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#### Their valorization of public space in contrast to private space is a fundamental misunderstanding of outer space and reifies the impacts of ghettoization, carcerality, and gentrification

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From the days of chattel slavery until today, the concept of travel has been inseparably linked in the minds of our people with the concept of freedom. (Robeson, 1988, original emphasis) In the 1960 presidential election, candidate John F. Kennedy invoked moon exploration to displace the salience of religious division by focus- ing on unifying issues, including the spread of Communism that was ‘fester[ing] only 90 miles from the coast of Florida’ and crises in family farms, hunger, and unaffordable medical care that ‘know no religious barrier.’ The real problem was ‘an America with too many slums, with too few schools, and too late to the moon and outer space.’ This listing of ‘real issues which should decide this campaign’ suggested urgent, yet equally solvable, concerns. The space race ratified a national challenge, suggesting that returning the gaze from this ‘new frontier’ to domestic problems was the next step for technoscientific progress. When Dr Martin Luther King spoke of the moon in 1967, he was a world away from Kennedy’s Cold War hopefulness (Jordan, 2003). He delivered his final speech, ‘Where Do We Go From Here?: Chaos or Community?’, to the Southern Christian Leadership Conference (SCLC) on the ten-year anniversary of the organization’s formation following the Montgomery bus boycott. Despite the gains of the civil rights move- ment, King concluded, ‘the Negro still lives in the basement of the Great Society.’ He went on to question the consonance between scientific and social progress that had seemed so central to Kennedy’s understanding of the nation: Today our exploration of space is engaging not only our enthusiasm but our patriotism. ... No such fervor or exhilaration attends the war on poverty. ... Without denying the value of scientific endeavor, there is a striking absurdity in committing billions to reach the moon where no people live, while only a fraction of that amount is appropriated to service the densely populated slums. If these strange views persist, in a few years we can be assured that when we set a man on the moon, with an adequate telescope he will be able to see the slums on earth with their intensified congestion, decay and turbulence. King concluded his remarks by asking: ‘On what scale of values is this a program of progress?’ (King, as cited in Gilroy, 1991 [1987], pp. 345–346). Spectacular Cold War images of space travel drew on and renovated a constellation of meanings associated with mobility that inform US national identity, including celebratory narratives of continental explora- tion, limitless possibility, and freedom. Kennedy did not see any conflict between mastering space travel and meeting domestic needs – each a concrete signification of American capitalist providence in the Cold War period. King’s speech marks both of these registers. His imagined telescopic view of the earth traverses an expansive scale of human possi- bility, but under Pax Americana, King finds that ‘common humanity’ is an ideological vision papering over the reality of grave economic and racial divisions. Even before a man (much less The Man) was on the moon, liberal and radical social critics alike were deploying a rhetorical device I call lunar criticism – ‘If we can put a man on the moon, we can do X, Y, or Z’ – to question US national priorities and narratives of progress. Liberal iterations of lunar criticism suggested that the gap between promise and practice could be bridged as part of fulfilling the national creed. Radical social critics argued that what appeared to be an incidental gap was in fact a racialized conflict. Reaching the moon began to look less like a virtuous American project than a white American project that furthered Black economic exploitation and abandonment. The space race as a spectacle of freedom and (white) upward mobility must be held in tension with the deepening ‘urban crisis’ (Beauregard, 2003). As both a powerful discourse and material geography, the urban crisis was constituted through Cold War investments in suburban hous- ing, freeways, and defense industry construction, relative disinvestment in central cities, and through militarized, counter-insurgency responses to the urban unrest of the 1960s (Loyd, 2014). Yet, the interrelations between these spaces have been obscured through enduring spectacular productions of capitalist suburban hyper-mobility and ‘ghetto’ immobi- lization and backwardness (Siddiqi, 2010). As novelist Thomas Pynchon dissected, ‘Watts’ was another country to white Americans, represent- ing a psychological distance that white Americans were disinclined to travel. This chapter situates radical iterations of lunar criticism within the context of urban crisis and on the cusp of what Jodi Melamed, following Howard Winant, calls the post-World War II ‘racial break’ after which ‘state-recognized US antiracisms replaced white supremacy as the chief ideological mode for making the inequalities that global capitalismgenerated appear necessary, natural, or fair’ (Melamed, 2011, p. xvi). By contrast, race-radical antiracisms ‘have made visible the continued racialized historical development of capitalism and have persistently fore- grounded antiracist visions incompatible with liberal political solutions to destructively uneven global social-material relations’ (p. xvii). In the spectacular treatment of urban uprisings, the space called the ‘ghetto’ ideologically and tactically cohered the problems of urban crisis, which were actually metropolitan (urban-suburban) in form and imperial in process. To develop this argument, I analyze the work of Gil Scott-Heron whose poetry, songs, and writing exemplify the race-radical tradition. His poem ‘Whitey on the Moon’ delivers a radical antiracist critique of the US space program that ties otherworldly investments to ongoing histories of Black forced im/mobility and immiseration. To that end, this essay responds to the call within the new mobilities scholar- ship to examine the ‘role of past mobilities in the present constitution of modern notions of security, identity and citizenship’ (Cresswell, 2012, p. 646). I begin by situating mobilities within post-war militarized spectacle and racial politics. I then move to an analysis of how race-radical lunar criticism grappled with the dialectics of urban crisis, which included the simultaneous deployment of rhetorics of mobility and new means of social control and state power. I conclude by exploring how Scott-Heron’s race-radical vision offers insights into contemporary mobilizations for mobility justice. Cold War spectacles of (upward) mobility What sort of national spectacle was the moon when King spoke? Spectacle tends to be understood as an ideological mask or distortion of reality, but Shiloh Krupar usefully conceptualizes spectacle as ‘a tacti- cal ontology – meaning a truth-telling, world-making strategy’ (2013, p. 10). Indeed, in Blank Spots on the Map (2009), Trevor Paglen shows how NASA was the visible institutional face of an expansive and largely secret Cold War military geography. Krupar and Paglen show how US milita- rization has developed through institutional apparatuses and personnel that create a world of plausible appearances. Visuality and material landscapes are interconnected such that hypervisibility (that is, the space race) is a technological apparatus simultaneously creating unseen spaces of waste and sacrifice. Thus, spectacle is a tool of reification and division that works by disconnecting spaces and categories – delineating human from nature, valued from abjected – that are actually produced together. Caren Kaplan’s work on the visual logic of modern war-making connects such spectacles to the mobility of states and imperial citizens. Air power is an iteration of the cosmic view, a ‘unifying gaze of an omnis- cient viewer of the globe from a distance’ (Kaplan, 2006, p. 401). Kaplan ties this viewpoint – which claims universality, neutrality, and freedom ‘from bounded embeddedness on earth’ – to Euro-American coloniza- tion (Kaplan, 2006, p. 402; also see Cosgrove, 1994). Modern military ‘air power is seamlessly linked to the cosmic view through its requirements for a unified, universal map of the globe that places the home nation at the center on the ground and proposes an extension of this home to the space above it, limitlessly’ (Kaplan, 2006, p. 402). The upshot, according to Kaplan, is that the mobility of air power simultaneously produces an imagination of fixed sovereign territories. Indeed, for Kaplan, modern war is paradoxical in that it ‘requires the movements of large armies and instigates the mass displacement of refugees, yet it also polices borders and limits freedom of movement’ (p. 396). I take these theories of spectacle to suggest that the Cold War space race produced a modern, white, upwardly mobile subject that obscured the simultaneous co-production of an immobilized, unfree population confined to a knowable, tactical domestic space. That is, the militariza- tion of the ‘cosmic view’ facilitates not only abstract targets of foreign war, but also targets of domestic state and state-sanctioned violence and confinement. The militarized logic of the ‘home front’ both coercively compels a patriotic citizen subject and obscures the racial, gender, class, and other social divides within the nation that belie the state’s claim to national unity (Lutz 2002; Young 2003; Loyd 2011). As the United States faced vulnerability to charges of racism during the Cold War, a cultural project of racial liberalism enabling mobility of the US empire would simultaneously entail efforts to confine Black mobility and dissident thought. For example, Rachel Buff (2008) shows how the US government deployed the terror of deportation as a means of disrupting political organizing. In the immediate post-World War II era, both W. E. B. Du Bois and Paul Robeson were barred from foreign travel for their views on peace, nuclear abolition, and decolonization (Kinchy, 2009; Robeson, 1988). The experience, no doubt, contributed to the observation that the Robeson epigraph makes on the race-radical desire for free mobility.

**Liberal anti-trust is the process through which Western empire, colonialism, and environmental destruction cohere themselves– antitrust scholars’ idealized capitalism irreconcilably provokes competition between worker and owner, masking the structural failure of propertization.**

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Limitations of liberal and progressive ‘techlash’ reforms In response to the rise of Big Tech, the intellectual classes in the Global North, led by American scholars, researchers and journalists, have formulated a liberal/progressive critique of Big Tech **and a corresponding set of capitalist reforms** they call the ‘techlash’. Their framework, informed by progressive-era figures like Louis Brandeis and Franklin D. Roosevelt (FDR), aims to restore the **Golden Age of Capitalism** through enlightened state regulation. This circuit of intellectuals are drawn primarily from elite universities (Ivy League, MIT, Stanford, Oxford, etc.) and the corporate media. Money for their research is sourced from elite academia and media outlets, wealthy foundations, philanthropists and Big Tech itself. The techlash critics ignore or downplay the **analytical and moral centrality of digital capitalism and colonialism,** ecological context and the need for a socialist transformation. A de facto vanguard within the intellectual community tuned into tech, together with Big Tech itself, these elite intellectuals set the bounds of leftist discourse and **exercise ‘tech hegemony’ over the broader narrative**.37 There are two branches of critique put forth by the American techlashers: a legal branch which focuses on anti-trust as its centrepiece to reform digital capitalism and a human rights branch which focuses on discrimination, privacy, content moderation and workers’ welfare. These intellectuals are typically in agreement with each other and often weave their critiques and solutions together. Let us consider each in turn. Legal reformers Within the legal domain, a new wave of anti-trust scholars have occupied centre-stage to address the digital economy.38 At the leftmost end of the spectrum in the United States, ‘neo-Brandeisian’ anti-trust scholars draw inspiration from Louis Brandeis, who viewed a fair and just democracy as one without extreme concentrations of wealth and power into the hands of corporations. Neo-Brandeisians share with socialists the idea that socioeconomic inequality in part springs from the monopoly power of big corporations. **However, anti-trust reformers depart from socialists in irreconcilable ways.** For one, they envision a ‘**small business capitalism’** of private property owners **kept intact by enlightened state regulators**. Socialists, by contrast, argue that the capitalist system **naturally concentrates wealth** and objects to class inequalities and private ownership of the means of production. For another, neo-Brandeisians fetishise **competition as a force for social good**, rather than a force **which pits owners and workers against each other in the battle for revenue, profits and market share.** Critically, the limits of economic growth are not acknowledged anywhere in the literature, nor are digital colonialism and American empire. **This is an analytical failure** because the fact that Big Tech corporations exercise global dominance should be evaluated in light of their international and environmental impact**. It’s as if central features of the global tech economy – American empire and ecological crisis – don’t even exist**. It is a moral failure because all parties affected should be involved in formulating and implementing remedies, but, instead, the United States’ scholars, lawmakers, courts and regulators are the ones making critical decisions about **reforming American firms with global reach.** European counterparts share in the US anti-trust reformist agenda, with an added caveat: the Europeans are explicitly trying to cut down the American super-giants in order **to build their own tech giants and colonise global markets**. In Europe, there are already tens of unicorns (privately held start-ups valued over $1 billion). Rich European countries dominate this race. The UK leads the pack and aims to produce its own trillion-dollar behemoth. President Emanuel Macron will be pumping €5 billion to tech start-ups in hopes that France will have at least twenty-five unicorns by 2025. Germany is attracting billions for its start-ups and spending €3 billion to become a global AI powerhouse and a world leader (i.e., market coloniser) in digital industrialisation. For its part, the Netherlands aims to become a ‘unicorn nation’. In 2021, the European Union’s competition commissioner, Margarethe Vestager, told the press in no uncertain terms that Europe needs to ‘build its own European tech giants’.39 Thus, the notion that European leaders are against Big Tech is demonstrably false. They are trying to shrink the American super-giants (GAFAM) so they can carve out market share for burgeoning European tech giants. It’s pure power politics – an inconvenient truth for America’s neo-Brandeisians, who laud and borrow ideas from their European counterparts. The new anti-trust scholars erase these realities from within their own **self-referential echo chambers**, and instead act as if anti-trust is a matter of remedying harms to their own citizens. This is not a small point. Even if anti-trust reforms go through**, the space created for new market entrants will almost certainly be dominated by the rich countries**, who still have **the most advanced engineers and resources** to pay them **high salaries and poach foreign talent.** Human rights reformers Another branch of analysis and solutions comes from a human-rights-oriented crowd centring around the politics of big data. This genre of ‘critical data studies’ literature blossomed during the 2010s through a corporate-academic research nexus funded by Big Tech, wealthy foundations and philanthropists. To be sure, meaningful contributions were made to the field of digital, particularly with respect to algorithmic discrimination (such as racial bias in search engine results and facial recognition). Yet this came at the expense of narrowing the focus of consideration from who owns the digital ecosystem itself – prevalent in the Free and Open Source Software community beginning in the 1980s – to one in which discrimination and data policy became paramount. A handful of other topics have been taken up by this ‘tech rights’ community, such as **content moderation and worker welfare.** Yet **these conversations have also come at the expense of a focus on property.** For example, the dominant literature on ‘content moderation’ addresses topics of who and what content companies like Facebook and Twitter will permit, amplify, or shadow-ban in their networks.40 Yet this area of concern fails to problematise **why** corporations – much less American ones – should own our social media networks in the first place, orienting them around profit, **accumulation**, wealth concentration, growth and market expansion. A more democratic option called the Fediverse – a set of public-owned and controlled, interoperable social media networks – is socialist in spirit and used by several million people every day.41 Yet content moderation scholars and media pundits virtually ignore it, at best calling for a ‘public option’ ostensibly in a mixed capitalist economy.42 As part of a non-profit industrial complex that waters down leftwing causes, donors like the Knight Foundation43 and even the Charles Koch Foundation44 are providing the funds needed to scale up this literature. Unsurprisingly, those who take the money fail to oppose American empire and capitalism proper. Unions and worker welfare form another set of topics within the human rights branch of tech ethics. Thanks to neoliberal reforms, a drop in worker unionisation has led to increased worker exploitation and inequality. Yet **the call for Big Tech worker unionisation seems rather vague and skirts major issues**. While one should support gig and warehouse worker unions trying to improve pay, working conditions and support for marginalised workers, there’s also an uncomfortable tension: Big Tech is structured to be **a colonial force of ecological destruction that needs to be dissolved as rapidly as possible.** Indeed, there’s a theme of ‘Big Tech exceptionalism’ that runs through the techlash community. For the Left, there are no calls to unionise or diversify Phillip Morris, Pfizer, Shell Oil, Goldman Sachs, Bayer/Monsanto, though there could be. Perhaps it would be justified for those corporations, too. But if so, **the workers should be pushing to dissolve their own companies – and that’s not presently being done in tech.** We also don’t have leading ‘ethics’ researchers from Pfizer, Shell Oil and the like, yet some of the most prominent techlash researchers work for Big Tech itself.45 There’s little discussion of either of these points.

#### Accumulation, appropriation, and extraction all occur through racial dispossession – racialized populations are fractured and territorialized to form the state of hyper-exploitation for financial capital

Wang 18, Jackie, black studies scholar, poet, multimedia artist, and PhD candidate in the Department of African and African American Studies at Harvard, “Carceral Capitalism”, <http://criticaltheoryindex.org/assets/CarceralCapitalism---Wang-Jackie.pdf>, Accessed 10/30/21 VD

