those who know how to innovate. Ultimately these companies will cease to innovate.

#### Causes extinction---uncontrolled risks from emerging tech cause rapid shifts in strategic stability and misuse---American dominance is key.

Jain **’20** [Ash; 2020; Senior fellow with the Scowcroft Center for Strategy and Security; Strategic Studies Quarterly; “Present at the Re-Creation: A Global Strategy for Revitalizing, Adapting, and Defending a Rules-Based International System,” <https://www.atlanticcouncil.org/wp-content/uploads/2019/10/Present-at-the-Recreation.pdf>]

The system must also be adapted to deal with new issues that were not envisioned when the existing order was designed. Foremost among these issues is emerging and disruptive technology, including AI, additive manufacturing (or 3D printing), quantum computing, genetic engineering, robotics, directed energy, the Internet of things (IOT), 5G, space, cyber, and many others. Like other disruptive technologies before them, these innovations promise great benefits, but also carry serious downside risks. For example, AI is already resulting in massive efficiencies and cost savings in the private sector. Routine tasks and other more complicated jobs, such as radiology, are already being automated. In the future, autonomous weapons systems may go to war against each other as human soldiers remain out of harm’s way.

Yet, AI is also transforming economies and societies, and generating new security challenges. Automation will lead to widespread unemployment. The final realization of driverless cars, for example, will put out of work millions of taxi, Uber, and long-haul truck drivers. Populist movements in the West have been driven by those disaffected by globalization and technology, and mass unemployment caused by automation will further grow those ranks and provide new fuel to grievance politics. Moreover, some fear that autonomous weapons systems will become “killer robots” that select and engage targets without human input, and could eventually turn on their creators, resulting in human extinction. The other technologies on this lisgt similarly balance great potential upside with great downside risk. 3D printing, for example, can be used to “make anything anywhere,” reducing costs for a wide range of manufactured goods and encouraging a return of local manufacturing industries.61 At the same time, advanced 3D printers can also be used by revisionist and rogue states to print component parts for advanced weapons systems or even WMD programs, spurring arms races and weapons proliferation.62 Genetic engineering can wipe out entire classes of disease through improved medicine, or wipe out entire classes of people through genetically engineered superbugs. Directed-energy missile defenses may defend against incoming missile attacks, while also undermining global strategic stability.

Perhaps the greatest risk to global strategic stability from new technology, however, comes from the risk that revisionist autocracies may win the new tech arms race. Throughout history, states that have dominated the commanding heights of technological progress have also dominated international relations. The United States has been the world’s innovation leader from Edison’s light bulb to nuclear weapons and the Internet. Accordingly, stability has been maintained in Europe and Asia for decades because the United States and its democratic allies possessed a favorable economic and military balance of power in those key regions. Many believe, however, that China may now have the lead in the new technologies of the twenty-first century, including AI, quantum, 5G, hypersonic missiles, and others. If China succeeds in mastering the technologies of the future before the democratic core, then this could lead to a drastic and rapid shift in the balance of power, upsetting global strategic stability, and the call for a democratic- led, rules-based system outlined in these pages.63

The United States and its democratic allies need to work with other major powers to develop a framework for harnessing emerging technology in a way that maximizes its upside potential, while mitigating against its downside risks, and also contributing to the maintenance of global stability. The existing international order contains a wide range of agreements for harnessing the technologies of the twentieth century, but they need to be updated for the twenty-first century. The world needs an entire new set of arms-control, nonproliferation, export-control, and other agreements to exploit new technology while mitigating downside risk. These agreements should seek to maintain global strategic stability among the major powers, and prevent the proliferation of dangerous weapons systems to hostile and revisionist states.

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The United States federal judiciary ought to hold that the failure to separate platforms from commerce for platforms in the private sector violates customary international law.

#### The CP solves and sets precedent for binding incorporation of customary law

Kundmueller ‘2 [Michelle; May 1; Attorney specializing in constitutional law, candidate for a J.D. and M.A. in Political Theory from the University of Notre Dame, B.A. from Flagler College; Journal of Legislation, “Note: The Application of Customary International Law in US Courts: Custom, Convention, or Pseudolegislation?” vol. 28]

III. Uses, Abuses, and Implications of Customary International Law in Domestic Law

Debates over the role of customary international law in domestic courts continue to produce differing opinions about the role of customary international law within the U.S. legal structure. While there is general agreement that customary international law plays some role, the extent of this role remains unclear. Three of the most important of the unanswered questions are covered in this section of this Note: (1) whether customary international law has the potential to trump federal legislation, (2) whether customary international law is federal law without empowering legislation from Congress, and (3) which political branch holds ultimate control over the interpretation of customary international law. The resolution of these issues will determine the power of customary international law in U.S. legal systems. In doing this, it may also change the balance of power between the respective federal branches by expanding the judiciary's ability to overrule federal law. In the final analysis, the answers to the preceding questions will determine whether customary international law or Congress controls in domestic legislation. The following section examines some currently viable theories about the power of customary international law in the U.S. legal system.

A. Dominance of Customary International Law over Federal Law

Jordan J. Paust, who has authored a book and several law review articles on the subject of customary international law, asserts that the incorporation of this body of law into domestic law is required by the Constitution. He claims that "customary international law has been directly incorporable, at least for civil sanction and jurisdictional purposes, without the need for some other statutory base." 20 According to Paust, "the Founders clearly expected that the customary law of nations was binding, was supreme law, created (among others) private rights and duties, and would be applicable in United States federal courts." 21

Based on his claims of constitutionally mandated incorporation of customary international law, Paust delineates the areas of domestic law that this affects. In some applications, customary international law enhances the power of the "Executive under Article II, section 3 to 'take care that the Laws be faithfully executed.'" 22 In other applications, customary international law restricts the Executive: "Supreme Court and other opinions have also recognized that while exercising Presidential war powers, the Executive is bound by customary international law." 23 In addition to affecting the President and therefore indirectly the Legislative branch, Paust claims that customary international law directly shapes Congressional power because it "can limit the exercise of an otherwise appropriate Congressional power and thus can function partly as an aid for interpreting the extent of constitutional grants of power." 24 The power of customary international law also affects the courts, where it "may be relevant to an adequate interpretation of various sorts of Congressional power in order to functionally enhance such powers." 25 Finally, Paust claims that the "latter process of incorporation might include an enhancement of the power of Congress under Article I, section 3, clause 18 to enact legislation 'necessary and proper for carrying into Execution . . . all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.'" 26

Because customary international law thus pervades the federal government, alternately limiting and expanding the powers of the respective branches, it becomes a defining body of law in relationship to the federal government. Hence, Paust writes, "in the case of an unavoidable clash between fundamental human rights supported by customary international law and a federal statute, the human rights (which have a constitutional status) must prevail." 27 In normal conflicts between codified (treaty) international law and federal statute, the last-in-time rule applies; this rule dictates that whichever law was most recently enacted controls. 28 Paust claims that this rule dictates that, in conflicts between customary international law and federal statutes, customary international law always controls. 29 As Paust theorizes, "customary international law would necessarily be 'last in time,' since custom is either constantly re-enacted through a process of recognition and behavior involving patterns of expectation and practice or it loses its validity and force as law." 30 By this reasoning, custom is always a controlling authority in the face of a directly conflicting federal statute.

The extent to which Paust claims that customary international law influences and controls domestic law leads to the question of who, within the U.S. legal system, decides upon the content, interpretation, and manner of application of international law. While all three branches of the federal government will have some indirect control in forming customary international law, it also limits the scope of each. Hence, whichever branch is empowered to control the application and interpretation of this body of law within the domestic legal structure will be that much stronger, relative to the coordinating branches. In Paust's view, the judicial branch is responsible to "identify, clarify, and apply" this body of law. 31 In response to concerns that this role improperly changes the balance of powers, he asserts that "it is precisely because the federal judiciary has both the power and responsibility to identify and apply customary international law in cases otherwise properly before the courts that there is no violation of the separation of powers when federal courts apply international law while interpreting federal statutes." 32

In an article on human rights law and domestic courts, Richard B. Lillich explores the role and the ramifications of customary international law in United States law. Like Paust, Lillich bases his understanding of the role of customary international law on the finding that "customary international law, while not mentioned in the Constitution, is part of the law of the land to be determined and applied by the courts whenever appropriate in making a decision." 33 Based on this, Lillich states that "the starting point in ascertaining what international human rights norms have been received into customary international law--and therefore are rules of decisions for domestic courts--commonly is thought to be the Universal Declaration of Human Rights . . . ." 34 The status of the Universal Declaration of Human Rights as a source of the customary international law rests solely on its position as evidence of existing customary international law. Lillich admits that, while the Universal Declaration of Human Rights resolution was adopted without a dissenting vote by the U.N. in 1948, it is not legally binding as a treaty, as it has never been ratified. 35

Thus, to the extent Lillich is correct that the Universal Declaration of Human Rights reflects--at least in part--customary international law, and to the extent that both Paust and Lillich are correct that customary international law is part of United States law which should be enforced and interpreted by the courts, it should also "be directly enforceable in domestic courts." 36 Most customary international law claims in U.S. courts have been based on a statute which provides for such a claim. The most common example of this is the Alien Tort Statute, which dates back to the Judiciary Act of 1789 and provides for federal jurisdiction over "any civil action by an alien for a tort only, committed in violation of the law of nations of a treaty of the United States." 37 The point of Lillich's suggestion is that, while there is nothing wrong with providing statutorily for the incorporation of customary international law, as has been done in the past, it is unnecessary or redundant.

The implications of Lillich's claim that customary international law may and ought to be directly incorporated into United States law even without statutory support are far reaching. He advocates that judges ought to use human rights law--and implicitly all of customary international law--without statutory support. Not only could claims be brought in federal and state courts without the benefit of enabling statutes, but, under the mirror principle, the United States has an obligation, enforceable domestically, to live up to the provisions of customary international law. 38 Beyond this direct effect, which has the potential to permit the voiding of a federal statute on the grounds that it conflicts with customary international law (as defined and recognized by the judiciary), Lillich predicts that customary international law should have the "greatest impact on domestic law in the future by influencing the courts' approach to constitutional and statutory standards." 39 This means that the Constitution, federal law, and state law should be interpreted in light of customary international law. As Lillich states, "litigants and judges already have invoked the Universal Declaration [of Human Rights] for precisely this purpose." n40 Lillich hails this new world of customary international law's direct and indirect incorporation into United States law as offering "significant as well as virtually limitless possibilities for achieving greater protection of the rights of individuals." 41

#### CIL solves extinction

Nagan ’14 [Winston; April 20; Professor of Law at the University of Florida, LL.M. from Duke University, J.D. from Yale University, M.A. from Oxford University; Cadmus, “The Crisis of the Existing Global Paradigm of Governance and Political Economy,” vol. 2]

Abstract

This article seeks to underline the central challenges to world order that are outcomes of our current system of global, social, power and constitutional processes. The article outlines these major problems which it is suggested represent a crisis for the future trajectory of human survival and well-being. The paper then uses the problem of the emergence of transnational criminal activity in order to underline the limits of the current global paradigm of governance. In effect, in the criminal law context the jurisdiction of sovereign states to attack the problem of transnational crime is hedged with severe limitations.

The most important of these limitations is the fact that the jurisdiction over crimes by sovereigns is limited by the territorial character of the definition of sovereignty. Thus a sovereign has a limited capacity to control and police criminal activity whose main locus of operation is generated outside of the territorial reach of the sovereign state. This essentially means that the element of global governance generates a juridical vacuum which permits organized crime to flourish outside of the boundaries of the state but at the same time, having the capacity to penetrate and corrupt the social, political and juridical processes of the sovereign state. The article explores the effort of the UN to provide some form of response to this crisis in the form of an international agreement. The most important global expectation about global governance is reflected in the Preamble of the UN Charter and it is authorized by “we, the people” of the earth/space community. That expectation includes the high priority humanity gives to international peace and security; the reaffirmation of faith and fundamental human rights, in the dignity and worth of the human person, and equal rights for men and women and nations of whatever size. It also underscores the importance of the global rule of law as well as the promotion of social progress, better standards of life, and expanding freedoms. That is the promise. However, at the practical level the institutions of global governance have been to a large extent a captive of their own history. That history emerged with scholars in the late 1500s and early 1600s (Bodin and Hobbes) and later was given a juridical imperator in the Treaty of Westphalia (1648). In the early 19th century Bodin, Hobbes, and Westphalia were given a powerful juridical imprimatur when John Austin published his influential book The Province of Jurisprudence Determined. In effect, from Bodin to Austin we have the developments from scholarship, to political agreement to creation of a jurisprudential foundation for the notion of the territorially organized sovereign state. The sovereign state became the currency of international relations, diplomacy, international law, as well as a powerful limitation on the force and efficacy of both international law and constitutional law.

In the 20th century the sovereignty idea contained no obvious constraints that could limit a drift into a global war (WWI). Moreover, the creation of the League of Nations system and the Covenant of the League was itself limited in a context of facilitating international peace and security by state claims to sovereign absolutism. At the end of WWII the victorious powers adopted the Charter of the United Nations. The Charter reflected ambiguity of its authority resting in “we, the people” and the residual strength and ambition of sovereign state powers, claiming frequently the competence to trump activities challenging their ambitions and interests. The current paradigm is thus responsible for generating problems that now seem to challenge the survivability of humanity, as well as undermine the prospect of global policy and practice that moves in a trajectory that secures humanity's wellbeing for the future. We list several of the most obvious scenarios where the state/sovereign-centered paradigm is limited in its capacity to respond effectively to the crisis of humanity’s future survivability and wellbeing. These are listed as follows:

1. The crisis of the global war system. States no longer have an effective monopoly on war making. States have been involved in privatizing the functions of the military with unforeseeable consequences. There continues to be the emergence of mercenary-like forces for hire in the global environment. The proliferation of the flow of arms and armaments in the global arms market remains significantly unregulated. The existence of weapons of mass destruction (nuclear, chemical and biological) still represents a major crisis regarding the acquisition of the technologies and assets of these weapons systems falling into the hands of terrorists groups or organized crime cartels.1

2. The growth of civil society deviance may threaten world order when it develops into forms of apocalyptic terrorism, state terrorism, organized crime, human trafficking, global drug production and distribution, and trading in small arms and/or components of mass destruction.

3. Global political economy of radical inequality. Conventional economic theory seems to lead a global race to the bottom. More wealth is produced than ever before and greater inequality is produced as well. Greater wealth concentrations often result in plutocracy which favors the wealthy and greater alienation for the impoverished. What is needed is an economic paradigm that is not confined to a single state or sovereign but a paradigm that functions within the context of a global, social and political process and responds to the problems that emerge from this process from a global inclusive perspective.

4. The depreciation of a human right to development, a depreciation that undermines the value potentials of human capital for the improvement of the human prospect. Clearly, the right to development is a human right of global dimensions and requires a global solution to effectively respond to it. The solution here is beyond the parochialism of national sovereignty.

5. The importance of a viable ecosystem for the survival of humanity requires policy making that is beyond the nation states’ competence. In short, global warming and climate change are matters of inclusive global concern. All must participate because all have a stake in preserving a viable ecosystem for all.

6. Human demographics and human survivability. The radical population increases raise the question of whether food security and accessibility to clean healthy water may be put at risk when earth’s population exponentially increases. Demographic growth may well challenge eco-social and economic capacity of the earth to indefinitely sustain such increases without important radical innovations in birth control, food production, and water conservation. These issues transcend any particular nation state.

7. The global capacity to respond to natural catastrophes (tsunamis, earthquakes, hurricanes, asteroid collisions). It’s now well accepted that such catastrophes require global action because the capacity of any particular sovereign is limited in this regard.

8. The global health crisis (AIDS, malaria, TB, Ebola, etc). It is clear today that any emergent global pandemic will be beyond the capacity of any single sovereign state. Such health threats are really beyond the current paradigm.

9. The global crisis of human rights and humanitarian values. Notwithstanding the vigorous advocacy for the promotion and defense of basic human rights, it is still the case that we have a great human rights crisis on the planet. At the heart of this crisis is the muted claim of unlimited sovereign absolutism. The human rights crisis cannot be solved exclusively within the sovereign state. It is a global problem that implicates the global authority of “we the people.”

The issues listed above represent a crisis for global humanity and as well underline a weakness of the existing paradigm which is a state sovereign dominant paradigm. This underscores the need for new and fresh thinking, nothing short of a new paradigm for understanding and responding to the global crisis of our time. To provide a more detailed explanation of the limits of the state sovereign paradigm we provide an overview of the background and possible value for humanity of an important UN initiative to enhance a global paradigm of governance with regard to a particular problem that defies the exclusive authority of the sovereignty approach. In this initiative we underscore the effort to strengthen the global rule of law, as an indispensable element for a new paradigm of global governance.

## Adv---Dynamism

### Slow Growth---1NC

#### No recession incoming.

Barbera ’21 [Robert J; July 20; Director of the Center for Financial Economics, PhD from John Hopkins University, 30 years as a Wall Street economist; Center for Financial Economics, “Does the 2021 Boom Lock the U.S. into 2023-2025 Gloom?” https://krieger.jhu.edu/financial-economics/2021/07/20/does-the-2021-boom-lock-the-u-s-into-2023-2025-gloom/]

Is it *likely*? The CBO forecasters had to acknowledge the reality of recent surging labor productivity. But rather than view that change as significant, they chose to insist that their earlier guess for sustainable productivity gains was correct. That completely arbitrary decision led them to forecast meagre prospective productivity growth ahead, and is central to their forecast of a swoon for 2023-2025 real GDP growth.

CBO’s insistence on this dour view forces them into pretty improbable territory. Glance at the chart below. It reveals that the flow of output, second half 2021, is deemed to already be well above the economy’s potential. With unemployment still close to 6% and with labor force participation still quite depressed, declaring that the economy is already in excessive territory, seems hard to support. I think it is flat out wrong.

Real GDP forecast and real potential GDP for 2020 to 2025

Deconstructing CBO’s Potential Output estimate

CBO’s characterization of potential is driven by three assumptions. Sustainable annual gains for U.S. labor productivity will average around 1.8%. Full employment for the U.S. economy is centered a bit above 4%. At full employment U.S. labor force growth is capped at around 0.3% per year. Combine these three items and you end up sketching out CBO’s version of the upside boundary for U.S. real GDP.

Again, however, embracing these assumptions forces you to assert that the economy, as we enter the second half of 2021, is already operating above its sustainable level, strikingly at odds with common sense amid very high joblessness, very low labor force participation and very low levels of capacity utilization for our industrial sector.

How might we modify an estimate of potential, so that it squares with the notion of ample excess labor and production capacity, mid-2021? Simply acknowledge that the spurt for productivity, over the past 6 quarters, need not be followed by a productivity swoon.

Additionally, we can revisit the question of full employment. CBO asserts that employment levels extended beyond safe levels, throughout 2018 and 2019. But there was little evidence of wage and or price pressures in late 2019. Labor force conditions then may have been at, but not beyond full employment after all, at that time.

Consider those two factors, and a post-boom 2%, not 1%, real GDP growth performance is easy to pencil in.

Productivity’s Trajectory Need Not Mean Revert.

CBO embraces the pre-pandemic consensus view on sustainable productivity gains, 1.8% per year. But over the 6 quarters ending in 2021:Q2, labor productivity wildly outstripped this performance, rising at around a 3.4% annualized pace, nearly double CBO’s sustainable rate.

Does it make sense to be adamant about sustainable productivity levels? Not really. Since 1950, long run average growth rates for labor productivity are neither stable nor predictable. They range anywhere from 1.6% to 2.6%, putting CBO’s figure on the very low end of post war history.

Histogram showing rolling average of productivity growth, 1952-2018.

Where did CBO come up with 1.8%? That is the bad news performance of the previous expansion. But CBO’s insistence on continued poor performance, despite nearly two years of boom, seems awfully conservative. Indeed, it amounts to insisting that good productivity news today, rather than a reason to revise up expectations for prospective productivity, necessitates a forecast of dastardly productivity performance and depressing economic growth news tomorrow.

CBO could have taken a somewhat less dour approach. They could have stuck to their guns about full employment levels and sustainable long-term productivity and labor force trajectories. But they could have attached theses trend trajectories to the elevated output levels achieved amid the boom. Simply allowing the economy to pocket the gains delivered by recent great productivity news would put 2025:Q4 3% higher than CBO’s current forecast.

Optimists could go further. They could envision an important upshift in the longer run trajectory for economic growth. Can two years of boom help us break out of the doldrums of piddling productivity growth and depressed labor force participation—the U.S. economic reality of the past two decades? Lift labor productivity to the mid-point of its post war range, 2.3% per year, and real GDP, 2025:Q4, is 5% higher than CBO’s current projection.

Reconsidering Full employment Levels

Similarly, CBO identifies 2018:Q1 as the period in which the U.S. economy slightly eclipsed full employment. At that time the jobless rate was at 4% and 25-to-54-year-old—prime age—workers’ participation rates stood at 82%. By 2019:Q4 the jobless rate had fallen to 3.5% and prime age participation had rebounded to 83%, and amid these further gains for employment no discernable wage acceleration appeared. If we choose to identify 2019:Q4 as full employment, then the potential labor force, 2025:Q4 is roughly 1% higher than CBO’s estimate, offering more room for growth before hitting labor market ceilings.

Worshipping at the Altar of No Free Lunches.

Why does CBO insist that short term gains require outyear pains? Take a step back and the message embedded in the updated CBO forecast is clear. CBO, and many conventional analysts will not allow short-term stimulus to change their guesses about the economy’s long-term trajectory. They must embed today’s stimulus supported boom, because we are knee deep in it. But they marry to it mean reverting arithmetic that force the economy back to their pre-boom guess for its sustainable level. The economist mantra, there is no such thing as a free lunch, is a powerful notion, and it leads many economists to insist on dangers that they simply should acknowledge are largely speculative.

### Separation Turn---1NC

#### The aff’s economically backwards. Platforms have no incentive to ‘gatekeep’ goods because they want to maximize two-way profits.

Yun ’20 [John M; Winter; Law Professor at George Mason University; the South Carolina Law Review, “Does Antitrust Have Digital Blind Spots?” vol. 72]

Splitting a platform into two separate markets for the purpose of antitrust analysis, however, runs afoul of a simple reality: no platform maximizes profit over just one side. 302Rather, profit maximization is determined through a joint [\*353] consideration of both sides. A platform, by its very nature, balances the interests of multiple sides and structures its price and non-price terms to achieve this balance. Further, as the Court emphasized, credit card networks are "transaction platforms," 303which are platforms where both sides share a common level of output. This also illustrates that artificially bifurcating the two sides into separate competitive effects analyses does not align with how firms actually make decisions. Antitrust law must start from these economic realities and fit the administration of the rule of reason analysis around them.

Conceptually, perhaps one of the strongest criticisms of the Court's approach is that it effectively eliminates step two of the rule of reason analysis--where the defendant bears the burden of justifying its conduct as procompetitive. 304Instead, that burden is shifted to the plaintiff in step one during which, in order to meet its prima facie burden, the plaintiff must show that the net effect is negative. 305This is an important criticism. Ultimately, the Court had to weigh two possible regimes. The first regime involves a framework where the prima facie burden is met simply with a price increase on one side. 306The second regime, which was adopted by the Court, involves a framework where the plaintiff's burden must not only include a one-sided price increase but also include "evidence of anticompetitive effects . . . such as reduced output, increased prices, or decreased quality." 307In other words, is a one-sided price increase actually and reliably evidence of anticompetitive harm? The integrated nature of the two sides does not support this proposition; consequently, the second regime better aligns with the economic realities of platforms. Importantly, Professors David Evans and Richard Schmalensee assert the following:

This is not a matter of burden-shifting. There is simply no way to know, especially in the case of a platform that provides a service that customers on each side consume jointly, whether a practice is anticompetitive without at least considering both types of customers and the overall competition among platforms. That analysis must, [\*354] therefore, happen at the first stage of the rule of reason to assess whether the conduct is anticompetitive or not. 308

Additionally, under a framework where the prima facie burden is met simply with a price increase on one side, this "distorts the assignment of burdens in the form of placing a thumb on the scale for plaintiffs in platform cases by redefining 'competitive harm' to mean any harm to any group of consumers." 309The reality is that such an alternate framework would result in no real ability of the defendant to offer procompetitive justifications in step two. Evans and Schmalensee, for example, observe:

First, it isn't clear that the court could consider the other side-specific market in the second stage of the rule of reason inquiry. The trial court judge noted that pro-competitive benefits on the consumer side, in "a separate, though intertwined antitrust market," could not be used to offset anti-competitive effects on the merchant side. Second, after finding that a practice is anti-competitive in the first stage, courts seldom give much weight to pro-competitive benefits in the second stage. 310

Further, it is not entirely clear that the burden is actually higher for plaintiffs in step one--particularly for transaction platforms. For instance, output, which is shared by both sides of a transaction platform, could serve as a reliable guide to welfare effects. This focus on output is something that conforms with both the law and economics of assessing markets and market power. 311

[\*355] In sum, the interrelationship between the various sides of a platform is critical. 312Specifically, for a platform like American Express, changes in cardholders' terms have a material impact on the number of transactions that merchants will enjoy. These feedback effects between the two sides are central to assessing conduct on the platform. The rule of reason framework established by the Court in Amex properly assessed and incorporated the economic literature on platforms into an administrable, coherent approach by shifting the burden of production. Rather than increasing the burden on plaintiffs, it requires plaintiffs to do a complete analysis of the effects of a given conduct on the platform instead of on an unnatural and narrowly focused segment of an integrated market. 313

V. CONCLUSION

Presently, antitrust law is among its most unprecedented times where there is a chorus--albeit lacking complete consonance--from various stakeholders seeking significant antitrust reforms. This chorus is comprised of myriad groups of academics, politicians from across the political divide, and various digital reports. 314

Ultimately, these calls for reform too often lack completeness and are too broad and general to form a reliable guide for agencies, courts, and legislatures. This is not to say questions regarding large platforms are completely and categorically settled. Network effects are certainly a key consideration in assessing certain digital markets, but it is important to understand precisely how and to what extent they are affecting these markets. Rather than being a presumptive source of market failure, network effects are more properly assessed as a market feature that must be accounted for in order to understand firm conduct. Similarly, there is a paucity of evidence [\*356] demonstrating that the conduct of digital platforms is actually reducing welfare and harming consumers. Finally, a close reading of the Court's Amex decision reveals an opinion that carefully treads the economic literature on platforms and implements that learning into a coherent rule of reason framework.

The most radical claim being made today is perhaps the most controversial one: that current antitrust law and enforcement actually are sufficient to properly assess and adjudicate conduct involving digital platforms. Antitrust law has always had an evolutionary character that recognizes the need to adjust to new learnings. 315This does not mean that the law is necessarily efficient or always moving in the right direction. Still, as long as antitrust law is tied to measures of economic efficiency and welfare and so long as it continues to carefully examine actual evidence rather than fall victim to unfounded presumptions, it provides a more reliable body of law for fostering innovation and economic progress than do the alternatives being proposed by its critics.

### Separation Fails---1NC

#### Structural separation fails.

Yoo ’14 [Chris and Daniel Spulber; 2014; Law Professor at the University of Pennsylvania; Daniel F. Spulber, Business Professor at Northwestern; the Oxford Handbook of International Antitrust Economics, “Antitrust, the Internet, and the Economics of Networks,” Ch. 17]

Structural separation requirements have proven exceedingly difficult to administer. For example, the court overseeing the implementation of the 1982 decree breaking up AT&T was bombarded with hundreds of requests to waive the decree’s line of business restrictions (Huber, Kellogg, and Thorne 1999). These requests often took from three to four years to process, with estimates of the total welfare loss associated with these delays exceeding $1 billion (Rubin and Dezhbakhsh 1995, Hausman 1997).

### Rulemaking Turn---1NC

#### Agency adjudication guarantees rent seeking and corruption.

Lambert ’22 [Thomas; forthcoming; Law Professor at Missouri Law School; Southern Methodist Law Review, “Peering Beyond Nirvana: A Comparative Institutional Analysis of Proposed Means of Addressing the Market Power of Digital Platforms,” vol. 75]

The agency oversight approach, however, is not simply “faster antitrust with expert adjudicators.” While standards-based and flexible, the approach differs from antitrust along three significant dimensions: focus, political susceptibility, and duration of control. Taken together, antitrust courts’ more narrowly focused objectives, greater insulation from political influences, and limited jurisdiction over their subjects render them far less susceptible to adverse public choice concerns than are agencies like the U.K.’s DMU.

In crafting remedies for anticompetitive harm, antitrust courts have a tremendous reservoir of authority.183 But antitrust’s focus—and the objective of any court-ordered remedy—is narrow: the restoration of market output to competitive levels for the benefit of consumers.184 This precludes successful claims by, and remedies in favor of, parties seeking some private benefit apart from the enhancement of market output. A digital markets regulator is unlikely to be as laser-focused on output effects as an antitrust court and will therefore be a more attractive target to rent-seeking firms. The DMU’s “open choices” objective, for example, invites a laggard competitor that might otherwise be driven out of business to seek some rule hindering its more efficient rivals on the ground that preserving its own offering will create a broader range of options for consumers.

A second important difference between antitrust courts and agencies relates to the decisionmakers’ incentives. The federal judges determining liability and imposing remedies in antitrust cases have little reason to please the parties before them. Possessing life tenure and fearing no retribution save possible reversal, they are insulated from outside pressure and motivated to make decisions calculated to enhance market output and thereby benefit consumers. The bureaucrats staffing agencies, by contrast, do not enjoy this level of political insulation. Many will have been appointed by or have ties to a political leader, whom they will wish to please. They may also contemplate future employment at one of their regulatees or at a regulatee’s rival. Even absent contemplation of a job change, they may have a stake in one regulatory outcome over another, as the budget or prestige of their agency may be affected by the regulatory choices they make. Their personal interests are therefore less aligned with the public’s interest in maximizing overall market output.

### Concentration Turn---1NC

#### Concentration breeds productivity with no negative effects.

Peltzman ’18 [Sam; May 10; Economics Professor at the University of Chicago; SSRN, “Productivity and Prices in Manufacturing During an Era of Rising Concentration,” https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3168877]

Cross tabulations in Table 2 give a rough first cut of the relevant co-movements. The three panels classify data by HHI change, HHI level and combination of these two respectively. The columns give results for two productivity measures and prices. The consideration of both the change and level of concentration is motivated by antitrust policy and ambiguity in some of the motivating stories outlined above.27 The last line in each panel or sub-panel gives the mean difference (DIFF) and its t-ratio in each outcome for the different market structures under consideration.

The outcomes are annual averages over the entire sample period. These long periods probably capture best the more permanent relationships we are interested in. They are long enough to make plausible a working hypothesis of long-run constant cost supply conditions in typical manufacturing markets. Collaterally, constant costs would be changed point-for-point by MFP and input price changes. Also, as a practical matter, the higher frequency outcome data within sample periods are noisy in potentially misleading ways.28

It is best to begin with the last triplet of columns (9-11) in Table 2, which focus on prices. The differences here range on both sides of zero, and there is no clear pattern. For example, in panel I increasing concentration seems to raise prices in the NAICS period but not in the SIC sample; on the other side, large increases in concentration have no greater (possibly a lesser) effect than small increases (line 4c). Similarly, panel III, which incorporates the Merger Guidelines focus on both change and level, shows little consistency. Within the more concentrated industries, prices do rise more when concentration increases, but only for the NAICS period (line 3, panel III). And, within the NAICS period, the price increases associated with rising concentration are about the same for the less concentrated industries than for the more concentrated industries. The lack of any pattern in the simple correlation of concentration and price changes, let alone one consistent with the specific concerns of the Merger Guidelines, will be a consistent feature of these data.

The productivity data in columns (3) through (8) show a more consistent pattern consistent with a benign effect of concentration. With the conspicuous exception of MFP growth in the SIC period, the relevant differences are well bounded away from zero in the benign direction. That is, high and rising concentration tend to be associated with greater productivity growth. There is no consistent overall effect from changes (line 3, panel I), but industries with large increases in concentration (line 4c, panel I) as well as highly concentrated industries (line 3, panel II) tend to have superior productivity growth.

The contrast between the productivity and price effects hints at another feature of subsequent data. Productivity growth implies lower costs. So if there are benign productivity effects from concentration but no price effects, the implication is that the cost effects are offset by rising margins. This is the possible dilemma for antitrust enforcement raised a long time ago by Oliver Williamson (1968).

Subsequent tables refine these cross-tabs by allowing the level and change in concentration to be continuous rather than dichotomous and by taking account of some industry background conditions. 29 Table 3 summarizes the connection between productivity and concentration. Specifically, the dependent variables are average annual growth rates of multi-factor productivity and labor productivity. The independent variables are the level and change of concentration. For this and subsequent tables, concentration is measured as the square root of HHI. This transformation removes most of the extreme skewness in both the level and change of the HHI.30 Summary statistics for the transformed variables are on lines 7 and 8 of table 1.

Each triplet of regressions begins with an analogue to the cross-tabs that includes only the HHI level and change on the right. The second regression adds sector (SIC 2 digit or NAICS 3 digit industry) fixed effects, and the third adds interaction between high and rising concentration. The fixed effects are meant to capture background conditions affecting productivity and concentration over broad groups of industries (e.g., food products), so the regressions then capture the correlations across the industries within these groups (i.e., across dog and cat food, confectionary products, etc.). The separation of concentration changes between high and low levels of concentration addresses the distinction central to the Merger Guidelines.

The results in Table 3 reinforce the cross-tabs. Again with the exception of MFP growth in the SIC sample, both the level and change of concentration tend to be positively correlated with productivity growth. This is true across the whole sample and within industry sectors. There is no meaningful difference between effects of changes in more or less concentrated markets. The implied magnitudes can be substantial. For example, consider a NAICS industry that begins the period with concentration one standard deviation below the mean and ends with concentration one standard deviation above the mean. The NAICS regression (2) coefficients would imply an improvement in MFP growth of .37 standard deviations, which exceeds the mean slowdown of MFP growth between the two sample periods.31

The next two tables (4A and 4B) explore the interaction of prices, productivity and concentration. The dependent variable here is the average annual log percentage change in the price of shipments. Aside from sector fixed effects, there is only one plausibly exogenous control. This is the average annual change in an input cost index, which is a weighted average of labor, material and capital good prices. Details are in the note to Table 1. The weights are cost shares at the beginning of each sample period, so they are unaffected by (possibly endogenous) within-period changes in cost shares. Also, to avoid issues about (also possibly endogenous) division of value added between labor and capital, I use sector wide rather than industry specific labor costs.32 This exogenous cost shifter is always important empirically with coefficients often around the benchmark of +1 implied by constant cost competition.

Table 4A is in two parts. The first three regressions show concentration effects controlling only for input costs. These concentration effects are uniformly weak statistically (and economically, but I defer discussion of magnitudes until later). Again, there is nothing exceptional about more concentrated industries. The last four regressions (columns (4) through (7) ) add productivity growth controls. These have the expected negative coefficients, and their inclusion changes the concentration effects. The change in concentration (but not the level) now has a significantly positive partial effect on price in both samples and with either MFP or labor productivity growth as controls. Once more, there is no support for the Merger Guidelines concern about highly concentrated industries (regression (5) or (7)). The regressions say that once the change in the level of costs is comprehensively controlled – the upward shift due to input prices and the offsetting downward shift due to productivity growth33 – the margin of price over cost has widened where concentration has increased. The hitch in this interpretation is that, as we have seen, the level of costs may not be independent of the concentration increase.

This hitch also creates a potential estimation issue. In principle a point of MFP growth shifts costs down as much as a point of input cost growth shifts costs up. This implies equal and opposite signed coefficients on the two in regression (4) or (5). Instead we find somewhat smaller MFP effects and (t-test not shown) we can comfortably reject the null. To see if results might be sensitive to the disparity in the size of the two coefficients I imposed equality on them, with results show in Table 4B. The first two regressions in this table impose a benchmark of textbook constant cost competition – i.e., prices completely determined by the level of costs in the long run, which implies coefficients of +1 and - 1 on the input cost and MFP changes respectively. The last two regressions impose the looser constraint that the two coefficients should be equal and opposite signed, as might be implied by, say, imperfect competition.34 The constrained regressions yield the same pattern of results (and similar magnitudes) as the previous table – i.e., significant concentration change effects when holding changes in input costs and productivity constant. 5. Summary and Implications

Industrial concentration has been increasing over the entire period since the promulgation of the Merger Guidelines in 1982. It is unclear whether this trend has yet run its course. There is concern about weaker competition as a result of these trends as evidenced, e.g., by higher prices in the wake of many mergers. There is also concern about the possibly reinforcing interplay between rising concentration and declining business dynamism and productivity (e.g., Council of Economic Advisers, 2016). I have tried to inform these concerns by describing salient trends in one sector – US manufacturing – over the long period since the first Merger Guidelines.

Specifically, instead of looking only at mergers in a few industries, I ask whether more concentration however arrived at is usually associated with higher prices across many manufacturing industries. I also ask about the productivity-concentration nexus. Have the newly concentrated industries been more or less productive than other industries? And how does the answer fit with the previous one about prices? The answers are meant to put the discussion of concentration into empirical perspective, not to settle questions of whether concentration is cause, effect or common symptom of any association with prices and productivity. For example, we are going to worry more about lax merger enforcement if increased concentration is more often found alongside rising prices and falling productivity than the reverse.

That is not the kind of world we have been in for the last 30 or so years, at least in the manufacturing industries whose data I have summarized. There is no systematic pattern in prices – they are about as likely to rise as fall in more concentrated industries. This seems to be the resultant of opposing tendencies that roughly cancel: the more concentrated industries seem to be more productive but firms in these industries also seem to retain most of the resulting efficiency gain in higher margins.

There is variety in the underlying results depending on sample periods, definitions of productivity and the like. But if we put the variety to one side and look at the point estimates a fairly consistent empirical story emerges. This is summarized in table 5, which walks through two scenarios - one involving an increase in concentration and the other comparing industries with different levels of concentration. Table 5 does this separately for each 15 year sample period, using results from the previous tables, as indicated in column (1), as the steps in this walk. In panel I, I work through the case of a one standard deviation increase in the change of concentration (which translates into around 90 extra HHI points in either period), and in panel II I compare industries with average and one SD above average concentration (a difference that works out to around 700 HHI points). To keep things simple I’ll focus on the results involving MFP growth and measure everything in SD units.

Panel I starts with the productivity effect of increased concentration (A.1): +.161 SD extra MFP growth in the NAICS period. The relevant price regression implies a .085 SD price reduction (panel I, B.1) from this much MFP growth. Then I add back the markup effect (i.e., price effect holding productivity and input costs constant) of .108 SD (panel I, C. 1). The net implied effect (-.085+.108) is the .023 shown on line a) of panel 1, D. a). The pattern of extra productivity and extra markup netting out to a small price increase (.046 SD) holds for the SIC regressions. For comparison I also show results for the “reduced form” regression of price on productivity (panel I, D .c).

Panel II does the same exercise for the level of concentration. Here we get consistently favorable productivity effects and inconsistent price effects that sum to small price reductions in both periods (-.077 SD and -.052 SD; panel II, D. a). The table does not include the interaction between the two concentration effects (rising concentration also increases the average level), which would reduce or essentially eliminate the already small positive price effects in panel I.

In short, the exercise tells of trivial net price effects arising from sometimes more sizeable productivity and markup effects that roughly offset each other. This pattern has been in place for 30 years or more. If it hasn’t run its course by now, there are at least two important implications. One is for the sources of increased concentration. Perhaps relaxed antitrust enforcement is part of the story, but it is not the whole story. Operating at large scale seems to have become a lower cost way of doing business, and increased concentration is a way of achieving large scale. This is a broad generalization with, no doubt, numerous exceptions. But it seems true enough in many industries to dominate the data. The efficiency advantages stimulating concentration are enhanced if, as also seems more true than not, higher concentration entails margin expansion.

The other implication is for antitrust merger policy. I find no evidence here consistent with the central tenet of that policy, which is that more concentration is only worrisome in already concentrated industries. Yet, ironically or paradoxically, neither is there is support for change, if current policy is read as more relaxed than alternatives. Calls for a revival of tough enforcement appear premature, since this runs the risk of reducing productivity without helping consumers.

### Concentration OK---1NC

#### No widespread evidence of concentration even exists.

Werden ’18 [Gregory J. Werden and Luke M. Froeb; Economics PhD at the University of Wisconsin-Madison, 42-year Economic Counsel of the Department of Justice’s Antitrust Division; Entrepreneurship and Free Enterprise at Vanderbilt University, Deputy Assistant Attorney General of the Department of Justice’s Antitrust Division; Vanderbilt Owen Graduate School of Management Research Paper, “Don’t Panic: A Guide to Claims of increasing Concentration,” No. 3156912]

Excessive Aggregation Makes Observed Concentration Trends Meaningless

Simple thought experiments prove that concentration trends for market aggregates are not informative of concentration trends in the underlying markets.16 We posit particular compositions for 1998 and 2018 of NAICS 3-digit subsectors, on which some academics have focused in identifying concentration trends.17 In our experiment, each subsector spans ten markets, and each market had ten firms in 1998. The far left panel in Figure 4 is a representation of each 1998 subsector, with the ten columns representing the ten distinct markets and each cell representing a firm. The areas of the cells reflect firm size, e.g., sales. We posit that each subsector has ten equal-sized firms in 2018. The other panels in Figure 4 depict two very different ten-firm subsector configurations for 2018.

Figure 4. Aggregation Can Completely Mask Market Concentration Trends, omitted.

The middle panel in Figure 4 depicts the result of one firm in each market acquiring every other firm in its market. The ten cells in each column are merged in 2018 A to reflect merger to monopoly in each market: Each market has an HHI of 10,000, which is a huge increase in concentration from HHI of 1,000 in 1998. The panel on the far right in Figure 4 depicts the result of non-horizontal mergers, with each firm in one market acquiring a firm in every other market in the subsector: Each market in 2018 B has an HHI of 1,000, just as it did in 1998. Although horizontal and non-horizontal mergers have completely different effects on market concentration, here they have exactly the same effect on the concentration of NAICS 3-digit subsectors. And they can have exactly the same effect on NAICS 6-digit industries, especially if markets are local.

Excessive aggregation also leads to fallacies associated with averaging. To see this, change the experiment so that, in 1998, half of the markets in each subsector had 5 equal-sized firms and half had 10 equal-sized firms, and assume that the former firms were twice the size of the latter, so all markets were of equal size. Each subsector is represented by the left-hand panel in Figure 5. In 1998 the HHIs were 2,000 for half of the markets and 1,000 for half of them, while the subsector HHI was 150.

Figure 5. Market Growth Affects Aggregations of Markets, omitted.

Suppose now that there were no mergers since 1998, and that no market shares changed but the 5-firm markets all grew twice as fast as the 10-firm markets. The 2018 situation is depicted in the right-hand panel of Figure 5. The subsector HHIs have increased to 200, but the market HHIs have remained just as they were in 1998. Changes in composition of the economy easily can lead to changes in subsector concentration without corresponding changes in market concentration.

Figure 6. Market and Sector Concentration Can Move in Opposite Directions, omitted.

Subsector concentration also can increase even if the concentration of every market in a subsector decreases. To see this, suppose everything is the same as in the second thought experiment except that every market experienced entry, with the 5-firm markets ending up with 6 equal-sized firms, and the 10-firm markets ending up with 12 equalsized firms. In Figure 6, the left-hand panel is exactly the same as in Figure 5, and the right-hand panel is the same as that in Figure 5 but for the new firms. Every market in the economy is now less concentrated than in 1998; the market HHIs are 1,667 and 833 rather than 2,000 and 1,000. But the change in composition causes every subsector to be more concentrated; the HHI for every subsector increased from 150 to 167.

What Do We Know about Trends in Market Concentration?

Data suitable for investigating trends in market concentration are not available for most of the U.S. economy. A few industries, however, are particularly rich in data because they are regulated in some way by the federal government. For three such industries, useful information on concentration trends has been compiled.

The airline industry experienced great change since deregulation in the late 1970s, including many mergers, but examinations of market concentration—at the route level— have not found systematic increases. Over the period 1984–90, the weighted average route-level HHI on domestic U.S. routes decreased slightly.18 During 1995–2009, the HHIs “for the largest 1000 short-, medium- and long-haul routes revealed a general downward trend in concentration.”19 And for 2007–12, “a slight reduction in concentration in the highest-traveled markets” was observed.20

Since 1980 the U.S. banking industry experienced more than 10,000 mergers, yet economists at the Federal Reserve System’s Board of Governors found that local market concentration, measured by the HHI, did not increase.21 One study reported that “average local market concentration measures . . . hardly budged throughout 1980–98.”22 Another study found that “average local market concentration decreased” from 2000 to 2010, although the decrease was slight.23

The Federal Communications Commission (FCC) tracks concentration in local wireless telecommunications markets.24 The FCC reported that the population-weighted average HHI increased from 2423 in 2004 to 3111 in 2015.25 In the Economist’s analysis, this industry stood out as the only one with high revenues, high concentration, and a large increase in concentration. It is notable that major mergers that would have caused substantial additional increases in concentration were remedied or blocked. The Justice Department secured divestitures in 2004 and 2005 that prevented increases in market concentration from the acquisition of AT&T Wireless by Cingular26 and from the acquisition of Western Wireless by ALLTEL.27 The proposed acquisition of T-Mobile by AT&T was abandoned in 2011 when the Department filed suit to block it,28 and the 2017 merger or Sprint and T-Mobile was called off in the face of antitrust opposition.

How Concerned Should We Be about Increases in Market Concentration?

No evidence we have uncovered substantiates a broad upward trend in the market concentration in the United States, but market concentration undoubtedly has increased significantly in some sectors, such as wireless telephony. Such increases in concentration, however, do not warrant alarm or imply a failure of antitrust.

Increases in market concentration are not a concern of competition policy when concentration remains low, yet low levels of concentration are being cited by those alarmed about increasing concentration. The Economist’s analysis mentioned above deemed an industry concentrated if the CR4 exceeded 1/3, yet a CR4 of 1/3 implies an HHI of at most 1,111, and the federal antitrust enforcement agencies consider a market unconcentrated as long as its HHI is below 1500. An essay from the Brookings Institution decrying increasing concentration also cited HHIs in the unconcentrated range.29 In the 1960s, merger enforcement in the United States was directed largely at unconcentrated markets, but most of those merger challenges would be rejected by courts today.

Moreover, no new merger legislation could prevent increases in market concentration. Prohibiting mergers does not alter the natural evolution of industry structure in which some firms thrive and grow while others languish or fail. An old literature in industrial organization economics explains that, when success and failure are random events, markets become concentrated over time.30

More importantly, market concentration naturally results from the growth of firms that are more innovative and efficient than their peers.31 A group of academics reporting increased industry concentration cite the rise of “superstar firms” as the cause of increasing concentration and as a major force reshaping the economy.32 But if superior skill and industry account for the spectacular success of these firms, both the competitive process and antitrust law are working as intended.

Digital media dramatically increased the speed of information dissemination even if it is unreliable. Without careful review of the claims or the underlying data, questionable claims of increasing concentration have become policy axioms.33 The evidence does not show increasing *market* concentration, so DON’T PANIC. However, the wisdom of existing antitrust law and policy always should be subject to continuous re-evaluation.

### Cyber---1NC

#### No cyber impacts.

Lewis ’20 [James Andrew; 8/17/20; senior vice president and director of the Strategic Technologies Program at the Center for Strategic and International Studies; "Dismissing Cyber Catastrophe," https://www.csis.org/analysis/dismissing-cyber-catastrophe]

More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are:

Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals.

There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.)

No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare.

State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war.

This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation.

The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability.

One major failing of catastrophe scenarios is that they discount the robustness and resilience of modern economies. These economies present multiple targets and configurations; they are harder to damage through cyberattack than they look, given the growing (albeit incomplete) attention to cybersecurity; and experience shows that people compensate for damage and quickly repair or rebuild. This was one of the counterintuitive lessons of the Strategic Bombing Survey. Pre-war planning assumed that civilian morale and production would crumple under aerial bombardment. In fact, the opposite occurred. Resistance hardened and production was restored.1

This is a short overview of why catastrophe is unlikely. Several longer CSIS reports go into the reasons in some detail. Past performance may not necessarily predict the future, but after 25 years without a single catastrophic cyberattack, we should invoke the concept cautiously, if at all. Why then, it is raised so often?

Some of the explanation for the emphasis on cyber catastrophe is hortatory. When the author of one of the first reports (in the 1990s) to sound the alarm over cyber catastrophe was asked later why he had warned of a cyber Pearl Harbor when it was clear this was not going to happen, his reply was that he hoped to scare people into action. "Catastrophe is nigh; we must act" was possibly a reasonable strategy 22 years ago, but no longer.

The resilience of historical events to remain culturally significant must be taken into account for an objective assessment of cyber warfare, and this will require the United States to discard some hypothetical scenarios. The long experience of living under the shadow of nuclear annihilation still shapes American thinking and conditions the United States to expect extreme outcomes. American thinking is also shaped by the experience of 9/11, a wrenching attack that caught the United States by surprise. Fears of another 9/11 reinforce the memory of nuclear war in driving the catastrophe trope, but when applied to cyberattack, these scenarios do not track with operational requirements or the nature of opponent strategy and planning. The contours of cyber warfare are emerging, but they are not always what we discuss. Better policy will require greater objectivity.

## Adv---Systemic Risk

### Systemic Risk---1NC

#### Systemic risk is a hoax.

Moosa ’10 [Imad; October 4; Finance Professor at RMIT in Melbourne, Australia; Journal of Banking Regulation, “The myth of too big to fail,” vol. 11]

There is only one argument for TBTF, the argument of systemic risk and failure. But there is no support in history for the proposition that the failure of one institution could bring about havoc on the financial system and the economy at large. There are numerous cases of financial institutions that were allowed to fail without significant systemic problems. The resulting losses were shared by a large number of investors and creditors, who would have been making good returns in previous years. Then some managers who had been accumulating huge personal fortunes through parasitic activities would lose their jobs and most likely find others. A failed institution would then disappear because of serious errors of judgements, so what? Is not this a feature of capitalism? Is not this the corporate version of the survival of the fittest? Is this not what Adam Smith believed in? Failure is necessary in a free market as it improves economic efficiency. When a company fails, a more successful company can buy its good assets, releasing them from incompetent management. The same applies to the labour force. It is a hoax to believe that catastrophic systemic losses can result from the failure of a badly managed financial institution.

### Cyber---1NC

#### Cyberattacks murder small firms.

Foster ’20 [Dakota and Zachary Arnold; May; Visiting Researcher at Georgetown's Center for Security and Emerging Technology, graduate student in the Department of War Studies at King’s College London; Research Fellow at the Center for Security and Emerging Technology, J.D. at Yale Law School; Center for Security and Emerging Technology, “Antitrust and Artificial Intelligence: How Breaking Up Big Tech Could Affect the Pentagon’s Access to AI,” <https://cset.georgetown.edu/wp-content/uploads/CSET-Antitrust-and-Artificial-Intelligence.pdf>]

Smaller AI firms might invest less in cybersecurity, making them and their products more vulnerable. Cybersecurity is expensive, and trade secret theft occurs primarily through cyberattacks.155Although big companies have a larger attack surface and more points of vulnerability, they also have the ability to invest in cybersecurity. By contrast, small firms often lack the cybersecurity resources to defeat sophisticated, state-sponsored hackers.

The top U.S. tech firms lead in domestic absolute spending on IT, which includes cybersecurity.156 Facebook’s Head of Global Affairs, Nick Clegg, claimed that “the resources that we will spend on security and safety this year alone [2019] will be more than our overall revenues at the time of our initial public offering in 2012. That would be pretty much impossible for a smaller company.”157

Not coincidentally, smaller businesses run a greater risk of cyberattack,158 and they are less likely than large companies to identify the source.159 Because of their size and access to larger companies through the supply chain, smaller firms are lucrative cyberattack targets.160Moreover, if smaller, post-breakup companies increasingly work on defense-relevant products, they will become more salient targets for foreign actors. Cybersecurity breaches generally result from internal mistakes rather than foreign government activity,161 yet “Defense Technology” and “Information and Communication Technology” are two of six industries identified by the National Counterintelligence and Security Center as the most likely targets for foreign intelligence collectors.162

### Meltdowns---1NC

#### No meltdowns impact.

Shellenberger 19 Michael Shellenberger, author, environmental policy writer, cofounder of Breakthrough Institute and founder of Environmental Progress, Time Magazine “Hero of the Environment.” [It Sounds Crazy, But Fukushima, Chernobyl, And Three Mile Island Show Why Nuclear Is Inherently Safe, 3-11-19, https://www.forbes.com/sites/michaelshellenberger/2019/03/11/it-sounds-crazy-but-fukushima-chernobyl-and-three-mile-island-show-why-nuclear-is-inherently-safe/#5b4a65ff1688]

But now, eight years after Fukushima, the best-available science clearly shows that Caldicott’s estimate of the number of people killed by nuclear accidents was off by one million. Radiation from Chernobyl will kill, at most, 200 people, while the radiation from Fukushima and Three Mile Island will kill zero people. In other words, the main lesson that should be drawn from the worst nuclear accidents is that nuclear energy has always been inherently safe. The truth about nuclear power’s safety is so shocking that it’s worth taking a closer look at the worst accidents, starting with the worst of the worst: Chernobyl. The nuclear plant is in Ukraine which, in 1986, the year of the accident, was a Soviet Republic. Operators lost control of an unauthorized experiment that resulted in the reactor catching fire. There was no containment dome, and the fire spewed out radioactive particulate matter, which went all over the world, leading many to conclude that Chernobyl is not just the worst nuclear accident in history but is also the worst nuclear accident possible. Twenty-eight firefighters died after putting out the Chernobyl fire. While the death of any firefighter is tragic, it’s worth putting that number in perspective. Eighty-six firefighters died in the U.S. in 2018, and 343 firefighters died during the September 11, 2001 terrorist attacks. Since the Chernobyl accident, 19 first responders have died, according to the United Nations, for ”various reasons” including tuberculosis, cirrhosis of the liver, heart attacks, and trauma. The U.N. concluded that “the assignment of radiation as the cause of death has become less clear.” What about cancer? By 2065 there may be 16,000 thyroid cancers; to date there have been 6,000. Since thyroid cancer has a mortality rate of just one percent — it is an easy cancer to treat — expected deaths may be 160. The World Health Organization claims on its web site that Chernobyl could result in the premature deaths of 4,000 people, but according to Dr. Geraldine Thomas, who started and runs the Chernobyl Tissue Bank, that number is based on a disproven methodology. “That WHO number is based on LNT,” she explained, using the acronym for the “linear no-threshold” method of extrapolating deaths from radiation. LNT assumes that there is no threshold below which radiation is safe, but that assumption has been discredited over recent decades by multiple sources of data. Support for the idea that radiation is harmless at low levels comes from the fact that people who live in places with higher background radiation, like Colorado, do not suffer elevated rates of cancer. In fact, residents of Colorado, where radiation is higher because of high concentrations of uranium in the ground, enjoy some of the lowest cancer rates in the U.S. Even relatively high doses of radiation cause far less harm than most people think. Careful, large, and long-term studies of survivors of the atomic bombings of Hiroshima and Nagasaki offer compelling demonstration. Cancer rates were just 10 percent higher among atomic blast survivors, most of whom never got cancer. Even those who received a dose 1,000 times higher than today’s safety limit saw their lives cut short by an average of 16 months. But didn’t the Japanese government recently award a financial settlement to the family of a Fukushima worker who claimed his cancer was from the accident? It did, but for reasons that were clearly political, and having to do with the Japanese government’s consensus-based, conflict-averse style, as well as lingering guilt felt by elite policymakers toward Fukushima workers and residents, who felt doubly aggrieved by the tsunami and meltdowns. The worker’s cancer was highly unlikely to have come from Fukushima because, once again, the level of radiation workers received was far lower than the ones received by the Hiroshima/Nagasaki cohort that saw (modestly) higher cancer rates. What about Three Mile Island? After the accident in 1979, Time Magazine ran a cover story that superimposed a glowing headline, “Nuclear Nightmare,” over an image of the plant. Nightmare? More like a dream. What other major industrial technology can suffer a catastrophic failure and not kill anyone? Remember when the Deepwater Horizon oil drilling rig caught on fire and killed 11 people? Four months later, a Pacific Gas & Electric natural gas pipeline exploded just south of San Francisco and killed eight people sleeping in their beds. And that was just one year, 2010. The worst energy accident of all time was the 1975 collapse of the Banqiao hydroelectric dam in China. It collapsed and killed between 170,000 and 230,000 people. Nuclear’s worst accidents show that the technology has always been safe for the same, inherent reason that it has always had such a small environmental impact: the high energy density of its fuel. Splitting atoms to create heat, rather than than splitting chemical bonds through fire, requires tiny amounts of fuel. A single Coke can of uranium can provide enough energy for an entire high-energy life. When the worst occurs, and the fuel melts, the amount of particulate matter that escapes from the plant is insignificant in contrast to both the fiery explosions of fossil fuels and the daily emission of particulate matter from fossil- and biomass-burning homes, cars, and power plants, which kill seven million people a year. It's not that nuclear energy never kills. It's that nuclear's death toll is vanishingly small. Consider nuclear's global death toll in context. These are just annual deaths. - walking: 270,000 - driving: 1,350,000 - working: 2,300,000 - air pollution: 4,200,000 By contrast, nuclear's death total is likely to be around 200.

### Grid---1NC

#### No grid impacts.

Uchill ’18 [Joe; august 23; internally citing Department of Homeland Security officials and other cybersecurity experts; Axios, “Why "crashing the grid" doesn't keep cyber experts awake at night,” https://www.axios.com/why-crashing-the-grid-doesnt-keep-cyber-experts-awake-at-night-a40563a5-f266-493d-856a-5c9a5c1383dd.html]

Reality check: The people tasked with protecting U.S. electrical infrastructure say the scenario where hackers take down the entire grid — the one that's also the plot of the "Die Hard" movie where Bruce Willis blows up a helicopter by launching a car at it — is not a realistic threat. And focusing on the wrong problem means we’re not focusing on the right ones.

So, why can't you hack the grid? Here's one big reason: "The thing called the grid does not exist," said a Department of Homeland Security official involved in securing the U.S. power structure.

Think of the grid like the internet. We refer to the collective mess of servers, software, users and equipment that routes internet traffic as "the internet." The internet is a singular noun, but it’s not a singular thing.

* You can’t hack the entire internet. There’s so much stuff running independently that all you can hack is individual pieces of the internet.
* Similarly, the North American electric grid is actually five interconnected grids that can borrow electricity from each other. And the mini-grids aren't singular things either. Taking down "the grid" would be more like collapsing the thousands of companies that provide and distribute power accross the country.
* "When someone talks about 'the grid,' it's usually a red flag they aren't going to know what they are talking about," says Sergio Caltagirone, director of threat intelligence at Dragos, a firm that specializes in industrial cybersecurity including the energy sector.

Redundancy and resilience: Every aspect of the electric system, from the machines in power plants to the grid as a whole, is designed with redundancy in mind. You can’t just break a thing or 10 and expect a prolonged blackout.

* On some level, most people already know this. Everyone has lived through blackouts, but no one has lived through a blackout so big it caused the Purge.
* 'The power system is the most complex machine ever made by humans," said Chris Sistrunk, principle consultant at FireEye in energy cybersecurity. "Setting it up, or hacking it, is more complicated than putting a man on the moon."
* An attack that took out power to New York using cyber means would require a nearly prohibitive amount of effort to coordinate, said Lesley Carhart of Dragos. Such a failure would also tip off other regions that there was an attack afoot. Causing a power outage in New York would likely prevent a power outage in Chicago.

## Adv---Dependancy Trap

### Digital Divide---1NC

#### The ‘digital divide’ has nothing to do with American platforms.

Li ’21 [Cheng; October 11; Political Science PhD at Princeton University, director of the John L. Thornton China Center; the Brookings Institution, “Worsening global digital divide as the US and China continue zero-sum competitions,” https://www.brookings.edu/blog/order-from-chaos/2021/10/11/worsening-global-digital-divide-as-the-us-and-china-continue-zero-sum-competitions/]

THE EXPANSION OF DIGITAL DIVIDES IN LDCS

Despite the global growth of digital technologies, a 2021 United Nations report noted that nearly half of the world’s population, 3.7 billion people, lack internet access. Deficiency of digital connectivity is especially prevalent within LDCs, where more than 80% of the population are still offline. In comparison, the unconnected population in developed countries and developing countries stands at 13% and 53%, respectively.

LDCs account for about 14% of the world’s population, and they comprise more than half of the world’s extremely poor. Digital divides both reflect and reinforce socioeconomic disparities. The pandemic has aggravated existing inequalities, often resulting in a widening gap of digital skills.

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#### Order’s resilient, BUT alt causes.

Hirsh ’19 [Michael; December 27; senior correspondent; Foreign Policy, “Why the Liberal International Order Will Endure Into the Next Decade,” <https://foreignpolicy.com/2019/12/27/why-liberal-international-order-will-endure-next-decade-2020-democracy/>]

Title: Why the Liberal International Order Will Endure Into the Next Decade

Subtitle: It’s true that democracy, globalism, and free trade are under assault, but they may prove stronger than the forces arrayed against them in the 2020s.

It’s become fashionable to wonder whether the liberal international order can survive the malign forces that have been lining up against it during the 2010s—what the Wall Street Journal called the “Decade of Disruption.” But based on recent trends, it’s a fair bet that democracy, globalism, and open trade will endure handily into the third decade of the 21st century.

Start with the state of democracy. Nothing has been more alarming to internationalists than the one-two punch of U.S. President Donald Trump and British Prime Minister Boris Johnson, who have taken power in two of the world’s oldest and most important democracies by awakening the old demons of nationalism. With Trump focusing his ire on NATO and the World Trade Organization, and Johnson stalking out of the European Union, the two leaders have transformed the once-hallowed “special relationship” from a bulwark of global stability (sullied though it was by the Iraq War) into what looks more like a wrecking ball. Elsewhere, illiberalism has overtaken young democracies, such as Hungary and Poland, and even threatened mature ones with the rapid rise of nationalist parties such as the Alternative for Germany and Norbert Hofer’s anti-immigrant Freedom Party of Austria. In the world’s largest democracy, India, Prime Minister Narendra Modi and his Hindu nationalist Bharatiya Janata Party appear to be sending the same message. And there are considerable doubts about whether the democratic body politic possesses an immune system strong enough to fight off a plague of cyber-generated misinformation and disinformation, and systemic hacking by such autocrats as Russian President Vladimir Putin.