Racial Capitalism and Settler Colonialism Given the dual character of capitalist accumulation identified by both Rosa Luxemburg and David Harvey, what new understanding of capitalism would be generated by focusing on dispossession and expropriation over .work and production? Contemporary political theorists as well as critical ethnic studies, black studies, and Native studies scholars and activists analyze how racial slavery and seeder colonialism provide the material and territorial foundation for U.S. and Canadian sovereignty. Rather than casting slavery and Native genocide as temporally circumscribed events chat inaugurated the birth of capitalism in the New World ("primitive accumulation"), they show how the racial logics produced by these processes persist to this day: In order to recuperate the frame of political economy, a focus on the dialectic of racial slavery and settler colonialism leads to important revisions of Karl Marx's theory of primitive accumulation. In particular, Marx designates the transition from feudal to capitalist social relations as a violent process of primitive accumulation whereby "conquest, enslavement, robbery, murder, in short, force, play the greatest part." For Marx, chis results in the expropriation of the worker, the proletariat, who becomes the privileged subject of capitalist revolution. [f we consider primitive accumulation 35 a persistent structure rather than event, both Afro-pessimism and settler colonial studies destabilize normative conceptions of capitalism through the conceptual displacements of the proletariat. As Coulthard demonstrates, in considering Indigenous peoples in relation to primitive accumulation, "it appears that the history and experience of dispossession, not proletarianization, has been the dominant background structure shaping the character of the historical relationship between Indigenous peoples and the Canadian state." It is thus dispossession of land through genocidal elimination, relocation, and theft that animates Indigenous resistance and anticapitalism and "less around our emergent status 35 'rightless proletarians.'" If we extend the frame of primitive accumulation to the question of slavery, it is the dispossession of the slave's body rather than the proletarianization of labor that both precedes and exceeds the frame of settler colonial and global modernity. 13 As lyko Day notes, Native dispossession occurs through the expropriation of land, while black dispossession is characterized by enslavement and bodily dispossession. Although both racial logics buttress white accumulation and are defined by a "genocidal limit concept" that constitutes these subjects as disposable, Day notes that "the racial content of Indigenous peoples is the mirror opposite of blackness. From the beginning, an eliminatory project was driven to reduce Native populations through genocidal wars and later through statistical elimination through blood quantum and assimilationist policies. For slaves, an opposite logic of exclusion was driven to increase, not eliminate, the population of slaves."14 A debate has ensued in critical ethnic studies about which axis of dispossession is capitalism's condition of possibility: the expropriation of Native land or chattel slavery? Was the U.S. made possible primarily by unbridled access to black labor, or through territorial conquest? Is the global racial order defined-as Day writes-primarily by the indigenous-settler binary or the black-nonblack binary? At stake in this debate is the question of which axis of dispossession is the "base" from which the "superstructures" of economy, national sovereignty, or even subjectivity itself emerge. Those who argue that settler colonialism is central have sometimes made the claim that even black Americans participate in settler colonialism and indigenous displacement by continuing to live on stolen land, while those who center slavery and antiblackness have sometimes viewed Native Americans as perpetrators of anriblackness insofar as some uibes have historically owned slaves and seek state recognition by making land-based claims to sovereignty-a claim that relies on a political grammar that black Americans do not have access to, as slaves were rem from their native lands when they were transported co the Americas (see Jared Sexton's "The Vel of Slavery"). Although weighing in on this debate is beyond rhe scope of this essay, I generally agree with Day's assertion that to treat this set of issues as a zero-sum game obfuscates the complexity of these processes. With that said, it is important to note that this book deals primarily with the antiblack dimensions of prisons, police, and racial capitalism, though I acknowledge that analyses of settler colonialism are equally vital to understanding the operations of racial capitalism and how race is produced through multiple expropriative logics. Gendered Expropriation Though this book focuses primarily on black racialization in a contemporary context, it is worth noting that expropriation reproduces multiple categories of difference--including the man-woman gender binary. Although categories of difference were not invented by capitalism, expropriative processes assign particular meanings to categories of difference. "Woman" is reproduced as inferior through the unwaged theft of her labor, while the esteem of the category of "man" is propped up by the valorization of his labor. Even when women are in the professional workforce, they are still vulnerable to expropriation when they are given or take on work beyond their formal duties-whether it's washing the dishes at the office, mentoring students, or doing thankless administrative work while male colleagues gee the "dysfunctional genius" pass. But above all, gendered expropriation occurs through the extraction of care labor, emotional labor, as well as domestic and reproductive labor all of which is enabled by the enforcement of a rigid gender binary. This system is propped up by gender socialization, which compels women to psychologically internalize a feeling of responsibility for others. Although, at a glance, ic might seem that the expropriation of women's labor happens primarily through housewifeitization, the marriage contract, and the assignment of child-care duties to women, in the current epoch-characterized by an aging baby boomer population and a shortage of geriatric health-care workers-women are increasingly filling this void by taking care of sick parents, family members, and loved ones. It is hardly surprising that two-thirds of those who care for chose with Alzheimer's disease are women, even as women are the primary victims of this disease. Given thac women's lives are often interrupted by both childcare duties and caring for ailing family members, it's also hardly surprising that women accumulate many fewer assets and arc more likely to retire into poverty than their male counterparts. A recent report found that the European Union gender pension gap was 40 percent, which far exceeds the gender pay gap of 16 percent. Overall, gender is a material relation that, among other things, bilks women of their futures. The aged woman who has toiled by caring for others is left with little by the end of her life. Though gender distinctions are maintained through expropriative processes, they also have consequences beyond the economic and material realm. While it could be said that disposability is the logic that corresponds to racialized expropriation, gendered subjectivation has as its corollary rapeability. It also goes without saying that these expropriative logics are not mutually exclusive, as nonwhite women and gender-nonconforming people may be subject to a different set of expropriative logics than white women. Racalized Expropriation Although I do not claim that expropriation should be defined exclusively as racialization (again, because different expropriative logics reproduce multiple categories of difference), this book deals primarily with the antiblack racial order that is produced by late-capitalist accumulation. Michael C. Dawson and Nancy Fraser are two contemporary political theorists who have defined expropriation as a racializing process in capitalist societies. In "Hidden in Plain Sight," Dawson takes Fraser to task for not acknowledging racialized expropriation as one of the "background domains" of capitalist society. Understanding the logic of expropriation, in his view, is necessary for understanding which modes of resistance are needed at this historical juncture. His article begins with a meditation on the question: Should activists and movements such as Black Lives Matter focus on racialized state violence (police shootings, mass incarceration, and so forth), or should they focus on racialized inequality cawed by expropriation and exploitation? What is the relationship between the first logic-characterized by disposability-and the second logic-characterized by exploitability and expropriability? Rather than describing these logics as distinct forms of antiblack racism, he analyzes them as two dimensions of a dynamic process whereby capitalist expropriation generates the racial order by fracturing the population into superior and inferior humans: Understanding the foundation of capitalism requires a consideration of "the hidden abode of race": the ontological distinction between superior and inferior humans-codified as race-that was necessary for slavery, colonialism, the theft of lands in the Americas, and genocide. This racial separation is manifested in the division between full humans who possess the right to sell their labor and compete within markets, and chose that are disposable, discriminated against, and ultimately either eliminated or superexploited.15 Black racialization, then, is the mark that renders subjects as suitable for-on the one hand-hyperexploitation and expropriation, and, on the other hand, annihilation. Before the neoliberal era, the racial order was propped up by the state, and racial distinctions were enforced through legal codification, Jim Crow segregation, and other formal arrangements. In a contemporary context, though the legal regime undergirding the racial order has been dismantled, race has maintained its dual character, which consists of "not only a probabilistic assignment of relative economic value but also an index of differential vulnerability to state violence." 16 In other words, vulnerability to hyperexploitation and expropriation in the economic domain and vulnerability to premature death in the political and social domains. My essay on the Ferguson Police Department and the city's program of municipal plunder is an attempt to make visible the hidden backdrop of Mike Brown's execution: the widespread racialized expropriation of black residents carried out by the criminal justice arm of the state. It is not just that Mike Brown's murder happened alongside the looting of residents at the behest of the police and the city's financial manager, but that racial legacies that have marked black residents as lootable are intimately tied to police officers' treatment of black people as killable. The two logics reinforce and are bound up with each other. In her response co Dawson's analysis of racialization as expropriation, Fraser develops Dawson's claims by looking at the interplay between economic expropriation and "politically enforced status distinctions." 17 Not only does accumulation in a capitalist society occur along the two axes of exploitation and expropriation, but one makes the other possible in that the "racialized subjection of those whom capital expropriates is a condition of possibility for the freedom of those whom it exploits." 18 In other words, the "front story" of free workers who are contracted by capitalists to sell their labor-power for a wage is enabled by, and depends on, expropriation that takes place outside this contractual arrangement. Fraser further extends Dawson's analysis by offering a historical account of the various regimes of racialization. In her analysis of the "proletarianization" of black Americans as they migrated from the South to industrial centers in the North and Midwest during the first half of the twentieth century, she points out that even in the context of industrial "exploitation," the segmented labor market was organized such that a "confiscatory premium was placed on black labor." Black industrial workers were paid less than their white counterparts. In some sense, the racialized gap in earnings can be thought of as the portion that was expropriated from black workers. It is not as though the black laborers who joined the ranks of the industrial proletariat were newly subjected to exploitation rather than expropriation, but that these two methods of accumulation were operating in tandem. In the "present regime of racialized accumulation"- which she refers to as "financialized capitalism"-Fraser notes that there has been a loosening of the binary that has historically separated who should be subjected to expropriation from who should be subjected to exploitation, and that during the present period, debt is regularly deployed as a method of dispossession: Much large-scale industrial exploitation now occurs outside the historic core, in the BRICS countries of the semi-periphery. And expropriation has become ubiquitous, afflicting not only its traditional subjects but also those who were previously shielded by their status as citizenworkers. In these developments, debt plays a major role, as global financial institutions pressure states to collude with investors in extracting value from defenseless populations. 19 While I agree with Fraser's claim that the "sharp divide" berween "expropriab le subjects and exploitable citizen-workers" has been replaced by a "contin uum" (albeit a continuum chat remains racialized), I would add that the existence of poor whites who have fallen out of the middle class or have been affected by the opiate crisis at the present juncture represents not racial progress for black Americans, but the generalization of expropriability as a condition in the face of an accumulation crisis. In other words, immiseration for all rather than a growing respect for black Americans. Fraser rightly points out that "expropriation becomes tempting in periods of crisis."20 Sometimes the methods of accumulation that were once reserved exclusively for racialized subjects bleed over and are used on those with privileged status markings. If expropriation and exploitation now occur on a continuum, then it has been made possible, in part, by late capitalism's current modus operandi: the probabilistic ranking of subjects according to risk, sometimes indexed by a person's credit score. As I will demonstrate in the coming sections, this method is not a race-neutral way of gleaning information about a subject's personal integrity, credibility, or financial responsibility. It is merely an index of already-existing inequality and a way to distinguish between which people should be expropriated from and which should be merely exploited.

#### Neoliberal capitalism will produce extinction – the system reproduces crises that depoliticize the left, undermine futural thought, and postpone its demise – the impacts are environmental collapse, endless war, and the rise of fascism

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The problem may be summarized as follows. Capitalism has indeed created the conditions for general prosperity and therefore for its own supersession. But it has also blocked, and continues to block, any hope of realizing this transformation. We cannot wait for capitalism to transform on its own, but we also cannot hope to progress by appealing to some radical Outside or by fashioning ourselves as militants faithful to some “event” that (as Badiou has it) would mark a radical and complete break with the given “situation” of capitalism. Accelerationism rather demands a movement against and outside capitalism—but on the basis of tendencies and technologies that are intrinsic to capitalism. Audre Lord famously argued that “the master’s tools will never dismantle the master’s house.” But what if the master’s tools are the only ones available? Accelerationism grapples with this dilemma. What is the appeal of accelerationism today? It can be understood as a response to the particular social and political situation in which we currently seem to be trapped: that of a long-term, slow-motion catastrophe. Global warming, and environmental pollution and degradation, threaten to undermine our whole mode of life. And this mode of life is itself increasingly stressful and precarious, due to the depredations of neoliberal capitalism. As Fredric Jameson puts it, the world today is characterized by “heightened polarization, increasing unemployment, [and] the ever more desperate search for new investments and new markets.” These are all general features of capitalism identified by Marx, but in neoliberal society we encounter them in a particularly pure and virulent form. I want to be as specific as possible in my use of the term “neoliberalism” in order to describe this situation. I define neoliberalism as a specific mode of capitalist production (Marx), and form of governmentality (Foucault), that is characterized by the following specific factors: 1. The dominating influence of financial institutions, which facilitate transfers of wealth from everybody else to the already extremely wealthy (the “One Percent” or even the top one hundredth of one percent). 2. The privatization and commodification of what used to be common or public goods (resources like water and green space, as well as public services like education, communication, sewage and garbage disposal, and transportation). 3. The extraction, by banks and other large corporations, of a surplus from all social activities: not only from production (as in the classical Marxist model of capitalism) but from circulation and consumption as well. Capital accumulation proceeds not only by direct exploitation but also by rent-seeking, by debt collection, and by outright expropriation (“primitive accumulation”). 4. The subjection of all aspects of life to the so-called discipline of the market. This is equivalent, in more traditional Marxist terms, to the “real subsumption” by capital of all aspects of life: leisure as well as labor. Even our sleep is now organized in accordance with the imperatives of production and capital accumulation. 5. The redefinition of human beings as private owners of their own “human capital.” Each person is thereby, as Michel Foucault puts it, forced to become “an entrepreneur of himself.” In such circumstances, we are continually obliged to market ourselves, to “brand” ourselves, to maximize the return on our “investment” in ourselves. There is never enough: like the Red Queen, we always need to keep running, just to stay in the same place. Precarity is the fundamental condition of our lives. All of these processes work on a global scale; they extend far beyond the level of immediate individual experience. My life is precarious, at every moment, but I cannot apprehend the forces that make it so. I know how little money is left from my last paycheck, but I cannot grasp, in concrete terms, how “the economy” works. I directly experience the daily weather, but I do not directly experience the climate. Global warming and worldwide financial networks are examples of what the ecological theorist Timothy Morton calls hyperobjects. They are phenomena that actually exist but that “stretch our ideas of time and space, since they far outlast most human time scales, or they’re massively distributed in terrestrial space and so are unavailable to immediate experience.” Hyperobjects affect everything that we do, but we cannot point to them in specific instances. The chains of causality are far too complicated and intermeshed for us to follow. In order to make sense of our condition, we are forced to deal with difficult abstractions. We have to rely upon data that are gathered in massive quantities by scientific instruments and then collated through mathematical and statistical formulas but that are not directly accessible to our senses. We find ourselves, as Mark Hansen puts it, entangled “within networks of media technologies that operate predominantly, if not almost entirely, outside the scope of human modes of awareness (consciousness, attention, sense perception, etc.).” We cannot imagine such circumstances in any direct or naturalistic way, but only through the extrapolating lens of science fiction. Subject to these conditions, we live under relentless environmental and financial assault. We continually find ourselves in what might well be called a state of crisis. However, this involves a paradox. A crisis—whether economic, ecological, or political—is a turning point, a sudden rupture, a sharp and immediate moment of reckoning. But for us today, crisis has become a chronic and seemingly permanent condition. We live, oxymoronically, in a state of perpetual, but never resolved, convulsion and contradiction. Crises never come to a culmination; instead, they are endlessly and indefinitely deferred. For instance, after the economic collapse of 2008, the big banks were bailed out by the United States government. This allowed them to resume the very practices—the creation of arcane financial instruments, in order to enable relentless rent-seeking—that led to the breakdown of the economic system in the first place. The functioning of the system is restored, but only in such a way as to guarantee the renewal of the same crisis, on a greater scale, further down the road. Marx rightly noted that crises are endemic to capitalism. But far from threatening the system as Marx hoped, today these crises actually help it to renew itself. As David Harvey puts it, it is precisely “through the destruction of the achievements of preceding eras by way of war, the devaluation of assets, the degradation of productive capacity, abandonment and other forms of ‘creative destruction’” that capitalism creates “a new basis for profit-making and surplus absorption.” What lurks behind this analysis is the frustrating sense of an impasse. Among its other accomplishments, neoliberal capitalism has also robbed us of the future. For it turns everything into an eternal present. The highest values of our society—as preached in the business schools—are novelty, innovation, and creativity. And yet these always only result in more of the same. How often have we been told that a minor software update “changes everything”? Our society seems to function, as Ernst Bloch once put it, in a state of “sheer aimless infinity and incessant changeability; where everything ought to be constantly new, everything remains just as it was.” This is because, in our current state of affairs, the future exists only in order to be colonized and made into an investment opportunity. John Maynard Keynes sought to distinguish between risk and genuine uncertainty. Risk is calculable in terms of probability, but genuine uncertainty is not. Uncertain events are irreducible to probabilistic analysis, because “there is no scientific basis on which to form any calculable probability whatever.” Keynes’s discussion of uncertainty has strong affinities with Quentin Meillassoux’s account of hyperchaos. For Meillassoux, there is no “totality of cases,” no closed set of all possible states of the universe. Therefore, there is no way to assign fixed probabilities to these states. This is not just an empirical matter of insufficient information; uncertainty exists in principle. For Meillassoux and Keynes alike, there comes a point where “we simply do not know.” But today, Keynes’s distinction is entirely ignored. The Black-Scholes Formula and the Efficient Market Hypothesis both conceive the future entirely in probabilistic terms. In these theories, as in the actual financial trading that is guided by them (or at least rationalized by them), the genuine unknowability of the future is transformed into a matter of calculable, manageable risk. True novelty is excluded, because all possible outcomes have already been calculated and paid for in terms of the present. While this belief in the calculability of the future is delusional, it nonetheless determines the way that financial markets actually work. We might therefore say that speculative finance is the inverse—and the complement—of the “affirmative speculation” that takes place in science fiction. Financial speculation seeks to capture, and shut down, the very same extreme potentialities that science fiction explores. Science fiction is the narration of open, unaccountable futures; derivatives trading claims to have accounted for, and discounted, all these futures already. The “market”—nearly deified in neoliberal doctrine—thus works preemptively, as a global practice of what Richard Grusin calls premediation. It seeks to deplete the future in advance. Its relentless functioning makes it nearly impossible for us to conceive of any alternative to the global capitalist world order. Such is the condition that Mark Fisher calls capitalist realism. As Fisher puts it, channeling both Jameson and Žižek, “it’s easier to imagine the end of the world than the end of capitalism.”

#### Neoliberalism strips language of its critical possibility and produces race neutrality – this reifies whiteness and lets white people think they are free of responsibility – thus the ROB and ROJ is to endorse tactics against racial capitalism

**Giroux 03,** Henry, American and Canadian scholar and cultural critic, Communication Education, “Spectacles of Race and Pedagogies of Denial: Anti-Black Racist Pedagogy Under the Reign of Neoliberalism”, <https://www.tandfonline.com/doi/abs/10.1080/0363452032000156190?journalCode=rced20>, Accessed 6/28/21 VD

Under the reign of neoliberalism in the United States, society is largely defined through the privileging of market relations, deregulation, privatization, and consumerism. Central to neoliberalism is the assumption that profit making be construed as the essence of democracy, thus providing a rationale for a handful of private interests to control as much of social life as possible to maximize their financial investments. Strictly aligning freedom with a narrow notion of individual interest, neoliberalism works hard to privatize all aspects of the public good and simultaneously narrow the role of the state as both a gatekeeper for capital and a policing force for maintaining social order and racial control. Unrestricted by social legislation or government regulation, market relations as they define the economy are viewed as a paradigm for democracy itself. Central to neoliberal philosophy is the claim that the development of all aspects of society should be left to the wisdom of the market. Similarly, neoliberal warriors argue that democratic values be subordinated to economic considerations, social issues be translated as private dilemmas, part-time labor replace full-time work, trade unions be weakened, and everybody be treated as a customer. Within this market-driven perspective, the exchange of capital takes precedence over social justice, the making of socially responsible citizens, and the building of democratic communities. There is no language here for recognizing antidemocratic forms of power, developing nonmarket values, or fighting against substantive injustices in a society founded on deep inequalities, particularly those based on race and class. Hence, it is not surprising that under neoliberalism, language is often stripped of its critical and social possibilities as it becomes increasingly difficult to imagine a social order in which all problems are not personal, social issues provide the conditions for understanding private considerations, critical reflection becomes the essence of politics, and matters of equity and justice become crucial to developing a democratic society. It is under the reign of neoliberalism that the changing vocabulary about race and racial justice has to be understood and engaged. As freedom is increasingly abstracted from the power of individuals and groups to participate actively in shaping society, it is reduced to the right of the individual to be free from social constraints. In this view, freedom is no longer linked to a collective effort on the part of individuals to create a democratic society. Instead, freedom becomes an exercise in self-development rather than social responsibility, reducing politics to either the celebration of consumerism or a privileging of a market-based notion of agency and choice that appear quite indifferent to how power, equity, and justice offer the enabling conditions for real individual and collective choices to be both made and acted upon. Under such circumstances, neoliberalism undermines those public spaces where noncommercial values and crucial social issues can be discussed, debated, and engaged. As public space is privatized, power is disconnected from social obligations, and it becomes more difficult for isolated individuals living in consumption-oriented spaces to construct an ethically engaged and power-sensitive language capable of accommodating the principles of ethics and racial justice as a common good rather than as a private affair. According to Bauman (1998), the elimination of public space and the subordination of democratic values to commercial interests narrow the discursive possibilities for supporting notions of the public good and create the conditions for “the suspicion against others, the intolerance of difference, the resentment of strangers, and the demands to separate and banish them, as well as the hysterical, paranoiac concern with ‘law and order”’ (p. 47). Positioned within the emergence of neoliberalism as the dominant economic and political philosophy of our times, neoracism can be understood as part of a broader attack against not only difference but also the value of public memory, public goods, and democracy itself. The new racism both represents a shift in how race is defined and is symptomatic of the breakdown of a political culture in which individual freedom and solidarity maintain an uneasy equilibrium in the service of racial, social, and economic justice. Individual freedom is now disconnected from any sense of civic responsibility or justice, focusing instead on investor profits, consumer confidence, the downsizing of governments to police precincts, and a deregulated social order in which the winner takes all. Freedom is no longer about either making the powerful responsible for their actions or providing the essential political, economic, and social conditions for everyday people to intervene in and shape their future. Under the reign of neoliberalism, freedom is less about the act of intervention than it is about the process of withdrawing from the social and enacting one’s sense of agency as an almost exclusively private endeavor. Freedom now cancels out civic courage and social responsibility while it simultaneously translates public issues and collective problems into tales of failed character, bad luck, or simply indifference. As Amy Elizabeth Ansell (1997) points out: The disproportionate failure of people of color to achieve social mobility speaks nothing of the justice of present social arrangements, according to the New Right worldview, but rather reflects the lack of merit or ability of people of color themselves. In this way, attention is deflected away from the reality of institutional racism and towards, for example, the “culture of poverty”, the “drug culture”, or the lack of black self-development. (p. 111) Appeals to freedom, operating under the sway of market forces, offer no signposts theoretically or politically for engaging racism, an ethical and political issue that undermines the very basis of a substantive democracy. Freedom in this discourse collapses into self-interest and as such is more inclined to organize any sense of community around shared fears, insecurities, and an intolerance of those “others” who are marginalized by class and color. But freedom reduced to the ethos of self-preservation and brutal self-interests makes it difficult for individuals to recognize the forms that racism often take when draped in either the language of denial, freedom or individual rights. In what follows, I want to explore two prominent forms of the new racism, color blindness and neoliberal racism and their connection to the New Right, corporate power, and neoliberal ideologies. Unlike the old racism, which defined racial differences in terms of fixed biological categories organized hierarchically, the new racism operates in various guises proclaiming among other things race neutrality, asserting culture as a marker of racial difference, or marking race as a private matter. Unlike the crude racism with its biological referents and pseudoscientific legitimations, buttressing its appeal to white racial superiority, the new racism cynically recodes itself within the vocabulary of the civil rights movement, invoking the language of Martin Luther King, Jr. to argue that individuals should be judged by the “content of their character” and not by the color of their skin. Amy Elizabeth Ansell (1997), a keen commentator on the new racism, notes both the recent shifts in racialized discourse away from more rabid and overt forms of racism and its appropriation particularly by the New Right in the United States and Britain: The new racism actively disavows racist intent and is cleansed of extremist intolerance, thus reinforcing the New Right’s attempt to distance itself from racist organizations such as the John Birch Society in the United States and the National Front in Britain. It is a form of racism that utilizes themes related to culture and nation as a replacement for the now discredited biological referents of the old racism. It is concerned less with notions of racial superiority in the narrow sense than with the alleged “threat” people of color pose—either because of their mere presence or because of their demand for “special privileges”—to economic, socio-political, and cultural vitality of the dominant (white) society. It is, in short, a new form of racism that operates with the category of “race”. It is a new form of exclusionary politics that operates indirectly and in stealth via the rhetorical inclusion of people of color and the sanitized nature of its racist appeal. (pp. 20––21) What is crucial about the new racism is that it demands an updated analysis of how racist practices work through the changing nature of language and other modes of representation. One of the most sanitized and yet pervasive forms of the new racism is evident in the language of color-blindness. Within this approach, it is argued that racial conflict and discrimination is a thing of the past and that race has no bearing on an individual’s or group’s location or standing in contemporary American society. Color blindness does not deny the existence of race but denies the claim that race is responsible for alleged injustices that reproduce group inequalities, privilege Whites, and negatively impacts on economic mobility, the possession of social resources, and the acquisition of political power. Put differently, inherent in the logic of color blindness is the central assumption that race has no valence as a marker of identity or power when factored into the social vocabulary of everyday life and the capacity for exercising individual and social agency. As Charles Gallagher (2003) observes, “Within the color-blind perspective it is not race per se which determines upward mobility but how much an individual chooses to pay attention to race that determines one’s fate. Within this perspective race is only as important as you allow it to be” (Gallagher, 2003, p. 12). As Jeff, one of Gallagher’s interviewees, puts it, race is simply another choice: “you know, there’s music, rap music is no longer, it’s not a black thing anymore … when it first came out it was black music, but now it’s just music. It’s another choice, just like country music can be considered like white hick music, you know it’s just a choice” (Gallagher, 2003, p. 11). Hence, in an era “free” of racism, race becomes a matter of taste, lifestyle, or heritage but has nothing to do with politics, legal rights, educational access, or economic opportunities. Veiled by a denial of how racial histories accrue political, economic, and cultural weight to the social power of whiteness, color blindness deletes the relationship between racial differences and power, and in doing so reinforces whiteness as the arbiter of value for judging difference against a normative notion of homogeneity (Goldberg, 2002, takes up this issue brilliantly, especially in pp. 200––238). For advocates of color blindness, race as a political signifier is conveniently denied or seen as something to be overcome, allowing Whites to ignore racism as a corrosive force for expanding the dynamics of ideological and structural inequality throughout society (Marable, 1998, p. 29). Color blindness is a convenient ideology for enabling Whites to ignore the degree to which race is tangled up with asymmetrical relations of power, functioning as a potent force for patterns of exclusion and discrimination, including, but not limited to, housing, mortgage loans, health care, schools, and the criminal justice system. If one effect of color blindness’s functions is to deny racial hierarchies, another consequence is that it offers Whites the belief not only that America is now a level playing field, but that the success that Whites enjoy relative to minorities of color is largely due to individual determination, a strong work ethic, high moral values, and a sound investment in education. Not only does color blindness offer up a highly racialized (though paraded as race-transcendent) notion of agency, but it also provides an ideological space free of guilt, self-reflection, and political responsibility, despite the fact that Blacks have a disadvantage in almost all areas of social life: housing, jobs, education, income levels, mortgage lending, and basic everyday services (see Bonilla-Silva, 2001, for specific figures in all areas of life, especially the chapter “White Supremacy in the Post-Civil Rights Era”). In a society marked by profound racial and class inequalities, it is difficult to believe that character and merit—as color blindness advocates would have us believe—are the prime determinants for social and economic mobility and a decent standard of living. The relegation of racism and its effects in the larger society to the realm of private beliefs, values, and behavior do little to explain a range of overwhelming realities, such as soaring black unemployment, decaying cities, and segregated schools. Paul Street (2002) puts the issue forcibly in a series of questions that register the primacy of, and interconnections among, politics, social issues, and race.

#### Reject the aff in favor of *revolutionary intercommunalism* – affirm the international movement against carceral capitalism and its technocratic managerialism

**Newton 04** (Huey Percy Newton was an African-American revolutionary, most known for co-founding the Black Panther Party with Bobby Seale. Together, Newton and Seale created the party's manifesto, the ten-point program.), “Revolutionary Intercommunalism & The Right of Nations to Self-Determination”, 2004, pg. 31-33 NT recut apark 10/13/21

We say that the world today is a dispersed collection of communities. A community is different from a nation.. A community is a small unit with a comprehensive collection of institutions that exist to serve a small group of people. And we say further that **the struggle in the world today is between the 32 small circle that administers and profits from the empire of the United States and the peoples of the world who want to determine their own destinies.** We call this situation intercommunalism. We are now in the age of **reactionary intercommunalism**, in which a ruling circle, a small group of people, control all other people by using their technology. At the same time, we say that this technology can solve most of the material contradictions people face, that the material conditions exist that would allow the people of the world to **develop a culture that is essentially human** and would nurture those things that would allow the people to resolve contradictions in a way that would not cause the mutual slaughter of all of us. **The development of such a culture would be revolutionary intercommunalism.** Some communities have begun doing this. They liberated their territories and have established provisional governments. We recognize them, and say that these governments represent the people of China, North Korea, the people in the liberated zones of South Vietnam, and the people in North Vietnam. We believe their examples should be followed so that the order of the day would not be reactionary intercommunalism (empire) but revolutionary intercommunalism. The people of the world, that is, must seize power from the small ruling circle and expropriate the expropriators, pull them down from their pinnacle and make them equals, and distribute the fruits of our labor, that have been denied us, in some equitable way. We know that the machinery to accomplish these tasks exists and we want access to it. 33 Imperialism has laid the foundation for world communism, and imperialism itself has grown to the point of reactionary intercommunalism because the **world is now integrated into one community**. The communications revolution, combined with the expansive domination of the American empire, has created the "global village." The peoples of all cultures are under siege by the same forces and they all have access to the same technologies. There are only differences in degree between what's happening to the Blacks here and what’s happening to all of the people in the world, including Africans. **Their needs are the same and their energy is the same.** And the contradictions they suffer will only be resolved when the people establish a revolutionary intercommunalism where they share all the wealth that they produce and live in one world. The stage of history is set for such a transformation: the technological and administrative base of socialism exists. When the people seize the means of production and all social institutions, then there will be a qualitative leap and a change in the organization of society. It will take time to resolve the contradictions of racism and all kinds of chauvinism; but because the people will control their own social institutions, **they will be free to re-create themselves and to establish communism**, a stage of human development in which human values will shape the structures of society. At this time the world will be ready for a still higher level, of which we can now know nothing.

## 2

#### Plan: States should reduce appropriation of outer space by private entities in accordance with the higher ethical principles of the outer space treaty.

#### CP solves all their ilaw internal links, all their space law, all their solvency – CP is competitive because it PICS out of antitrust harmonization – CP PICs out of “that engage in anti-competitive business practices”

## 3

#### The FTC’s focusing on international outreach to globally coordinate investigations---new authorities and burdens trade off, crushing cooperative controls over AI---no agency is a magic pudding!

--ICN = international competition network

Boswell et al. 19, Matthew Boswell is the Commissioner of Competition of the Competition Bureau Canada; Laureen Kapin (moderator) has practiced consumer protection law with the U.S. Federal Trade Commission for the past 18 years; Molly Askin (moderator) is Counsel for International Antitrust at the U.S. Federal Trade Commission’s Office of International Affairs; Fiona Schaeffer is an antitrust partner at Milbank LLP; Maria Coppola (moderator) is counsel for international antitrust at the U.S. Federal Trade Commission, where she is responsible for the agency’s enforcement and policy work with Europe; Marcus Bezzi has been Executive General Manager at the Australian Competition and Consumer Commission (ACCC) since early 2009, “FTC Hearing #11: The FTC’s Role in a Changing World,” 3/26/19, https://www.ftc.gov/news-events/events-calendar/ftc-hearing-11-competition-consumer-protection-21st-century