But democracy just won’t give up, and in 2019—which could justly be called the year of global protest—it kept reinventing itself at the grassroots. This has been happening in the most unlikely of places around the globe, in countries such as Iran, Lebanon, Iraq, Chile, and above all in Hong Kong, where thousands of determined protesters have braved bullets and tear gas, embarrassing Chinese President Xi Jinping even as he brutally consolidates his autocratic rule on the mainland. Perhaps the U.S. and British democracies are becoming decadent—and 2020 will tell us a lot about that question come November—but the idea of democracy remains a powerful, ever-replenishing urge that, as sociologists and political scientists have long told us, only gets stronger the more that income and educational levels increase around the world.

The international economy is also undergoing some severe stress tests—and surviving remarkably intact. The year 2019 began with deep-seated fears that Trump’s trade wars would help trigger a global recession—and among the most concerned was Federal Reserve Chairman Jerome Powell, who midway through the year suggested he and other central bank chiefs simply didn’t know how bad things could get. “The thing is,” Powell said, “there isn’t a lot of experience in responding to global trade tensions.” Growth and investment are still slowing due in large part to the uncertainty Trump has created, but fears of a recession have receded. It turns out the U.S. president cannot single-handedly return the United States to the days of Smoot-Hawley—even his fellow neonationalist Boris Johnson believes in free trade—and the domino effect of retaliatory tariffs that followed in the 1930s, setting the stage for world war. (In June 1930, under the Smoot-Hawley Act, the United States raised tariffs to an average of 59 percent on more than 25,000 imports; just about every other nation reacted in tit-for-tat protectionist fashion, severely depressing the global economy.)

Today, the complexities of a deeply integrated global economy and its supply chains may prove too much to undo—even for the most powerful person on the planet.

And what of the institutions of the international system? The United States has always had an uneasy relationship with its post-World War II progeny, principally the United Nations, the WTO, and NATO—despite helping create them—and Trump only gave expression to an American id that was long seething under the surface. True, Trump is demeaning these institutions to an unprecedented degree and demanding far more of them. But he’s only saying more stridently what was said by, say, President Barack Obama, who also criticized the NATO allies for being free-riders, and former President George W. Bush, whose administration privately mocked the alliance and sneered at the U.N. (Another little-remembered precursor to Trump was President Bill Clinton’s feisty first-term trade representative, Mickey Kantor, who once said he wasn’t interested in free-trade “theology” and preferred that Americans behave like mercantilists.)

Trump is making a serious run at denuding the WTO by taking down its appellate court, but even that institution is likely to outlast a 73-year-old president who, at most, has only four more years in office to wreak havoc on the global system. This is especially likely because he is now mostly alone in his anti-globalist passion with the departure of his deeply ideological national security advisor, the militant John Bolton.

Let’s not forget either that the advent of Trump and Johnson represents a legitimate backlash to major policy errors made by the elites who have dominated the international system. George W. Bush led the Republican Party badly astray with his strategically disastrous Iraq War and fecklessness over the deregulation of Wall Street, which set the stage for the biggest financial crash since 1929 and the Great Recession. That turned voters off to traditional Republican thinking and opened the door to Trump’s unlikely takeover of the party. Something similar happened in Britain, when Bush’s partner in these neoliberal economic delusions and his ally in an unnecessary war, the once-popular Labour leader Tony Blair, set the stage for Labour’s eventual handoff to the socialist Jeremy Corbyn. (A shift that was, in turn, analogous to the ascent of Sen. Bernie Sanders, Sen. Elizabeth Warren, and the left inside the U.S. Democratic Party in response to the rise of Trump’s 2016 presidential rival Hillary Clinton, who was seen as pro-war and too friendly to Wall Street.)

But the larger point is that Trump and Johnson are only the latest stresses to a system that, since the end of the Cold War, has suffered some pretty major ones and yet endured. In the quarter-century since then, financial markets collapsed several times, and the global economy has remained intact. Islamist terrorists have struck at major capitals around the world, and a clash of civilizations hasn’t ensued. The world’s two largest economies, the United States and China, incessantly bicker, but they’re still doing business. Ivory tower realists continue to be dead wrong in their predictions that the international system will fall back into anarchy, even when politicians like Trump are doing their best to make that happen. On the realist view, the so-called West and its institutions should have disintegrated after the Cold War with the disappearance of the Soviet Union; as Owen Harries wrote in Foreign Affairs in 1993, “The political ‘West’ is not a natural construct but a highly artificial one. It took the presence of a life-threatening, overtly hostile ‘East’ to bring it into existence and to maintain its unity. It is extremely doubtful whether it can now survive the disappearance of that enemy.”

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#### dependency - new competitors won’t be American business, but Chinese saboteurs angling for technological supremacy

Thompson ’20 [Loren; July 16; Senior Contributor for Aerospace and Defense, former Deputy Director of the Security Studies Program at Georgetown University, Ph.D. and M.A. in Political Science and Government from Georgetown University; Forbes, “Inventing Bogus Antitrust Arguments to Bring Down Big Tech Is Bad for National Security,” <https://www.forbes.com/sites/lorenthompson/2020/07/16/inventing-bogus-antitrust-arguments-to-bring-down-big-tech-is-bad-for-national-security/?sh=613768e4784b>]

What makes this relevant to national security is that the new entrants increasingly aren’t American, they’re Chinese. The biggest reason U.S. manufacturing has receded since 2000 is the rise of China, and the success of companies like Beijing-based Bytedance—TikTok’s parent—is a signal that China is capable of doing the same thing to U.S. tech companies that it has already done to steel makers and electronics manufacturers.

TikTok was downloaded over 300 million times during the first quarter on 2020, making it the most downloaded app during a single quarter in history. Six of the top ten apps in India, soon to be the world’s most populous country, are Chinese. Indian authorities reversed that trend when they banned Chinese apps after a border skirmish, but America’s Internet-based service providers can expect continuous assaults by Chinese rivals for the foreseeable future.

Beijing is undoubtedly encouraging if not subsidizing such assaults. The contrast between how the Chinese government treats its tech companies and the way Washington treats its own players is hard to miss. Whether we like it or not, companies like Alphabet and Facebook have become the leading purveyors of American ideas and influence to the world. If they are hobbled, Chinese competitors will eagerly take their place.

There is no compelling argument for breaking up or otherwise sanctioning U.S. technology leaders. If you think America’s Big Tech companies have too much power, imagine how it will feel when their successors are run out of the People’s Republic.

#### America's maintaining a research and quality advantage

TR '20 [MIT Technology Review; 10/29/20; "America's technological leadership is at stake in this election," https://www.technologyreview.com/2020/10/29/1011375/americas-technological-leadership-is-at-stake-in-this-election/]

The government’s share of funding for basic research—the precursor to the kinds of technologies companies can exploit—has been dropping too, from above 70% in the mid-20th century to 42% in 2017. Again, the private sector has filled the gap, but its priorities are different; much of the replacement money is in pharma. Governments are more likely to fund long-term, risky bets like clean energy, sustainable materials, or smart manufacturing—the kinds of technologies the world really needs right now.

Contrast this with the situation in China. There, government-funded R&D has gradually grown as a percentage of GDP (chart 2), even as the economy has exploded in size. The true measure of government investment is probably higher, since a lot of the private-sector R&D spending is by state-owned enterprises that to some extent take orders from the government.

And overall, China's R&D spending is shooting up, approaching the level in the US (chart 3).

True, China is still far behind on many measures. Basic research, though it’s growing, still represents a much smaller share of GDP than in the US or other advanced economies (chart 4). Also, as we’ve written, although the number of scientific papers and patents published by Chinese researchers is ballooning, the quality of that work (as measured by things like the number of citations) is low, and homegrown Nobel laureates are few and far between.

Nonetheless, the gap is closing. Kai-fu Lee, a venture capitalist and former head of Google China, expressed an oft-heard view at a recent event held by the New York–based China Institute: the US, he said, is “further ahead in fundamental research in AI as well as almost any other domain,” but China is “catching up quickly” and has an edge in AI applications that require masses of data, such as machine translation and speech recognition. (Our China issue looked at several other areas in which the country is carving out an advantage.)

Much of China’s technological acceleration is linked to state-led plans such as “Made in China 2025,” which aims to make China more self-sufficient (pdf, page 21) in key high-tech industries like zero-emission vehicles, industrial robots, mobile-phone chips, and medical devices. This is in stark contrast to the US approach, where the main driver of decisions about where the money goes has been venture capitalists and the increasingly deep-pocketed tech giants, all of them desperate to find the next product idea that can rapidly scale into a billion-dollar business.

Of course, one should take the claims made about schemes like Made in China 2025 with a pinch of salt. The shortcomings of centrally planned economies are well documented, and governments are usually not very good at innovation. The regulatory reforms in the mid-20th century that paved the way for the venture capital industry are arguably some of the most important technology policies the US ever adopted.

#### America's responding to adversaries but cannot afford antitrust expansion.

CCIA '9/13 [Computer & Communications Industry Association; 9/13/21; "National Security Issues Posed by House Antitrust Bills," https://www.ccianet.org/wp-content/uploads/2021/09/CCIA-KS-NatSec-White-Paper.pdf/]

The United States is at a critical inﬂection point in its innovation race with China and the economic, geopolitical, and national security stakes could not be higher. Chinese President Xi last year announced his government would invest $1.4 trillion by 2025 to overtake the United States in key technology ﬁelds, and as of 2018, nine of the top twenty technology ﬁrms by market valuation are now based in China. In response to this ongoing threat, the Senate recently passed an ambitious proposal to empower U.S. technology research and development, particularly in key emerging technologies like artiﬁcial intelligence, quantum computing, and cloud services.

However, the House of Representatives is considering several bills targeting leading U.S. technology ﬁrms with sweeping provisions that are in serious tension with the overall U.S. national innovation strategy to combat China and other adversaries. In fact, these bills contain provisions that, as drafted, may inadvertently undermine U.S. national security by transferring sensitive data to adversaries and granting foreign competitors access to U.S. digital platforms, hardware, and software. Additionally, these bills would weaken the U.S.’s ability to counter foreign cyber attacks, espionage, inﬂuence and surveillance efforts. Furthermore, only a small group of U.S. tech companies are in scope under these bills, while a much larger set of foreign rivals in China, Russia, and other markets are entirely exempt from the legislation.

#### Biden's building on Trump's hardline approach with proactive investments and partnerships.

Kharpal '21 [Arjun; 4/28/21; senior technology correspondent for CNBC; "First 100 days: Biden keeps Trump-era sanctions in tech battle with China, looks to friends for help," https://www.cnbc.com/2021/04/29/biden-100-days-china-tech-battle-sees-sanctions-remain-alliances-made.html/]

In his first 100 days as president, Joe Biden has made one thing clear — he wants to make sure the U.S. outcompetes China on a number of fronts, with technology being front and center.

His policies continue the Trump-era hardline on export controls to Chinese technology companies but adds some new elements — collaboration with allies in areas seen as critical, such as semiconductors and a focus on beefing up domestic capabilities.

“The priority is on domestic innovation and forging technology alliances to coordinate confrontation against China in the tech domain,” Paul Triolo, head of the geo-technology practice at Eurasia Group, said.

What has Biden done so far?

The Biden administration has kept some Trump-era export bans on Chinese companies. Under Trump, telecommunication equipment maker Huawei and China’s largest chipmaker SMIC were put on the so-called “entity list,” which restricts American firms from exporting technology to companies on this blacklist.

Last year, the Trump administration introduced a rule that effectively cut Huawei off from critical semiconductor supplies, a move which has hurt the technology giant’s smartphone business. The U.S. maintains Huawei is a national security threat, a claim the Chinese firm has repeatedly denied.

For Trump, ensuring U.S. technology did not make it into the hands of Chinese companies was key, especially in critical areas like chips.

While Biden has kept these rules in place, he has also announced policies aimed at boosting American innovation.

“Where the Trump administration tended to focus on defensive measures (e.g., restrictions on Chinese military companies), early messaging about Biden’s approach suggests that it pairs those with more offensive, or proactive ones — investments, for example, in alternatives to China,” said Emily de La Bruyere, co-founder of consultancy Horizon Advisory.

In his American Jobs Plan, Biden calls on Congress to make a $180 billion investment in advancing “U.S. leadership in critical technologies and upgrade America’s research infrastructure.” There is also a call to invest $50 billion in manufacturing and research, via the bipartisan CHIPS Act.

Earlier this month, a number of Democrat and Republican lawmakers reintroduced the Endless Frontier Act to the legislative process. This proposes changing the name of the U.S. National Science Foundation (NSF) to the National Science and Technology Foundation (NSTF). This is an independent agency of the U.S. government aimed at advancing scientific research.

A technology directorate would be set up under the newly-named NSTF and would be given $100 billion over five years to “reinvigorate American leadership in the discovery and application of key technologies that will define global competitiveness.”

The directorate would fund research in 10 key areas including artificial intelligence, semiconductors, robotics, materials sciences, advanced communications technologies, among others.

The focus on domestic investment but also maintaining export controls is “primarily driven by the perceived need to protect the U.S. company technology leadership in key areas such as semiconductor manufacturing,” Triolo said.

But “raising new barriers around U.S. technologies and essentially weaponizing key supply chains as part of an effort to contain China’s rise are (also) part of the Biden strategy,” he added.

### at: innovation low

#### VC investment in tech is rising, NOT declining - and startups are less important for innovation in tech

Kennedy 20 - Dr. Kennedy was the chief economist for the U.S Department of Commerce (Joe, <https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones>, emuse)

Large Internet platforms such as Amazon, Apple, Facebook, and Google have attracted increased regulatory attention over the past several years. Most recently, the Democratic majority in the Subcommittee on Antitrust, Regulatory, and Administrative Law of the U.S. House of Representatives Committee on the Judiciary culminated a 16-month investigation of competition in digital markets by issuing a report calling for significantly greater regulation of these companies. One argument made against large technology companies is that they limit innovation, either by acquiring start-ups in order to terminate the development of innovations that threaten their continued dominance (“killer acquisitions”) or by creating areas of the market in which they exert dominance to the extent others won’t invest in these areas (“kill zones”). Either way, large tech companies supposedly limit prospective challengers from being able to take root and grow, thereby limiting not only competition but overall U.S. innovation. In fact, acquisitions may be beneficial, at least to innovation, if they allow the larger firm to benefit from economies of scale or network effects, and enable the smaller firm to reach many more customers much more quickly with a higher quality product. Moreover, the prospect of being purchased by a larger company often motivates founders and venture capitalists to invest. Making it more difficult for them to sell might make it harder for promising firms to find funding. And rather than looking at so-called kill zones as an innovation deterrent, it is more accurate to view them as an innovation enabler, guiding entrepreneurial resources (talent and capital) to areas that have the best chance of success. Why invest in companies seeking to duplicate usually mature products offered by large firms that benefit from economies of scale or network effects? It is better for society if new companies concentrate instead on other markets they can break into. Indeed, that seems to be occurring as venture capital investment, especially in early-stage deals, has grown significantly over the last decade, indicating that there is no shortage of innovation opportunities. Although the areas of investment have shifted in response to market developments, this reflects the natural evolution of Internet platforms, rather than a pernicious attempt to stifle competition or innovation. In either case, regulators already have sufficient powers to protect competition. The current focus on consumer welfare adequately incorporates concerns about innovation. While antitrust authorities going forward probably should broaden their review of acquisitions by dominant companies, there is no need to significantly change antitrust statutes or embrace structural remedies such as structural separation or breakups, as these would likely slow innovation and harm consumers. WORRIES ABOUT KILLER ACQUISITIONS Large technology-based companies have long used acquisitions as a way to grow and complement their innovation. For example, Between 1993 and 2000, Cisco Systems spent roughly $9 billion buying more than 50 companies. The technology it acquired allowed it to use some of its remaining resources to focus on its core competencies and gain needed capabilities to expand in global markets.1 Since 1998, the four major tech companies (Amazon, Apple, Facebook, and Google) have purchased over 500 companies.2 In February 2020, the Federal Trade Commission (FTC) issued Special Orders to the five largest tech firms (Amazon, Apple, Facebook, Google, and Microsoft) requiring each to provide the commission with information about past acquisitions that were not previously reported to the government. The commission ’s action reflects a broader concern about the effect of acquisitions on competition and innovation within large tech companies. The majority House Subcommittee on Antitrust, Commercial, and Administrative Law report states: [F]irms investigated by the Subcommittee have acquired hundreds of companies just in the last ten years. In some cases, a dominant firm evidently acquired nascent or potential competitors to neutralize a competitive threat or to maintain and expand the firm’s dominance. In other cases, a dominant firm acquired smaller companies to shut them down or discontinue underlying products entirely—transactions aptly described as “killer acquisitions.”3 WORRIES ABOUT KILL ZONES Others worry that large technology companies deter investment because no one wants to challenge their market. At a recent antitrust workshop organized by the Department of Justice, investor Paul Arnold said: Everybody’s dissatisfied with LinkedIn. Every founder thinks there’s a better thing to be done. And they’re probably right. It’s not that good. But they have a very powerful network effect. It’ s just incredibly hard to overcome that network. And I’ve never seen something compelling. And so, my choice is investing in a company that’s going to try to do that, or has a very clear path for selling something in insurance, easy choice.4 In 2018, The Economist wrote, “Anything having to do with the consumer internet is perceived as dangerous, because of the dominance of Amazon, Facebook and Google…. Venture capitalists are wary of backing startups in online search, social media, mobile and e-commerce. It has become harder for startups to secure a first financing round.”5 The article predicts kill zones are likely to stay, partly because “the giants have tons of data to identify emerging rivals faster than ever before.”6 The House Subcommittee on Antitrust, Commercial, and Administrative Law report states: Some venture capitalists, for example, report that there is an innovation “kill zone” that insulates dominant platforms from competitive pressure simply because investors do not view new entrants as worthwhile investments. Other investors have said that they avoid funding entrepreneurs and other companies that compete directly or indirectly with dominant firms in the digital economy.7 ACADEMIC PAPERS IDENTIFYING KILL ZONES AND KILLER ACQUISITIONS A number of academic papers have studied both kill zones and killer acquisitions in the tech sector. Economists Sia Kamepalli, Raghuram Rajan, and Luigi Zingales developed a model to measure the prospect that the acquisition of a potential competitor could deter future innovation in a market.8 In their model, the growth of a platform relies on its adoption by “techies.” These early adopters of technology can accurately judge whether a new platform is better than the incumbent. They are willing to incur the switching costs in order to master a new platform provided they 1) judge it to be significantly better than the alternatives; or 2) believe it will eventually become the new standard. Their adoption gives the new technology critical market share in the early stages until others, influenced by early adopters, also join. They postulate that if new companies are frequently acquired and their technology is sidelined, techies will be less inclined to adopt new technology. But if mergers are discouraged, techies will have more confidence that the new technology will eventually replace the existing standard, thereby justifying their investment in adopting it. In this way, acquisitions of new entrants by incumbents can reduce new entry and investment by reducing the new technology’s ability to attract techies.9 The authors acknowledged that prohibitions on mergers can also dampen investment by making it harder for entrants to obtain early-stage funding: “[T]he social optimum will not be an outright prohibition or complete laissez faire, but some middle-of-the-road policy, which will trade off the ex-post welfare losses produced by merger restrictions against the ex-ante gains in investments in innovation.”10 In order to discover whether actual acquisitions deter innovation, the paper looks at acquisitions of software companies for over $500 million. Of the hundreds of deals large Internet companies have done over the last decade, only nine acquisitions met this criteria: seven by Google and two by Facebook. The authors also looked at data from Pitchbook to measure the amount of investment in start-up companies operating in the same “space” as the companies acquired, as well as the total number of venture capital deals funded. From this sample, they concluded that sectors targeted by the two companies exhibit lower investment by venture capitalists. This suggests that Facebook and Google may crowd out investments even before they acquire a company.11 However, Mark Jamison of the American Enterprise Institute has argued that the acquisitions Kamepalli et al. used don’t fit the assumptions of their model, making any conclusions dubious at best.12 The Kamepalli paper assumes that each transaction meets five key assumptions, including that the entrant produces the same product as the acquirer, only better; that there is no multi-homing; and that the acquirer never innovates. Jamison alleged that of the nine transactions examined by Kamepalli et al., five fail to meet any of the assumptions, and four meet just one. Given this, it is hard to have much faith in the conclusions.13 Ian Hathaway took a similar approach as Kamepalli et al. Using data from Pitchbook, he tracked the change in annual venture capital first financings starting in 2009.14 Looking at Amazon, Google, and Facebook, the data let him compare historical financing in the specific market each company is in (e.g., for Google, Internet software), the next broadest category excluding the specific market (for Google and Facebook, software, excluding Internet software), and also for the next-highest category (for both companies, information technology (IT) excluding software). The results allowed him to compare outside investment in the markets primarily occupied by the three companies with investment in markets once and twice removed from them. In each case Hathaway found that investments in the core market increased rapidly up to a point, but that, after a certain date, the rate of increase fell relative to adjacent markets, giving the appearance of killer zones. However, Hathaway also found that investment in immediately adjacent markets continues to grow strongly for several years—in fact, much more strongly than venture capital as a whole, and that despite tailing off, some first fundings continue to occur in the core market. For this reason, Hathaway cautioned: A number of factors outside of market power could explain the decline of new startup activity in [core] industries. Even if market power (or the leveraging of that power into adjacent markets) is to blame, that doesn’t automatically spell trouble for innovation—and in markets with strong network effects, strong concentration might be the most likely or even preferred outcome.15 Other studies have looked at the effect permissive acquisition policy can have on the technology developed by an entrant in an established market. They find that, at least in certain circumstances, merger policy can help a dominant firm create a killer zone within which there is less innovation by new companies. A paper by Kevin A. Bryan and Erik Hovenkamp concludes that if start-up acquisitions are unlimited, a leading incumbent will sometimes acquire new technology partly to keep other companies from catching up. Start-ups will shift innovation to inventions that improve the leader’s technology rather than those that help the broader market. Should the market leader acquire a monopoly, its willingness to purchase new technologies will fall, thereby reducing private returns on future innovations.16 A model developed by economist Michael Katz of the University of California, Berkeley, cautions that “the competitive effects of mergers can be complex and highly fact specific.”17 His model predicts that the effect of permissive merger policy on the incentive to innovate depends on how superior an entrant’s technology is compared with the incumbent’s. In certain cases, incumbents will respond by developing rival technology solely to place pressure on the incumbent to sell. However, models such as this, which are divorced from actual data, show what could conceivably happen under certain assumptions—but provide little guidance on what will actually happen. A study by Etla Economic Research uses Crunchbase data on venture capital deals to measure the actual impact of acquisitions by comparing activity in product markets that experienced acquisitions with markets that have not.18 The study compares the timing of acquisitions in a particular market with the pattern of market entry and venture capital financing both before and after the event. The authors concluded that buyouts by the large technology companies generally led to substantially lower market-entry rates and less venture capital funding in the relevant market. They reported that this effect grew during the 2010s when the large companies gained access to increasing amounts of user data showing what websites and apps people were using, allowing them to spot new challengers sooner. Acquisitions of platform companies have also decreased entry into markets unrelated to those directly affected by the acquisition. Finally, a paper by Mark Lemley and Andrew McCreary argues that the heavy dependence on acquisitions as an exit strategy for venture capitalists is problematic.19 The authors alleged that acquisitions lead to concentration in the tech industry by reinforcing the power of large firms, and preclude the development of the type of disruptive technologies that have traditionally displaced incumbents. But, although they suggested a number of possible solutions, it is not clear any of them would result in better outcomes on average. ARGUMENTS AND STUDIES AGAINST THE KILL ZONE AND KILLER ACQUISITIONS THEORIES Despite the warnings about killer acquisitions and kill zones, many have written and argued that the negative impacts are overstated, and future acquisitions should not be curtailed. Indeed, there are a number of reasons to believe that these concerns are significantly overstated. The Tech Industry Is Different As in much of the anti-monopoly movement’s criticism of technology industries, the critique of killer acquisitions does not reflect the unique nature of technology industries, wherein continued innovation is key and product platforms are complex and require many different components, often ones that companies simply do not have capabilities in. As Edward Roberts and Wenyun Kathy Liu wrote in 2001: The most dramatic change in global technological innovation—the movement toward externally oriented collaborative strategies that complement internal research-and-development investments—began more than a decade ago. Today companies use alliances, joint ventures, licensing, equity investments, mergers and acquisitions to accomplish their technological and market goals over a technology’s life cycle.20 Unlike most other industries, the large Internet companies have plenty of cash to invest in new research. Their markets also experience rapid technological innovation that threatens to displace them if they do not continue to offer a better service than their rivals. The high capacity for internal investment reduces the need for venture capital. But the dynamic nature of the markets ensures continuous innovation, even without entrants. A market leader that merely buys up companies to protect itself from having to innovate will soon be eclipsed by the next new thing. This is part of the reason these companies spend significantly more on research as a portion of their revenue than virtually any other public companies in the world.21 This is why, despite expressing many concerns about the competitive threat posed by large Internet firms, a recent report for the European Commission urges caution in toughening merger policy for digital companies: In the digital field, mergers between established firms and start-ups may frequently bring about substantial synergies and efficiencies: while the start-up may contribute innovative ideas, products and services, the established firm may possess the skills, assets and financial resources needed to further deploy those products and commercialise them.22 Likewise, economist Luis Cabral argued that several features of digital platforms make acquisitions a more attractive form of technology transfer.23 First, the evolution of business models is much harder to predict. Partly for this reason, preemptive actions are difficult to judge given the poor definition of markets and the uncertainty in identifying future rivals. Second, intellectual property is more difficult to protect than in markets such as pharmaceuticals. As a result, companies cannot be sure of what they are licensing. Nor can they be confident that a rival will not simply copy their technology for free. Cabral noted that, out of hundreds of mergers completed by these companies over the last decade, only a handful typically attract any criticism. As an anecdote, he mentioned Alta Vista’s refusal of an offer to purchase Google for $1 million. He pointed out that Google’s substitutability and superiority was not apparent at the time. In fact, two years later, Alta Vista still had more than double Google’s market share. Also, while the tech industry does use acquisitions as a way to gain needed technology and talent, it does not do so as a substitute for investing in its own innovation. According to the 2019 EU Industrial R&D Scorecard, of the top companies globally with the largest increase in research and development (R&D) expenditures, four were large U.S. tech companies (Apple, Facebook, Google, and Microsoft). And of the top 5,000 companies in the world ranked by R&D spending in 2019, Alphabet (Google’s parent) ranked number 1, Microsoft 3, Apple 6, and Facebook 11. And according to the EU, Amazon would have ranked first overall if it had broken out its R&D and content development expenditures. Even with the ability to acquire other firms, these firms seem to have plenty of incentive to invest in R&D. Moreover, it is precisely their size and market power that gives them the ability to invest so heavily in R&D.24 So-Called Kill Zones Could Maximize Welfare and Innovation To the extent established companies are conducting research in a narrow market, it makes sense for entrants to avoid head-on competition and instead exploit complementary markets. This is almost as likely to be true whether the industry is dominated by one firm or five. Breaking into an industry with relatively mature technology dominated by large players is never easy. That is why many industries have gone through periods of heavy investment in the early stages of an industry as companies try to become one of the dominant players. Once the industry has matured to achieve economies of scale or network effects, new entrants tend to focus on complementary technology rather than trying to challenge the larger companies head-on. Few complained after the 1930s automobile-sector start-ups declined precipitously. By the 1930s, it made little sense to invest in new automobile companies when it was clear the technology system (internal combustion engine) and major players (American Motors, Chrysler, Ford, and GM) had already been established. Investment to create new entrants would have represented a waste of societal resources. Instead, funding went to emerging industries such as radios, chemicals, and machine tools. Today is no different. The technology and business models for search, social networks, and Internet retailing are relatively mature; society is better off if entrepreneurs and venture capitalists focus on other areas. Indeed, to the extent investors may be focusing their capital outside a few areas where large firms have established positions in what are somewhat mature technologies, it is arguably a good thing because it means there is more capital for other promising areas. Hathaway, in fact, acknowledged the possibility that “venture capital investment may have increased in non-tech sectors too, so that the tech giants have simply diverted the flow of capital to other areas.”25 The is buttressed by an earlier study by Oliver Wyman, which shows that acquisitions by Facebook, Google, and Amazon have not had a negative effect on the amount of venture capital flowing into tech industries.26 (See figures 1 and 2.) Acquisitions Often Increase Innovation There is often an assumption that acquisitions decrease innovation, but a number of studies suggest the opposite. A Dutch study looks at acquisitions in the manufacturing sector, which includes technology companies, and finds that both acquisitions and divestitures are positively correlated with increased innovation.27 Likewise, a paper by Igor Letina, Armin Schmutzler, and Regina Seibel argues that prohibiting killer acquisitions strictly reduces the variety of innovation projects in an industry because it deters innovation.28 They built a model in which prohibiting acquisitions has a positive effect on consumer surplus only if the bargaining power of the entrant is small and competition in the industry is not too intense, because both raise the incentives for an incumbent to do its own innovation rather than purchasing that of others. They cautioned: While prohibiting acquisitions always has a strictly negative innovation effect in the case without commercialization (i.e. for killer acquisitions), it is not necessarily true for acquisitions with commercialization. Thus, even though killer acquisitions may appear to be particularly problematic, the case for prohibiting them is not necessarily stronger than for acquisitions with commercialization if one takes ex-ante innovation incentives into account.29 Moreover, Will Rinehart of the Center for Growth and Opportunity wrote that the large majority of acquisitions are motivated by the desire to purchase either the technology or the talent of the specific firm, rather than to stifle a potential rival.30 Sometimes termed “acqui-hires,” these acquisitions refer to when a company is acquired largely as a means to hire its workforce, and the newly hired team is often more productive after acquisition, in part because of economies of scope and increased resources.31 These acquisitions also often benefit both parties by integrating new technology into a broader network and helping the new firm scale up. They also benefit consumers by disseminating innovations more broadly. Rinehart related how Facebook’s purchase of Instagram was frequently mocked at the time. Since the purchase, Facebook has helped Instagram become a widely used platform. Likewise, when Google purchased the start-up Keyhole, an innovative digital mapping company, (at the request of Keyhole founders), Google invested billions to improve and expand the mapping coverage. Bill Kilday, one of the founders of Keyhole, wrote that Google “gave them zero direction [and] unlimited resources.”32 In Keyhole’s early days, Kilday talked with someone who had an idea to do street-level mapping, complete with pictures. He estimated that because of the vast scale of it, coupled with an uncertain business model, it was essentially science fiction, not likely to be seen in his lifetime. Google, with its Street View project, did it in less than five years, providing it to consumers for free. Moreover, by acquiring Keyhole to help it create Google maps, Google disrupted an incumbent duopoly (MapQuest and TeleAtlas) that was charging for their products. Moreover, the assumption there are many killer acquisitions does not seem to be borne out. One reason is they are seldom profitable. A mathematical model developed by Pehr-Johan Norbäck, Charlotta Olofsson, and Lars Persson predicts that companies will only purchase a new technology in order to kill it if the quality of the invention is small, otherwise the profit from introducing the technology is higher than the value of deterring its use.33 This incentive to acquire also falls when intellectual property rights are strong, thereby increasing the entrant’s commercial value. Likewise, a paper by Axel Gautier and Joe Lamesch that surveyed acquisitions by Google, Amazon, Facebook, Microsoft, and Apple finds that out of 175 acquisitions in the 2015–2017 period the paper surveys, only one qualified for being a potential “killer” acquisition: Facebook’s acquisition of a photo-sharing app called Masquerade, which had raised just $1 million in funding before being acquired.34 Acquisitions Often Fail and Do Not Provide a Competitive Advantage The antimonopoly critics of tech firms assume the firms are all powerful and prescient, and all their acquisitions achieve the companies’ goals. It is easy for them to remember successful acquisitions, but failures tend to be forgotten. Moreover, even successful mergers are unable to protect the acquirer from technological and market changes that erode its competitive advantage. We have seen a number of examples of this. In the late-1990s and early 2000s, Lucent and Nortel were the powerful tech giants of their time. In the quest to get even larger, they invested tens of billions of dollars in acquisitions. In just five years, Lucent acquired nearly 40 companies, including spending over $20 billion for Ascend Communications.35 Nortel spent $9.1 billion to acquire Bay Networks in 1998.36 Almost all these acquisitions were subsequently written off or divested at a significant loss. Sun Microsystems acquired numerous companies during its heyday, including StarDivision, [StorageTek](https://www.computerhope.com/comp/stortek.htm), Procom Technology, and at least 88 others.37 In 1997, it bought tech start-up Diba, which created technology for devices that scan television and the Internet. As one article states, “This is just one more of Sun's strategic ventures to stay ahead of competition.”38 At the time, Sun was “big tech” and “ideally positioned with its leadership in network computing and [the Internet](https://www.encyclopedia.com/science-and-technology/computers-and-electrical-engineering/computers-and-computing/internet).”39 But it was for naught because eventually Sun, near failure, was purchased by Oracle, in what is generally seen as a poor decision by Oracle. Likewise, once-dominant Internet titan Yahoo! purchased over 114 technology companies, many of them start-ups.40 When it was just five years old, it was worth more than GM, Ford, and Chrysler combined. Indeed, some antimonopolists of the day believed that the Department of Justice would soon bring an antitrust suit against Yahoo! for being a dominant monopoly.41 But the acquisitions did not enable it to remain ahead of Google in search. A team led by Mats Holmström pointed out that many acquisitions, which by definition are expected to benefit the acquirer, fail miserably. A long academic literature documents the fact that, in different industries over different time periods, only a fraction of mergers meet their financial goals.42 That is why the team expressed skepticism that either WhatsApp or Instagram could have become strong competitors to Facebook. Acquisitions Provide a Needed Exit Route The knowledge of possibly being acquired can also spur entrepreneurial activity and investment. As the report for the European Commission notes: Simultaneously, the chance for start-ups to be acquired by larger companies is an important element of venture capital markets: it is among the main exit routes for investors and it provides an incentive for the private financing of high-risk innovation.43 This argument was echoed by James Pethokoukis of the American Enterprise Institute: Not every founder starts a company intending for it become Amazon. Often future acquisition is the goal. Then the entrepreneur can go on to start another firm or become an investor in other aspirational startups working on risky new ideas. Same goes for the investors in the acquired firm. What’s more, these purchases are often “acquisition-by-hire” situations where the prize is talent rather than the Next Big Thing. And when an upstart firm has a valuable idea, acquisition can be the fastest way to get it to users.44 The Assumption That Small Firms Are Inherently More Innovative Than Large Firms Is Not Borne Out by the Evidence One core argument made by anti-monopolists who oppose large companies and argue that kill zones and killer acquisitions are real and harmful is that small firms are inherently more innovative than large firms. As FTC Commissioner Christine Wilson argued, “[M]any today believe that small firms are inherently more innovative than large ones, so that the acquisition of a small firm by a large one necessarily reduces innovation.”45 For example, Tim Wu recently testified before Congress that innovation in technology sectors would increase if government imposed greater regulations and increased antitrust enforcement because “[o]ver the last century, competitive, open sectors—ecosystems—have proved themselves superior to those monopolized or dominated by a ‘big three’ or ‘big four.’”46 In fact, large companies are as or more innovative than small firms. In a 1996 paper, Wesley M. Cohen and Steven Klepper found that large firms invest more in R&D as a share of sales.47 The number of patents and innovations produced per R&D dollar decline with increasing firm size. But they argued that this reflects a mismeasurement of innovation outputs. Large firms benefit from “cost spreading,” because they can spread the benefits from one innovation across more units and products, leading to a greater overall level of innovation per unit of R&D. They wrote, “Not only does cost spreading provide the basis for explaining the R&D-size relationship, it also challenges the consensus that has emerged from the R&D literature that large firm size imparts no advantage in R&D competition.”48 More recently, in 2016, business professors Anne Marie Knott and Carl Vieregger estimated that a 10 percent increase in the number of employees increases R&D by 7.2 percent, and a 10 percent increase in firm revenues increases R&D productivity by 0.14 percent. This shows that large firms not only invest more in R&D activities, they also enjoy higher returns on innovation output per dollar invested in R&D.49 Other research has found that “small firms prevail in the early stages and innovation tends to concentrate in larger firms as industries evolve towards maturity.”50 In the 1990s, many small firms emerged and competed to be the winners in IT platforms. But only a few firms could emerge as winners, and the ones that did continue to invest in innovation. Data on Venture Investments Suggests Tech Acquisitions and High Market Share Do Not Hurt Start-Ups The right measure of the effect of killer zones is not the trend in the specific market wherein large tech firms operate, but in the overall tech innovation ecosystem. Even Hathaway acknowledged that the relative declines he observed in the narrow markets where the big firms are strongest could be offset by investments moving to other, more promising, markets. In fact, that appears to be exactly what has happened. From 2006 to 2019, venture capital investments in IT deals increased steadily and significantly. Although it leveled off in 2019, tech funding was still 54 percent above the 2017 level. Figure 2 shows the number of technology angel and seed deals as well as the number of early stage deals. The number of angel and seed deals rose by almost six-fold between 2006 and 2019, peaking in 2015. The number of early deals rose by 2.4 times. It is hard to see any sign of investor activity slowing down.