MR. BOSWELL: Oh, okay. Well, I'll go back to what has been a common theme, which is supporting the ongoing personal relationships between people around the world. You know, people move in and out of jobs. You have to keep those relationships, and it can be expensive. And it can be to certain outside parties hard to justify to expend those resources on having people attend, for example, ICN workshops so that they know people around the world, they're sharing best practices, we’re not reinventing the wheel. Somebody has come up with a good way to do something, we should have those relationships where we can learn it, but it costs money to invest and to always invest in relationships. MS. KAPIN: Well, I want to thank everyone. I think we heard a recognition that we should recognize the value of infrastructure, some common protocols and definitions and best practices can also help us overcome the challenges for international cooperation. But first and foremost, what I heard echoed was the recognition that this human glue really is the stuff that lets us stick together and accomplish our common goals. So, Molly? MS. ASKIN: I think one thing I've also heard is the importance of the networks that we have seen evolve over, if we’re looking at the past 25 years, either be founded in the first instance or have changed in their mission to really be able to be nimble enough to address some of these important issues and give agencies a forum for interaction that can facilitate both the tools and the relationships. So thank you all very much for participating. And we are now going to go into a 15- minute break and return for the next panel at 11:30. Thank you. MS. KAPIN: Thank you. CONSUMER PROTECTION AND PRIVACY ENFORCEMENT COOPERATION MS. FEUER: Okay, it’s about one minute early, but we’d like to get started. I’m Stacy Feuer. I’m the Assistant Director for International Consumer Protection and Privacy here at the FTC’s Office of International Affairs. This entire morning we’ve heard about a number of very interesting enforcement developments and challenges all over the world. Now we’re going to take a deeper dive into enforcement cooperation in the area of consumer protection and privacy. One of the most interesting aspects of our work here at the FTC on international consumer protection and privacy matters is the very wide range of issues we cooperate on, everything from telemarketing scams to online subscription traps to cross-border data transfer mechanisms, and to other privacy law violations. Equally remarkable to me is the incredibly wide range of authorities that we cooperate. So, for example, we cooperate with not only consumer protection agencies but data protection authorities, criminal regulators, and sometimes telecommunications and financial regulators. Our panelists that we have here today represent these different strands of our enforcement cooperation activities. They will highlight the issues involved in some of these different cooperation strands, and I will introduce them individually as we move through this panel. I do want to remind you at the outset that we have comment cards available, and please do send up questions. We’ll try and be a little interactive and ask some of your questions during the panel and not just wait until the end. So please ask away. So we’ve segmented our panelists into mini- groups so as to better draw out some of the cooperation strands. I’ll turn first to James Dipple- Johnstone who is the Deputy Commissioner at the UK’s Information Commissioner’s Office and ask him, and then followed by Deputy Assistant Secretary Jim Sullivan from the Department of Commerce’s International Trade Administration for their thoughts about cooperation and particularly focusing on the privacy sphere. We are so pleased that you are both here. So, Commissioner Dipple-Johnstone, can you begin? MR. DIPPLE-JOHNSTONE: Yes, and thank you, Stacy, and thank you to FTC colleagues for your invite and the opportunity to speak with you today. I’m looking forward to our discussion of these important issues, and it was interesting to hear the different perspectives from the previous panel. A little bit about the Information Commissioner’s Office first, given there’s a range of different types of organizations on the panel, in case it helps with my comments later on. With the implementation of the GDPR, which has already been referenced this morning, I’m pleased to hear, and the new equivalent legislation in the UK, the ICO has been through a significant growth process over the past 12 to 18 months. We’ve taken on new powers, and as has been mentioned this morning, as many other organizations, we’ve been through a capability growth over the past few months, which has begun to see us work more internationally and deal with more complex and challenging caseload. This reflects in part the importance the UK Government places on data protection and consumer protection, but also the seriousness of some of the recent scandals we’ve seen, for example, that involving Cambridge Analytica recently. In granting powers, the UK Parliament has gone further than many other EU legislatures to ensure that the ICO has both the funding through its funding regime to give us the financial resources, but also the new powers to do its work in the digital age. There was significant national debate in the UK about these new powers, many of which are actually quite intrusive and are more common in law enforcement agencies than in a traditional data protection authority and the balances in checks and balances being put in place to go with those powers through the UK’s Information Rights Tribunal who oversee our work and our individual case judgments. I couldn’t come here and talk to you without recognizing there’s quite a lot of difference within the ICO as well. As well as our data protection remit, we have a remit for access to information. So one part of the office is working very hard around keeping privacy concerns and how data can be safeguarded and secured and only disclosed where appropriate; another side of the office is hearing appeals about how to make public information more widely available. We have around 700 officers and new powers to seize equipment, search premises, examine algorithms in situ for bias to make sure that they are working effectively, and audit company systems and processes. We also have powers which were touched upon this morning as well, around the power to compel provision of information from wherever and whomever holds it, which is quite a wide remit for an office of our type. We deal with around 50,000 citizen complaints each year and undertake around 3,500 investigations across different parts of our office. And we cover both the commercial sector, but also the public and law enforcement sector. In many ways, as colleagues are, we're learning as we go with these powers and these new resources. And one of those key areas of learning has been that which has been touched upon this morning. And that’s the importance of working collaboratively with others internationally. Many of the most significant files on my desk -- and I have responsibility for the enforcement and investigation arms of the office -- in the last 12 months, we’ve engaged with 50 international colleagues on various different files. And most of the major cases we have on at the moment are involving international colleagues, either as joint investigations, seconding staff to and from other offices, or sharing information and intelligence about the work we're doing. As our citizens become more aware and concerned about the use of data and as the digital economy becomes the economy, people expect this kind of international engagement. And with this in mind, we value hugely the UK's positive relationship with its colleagues on this side of the Atlantic, the FTC, but also our colleagues in Canada who have been speaking this morning. We value the different networks we're involved in. There have been mention of some of those networks already, but in particularly GPEN, the Global Privacy Enforcement Network, but also those networks which involve looking at unsolicited communications, which continues to be a significant part of my office's work. We learn a huge amount from these relationships, as well as the sort of human glue that was described this morning, just the opportunity to discuss tactics, approaches, to understand how each other work is a real positive that comes out of that work and allows us to do our jobs more effectively. To support this, we have a number of legal gateways to share and receive information. These are backed by strict protections within UK domestic law, which bite both collectively on the organization but also the individual officials within that. They are backed by criminal sanctions, and nothing focuses the mind like those. In the course of our investigation, we could use one or any of MOUs, MLATs, and we’ve heard about the challenges with the time scales that MLATs take. Membership arrangements, such as GPEN or the International Conference of Data and Privacy Commissioner arrangements or, indeed, Convention 108. This very much depends on the exchange of information, what's involved, who it’s going to, who’s asked for it, and what we need to do our work. Of particular note are the DPA 2018, which is the Data Protection Act in the UK. That contains formal information gateways. That allows us to share information for law enforcement purposes or for regulatory purposes where there’s an overlap and there’s a public interest. Of relevance to the FTC in particular is Schedule 2 of the DPA. That sets out the conditions for public interest and information- sharing within the UK law. And I understand the UK has been working through these for a number of years from the 1998 act and now into the 2019 act and working with colleagues at the FTC through the SAFE WEB Act provisions and the criteria for sharing information there with foreign enforcers. And that's been a huge positive. Just in the short time I've been with the Office over the last two years, there have been a number of cases that we've been working on, on sharing information and understanding. And, of course, this goes alongside our EU work. We mustn’t forget that. We are a competent authority under the GDPR, the EU provisions for the one-stop-shop mechanism. And around a fifth of those cases in the mechanism over the past year have involved the UK as either a lead supervisory authority or a concerned supervisory authority. Many of the big issues we are grappling with is privacy authorities, algorithmic transparency, adtech, microtargeting and profiling of citizens, part of the bread and butter of those cases we're working through. And our ability to work with international colleagues, in particular the FTC, has been really helpful in us discharging our role, notably on the Ashley Madison file, but also on other confidential matters more recently, where we found the insight afforded by our bilateral arrangements with the FTC help us fill in the missing pieces. They help us make better investigations. We know that the FTC has helped us by using its SAFE WEB powers to obtain information for us, in particular with some of the -- I think you call them robocalls here, but unsolicited communications in the UK, and that information has been hugely beneficial in protecting UK citizens. And we hope the reciprocal has been helpful to the FTC and colleagues here. And I’m mindful of time, but in closing, I'd just like to say we're very keen in the ICO to continue to use these positive engagements and continue to build them, particularly as you come to look at the renewal of the SAFE WEB Act. Thank you. MS. FEUER: Thank you very much. Deputy Assistant Secretary Sullivan, how does the issue of privacy enforcement cooperation come within your purview at the Department of Commerce? MR. SULLIVAN: So in my role, I'm in the International Trade Administration, which is one of the agencies at the Commerce Department, and one of the offices that I oversee is responsible -- they are the US Government Administrator for and our interagency lead on different privacy frameworks -- international privacy frameworks, including both privacy shield frameworks, the EU and US Privacy Shield and the Swiss-US Privacy Shield. We're also very actively engaged in promoting the expansion of the Asia-Pacific Economic Cooperation and Cross-Border Privacy Rule system, APEC CBPR as it’s called. And we work extremely closely with the FTC on those issues around the world as we see a growing number of countries grappling with privacy while trying to balance innovation at the same time, which as everyone here knows, I'm sure it's not always the easiest formula. So that's a quick summary of what we do at Commerce. I'll leave it at that for now. MS. FEUER: Great, great. Well, it's interesting to hear you both speak about the importance of enforcement cooperation in the privacy area, James, for your agency on many, many individual files and Jim as the sort of overarching systemic systems for cross-border transfers. So I want to follow up with a few questions. So, James, sort of the elephant in the room, we've heard a lot this morning in the first panel about privacy as a "barrier" to regulatory enforcement cooperation. And I’m wondering what your view is of that statement or assertion and what kinds of tools do agencies need to cooperate effectively given some of these limitations and, of course, in privacy enforcement investigations? MR. DIPPLE-JOHNSTONE: Yes, yes. And it's not something we've -- you know, which is uncommon to us. We get that call often. I mean, we want to be clear, we're not the “ministry of no.” But, actually, what’s really important in this space is to do that groundwork and that thinking about what information do you need, how is it going to be transmitted, how is it going to be secured, what purpose is it going to be used for. And we often find there are many avenues and routes to be able to share information. We also get the -- interesting when we ask for information, we sometimes get from colleagues internationally, we can't because of privacy. And, oh, that's an interesting concept. How do we work through that? We've often found there is a way through. Sometimes where these arrangements are being agreed internationally and where, for example, it was mentioned this morning about the challenge with the advent of the GDPR, IOSCO working with colleagues at the EDPB and needing to sort of tease through that, it can sometimes be tough to be the first going through that process, but once those processes are in place, people understand how they work, those relationships are built, that common understanding is built. Things do flow a lot quicker and a lot easier in subsequent cases. And so very much it’s that sort of keep talking, keep engaging. And, importantly, I've recently come back from an international conference working group, where one of the key challenges has been that with the scale and pace of change internationally with enforcement agencies and enforcement bodies, some of which, again, was referenced this morning, just keeping pace of who can do what where and with what data is really important. So if those international networks can really help their members understanding where the right levers are and how their respective national laws work, that can only be a good thing. MS. FEUER: Thank you. Well, Secretary Sullivan, in your experience, how important has the issue of enforcement cooperation been with the foreign governments and stakeholders that you have negotiated these international data transfer mechanisms with, and how important are the powers that the FTC has in those discussions? MR. SULLIVAN: So, again, I'm going to refer to the three frameworks that I cited just a moment ago. And both the enforcement power and the international cooperation authority granted to the FTC under the SAFE WEB Act are both integral to the functioning of those frameworks, I think. Without them, they would lack legitimacy or credibility. You have to have some teeth behind these frameworks so that folks know that companies are going to be held accountable for the pledges and the promises and commitments they're going to make to comply with the principles or the practices that they have pledged to comply with in accordance with these frameworks. I don't know how that would be possible without what we just cited to, both the powers to enforce but also to coordinate with other enforcement agencies cross-border. MS. FEUER: Thanks. As a follow-up, I asked you about how important this is for foreign governments, but I'm wondering what you hear from your industry stakeholders here in the US. MR. SULLIVAN: I don't want to generalize. We certainly hear a lot. I think there's a strong recognition among most of the stakeholders that we engage with, sort of along the lines of what I just said. I mean, first of all, what would be the incentive to comply with something that really didn't have any teeth? I think they know increasingly how important it is to align their practices with these frameworks, given a lot of the developments. We’ve seen recently, and it's I think -- they generally -- and I am generalizing -- they do want to see strong frameworks that are actually enforceable and, they do want to see, as I think James just alluded to, greater collaboration because that’s going to lead to more consistent best practices or principles and approaches to a lot of these issues as opposed to just this fragmented, diverse, ad hoc approach to a lot of these same dilemmas that we're all facing. MS. FEUER: Thank you. I want to ask my fellow panelists, while we're talking about privacy, whether there was anything that they want to add in sort of response to what Commissioner Dibble-Johnstone and Secretary Sullivan were talking about. So does anyone want to -- it looks like Marie-Paule wants to hop in. MS. BENASSI: Yes. What I would like to say is that we should make a difference between issues related to privacy and to the confidentiality of investigations. And very often, indeed, it is quite a common answer to refuse cooperation, to say, oh, no, we cannot share information because of problems of privacy. But in the European Union, first of all, I think we have solved this, and I think that our GDPR itself helps a lot to clarify that authorities can exchange information, including information which contains personal data. And so this enables, in principle, very seamless type of cooperation in the European Union, because for law enforcement purposes, we can exchange this information between authorities in one member state or in other member states. And this -- I think in this way, the GDPR is an enabler. And when we look into the implementation of the GDPR for international cooperation, we should also look at it in the same way as an abler and enabler, because if it is respected; then exchange of information for law enforcement purposes should be facilitated. And, for example, we are also doing adequacy decisions, for example, with some other countries in order to also create the seamless facilities, including for law enforcement purposes. MS. FEUER: Thank you. Anyone else? Kurt. MR. GRESENZ: So I agree with Marie-Paule's sentiments there. You know, the issue that we encountered at the SEC as a civil agency with administrative investigatory powers, while the Department of Justice was out in front with an umbrella agreement to facilitate cooperation in the criminal sphere under the public interest mechanism, which is something that James talked about at the beginning, it was less clear how that applies in the civil or administrative context. So the step that IOSCO took to negotiate what is the first administrative arrangement under the GDPR will enable the second step of what Marie-Paule talked about, which are transfers of personal data from the EU to jurisdictions and authorities outside the EU. And now with that process, as Jean-François in the earlier panel talked about, having been blessed by the European Data Protection Privacy Board, we in the security space are looking forward to the data protection authorities in the 28, possibly 27, EU members states adopting that and approving that and so it can be the standard with the securities authorities who are IOSCO members. MS. FEUER: Thanks. So I want to shift us now from what has been a privacy-heavy conversation to more of a focus on consumer protection. Our second pair of panelists represent two of the different strands of the kind of consumer protection enforcement cooperation we do here. So to hear about the EU enforcement model, we'll have Marie-Paule Benassi from the European Commission’s DG Justice, and to hear about our cross-border work with our Canadian criminal counterparts, we'll hear from Jeff Thompson, Acting Superintendent in Charge of the RCMP's Canadian Anti- Fraud Centre. So, Marie-Paule, can you start us off? MS. BENASSI: So thank you, Stacey and thank you for the FTC to invite me. So, first of all, I would like to remind you that the European Union is currently counting 28 member states, and it's very well known for being something very complicated, and I would like to try to break that myth. But unfortunately, I think, or fortunately for a better understanding of the complexity of the Union, I think that Brexit and the interest which this is bringing in the headlines is also maybe shedding some light on why it is so complicated. So we have an integration of EU-level and national laws, a model, and this is where I think it’s simple. It's based on a very simple principle. We have one EU law in a certain domain, and it tries to harmonize national laws using key high-level principles. What is not harmonized is how this law is implemented. So it is -- except in a very few cases, it is implemented nationally. It is enforced nationally, and we try to do this in a way which preserves the diversity of the enforcement model in the member states. And so in the area of consumer protection, it is how it works. And the European Commission for which I'm working has no direct enforcement power. It is the member states which have the enforcement powers. So when I speak of enforcement, it means enforcement of the law towards businesses and other possible subjects because the European Commission is in charge of checking that the member states are enforcing the laws correctly, but we are not directly involved to stamp out illegal practices. In the area of consumer protection, so we have a strong role. And this role has been strengthened in the recent past. What is our role? Our role is to facilitate the cooperation of the member states because this is a EU, I would say, a harmonized law, and we want it to be implemented in a consistent manner in all the member states. And to do this, the only solution is cooperation. So we have a long tradition of cooperation inside the European Union and now we are doing it via a law which is called the Consumer Protection Cooperation Regulation. This law is establishing the framework for cooperation. So we start by first saying even if the member states are very different, they should have similar type of powers, so investigative powers. For example, the power for mystery shopping, the power to request information on financial flows, the power to obscure illegal content online. Another thing, also, is the framework for cooperation. So we have two types of cooperation now in our new legislation. One is what we call the bilateral cooperation, the more traditional cooperation, where one member state asks -- requests enforcement cooperation from another member state. But now we have this new system which is E- level coordination. And there, the European Commission has a new role because we have a role of market surveillance. And from this role, we can ask the member states to check some practices that we think are likely to be illegal. And if the member states find that there is sufficient evidence to start an investigation, then the Commission is coordinating this investigation. We also have a new power in terms of intelligence I mentioned. And we are also doing coordination of priorities. So, in fact, the role which we have is quite strong. And the new model, which we are going to implement from January next year, in fact, is already functioning, maybe in a lighter way. And it's working. So we have in the past done some coordinated actions, which are concerning. For example, illegal practices by big companies operating at the level of the European Union. Today, we are publishing a press release on an action done in the field of car rental, for example. So with the authorities, we have been working together with the authorities to find -- to analyze bad practices of the five leaders of this sector, and we wrote a common position asking these companies to change their practices. They made commitments, and now we have been monitoring the commitments and concluding that finally these companies are implementing these commitments. This is a negotiated procedure, so this is another element I would like to stress. These EU-level actions are not based on strong enforcement means because they don't exist at the European level. They are based on a coordinated approach and the cooperation with the traders. If the traders refuse to cooperate, do not cooperate sufficiently, or do not follow their commitments, then what is going to happen is coordinated enforcement action by the member states. And we have just added something very recently which is a system of fining that can be applied for this kind of EU-level infringement and coordination of the fines. And this is a big -- it's not yet completely finalized, but it's going to be a big step forward because in certain member states, they don't even have a fining system for consumer offenses. So we are building the system. So for the future, what is -- what can we do? We can do international agreements. So there is a possibility on the basis of this framework to agree international cooperation agreements with certain countries. And the framework which I've described can be applied also with the said countries to the extent possible, of course, depending on the type of base laws that exist in the member states. And what I could say is that we would like to start discussing on the basis of this new regulation with the FTC, if we can progress such an agreement. Why an agreement would be necessary? Because it's important that the formal part is there. Because as we heard from various speakers, the formal part is an enabler also for an efficient cooperation. This system, however, has several challenges. One of the challenges, as I said, it’s based on negotiation with traders. So it doesn't work when there is fraud, fraudulent operators. This is really required to develop additional cooperation, for example, with police forces because in most of our EU member states, they don't have this possibility of going against fraudulent operators. They need the cooperation of police, so this is an area where we need to develop in the future. And then relation with competition, relation with data protection, these are the future avenues for our cooperation. Thank you. MS. FEUER: Thank you very much, Marie- Paule. And that was the perfect segue to Jeff Thompson, who is from the RCMP's Canadian Anti-Fraud Centre. And, Jeff, maybe