#### Their startup formation statistics are misleading - tech startups are actually booming

Atkinson ’20 [Robert D and Caleb Foote; August 3; Ph.D. at UNC-Chapel Hill, the founder and president of ITIF; research assistant at the ITIF; Information Technology & Innovation Foundation, “Monopoly Myths: Is Concentration Leading to Fewer Start-Ups?” https://itif.org/publications/2020/08/03/monopoly-myths-concentration-leading-fewer-start-ups]

This difference in the kind of new firm start-ups is why dire claims that the sky is falling on new business formation can exist parallel to claims that we are living in a time of robust innovation and entrepreneurship, with Silicon Valley and other tech hubs throughout the nation enjoying frothy and dynamic innovation. As Silicon Valley venture capitalist Marc Andreessen tweeted, “There’s too much entrepreneurship: Disruption running wild!” He added, “There’s too little entrepreneurship: Economy stalling out!”42 A big reason for this contradiction is that the above studies reporting gloom don’t differentiate between lifestyle businesses that stay small (mostly in the retail sector) and growth businesses that don’t.

What really matters is how high-growth, innovation-based start-ups are doing (think: biotech or robotics start-ups, not owner-operated pizza parlors). And here, things are healthy. When MIT professors Jorge Guzman and Scott Stern looked at trends in high-growth entrepreneurship for 15 large states from 1988 to 2014, they found that even after controlling for the size of the U.S. economy, the second-highest rate of high-growth entrepreneurship occurred in 2014.43 They also found that even after controlling for the size of the U.S. economy, the second highest rate of high-growth entrepreneurship occurred in 2014.44 This research indicates that the entrepreneurial potential (successful start-ups as a share of gross domestic product (GDP)) by founding year hit its low point in 1990, peaked in 2000 at almost twice as high, fell after the dot-com bust, then rose to 2007, fell again with the global recession of 2008–2009, but then bounced back to almost record highs by 2014. As Fazio and colleagues have noted, “Quantity-based measures document a troubling, three-decade-long decline in the U.S. rate of entrepreneurship…. Conversely, outcome-based measures indicate that the rate of entrepreneurship is rising. Early-stage angel and venture capital financing of new ventures has been on a significant upswing over the past several years.”45

And when the Information Technology and Innovation Foundation (ITIF) examined data on more than 5 million technology-based start-ups in the United States, it found that the number had grown 47 percent over the last decade.46 For example, from 2007 to 2015, software-firm start-ups increased 20 percent. And there were more software firms in 2016 than in 2007. Their five-year survival rate in 2011 was 17 percentage points higher than in 1999.

### at: small innovators

#### Size does matter, but bigger is better. Large companies innovate more.

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

The Assumption That Small Firms Are Inherently More Innovative Than Large Firms Is Not Borne Out by the Evidence

One core argument made by anti-monopolists who oppose large companies and argue that kill zones and killer acquisitions are real and harmful is that small firms are inherently more innovative than large firms. As FTC Commissioner Christine Wilson argued, “[M]any today believe that small firms are inherently more innovative than large ones, so that the acquisition of a small firm by a large one necessarily reduces innovation.”45 For example, Tim Wu recently testified before Congress that innovation in technology sectors would increase if government imposed greater regulations and increased antitrust enforcement because “[o]ver the last century, competitive, open sectors—ecosystems—have proved themselves superior to those monopolized or dominated by a ‘big three’ or ‘big four.’”46

In fact, large companies are as or more innovative than small firms. In a 1996 paper, Wesley M. Cohen and Steven Klepper found that large firms invest more in R&D as a share of sales.47 The number of patents and innovations produced per R&D dollar decline with increasing firm size. But they argued that this reflects a mismeasurement of innovation outputs. Large firms benefit from “cost spreading,” because they can spread the benefits from one innovation across more units and products, leading to a greater overall level of innovation per unit of R&D. They wrote, “Not only does cost spreading provide the basis for explaining the R&D-size relationship, it also challenges the consensus that has emerged from the R&D literature that large firm size imparts no advantage in R&D competition.”48

More recently, in 2016, business professors Anne Marie Knott and Carl Vieregger estimated that a 10 percent increase in the number of employees increases R&D by 7.2 percent, and a 10 percent increase in firm revenues increases R&D productivity by 0.14 percent. This shows that large firms not only invest more in R&D activities, they also enjoy higher returns on innovation output per dollar invested in R&D.49

Other research has found that “small firms prevail in the early stages and innovation tends to concentrate in larger firms as industries evolve towards maturity.”50 In the 1990s, many small firms emerged and competed to be the winners in IT platforms. But only a few firms could emerge as winners, and the ones that did continue to invest in innovation.

#### Empirical consensus that dominant platforms are procompetitive.

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

1. Does the Empirical Evidence Support the Claim That a Ban on Vertical Integration Would Make Consumers Better off?

Since Ronald Coase’s initial intellectual foray into the boundaries of the firm, the causes and consequences of vertical integration have been one of the most empirically studied economic phenomena in industrial organization economics.200 Three leading empirical literature surveys summarize the results of these studies. It is notable that these surveys are not only authored by well-established and industrial organization economists, but also that the authors span the ideological spectrum, and have significant experience in enforcement agencies. What do these literature surveys find? In sum, each author accepts the well-known theoretical result that vertical integration might harm competition, but each study finds that vertical integration is overwhelmingly procompetitive in practice.

In two separate papers, Francine Lafontaine and Margaret Slade reviewed the available empirical evidence and examined the effects of vertical integration and vertical restraints on consumers.201 In a 2005 paper on exclusive dealing and other vertical restraints, Lafontaine and Slade concluded that:

In general, [then,] the empirical evidence leads one to conclude that consumer well-being tends to be congruent with manufacturer profits, at least with respect to the voluntary adoption of vertical restraints. When the government intervenes and forces firms to adopt (or discontinue the use of) vertical restraints, [in contrast,] it tends to make consumers worse off.202

In 2007, Lafontaine and Slade discuss vertical integration specifically.203 After reviewing the evidence, the authors again found that “under most circumstances, profit-maximizing vertical-integration decisions are efficient, not just from the firms’ but also from the consumers’ point of view. Although there are isolated studies that contradict this claim, the vast majority support it. Moreover, even in industries that are highly concentrated so that horizontal considerations assume substantial importance, the net effect of vertical integration appears to be positive in many instances.”204

Current and former enforcement agency economists—including the former Chief Economist for the DOJ’s Antitrust Division, Luke Froeb— conducted a study of the same literature on vertical restraints and vertical integration. Froeb et al. reach similar conclusions, finding, “there is a paucity of support for the proposition that vertical restraints [or] vertical integration are likely to harm consumers.”205 Finally, former FTC and DOJ economist Daniel O’Brien conducted a similar in-depth study of the literature on vertical restraints and integration, and reached the same conclusion: that “[t]he theoretical literature on [vertical agreements] implies a largely benign view of the effects of vertical restraints/integration,” and that “[w]ith few exceptions, the literature does not support the view that these practices are used for anticompetitive reasons.”206

None of the papers go so far as to say that vertical mergers or restraints should be per se legal. However, the consistency of results across these literature surveys is clear: vertical integration, in general, benefits consumers. The obvious and direct effect of adopting the Hipster Antitrust proposal to ban vertical integration would be to dramatically and reliably decrease consumer welfare

#### Performance determines size, not the other way around – antitrust stalls competition.

Jamison ’19 [Mark; December 10; Nonresident Senior Fellow at the American Enterprise Institute, Professor of the Public Utility Research Center at the University of Florida’s Warrington College of Business, former member of the FCC transition team, Ph.D. in Economics from the University of Florida; American Enterprise Institute, “Big Tech and the backwards logic of the neo-Brandeisians,” <https://www.aei.org/technology-and-innovation/big-tech-and-the-backwards-logic-of-the-neo-brandeisians/>]

The NB logic goes something like this: Big Tech is, well, big! And being big endows the companies with enduring power over the economy and over politics. Such influence stifles innovation and destroys democracy. So the only thing to do is break up the companies. The second best option is for a specialized government regulator to control their business practices.

The problem with this logic is that each step is backwards.

The first step puts emotion-based conclusions in front of facts and analysis. The claim appeals to megalophobia (fear of big things), asthenophobia (fear of weakness), neophobia (fear of anything new), soteriophobia (fear of dependence on others), etc.

Luis Brandeis — whom the NBs assert they follow — did the same thing. He attacked bigness, but left the definition vague so that its orientation was primarily emotional. This worked for Brandeis because big business was a new phenomenon for his contemporaries. Just as is happening today, new technologies and management practices had enabled businesses to grow to sizes larger than people had experienced previously. This seemed frightening to many people, and Brandeis capitalized on the fears.

The second step assumes that a company’s size determines its performance. Actually, performance determines size. Each Big Tech company achieved its scale from customers continually choosing it over competitors. The superior products and services attracted customers, which made each company big.

Another error is that proponents of NB antitrust assume that rival and political complaints are evidence of abuse of power. Actually, they are evidence of a lack of power. If the firms could truly control their markets, they would have no rivals of any note and startups would avoid the space. In reality, eBay and others compete with Amazon, YouTube and Snapchat compete with Facebook, Microsoft and Yelp compete with Google, etc. And venture capital is flowing into the tech sector in part because startups believe they can capture some or all of the leading companies’ profits.

The idea that Big Tech is politically powerful is also contrary to evidence: How many politically powerful people or institutions are under attack by Republicans, Democrats, the media, Attorneys General, the EU, India, China, and more? The list of critics and enemies of Big Tech is long. Politically powerful entities generally have lots of friends. Big Tech seems to have none.

What happens if NBs have their way with Big Tech? My [estimate](https://www.aei.org/technology-and-innovation/3-reasons-regulation-of-big-tech-could-cost-consumers-700-billion/) is that US consumers would lose $700 billion in economic value annually. Powerful politicians and their allies would [control](https://www.aei.org/technology-and-innovation/a-darker-side-of-elizabeth-warrens-war-on-tech/) or at least influence what people are allowed to share on social media. Online businesses would have to be [neutral](https://www.aei.org/technology-and-innovation/some-faulty-premises-of-neutrality-movement-part-i/) and [bland](https://www.aei.org/technology-and-innovation/some-faulty-premises-of-neutrality-movement-part-ii/) rather than innovative and valuable. And regulation would likely [stall](https://www.aei.org/technology-and-innovation/creating-an-online-trust-in-the-guise-of-trust-busting/) competition and innovation.

### at: disconnect

#### Platforms leverage their size to invest in cool technologies like 5G, Quantum, and AI

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

II. THE BENEFITS DIGITAL PLATFORMS BRING

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

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

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

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

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

These companies are also among the most innovative in the world. Amazon and Alphabet led all companies in investment in research and development in 2018.

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

III. THE ALLEGED THREAT TO ANTITRUST

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

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

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

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

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

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

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

### at: “evolve”

#### Literature consensus proves platform integration sparks growth. Separating platforms is like ‘amputating your leg to treat a mosquito bite.’

Hoffman ’21 [D. Bruce and Garrett D. Shinn; June; Director of the Bureau of Competition at the US Federal Trade Commission; Associate specializing in antitrust at Cleary Gottlieb; CPI Antitrust Chronicle, “Self-Preferencing and Antitrust: Harmful Solutions for an Improbable Problem,” <https://www.clearygottlieb.com/-/media/files/cpi--hoffman--final-pdf.pdf>; KP]

VI. A WORD ABOUT CURES THAT ARE WORSE THAN DISEASES

Medieval doctors often killed their patients with ill-advised treatments.30 Similarly, there is a serious risk that the current zealotry against self-preferencing will inflict considerable economic damage in an attempt to cure problems that, to the extent they exist, could be remedied by less-drastic measures. To explain the danger, we briefly touch on the practical consequences of some of the remedies being bandied about for self-preferencing.

Some anti-self-preferencing advocates are calling for root-and-branch structural relief, i.e. preventing platforms from self-preferencing by preventing them from vertically integrating in the first place, and carving up platforms that are already integrated.31 After all, you can’t favor your own product if you’re not allowed to offer it in the first place. But empirical evidence indicates that vertical integration is generally good — it reduces prices, reduces costs, increases competition, and benefits consumers — and is not usually harmful.32

Footnote starts.

32 E.g. U.S. Dep’t of Justice and Fed. Trade Comm’n, Vertical Merger Guidelines (“Vertical mergers combine complementary economic functions and eliminate contracting frictions, and therefore have the capacity to create a range of potentially cognizable efficiencies that benefit competition and consumers.”); Francine Lafontaine & Margaret Slade, Vertical Integration and Firm Boundaries: The Evidence, 45 J. of Econ. Lit. 629 (2007) (“[The weight of the evidence] says that, under most circumstances, profit-maximizing vertical-integration and merger decisions are efficient, not just from the firms’ but also from the consumers’ points of view.”); Joshua D. Wright, Douglas H. Ginsburg, Tad Lipsky, & John M. Yun, Connecting Vertical Merger Guidelines to Sound Economics, Truth on the Market Blog (Feb. 6, 2020), https://truthonthemarket.com/2020/02/06/wright-vmg-sym- posium/ (“With few exceptions, the literature does not support the view that [vertical mergers] are used for anticompetitive reasons. . . . [T]he empirical reality [is] that vertical relationships are generally procompetitive or neutral.”); D. Bruce Hoffman, Director, FTC Bureau of Competition, Vertical Merger Enforcement at the FTC, Remarks as Prepared for Delivery at Credit Suisse 2018 Washington Perspectives Conference (Jan. 10, 2018), available at https://www.ftc.gov/system/files/documents/public\_statements/1304213/ hoffman\_vertical\_merger\_speech\_final.pdf (“Moreover, while efficiencies are often important in horizontal mergers, they are much more intrinsic to a vertical transaction due to the cost-reducing effects of most vertical mergers, at least in the abstract. Due to the elimination of double-marginalization and the resulting downward pressure on prices, vertical mergers come with a more built-in likelihood of improving competition than horizontal mergers.”); Jon Sallet, Deputy Assistant Attorney General For Litigation, Antitrust Division, U.S. Department of Justice, The Interesting Case of the Vertical Merger, Remarks as Prepared for Delivery, ABA Fall Forum (Nov. 17, 2016) (“And here it’s worth emphasizing that vertical integration can create significant efficiencies that benefit suppliers, distributors, and consumers alike.”).

Footnote ends.

And, as we’ve shown above, this is equally true for platform vertical integration. In fact, because of platforms’ incentives and the consequences of multisided indirect network effects, vertical integration by platforms seems particularly likely to be beneficial, and particularly unlikely to be harmful. Indeed, many of the complaints leveled at vertically integrated platforms are, on their face, complaints about practices that benefit consumers by providing better products (though competitors, of course, don’t like those products). Broadly prohibiting platform vertical integration to avoid the risk that in some rare cases vertical integration might be anticompetitive would be like amputating your leg to treat a mosquito bite.

#### And, even if they are right that integration is counterproductive - divestiture - which is what separation requires - is still a catastrophically misguided remedy

Hovenkamp ’21 [Herbert; June; Law Professor at the University of Pennsylvania; Yale Law Journal, “Antitrust and Platform Monopoly,” vol. 130, no. 8]

For most antitrust problems outside the context of acquisitions, structural breakup is not a promising remedy. The history of deconcentration measures in American monopolization cases is not pretty.249 Requiring integrated firms to spin off specific plants or products will make them less attractive to consumers but will not inherently serve to dissipate market power in any particular product or service.

Entities and assets acquired by merger, however, present different issues. In some cases, acquired assets are eventually so completely integrated into the acquiring firm that the spinoff problem is not materially different from that of internally developed assets. In others, the degree of integration is less or acquisition lines remain distinct, and the undoing of mergers becomes a more promising remedy. For example, in its Facebook antitrust complaint, the FTC requests an order for Facebook to divest Instagram and WhatsApp, two companies that Facebook acquired, respectively, in 2012 and 2014. 250 Both Insta- gram and WhatsApp continue as separate platforms with distinct member- ship.251 Although the extent of integration between them and Facebook is significant, some of that integration occurred as recently as 2020. 252 Writers have suggested that even this integration was primarily gamesmanship to make an antitrust breakup more difficult.253 A more challenging problem is Android, which Google acquired in 2005 when it was still a tiny, financially troubled firm making software for digital cameras and mobile phones.254 Most of its development into a mature smartphone operating system occurred after this acquisition.255

One successful breakup of a unitary firm was that of AT&T, implemented by a 1982 antitrust consent decree.256 The AT&T network had been presumed to be a natural monopoly, but it lost that status as technological changes facilitated the growth of wireless communication. The breakup left the incumbent local exchange carriers intact for local service because they still depended on wired connections to each customer. However, long-distance service and the production of instruments were divested and turned over to competition.257 The AT&T breakup carries some important lessons for anyone considering structural relief against a monopoly: identify those markets and assets where competition can be made to work well, and devise the remedy accordingly.

The structural breakup problem is more severe for digital platforms. First, breakups can decrease the scope of both direct and indirect network effects, resulting in loss of value. Second, setting aside externally acquired assets, the platforms are typically highly integrated. To be sure, a multidivisional firm such as Alphabet probably can be broken into separate parts that follow its corporate lines—perhaps one firm for the Android OS; another for application services such as Gmail and Google Search; and others for YouTube, Google Nest home products, and Waymo autonomous-driving technology.

But breaking apart noncompeting units does not necessarily increase the amount of competition. If a manufacturer makes 80% of the world’s toasters and 75% of the world’s blenders, compelling divestiture of one will yield one firm that makes 80% of the world’s toasters and a second firm that makes 75% of the world’s blenders. Because the two divisions are not competitors to begin with, we have done nothing to increase the amount of competition.

To do that, we need to break *into* the production of each product. We might force divestiture of half of the firm’s toaster business and half of its blender business, spinning them off to other firms. This, however, can be a much more difficult thing to accomplish. The more integrated the primary company, the greater the difficulties. For example, if the firm makes its toasters in one plant with an integrated production line and blenders in a different plant, a divesture that actually increases competition will likely require dismantling or restructuring the plants themselves.

Breaking up any platform subject to significant economies of scale threatens to be socially costly. It would force inefficiencies

on all postbreakup constituents as well as cause consumer harm. For example, Amazon has roughly 67% of the market for ebooks.258 We might divest Amazon’s ebook business and give it to a different firm. Currently, a user can call up a book title on Amazon and select from available formats, whether hardback, paperback, Kindle (ebook), or audio. Forcing a divestiture of Kindle would require a customer who wanted the ebook version to go to a different firm’s website. Ebooks are sold by other resellers, including many of the publishers themselves. The principal impact of such a di- vestiture would be to make it less convenient for readers to select a book format. That is not likely to be a consumer-welfare improvement, and it will do little to promote competition within the ebook industry.

#### Enforcement doesn’t “evolve” is a healthy way. Even if they win every economic claim, antitrust enforcers and courts won’t apply the aff cleanly.

Gilbert ’21 [Richard J; March; Economics Professor at UC Berkeley; Information Economics and Policy, “Separation: A Cure for Abuse of Platform Dominance?” vol. 54]

There is no single formula to address concerns about the alleged abuse of market power by these platforms. Separation is an alternative to behavioral remedies of the type imposed by the European Commission in the Google Shopping case. These behavioral remedies have accomplished little to restore competition that the EC alleged was harmed by Google’s search algorithms. Separation has the potential to be a more effective remedy to restore competition allegedly harmed by the conduct of a platform owner, but separation raises many questions, including the platforms that require separation, the services that must be separated, the terms and governance of separation requirements, and procedures to evaluate appeals from line-of-business restrictions. Structural separation is administratively feasible for some platform activities, such as the sale of merchant and proprietary products on Amazon’s online retail platform or the separation of Google’s Ad Manager from its other products and services. Some past acquisitions could be unwound. Functional separation is another alternative for some services. Amazon could establish an ethical wall between its proprietary sales and sales by independent merchants. However, structural or functional separation does not necessarily eliminate incentives for discrimination and Amazon’s use of non-confidential information obtained from sales of products on its platform can benefit consumers. For many other platform services, it is unlikely that structural or functional separation would prove to be more consumer-friendly than the line-of-business restrictions imposed on AT&T by FCC regulation and the 1984 Modified Final Judgment, which ultimately collapsed under the weight of numerous waiver requests and were replaced by the 1996 Telecommunications Act. Courts have avoided structural remedies in part because they are difficult to implement and potentially harm corporate, shareholder, and labor interests (Waller, 2009). Yet the threat to dissolve a corporate structure can deter some future anticompetitive conduct precisely because it has disruptive consequences. For separation to serve this deterrence function, it should punish conduct that has clear and substantial anticompetitive effects and is likely to be repeated in the future absent the threat of dissolution. However, the deterrence benefit from structural or functional separation is limited for digital platforms. There is disagreement about the conduct by digital platforms that warrants harsh punishment and about effective remedies for allegedly harmful conduct. Although antitrust liability and remedy are separate concepts, it is questionable whether conduct should be liable for antitrust enforcement if enforcers cannot fashion a workable remedy for the challenged conduct (Melamed, 2009). Furthermore, many of the alleged concerns related to conduct by the major digital platforms are specific to particular business models and therefore punishments would not necessarily deter other types of conduct by the platforms. Antitrust is a critical enforcement tool despite the difficulties of crafting effective remedies to restore or deter anticompetitive conduct. Merger enforcement can and should prevent platforms from increasing their market power or using acquisitions to eliminate nascent competitors. Monopolization law can address abuses of monopoly power, which can occur at many different levels in the chain of activities engaged by digital platforms. Along with antitrust oversight from properly designed consent decrees, the threat of monetary penalties can be an effective deterrent for anticompetitive conduct, but they must be large enough to make the conduct unprofitable, which is not the case today. Antitrust enforcement cannot solve all of the problems raised by the concentration of market power in the digital economy. Public policy for the digital economy requires a mix of institutional approaches, including regulations, to promote competition in ways other than structural or functional separation, such as by requiring platforms to share data that create a barrier to new competition, along with stronger antitrust enforcement to address abuses of market power. The most important lesson for structural separation of the major digital platforms gained from the history of telecommunications deregulation and other reforms is the trade-off between encouraging competition and innovation. The breakup of AT&T into separate functional and geographic units imposed by the 1984 MFJ promoted competition in some sectors of the industry that had been highly regulated. The decree arguably also stifled some innovations by erecting a wall between local telecommunications services, long distance, and enhanced information services when technology was eroding the distinctions between these services. There are no simple structural solutions that both preserve the incentive and ability of platforms to innovate and protect rivals from the consequences of that innovation.

### at: Cavenaile

#### No UQ - tech companies are uniquely incentivized to pursue maximum innovation intensity regardless of competition

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

The Tech Industry Is Different

As in much of the anti-monopoly movement’s criticism of technology industries, the critique of killer acquisitions does not reflect the unique nature of technology industries, wherein continued innovation is key and product platforms are complex and require many different components, often ones that companies simply do not have capabilities in. As Edward Roberts and Wenyun Kathy Liu wrote in 2001:

The most dramatic change in global technological innovation—the movement toward externally oriented collaborative strategies that complement internal research-and-development investments—began more than a decade ago. Today companies use alliances, joint ventures, licensing, equity investments, mergers and acquisitions to accomplish their technological and market goals over a technology’s life cycle.20

Unlike most other industries, the large Internet companies have plenty of cash to invest in new research. Their markets also experience rapid technological innovation that threatens to displace them if they do not continue to offer a better service than their rivals. The high capacity for internal investment reduces the need for venture capital. But the dynamic nature of the markets ensures continuous innovation, even without entrants. A market leader that merely buys up companies to protect itself from having to innovate will soon be eclipsed by the next new thing. This is part of the reason these companies spend significantly more on research as a portion of their revenue than virtually any other public companies in the world.21

#### Enabling acquisitions is vital for superstars. Err neg---empirics prove.

Agarwal ’20 [Asheesh; 12/21/20; J.D. from the University of Chicago Law School, Advisor for the American Edge Project, Deputy General Counsel and Internet Policy Counsel at Tech Freedom; "Today's antitrust ideas would have stifled yesterday's innovations," https://thehill.com/opinion/technology/531131-todays-antitrust-ideas-would-have-stifled-yesterdays-innovations/]

A century ago, Louis Brandeis railed against corporate consolidations and “the curse of bigness.” Today, the concern is “nascent” corporate acquisitions, where an established company purchases a smaller firm in a related market to nip a potential rival in the bud. A recent report from the House Judiciary Committee proposes a variety of fixes to this perceived problem: heightened merger scrutiny, structural separation of large companies into single lines of business, and the possibility of unwinding past acquisitions.

As described in a new paper, however, history urges caution. Had these ideas been in place during the last century, America’s economy could look very different — and smaller. Nascent acquisitions repeatedly benefited competition and consumers. They provided acquired companies with critical financing to survive and innovate. They allowed acquiring companies to bring new products to consumers faster and cheaper. Moreover, as data confirms, such purchases usually lead to lower prices and greater innovation for consumers.

Nobel laureate Ronald Coase identified the most famous such acquisition. In 1908, Fisher Body designed an enclosed auto body to appeal to women. This insight helped the company prosper, and by 1918, Fisher Body sold to most major car manufacturers. Within a few years, however, General Motors purchased all of Fisher Body’s stock. Coase concluded that the purchase made economic sense: GM secured its supply chain and Fisher Body found a permanent customer for its specialized output. The purchase also allowed GM to lower costs by locating its body plants near its assembly plants.

Similarly, John Deere might never have sold tractors but for a nascent acquisition. In the early 20th century, Deere was a farm equipment company that sold planters, buggies, wagons, and grain drills. Deere’s tractors, however, all flopped in the marketplace. To satisfy its customer base, in 1918, Deere purchased the Waterloo Gasoline Engine Company, which had developed the first successful gasoline tractor. Deere devoted more than one-third of its advertising budget to touting the tractor. The bet paid off: In its first year, Deere’s distribution network and marketing expertise roughly tripled the sales of Waterloo tractors to consumers, and over time Deere’s green tractors became global icons.

Nascent acquisitions kept some companies alive. In 1926, a bus operator founded Pacific Air Transport to carry mail and passengers between Seattle and Los Angeles. The airline struggled for two years, with thin profits and the loss of several aircraft. In 1928, Boeing bought the company and upgraded its airplanes. Within two years, the company roughly tripled its number of passengers and volume of mail.

More recently, in the tech sector, nascent purchases have increased innovation and output. In 1987, Microsoft purchased Forethought, which allowed it to improve and distribute PowerPoint far more broadly. In 2005, YouTube was a dating site that offered women $20 to upload videos. In 2006, Google purchased the company, injected capital, and upgraded its platform. Five years later, YouTube hit more than three billion daily views.

These examples offer lessons for today. As the FTC acknowledges, Facebook purchased Instagram and WhatsApp, at least in part, because Facebook saw the potential in mobile photo sharing and mobile messaging but couldn’t develop competitive technology internally — just as John Deere saw the potential in tractors, GM in enclosed auto bodies, and Boeing in mail delivery. Each company acquired smaller firms that arguably could have grown to rival their acquirers.

Hindsight isn’t always 20/20. Looking backwards, it’s easy to conclude that John Deere eventually would have developed tractors, that GM would have built entire cars, and that Instagram and WhatsApp would have become viable businesses. In reality, nothing was inevitable. Their success stories required time, money, skill, and the assumption of risk.

In the face of such uncertainty, policymakers should exercise caution before they discourage investment in small companies by rewriting antitrust law, or by bringing lawsuits to unwind deals years after the fact, out of a speculative belief that small acquired companies would have grown into global giants if only they had been left to their own devices. America’s economic history should teach our regulators and policymakers a little humility.

Cavenaile is a neg card:

#### a. Only a small fraction of acquisitions diminish growth.

Cavenaile ’21 [Laurent, Murat Alp Celik, and Xu Tia; July; Economics Professor at University of Toronto Scarborough; Economics Professor at the University of Toronto; Finance Professor at the University of Georgia; Journal of Monetary Economics, “The Dynamic Effects of Antitrust Policy on Growth and Welfare,” vol. 121]

We find that only mergers in industries with two superstars meet our criteria to be classified as anticompetitive acquisitions. An acquisition in such industries converts them to a single-superstar industry in which the remaining superstar need not invest in any innovation until another superstar emerges as a result of small firm innovation. As discussed before, acquisitions in two superstar industries are only profitable when the second superstar is much less productive (and therefore smaller) than the industry leader. Consequently, anticompetitive acquisitions target either newly-minted superstars, or those that have shrunk considerably over time due to continued lack of success in innovation. At the date of acquisition, product market competition from such targets is trivial, but the potential threat from their future innovation is not. Therefore, the industry leader finds it optimal to acquire them due to dynamic considerations, and eliminate competition preemptively.

Focusing on the efficacy of the HHI-based rules to target such anticompetitive acquisitions yields mixed results. The fraction of anticompetitive acquisitions that are investigated is only 16.6%. The largest such acquisitions meet the HHI-based criteria, and are obstructed at the rate. However, the overwhelming majority of anticompetitive acquisitions stay under the radar, since the predicted change in HHI remains below the 1% threshold due to the small size of the targets.

The situation is the opposite in industries with more than two superstars. In three and four superstar industries, none of the acquisitions are classified as anticompetitive acquisitions according to our definition. Despite this fact, 4.08% of the acquisitions in three superstar industries, and 1.18% of those in four superstar industries are investigated.

While the lower investigation rate of non-anticompetitive acquisitions points to some degree of success of the HHI-based rules in targeting anticompetitive acquisitions moreso than the rest, our analysis suggests the existence of considerably large type-I and type-II errors. From a less model-dependent perspective, the primary weakness seems to be the inability to capture merger transactions that involve currently small, but potentially very innovative targets. If acquirers can assess the future potential of innovative targets before the targets ramp up their production and market share, an acquisition is possible without triggering the scrutiny of the antitrust authorities. Ignoring such dynamic considerations may therefore be suboptimal. While figuring out better rules-of-thumb remains beyond the scope of our current study, our model suggests the relative value of the target firm might contain useful information insofar as it captures the future growth prospects of the company.

#### b. It’s NOT empirical. It’s theoretical, based on a model that uses lackluster real-world information.

Cavenaile ’21 [Laurent, Murat Alp Celik, and Xu Tia; July; Economics Professor at University of Toronto Scarborough; Economics Professor at the University of Toronto; Finance Professor at the University of Georgia; Journal of Monetary Economics, “The Dynamic Effects of Antitrust Policy on Growth and Welfare,” vol. 121]

4.7. Model Extensions

It is possible that firms in the real world have more information regarding the potential outcome of a merger transaction proposal. If firms can anticipate that their merger transaction will be blocked by the authorities with reasonable accuracy, they might be dissuaded from applying for a merger in the first place, creating a discrepancy between the observed merger obstruction rate and the unobserved true merger obstruction rate. In Appendix A.6, we extend our model by incorporating antitrust decision anticipation, which amplifies the growth and welfare impact of the counterfactuals. We further show that our results are robust to allowing for elastic labor supply in Appendix A.7. See the Appendix for more details.

### at: killer acquisitions

#### Acqusitions drive competition - they don’t stymie it

Atkinson ’21 [Robert D; March 10; Ph.D. at UNC-Chapel Hill, the founder and president of ITIF; Information Technology & Innovation Foundation, “How Progressives Have Spun Dubious Theories and Faulty Research into a Harmful New Antitrust Doctrine,” https://itif.org/publications/2021/03/10/how-progressives-have-spun-dubious-theories-and-faulty-research-harmful-new]

Myth 8: Big Technology Companies Create Innovation Kill Zones28 Large U.S. technology platforms invest almost as much in R&D as the entire U.K. economy does (business and government).29 But knowing that innovation is important, neo-Brandeisians have argued that big technology companies actually limit innovation, either by acquiring start-ups in order to terminate the development of innovations that threaten their continued dominance (“killer acquisitions”) or by creating areas of the market in which they exert dominance to the extent others won’t invest in them (“kill zones”). Either way, large tech companies supposedly limit prospective challengers from being able to take root and grow, thereby limiting not only competition but overall U.S. innovation. In fact, acquisitions may be beneficial, at least to innovation, if they allow the larger firms to benefit from economies of scale or network effects, and enable the smaller firms to reach many more customers much more quickly with a higher quality product. Moreover, the prospect of being purchased by a larger company often motivates founders and venture capitalists to invest. Making it more difficult for them to sell therefore might make it harder for promising firms to find funding. And rather than looking at so-called kill zones as an innovation deterrent, it is more accurate to view them as an innovation enabler that guides entrepreneurial resources (talent and capital) to areas that have the best chance of success. Why invest in companies seeking to duplicate mature products offered by large firms that benefit from economies of scale or network effects? It is better for society if new companies concentrate instead on other markets they can break into. Indeed, that seems to be occurring, as venture capital investment, especially in early-stage deals, has grown significantly over the last decade, indicating that there is no shortage of innovation opportunities. Moreover, if they are creating kill zones, why did the number of angel and seed deals rise almost sixfold between 2006 and 2019, peaking in 2015? The number of early deals rose by 2.4 times. It is hard to see any sign of investor activity slowing down. (See figure 5.)

#### Kill zones are good - productively steer investment

Kennedy 20 - Dr. Kennedy was the chief economist for the U.S Department of Commerce (Joe, <https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones>, emuse)

Large Internet platforms such as Amazon, Apple, Facebook, and Google have attracted increased regulatory attention over the past several years. Most recently, the Democratic majority in the Subcommittee on Antitrust, Regulatory, and Administrative Law of the U.S. House of Representatives Committee on the Judiciary culminated a 16-month investigation of competition in digital markets by issuing a report calling for significantly greater regulation of these companies. One argument made against large technology companies is that they limit innovation, either by acquiring start-ups in order to terminate the development of innovations that threaten their continued dominance (“killer acquisitions”) or by creating areas of the market in which they exert dominance to the extent others won’t invest in these areas (“kill zones”). Either way, large tech companies supposedly limit prospective challengers from being able to take root and grow, thereby limiting not only competition but overall U.S. innovation. In fact, acquisitions may be beneficial, at least to innovation, if they allow the larger firm to benefit from economies of scale or network effects, and enable the smaller firm to reach many more customers much more quickly with a higher quality product. Moreover, the prospect of being purchased by a larger company often motivates founders and venture capitalists to invest. Making it more difficult for them to sell might make it harder for promising firms to find funding. And rather than looking at so-called kill zones as an innovation deterrent, it is more accurate to view them as an innovation enabler, guiding entrepreneurial resources (talent and capital) to areas that have the best chance of success. Why invest in companies seeking to duplicate usually mature products offered by large firms that benefit from economies of scale or network effects? It is better for society if new companies concentrate instead on other markets they can break into. Indeed, that seems to be occurring as venture capital investment, especially in early-stage deals, has grown significantly over the last decade, indicating that there is no shortage of innovation opportunities. Although the areas of investment have shifted in response to market developments, this reflects the natural evolution of Internet platforms, rather than a pernicious attempt to stifle competition or innovation. In either case, regulators already have sufficient powers to protect competition. The current focus on consumer welfare adequately incorporates concerns about innovation. While antitrust authorities going forward probably should broaden their review of acquisitions by dominant companies, there is no need to significantly change antitrust statutes or embrace structural remedies such as structural separation or breakups, as these would likely slow innovation and harm consumers. WORRIES ABOUT KILLER ACQUISITIONS Large technology-based companies have long used acquisitions as a way to grow and complement their innovation. For example, Between 1993 and 2000, Cisco Systems spent roughly $9 billion buying more than 50 companies. The technology it acquired allowed it to use some of its remaining resources to focus on its core competencies and gain needed capabilities to expand in global markets.1 Since 1998, the four major tech companies (Amazon, Apple, Facebook, and Google) have purchased over 500 companies.2 In February 2020, the Federal Trade Commission (FTC) issued Special Orders to the five largest tech firms (Amazon, Apple, Facebook, Google, and Microsoft) requiring each to provide the commission with information about past acquisitions that were not previously reported to the government. The commission ’s action reflects a broader concern about the effect of acquisitions on competition and innovation within large tech companies. The majority House Subcommittee on Antitrust, Commercial, and Administrative Law report states: [F]irms investigated by the Subcommittee have acquired hundreds of companies just in the last ten years. In some cases, a dominant firm evidently acquired nascent or potential competitors to neutralize a competitive threat or to maintain and expand the firm’s dominance. In other cases, a dominant firm acquired smaller companies to shut them down or discontinue underlying products entirely—transactions aptly described as “killer acquisitions.”3 WORRIES ABOUT KILL ZONES Others worry that large technology companies deter investment because no one wants to challenge their market. At a recent antitrust workshop organized by the Department of Justice, investor Paul Arnold said: Everybody’s dissatisfied with LinkedIn. Every founder thinks there’s a better thing to be done. And they’re probably right. It’s not that good. But they have a very powerful network effect. It’ s just incredibly hard to overcome that network. And I’ve never seen something compelling. And so, my choice is investing in a company that’s going to try to do that, or has a very clear path for selling something in insurance, easy choice.4 In 2018, The Economist wrote, “Anything having to do with the consumer internet is perceived as dangerous, because of the dominance of Amazon, Facebook and Google…. Venture capitalists are wary of backing startups in online search, social media, mobile and e-commerce. It has become harder for startups to secure a first financing round.”5 The article predicts kill zones are likely to stay, partly because “the giants have tons of data to identify emerging rivals faster than ever before.”6 The House Subcommittee on Antitrust, Commercial, and Administrative Law report states: Some venture capitalists, for example, report that there is an innovation “kill zone” that insulates dominant platforms from competitive pressure simply because investors do not view new entrants as worthwhile investments. Other investors have said that they avoid funding entrepreneurs and other companies that compete directly or indirectly with dominant firms in the digital economy.7 ACADEMIC PAPERS IDENTIFYING KILL ZONES AND KILLER ACQUISITIONS A number of academic papers have studied both kill zones and killer acquisitions in the tech sector. Economists Sia Kamepalli, Raghuram Rajan, and Luigi Zingales developed a model to measure the prospect that the acquisition of a potential competitor could deter future innovation in a market.8 In their model, the growth of a platform relies on its adoption by “techies.” These early adopters of technology can accurately judge whether a new platform is better than the incumbent. They are willing to incur the switching costs in order to master a new platform provided they 1) judge it to be significantly better than the alternatives; or 2) believe it will eventually become the new standard. Their adoption gives the new technology critical market share in the early stages until others, influenced by early adopters, also join. They postulate that if new companies are frequently acquired and their technology is sidelined, techies will be less inclined to adopt new technology. But if mergers are discouraged, techies will have more confidence that the new technology will eventually replace the existing standard, thereby justifying their investment in adopting it. In this way, acquisitions of new entrants by incumbents can reduce new entry and investment by reducing the new technology’s ability to attract techies.9 The authors acknowledged that prohibitions on mergers can also dampen investment by making it harder for entrants to obtain early-stage funding: “[T]he social optimum will not be an outright prohibition or complete laissez faire, but some middle-of-the-road policy, which will trade off the ex-post welfare losses produced by merger restrictions against the ex-ante gains in investments in innovation.”10 In order to discover whether actual acquisitions deter innovation, the paper looks at acquisitions of software companies for over $500 million. Of the hundreds of deals large Internet companies have done over the last decade, only nine acquisitions met this criteria: seven by Google and two by Facebook. The authors also looked at data from Pitchbook to measure the amount of investment in start-up companies operating in the same “space” as the companies acquired, as well as the total number of venture capital deals funded. From this sample, they concluded that sectors targeted by the two companies exhibit lower investment by venture capitalists. This suggests that Facebook and Google may crowd out investments even before they acquire a company.11 However, Mark Jamison of the American Enterprise Institute has argued that the acquisitions Kamepalli et al. used don’t fit the assumptions of their model, making any conclusions dubious at best.12 The Kamepalli paper assumes that each transaction meets five key assumptions, including that the entrant produces the same product as the acquirer, only better; that there is no multi-homing; and that the acquirer never innovates. Jamison alleged that of the nine transactions examined by Kamepalli et al., five fail to meet any of the assumptions, and four meet just one. Given this, it is hard to have much faith in the conclusions.13 Ian Hathaway took a similar approach as Kamepalli et al. Using data from Pitchbook, he tracked the change in annual venture capital first financings starting in 2009.14 Looking at Amazon, Google, and Facebook, the data let him compare historical financing in the specific market each company is in (e.g., for Google, Internet software), the next broadest category excluding the specific market (for Google and Facebook, software, excluding Internet software), and also for the next-highest category (for both companies, information technology (IT) excluding software). The results allowed him to compare outside investment in the markets primarily occupied by the three companies with investment in markets once and twice removed from them. In each case Hathaway found that investments in the core market increased rapidly up to a point, but that, after a certain date, the rate of increase fell relative to adjacent markets, giving the appearance of killer zones. However, Hathaway also found that investment in immediately adjacent markets continues to grow strongly for several years—in fact, much more strongly than venture capital as a whole, and that despite tailing off, some first fundings continue to occur in the core market. For this reason, Hathaway cautioned: A number of factors outside of market power could explain the decline of new startup activity in [core] industries. Even if market power (or the leveraging of that power into adjacent markets) is to blame, that doesn’t automatically spell trouble for innovation—and in markets with strong network effects, strong concentration might be the most likely or even preferred outcome.15 Other studies have looked at the effect permissive acquisition policy can have on the technology developed by an entrant in an established market. They find that, at least in certain circumstances, merger policy can help a dominant firm create a killer zone within which there is less innovation by new companies. A paper by Kevin A. Bryan and Erik Hovenkamp concludes that if start-up acquisitions are unlimited, a leading incumbent will sometimes acquire new technology partly to keep other companies from catching up. Start-ups will shift innovation to inventions that improve the leader’s technology rather than those that help the broader market. Should the market leader acquire a monopoly, its willingness to purchase new technologies will fall, thereby reducing private returns on future innovations.16 A model developed by economist Michael Katz of the University of California, Berkeley, cautions that “the competitive effects of mergers can be complex and highly fact specific.”17 His model predicts that the effect of permissive merger policy on the incentive to innovate depends on how superior an entrant’s technology is compared with the incumbent’s. In certain cases, incumbents will respond by developing rival technology solely to place pressure on the incumbent to sell. However, models such as this, which are divorced from actual data, show what could conceivably happen under certain assumptions—but provide little guidance on what will actually happen. A study by Etla Economic Research uses Crunchbase data on venture capital deals to measure the actual impact of acquisitions by comparing activity in product markets that experienced acquisitions with markets that have not.18 The study compares the timing of acquisitions in a particular market with the pattern of market entry and venture capital financing both before and after the event. The authors concluded that buyouts by the large technology companies generally led to substantially lower market-entry rates and less venture capital funding in the relevant market. They reported that this effect grew during the 2010s when the large companies gained access to increasing amounts of user data showing what websites and apps people were using, allowing them to spot new challengers sooner. Acquisitions of platform companies have also decreased entry into markets unrelated to those directly affected by the acquisition. Finally, a paper by Mark Lemley and Andrew McCreary argues that the heavy dependence on acquisitions as an exit strategy for venture capitalists is problematic.19 The authors alleged that acquisitions lead to concentration in the tech industry by reinforcing the power of large firms, and preclude the development of the type of disruptive technologies that have traditionally displaced incumbents. But, although they suggested a number of possible solutions, it is not clear any of them would result in better outcomes on average. ARGUMENTS AND STUDIES AGAINST THE KILL ZONE AND KILLER ACQUISITIONS THEORIES Despite the warnings about killer acquisitions and kill zones, many have written and argued that the negative impacts are overstated, and future acquisitions should not be curtailed. Indeed, there are a number of reasons to believe that these concerns are significantly overstated. The Tech Industry Is Different As in much of the anti-monopoly movement’s criticism of technology industries, the critique of killer acquisitions does not reflect the unique nature of technology industries, wherein continued innovation is key and product platforms are complex and require many different components, often ones that companies simply do not have capabilities in. As Edward Roberts and Wenyun Kathy Liu wrote in 2001: The most dramatic change in global technological innovation—the movement toward externally oriented collaborative strategies that complement internal research-and-development investments—began more than a decade ago. Today companies use alliances, joint ventures, licensing, equity investments, mergers and acquisitions to accomplish their technological and market goals over a technology’s life cycle.20 Unlike most other industries, the large Internet companies have plenty of cash to invest in new research. Their markets also experience rapid technological innovation that threatens to displace them if they do not continue to offer a better service than their rivals. The high capacity for internal investment reduces the need for venture capital. But the dynamic nature of the markets ensures continuous innovation, even without entrants. A market leader that merely buys up companies to protect itself from having to innovate will soon be eclipsed by the next new thing. This is part of the reason these companies spend significantly more on research as a portion of their revenue than virtually any other public companies in the world.21 This is why, despite expressing many concerns about the competitive threat posed by large Internet firms, a recent report for the European Commission urges caution in toughening merger policy for digital companies: In the digital field, mergers between established firms and start-ups may frequently bring about substantial synergies and efficiencies: while the start-up may contribute innovative ideas, products and services, the established firm may possess the skills, assets and financial resources needed to further deploy those products and commercialise them.22 Likewise, economist Luis Cabral argued that several features of digital platforms make acquisitions a more attractive form of technology transfer.23 First, the evolution of business models is much harder to predict. Partly for this reason, preemptive actions are difficult to judge given the poor definition of markets and the uncertainty in identifying future rivals. Second, intellectual property is more difficult to protect than in markets such as pharmaceuticals. As a result, companies cannot be sure of what they are licensing. Nor can they be confident that a rival will not simply copy their technology for free. Cabral noted that, out of hundreds of mergers completed by these companies over the last decade, only a handful typically attract any criticism. As an anecdote, he mentioned Alta Vista’s refusal of an offer to purchase Google for $1 million. He pointed out that Google’s substitutability and superiority was not apparent at the time. In fact, two years later, Alta Vista still had more than double Google’s market share. Also, while the tech industry does use acquisitions as a way to gain needed technology and talent, it does not do so as a substitute for investing in its own innovation. According to the 2019 EU Industrial R&D Scorecard, of the top companies globally with the largest increase in research and development (R&D) expenditures, four were large U.S. tech companies (Apple, Facebook, Google, and Microsoft). And of the top 5,000 companies in the world ranked by R&D spending in 2019, Alphabet (Google’s parent) ranked number 1, Microsoft 3, Apple 6, and Facebook 11. And according to the EU, Amazon would have ranked first overall if it had broken out its R&D and content development expenditures. Even with the ability to acquire other firms, these firms seem to have plenty of incentive to invest in R&D. Moreover, it is precisely their size and market power that gives them the ability to invest so heavily in R&D.24 So-Called Kill Zones Could Maximize Welfare and Innovation To the extent established companies are conducting research in a narrow market, it makes sense for entrants to avoid head-on competition and instead exploit complementary markets. This is almost as likely to be true whether the industry is dominated by one firm or five. Breaking into an industry with relatively mature technology dominated by large players is never easy. That is why many industries have gone through periods of heavy investment in the early stages of an industry as companies try to become one of the dominant players. Once the industry has matured to achieve economies of scale or network effects, new entrants tend to focus on complementary technology rather than trying to challenge the larger companies head-on. Few complained after the 1930s automobile-sector start-ups declined precipitously. By the 1930s, it made little sense to invest in new automobile companies when it was clear the technology system (internal combustion engine) and major players (American Motors, Chrysler, Ford, and GM) had already been established. Investment to create new entrants would have represented a waste of societal resources. Instead, funding went to emerging industries such as radios, chemicals, and machine tools. Today is no different. The technology and business models for search, social networks, and Internet retailing are relatively mature; society is better off if entrepreneurs and venture capitalists focus on other areas. Indeed, to the extent investors may be focusing their capital outside a few areas where large firms have established positions in what are somewhat mature technologies, it is arguably a good thing because it means there is more capital for other promising areas. Hathaway, in fact, acknowledged the possibility that “venture capital investment may have increased in non-tech sectors too, so that the tech giants have simply diverted the flow of capital to other areas.”25 The is buttressed by an earlier study by Oliver Wyman, which shows that acquisitions by Facebook, Google, and Amazon have not had a negative effect on the amount of venture capital flowing into tech industries.26 (See figures 1 and 2.) Acquisitions Often Increase Innovation There is often an assumption that acquisitions decrease innovation, but a number of studies suggest the opposite. A Dutch study looks at acquisitions in the manufacturing sector, which includes technology companies, and finds that both acquisitions and divestitures are positively correlated with increased innovation.27 Likewise, a paper by Igor Letina, Armin Schmutzler, and Regina Seibel argues that prohibiting killer acquisitions strictly reduces the variety of innovation projects in an industry because it deters innovation.28 They built a model in which prohibiting acquisitions has a positive effect on consumer surplus only if the bargaining power of the entrant is small and competition in the industry is not too intense, because both raise the incentives for an incumbent to do its own innovation rather than purchasing that of others. They cautioned: While prohibiting acquisitions always has a strictly negative innovation effect in the case without commercialization (i.e. for killer acquisitions), it is not necessarily true for acquisitions with commercialization. Thus, even though killer acquisitions may appear to be particularly problematic, the case for prohibiting them is not necessarily stronger than for acquisitions with commercialization if one takes ex-ante innovation incentives into account.29 Moreover, Will Rinehart of the Center for Growth and Opportunity wrote that the large majority of acquisitions are motivated by the desire to purchase either the technology or the talent of the specific firm, rather than to stifle a potential rival.30 Sometimes termed “acqui-hires,” these acquisitions refer to when a company is acquired largely as a means to hire its workforce, and the newly hired team is often more productive after acquisition, in part because of economies of scope and increased resources.31 These acquisitions also often benefit both parties by integrating new technology into a broader network and helping the new firm scale up. They also benefit consumers by disseminating innovations more broadly. Rinehart related how Facebook’s purchase of Instagram was frequently mocked at the time. Since the purchase, Facebook has helped Instagram become a widely used platform. Likewise, when Google purchased the start-up Keyhole, an innovative digital mapping company, (at the request of Keyhole founders), Google invested billions to improve and expand the mapping coverage. Bill Kilday, one of the founders of Keyhole, wrote that Google “gave them zero direction [and] unlimited resources.”32 In Keyhole’s early days, Kilday talked with someone who had an idea to do street-level mapping, complete with pictures. He estimated that because of the vast scale of it, coupled with an uncertain business model, it was essentially science fiction, not likely to be seen in his lifetime. Google, with its Street View project, did it in less than five years, providing it to consumers for free. Moreover, by acquiring Keyhole to help it create Google maps, Google disrupted an incumbent duopoly (MapQuest and TeleAtlas) that was charging for their products. Moreover, the assumption there are many killer acquisitions does not seem to be borne out. One reason is they are seldom profitable. A mathematical model developed by Pehr-Johan Norbäck, Charlotta Olofsson, and Lars Persson predicts that companies will only purchase a new technology in order to kill it if the quality of the invention is small, otherwise the profit from introducing the technology is higher than the value of deterring its use.33 This incentive to acquire also falls when intellectual property rights are strong, thereby increasing the entrant’s commercial value. Likewise, a paper by Axel Gautier and Joe Lamesch that surveyed acquisitions by Google, Amazon, Facebook, Microsoft, and Apple finds that out of 175 acquisitions in the 2015–2017 period the paper surveys, only one qualified for being a potential “killer” acquisition: Facebook’s acquisition of a photo-sharing app called Masquerade, which had raised just $1 million in funding before being acquired.34 Acquisitions Often Fail and Do Not Provide a Competitive Advantage The antimonopoly critics of tech firms assume the firms are all powerful and prescient, and all their acquisitions achieve the companies’ goals. It is easy for them to remember successful acquisitions, but failures tend to be forgotten. Moreover, even successful mergers are unable to protect the acquirer from technological and market changes that erode its competitive advantage. We have seen a number of examples of this. In the late-1990s and early 2000s, Lucent and Nortel were the powerful tech giants of their time. In the quest to get even larger, they invested tens of billions of dollars in acquisitions. In just five years, Lucent acquired nearly 40 companies, including spending over $20 billion for Ascend Communications.35 Nortel spent $9.1 billion to acquire Bay Networks in 1998.36 Almost all these acquisitions were subsequently written off or divested at a significant loss. Sun Microsystems acquired numerous companies during its heyday, including StarDivision, [StorageTek](https://www.computerhope.com/comp/stortek.htm), Procom Technology, and at least 88 others.37 In 1997, it bought tech start-up Diba, which created technology for devices that scan television and the Internet. As one article states, “This is just one more of Sun's strategic ventures to stay ahead of competition.”38 At the time, Sun was “big tech” and “ideally positioned with its leadership in network computing and [the Internet](https://www.encyclopedia.com/science-and-technology/computers-and-electrical-engineering/computers-and-computing/internet).”39 But it was for naught because eventually Sun, near failure, was purchased by Oracle, in what is generally seen as a poor decision by Oracle. Likewise, once-dominant Internet titan Yahoo! purchased over 114 technology companies, many of them start-ups.40 When it was just five years old, it was worth more than GM, Ford, and Chrysler combined. Indeed, some antimonopolists of the day believed that the Department of Justice would soon bring an antitrust suit against Yahoo! for being a dominant monopoly.41 But the acquisitions did not enable it to remain ahead of Google in search. A team led by Mats Holmström pointed out that many acquisitions, which by definition are expected to benefit the acquirer, fail miserably. A long academic literature documents the fact that, in different industries over different time periods, only a fraction of mergers meet their financial goals.42 That is why the team expressed skepticism that either WhatsApp or Instagram could have become strong competitors to Facebook. Acquisitions Provide a Needed Exit Route The knowledge of possibly being acquired can also spur entrepreneurial activity and investment. As the report for the European Commission notes: Simultaneously, the chance for start-ups to be acquired by larger companies is an important element of venture capital markets: it is among the main exit routes for investors and it provides an incentive for the private financing of high-risk innovation.43 This argument was echoed by James Pethokoukis of the American Enterprise Institute: Not every founder starts a company intending for it become Amazon. Often future acquisition is the goal. Then the entrepreneur can go on to start another firm or become an investor in other aspirational startups working on risky new ideas. Same goes for the investors in the acquired firm. What’s more, these purchases are often “acquisition-by-hire” situations where the prize is talent rather than the Next Big Thing. And when an upstart firm has a valuable idea, acquisition can be the fastest way to get it to users.44 The Assumption That Small Firms Are Inherently More Innovative Than Large Firms Is Not Borne Out by the Evidence One core argument made by anti-monopolists who oppose large companies and argue that kill zones and killer acquisitions are real and harmful is that small firms are inherently more innovative than large firms. As FTC Commissioner Christine Wilson argued, “[M]any today believe that small firms are inherently more innovative than large ones, so that the acquisition of a small firm by a large one necessarily reduces innovation.”45 For example, Tim Wu recently testified before Congress that innovation in technology sectors would increase if government imposed greater regulations and increased antitrust enforcement because “[o]ver the last century, competitive, open sectors—ecosystems—have proved themselves superior to those monopolized or dominated by a ‘big three’ or ‘big four.’”46 In fact, large companies are as or more innovative than small firms. In a 1996 paper, Wesley M. Cohen and Steven Klepper found that large firms invest more in R&D as a share of sales.47 The number of patents and innovations produced per R&D dollar decline with increasing firm size. But they argued that this reflects a mismeasurement of innovation outputs. Large firms benefit from “cost spreading,” because they can spread the benefits from one innovation across more units and products, leading to a greater overall level of innovation per unit of R&D. They wrote, “Not only does cost spreading provide the basis for explaining the R&D-size relationship, it also challenges the consensus that has emerged from the R&D literature that large firm size imparts no advantage in R&D competition.”48 More recently, in 2016, business professors Anne Marie Knott and Carl Vieregger estimated that a 10 percent increase in the number of employees increases R&D by 7.2 percent, and a 10 percent increase in firm revenues increases R&D productivity by 0.14 percent. This shows that large firms not only invest more in R&D activities, they also enjoy higher returns on innovation output per dollar invested in R&D.49 Other research has found that “small firms prevail in the early stages and innovation tends to concentrate in larger firms as industries evolve towards maturity.”50 In the 1990s, many small firms emerged and competed to be the winners in IT platforms. But only a few firms could emerge as winners, and the ones that did continue to invest in innovation. Data on Venture Investments Suggests Tech Acquisitions and High Market Share Do Not Hurt Start-Ups The right measure of the effect of killer zones is not the trend in the specific market wherein large tech firms operate, but in the overall tech innovation ecosystem. Even Hathaway acknowledged that the relative declines he observed in the narrow markets where the big firms are strongest could be offset by investments moving to other, more promising, markets. In fact, that appears to be exactly what has happened. From 2006 to 2019, venture capital investments in IT deals increased steadily and significantly. Although it leveled off in 2019, tech funding was still 54 percent above the 2017 level. Figure 2 shows the number of technology angel and seed deals as well as the number of early stage deals. The number of angel and seed deals rose by almost six-fold between 2006 and 2019, peaking in 2015. The number of early deals rose by 2.4 times. It is hard to see any sign of investor activity slowing down.