you can sort of talk us through a little bit about what some of the tools and challenges you face and we face in cooperating on US- Canada cross-border fraud matters. MR. THOMPSON: Sure. Thank you, Stacy. It's a pleasure to be here today to talk about international cooperation and consumer protection. Since the start of my career, I've learned that cross- border fraud was an evolving criminal market that cannot be tackled by any one country alone and even more so today. Consumer Sentinel reporting shows more than 1.4 million reports were received in 2018, up from 433,000 in 2005. Similarly, the Canadian Anti- Fraud Centre data shows annual losses to fraud continues to increase, reaching 119 million in 2018, a 495 percent increase since 2005. So it's easy to say that mass marketing fraud and cross-border fraud continues to be a threat to the economic integrity of Canada and the US, furthermore, if you consider technology, voice-over- net protocols, social media, virtual currencies, money service businesses, and other key facilitators that continue to provide criminals and criminal organizations behind a scam opportunities to operate across multiple international jurisdictions. And as we heard this morning, while this is an evolving threat, there is good news. There are, indeed, existing strategies that do exist and tools that provide an effective approach to attack on this criminal market. In fact, as we heard this morning again, the history between Canada and the US is long. It dates back to 1997, when Former President Clinton and Prime Minister Chretien met at the first US Cross- Border Crime Forum. It was at this meeting that telemarketing fraud first got identified as a major Canada-US cross-border crime concern. And it also made a number of recommendations, including the establishment of a multiagency task force, the development of consumer reporting and information- sharing systems, enforcement actions, and better public education and prevention measures. Since then, both US and Canada cooperate to implement and refine a number of these strategies, and while all recommendations made are important, I'm going to focus my discussion on the existing multiagency task force, or in today's terms, strategic partnerships. This case and work that the partnerships have done showcase an effective enforcement approach. They highlight intelligence-led policing and integrated policing models, along with providing insight into some of the tools and approaches to consumer protection. So if we consider the cross- border fraud partnerships as an intelligence-led approach, what we see is a group of key stakeholders joining efforts to achieve a common enforcement objective, namely, reducing fraud. To give you a practical idea of this, I think back to some of my early meetings at the Toronto Strategic Partnership. I did not fully recognize or appreciate the significance of the discussions held around the table. Members from several different agencies and organizations discussed top reported scams, scam trends, top offenders, current investigations, and gaps and challenges in enforcement options. Oftentimes, this intelligence-led approach was started by members from the Federal Trade Commission or the Canadian Anti-Fraud Centre, bringing intelligence developed from their respective central databases, Consumer Sentinel and the Anti-Fraud Centre database. This dialogue helped identify the new and emerging scam trends and discussion around the key facilitators to the scams. It also helped to coordinate joint priority setting, identify lead agencies, investigative assistance, and actions required to complete the files, and in many cases helps with deconfliction amongst the agencies. Sharing information around the table was a key factor, and as long as there’s a willingness to share, there is a way to share. There is also a common trust and understanding amongst the partners to share information within the confines of law. Thus, the partnerships serve as an intelligence-led approach in as far as they create a platform to share and synthesize information from multiple perspectives. Turning now to consider the partnerships as an integrated policing approach, we begin to realize that criminals and criminal markets can be disrupted through civil, regulatory, or criminal investigations and that different agencies and different laws all play a role. If we dissect again the Toronto Partnership, we have a minimum of eight different organizations: the Federal Trade Commission, the Royal Canadian Mounted Police, the United States Postal Inspection Service, Toronto Police, the Ontario Provincial Police, the Ministry of Consumer and Government Services, the Competition Bureau of Canada, and the Ministry of Finance. The FTC alone has 70 different laws that it enforces. Who really knew that the Ministry of Consumer and Government Services enforces numerous consumer protection laws such as the Loan Brokers Act, which can be used to go after the advance-fee loan scammers? Or that, again, as we heard this morning, CASL legislation also has clauses that allow for foreign enforcement to request assistance from respective Canadian law enforcement partners? At the heart of an integrated policing model is a give-and-take approach. And in the US-Canada cross-border partnership context, this approach is formalized by MOUS. As recent as 2017, the Federal Trade Commission and the Royal Canadian Mounted Police formalized an MOU that identifies best efforts that participants can use to further the common interest of combating fraud. The language used highlights the foundation of information-sharing and cooperation. Participants shall share materials, provide assistance to obtain evidence, exchange and provide materials, coordinate enforcement, and meet at least once a year. So, again, if we take a practical view, the strategic partnership model against cross-border fraud uses intelligence-led and an integrated policing approach that allows investigators from Canada and the US to move beyond simply coming together to talk about cross-border fraud concerns to developing investigative plans that identify investigative steps and processes needed to gather that evidence. Each participant brings a range of tools that can be leveraged to ensure the effective cooperation. One such tool that we’ve heard plenty of today is the US SAFE WEB Act. From a Canadian-US perspective or from the Canadian perspective, I mean, it provides us an avenue to formally seek investigative assistance in the US from the FTC. It also formally acknowledges by name some of the regional partnerships that exist today. This act alone has assisted strategic partnerships in countless cases, at least 22 by my count since 2007, and as we’ve heard, a lot more. These cases have led to arrests -- civil arrest charges, civil forfeitures, and, most importantly, victim restitution, which in the Canadian context is often rare to see. This includes Operation Telephony, which involved more than 180 actions brought by the Federal Trade Commission, including actions in Canada and the US, and it also includes the Expense Management Case that we heard about in the last panel involving $2 million that was eventually turned over to the FTC for consumer redress. And while there's a history of success and continuing work and outcomes to look forward to, we know that the criminals adapt. Today's frauds typically involve solicitations coming from one country targeting consumers in another country and funds going to yet another one. Mass marketing fraud is truly a transnational crime. We know that in a number of cases, the criminals and criminal groups involved are deeply rooted in Canada and the US and that moreso today, the work being done by these partnerships exposes these international networks who are also providing each other an opportunity to leverage our international networks to tackle this problem collectively. And we’re already doing this to some extent. The International Mass Marketing Fraud Working Group is another example of how Canada and the US cooperation has extended beyond North America. As recently as March 7th, this group announced -- or the US Department of Justice announced the largest ever nationwide elder fraud sweep, and the International Mass Marketing Fraud Working Group played a role. At least eight different countries were engaged. At the same time, there are other challenges, such as the willingness of other countries to identify mass marketing fraud as a transnational threat, whereas in many cases fraud or financial crime is not a priority. And this even holds true today to some extent. The parties and law enforcement agencies are subject to change, and the ability of any one agency to solely lead a partnership can be impacted by this change. Albeit, there's still partnership models that work in which chairs to partnerships rotate and changing priorities are acknowledged. In May of 2018, the RMCP coordinated a national mass marketing fraud working group meeting whereby we acknowledged the changing nature of mass marketing fraud and sought to renew our efforts. We also sought input from key US stakeholders. The Federal Trade Commission and the United States Postal Inspection Service were at these meetings. And while work continues to renew this renewal, such as the emergence of a Pacific partnership to replace Project Emptor, there's still work to be done. So in concluding, there’s a long and successful history of Canada-US enforcement in consumer protection, and that demonstrates effective cooperation through integrated and intelligence-led approaches and that this continued cooperation is integral to combating this transnational crime today. Thank you. MS. FEUER: Thank you very much, Jeff. So I think that we now have a couple of very interesting issues out on the table about consumer protection and enforcement cooperation, both the EU model of the CPC network and the FTC Canada model, which focuses on these seven strategic partnerships that exist in Canada. So I want to ask a few questions of our panelists, Marie-Paule and Jeff Thompson, and then I do want to turn back to Secretary Sullivan. But, first, Marie-Paule, I did want to ask you one thing. I know that the CPC network uses a technological tool to facilitate the cooperation among the 28 member agencies. I'm wondering your thoughts about how well that works and how it might work in a more multilateral context. MS. BENASSI: Thank you, Stacy, for this. So, first of all, I think I would like to make two types of tools. One is the system which we use to network, and I would say this is based on technologies of collaborative websites. And we have been using them now since several years and we are quite confident that it is safe for exchanging information and including information on containing personal data, for example, on businesses or on witnesses, and also it can be adapted. But currently, the CPC system doesn't contain a lot of cases. So it's growing organically, I would say. And it's also very much used to exchange information, best practices, for example. In the future, we are building something which is going to be a case management system and it will contain several modules, including a module for our external [indiscernible]. So we are going to open this to various entities -- NGOs, entities. And so we are going to build doors, in fact, in such a way that the two systems can communicate, but without having [indiscernible] you know, for -- so that the stakeholders will only see their external areas. And I'm quite confident that we can build the same type of modules for international cooperation with our technology. But what I would like to say is that we are also developing technologies for online enforcement tools. And what we want is to create, for example, a system where we would have an internet lab that could be used by the various member states, and we are also building capacities of administration in the EU countries. We are developing training, and we think also that this kind of tools could benefit from pooling of expertise from various agencies, including in an international context. MS. FEUER: Thank you. So I want to turn -- before I turn back to Jeff Thompson, I want to turn back to Secretary Sullivan and ask what are the tools that can be used to facilitate cooperation under the various cross-border mechanisms? And why are they important? MR. SULLIVAN: So in terms of why they’re important, I mean, again, a lot of this is probably self-evident to those in this room, but the data explosion we've seen is only going to continue. And we now have these cross-border data flows that really do benefit stakeholders across our societies and our economies. So you’ve seen these cross-border data flows help enable consumers, for example, to access more and better services and products. They help our companies to increase the efficiency of operations and innovation, and they help nations in terms of their competitiveness and their ability to help create jobs and facilitate economic growth. So this is all great. The problem we're dealing with is that different counties now take very different approaches to how they regulate these data flows specifically on privacy. And so what I wanted to just touch on a bit was what we do, the Commerce Department, in conjunction and partnership with the FTC to deal with this issue, this dilemma. How do you continue to facilitate these cross-border data flows when you are dealing with countries that have all adopted varying approaches, legal regimes, or policy priorities. I touched on the three frameworks, and I just quickly wanted to go through some of the tools within those frameworks, if I could, which from our perspective are absolutely critical to digital trade because, again, right now, there is no single comprehensive binding multilateral approach governing these cross-border data flows. So you know, again, I'm repeating myself a bit but we have stakeholders that we meet with all the time coming in, telling us about this constantly shifting and evolving and rapidly accelerating policy landscape that they have to deal with. So in response to this challenge, one approach that we've taken, as I alluded to earlier, for example, is the APEC CBPR system. And it's basically a voluntary enforcement code of conduct based on internationally recognized data protection guidelines. It establishes principles for both governments and for businesses to follow to protect personal data and to allow the data flows between APEC economies. To join this system, an APEC economy has to designate a third party called an accountability agent. And that accountability agent is empowered to audit a company's privacy practices and take enforcement action as necessary in some instances, but if that accountability agent cannot do that, resolve a particular issue, an APEC economy, their domestic enforcement authority serves as a backstop for dispute resolution. And in the United States, the FTC is our designated regulator, obviously, and enforcement authority for the CBPR system. And they enforce the commitments that are made by the CBPR participating companies to comply with the principles that they have committed to comply with. I do want to note all CBPR participating economies also have to join the cross-border privacy enforcement arrangement, CPEA, to ensure cooperation and collaboration among their designated enforcement authorities. To date, if memory serves, I know the FTC has brought four enforcement actions against companies for making deceptive statements about their participation in CBPR, and it’s also used its authority under the SAFE WEB Act to enhance cooperation with other privacy and data protection regulators within APEC. So, again, as I noted at the outset, FTC enforcement and international cooperation are absolutely critical to the credibility, to the integrity, and the success of the CBPR system. There are currently eight economies in APEC of the 21 economies participating in the system: the US, Japan, Mexico, Canada, South Korea, Singapore, Australia, and Chinese Taipei. And the Philippines is currently working on joining the system as well. I want to underscore that if this system were to scale across APEC, the framework would help underpin over a trillion dollars in digital trade. So we regard that as a very big priority and, again, we cannot emphasize enough just how critical the FTC is to that framework. And it's also a similar dynamic with the EU. It's been, the FTC, extremely integral to the success of both privacy shield frameworks. We all know, and it’s been touched on, about a year ago, GDPR was put into effect in Europe. And like the predecessor directed before it, it imposes certain restrictions on the ability of companies to transfer certain data from Europe to other jurisdictions, so we have Privacy Shield. And, again, like CBPR, it's a voluntary enforceable mechanism that companies can use to promise certain protections for data transferred from Europe to the United States, and the FTC enforces those promises made by Privacy Shield-participating companies in its jurisdiction. Again, I talked about how big APEC was and how these data flows underpin trade there. The EU is actually the largest bilateral trade investment relationship with the US in the world. That, too, is valued at over a trillion dollars. And I know the Transatlantic economy accounts for about 46 percent of global GDP, about one-third of global goods trade, and the highest volume of cross-border data flows in the world. And the Privacy Shield program is absolutely key to underpinning this economic relationship. We have about 4,500 companies now participating in the program. They've all made these legally enforceable commitments to comply with the framework, and they range from startups and small businesses to Global 1000 and Fortune 500 companies across every sector, from manufacturing and services to agriculture and retail. And I do want to note that about 3,000 -- nearly 3,000 -- of those companies are actually SMEs, so it’s not just the big tech companies that we're talking about. So to help protect data against improper disclosure or misuse, the Commerce Department and the FTC do work together, and they move swiftly to ensure that participating businesses who join Privacy Shield and certify under Privacy Shield are complying with their obligations. And over the last two years, Commerce, for example, has implemented a buying arbitration mechanism and new processes to enhance compliance oversight and reduce false claims. And by the same token, the FTC has enforced companies’ Privacy Shield declarations and commitments by bringing several cases pursuant to Section 5 of the FTC Act, which prohibits unfair and deceptive acts. We also refer false claims participation in the program to the FTC, which have often resulted in FTC settlement agreements. And under those agreements, the FTC can obtain certain remedies such as remediation measures and compliance monitoring that are, I think, generally otherwise unavailable in an enforcement action. And to date, the FTC has brought about four false claims cases. So, again, as with CBPR and APEC, the FTC has been just an essential element in bridging the gap between the EU and the US approaches to privacy. And, again, I'll just end by saying you're not going to get buy-in legitimacy or credibility without that enforcement power and that collaboration and cooperation that we're all talking about today. So thank you. MS. FEUER: Thank you very much. I want to turn back to Jeff for a minute. So everyone has done, I think, a really fantastic job of outlining the tools. And, Jeff, you talked about these partnerships, and I guess I'd like to know a little bit more about the partnerships in terms of their status today, whether you think that they kind of could be adapted for a more, I guess, global enforcement model and whether you have any ideas about how cross-border cooperation and consumer protection matters could be improved. MR. THOMPSON: Sure. Thanks, Stacy. So, yeah, the status of the partnerships -- as I mentioned, the partnerships stem from a 1997 meeting. There were three partnerships created across Canada -- one in Vancouver, one in Toronto, Ontario, and one in Montreal, Quebec. At one point in time, we saw this increase to seven Canada-US cross-border partnerships, but that wasn't maintainable for a number of reasons, primarily being there wasn't a lot of enforcement work in Atlantic Canada and Saskatchewan, for instance. So, I mean, things changed. And, again, as I said, priorities change. So right now we have three partnerships, including the new Pacific partnership which replaced Project Emptor. The Montreal Canada project, Project Colt is also defunct currently, but I mentioned we're working on renewing these efforts and coordinating something there. So, right now, as it stands, there’s the Alberta Partnership and the Toronto Strategic Partnership, and the Montreal Partnership. As far as improvements go, one area for I think more global enforcement cooperation that we discuss a lot at the office is disruption. And by disruption, I'm not talking about actual enforcement action. I'm talking about cooperation with private sector partners, using the data that we capture in our central fraud databases to block, say, shut down foreign numbers, to get bank accounts blocked. In Canada, we're sharing information with banks and credit card providers to go after the subscription traps, the continuity schemes, the counterfeit sales of other goods online and nondelivery goods. So the information we house that there's other alternatives to enforcement, and those are some of the areas that need to be improved on internationally. MS. FEUER: Thank you very much. I now turn to Kurt Gresenz, who is the Assistant Director at the SEC’s Office of International Affairs. And, Kurt, as we heard earlier from Jean-François Fortin, securities enforcement collaboration is truly global and truly impressive, I have to say. I'm interested in hearing more from your perspective to inform our thinking about the cooperation in the areas that fall within the FTC's jurisdiction. MR. GRESENZ: Thank you, Stacey. Let me start out by giving the disclaimer I’m required to give, that these are my views, only my views, and not necessarily those of the Securities and Exchange Commission, its Commission, or its staff, which I like doing because that frees me up now to say what I would like to say, which hopefully follows what the SEC would say. Okay, so let me start out with building on some of the themes that have been talked about. One of the reasons, I think, that we have been successful in forging a pretty broad alliance of securities authorities around the world that are cooperating is by virtue of the fact that the IOSCO principles of securities regulation are part of what national economies are assessed against as part of the financial sector assessment program that is done by the IMF. So essentially when the IMF and team comes into a jurisdiction to grade you on your financial resiliency and financial regulation, they're going to look at the IOSCO principles. And the IOSCO principles say that your securities has to have certain minimum powers and also the ability to share information across borders for enforcement purposes. And I think that has been one of the key tools that has caused one of the things that Jean-François talked about from early adoption, say two dozen countries in 2002 under the MMOU to where we are now as 121, that it's an easy way to getting a failing grade by not being signed up to the MMOU. And national legislatures have, for the most part, made the amendments to their domestic law to enable them to meet the MMOU standards. So in the scale of cooperation, Jean- François talked about over 5,000 requests that were made under the MMOU last year. The SEC is, as you might expect, a big user of those, probably 600 to 800 of those were ours. So we have an incentive in that process working smoothly. And where the parallels are, I think, for me is when I talk to my colleagues at the FTC, we're talking about consumer protection. And the concept of investor protection is essentially the same concept. The investor is our consumer. And one of the focuses of our enforcement priorities is on the mom-and-pop investor, the retail investor who really is somebody that will benefit from an active securities authority acting in their stead. In the securities context, one of the things Jeff talked about was he mentioned you have people set up in one country, you have targeting of investors somewhere else and then you have sending the funds elsewhere. I would actually build on that. In an ICO case for example, the entities might be incorporated in two or three different jurisdictions. The investors might be targeted in the UK, Australia, and the US. They might be storing their documents in a fourth or fifth jurisdiction or in the cloud so it’s very difficult to, you know, figure out where those are to begin with. So those are the challenges, and building through those, and I think we've had a good discussion of the privacy challenges, but two things I want to mention that also came up in the earlier points is one is what I call regulatory arbitrage, which somebody called regulatory competition. Cooperation works very well, but we also have to be cognizant that there are competing policy concerns with how we approach our enforcement tasks. So for example, a sophisticated fraudster is going to have some basic awareness of what the regulatory scope is in a given jurisdiction. And these people may set up shop in particular places and do things in particular places for taking advantage of whatever the legal system is there, and often that legal system may be one that is less conducive to cross-border sharing. So then as we advance down the path of the investigation, either related to that or other things, regulators move at different speeds. They may have different approaches as to how they approach witnesses. Are we going to go let everybody know in advance? I will tell you that from an SEC investigative perspective, which I'm sure people around the room and at this table would share, that people acting in a manner that is entirely consistent with their own investigative processes and procedures, but that may be contrary to what somebody is doing elsewhere. Those are things that are going to almost always result in people wanting to control their own investigation, perhaps at the expense of greater coordination. And I think that's where, you know, discussion is certainly important. And I don't know if this is really privacy. Maybe this goes to confidentiality. Also, different authorities have different legal requirements when it comes to what types of information they have to disclose in a particular setting. So let's say that we transmit files to an authority who assigned assurances of confidentiality and then we read a newspaper report that talks about things that we disclosed on a confidential basis, and then we drill down and it turns out that, well, yes, they kept it confidential but not from a lawful request, and it might be a Freedom of Information Act request or something like that. So that’s obviously going to be something that maybe you don't anticipate on the front end, but it might chill information exchanges going forward. And then the case of the ambitious prosecutor, he or she who may leak to the press. I know that that’s always a source of great consternation, whether it's the SEC or DOJ or elsewhere, when you read confidential details that are unattributed by a source who’s not authorized to speak about something that you thought you transmitted in confidence. So I do want to talk about those. I think the last thing I want to talk about in challenges is one of the things that we are dealing with frequently at the SEC, and I think we sort of have a little bit of a handle on it, and I know it must be something that the FTC confronts, also, but the law has been unsettled for a number of years as it relates to the Electronic Communications Privacy Act and what type of records we can get from internet service providers, and maybe who a subscriber is, who is the identity of a particular account. Maybe that’s something that is reachable, but what about the cases where you know there's communications and you want those communications, and maybe there's impediments there. I know that the criminal authorities can go through a warrant process for things like that. What is the recourse of an administrative agency where we don't necessarily have recourse to a criminal mechanism to show just cause, due cause, probable cause, reasonable suspicion, whatever the standard is. So cooperation works, but we have to be, I think, vigilant of the challenges to that, and like we’ve already talked about in the GDPR space, how do we get to a solution that works for most people most of the time. MS. FEUER: Thank you very much. So let me ask you one follow-up, which is about your statutory authority which underlies your ability to cooperate. I know that you have some tools that you've had since the 1970s that are somewhat similar to what we have in SAFE WEB. And I'm wondering how they actually underpin what you do and how effective you think having that statutory authority has been. MR. GRESENZ: So there are three sections that I'll talk about. And absent these three things, we would not be able to meet the IOSCO principles, which means we wouldn't be able to sign the MMOU, which means the Treasury Department would be unhappy when we were adjudged to be noncompliant in an FSAP in these areas. The first one is what I call our access request authority, and what this says is the Commission has discretion to share confidential file materials with any person, provided that person demonstrates need and can make appropriate provisions of confidentiality. And I think more or less that tracks what the FTC can do, although maybe the Safe Web is restricted to regulatory authorities, where the SEC, in theory, has discretion to share with any person. Our Commission has delegated that authority to exercise the discretion to the staff in the area where I work with, which is cross-border enforcement cooperation. Now, typically, my office will look at any request for access for SEC files that comes from a foreign authority, and we will make a baseline determination of whether sharing is appropriate with that organization or not. Obviously, if they’re an MMOU signatory, that question is easier. So that's the first one, the ability to give access to materials and files. The second one is to use our compulsory power on behalf of a foreign authority. And I think, again, here, there's probably parallels all down the line with the FTC's existing authority, is we have to make sure that there's -- well, for us to start with, the requesting authority has to be a foreign securities authority, which means do they enforce laws that fall within their securities regulation. Number two, the authority has to be able to provide reciprocal assistance. And, again, if it’s an MMOU party, that's already written in and baked into our principal cooperation mechanism. The sharing has to be consistent with the public interest of the United States, and we go through that process of the deconfliction process with the US Department of Justice. So that's something else that is taken care of. And one interesting fact here is it's not necessary for the conduct to be a violation of US law. So, for example, if it's illegal in Country X but it may not be illegal here, we do have the authority to assist in appropriate circumstances. The third piece after the access request and the compulsory authority, you know, of course, you list three and then you forget the third one. Let me come back to that one. I should have made a note when I was thinking about this. MS. FEUER: Okay. Well, that's great. So we have a lot here to work with to start us off on questions, and there are so many strands to the strands that we've brought out that it's hard to know where to start, but I am going to start with two questions that have come in. And the first really builds on, Kurt, what you were just talking about, that your investigative assistance power doesn't require the law violation to be a law violation in the United States if it is a law violation in another country. And we actually have a question on that. And this is, I think, to the consumer protection and privacy areas where I think laws diverge more than they do in the securities arena. But the question is this, when an act or practice would violate consumer protection law in a consumer's home country but it isn’t against the law in the seller's country, should agencies cooperate? When there is a conflict of laws, what should consumer and privacy agencies do? And I'm going to throw that out to the panel and see who hops on it. James? MR. DIPPLE-JOHNSTONE: Is it helpful to say just in terms of our experience at the ICO's offices for that very reason is our legal gateways are framed with a public interest test? And that's a very widely drawn public interest test, so it doesn't need to be a specific offense in the UK for us to be able to cooperate and exchange information, for that very reason is there is quite a variety. MS. FEUER: So that's helpful to know. By way of background, the FTC's -- yes, I work for the FTC -- the FTC’s authority to obtain investigative assistance for foreign counterparts relates to unfair or deceptive acts or practices, as well as violations of laws that are substantially similar to those that the FTC enforces. So we have a little bit more defined statutory language, although as you can see here, it allows to us cooperate with a wide variety of agencies. Anyone else want to opine on this first question from our audience? Marie-Paule? MS. BENASSI: Yes, thank you. It's a very important and interesting question. So in the European Union, we have laws which are harmonized, fully harmonized, or minimum harmonization. So our system of cooperation for enforcement actions are based on the minimum harmonization, when it is minimum harmonized. So it means that you cannot take an enforcement action for a violation which goes beyond the minimum harmonization and which would not be the same in one -- in your member state where the trader is established compared to the member states of the consumer. But requests for information and other types of assistance I think can function. And what we see when we work with cooperation in an informal setting with other jurisdictions outside of the European Union is that very often the principles -- at least the principles are quite the same. And so it’s on this basis, I think, that in many cases exchange of information can be possible. MS. FEUER: Jeff. MR. THOMPSON: Yeah, I think this touches a little bit on what I was referring to with disruption as well. Enforcement is not the only answer where we can't enforce the law in another country or a law doesn't exist that prohibits a certain action. However, we may be able to work with, again, private sector partners or other agencies to block these services from being offered in Canada. Binary options was a great example in Canada where we worked with credit card companies, and Canadian law prohibits the sale of securities if somebody is not registered. So, therefore, there was no binary options. Companies registered in Canada, therefore, any sales to Canadians are against our laws. So we're able to work with Mastercard and Visa and the credit card companies to prevent any Canadian transactions for binary options. MS. FEUER: So that’s very interesting. So there are really a range of options here from a very broadly defined public interest standard to the European Union's concept of minimally or maximally harmonized laws, which essentially means whether every EU country has the exact same law or whether they have more leverage and freedom to implement laws differently. To the example that Jeff has given with disruption and also being able to cooperate across the civil and criminal divide, because we obviously cooperate with the RCMP as a criminal agency, and many of our colleagues, for example, the UK ICO, has criminal authority as well as civil authority. Kurt, I saw you want to say one more thing here. MR. GRESENZ: Yes, I was actually thinking about a topic that you and I have talked about. So one of the questions that can come up in the work that I do is there might be a hesitation on the part of some of our foreign counterparts to work with us in some cases if they are afraid that an SEC outcome will foreclose them from acting. And I think this is the result of different legal interpretations of what amounts to double jeopardy. So you know, in the US, depending, we have different sovereigns for different purposes. What some of my colleagues overseas have said that essentially should the SEC take some action, even administrative action against an actor where the conduct is based on something the foreign authority is looking at that that could potentially preclude the foreign authority from doing any action at all? So that's in one direction we have to be sensitive to that. You know, the question there is let's say we ask for help in a case and they're looking at it and they say, well, we don't want to tell you because you're going to take action and then we're going to be left with nothing. And, again, we would work through that stuff, but it's a real issue. You know, from our side, we take Foreign Corrupt Practices Act violations seriously. And from an economic perspective, my personal view is there's a really good strong reason to do that. That's not always the approach that some foreign jurisdictions take. And we have from time to time encountered hesitancy to help us on our FCPA investigations on the SEC side, not speaking for the Department of Justice, because of a view that well, you know, I don't understand how that falls into a securities violation. It could be just code for, well, we don't really look at it in that way from our country. So we don't think we can help you. Again, people have to decide are they going to step up and are they going to help. MS. FEUER: Right. So really interesting question and really interesting responses. I want to turn to another question that sort of focuses on one of the hot topics of today, which is this. Congress is considering passage of a comprehensive data protection and privacy law. How might that change or affect the relationship between US regulators and those in Europe and elsewhere, particularly as it relates to privacy investigations and litigation? And I'm going to put James on the spot first. MR. DIPPLE-JOHNSTONE: Okay. Well, I think in many ways, you know, we should look at the opportunities. There are many countries around the world which are looking either at their first data protection act or privacy act or enhancing the one they’ve got. And I think the key things are to make sure that, you know, as referenced by the international conference, that there are those opportunities to collaborate and cooperate to ultimately do what we’re all there to do, which is to keep our citizens safe. And this will continue to be a theme as we go forward. Countries like India are looking at the data protection bill, going through their Parliament and their legislative process. They will be significant, given the scale and size of their economies and their country. So we should look for the opportunities to work better together. MS. FEUER: And I thought you were going to mention GPEN again. MR. DIPPLE-JOHNSTONE: Well, GPEN provides a great opportunity to do that, both in terms of the cooperation, but also more importantly the technical challenges, the assistance. One of the great things GPEN does, if I can make a plug for it, is coordinate around sweeps, so looking at upcoming threats and risks that might affect privacy authorities and sharing that load out and sharing that learning out in terms of all of us looking consistently at threats within each of our nations and then bringing together the results of that for a common discussion. MS. FEUER: So any other observations on the question? It focuses on whether changes in privacy laws might affect cooperation, but I think the question is really broader. As we talked about this morning, many countries are in the process of updating their laws, whether it be consumer protection laws, privacy laws, securities laws, maybe? And so I wonder how this whole issue of changing laws, changing standards affects the way or the opportunities or the challenges for cooperation. And I'll throw that out to whoever wants to go first. Secretary Sullivan. MR. SULLIVAN: So I'll just say, we in the International Trade Administration have been working with the National Telecommunications Information Administration and the National Institute of Standards and Technology, also sister agencies at the Commerce Department, to evaluate what, if anything, the Federal Government should do to address some of the privacy concerns that have certainly captured a lot of attention in the last couple of years. I think this goes back to what I was talking about. This is my personal opinion. I think we're probably quite a long ways off from any global standard. I think -- you know, you talked about India, Brazil. A lot of countries, you know, many have been looking to GDPR as an example, but no one is replicating GDPR exactly. There are still these differences, and those are going to continue because, as I think I said earlier, different countries have different cultural norms and legal traditions and histories, and they have different policy priorities that are all going to, you know, result in differences of kind if not degree. Again, I sound like a one-trick pony, but this goes back to the APEC CPBR system because what that basically is, is it takes these internationally recognized norms that we all agree on, which came from the OECD guidelines and the fair information principles before that and said let's all agree to these baselines, because you are going to have these differences. And we have to find a way to bridge these differences between these different regimes that countries have. I think, again, you know, there are aspirations for a single global standard. I don't think that’s about to happen anytime soon, so we’ve got to figure out, you know, how these different regimes can be made to work together. The approach in APEC is this interoperability approach, which I really think has a lot of appeal, is very well developed, and has been embraced, as I said, by a lot of countries in APEC, and we’ve heard a lot of interest from other countries around the world because it really is very flexible and can be adapted. On the one hand, it definitely protects privacy, but it can deal with technology because we in government are always going to be one step behind in regulation and legislation to begin with, but in this space in particular with the technology evolving so quickly, I really think there’s great appeal there. MS. FEUER: Thanks. Anyone else? Marie-Paule? MS. BENASSI: I agree with what James Sullivan said. I think it's going to be really incredibly difficult to sort of have a very harmonized universal framework for that data protection but also for consumer protection. And in the European Union, we are -- we have these principle-based laws and even in case of maximum harmonizations, there remain some differences. So our reply is to work on common enforcement actions and develop these actions in a way that they have become also guidance in a way. So -- and they are less theoretical than the law because they are applied to practical problems, practical practices. And in the future, what we want to do is to do more of these actions where, in fact, we have -- we publish the common position of the CPC network in the form of a guidance that can be applied by all the different operators in a certain industry. The other point I wanted to mention is notice and action procedures. So in the European Union, we have a law which is called the E-Commerce Directive, and which provides that marketplaces and social networks do not have a duty to monitor illegal practices, but they have a duty to act upon notification against an illegal practice. And this means, for example, withdrawing the account, obscuring the information. One of the problems of these operators, because we are now discussing a lot with them, is that, first of all, the domain of laws, which should apply, which is enormous and then it's -- for them, it's very difficult in a way to have an efficient action when the domain of law is so big and also the enforcement type are very big. And so I think that also cooperation on common notice and action procedures at the international level with a certain level of recognition, so this is what Jeff is saying about this disruption, so looking into also other type of models which are more based on practical enforcement tools, systems. MS. FEUER: Thank you. Anyone else? So in the few minutes we have remaining, what I'd like to do is turn to each of the panelists and, similar to the first panel today, ask for a one-, maybe two-minute takeaway of what you see as the most important tools for international cooperation, what you see as your main challenges, and how you might remedy them. So I'm going to put Kurt on the spot and ask our SEC colleague to start first. MR. GRESENZ: So when you started with tools, I did remember the third tool that was so important that I forgot it, but it actually is very important. So we have two provisions of law which help us protect information we receive from foreign authorities. The first one is a statutory protection that protects from any third parties any materials that we receive from foreign securities authorities. So outside of the litigation context, that essentially gives us ironclad protection for SEC files for enforcement purposes. But more recently, we added a legal amendment, a new tool that protects in litigation any material that would be privileged in the foreign jurisdiction. So let's say, for example, we get confidential financial intelligence from a foreign authority, and as a condition of receiving that, the foreign authority makes a good faith representation that this is for intelligence purposes, and it is privileged from disclosure in our jurisdiction. Under Section 24(f) of our 34 act, that protection would carry over into US law, and there is an absolute privilege it would stand discovery, for example, that it will carry over the foreign privilege to US law. And it could be anything. It could be financial intelligence, it could priest-penitent. I mean, if there is a privilege that is recognized in the foreign jurisdiction and we receive materials pursuant to that privilege without waiver, then there's no examination behind the statute for the court to make. It just has to be the representation. So that, I think, gives us added teeth when it comes to representations that we, in fact, can protect things in our files. So, you know, the takeaway for me is the big difference that I see is it looks like what we do in the security space is much more concentrated. You know, we know exactly who the players are. We see them all the time. There's crossover to some criminal authorities and other domestic agencies, but by and large, we seem to be in a more narrow lane. And I think my takeaway would be that listening to my colleagues here is there's a lot of lanes running in parallel and overlapping and overpasses and other sides that I think that we just don't have that much of in the security space in my view. MS. FEUER: Thanks. And that raises two interesting points. I think this afternoon we'll have a panel on competition enforcement, and I think there might be a few less lanes, although I know there are some. And, also, your mention of your statutory ability to protect information, we have an analog in the SAFE WEB context for information provided by foreign law enforcement agencies when they ask for confidentiality that gives a privilege against FOIA disclosure. So turning now to Jeff, your top takeaway. MR. THOMPSON: At the end of the day, what I got out of this is, I mean, there's an increasing abundance of information in the world, and we need to be able to prioritize our enforcement efforts. So it's processing all that information that’s certainly a challenge, and there’s all kinds of technology tools to help us. But not only that, it’s setting the right priorities and working smarter. So the intelligence- led approach, where we’re using the central fraud databases such as Consumer Sentinel or Anti-Fraud Centre to start driving enforcement action in a more targeted and effective manner. MS. FEUER: Thank you. So intelligence is key to international cooperation. Marie-Paule? MS. BENASSI: So I wanted to say two things. The first thing Jeff said it already, which is about prioritization. And I think that fraud is becoming internet fraud, all the different facets of it, and its internationalization, I think, is becoming a very big problem in terms of the harm caused to consumers and collectively in the world. And also in this respect, the role of the big platforms, you know? And if we don't prioritize and don't find efficient ways, building also on what this platform can do, I think is going to become more and more difficult to prevent fraud. And we see organized crime moving into these kind of activities, which seems to be giving them the possibility to earn a lot of money very easily. But then we have a different type of problem which we didn't discuss much, because also we have a bit -- had discussions a bit in silos here, but which is how to tackle the new types of misleading practices which are developing and which are based on the data economics. So on this we need to build links between competition, data protection, and consumer protection in order to understand this and see how -- what are the impact on consumers in terms of also the possible harm and also for businesses, possible lack of competition that this type of new data models are creating. MS. FEUER: Thank you. Secretary Sullivan. MR. SULLIVAN: So, again, for me, my perspective, the biggest challenge we're dealing with right now is the fragmentation or the vulcanization of the internet around the globe. You're seeing rising delocalization, which, again, I think that just impoverishes everybody, those within the country that have imposed delocalization measures, those that have overly strict restrictions on data flows. I think certainly we share a legitimate and strong desire for consumer privacy with a lot of other countries. And as I noted earlier, we take different approaches. I do think we need to be very wary because these issues, the way we're headed and in the coming years, we're going to be looking at, you know, more and more connected devices that are transmitting data, and this data has to be protected on the one hand, but it can lead to such tremendous opportunities. I mean, in the public sphere, in terms of smart cities and efficiencies and health breakthroughs and precision medicine and detecting disease patterns. And we want to be very wary of going too far in one direction, I think. So I agree with you about the balancing of these interests. And, again, I'll go back to my -- I really think, you know, the EU, for example, and the US do take different approaches, but we ultimately share, at eye level, the very same goal. And I think interoperability between GDPR on the one and CBPR on the other could be a very positive development. I know there was a referential a few years ago with BCRs, binding corporate rules, which is an EU proof mechanism for data transfers and mapping it relative to CBPRs. And, again, these all derive from the same OECD guidelines, and I think there's a lot of overlap. And I know GDPR allows for certification mechanisms, and I think there's a tremendous opportunity there for us to make these systems work together and make sure that we are extending privacy protections around the globe, while at the same time making sure that we're not quashing or squashing innovation and, again, doing damage to our long-term interests. So I think interoperability would be my solution there. And as, again, I've said a couple times already, you know, the FTC is probably the preeminent privacy data protection authority, as it were, in the world going back to the 1970s, has been a great partner as we go around the world and talk to countries on this. And so we should continue to do that. And I hope we can partner with other like- minded countries to that end. MS. FEUER: Thank you. And the clock is quickly counting down, so I’ll ask Commissioner Dipple-Johnstone to say a final word. MR. DIPPLE-JOHNSTONE: I will be very quick, then. I mean, I can almost echo the comments of others. I think it’s that keeping updated and keeping pace with vast changes in the landscape and technology and making sure that we don't become the ministries of no, that we support innovation in a very practical sense. And as part of that, it’s making sure we make the right links both internationally with each other but also in each of our respective homes with the other agencies and authorities we have to work with so that the offer we can make internationally is the right one. MS. FEUER: So thank you very much to the panel for some incredibly thought-provoking ideas. Before we break for lunch, I just want to mention that the Top of the Trade on the 7th floor has catering available for you to purchase. There's a handout on the table just outside with information about nearby restaurants. If you leave the building, you will have to go through security again unless you are an FTC employee. And be mindful that there is a small group of protesters outside the building, so leave ample time to get back in for our fascinating afternoon panels. Thank you. (Applause.) AFTERNOON SESSION COMPETITION ENFORCEMENT COOPERATION MS. COPPOLA: Okay. I’m getting the green light from Bilal Sayyed, our head of Policy. So I think we should get started. Thank you all for coming to this afternoon’s panel. Today, we’re going to talk about enforcement cooperation on the competition side. You’ve just heard, in the break before lunch, about cooperation on the consumer side. It has a very different nature on the competition side. So we’ll be talking about that this afternoon. I’d like to introduce my panelists briefly. Starting with -- going in alphabetical order, Nick Banasevic. Nick is from the European Commission’s DG Competition where he heads the unit that covers IT, internet, and consumer electronics. So we’ve had the very good fortune