### AT: gmu indict

#### Aff cards are a liberal conspiracy to take over higher education.

WSJ ’18 [Editorial Board; May 11; Wall Street Journal, “The Trashing of George Mason University,” https://www.wsj.com/articles/the-trashing-of-george-mason-university-1526079531]

Progressives dominate all but a few corners of American academia, but apparently they want it all. Witness the political and media assault on George Mason University, an island of intellectual diversity in Northern Virginia that has committed the sin of accepting money from conservative donors.

A public university with some 36,000 students, George Mason has made a mark in economic debates through its Mercatus Center. This has caught the attention of an outfit called UnKoch My Campus, which claims that donors like Charles and David Koch inappropriately influence university decisions. The demand is for “transparency” but the real goal is to silence conservative views.

George Mason recently released hundreds of pages of public records in response to requests by Transparent GMU, the local UnKoch affiliate. They include contracts and correspondence related to a $30 million donation in 2016, the largest in school history. Ten million dollars came from the Koch Foundation, and $20 million from an anonymous donor represented by attorney Leonard Leo. Mr. Leo is also a vice president of the Federalist Society, the non-secret network of conservative lawyers.

Cue the outrage. Among the horrors supposedly uncovered by UnKoch is that one condition of these gifts was that George Mason rename its law school after Antonin Scalia. UnKoch wants everyone to know that the Great Scalia was “one of the most ideological and polarizing Supreme Court Justice [sic] in history.” OMG, as the kids say. The New York Times ran a nearly full-page story on the documents.

The truth is that the naming request and decision went through normal university channels that included a vote by the university’s Board of Visitors, as well as the State Council on Higher Education for Virginia. Liberal Justice Ruth Bader Ginsburg, a Scalia friend, also approved.

UnKoch has also hyped correspondence between George Mason’s law school and the Federalist Society as something nefarious. The emails include Mr. Leo’s recommendation of a prospective student and discussion of candidates for professorships. UnKoch is aghast that a law professor and Mr. Leo would discuss federal clerkships for alumni who are current Federalist Society members. Don’t universities want their graduates to succeed?

UnKoch has also seized on now-obsolete gift agreements between the Mercatus Center and George Mason’s economics department. Signed between 2003 and 2011, they gave the Koch Foundation a minority role on committees that make recommendations about candidates for George Mason professorships and for Mercatus Center positions funded by its gifts.

This non-scandal gets worse. A 2009 gift agreement between George Mason and the Mercatus Center outlined the terms for a Koch-funded chair, and it states that “the objective of the Professorship is to advance the understanding, acceptance and practice of those free market processes and principles which promote individual freedom, opportunity and prosperity, including the rule of law, constitutional government, private property and the laws, regulations, organizations, institutions, and social norms upon which they rely.”

We should hope so. Donors are committing no crime in trying to judge if their philanthropy is fulfilling its purpose. The Kochs, God bless them, believe in supporting academics who believe in the principles of liberty and market economics. While they can’t and shouldn’t dictate what any professor writes, professors who believe in free markets will tend to support those principles.

The contracts explicitly stipulate that “the final say in all faculty appointments lies in specified GMU procedures, involving academic approval and final approval by the Board of Visitors.” But if George Mason chose to hire academics like the prolific Donald Boudreaux because he believes in advancing free-market ideas, so much the better.

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All of this UnKoch nonsense is part of the left’s attempt to stifle conservative ideas in the guise of an attack on “dark money.” The Kochs are so “dark” that the progressives decided to use their name. And speaking of dark money, UnKoch My Campus isn’t a nonprofit and doesn’t file regular financial disclosures.

Researchers from Stanford, Harvard and the University of Chicago Law School found last year that only 15% of American law school professors are conservative. We’re surprised it’s that many. The good people at George Mason should go on taking money from the Kochs and anyone else it wants, and tell the UnKochs to harass somebody who deserves it, like that progressive icon, Eric Schneiderman.

#### Indicts have no clue how academia works. Donations are nice!

Geraghty ’18 [Jim; May 9; reporter; National Review, “A Washington Post Scoop about the Koch Brothers Falls Apart,” https://www.nationalreview.com/2018/05/washington-post-koch-brothers-scoop-falls-apart/]

Ominous stuff. But Cabrera’s admission was vague and heavily qualified: “The agreements did not give donors control over academic decisions, and all but the earliest of these agreements explicitly stated that the final say in all faculty appointments lies in university procedures,” Cabrera wrote. “Yet these agreements fall short of the standards of academic independence I expect any gift to meet.” Cabrera didn’t specify how those agreements fell short. A subsequent article quoted a representative from a progressive activist group, UnKoch My Campus, that painted the university as trying to cover up a corrupt deal, transforming the school into a fully purchased puppet of the Koch network’s libertarian agenda.

On May 6, the Post’s editorial board weighed in, declaring that “The Charles Koch Foundation paid to pull strings at George Mason. It’s time for transparency.” The editorial cited “documents showing the conservative Koch Foundation had been given a voice in faculty selection and evaluation.”

Except that no evidence has surfaced indicating that the foundation actually selected or evaluated any faculty. The agreements, accepted from 2003 to 2011, and all expired except one, allowed the Koch Foundation to appoint members to a search committee who could also serve on a separate advisory board for personnel decisions for the Mercatus Center. And this is far from rare in the academic world.

Policies explicitly permitting donors to serve on faculty search or selection panels in some capacity (but not selecting faculty single-handedly) are in place at Auburn University, Chapman University, the University of Florida, Georgia State University, Illinois Wesleyan University, the University of Missouri system, the University of New Mexico, New York University, the University of Richmond, San Francisco State University, Southern Methodist University, and Virginia Commonwealth University. In a 2002 RAND Corporation report, Intelligent Giving: Insights and Strategies for Higher Education Donors, the research team declared that “it may be okay for you to be on the search committee for your endowed chair, but you cannot have veto power. While it is less common to be on the search committee for replacements for the original holder, there is no reason you could not be.”

Meanwhile, the relationship between the Mercatus Center and George Mason is not easy to summarize. The center is led by a faculty director, currently the economist Tyler Cowen, who is appointed by the provost of George Mason. The center offers fellowships for undergraduate, MA, and doctoral students, and organizes conferences, seminars, workshops, and reading groups. But the Mercatus Center does not receive financial support from George Mason University or any federal, state, or local government.

For what it’s worth, university officials vehemently deny that the Koch Foundation had any direct say in personnel decisions.

Donald J. Boudreaux, who chaired the George Mason Economics Department from August 2001 until August 2009, told the school’s faculty senate that “all economics faculty hiring, and decisions on promotion, tenure, termination, and pay-raises – as well as all faculty support with university funds – has been driven exclusively by the economics faculty in accordance professional principles of competitive search and vetting, and all with standard university input and oversight from the office of the provost and other university administration.”

It’s a similar story at George Mason’s Antonin Scalia Law School, where Dean Henry Butler offered a similarly sweeping and emphatic statement: “While we are pleased to receive recommendations from many sources, decisions on faculty hiring and student admissions and scholarships are independent and strictly the purview of the law school’s faculty and administrative leadership,” he wrote. “There are numerous misleading and inaccurate statements in the press coverage.”

An embarrassing “clarification” to the Post’s editorial a day later stated that, “in agreements with George Mason University, the Charles Koch Foundation could name members of a selection committee whose appointees could also serve on an advisory board that had the power to recommend dismissal from the school’s Mercatus Center, but had no power over faculty retention or promotion.” Whoops.

Perhaps there is a case to be made that in the name of academic independence, no donor should ever have any role in selecting faculty. But UnKoch My Campus isn’t upset about any other donors on any other campuses.

The group’s primary personnel all previously worked at precisely the institutions a cynical conservative would expect, such as the Sierra Club and Greenpeace, and express interest in topics such as “academic white supremacy.” It’s a free country, and the group is free to argue that George Mason University and its related think tank should not accept money from anyone connected to the Kochs. But that kind of ideological closed-mindedness would come with a considerable cost, and not merely to the value of diversity. For example, in February 2016, an unidentified donor called up the George Mason law-school dean and, in Butler’s words, offered “to provide us with $20 million in scholarship dollars for the naming the school after one of the most important Supreme Court justices ever [Antonin Scalia], as long as the Charles Koch Foundation provided an additional $10 million for scholarships — no strings attached.”

The folks at UnKoch My Campus are free to argue Butler should have told that donor to get lost. Of course, they aren’t exactly full of ideas about how to find an alternative $30 million for scholarships.

It’s a familiar story: Figures villainized by progressives — in this case, the Koch brothers — take an ordinary, legal, charitable act, and it’s deemed unusual and menacing. This kind of chicken-little panic over routine donations and agreement language is a good way to ensure no one pays attention when there’s a real academic scandal.

## growth

### Separation Turn---2NC

#### That’s theoretically AND empirically proven. Platforms want happy consumers, agnostic in favor of whatever the consumer wants.

Hoffman ’21 [D. Bruce and Garrett D. Shinn; June; Director of the Bureau of Competition at the US Federal Trade Commission; Associate specializing in antitrust at Cleary Gottlieb; CPI Antitrust Chronicle, “Self-Preferencing and Antitrust: Harmful Solutions for an Improbable Problem,” <https://www.clearygottlieb.com/-/media/files/cpi--hoffman--final-pdf.pdf>; KP]

III. WHAT’S SO BAD ABOUT SELF-PREFERENCING? AS IT TURNS OUT, NOT MUCH

So we see that modern political and popular discourse treats self-preferencing as nearly a per se evil. But, is there any reason to think that is right? Consider the example of that most quotidian of platforms: the shopping mall.15

A shopping mall is a platform. Its value is as a gathering place for stores on the one hand and shoppers on the other. It is compensated for this role by rent collected from its tenants. Let’s suppose that a particular mall decides to open its own pretzel store in its food court.

A question we should ask right off the bat is: why would the mall open its own pretzel store? Is it likely due to some nefarious motive — some secret desire, say, to squelch the businesses of the pretzel and other snack stores already inhabiting its food court, and to take their customers — and the money they spend — for itself? The answer is probably not, for a couple of reasons.

First, if the mall owner wants to make more money, opening its own pretzel store is a complicated, expensive, risky, and inefficient way to achieve that goal. It has much better tools at its disposal, such as raising the rent a little, or doing a bit more advertising to drive additional traffic to its mall. Occam’s razor thus cuts this explanation off pretty neatly.16

Second, and perhaps more importantly, platforms don’t really care what items businesses are selling on the platform; a mall has no particular reason to care whether a given store sells pretzels, shoes, or jewelry.17 Nor do platforms have a strong interest in dictating what particular products customers are buying; again, the mall doesn’t really care if you’re buying burgers, shirts, or perfume. What platforms want is more businesses successfully selling more stuff to more customers. They care about the mix of those businesses only insofar as that mix is more likely to be attractive to more customers, and — in turn — more attractive to other businesses. The mall wants stores to want to be in its mall, and customers to want to shop there.18

What all this means is that (1) because the platform has other, easier ways to make more money than by vertically integrating, and (2) because the platform’s motivation is to make both sellers and buyers happier, the most likely reason a platform would vertically integrate is to make buyers happier. That will make them more likely to come to the mall, spend more time there, and spend more money in all the stores at the mall. In turn, this will make sellers more likely to want to be in the mall, and able and willing to pay higher rent because of the higher sales they’ll make. In more technical antitrust terms, the most likely reason for platform vertical integration is to increase output and consumer (and overall) welfare.

So let’s consider our new pretzel store. As we’ve shown above, the most likely reason for our mall owner to open its own pretzel store is that it perceives a gap in the products and services being offered to consumers in the mall, and thinks it’s best able to fill that gap. Perhaps the mall owner noticed a shocking dearth of high-quality pretzels, or has a particularly good pretzel recipe, or has some other reason to think it’s in a uniquely good position to provide mall shoppers a really attractive pretzel offering. Whatever the specific reason, when the mall owner vertically integrates, it’s probably trying to improve the mall’s consumer offering. As a result of our mall opening the pretzel store, hungry shoppers have additional options for food and competition between food court shops increases, which may even lead to lower prices at all stores in the food court. And, shoppers who might otherwise have left the mall to buy food somewhere else now spend a little more time there, shopping at other stores and increasing those merchants’ sales.

Of course, the mall owner might get this wrong — the pretzel shop might be low-quality or unpopular, maybe even driving shoppers out of the mall. But if that happens, the mall owner suffers as much as (or more than) the other businesses, because the mall owner’s main goal is to have more shoppers spending more time and money in the mall, not fewer shoppers spending less time and money.

But what if the mall owner does more than open its own pretzel shop — what if it “favors” that shop, by, say, not charging itself rent, and so offering lower prices for pretzels than other tenants, or perhaps by putting its shop in a prime location, or surrounding it with the best tables, nicest fountains and seating areas, and so forth? In other words, what inferences should we glean from self-preferencing? The answer turns out to be the same — the most likely reason for self-preferencing is to improve the overall quality of the mall (the platform) to consumers, and thus to increase output and welfare.

It’s actually not difficult to understand why self-preferencing is probably good for consumers and competition in most circumstances if we just recall why the platform is likely to vertically integrate in the first place — to increase traffic and sales in the mall. To trace this point through, consider how self-preferencing would play out for our mall owner and pretzel store.

Let’s start by considering the possibility that the mall owner actually just wants to hurt the competing pretzel and snack shops, or even drive them out of the mall — could that explain self-preferencing? It should be obvious that the answer is probably not, for a simple reason: the mall owner has much better tools for that purpose. It could, for example, just kick the competing snack stores out of the mall, or raise their rents to unsustainable levels. Making its own pretzel offering particularly compelling for customers is a costly and roundabout way to drive out rivals, if that’s what the mall owner really wants to do.

More importantly, consider what will happen if the mall owner’s actions hurt other snack stores and the net result — the changes in the other snack stores plus the effect of the addition of the new pretzel store — is bad for customers. In other words, the other snack stores close, or raise prices or cut the quality of their offerings because they’re being squeezed on rent, and whatever the mall owner’s own pretzel store offers isn’t good enough to outweigh the negative effects of the degradation of the other snack stores. So now there are long lines at the pretzel store, and shoppers are upset because they don’t have the options they appreciated before. If that happens, the mall will become less attractive to shoppers. Some won’t come, some will leave sooner, and in total, they’ll spend less. As shopper spending declines, the mall becomes less attractive to merchants; some close, or cut quality, or reduce hours, and total sales fall, which in turn makes the mall even less attractive to shoppers, and so on.19 And as all of this happens, the mall owner gets less rent and is worse off, which plainly wasn’t its goal.

So if the mall owner doesn’t want to hurt rival snack shops by setting up and favoring its pretzel store, what is it trying to do? The answer is obvious — the most likely reason for a mall to do this is because it thinks the net result of its actions will benefit shoppers and make the mall more attractive (both to shoppers and merchants). In other words, our little thought experiment demonstrates that the most likely explanation for platform self-preferencing is procompetitive, benefiting both buyers and sellers on the platform and increasing overall output.

The mall example may seem quaint in a world of multibillion-dollar digital platforms, but the principles it illuminates are no less applicable to those platforms than to shopping malls or farmers’ markets. Self-preferencing should generally be expected to be efficient and pro-competitive. This is because a platform is agnostic to its source of revenue. Its primary interest is in maximizing traffic on the platform to drive revenue, and it will not likely take actions that endanger this interest. Because the platform’s highest interest is in maximizing traffic, the platform’s interests are a good proxy for consumer interests and welfare. The conclusion then is that if a platform vertically integrates, it is because it expects that it can improve its platform by doing so. If a platform self-preferences, it is because it expects that consumers will be well-served as a result.

#### The plan kills the very concept of what a platform is.

Evans ’19 [David and Richard Schmalensee; December 16; Ph.D. in Economics from the University of Chicago, Chairman of Global Economics Inc., founding editor of Competition Policy; Richard Schmalensee; Fellow of the Econometric Society and the American Academy of Arts and Sciences; Antitrust Analysis of Platform Markets: Why the Supreme Court Got It Right in American Express, p. 43-46]

Some platforms, however, provide a service that, by its very nature, must be jointly consumed by two customers and cannot be separately provided to one or the other. Consider an equity exchange such as Nasdaq. The service involves helping buyers and sellers find each other and engage in trades. The service is jointly consumed: the buyer and seller agree to terms and then consummate a transaction. The exchange service is also unseverable since it is not possible to provide it just to buyers or just to sellers. Any enterprise that wants to be in this business must provide the service to both groups.

When a service is jointly provided, a party and a counterparty stand at opposite ends of the service. In some cases, the same platform participants could be on either end of the service depending on their circumstances. People can, at different times, be both senders and receivers of messages on a messaging platform (e.g. WhatsApp) and both senders and receivers of funds on a person-to-person money-transfer platform (e.g. Venmo). In other cases, the parties and counterparties are necessarily distinct. Heterosexual dating platforms (e.g., Match.com) connect members of opposite sexes, and payment card networks (e.g., American Express) connect cardholders and merchants.

In all these cases, the platform must decide how to split the cost of the service between the parties that consume it jointly and unseverably. OpenTable, for example, charges restaurants $1.00 and diners $0.00 for reservations made through the platform.92 The price it charges for a reservation would still be $1.00 if it charged restaurants $0.75 and diners $0.25 for each reservation or any other set of numbers that added up to $1.00.

It would not make economic sense to analyze the conduct of a platform that provides a service that is jointly consumed by looking only at what customers on one side pay for the service and receive from it. Businesses of this sort never provide a transaction to only one side of the service, and every interaction has a party and a counterparty that both benefit from the service.

The economic surplus generated by each interaction equals the total difference between the values both parties place on the interaction minus the total costs they incur. The platform determines the division of this surplus between the two sides through the prices it charges each. Competition between platforms that provide joint and unseverable services, like competition between ordinary single-sided businesses, leads to greater economic surplus by encouraging lower prices, better quality, and higher output.

### Separation Fails---2NC

#### It’s at best a vague wish list. Even if they’re right about the economics of platforms, they will still discriminate, just broken up into smaller entities!

Gilbert ’21 [Richard J; March; Economics Professor at UC-Berkeley; Information Economics and Policy, “Separation: A Cure for Abuse of Platform Dominance?” vol. 54]

Structural separation of Google’s search product from products that rely on search results is unlikely to be a more effective policy to address the conduct challenged by the EC in its Google Shopping decision. Separation would require a determination of the types of search results that Google may or may not provide, including specialized results such as product listings, maps, reviews, job notices, and travel information, and how and where they may be displayed on search engine results pages. Hashing out these distinctions would be a major task for the courts and would be further complicated as search engines and other platforms evolve in response to technological developments. An authority would have to monitor and enforce compliance with restrictions on Google’s search platform. Courts are ill-suited to perform this type of industry management and oversight. The Federal Communications Commission aided the court in the administration of line-of-business restrictions for telecommunications imposed by the MFJ. Presently, there is no comparable body with the expertise and staff to perform a similar function for the digital platforms.

More recently, antitrust authorities and regulators have focused on Google’s market power and conduct in the complex chain of services that link the demand to display advertisements on websites and apps to the supply of available spaces to display these ads.51 Supply-side ad exchanges enable content publishers to offer available space in real time on the their websites or mobile applications to advertisers that bid for the rights to display ads on their properties.52 Google dominates the business of automating the provision of inventory for display ads on third-party websites and apps and the company has a large presence in other online advertising services.53

Google’s market power in display advertising intermediation services gives the company the ability to steer advertisers to its proprietary products, such as YouTube, which it has an incentive to do because then it does not have to share advertising acquisition fees with content publishers or other advertising intermediaries. Google allegedly has the incentive and ability to engage in conduct – including the design of its services, access to data and proprietary products, and bidding rules – that excludes or raises the cost of rivals in the digital advertising space.54 As a consequence, competitors allegedly face obstacles to attracting business from advertisers or content publishers, advertisers and consumers pay higher prices, and publishers receive less revenue from their display ads.

It would be feasible to structurally or functionally separate Google’s ad serving business for publishers of websites and apps from its other activities without undermining the company’s internet business model. Google relies on revenues from advertisers to fund services that allow consumers to search the internet and view content without a financial charge. Google does not have to dominate the supply-side business of the automated management of available space for display advertising in order to generate advertising revenues for its proprietary products.

Although it is feasible to separate supply-side ad serving from other Google properties and services, separation could sacrifice significant efficiencies. The integration of supply-side ad serving with other Google activities gives the company the ability to monitor and add value to advertising services and Google’s ownership of an extensive portfolio of digital advertising services can avoid or mitigate markups that would occur if independent firms offer these complementary services. Moreover, structural or functional separation would likely require restrictions to prevent Google from competing in these services and using its market power in search and video to exclude rivals. Even if separation were pursued to remedy anticompetitive conduct related to online advertising, antitrust oversight would continue to be necessary to address alleged abuses of market power, possibly reinforced by a specialized regulatory authority.

5. Conclusions

A handful of platforms wield substantial market power in the digital economy. A theme that resonates with legislators and antitrust enforcers is the ability of the platform owners to advantage their own products or services by distorting the information they display to consumers or by misusing information they obtain from firms that utilize their services. Key questions are whether these concerns can and should be addressed by antitrust enforcement or regulation and, if they should be addressed, whether remedies should require structural or functional separation or be limited to behavioral conditions.

There is no single formula to address concerns about the alleged abuse of market power by these platforms. Separation is an alternative to behavioral remedies of the type imposed by the European Commission in the Google Shopping case. These behavioral remedies have accomplished little to restore competition that the EC alleged was harmed by Google’s search algorithms. Separation has the potential to be a more effective remedy to restore competition allegedly harmed by the conduct of a platform owner, but separation raises many questions, including the platforms that require separation, the services that must be separated, the terms and governance of separation requirements, and procedures to evaluate appeals from line-of-business restrictions.

Structural separation is administratively feasible for some platform activities, such as the sale of merchant and proprietary products on Amazon’s online retail platform or the separation of Google’s Ad Manager from its other products and services. Some past acquisitions could be unwound. Functional separation is another alternative for some services. Amazon could establish an ethical wall between its proprietary sales and sales by independent merchants. However, structural or functional separation does not necessarily eliminate incentives for discrimination and Amazon’s use of non-confidential information obtained from sales of products on its platform can benefit consumers. For many other platform services, it is unlikely that structural or functional separation would prove to be more consumer-friendly than the line-of-business restrictions imposed on AT&T by FCC regulation and the 1984 Modified Final Judgment, which ultimately collapsed under the weight of numerous waiver requests and were replaced by the 1996 Telecommunications Act.

Courts have avoided structural remedies in part because they are difficult to implement and potentially harm corporate, shareholder, and labor interests (Waller, 2009). Yet the threat to dissolve a corporate structure can deter some future anticompetitive conduct precisely because it has disruptive consequences. For separation to serve this deterrence function, it should punish conduct that has clear and substantial anticompetitive effects and is likely to be repeated in the future absent the threat of dissolution. However, the deterrence benefit from structural or functional separation is limited for digital platforms. There is disagreement about the conduct by digital platforms that warrants harsh punishment and about effective remedies for allegedly harmful conduct. Although antitrust liability and remedy are separate concepts, it is questionable whether conduct should be liable for antitrust enforcement if enforcers cannot fashion a workable remedy for the challenged conduct (Melamed, 2009). Furthermore, many of the alleged concerns related to conduct by the major digital platforms are specific to particular business models and therefore punishments would not necessarily deter other types of conduct by the platforms.

### Rulemaking Turn---2NC

#### FTC rulemaking would kill the economy.

Abbott ’21 [Alden; August 9; the Federal Trade Commission’s General Counsel (2018-2021), adjunct professor at George Mason University, J.D. from Harvard Law School, M.A. in economics from Georgetown University; Truth on the Market, “FTC Antitrust Enforcement and the Rule of Law,” https://truthonthemarket.com/2021/08/09/ftc-antitrust-enforcement-and-the-rule-of-law/]

Proposed FTC Competition Rulemakings

The new FTC leadership is strongly considering competition rulemakings. As I explained in a recent Truth on the Market post, such rulemakings would fail a cost-benefit test. They raise serious legal risks for the commission and could impose wasted resource costs on the FTC and on private parties. More significantly, they would raise two very serious economic policy concerns:

First, competition rules would generate higher error costs than adjudications. Adjudications cabin error costs by allowing for case-specific analysis of likely competitive harms and procompetitive benefits. In contrast, competition rules inherently would be overbroad and would suffer from a very high rate of false positives. By characterizing certain practices as inherently anticompetitive without allowing for consideration of case-specific facts bearing on actual competitive effects, findings of rule violations inevitably would condemn some (perhaps many) efficient arrangements.

Second, competition rules would undermine the rule of law and thereby reduce economic welfare. FTC-only competition rules could lead to disparate legal treatment of a firm’s business practices, depending upon whether the FTC or the U.S. Justice Department was the investigating agency. Also, economic efficiency gains could be lost due to the chilling of aggressive efficiency-seeking business arrangements in those sectors subject to rules. [Emphasis added.]

In short, common law antitrust adjudication, focused on the consumer welfare standard, has done a good job of promoting a vibrant competitive economy in an efficient fashion. FTC competition rulemaking would not.

#### Businesses prefer uncertainty to a certain regulation.

Economist ’11 [The Economist; September 6; International newspaper that focuses on current affairs, international business, politics, and technology; The Economist, “Of red tape and recessions,” <https://www.economist.com/free-exchange/2011/09/06/of-red-tape-and-recessions>]

How much of our economic malaise can be blamed on regulatory uncertainty? Conservatives argue that a wave of Obama administration regulations and the threat of more to come are the primary hindrance to business confidence and hiring. Liberals say that the weak economy is far more important and that any regulations being enacted more than pay for themselves in economic terms.

I've been struggling with this question for months and have found the debate frustrating: the terminology is wrong and the subject poorly framed, the evidence fragmentary and unhelpful, and generalisations are rampant. So what follows are a few thoughts that I think clarify the debate, though without necessarily resolving it.

First, it is not “uncertainty” per se that bothers business. Whether uncertainty is unwelcome depends entirely on what's at stake. What would you prefer: 100% probability of dying next year, or 50%? Most of us would choose the latter. Similarly, business would prefer zero probability of a burdensome new rule, but if that's not possible, would certainly take 50% probability over 100%. The administration's decision to delay implementation of a new ozone standard perpetuates uncertainty. Business welcomed it nonetheless because now they do not have to spend money to meet it for at least two years, and perhaps forever if in the interim a new president chooses never to implement it. Does the Federal Reserve create some uncertainty when it undertakes quantitative easing? Probably, but in the process it makes the stability of inflation around 2% much more certain, and that, most businesses would say, is a reasonable trade-off.

### Concentration Turn---2NC

Concentration catalyzes productivity growth while prices stay constant or decline---that’s Peltzman.

#### Digital technologies are decreasing local concentration---promotes the most competition in smaller areas---case is opposite.

Hsieh ’21 [Chang-Tai and Esteban Rossi-Hansberg; May 21; Economics Professor at the University of Chicago; Economics Professor at Princeton; NBER Papers, “The Industrial Revolution in Services,” https://www.princeton.edu/~erossi/IRS.pdf]

We use micro-data from the Longitudinal Business Database from 1977 to 2013, supplemented with sales data at the establishment level from the micro-data of the Economic Censuses from 1977 to 2012, to document six main facts. First, we show that growth in the number of markets per firm has been large and heterogeneous across industries. We measure a market as an establishment, county, zipcode, or a metropolitan statistical area (MSA). The growth in the number of local markets served by a typical firm has been much more pronounced outside the broad construction and manufacturing sectors, but broad sectoral classifications are imperfect. Non-traded service industries that exhibit large expansions in markets per firm can be found in all sectors of the economy, including in sectors that are classified as “manufacturing.”

Second, service industries where markets per firm have increased have grown faster than other industries in the U.S. economy. The larger growth is evident for all our definitions of a market and when we use either employment or sales. This evidence is consistent with our view that the rise of markets per firm is driven by forces such as the adoption of new technologies or management practices that ultimately raise aggregate industry total factor productivity (TFP).

Third, industries in which the number of markets per firm has increased also experienced large increases in observable fixed-cost expenditures such as total employment in R&D and headquarter establishments. The measured elasticity of these fixed-costs to establishments per firm across industries is as large as 1.5, and even larger with respect to MSAs per firm.

Forth, the number of markets per firm is driven by the top firms in the industry. For example, in the industries that experienced the fastest growth in markets per firm of the top 1% of firms in an industry expanded the number of markets per firms more than twice as fast as the average firm.

Fifth, the increase in national industry concentration documented by Autor et al. (2017) and others, is driven by the expansion in markets per firms by top firms. National employment and sales concentration, measured by the share of the top 1% or top 10% of firms or by the Herfindahl-Hirschman index (HHI), has risen much more significantly in sectors with higher establishments per firm or MSAs per firm. In fact, more than 100% (155%) of the employment expansion of the top 10% firms in an industry is driven by an increase in the number of establishments, since the average establishment has shrunk over time. When we define a market by as an MSA, this finding is less pronounced but still large: 94% of the expansion of top 10% firms is across MSAs rather than within.4

Sixth, the new local markets where top firms enter tend to be smaller. The share of top firms in local employment has grown significantly in small and mid-sized U.S. cities. In contrast, in the very largest U.S. cities, there is no change in the employment share of top firms. The increasing presence of top firms has decreased local concentration as the new establishments of top firms gain market share from local incumbents. The share of the top firms in the local market and the Herfindahl-Hirschman index (HHI) has declined throughout the city distribution, but the decline has been much more pronounced for smaller cities.5

We use a simple theory of firm size and local market entry to show that a key ingredient of the industrial revolution in services, documentedby our six main facts, are new fixed-cost-intensive technologies that lower the marginal cost of production in all markets served by the firm.6 The adoption decision of firms involves a trade-off between a proportional reduction in all establishment’s variable costs and an increase in the firm’s fixed cost. Firms that adopt the new fixed-cost-intensive technology in an industry expand by serving new markets that are now viable due to their lower marginal cost. Top firms, which are more productive, find the trade-off between fixed and variable costs more beneficial and so they adopt the new technology more intensively, which leads to a rise in industry concentration. It also leads to industry expansion relative to industries where these new technologies are less useful or more costly. For example, we show that in industries where goods are easily tradeable and so geographic replication is unnecessary (as in many manufacturing industries), firms adopt these new fixed-cost intensive technologies less.

The industrial revolution in services has aggregate and local implications that we also corroborate in the data. Since top firms expand by entering new markets and these markets tend to be smaller, we see the share of top firms grow particularly in small markets. The increasing presence of top firms has decreased local concentration in local markets as the new establishments of top firms gain market share from local incumbents. We see the share of the top firm and the local Herfindahl-Hirschman index decline everywhere, but the decline is much more pronounced in small cities. Contrary to popular narratives, the entry of these top firms has been accompanied by significantly faster employment growth in small cities. As a result, we see that job destruction due to exit or incumbents’ employment decline does not vary much by city size. The larger increase in the share of top firms in most cities, but most markedly in small ones, implies that consumers opted to buy from them and so probably gained from their presence. The gain from entry by top national firms into local markets is not measured in official price statistics because current statistical procedures only measures prices from incumbent establishments. Following the methodology in Aghion et al. (2019a), we calculate “missing growth” to be 1.2% per year in the smallest cities, as low as 0.2% in the largest ones, and 0.5% in the aggregate.

Previous work has identified elements of the technological changes we underscore here. Sutton (1991) argues for the presence of new sunk cost technologies and describes their effect on market concentration, although he does not emphasize the increasing geographic scope of firms, nor their resulting specialization. Hortac¸su and Syverson (2015) provide a description of the evolution of concentration and scale in the retail industry consistent with the geographic expansion we emphasize. Holmes (2011) focuses on a single firm (Walmart) and studies its geographic expansion to form a distribution network and inventory system. Similarly, Ganapati (2018) studies the wholesale industry and the expansion of the warehouses and international input use of the top firms. We view these industry studies as examples of the general evolution we document.