to cooperate with Nick on a number of cases. Next to Nick is Marcus Bezzi. He is the Executive Director at the Australian Competition and Consumer Commission, where, among other things, he oversees all of the ACCC’s international engagements. So I also have had a great time working with him, even though very often the calls were extremely early for us and extremely late for him. We still have a terrific relationship. Then we have Fiona Schaeffer, who is an Antitrust Partner at Milbank LLP. She has practiced on both sides of the Atlantic. So she brings unique perspective in that sense and has lot of experience in multijurisdictional mergers in particular. Then just to my left -- I was a little thrown off because I thought it was alphabetical and that’s why I was -- yeah, you didn’t look like Jeanne, anyway. So Jeanne Pratt, who is Senior Deputy Commissioner from the Canadian Competition Bureau. She oversees their abuse of dominance and mergers and noncartel horizontal conduct matters. She also has experience at the ACCC. So I’m sure that she will bring that to the discussion today. So those are our panelists and you’re going to hear from them, not from me. Just by way of background, a lot of the cooperation issues that are relevant to the competition enforcement discussion were addressed in this morning’s session. So we’ll try to get into a little bit more granular level so that we don’t repeat what was discussed this morning. Just I guess to set the stage in thinking about cooperation in general, we engage in enforcement cooperation for a number of reasons. Often, we find that it will improve our own analyses. It allows us to identify issues where we have a common interest, it allows us to avoid inconsistent outcomes, and perhaps, most importantly, for the outcome to coordinate remedies. So with that in mind, I have asked the panel to start off -- we’re trying to understand strengths and weaknesses of enforcement cooperation, get some advice for the FTC. So before we delve into specific questions, I’ve asked each of the panelists to deliver the headline of their story. What is your elevator speech? Starting with Nick. MR. BANASEVIC: Thank you, Maria. Thank you to you and to the FTC. It’s really a great pleasure to be here and, hopefully, share some interesting insights. My elevator ride is 27 floors up and it takes about half a minute. So I don’t know if that’s how long I’ve got. But I think my five-second message is don’t neglect cooperation, it can really bring benefits. Of course, I think the first instinct that we have and what we’re responsible for by definition is our own jurisdiction, and the bread and butter of that is doing individual cases and that’s what we focus on. That’s, as I say, the bread and butter of our work. Beyond that we have our policy, guidance, soft law role which is complementary to the actual case enforcement. I think my core message and, hopefully, I’ll illustrate it during the panel is, although you’re not going to necessarily spend the majority of your time, although you might spend a lot in an individual case on cooperation, I think it’s trying really -- in terms of what agencies can gain and benefit mutually. Don’t view it as add-on activity, something extra that you have to do. It can really bring organic benefits to either an individual case -- and, hopefully, I’ll give some examples -- and also to policy to avoid misunderstandings, to converge where possible. It’s really something that should be fostered over the years. I’ve known Maria and her colleagues and colleagues at the DOJ for many years, and it’s really very useful in terms of building trust, facilitating relationships, and understanding where each of us are coming from. So from my perspective, I’ve had very good experiences over the years and I will give some more insights as we go on. MS. COPPOLA: Thanks. Marcus? MR. BEZZI: Well, if Nick had been standing next to me in the elevator, I would say I agree with all of that. I’d also say -- make the point that was made a lot this morning, that commerce is now more global than ever and, indeed, that’s a trend that’s significantly enhanced by the digital economy. And the corollary of that is that enforcers have to respond to the pace of change and globalization by working more closely together. We have to be more joined up and timely. And we need to do this for three reasons. Firstly, because I believe that in doing so, we will facilitate more efficient commerce. It will actually be better for the commercial parties if we are more joined up. Secondly, it will make us better at our jobs. We’ll be more effectively able to police compliance with laws in our jurisdictions. And, finally, because we’ve got scarce resources and working closely together is likely to prevent us from reworking issues, from seeking to reinvent the wheel or overlapping each other’s work. It will make us more efficient. Thanks. MS. COPPOLA: Great. MS. SCHAEFFER: Well, hopefully, we’re not in a Dutch elevator so there’s room for me as well. I certainly agree with everything that both Nick and Marcus have just said. I particularly like the idea that cooperation is not the icing on the cake, but, hopefully, the glue, as Kovacic would say, or the icing in the middle. What does cooperation mean? It doesn’t mean achieving the same result on the same timetable in every transaction or investigation. That’s not cooperation. That’s utopia. And that’s never going to exist. But I do think it can and often does mean a greater understanding of the issues, an enhanced understanding, as you said, Maria, for your own investigation and how to address concerns. And it, hopefully, can be used to maximize all of the efficiencies in the process given the substantive constraints and the procedural limitations that each jurisdiction has to live within. So I think from a private practitioner perspective, I agree there is a lot to be gained from cooperation. And I would love to use this panel to talk about practical ways that we can enhance cooperation, again using Kovacic’s human glue analogy, more at that human level than at the formal, procedural MLAT kind of level that I think we’ve all worked with or had our frustrations with over the last decade or so, and have found that it is these informal connections and understandings that have facilitated greater cooperation more than the very formalistic process. MS. PRATT: Well, I agree with everything that everyone said. The only thing I would add is I don’t think cooperation is only good for enforcement agencies, I think it’s good for business. It allows competition law enforcement agencies to benefit from the experience of one another, reach conclusions quicker, and with less probability of conflict and ultimately, hopefully, increased timeliness and effectiveness of the outcome. But it’s -- as all of these people have said, it’s more than about sharing information, it’s that human glue. It’s having the trust amongst agencies to be able to have productive discussions, to be able to exchange theories of harm, to talk about what they’re hearing from the marketplace, to sort of be in a united front with the businesses so that they understand that it is in their benefit and it will be more efficient for them to cooperate with all of us together. And so I think the result, hopefully, is that investigations aren’t longer, are more focused, and the probability of outcomes being conflicting outcomes is minimized, and ultimately for all of us, the predictability, consistency, and effectiveness of outcomes across jurisdictions is maximized. The Canadian Competition Bureau, as you heard from Commissioner Boswell this morning and as you heard from some of my colleagues from the RCMP, I think Canada generally is a strong advocate for international cooperation and we’re always looking for opportunities to cooperate further, including with respect to not just merger cases, but unilateral conduct cases as well. MS. COPPOLA: Thanks, Jeanne. Okay. So there’s a lot of human glue. So we seem to all agree that there’s a lot of great things that come out of cooperation, cooperation is very important. I guess drilling down to the next level, what can parties expect for agencies, and I guess for Fiona, what can agencies expect at a more detailed level from cooperation. Why don’t we start with Marcus this time. MR. BEZZI: Thanks, Maria. Well, there are things like sharing case theories, if waivers are given there will be sharing of information. If we use our formal processes, they can expect them to take a long time. In our experience, MLATs -- well, I’ll just relate one story. We used an MLAT in a criminal matter recently and were absolutely stunned to get a result from the process in one year or a little bit less than one year. That’s the fastest that anyone can ever think of. Mostly, they take two years, three years, four years. We’ve got 19th Century formal cooperation procedures, 19th Century timetable for our formal cooperation procedures. So really we spend most of our time on the informal. And I must say, I listened to some of the sessions this morning and heard people talking about the IOSCO MMOU. I was very envious hearing about how quickly their processes work. They really do seem to operate at a more reasonable speed given the speed of commerce today. I should say that in mergers, the informal cooperation works extremely well and we don’t have to rely upon the formal. A lot of the time in Australia, we use the processes to coordinate remedies and people can reasonably expect us to do that in a fairly efficient way. I think that is a good aspect of the current system. MS. COPPOLA: Thanks. Jeanne, do you want to – MS. PRATT: Sure. I mean, we cooperate very closely with the Federal Trade Commission and with the US Department of Justice and the DG Comp. Those are the three jurisdictions or three agencies that we cooperate most with. And if you’re a party either on the merger side or on the conduct side, you can expect that we would have in-depth discussions related to investigative approach, theories of harm, market definition, concerns expressed by market contexts in the various jurisdictions and, frankly, our analysis of the data and evidence that we’ve seen. In some cases, you will see us do joint market interviews of joint market context. We’ll have sometimes joint calls with the parties and we’ll coordinate that interaction with the parties to make sure that the risk of uncertain or conflicting messages is minimized. And where cross border competition concerns are identified, you can expect the Canadian Competition Bureau to engage agencies in remedy discussions, because we need to make sure that those remedy discussions are considered in the broader context, including the need for remedies in one or more jurisdictions and whether a remedy in one jurisdiction may actually be sufficient to address concerns in another, so that we may not need our own consent agreement in Canada. We also look at whether a common monitor should be appointed or looking at the consistency of the language around preservation of assets or hold separate arrangements. And in some cases that cooperation with the Canadian Competition Bureau may ultimately lead to us accepting a remedy that is proposed from a sister agency and it can, where appropriate, ensure the most efficient and least intrusive form of remedy for market participants. So we do cooperate very deeply with our agency. And that, again, is based on a strong foundation of trust that has been built over 20 years of cooperating with the counterparts with whom we cooperate most frequently. MS. COPPOLA: Thanks, Jeanne, very much. I’m very sorry to have to ask Nick to add to that because I think you about covered the universe. But, Nick, what do you think that parties can expect from cooperation and thinking specifically about your perspective from a shop that deals with conduct matters? MR. BANASEVIC: I agree with everything so far. So not – MS. COPPOLA: Okay. Can we be clear? You have to disagree at some point. This would be like dreadfully boring if you – MR. BANASEVIC: In the post-panel, perhaps. No, but I think, as Jeanne said -- and perhaps -- and this is something I think we’ll develop perhaps as a difference in terms of incentives in conduct in mergers. Most of what my experience, in terms of what parties have incentive-wise, is in conduct. I’ve worked on a few mergers where the incentives have been aligned. We’ve had issues with parties where sometimes they don’t want to give waivers in conduct cases because they feel that that would somehow not be beneficial to them. That is, of course, their prerogative. My personal view is that actually, you know if they’ve got a good story to tell, there’s no issue with giving away, but because it’s precisely those things that we can discuss openly with them and with our colleagues, our sister agencies. But I think exactly the kinds of things that -- whether or not there is a waiver, because I think even without a waiver we’re able to, from our perspective, in terms of what we can gain, talk about theories of harm in the abstract and general levels, test, test theories, test realities. So I think if we’re doing that anyway, there is an interest for parties to give us a waiver. Again, that’s my personal view. But as I say, we’ve had some cases where we haven’t had waivers. To switch, in terms of what -- because I think we do have that responsibility ourselves to parties. And, again, maybe it’s more in mergers that it happens that they have these incentives where they’re aligned in terms of timing, coordination. In terms of what we can expect as an agency, just to develop a bit what I was saying at the beginning, I think, again, it’s not that we must always dream of having the uniform solution worldwide. We all have different legal traditions, different systems. Having said that, I think where we can achieve at least a high level of convergence where possible, I think that’s something that is desirable. So I think we, in terms of both policy development -- and then when we’re doing cases, I think it is invaluable and we each have a lot to gain in terms of, again, coming back to some of the things I’ve said in terms of case specifics, theories of harm, making sure that we’ve got a reality check on whether something is correct or not, testing these theories with each other, and if appropriate, moving the cases forward in the same or similar direction. If not, at least understanding the background to where we’re each coming from and why we may take a different approach. And I found that invaluable over the years in many cases, and I’ll develop that a bit more a bit later. MS. COPPOLA: Thanks. I think that the last point you mentioned, this idea that the effects of case cooperation are not just contained to the case itself, but to a longer-term story of deepening the understanding between agencies is really important. Fiona? MS. SCHAEFFER: Sure. Well, I think from the parties’ perspective -- and my comments are primarily in the context of merger reviews -- the goals of what can realistically be achieved from cooperation include reducing duplicative effort, reducing the burdens of investigation, convincing the agency, through cooperation, that just because there is a hill there to climb doesn’t mean that everyone has to climb it. One can climb and report, assuming, of course, it is a similar hill. We hope to have consistent, if not identical, outcomes and that includes, where possible, hopefully convincing an agency that they don’t need to have the same remedy as everyone else just because someone else has a remedy. We don’t have to have every jurisdiction reviewing, believing that it needs to have its pound of flesh in order to believe that it’s conducted an effective review. And that, of course, involves some levels of trust between the different agencies as well, that the enforcement of a remedy in one jurisdiction is going to be sufficiently robust to protect others. And, you know, that may not always be the case and it may vary by jurisdiction. We hope, also, that through cooperation we will, if not have a shorter overall timetable, certainly not a longer one. I think that is sometimes a concern that private parties feel is that a potential cost of cooperation is that you may be put on, in essence, the timeline of the slowest jurisdiction, rather than promoting efficiency throughout the process. I guess a word on waivers just to Nick’s point. In principle, I agree that knowledge is power and I like everyone at the table to have a similar level of knowledge, if we have good substantive points and arguments and documents to share, or even if not so good. The agency can do a better job armed with that knowledge than if there is some game-playing and trying to orchestrate the process and manage who knows what. I do think that that calculus is quite different in merger versus conduct cases. And it’s not a question of giving different agencies the same level of knowledge, necessarily, although in some cases it can be. But I think for us there is a bigger concern in conduct cases that information provided to one regulator and then shared more broadly increases the risk of discovery obligations and private class action consequences that aren’t so much of a practice concern in a merger context. So it’s not the sharing within the agencies necessarily that is the biggest challenge there; it’s what can be done with the information once it is within multiple agencies. We know that we’re dealing with jurisdictions that have very different levels of confidentiality protection, and in some instances, for example, are required to give third parties due process or other government agencies access. So I think there’s a greater feeling of concern about being able to manage the flow of that information in the conduct arena. MS. COPPOLA: Thanks, Fiona. I think we’ll come back to that point about information exchange in a moment. But I think, before that, I want to pick up on Marcus’ point about keeping pace. I don’t know that -- the 19th Century might be a bit of an exaggeration, but I think even 20th Century tools are not fit for purpose. Last night, I was watching All the President’s Men with my 12-year-old son and they were trying to find the phone number for someone and they had a room full of phone books, and he just kind of said, what’s that, what are they doing? Anyhow, what types of things, what kind of -- what would a tool look like that was fit for the 21st Century? Are these more in the realm of informal cooperation? What tools do you use? What tools do you wish you had? What can we learn from you? MR. BEZZI: Would you like me to go first? MS. COPPOLA: Yes. That’s why I’m looking at you. I’m sorry. (Laughter.) MR. BEZZI: Well, where do I start. So informal -- I’ll start on the informal. And, look, I should say 95 percent of the cooperation that we’re involved in -- probably more than 95 percent is informal and it’s very effective and it involves engagement with the various agencies that we’ve got excellent relationships with. We have many counterpart agencies that we’ve got second generation cooperation agreements with or first generation cooperation agreements with. And they help to create a formal framework in which we can engage in informal cooperation. And I should actually just go back a step. The formal arrangements really do enhance the informal. We have a very formal arrangement with the United States. We have a treaty with the US. I think we’re the only country that has an antitrust cooperation treaty with the US. We rarely use it. I think the number of times it’s been formally used you could probably count on probably less than two hands. But I believe that it promotes the use of waivers, it promotes the cooperation of witnesses, the cooperation of parties with our investigations, and it really facilitates and creates the atmosphere in which informal cooperation works very, very well. So what does that actually mean? It means that we can have case teams that have regular phone calls if we’ve got a common investigation or we’re investigating common or related issues. We can talk about case theories. We can talk about practical things like when we’re going to interview common witnesses. We can talk about lines of inquiry that have not been successful that have been a waste of our time and suggest to each other perhaps don’t bother going there, it won’t lead anywhere or, actually, look here, it’s a better place to look. Those sorts of discussions happen between case teams and they are really valuable. The exchange of information when we’ve got waivers -- confidential information when we’ve got waivers is very, very useful. I should emphasize that we very, very rarely -- in fact, I can’t think of a single occasion that we’ve done it using a waiver, but we very rarely exchange evidence. I can think of two cases where we’ve done that using formal processes. If we want evidence, we will go to the source and get the evidence from the source if we possibly can. It’s much more valuable to us that way, anyway. So I think you said, what would be better? Well, some of the processes that exist under IOSCO where -- and, indeed, exist under the antitrust treaty that we have with the US -- where we can ask counterpart agencies to compel testimony, we can ask counterpart agencies to compel the production of evidence or production of information and to do so in a very timely way, to put in a request that can be responded to in days or weeks rather than months or years. Those sorts of things are things that we aspire to. We get a lot of it informally, I should emphasize that. I don’t want to understate the importance of the informal. But having a more formal framework which would enable more of that -- and I think they have in IOSCO context -- would really be a facilitator of even greater informal cooperation. MS. COPPOLA: I think we heard on the consumer protection and privacy panel that some of that investigative assistance is already happening on that side. So it’s – MR. BEZZI: Very much so, yes. MS. COPPOLA: Since we’re all -- many of us have it housed in the same agency, you would hope that we can have that transfer over to the competition side. Jeanne, could you pick up a little bit on the informal cooperation point and tools? MS. PRATT: Yeah, I’ll try not to do – MS. COPPOLA: So we can just – MR. PRATT: I, again, agree with everything that Marcus said. And I think what I would say is it only works -- those informal cooperation tools, again, only work if you’ve got trust in the legitimacy, the competence, the candor and, frankly, the ethics of your counterparts in the other agency. And you can’t develop that necessarily in the context of just having a case discussion. You’ve got to take the time to have the conversations to understand different frameworks, to understand how they go about doing their work. And, frankly, that in our experience has led to us getting to learn some of the lessons from our colleagues so that we don’t have to repeat the same mistakes and, hopefully, we have also shared some of those with our foreign counterparts. So some of the mechanisms that we use outside of informal cooperation on a case to try and do that are the case team leader meetings that you heard Commissioner Boswell talk about this morning, which I find incredibly useful because it is our officers who are doing the work, that are leading those cases, that will take some time out to talk about how they do their work, what issues they are facing. Sometimes it’s talking about a particular case development or a lesson learned that they have from their jurisdiction. And that builds relationships amongst our staff, it builds trust, it builds confidence in our counterpart’s abilities as economists and lawyers doing the same type of work. Exchanges are another tool. And as was mentioned this morning, I am the very lucky candidate who got to go to the ACCC for a full year and see how they do their merger work, and I benefitted greatly as an individual. But I also I think benefitted the Bureau because we got to see not just how a particular case unfolds, but how you actually manage the organization, how you do your work, what tools you use and, frankly, seeing how something can be so different in some areas, but there’s a lot of commonality in the analysis that we do in mergers. MR. BEZZI: We loved having you, too, Jeanne. It was great having you. MS. PRATT: It was a tough winter in Ottawa, I have to say. The other thing that we have found valuable is taking some time out, maybe more publicly, to have workshops on particular issues. The FTC and the DOJ and the Competition Bureau in 2018 had a joint workshop on competition in residential real estate brokerage. And, you know, we had eight years of litigation in the real estate industry surrounding the use and display of critical sales information through digital platforms that wasn’t resolved until years after the US. But because we had taken so long, there had been a lot of evolution in the law and the economy. And so some of the lessons that we learned along the way were also informative to update since the fight in the US. So the only other formal thing that I think I would I say, not the informal, is we have a gateway provision in the Canadian Competition Act, Section 29. So when we’re doing mergers, we don’t ask for waivers in Canada. As long as we’re working on a case and we feel that that cooperation is necessary for enforcement of the Competition Act in Canada, we feel that that gives us the ability to have that conversation with our counterparts. So if you -- and I think this would be particularly useful in the unilateral conduct side where you may be looking at different incentives. The merging parties may want to get through our process as quickly as possible. They, I think, have come to see more of the benefits of our cooperation to get them where they need to get to with less conflict and quicker results. But, you know, that kind of a gateway provision could allow us to have discussions on the unilateral conduct side because the discussion is only as good as the two-way communication allows. MS. COPPOLA: Thanks. The senior level exchange, I think, would be a big hit here if the destination was Australia. But I guess kidding aside, it’s interesting because what you learn there, you’re coming back and you’re in charge so you can actually implement the changes. So that must have had a terrific effect. Okay, Nick, just thinking a bit more about cooperation in conduct investigations. I almost said antitrust investigations because I was looking at you. What kind of practical experience tips do you have that you would like to share? MR. BANASEVIC: So I’m going to go back in time a bit and give you a couple of examples of very intense cooperation with the FTC and the DOJ. Actually, let me first say, to go back a step even, for us, cooperation starts at home in the sense that we’ve got the European Competition Network, which in -- I don’t know if “unique” is the word, but it’s the network of us, the European Commission with all the national member state competition authorities in the EEA, the European Economic Area, all applying European competition law. And so we first need to cooperate at home in terms of both just allocating cases and, of course, generally the European Commission does the cases that