It is perhaps hard to set apart a number of concurrent technological changes, all of which are naturally intertwined. Information and communication technology (ICT) started in the 60’s with the systematic use of corporate databases, then continued with the invention and rapid adoption of personal computers, electronic communication technologies and the internet, and the invention and subsequent explosion in the use of smartphones.7 There is a vast literature on the effect of these changes on the organization of production.8 The form of technological change we emphasize here was certainly enabled by ICT, at least partly, which explains its timing. The examples of fixed-cost based technologies described above all have a component that was facilitated either by better data collection and analysis or by better communication and diffusion of information. It is undoubtedly the case that new business processes that reduce the cost of managing many different establishments require easy communication, as well as cheap data gathering and processing. Managing many hospitals and exploiting the synergies between them would be impractical without the heavy use of ICT-based systems. Thus, ICT is an essential part of the industrialization of services. It is the general purpose technology, as defined by Rosenberg and Trajtenberg (2004), that has enabled the geographic expansion of firms (particularly in retail, services, and wholesale) by allowing them to replicate and control establishments dispersed across space. Perhaps this is where the gains from ICT have been hiding.9

#### The most recent and comprehensive data proves monopolies are good.

Ganapati ’21 [Sharat; 2021; Assistant Professor of International Economics at Georgetown University; American Economic Journal of Microeconomics, “Growing Oligopolies, Prices, Output, and Productivity,” vol. 13, no. 3]

American industries have grown more concentrated over the last 40 years. In the absence of productivity innovation, this should lead to price hikes and output reductions, decreasing consumer welfare. With US census data from 1972 to 2012, I use price data to disentangle revenue from output. Industry-level estimates show that concentration increases are positively correlated to productivity and real output growth, uncorrelated with price changes and overall payroll, and negatively correlated with labor’s revenue share. I rationalize these results in a simple model of competition. Productive industries (with growing oligopolists) expand real output and hold down prices, raising consumer welfare, while maintaining or reducing their workforces, lowering labor’s share of output. (JEL D43, L13, D24, D33, D21, D42)

Does America have a monopoly problem? Market concentration within narrowly defined industries has risen over the last 40 years. Various papers have systematically and comprehensively laid out the implications of concentration on profits, productive factors, and markups.1 However, research has not systematically measured consumer welfare and prices, a first-order concern for antitrust authorities (Shapiro 2010, FTC Hearings 2018). 2 In the simplest economics examples (Tirole 1988), monopolies charge higher prices and restrict output, maximizing profits and reducing consumer welfare. However, monopolies could be caused by innovation from “superstar” firms or scale economies, leading to falling prices or increased output (Autor et al. 2017, Van Reenen 2018, Armstrong and Porter 2007, Tirole 1988, Kehrig and Vincent 2021).

Monopolists and oligopolists have incentives to both increase prices and/or decrease output.3 My main research question is simple: is there an empirical relationship between changes in oligopolies and consumer-relevant market outcomes on an economy-wide basis? I test the relationship of prices, quantities, and market concentration across the vast majority of the US economy using 40 years of census data. I then link these changes on the consumer side to productivity innovations and labor shares.

I directly quantify how changes in industry concentration in the medium- to long-run are correlated to changes in prices and real output by combining price data with revenue data.4 A 10 percent increase in the national market share of the 4 largest firms is correlated with a 1 percent increase in real output. Finding that higher output, but not price, is linked with higher concentration rates, I turn to the role of productivity. Industries with the most real productivity growth are those with the largest increases in industry concentration. A 10 percent increase in the market share of the largest 4 firms is linked to a 2 percent increase in labor productivity. With both industry concentration and productivity, output growth is not accompanied by payroll growth. Growing monopolists and oligopolists are able to produce more output with fewer, but higher-paid, workers. A 10 percent increase in the market share of the largest 4 firms is correlated with a 1 percent decrease in the labor’s share of revenue.5

### Concentration---2NC

#### No aff cards can cite systematic data---ONLY poorly constructed snapshots.

Dorsey et al. ’19 [Elyse; 4/15/19; Adjunct Professor at the Antonin Scalia Law School at George Mason University, J.D. from George Mason University; et al.; "Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement," https://regproject.org/wp-content/uploads/RTP-Antitrust-and-Consumer-Protection-Populist-Antitrust.pdf/]

A. Concentration Has Increased and Competition Has Decreased — And the Consumer Welfare Standard Is to Blame

One of the populist movement’s primary critiques is the purported increase in industry concentration and the resulting conclusion that competition has diminished, and the consumer welfare standard is to blame.

To begin, however, there is, in fact, no rigorous economic support for claims that high concentration levels are a strong indicator of harm to competition or that they should trigger a presumption of such harm in antitrust analysis.45

As it stands, there is no empirical foundation on which to conclude that monopoly power is rising. To the extent that markups are increasing, other studies show that output has increased and that quality-adjusted prices have remained stable. Claims that concentration has increased at least find somewhat consistent empirical support, although the extent of those changes are up for debate. There is no reliable empirical basis, however, to support the inference that the United States economy has experienced a systematic increase in market power.46

Indeed, this has been true since at least the 1970s:

[T]he studies done to date strongly indicate that there is little or no significant correlation between industrial concentration and corporate profits. To be sure, if one selects a particular year with peculiar characteristics, the figures can be made to appear otherwise, but in general, over a significant period of time, this lack of correlation seems well substantiated....

Indeed, one thing on which there is unequivocal agreement among economists… is that monopoly rates of return are realized regularly in some of the least-concentrated industries imaginable: those for personal services…. In the industrial sector on the other hand, where remedies for unproved problems abound, monopoly rates of return, when they do occur, seem unlikely to persist for a significant period of time.47

Instead, such assertions are based on a simple inference of competitive effects from market structures, and the unsupported assumption that an increase in concentration can mean only a reduction in competition. The problem is that no such inference can be made: “[I]t is presumptuous to conclude… that markets populated by fewer firms perform less well or offer competition that is less intense.”48 As Yale Brozen so aptly put it back in 1978:

Industries have become concentrated where that was the road to lower costs. It is these lower costs that have created temporary, above-average profitability in concentrated industries when it has occurred. Where concentration was not the road to lower costs, industries have remained unconcentrated. The market has worked surprisingly well, where it has been permitted, to conserve our resources and maximize our output. The antitrust agencies’ concentration on concentration in recent years is misdirected and should cease.49

Properly considered, a superficial increase in concentration is just as consistent with an increase in competition as with a decrease; the contrary claim — that there is a clear causal link between increased concentration and reduced competition — simply disregards the weight of economic evidence.50 Put simply: market share and industry concentration are poor predictors of competitive effects.51

The fact is that economists know very little about the relationships among market structure, firm size, competition, profits, prices, entrepreneurship, and innovation.52 Market shares and structural presumptions are not capable of predicting competitive effects and, thus, of specifying optimal policy choices.

In particular, in markets in which competition occurs significantly through innovation, the effect of increased concentration on competitiveness is ambivalent, at best.53 Where effective competition requires significant up-front investment and where economies of scale predominate (because of these high fixed costs),54 the assumption that concentration leads to reduced competition is especially misguided.

Excessive reliance on obsolete, market-share-based analysis to evaluate antitrust practices is tantamount to a rejection of modern antitrust principles and the economic learning that undergirds them. Moreover, such an analysis is likely to lead to decisions that reduce rather than promote consumer welfare and the public interest.

# 1NR

## CP---Adv

### 1NR---AT: L2NB

#### CP avoids the link

Hovenkamp ’21 [Herbert; June; Law Professor at the University of Pennsylvania; Yale Law Journal, “Antitrust and Platform Monopoly,” vol. 130, no. 8]

a. Enabling Competition Within the Platform

One alternative to divestiture is to leave a platform’s physical assets and range of participants intact but change the structure of ownership or management so as to make it more competitive internally. A platform or other organization can itself be a “market” within which competition can occur. In that case, antitrust law can be applied to its internal decisions, improving competition without limiting the extent of scale economies or beneficial network effects.

Ordinarily, agreements among subsidiaries or other agents within a firm are counted as unilateral and so are attributed to the firm itself.303 That rule is a direct consequence of the separation of ownership and control. The all-important premise, however, is that the firm’s central management is the only relevant economic decisionmaker. When that is not the case, even agreements among the various constituents within the firm can be treated as cartels.

### 1NR---Solvency---China

#### Empirics and strong incentives prove compliance.

Ricardel ’20 [Mira; January 20; a principal at the Chertoff Group and a former assistant to the president and deputy national security adviser; Fortune, “These new rules might end tech’s reliance on Chinese investors,” <https://fortune.com/2020/01/20/cfius-rules-regulations-china-investment/>; KP]

Third, penalties for violations are high—not just fines, but also transactional costs and loss of potential revenue from investments that are blocked or are forced to unwind. Recently, the $245 million acquisition of Grindr by Kunlun Tech of China was reversed, and prior to that Broadcom’s attempted takeover of Qualcomm, a $117 billion deal, was blocked by executive order.

Fourth, mitigation—which involves taking concrete steps such as firewalling sensitive information from foreign nationals and instituting third-party monitoring to assess compliance—is possible in some cases—but success is not guaranteed. The $1.2 billion MoneyGram-Ant Financial transaction failed in the wake of mitigation proposals being rejected by CFIUS.

Fifth, a strong compliance process and culture is essential. This is not just a requirement for general counsels, but for the C-suite and key employees. Failure to understand, internalize, and comply with the law can affect a company’s stock price and reputation. It can also affect the confidence CFIUS has in a firm and thus the trust necessary for potential approval or mitigation of future transactions.

So buyers and sellers beware: These regulations are not going away. There is strong bipartisan consensus for tightening FDI rules and even a change in administrations is highly unlikely to alter this new course. The number of investigations of foreign investment transactions by CFIUS grew from 25 in 2009 to 172 in 2017, as documented in the committee’s most recent annual report to Congress.

### 1NR---Solvency---Digital Divide

#### The counterplan bridges the digital divide without separation.

Atkinson ’21 [Robert; January 19; Ph.D. at UNC-Chapel Hill; Information Technology and Innovation Foundation, “A U.S. Grand Strategy for the Global Digital Economy,” https://itif.org/publications/2021/01/19/us-grand-strategy-global-digital-economy]

As such, going forward, the United States needs a revised and clear set of principles that together articulate a new doctrine of digital realpolitik to orient its global digital policy. These are both at the same time principles for guiding U.S. action and talking points to communicate to allies and non-aligned nations.

Principle 1: Unabashedly Support IT and Digital Innovation, Rejecting the Techlash Narrative and Policies

This may seem obvious, but it is anything but. China’s goal is not innovation; it is global power. Europe’s goal is not principally innovation; it is ensuring that IT and digital technologies serve such goals as privacy, racial and gender justice, income redistribution, limiting the role of government in areas such as law enforcement, expanding the role in other areas such as broadband, supporting small business and undermining large, and protecting incumbent businesses. Many UNCTAD nations’ goals are digital protectionism and redistribution from the North. It is this core lack of agreement on goals that makes achieving policy agreement so difficult.

Policymakers today need to reaffirm that commitment and make it clear in dealing with other nations that the United States will support policies that spur global IT and digital innovation and oppose those that needlessly harm that.

Since the formation of the republic, the United States has stood for growth and progress, including technological. Policymakers today, from both parties, need to reaffirm that commitment and make it clear in dealing with other nations that the United States will support policies that spur global IT and digital innovation and oppose those that needlessly harm that. As such, all discussions and narratives about digital technologies need to start with why the technology is a force for progress.

Principle 2: Embrace IT and Digital “National Developmentalism” (Smart, Active Policies to Support IT Innovation and Adoption) and Bring More Nations Into That Orbit

In the Cold War, there were two major camps: the democratic, market-based West and the authoritarian Communist East. It was clear what the goal of U.S. foreign policy was: keep nations from aligning with the Soviets and the Chinese, and encourage them to align with the United States.

Now there are five major political economy approaches to the digital economy.

The first is the neo-liberal “Washington consensus.” This is the traditional market-based approach that advocates for open markets, international trade, less regulation, the rule of law, and a minimal role for government. There are two problems with this approach. First, it always undervalues the key role of government in supporting innovation. Historically, the federal government played a key role in helping enable many key digital technologies, including the Internet, semiconductors, computing, GPS, and others. The second is that when the U.S. government advocates a principally free-market, hands-off approach to government, it fails to provide an acceptable alternative to China’s state-directed model. This not only means the United States has less influence in most nations seeking to grow their digital economy, it also leads many nations to become closer to China, and follow what appears to be a successful government-led model of technology catch up.

The second is social democratic regulation. As noted, this is the dominant doctrine in the EU (and among most on the left in the United States). In this approach, the key role of government is to regulate technology and technology companies so they achieve social democratic values of equality. This is increasingly bolstered by identity politics wherein activists routinely assert, usually without evidence or by cherry-picking evidence that supports their preconceptions, that digital technologies are inherently biased and harmful. It is a short step to the view that capitalism itself is inherently biased, oppressive, imperialist, and exploitative.

There are two problems with this approach. The first is that embracing it means less digital innovation and, by definition, slower per capita income growth, something many social democrats reject anyway, since they believe people already consume too much and for the sake of the planet should “live simple.” It also means less innovation in key areas such as health care, transportation, and education. The second problem is this approach lends support to an anti-business agenda, especially toward big business, and as such, leads to a weaker U.S. economy, since the United States on average has larger (and more efficient) firms than other nations.159 It also lends itself to anti-Americanism and the false third-way narrative between Chinese authoritarianism, American capitalism, and idealistic, harmonious, and sustainable EU social democracy.

The third approach is protectionism: This is the view that sees limiting foreign IT and digital market access as the key way to grow a digital economy. Nations such as India and Indonesia exemplify this approach. Digital protectionism usually doesn’t work, in part because it often drives up the costs of digital technologies, thereby limiting their use domestically, and because it also is against U.S. interests.

Washington has long and rightly argued against digital protectionism, although all too often it has spoken loudly but “carried a small stick.” In other words, digital protectionists have seldom been punished, and in some cases, continue to be rewarded.

The fourth is authoritarian statism. This is the state-directed approach that Chinese and other authoritarian governments engage in. While China is protectionist, it is more than that. It is also authoritarian, and its policies don’t just seek to protect domestic markets, they seek to harm foreign competitors.

There are two key problems with this approach. The first is while it can generate income growth and digital industry growth, it often comes at the expense of strong total factor productivity growth because so many resources are wasted.160 The second is it harms global IT and digital innovation because China’s massive subsidies, IP theft, and coerced transfer take market share away from more innovative firms in other nations.161 The third is China does not embrace freedom, human rights, civil liberties, or democracy, and the lack of those values is often reflected in both their companies and their advocacy in global forums.

The fifth approach is national developmentalism, which holds that government should be a coach, helping firms within its borders to compete globally, innovate, and boost productivity.162 It supports innovation, markets, and business—including big business. But it also recognizes that the state should play a key role in supporting digital innovation, including by defending its firms from unfair foreign competition. Some nations have moved toward or have fully embraced the national developmentalism model, including Scandinavian nations; increasingly the United Kingdom, as conservatives move beyond their Thatcherite traditions; Israel, Singapore, Taiwan, and others. In addition, some U.S. policymakers on both sides of the aisle have moved in this direction.

The United States should fully embrace national developmentalism and actively work to bring as many countries as possible into the U.S. national developmentalism orbit, “selling” it as a compelling and effective alternative to social democratic regulation, protectionism, and authoritarian statism.

While this doctrine presents a more realistic picture of the world, for it recognizes that nations seek competitive advantage in IT and digital industries, it also counsels a “race-to-the-top” wherein nations support digital innovation with policies related to R&D, skills development, and digital infrastructures, as well as the right regulatory and tax policies, coupled with government use of the technologies themselves.

U.S. policymakers are moving more toward a national developmentalism view as they recognize the significant challenge that is China. As such, the United States should fully embrace national developmentalism and actively work to bring as many countries as possible into the U.S. national developmentalism orbit, “selling” it as a compelling and effective alternative to social democratic regulation, protectionism, and authoritarian statism.

Principle 3: Work to Limit China’s IT and Digital Progress, Especially When It Is Based on Innovation Mercantilism

While U.S. policy should foster a broad community of nations embracing IT and digital national developmentalism and a free and mostly open Internet, it should also work to limit Chinese progress, in part by working with allies and other nations that see China as a threat. To be clear, the motivation here is based not only on resisting China’s efforts to become a global hegemon, but on the fact that much of China’s technological success comes from illegitimate, unfair, predatory, and often illegal policies and practices.

While changing Chinese behavior (e.g., reducing their innovation mercantilist behaviors) is important, it should not be the principal goal, as that can be quite difficult. China has shown little willingness to pare its innovation mercantilist arsenal.

Rather, the goal should be to limit both Chinese progress and Chinese harm to U.S. technology and economic interests. As long as China seeks to gain global dominance in IT and digital sectors (as opposed to comparative advantage) by using “innovation mercantilist” tools that violate the spirit, if not the letter, of the WTO, and seeks to repress freedom, U.S. policy should work to limit Chinese IT and digital progress. But this must be done in ways that do not at the same time “shoot ourselves in the foot,” such as through unilateral export controls of technology products that for the most part China can obtain elsewhere.

Principle 4: Actively Fight Foreign IT and Digital Protectionism

As noted, many nations and regions, including Europe and many UNCTAD nations support digital protectionism (including limiting cross-border data flows), wrongly seeing it as a fast track to growth. If for no other reason than this hurts U.S. firms in their global competition with Chinese firms, U.S. policy should more actively resist foreign digital protectionism, and engage more effectively in multinational agencies, such as the World Bank and UNCTAD, that reward and encourage such protectionist policies.

Principle 5: Embrace IT and Digital Free Trade, Especially With Like-Minded Nations

The converse to principle four is that the United States should support IT and digital free trade. Concretely, for example, this means supporting the free flow of data; continued expansion of the Information Technology Agreement (ITA), including an ITA-3 that brings products covered up to date; and negotiating an ambitious WTO e-commerce agreement.163 However, the United States should be strategic about which nations it encourages to participate in such agreements. For example, while it is in the United States’ interests for China to remain in the ITA agreement, the United States should negotiate the WTO e-commerce agreement without China, only letting China in after the agreement is concluded. Failure to do that is likely to lead to a significantly weakened agreement.164

Principle 6: Resist Authoritarian Influences in the IT and Digital Economy but Remain Focused on Key U.S. Interests

Just as the United States rightly resists authoritarianism around the world because it violates core human rights, as well as often threatening core U.S. national interests, it should do the same when it comes to these nations’ actions and influences on the digital economy. But this should not mean weakening key national interests (e.g., IT and digital competitiveness) to push for more openness in authoritarian nations. And, to the extent the U.S. government pushes back against Chinese censorship, especially unilaterally, it should include a focus on how it hurts U.S. competitiveness.165

Principle 7: Defend the Private Sector’s Core Role in IT and Digital Governance

When it comes to IT and digital standards, global innovation is maximized if the private sector plays the key role not influenced by government. When authoritarian governments get involved, the motivation is to limit Internet freedom or support technology protectionism. As such, U.S. policy should continue its affirmative stance for a strong non-governmental role, but at the same time, should get more engaged in stopping China from distorting the global standards system for its own advantage, including by forcing Chinese companies to “toe the party line.”

Principle 8: Defend the Principle That Big Is Not Bad, and Often Is Superior

It is all too easy for policymakers, even in the United States, to get swept up in the anti-Big Tech rhetoric coming out of other nations seeking to take U.S. tech companies down a peg or two. Large companies, including tech companies, are mostly a force for good—helping drive growth, innovation, and competitiveness.166 As such, U.S. policy should defend the concept of bigness and not aid and abet other nations that seek to attack large U.S. firms.

Principle 9: Defend Innovation-Oriented Regulation

To the extent the United States embraces Internet-libertarianism, it is helping other nations by making it easier for them to adopt an anti-American narrative and policies. However, the alternative should not be EU-style regulation, which limits innovation. Indeed, if the United States embraces a social-democratic approach to Internet regulation, it will mean less progress and growth both domestically and around the world. As such, the United States needs to embrace innovation-based IT and digital regulation (as opposed to precautionary principles-based) at home and abroad. At home, for example, this means enacting national privacy legislation and rules around the use of such technologies as facial recognition. Abroad, this means actively assisting other nations on how to craft innovation-enhancing regulatory systems that also meet key social policy concerns.

Principle 10: Defend the Mostly Open Internet

When the United States pursues an absolutist open Internet agenda (virtually everything should be open), it not only alienates other nations that don’t share U.S. values or have the same approach to free speech, it also diverts U.S. efforts from defending the U.S. digital economy. This is not to say, however, that an open Internet is not a force for progress or that the United States should not encourage nations to move in this direction. But if the U.S. narrative is tone-deaf to cultural differences (e.g., some nations do not want their citizens to access Internet pornography; others want to limit access to hate speech, etc.) the United States will be tuned out not just on this issue but on more important ones. In addition, the narrative of the absolutely open Internet makes it harder for the United States to call for measures to limit digital piracy, since many Internet exceptionalists and progressives wrongly decry any efforts to fight digital piracy as violating the open Internet.167

Principle 11: Support a Robust Domestic IT and Digital Policy That Ensures U.S. Global Leadership

Foreign policy only goes so far. The United States will not effectively defend its IT and digital interests, nor effectively promote the superior U.S. approach around the world, unless Congress and the Biden administration put in place a robust, national developmentalism-based IT and digital strategy.168 One key problem is that while the holders of the Washington Consensus rightly support a light touch approach to digital regulation, they are ambiguous toward a robust national advanced technology strategy.169 And in turn progressives seek a strategy that advances social policy goals, not competitiveness and innovation goals.170

Absent such a strategy, the risk of the United States falling behind China grows significantly. Helping IT and digital firms in the United States continue to build products that are so good consumers all around the free world will insist on using them is good insurance, both against Chinese innovation mercantilism and IT and digital protectionism more broadly. This means the government enabling and supporting major advances in digital health care, education, financial services, public services, transportation, and other areas, as well as the talent needed to develop them.

CONCLUSION

This decade will likely prove decisive in how the global digital economy, and the U.S. IT and digital economy in particular, evolve. We can move to a world dominated by EU innovation-limiting regulations and Chinese technology predation and authoritarianism, with the attendant harms to U.S. and global innovation. Or, with decisive U.S. leadership under a new doctrine of digital realpolitik, we can move to a world wherein appropriate technology and regulatory policies enable IT and digital innovation to flourish, with all the attendant benefits, including continued U.S. leadership.

### 1NR ---Solvency---Growth

#### Restructuring management decreases the incentive to discriminate.

Hovenkamp ’21 [Herbert; June; Law Professor at the University of Pennsylvania; Yale Law Journal, “Antitrust and Platform Monopoly,” vol. 130, no. 8]

The Terminal Railroad decree suggests a way to remedy anticompetitive behavior by large digital platforms representing several sellers without sacrificing operational efficiencies. Rather than requiring divestiture of productive assets, which almost always leads to higher prices, we could restructure ownership and management. A large firm such as Amazon can attain economies of scale and scope that rivals cannot match. Further, Amazon benefits consumers, most suppliers, and labor, by selling its own house brands and the brands of third-party merchants on the same website. This is how a seller of house brands can break down the power of large name-brand sellers.348

The problem is not that Amazon sells too much, but rather that Amazon’s ownership and management make it profitable for Amazon to discriminate in favor of its own products and against those of third-party sellers, or to enter other anticompetitive agreements with independent sellers. Breaking up Amazon or forcing a physical separation of own-product and third-party sales would mean giving up a great deal of brand rivalry that benefits consumers.

Suppose a court required Amazon to turn important commercial decisions over to a board of active Amazon participants who made their own sales on the platform, purchased from Amazon, or dealt with it for ancillary services. Acting collaboratively, they could control product selection, distribution and customer agreements, advertising, internal product development, and pricing of Amazon’s own products. Their decisions would be subject to antitrust scrutiny under section 1 of the Sherman Act.

#### IP reforms deletes killer acquisitions.

Hovenkamp ’21 [Herbert; June; Law Professor at the University of Pennsylvania; Yale Law Journal, “Antitrust and Platform Monopoly,” vol. 130, no. 8]

Limiting the dominant firm to a nonexclusive license solves the killer-acquisition problem to the extent that the acquired assets are intellectual-property rights. Indeed, if the acquirer does not intend to use the acquired assets at all, then acquisition of a nonexclusive right has no value in the short run.

## Adv---Econ

### 1NR---AT: Concentration

#### The most recent and comprehensive data proves monopolies are good.

Ganapati ’21 [Sharat; 2021; Assistant Professor of International Economics at Georgetown University; American Economic Journal of Microeconomics, “Growing Oligopolies, Prices, Output, and Productivity,” vol. 13, no. 3]

American industries have grown more concentrated over the last 40 years. In the absence of productivity innovation, this should lead to price hikes and output reductions, decreasing consumer welfare. With US census data from 1972 to 2012, I use price data to disentangle revenue from output. Industry-level estimates show that concentration increases are positively correlated to productivity and real output growth, uncorrelated with price changes and overall payroll, and negatively correlated with labor’s revenue share. I rationalize these results in a simple model of competition. Productive industries (with growing oligopolists) expand real output and hold down prices, raising consumer welfare, while maintaining or reducing their workforces, lowering labor’s share of output. (JEL D43, L13, D24, D33, D21, D42)

Does America have a monopoly problem? Market concentration within narrowly defined industries has risen over the last 40 years. Various papers have systematically and comprehensively laid out the implications of concentration on profits, productive factors, and markups.1 However, research has not systematically measured consumer welfare and prices, a first-order concern for antitrust authorities (Shapiro 2010, FTC Hearings 2018). 2 In the simplest economics examples (Tirole 1988), monopolies charge higher prices and restrict output, maximizing profits and reducing consumer welfare. However, monopolies could be caused by innovation from “superstar” firms or scale economies, leading to falling prices or increased output (Autor et al. 2017, Van Reenen 2018, Armstrong and Porter 2007, Tirole 1988, Kehrig and Vincent 2021).

Monopolists and oligopolists have incentives to both increase prices and/or decrease output.3 My main research question is simple: is there an empirical relationship between changes in oligopolies and consumer-relevant market outcomes on an economy-wide basis? I test the relationship of prices, quantities, and market concentration across the vast majority of the US economy using 40 years of census data. I then link these changes on the consumer side to productivity innovations and labor shares.

I directly quantify how changes in industry concentration in the medium- to long-run are correlated to changes in prices and real output by combining price data with revenue data.4 A 10 percent increase in the national market share of the 4 largest firms is correlated with a 1 percent increase in real output. Finding that higher output, but not price, is linked with higher concentration rates, I turn to the role of productivity. Industries with the most real productivity growth are those with the largest increases in industry concentration. A 10 percent increase in the market share of the largest 4 firms is linked to a 2 percent increase in labor productivity. With both industry concentration and productivity, output growth is not accompanied by payroll growth. Growing monopolists and oligopolists are able to produce more output with fewer, but higher-paid, workers. A 10 percent increase in the market share of the largest 4 firms is correlated with a 1 percent decrease in the labor’s share of revenue.5

### 1NR---AT: Econ

#### Economic decline doesn’t cause war.

Walt ’20 [Stephen; May 13; International Relations Professor at Harvard University; Foreign Policy, “Will a Global Depression Trigger Another World War?” https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/]

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”

Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

## Adv---Systemic Risk

### 1NR---AT: Systemic Risk

#### Probability of catastrophe is low. ‘Interconnectedness’ is a neg argument.

Moosa ’10 [Imad; October 4; Finance Professor at RMIT in Melbourne, Australia; Journal of Banking Regulation, “The myth of too big to fail,” vol. 11]

ALLOWING MISMANAGED FINANCIAL INSTITUTIONS TO FAIL

Finally, if they have to fail, let it be. In every case of government bailout, a typical argument is put forward that allowing a big institution to fail brings about havoc on the financial sector and the economy as a whole. A doomsday scenario would be used by the management of a failed institution and regulators alike to ‘bail out or else’. Some would argue that finance is deeply interconnected, so that even a moderately large player can take down the system if it implodes. Those who argue along these lines would say that it was the failure of Lehman Brothers (not Citi or Bank of America) that ‘brought the world to the brink’. This claim is far-fetched because the world came to the brink as a result of the collective malpractice of financiers. Saving Lehman in any shape or form could not have changed the course of the global financial crisis.

Take, for example, AIG whose management claimed that any failure by the government to bail it (or them) out would have ‘catastrophic’ consequences. I do not believe that it would have been catastrophic (a really big word) to let AIG's partners in derivative transactions (which are mainly buyers of the credit default swaps offered by AIG) to take substantial losses – this is business, is it not? They took a gamble, and it did not work. The alternative to bailout would have been to put AIG into Chapter 11, in which case the creditors (including derivative counterparties) would obtain the company's assets. They would end up with a certain recovery ratio on their claims (say 20 per cent), bearing the losses themselves. They can afford it, and if they cannot then bad luck. Governments do not compensate people for losses incurred in the stock market, so why compensate rich companies (and the rich people who mismanage them) for their gambles? This is like opening loss compensation offices in the casinos of Las Vegas.

Consider now the case of LTCM, which is analysed brilliantly by Dowd.4 He wonders what might have happened if LTCM had failed, and whether or not the Federal Reserve's fears were plausible. The underlying arguments for bailouts were that (i) financial markets were in a particularly fragile state in September 1998; (ii) LTCM was a big player that was heavily involved in derivatives trading; and (iii) it had significant exposures to many different counterparties, and many of its positions were difficult and costly to unwind. These were the justifications for why the Fed was nervous about the prospect of LTCM's failing. Dowd, however, argues that financial markets could have absorbed the shock of LTCM's failing without going into the financial meltdown that Federal Reserve officials feared. He supports his argument as follows:

* Although many firms would have taken large hits, the amount of capital in the markets is in the trillions of dollars. It is therefore difficult to see how the markets as a whole could not have absorbed the shock, given their huge size relative to LTCM.
* When firms are forced to liquidate positions in response to a major shock, there are usually other firms willing to buy at the right price. Sellers may have to take a loss to liquidate, but buyers can usually be found (ask Warren Buffet who was willing to buy LTCM at a fair price). Competition for good buys usually puts a floor under sellers’ losses.
* Market experience suggests that the failure of even a big derivatives player usually has an impact only on the markets in which that player is very active. Worldwide market liquidity has never been threatened by any such failure.
* Even in those rather extreme and unusual markets where liquidity might be paralysed in the immediate aftermath of a major shock, participants have every reason to resume trading as soon as possible. There is no reason to suppose that the market response would have been much different if LTCM had failed.
* There have been major developments in derivatives risk management over the last few years, which means that most firms’ ‘true’ exposures are now only a small fraction of what they might otherwise appear to be.

In short, history does not provide even circumstantial evidence indicating that the failure of one institution can cause the failure of the whole system. Such a proposition cannot be substantiated by intuition or theoretical reasoning, neither can it be supported by empirical evidence. Good economics tells us that if a firm must fail, we should let it fail.

#### Err neg. Their cards use the language of fear but lack substance.

Moosa ’10 [Imad; 2010; Finance Professor at RMIT in Melbourne, Australia; The Myth of Too Big to Fail, “Dealing with the Menace of TBTF,” Ch. 8]

The language of fear

In every case of government bailout, a typical argument is put forward that allowing a big institution to fail brings about havoc in the financial sector and the economy as a whole. Wolf (2009) tells an anecdote from just after the failure of Lehman Brothers in September 2008. When Ben Bernanke was asked “what if we don’t do anything”, he replied “there will be no economy on Monday”. During a town hall meeting on 27 July, Bernanke made similar remarks as he said the following (Money Really Matters, 2009):

The problem we have is that in a financial crisis if you let the big firms collapse in a disorderly way, they’ll bring down the whole system. When the elephant falls down, all the grass gets crushed as well.

The irony here is that regulators construct a doomsday scenario only when it suits them. They let Lehman Brothers go down although it was twice as big as Bear Stearns, but this is what the Federal Reserve said to justify the bailout of Bear (Board of Governors of the Federal Reserve System, 2008):

A bankruptcy filing would have forced the secured creditors and counterparties of Bear Stearns to liquidate the underlying collateral, and given the illiquidity of markets, those creditors and counterparties might well have substantial losses. If they had responded to losses or unexpected illiquidity of their holdings by pulling back from providing secured financing to other firms and by dumping large volumes of illiquid assets on the market, a much broader financial crisis would have ensued with consequent harm to the overall economy.

In the first major case of a TBTF bailout, that of Continental Illinois, a doomsday scenario was drawn by Charles Conover, the then Comptroller of the Currency. Conover (1984) declared:

Had Continental failed and been treated in a way in which depositors and creditors were not made whole, we could very well have seen a national, if not an international, financial crisis, the dimensions of which were difficult to imagine. None of us wanted to find out.

Then the Chairman of House Banking Committee, Congressman St Germain, argued that “had the Continental Illinois been allowed to fail… all those people [would have been] put out of work and all those corporations out of money” (Kaufman, 2004). This is the same St Germain as in the deregulatory Garn-St Germain Act of 1982, which means that an enthusiastic free marketeer justified government intervention to save a failed private-sector business. In a subsequent testimony a former governor of the Fed, John LaWare, went as far using the Chernobyl disaster as an analogy for financial failure (what a joke!). LaWare (1991) declared:

It is systemic risk that fails to be controlled and stopped at the inception that is a nightmare condition that is unfair to everybody. The only analogy that I can think of for the failure of a major international institution of great size is a meltdown of a nuclear generating plant like Chernobyl. The ramifications of that kind of failure are so broad and happen with such lightning speed that you cannot after the fact control them. It runs the risk of bringing down other banks, corporations, disrupting markets, bringing down investment banks along with it… We are talking about the failure that could disrupt the whole system.

Likewise, a doomsday scenario would be used by the management of a failed institution and regulators alike to bail out the institutions (or else). For example, some would argue that finance is deeply interconnected, so that even a moderately large player can take down the system if it implodes. Those who argue along these lines would say that it was the failure of Lehman Brothers (not Citigroup or Bank of America) that brought the world to the brink. This claim is far-fetched because the world came to the brink as a result of the collective malpractice of financiers. Saving Lehman in any shape or form could not have changed the course of the global financial crisis.

Back to AIG

When the U.S. government was considering what to do about AIG, the management of the failed company claimed that any failure by the government to bail it (or them) out would have “catastrophic” consequences. This is the same management that, in the words of O’Rourke (2009), adopted financial practices that “displayed a shameful level of arrogance and irresponsibility” and the same management that was unable to “practice even the most basic risk management”. In an AIG (2009) document dated 26 February 2009—and marked “strictly confidential” although it is freely available on the internet—the following consequences of the failure were envisaged:

* The failure of AIG would have a cascading impact on a number of U.S. life insurers.
* State insurance guarantee funds would be quickly dissipated, leading to runs on the insurance industry.
* Given AIG’s size relative to other U.S. insurance companies, there is no ability for an “arranged marriage” of AIG with other U.S. insurance companies.
* The government’s unwillingness to support AIG could lead to a crisis of confidence over other large financial institutions.
* The loss of confidence is likely to be particularly acute in countries that have large investments in U.S. companies and securities and whose citizens may suffer significant losses as a result of the failure of AIG’s foreign insurance subsidiaries.
* This could lead directly to a decrease in the attractiveness of U.S. government securities and a consequent increase in borrowing costs for the U.S. government.
* It is questionable whether the economy could tolerate another shock to the system that a failure of AIG would produce.
* The failure of AIG could create a “chain reaction of enormous proportions”, given the extent and interconnectedness of AIG’s business.
* The failure of AIG would have a devastating impact on the U.S. and global economy.
* Potential unemployment for a large portion of the 116,000 employees, including 50,000 employees generating annual U.S. salaries totalling $3.5 billion.
* Adverse impact on AIG’s 74 million policyholders worldwide. Existing policy holders could be unable to obtain cover from other insurance companies.
* Possible outcomes for which the Treasury would need to be prepared to respond include: (i) fall in the value of the dollar, (ii) increase in Treasury borrowing costs, and (iii) doubts about the ability of the U.S. to support its banking system.
* AIG has $1.6 trillion in notional derivatives exposures. Unwinding of portfolios in an AIG failure would likely cause enormous downward pressure on valuations across a wide range of associated asset classes.
* And there is more that I will just overlook.

Notice the language of fear: “cascading impact”, “crisis of confidence”, “chain reaction of enormous proportions”, and “devastating impact”. This kind of language is used only by the agents of apocalypse. If these claims were true then the people who caused the problem should be tried for crimes against humanity (on the contrary, they got their bonuses out of taxpayers’ money).

But these claims are false, as there is no way the failure of one firm can cause this kind of damage to the world economy. They make it sound more catastrophic than a massive earthquake (and people survive and flourish even after massive earthquakes). I will not dignify AIG’s claims by commenting on them individually. What is most ludicrous, however, is the claim that the failure of AIG would bring about dollar depreciation. If my memory serves me right, I recall that the dollar soared in value in the fourth quarter of 2008, when problems at AIG started to surface to become public knowledge, then it started to depreciate following the bailout. If anything, currency depreciation may result from bailing out a failed institution if the bailout is financed by printing money (Stern and Feldman, 2004).

I do not believe that it would have been catastrophic (a really big word) to let AIG’s partners in derivative transactions (which are mainly buyers of credit default swaps) take substantial losses (this is business, is it not?). They took a gamble, and it did not work. The alternative to bailout would have been to allow (or force) AIG to file for bankruptcy, in which case AIG’s creditors (including its derivative counterparties) would obtain the company’s assets. They would end up with a certain recovery rate on their claims (say 20 per cent), bearing the losses themselves. They could afford it, and if they could not then bad luck. In a Congressional hearing held in July 2009, Dean Mahoney suggested allowing financial institutions to go through bankruptcy proceedings, so that costs may be appropriately passed to creditors rather than taxpayers (US Fed News Service, 2009). Governments do not compensate people for losses in the stock market, so why compensate rich companies (and the rich people who mismanage them) for their gambles? This is like opening loss compensation offices in the casinos of Las Vegas. By the way, I have often wondered why governments bail out institutions but not markets.

Let us assume for the sake of argument that it was legitimate to be worried about AIG’s counterparties, including major U.S. and foreign banks, some of which would deplete their capital. The question is why pay AIG to pay these counterparties? It only made it easy for AIG executives to get their bonuses, having just blown up the world. It is important to understand that the government can also employ intermediate approaches between fully backing AIG’s derivative obligations and no backing at all. For example, the government could place AIG in Chapter 11, but commit to providing supplementary coverage that would make up any difference between the value that creditors would get from AIG’s reorganization and, say, an 80 per cent recovery rate. Such an approach could allow setting different “haircuts” for different classes of creditors. The government, for example, might elect not to provide such supplementary coverage to executives owed money by AIG. Letting AIG’s derivative counterparties take a significant “haircut”, however, should not lead to a crisis.

It is not only big institutions that portray doomsday scenarios to claim TBTF bailout. Even unknown small-medium institutions do it from time to time. In late 2001 a medium-size broker-dealer firm based in Minneapolis, MJK Clearing, experienced severe financial difficulty. The management of the firm argued with the Federal Reserve Bank of Minneapolis that its failure would spill over and severely impair around 200,000 retail customers, several brokerage firms involved in the stock-lending deal that initially caused the problem, and a variety of small brokerage houses. MJK’s lawyer claimed the TBTF status and urged the Fed to provide financial assistance. It was subsequently demonstrated that the alleged spillover effect was exaggerated, and no assistance was provided (Stern and Feldman, 2004). If, instead, the Fed had chosen to go for a rescue operation, we would have been told that failure to do so would be destructive for the State of Minnesota and the U.S. economy as a whole.

Inflated figures

What I would like to see from a failing institution using alarming language is a list of how much each counterparty would lose as a result of its failure. There is no point in talking about the trillions of dollars of losses that would be incurred by counterparties all around the world. Deals involving derivatives, for example, produce inflated, frightening but unrealistic figures. For example, the notional value of outstanding credit default swaps at one time was $36 trillion, but this figure counts all guaranteed debt—the equivalent, in home insurance, of the total value of houses covered rather than the premium paid (The Economist, 2009n). Interest rate swaps provide another good example. The value of outstanding contracts is measured in terms of notional values, which means nothing because interest payments represent a tiny fraction of notional values. For example, AIG claimed an impending disaster that could result from the unwinding of $1.6 trillion of positions on derivatives. This figure, however, is the notional amount involved, not the actual payments that would have been a fraction thereof.

Furthermore, the word “loss” could mean anything or nothing, as Davis (2009) explains. When asset prices collapse, what is lost is “paper wealth” that was created by the increase in asset prices on the perception of some market participants that those assets were worth more. Loss also depends on which price level is used as a benchmark. Quiggin (2009) refers to “notional losses” resulting from the wiping out of the “spurious gains of previous years”. The only real losers in a TBTF fiasco are taxpayers.

### 1NR---AT: Impacts

#### No meltdowns impact.

Shellenberger 19 Michael Shellenberger, author, environmental policy writer, cofounder of Breakthrough Institute and founder of Environmental Progress, Time Magazine “Hero of the Environment.” [It Sounds Crazy, But Fukushima, Chernobyl, And Three Mile Island Show Why Nuclear Is Inherently Safe, 3-11-19, https://www.forbes.com/sites/michaelshellenberger/2019/03/11/it-sounds-crazy-but-fukushima-chernobyl-and-three-mile-island-show-why-nuclear-is-inherently-safe/#5b4a65ff1688]

But now, eight years after Fukushima, the best-available science clearly shows that Caldicott’s estimate of the number of people killed by nuclear accidents was off by one million. Radiation from Chernobyl will kill, at most, 200 people, while the radiation from Fukushima and Three Mile Island will kill zero people. In other words, the main lesson that should be drawn from the worst nuclear accidents is that nuclear energy has always been inherently safe. The truth about nuclear power’s safety is so shocking that it’s worth taking a closer look at the worst accidents, starting with the worst of the worst: Chernobyl. The nuclear plant is in Ukraine which, in 1986, the year of the accident, was a Soviet Republic. Operators lost control of an unauthorized experiment that resulted in the reactor catching fire. There was no containment dome, and the fire spewed out radioactive particulate matter, which went all over the world, leading many to conclude that Chernobyl is not just the worst nuclear accident in history but is also the worst nuclear accident possible. Twenty-eight firefighters died after putting out the Chernobyl fire. While the death of any firefighter is tragic, it’s worth putting that number in perspective. Eighty-six firefighters died in the U.S. in 2018, and 343 firefighters died during the September 11, 2001 terrorist attacks. Since the Chernobyl accident, 19 first responders have died, according to the United Nations, for ”various reasons” including tuberculosis, cirrhosis of the liver, heart attacks, and trauma. The U.N. concluded that “the assignment of radiation as the cause of death has become less clear.” What about cancer? By 2065 there may be 16,000 thyroid cancers; to date there have been 6,000. Since thyroid cancer has a mortality rate of just one percent — it is an easy cancer to treat — expected deaths may be 160. The World Health Organization claims on its web site that Chernobyl could result in the premature deaths of 4,000 people, but according to Dr. Geraldine Thomas, who started and runs the Chernobyl Tissue Bank, that number is based on a disproven methodology. “That WHO number is based on LNT,” she explained, using the acronym for the “linear no-threshold” method of extrapolating deaths from radiation. LNT assumes that there is no threshold below which radiation is safe, but that assumption has been discredited over recent decades by multiple sources of data. Support for the idea that radiation is harmless at low levels comes from the fact that people who live in places with higher background radiation, like Colorado, do not suffer elevated rates of cancer. In fact, residents of Colorado, where radiation is higher because of high concentrations of uranium in the ground, enjoy some of the lowest cancer rates in the U.S. Even relatively high doses of radiation cause far less harm than most people think. Careful, large, and long-term studies of survivors of the atomic bombings of Hiroshima and Nagasaki offer compelling demonstration. Cancer rates were just 10 percent higher among atomic blast survivors, most of whom never got cancer. Even those who received a dose 1,000 times higher than today’s safety limit saw their lives cut short by an average of 16 months. But didn’t the Japanese government recently award a financial settlement to the family of a Fukushima worker who claimed his cancer was from the accident? It did, but for reasons that were clearly political, and having to do with the Japanese government’s consensus-based, conflict-averse style, as well as lingering guilt felt by elite policymakers toward Fukushima workers and residents, who felt doubly aggrieved by the tsunami and meltdowns. The worker’s cancer was highly unlikely to have come from Fukushima because, once again, the level of radiation workers received was far lower than the ones received by the Hiroshima/Nagasaki cohort that saw (modestly) higher cancer rates. What about Three Mile Island? After the accident in 1979, Time Magazine ran a cover story that superimposed a glowing headline, “Nuclear Nightmare,” over an image of the plant. Nightmare? More like a dream. What other major industrial technology can suffer a catastrophic failure and not kill anyone? Remember when the Deepwater Horizon oil drilling rig caught on fire and killed 11 people? Four months later, a Pacific Gas & Electric natural gas pipeline exploded just south of San Francisco and killed eight people sleeping in their beds. And that was just one year, 2010. The worst energy accident of all time was the 1975 collapse of the Banqiao hydroelectric dam in China. It collapsed and killed between 170,000 and 230,000 people. Nuclear’s worst accidents show that the technology has always been safe for the same, inherent reason that it has always had such a small environmental impact: the high energy density of its fuel. Splitting atoms to create heat, rather than than splitting chemical bonds through fire, requires tiny amounts of fuel. A single Coke can of uranium can provide enough energy for an entire high-energy life. When the worst occurs, and the fuel melts, the amount of particulate matter that escapes from the plant is insignificant in contrast to both the fiery explosions of fossil fuels and the daily emission of particulate matter from fossil- and biomass-burning homes, cars, and power plants, which kill seven million people a year. It's not that nuclear energy never kills. It's that nuclear's death toll is vanishingly small. Consider nuclear's global death toll in context. These are just annual deaths. - walking: 270,000 - driving: 1,350,000 - working: 2,300,000 - air pollution: 4,200,000 By contrast, nuclear's death total is likely to be around 200.

#### No grid impacts.

Uchill ’18 [Joe; august 23; internally citing Department of Homeland Security officials and other cybersecurity experts; Axios, “Why "crashing the grid" doesn't keep cyber experts awake at night,” https://www.axios.com/why-crashing-the-grid-doesnt-keep-cyber-experts-awake-at-night-a40563a5-f266-493d-856a-5c9a5c1383dd.html]

Reality check: The people tasked with protecting U.S. electrical infrastructure say the scenario where hackers take down the entire grid — the one that's also the plot of the "Die Hard" movie where Bruce Willis blows up a helicopter by launching a car at it — is not a realistic threat. And focusing on the wrong problem means we’re not focusing on the right ones.

So, why can't you hack the grid? Here's one big reason: "The thing called the grid does not exist," said a Department of Homeland Security official involved in securing the U.S. power structure.

Think of the grid like the internet. We refer to the collective mess of servers, software, users and equipment that routes internet traffic as "the internet." The internet is a singular noun, but it’s not a singular thing.

* You can’t hack the entire internet. There’s so much stuff running independently that all you can hack is individual pieces of the internet.
* Similarly, the North American electric grid is actually five interconnected grids that can borrow electricity from each other. And the mini-grids aren't singular things either. Taking down "the grid" would be more like collapsing the thousands of companies that provide and distribute power accross the country.
* "When someone talks about 'the grid,' it's usually a red flag they aren't going to know what they are talking about," says Sergio Caltagirone, director of threat intelligence at Dragos, a firm that specializes in industrial cybersecurity including the energy sector.

Redundancy and resilience: Every aspect of the electric system, from the machines in power plants to the grid as a whole, is designed with redundancy in mind. You can’t just break a thing or 10 and expect a prolonged blackout.

* On some level, most people already know this. Everyone has lived through blackouts, but no one has lived through a blackout so big it caused the Purge.
* 'The power system is the most complex machine ever made by humans," said Chris Sistrunk, principle consultant at FireEye in energy cybersecurity. "Setting it up, or hacking it, is more complicated than putting a man on the moon."
* An attack that took out power to New York using cyber means would require a nearly prohibitive amount of effort to coordinate, said Lesley Carhart of Dragos. Such a failure would also tip off other regions that there was an attack afoot. Causing a power outage in New York would likely prevent a power outage in Chicago.

## Adv---Digital Divide

### 1NR---AT: Digital Divide

#### Studies disagree that platforms are relevant.

Huang ’10 [Chun-Yao and Hau-Ning Chen; Fall; Marketing Professor at National Taiwan University; Doctoral Student at National Taiwan University; Journal of Public Policy & Marketing, “Global Digital Divide: A Dynamic Analysis Based on the Bass Model,” vol. 29, no. 2]

Third, the global digital divide is a function of economic, educational, and cultural factors in the long run. The roles of these factors evolve over time. From the empirical study in the form of six separate cross-sectional regressions, we establish that variables reflecting economic, educational, and cultural factors all contribute to the explanation of the digital divide, but at different times. The finding that historical Internet penetration can be explained by income between 1996 and 2008 is not surprising, because affordability matters in Internet adoption. Historically, therefore, the global digital divide has been strongly associated with the income divide among countries.

Various cultural factors explain the levels of Internet penetration across countries at different times. In the early days of Internet diffusion, countries that were more socially cohesive and integrative (i.e., lower level of individualism) and were more culturally comfortable at unstructured situations (i.e., lower level of uncertainty avoidance) were more likely to have higher levels of Internet penetration. How-ever, the influences of individualism and uncertainty avoidance disappeared subsequently. Such a finding implies that the soft, latent, cultural factors in a marketing system, beyond the more concrete income level, were important as either facilitators or inhibitors in the early days of Internet diffusion. As more households in different countries gained access to the Internet, the association between cultural fac-tors and Internet penetration was no longer significant.

What is even more intriguing is the role of education. According to our analysis and accounting for the economic and cultural factors, the importance in the literacy rate—the proxy of education in this research—has been insignificant during the course of past Internet diffusion. However, when we consider the predicted ultimate levels of Internet diffusion across countries, heterogeneity in literacy rates is the sole statistically significant explanation (among a wide array of currently available variables).

If we piece the chunks of cross-sectional analysis together, the longitudinal picture reveals that at different stages, there are different sets of factors that are strongly associated with the global digital divide. Historically, while income has been a persistent factor in explaining the global digital divide, cultural factors were only significantly associated with the global digital divide during the early days. However, the future divide can be best explained by the rate of literacy. Any single cross-sectional attempt for the analysis of digital divide's determinants is, at best, partial and potentially misleading.

### 1NR---AT: LIO

#### Err neg. Dire predictions are hype.

Cole ’18 [Daniel and Aurelian Craitu; June 28; Law Professor at Indiana University; Political Science Professor at Indiana University; Aeon, “The many deaths of liberalism: More than a century of death notices have not diminished the achievements and the necessity of liberalism,” https://aeon.co/essays/reports-of-the-demise-of-liberalism-are-greatly-exaggerated]

The intellectual attraction of liberalism’s jeopardy must be great indeed because liberalism has been declared dead so often. We conducted a Google Books Ngram analysis, which graphs the number of books containing a certain word or phrase as a percentage of all books in Google’s collection, numbering more than 30 million volumes at present. (We do not claim that the Ngram analysis presents a complete or completely accurate representation of publication frequency. We did not test alternative search terms, such as ‘liberalism is dead’ or ‘liberalism is dying’. Moreover, Google’s Ngram analysis does not capture many journal articles.) According to this analysis, liberalism first died in the late 1870s (although, according to Hirschman, it was already declared to be dying as early as the 1830s), then died some more at the turn of the 20th century, and has been dying almost continuously since 1920.

As the graph illustrates, communism is even ‘deader’ (as it were) than liberalism, according to the percentage of books in Google’s collection containing the phrase ‘death of communism’. However, authors did not start declaring it dead until just before its actual demise. Liberalism, by contrast, has been pronounced dead for at least the past 150 years, though it has not yet actually died. Fascism, too, has regularly been declared dead almost since it originated in the 1920s, but at a significantly lower frequency than liberalism. For a while, at least, fascism actually did seem moribund, if not actually dead, throughout Western Europe and North America.

#### No inequality crisis and antitrust makes it worse---prefer studies on consumption instead of capital.

Wright et al 19 [Joshua D. Wright is University Professor and the Executive Director of the Global Antitrust Institute at Scalia Law School at George Mason University. Professor Wright also holds a courtesy appointment in the Department of Economics. In 2013, the Senate unanimously confirmed Professor Wright as a member of the Federal Trade Commission (FTC), following his nomination by President Obama. He rejoined Scalia Law School as a full-time faculty member in Fall 2015. "Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement." https://regproject.org/paper/consumer-welfare-the-rule-of-law-the-case-against-the-new-populist-antitrust-movement/]

Another assertion populist antitrust supporters regularly make is that prices have increased and output has decreased. Again, the evidence here is mixed at best.

The movement’s proponents claim increased monopoly power economy-wide has led to increased prices for consumers. One study by De Loecker and Eeckhout, for instance, purports to demonstrate an increase in markups since 1980, which they argue indicates market power has increased over this period.68 This study utilizes Compustat-compiled input and output data for firms across the U.S. economy to calculate firm-level markups, examining measures of sales, input expenditure, capital stock information, industry activity classifications, and accounting data measuring profitability and stock market performance.

While this study purports to demonstrate an increase in markups and, therefore, an increase in market power, there are several problems with this methodology and reasoning. Fundamentally, industrial organization economics literature has clearly established that profit margins, alone, are not reliable evidence of market power.69 Additionally, it is clear that increased markups, alone, are not reliable evidence of price increases. To understand whether higher markups translated to higher prices, we would need to understand additional factors, such as whether marginal costs have changed.70 If, for example, marginal costs decreased, markups could increase even if prices remained the same; indeed, depending upon how much marginal costs decreased, margins could increase even while prices decreased. Moreover, a trend toward higher markups does not necessarily indicate firm profits are likewise trending higher, as De Loecker and Eeckhout acknowledge. As they explain, a technological change that reduces variable, but increases, fixed costs might result in increased markups but not increased profits.

In addition, higher markups might simply reflect a shift in the composition of firms within the economy. Today, high-tech (and other) firms with low marginal costs but substantial R&D costs comprise a more significant percentage of the economy than they have historically. Consider, for instance, a software company that spends a tremendous amount developing an innovative new software that consumers download on their personal devices. While the marginal cost of selling each new unit of software would be miniscule, the company—to stay in business—would need to charge a price that helped it recoup the costs incurred to create its innovative product. The more firms within the economy employing this business model, the more we would expect to see higher markups, and so the less we could assume, based upon the existence of higher markups, alone, that those markups derive from increased market power.

Aside from the methodological issues with these studies, there is the added complication that other work finds conflicting results. Robert E. Hall, for instance, finds “no evidence that mega-firm-intensive sectors have higher price/marginal cost markups.”71 Notably, while he finds no real evidence of increasing markups in less regulated sectors like Manufacturing or Transportation and Warehousing, he does find a fairly strong trend of increasing markups in heavily regulated sectors like Finance and Insurance, and Health Care and Social Assistance—which is consistent with something other than concentration driving increased markups.72

Others examining the effect of concentration upon prices likewise find results that conflict with the populist antitrust movement’s claims. James Traina, for example, analyzes this same question, attempting to correct for another flaw in De Loecker and Eeckhout’s methodology: namely, De Loecker and Eeckhout focus only on the “cost of goods sold” (COGS) facet of firms’ operating expenses, omitting the “selling, general, and administrative expenses” (SGA) facet. Traina argues that SGA is an increasingly significant share of variable costs for firms in the U.S. economy, and demonstrates that once SGA is incorporated into De Loecker and Eeckhout’s measure of cost, markups actually remain flat (or decline).73

Similarly, Ganapati examines data from 1972-2012, and finds concentration issues do not lead to higher prices, but in fact correspond with increased output.74 He concludes that the concentrated industries he analyzes are concentrated not due to anticompetitive behavior, but “likely due to technical innovation or scale economies.”75 His findings are consistent with other work that finds that the trends in concentration populists condemn may, in fact, be related to changes in economies of scale and to their corresponding productivity improvements.76

Other studies upon which populist antitrust proponents rely purport to identify higher prices using different metrics. One such regularly-cited study is John Kwoka’s meta-analysis of retrospective studies of mergers, joint ventures, and other horizontal arrangements.77 Here, Kowka compiles data covering more than 3,000 mergers and concludes the average price effect for the studied mergers is a 7.22% increase.78 His findings have, however, been called into serious question. Experienced economists in the FTC’s Bureau of Economics, Michael Vita and David Osinski, identify several objections to Kwoka’s methodology and, accordingly, his findings. They explain why various methodological failings—including not using standard meta-analytic techniques to compute average price effects and standard errors, not weighting observations by their estimated variances (meaning all price estimates are treated the same regardless of their certainty), and omitting standard errors from his report—undermine Kwoka’s fundamental findings regarding price effects.79

The evidence upon which populist antitrust supporters rely in asserting that prices have increased is, accordingly, mixed at best. The studies they cite often attempt to examine very important—but also difficult to measure—questions. The limits of these studies must be acknowledged in any serious debate regarding the state of antitrust enforcement today. While many of these studies offer good initial insights, they mostly identify areas for further research. And in no case do they clearly identify systemic shortcomings in current antitrust enforcement efforts.

In addition to questionable empirical premises, the argument that we must abandon the consumer welfare standard because prices are higher and output is lower under this standard is in serious tension with remedies the populist antitrust movement proposes. Each of the proposed remedies would, as described above, diminish consumer welfare. If, for instance, we adopted a public interest standard, prices and output might be one concern—but employment, democracy, the environment, and inequality might be competing concerns. And lower prices, higher output, and product improvements would not have the trump card in the analysis they do today. Similarly, if we decided to ban vertical mergers or prohibit any transactions over a certain size, we would be preventing at least some transactions that would lower prices and increase output. This would appear to be particularly likely in the case of banning vertical mergers, a move which empirical evidence indicates has anticompetitive outcomes—i.e., higher prices or lower output—result only rarely.80 And it would lead to the perverse result of antitrust law deliberately fostering higher prices or lower output, meaning consumers would be less able to purchase products or services they desire.

Accordingly, even if prices and output have, in fact, trended in directions harmful to consumers, the better question to be asking is whether this is because enforcement under the consumer welfare standard is not at the optimal level. The consumer welfare standard focuses on just such factors—along with innovation, quality, and other consumer concerns. If the goal is to lower prices and increase output, it is difficult to see what better standard could be adopted than one that makes these consumer concerns its sole focus.

C. Increasing Antitrust Enforcement Would Reduce Inequality

Populist antitrust supporters further note that income inequality in the United States has increased dramatically in recent decades, and proffer that lax antitrust enforcement is (to varying degrees) to blame.81 The general intuition here is fairly easily stated: lenient antitrust enforcement allows firms to obtain market power, which allows them to reduce output, raise prices, and generate monopoly profits—all of which enriches shareholders. Shareholders are, by and large, in the top percentage of wealth and income distribution, so these increasing returns increase the wealth of the wealthiest and, thus, inequality.82

Imbedded in this theory are a couple key assumptions, both of which can be empirically tested. First, that inequality is increasing. The evidence here suggests inequality is likely increasing, though the magnitude of this increase is probably overstated. Second, that increasing antitrust enforcement would reverse this trend. On the proffered causal link between antitrust enforcement and inequality, there is, so far, a notable dearth of empirical support or development.

First, consider the evidence on inequality trends. Populist claims regarding increasing inequality largely rely upon analysis of the Gini coefficient for US incomes over the last 50 years, which appears to show a steep increase in inequality. Examining the ratio of the share of US income among the 5th quintile of income-earning households to the share among the 1st quintile of households likewise seems to show increasing inequality.83

While these data points offer interesting insights, it is again important to understand their limitations. As Robert Kaestner and Darren Lubotsky emphasize, for example, failing to account for government transfers and employee benefits—that presumably substitute, in part, for cash income—can meaningfully affect these kinds of inequality measures.84 One important example they explore is that of healthcare benefits. As healthcare costs have rapidly increased in recent years, omitting a measure of health insurance benefits (provided by employers or by the government) could significantly affect ultimate inequality findings. Kaestner and Lubotsky, in fact, analyze inequality measures accounting for this omission, and find that including health insurance benefits substantially lessens the difference between high-end and low-end incomes.85 They find the ratio of income between households at the 90th percentile and the 10th percentile to be approximately 5 in 1995, 5.2 in 2004, and 5.6 in 2012.86 So while their findings support the notion that inequality is increasing, they also suggest that the trend is significantly smaller than reported.

Examining household consumption trends tells a similar story. Scholars have argued that consumption might be a superior measure of welfare, given a “closer link between consumption and well-being.”87 Consumption trends would also seem to be relevant when considering antitrust enforcement efforts, as they offer more information regarding economic effects than isolated income or wealth measurements. Examining household consumption over the last couple decades indicates that inequality is increasing but at a muted rate.

Accordingly, the evidence does seem to indicate inequality is increasing by some amount. Potentially more-accurate measures of income and welfare, however, suggest this trend is not as significant as populists claim. So, the first assumption in this particular populist theory appears to be valid, if often overstated. That leads us to the second—and for this discussion, the critical—assumption that antitrust enforcement is driving the apparent inequality trend.

Second, consider the empirical evidence supporting a causal link between antitrust enforcement and inequality. This proffered link remains, thus far, largely theoretical and undeveloped empirically. Populist papers advocating for increased antitrust as a salve for increasing inequality do not offer empirical support for their preferred course of treatment. But other authors have begun to explore empirically the proposed tie between antitrust enforcement and inequality. Wright et al., for instance, present time series regressions relating measures of inequality to antitrust enforcement measures.88 While the authors acknowledge the standard reasons that these analyses cannot isolate, with confidence, causation, their work provides a useful foray into the empirical basis for the notion that antitrust enforcement and inequality are causally linked. The authors examine data from DOJ investigations between 1984 and 2016, focusing first on merger investigations, given the populist emphasis on merger activity, and then broadly examine all DOJ investigations for a more general enforcement measure. Their results do not offer “much empirical evidence to substantiate the proposed correlation between antitrust enforcement activity and inequality.”89

Populist claims that increased antitrust enforcement is necessary to combat a severe trend of increasing inequality thus appear to be overstated. While inequality appears to be increasing, the rate is likely more modest than the populist movement implies. And there is, as of yet, no empirical support for the underlying proposition that increasing antitrust enforcement levels would slow, stop, or reverse this trend.