are over a broader geographic scope, whereas the national agencies tend to focus on more national ones and in terms of substance coordination as well. Beyond that, I think we have extensive international cooperation with all the major competition authorities around the world, including Canada and Australia. But to give the two examples that, for me, have been personally particularly instructive over the years, going back to the beginning of the century is first the Microsoft case with DOJ, where, as background, you remember that the D.C. Circuit Court of Appeals affirmed a monopoly maintenance finding here under Section 2. And that was while our case was still ongoing in Europe. We had an interoperability and a tying abuse, tying of Media Player. And then there was a remedy implemented in the US that changed the way that some things were done. So it had a kind of factual impact on some of the things that we were doing in our case while it was still ongoing. And the issues were also -- even though the liability case here was little bit different, through the remedy, there was an interoperability element as well. So the kinds of issues were very similar. We met, I think, for a period of a few years twice a year. We would come here once a year and the DOJ would come to see us in Brussels. And it was invaluable just to exchange theories, to understand where each side was coming from, and to develop a trust and understanding over the years. So I think it’s fair to say that even though the issues were different, there wasn’t always perfect agreement, but it was a relationship that we valued and that really brought a lot in terms of understanding where we were coming from and in my view, at least, having a solution that was not necessarily exactly the same, didn’t lead to an overt situation of conflict, which, again, in my view was greatly facilitated by these contacts. The second example is the kind of policy and case area standard essential patterns. This goes back to even Rambus with the FTC where we had a similar case ourselves in Europe. But more generally and more recently, or five, six years ago, I guess, this issue of injunctions based on standard essential patterns. The FTC -- I think it was 2013 you had the consent decree with Motorola and we had a prohibition decision against Motorola a year earlier on the same kind of issue. And, again, take a step back or try and remember, this is a very -- I don’t know if “novel” is the word, but it was a controversial area of law. And perhaps it still is. For us in Europe, at least, we adopted a prohibition decision, which said that injunctions against willing licensees, based on standard essential patterns where you’ve given a commitment to license on FRAND terms, are an abuse. That was confirmed by our Supreme Court, the European Court of Justice, in a separate case, but the principle was confirmed. But it was, and still is, a subject that attracts a great deal of attention and a great deal of controversy. There were many people -- and that debate still goes on. But there were many people saying, how can you possibly do this? There are some people saying that. But against that background of that -- again, I’m not sure if “novel” is the word, but a very complex, important issue, it was really invaluable to have both the case coordination with the FTC on Motorola, where we had regular contact in terms of meetings and calls, and then on the policy level with both the FTC and the DOJ, where essentially we were on the same page in terms of developing this policy and this approach towards how we deal with the specific issue of injunctions based on standard essential patterns. I think particularly because it was an area that was so complex and controversial, my personal view is that we all mutually benefitted from being able to really share these experiences and insight. So those are two examples and there are many more, but it’s really, for me, a manifestation of just concrete case teams talking to each other regularly, being open, exchanging ideas, evidence if appropriate, if you have the waiver, and it’s been a great benefit. MS. COPPOLA: Yeah, I think interplay of the case level and the policy level is a really good point that really deepens greatly the discussion and understanding. Fiona, we’ve heard kind of rah-rah-rah cooperation and lots of pluses on cooperation. You’ve talked about how cooperation doesn’t mean getting to the finish line at the exact same time. What are some of the practical limitations on cooperation from a private practitioner’s perspective? MS. SCHAEFFER: Well, I think we start out with very different procedural frameworks in different jurisdictions. We happen to have probably two of the closest jurisdictions here in Canada and the US, on process. But others look quite different in terms of the amount of prefiling work in a merger context that needs to be done, the time that that will take, the uncertainty around when you actually get on the clock in say Europe or China versus in the US. And all of that leads to, you know, in many cases, if not an impossibility, certainly, all of the stars would have to align for the timing to actually be the same. So we are working with different processes, different timetables, and I think we have to accept that the timing is not going to be the same. The question is, can we make it sufficiently compatible that we can have substantive discussions at a similar time frame, particularly on remedies. That will, you know, minimize inefficiencies and maximize the ability to have a consistent compatible remedy. And even when you’ve done all of those things and there’s been I think an earnest, concerted goodwill effort to align those discussions, you’re inevitably going to have cases where, you know, something surprising happens like one jurisdiction decides, yes, we like the remedy package that everyone else has agreed to, but lo and behold, we think there ought to be a different purchaser in our jurisdiction, which shall remained unnamed, than in the rest of the world, which as you can imagine when you’re dealing with products that are sold around the globe under one brand name can be pretty challenging. I’m not sure that cooperation could have changed that result. But you’re always going to have these unpredictable aspects of a multijurisdictional merger review that can occur right up until the end. What can we do to enhance practical day-to- day cooperation, I think your earlier question. A lot of the time when we talk about cooperation, it’s really in a bilateral context. You’ve got parties speaking with Agency A, parties speaking with Agency B, parties speaking with Agency C, and then similar conversations happening between those agencies who are essentially, you know, in some cases, playing Chinese whispers, but reporting on conversations they’ve had trying to find common approaches, common understandings. I wonder sometimes can we expedite -- streamline those conversations to have fewer bilateral conversations and more multilateral conversations in the same room. Just as when we are faced with a conduct or a merger investigation ourselves, trying to understand better the facts, what’s going on, where, we often have multijurisdictional, multicounsel calls. I don’t see why we couldn’t do more of that involving multiple agencies on the same video conference or the same phone call. There is a limit, of course, where you get these huge conversations that, you know, are impossible to schedule, and no one says anything because there’s 100 people on the line. So yes, that level of cooperation can be unwieldy, but I think we can do more to explore having simultaneous conversations. I think there’s been a mindset probably maybe more in the minds of -- well, maybe equally in the minds of the companies and counsel, as well as agencies, that everyone needs to have their kind of process, everyone needs to have their separate meeting, everyone needs to have the merger explained to them, you know, Australian or in Canadian or in -- (Laughter.) MS. SCHAEFFER: But I don’t think that that’s necessarily the case, not for all meetings or forms of cooperation. So that’s something I think we could do more with. MS. COPPOLA: That’s a really interesting idea. I mean, we’ve heard earlier, and on this panel, that there’s a lot of joint third party calls. I know at the FTC we have limited experience with joint party calls, but that’s a really neat idea and it’s certainly very 21st Century if it’s video. So thinking I guess -- so those are some of the practical limitations on the practitioner’s side. Thinking about some of the practical limitations on the agency’s side, it seems like the one that has appeared a few times in this discussion is confidentiality. Nick has already talked a little bit about what we can exchange when we don’t have waivers. So what falls within the realm of public or agency nonpublic information, so, as he said, theories of harm, market definition, kind of basic thinking on remedies. But, of course, those discussions are much more robust when we’re saying because of evidence of X, Y, and Z. Marcus, you had mentioned that you have an information gateway in Australia. What does that mean and what can the FTC learn from that? MR. BEZZI: So an information gateway is a legislative provision that enables our Chairman to make a decision to release material that we’ve obtained through some confidential process either a compulsory power, exercise of a compulsory power, requiring compelled production of information, or otherwise, and it enables us to release that information without the consent of the party whose information it is. So it’s something we don’t do lightly and it’s something we don’t do often. And it’s something we’ll only do if there are -- if we’re really 100 percent confident that people are going to comply with the conditions that are imposed on the release of the information. So if we’re dealing with a trusted agency, and we are confident that they will maintain the confidentiality of the information that we disclose, then we have got the capacity to release it. As I say, it doesn’t happen very often. There will be more than just a set of conditions imposed. There’s usually a fairly rigorous process that we put in place to ensure that the conditions are complied with. So there’s reporting. And after the agency that’s received the information has finished with it, we’ll require them to give the information back. And I should say this is a very similar provision to a provision that the CMA has in the UK and that Canada has. And it, as I say can be -- it’s more useful in being there than in being used, if I could put it that way. MS. COPPOLA: Right, right. Thanks, Marcus. I think, Jeanne, I’ll have you answer next because he’s just talked about your information gateway. Does this have an impact on kind of target parties, third parties’ willingness to provide information, and what kind of notice do they get before you share the information? What are some of the consequences? MS. PRATT: Yeah, I mean with great -- it’s -- we have to take that very, very seriously. So when we’re using our gateway provision, we have very transparent policies to stakeholders. It’s written in a confidentiality bulletin what the conditions of sharing are. Every time we do a market contact, it is disclosed to that market contact that we do have the information gateway, that we may use it obviously in an international merger context, that we may share it with our counterpart agencies and discuss it where they have waivers. So I think the lesson for us is transparency is really important to maintain your reputation because without our reputation to maintain the confidential information, we won’t be able to do our job and the effectiveness of our agency is diminished. It’s fundamental, frankly, to how we do our job. So in our confidentiality bulletin, we do set out the conditions quite clearly and we do say that we will seek to maintain the confidentiality of information through either formal international instruments or assurances from a foreign authority. And the Bureau also requires as a condition that the foreign authority’s use of that information is limited to the specific purpose for which it was provided. So our information gateway provides that we can use it for enforcement of the Act, which, for us, means if we’re working on a common case with an agency with whom we have a foreign -- or an instrument and we’ve got those certainties that that is when we will do so. Where there is no bilateral-multilateral cooperation instrument in force, the Bureau does not communicate information protected by Section 29 unless we are fully satisfied with the assurances provided by the foreign authority with respect to maintaining the confidentiality of the information and the uses to which it will be put. And this, again, is where trust becomes key for us, we’re not going to put our reputation and our effectiveness on the line if we are not certain that those conditions will be satisfied. In assessing whether to communicate the information and the circumstances, we do also consider the laws protecting confidentiality in the requesting country, the purpose of the request, and any agreements or arrangements with the country or the requesting authority. If we are not satisfied that it will remain protected, it is not shared. Likewise, when foreign authorities are typically communicating confidential information to the Bureau, they are doing so on the understanding that the information will be treated confidentiality and used for the purposes of administration and enforcement of the Act. I should mention, too, we do have another provision in our Act which ensures that all inquiries conducted by the Competition Bureau are conducted in private and that provides some legislative certainty that it will be maintained in confidence on our end. So I guess I would say the gateway for us, while similar to Australia, I think has been used a little bit different and that mostly is a result of practice, our transparency, the market having a lot of faith in our practices and procedures, to maintain confidentiality. And without it, I don’t think it would be as effective. MS. COPPOLA: Thanks very much. Nick, turning to the European Commission, I mean, you have sort of the highest level of information sharing and investigative assistance with the ECN and you also have things like the second generation agreement that you have with Switzerland. Do you want to share a little bit of your experience with those? MR. BANASEVIC: Sure. Again, the ECN is -- again, I don’t want to say it’s the highest level of cooperation, but everything is open there. MS. COPPOLA: Right, right. MR. BANASEVIC: There’s automatic transmission of everything, there is -- I mean, that’s a consequence of what the EU or the EEA is in a sense. So it’s critical that we share up front information just about who’s got what case so that we can allocate them most efficiently and to coordinate on issues of substance because we’re all applying the same law. In terms of outside the ECN and outside the EEA, I -- as a general point, I think the main issues have been outlined in terms of maybe there being different incentives -- I’m talking outside Switzerland, which I’ll mention briefly now in terms of different incentives maybe between mergers and conduct. I take Fiona’s point about -- concern about disclosure in another jurisdiction. I understand that. I think the instances that I have referred to in some conduct cases have rather been a concern about not wanting agencies to discuss theories of harm even. So that’s a different thing. And in terms of Switzerland, actually, I think it resonated. I mean, we have a second generation agreement with Switzerland, which means in practice that we can transmit evidence between us without consent. Obviously, we’re talking about where the same conduct has been investigated. And what we found -- and this resonated when Marcus was talking about it -- is actually we haven’t needed to use -- to invoke those provisions. And it’s actually encouraged that that framework, and maybe the trust or the mechanics of how things work, have encouraged information provision without needing to use the formal provisions under the agreement. So I think that’s an interesting point. MS. COPPOLA: Right, yeah, yeah. Fiona, you’ve touched on this a tiny bit already, but what are -- can you bring out a little bit some of the concerns that agencies might have either about these types of agreements or about granting waivers in the nonmerger context? What are some of the red flags? MS. SCHAEFFER: From a merging party’s perspective or from an investigated party’s perspective? MS. COPPOLA: From both. MS. SCHAEFFER: Yeah, I think there is -- certainly in terms of the exchange of confidential information as opposed to permitting agencies to discuss case theories, I think there is an understandable sense that if an agency really needs that kind of information and has a right to obtain that kind of information domestically, then they should just ask the parties for it directly rather than get it -- you know, it sounds a bit pejorative -- but through the back door. I do think, on the merger side, the incentives are greater to provide it anyway. But I think, also, at the same time, the actual exchange of confidential information is relatively rare and I think its use is overrated. I think the biggest benefit that I’ve seen from cooperation from a private party’s perspective -- and I suspect the agencies might agree with this -- is just being able to discuss the case, the theories, the investigation, the legal analysis, the basic understanding of how the products work, what third party concerns are without, you know, revealing any confidential information. And all of that dialogue I’ve found in all of the deals I’ve worked on, and maybe I’ve just been lucky, but I can’t recall a single case where we facilitated cooperation and we suddenly found that Agency C, that had been going on its normal course of business and investigating without big concerns, suddenly had a new theory of the case that was going to put them into an extended review. I’ve always had the opposite. Namely, Agency C, when we have facilitated contact with Agency A and B, typically has been relieved to know that Agency A and B is investigating these particular various areas, that it doesn’t necessarily have to cover all of the same ground. And I have found that it’s expedited, not prolonged, the review or started new lines of attack that didn’t exist before. And I think that could also hold true, although it’s less tested in conduct cases where some of the theories of harm are just more wacky or radical. And I think agencies that have been at it for a longer period of time, in that investigation or generally, may be able to help other agencies understand what are the real issues here, what are some of the false paradigms or paths that, you know, we looked at five years ago but discovered really weren’t productive. MS. COPPOLA: Right, right. Sometimes that thinking can go the other way, too. The learning can go the other way. I think I want to circle back on your point on forbearance. But before I do that, does anyone have any reactions to what Fiona was saying about information sharing and thinking of it as a backdoor way when it’s done -- the confidential information between agencies? MS. PRATT: Well, I think it’s -- I guess from my perspective it would -- I’ve never seen that risk become realized. Because each of our agencies are very concerned about the confidential forecast that we have, that we want to minimize the risk of that because, otherwise, it would be a reputational risk for us doing our job. I do think a lot of the value, unless you are doing a joint investigation where there is evidence that you need in another jurisdiction, most of the value of that cooperation can come from not providing confidential, competitively-sensitive third party information. So if you have waivers or you have a gateway provision, that facilitates that cooperation quite well. MR. BEZZI: I agree with that. I mean, parties know -- if ever we are using an information gateway, and it happens rarely, but they know. It’s not done secretly; it’s done in their knowledge; it’s done transparently. MS. COPPOLA: Fiona, I may have misinterpreted you. When you were talking about backdoor, I think you meant even in the presence of waivers. You didn’t mean out extralegally, right? MS. SCHAEFFER: Yeah, I meant exchange of confidential information, where there are waivers, but the agency couldn’t get the information directly. MS. COPPOLA: Right, right. Nick, do you have anything you wanted to add here? MR. BANASEVIC: Nothing spectacular. MS. COPPOLA: Okay. I have one question from the audience, but before we -- and I encourage other questions. So now is the time to write them. But before we get to that, I wanted to talk, I think because at the end of the day, the immediate goal in a particular case of cooperation is making sure that you don’t have conflicting remedies, that you have remedies that are, if not identical, at least interoperable. And we’ve heard some discussion today that, you know, there’s been a lot of agencies, more agencies looking at things than there used to be. And sort of the question about should we be giving more attention to cooperation, in the form of forbearance, than coordination. And, Fiona, if you could start that discussion for us. MS. SCHAEFFER: Sure. Well, we were having a discussion at lunch and Marcus mentioned the magic pudding story. I said to Marcus, will this audience understand the magic pudding story? And looking around the room, I see there are bemused faces. Well, it’s a story we all told our children growing up in Australia where, as a child, I really enjoyed it. The magic pudding just never stopped producing pudding until the entire town was flooded with porridge and pudding everywhere. Well, no agency is a magic pudding. Agencies have limited resources. They can’t just keep on producing. And I think from an agency perspective, as well as from the parties’ perspective, one always ought to ask what are the incremental benefits of this additional investigation we’re doing over -- you know, on top of what five other agencies are doing? What are the incremental benefits of a remedy that is the same or virtually identical to what another agency has obtained as opposed to taking our limited resources and using them for investigations and transactions that these other five agencies couldn’t review? And it’s been interesting to me just to look at how different agencies have been allocating their resources over time. Brazil is an agency that comes to mind. When I come to think about some of the cartel investigations, the merger investigations they focused on maybe ten years ago, my anecdotal perception is that there was a lot more of an international dimension to them than there is today. I think some of the larger Brazilian investigations have involved, in more recent times, transactions in the educational sector and the health care sector, in the domestic financial services sector. And their bang for their buck in those investigations I think is significantly higher than it would be if they were another me-too in a global transaction. Having said that, is it realistic to say if the US is looking at a deal or the EU is looking at a deal or Canada and they’ve got remedies, that everyone else should just back off? No, of course not. But I think at each stage of the investigation, it’s useful for the agencies to ask themselves, what is the incremental value and what are the areas of this transaction that may be specific to our jurisdiction that the other people aren’t covering? What are the holes that we need to fill potentially for our jurisdiction that the others aren’t worrying about as opposed to retreading the same ground? And as counsel to parties to transactions and conduct investigations, we ought to be asking ourselves those same questions about what are the specific impacts of this transaction or our conduct on this jurisdiction. MS. COPPOLA: Mm-hmm, mm-hmm. That’s very interesting. Thank you, Fiona. Marcus, what did you say to the magic pudding discussion and what are your thoughts on the topic more generally? MR. BEZZI: Well, exactly, we are not a magic pudding. We have limited resources. We’ve got to use them intelligently. So we’ve got to focus on the things that are most important within our jurisdiction. Fiona raised the cartel issue and international cartels. We could all spend all of our time doing international cartels and nothing else. But -- and they’re important, don’t get me wrong. Many international cartels have a big impact in Australia. But we’ve explicitly said in our enforcement and compliance policy, which sets out our priorities for enforcement and is adjusted each year, that we will focus on international cartels that have an impact on Australians and Australian consumers. It’s the detriment in Australia that is the focus. If there’s no detriment in Australia, then we’ll let other agencies deal with those cartels. Similarly, in mergers, we will focus on the detriment in Australia. We’ll focus on a remedy that can fix the problems we have identified in Australia, and if it happens that that remedy has already been devised somewhere else and the remedy somewhere else will completely fix the problem in Australia, then what we can do is accept what’s called an enforceable undertaking, which is essentially a statutory promise, which requires the parties to give effect to whatever the commitment that’s being given outside Australia is, give them -- they are required to give that commitment to us in Australia, and that essentially is -- deals with the problem that we’ve got jurisdiction to deal with. MS. COPPOLA: Right. That allows you to have something that you can enforce of there is a – MR. BEZZI: We’ve got something that we can enforce. MS. COPPOLA: Right. MR. BEZZI: And we’re recognizing that our resources will be managed in a better way. MS. COPPOLA: Better focused. Right, right. Jeanne? MS. PRATT: Well, I guess speaking -- the Canadian approach in mergers in particular, we actually have accepted and gone probably one step further than what Marcus was saying and not even put a consent agreement in place in Canada because we have been satisfied that the remedy mostly in the United States addresses our concern. The only way we get there, though, is, again, to have really close cooperation. We need to understand the scope of the issues, we need to understand the scope of the remedy, and, frankly, we also need to have trust in the agency that they are going to enforce that remedy at the end of the day, which we have full faith in the US Department of Justice and the US Federal Trade Commission to do that. One of the primary reasons that we do use comity and forbearance is because we think it allows a more effective and streamline remedy that’s least intrusive to business, avoids conflict, and simultaneously allows us, as a very small agency north of the 49th Parallel, to focus our scarce enforcement resources. So two examples I would give, we had one where we accepted the US FTC’s remedy in the GSK/Novartis merger in 2015. So we were satisfied there. We didn’t even need a me-too registered consent agreement. We were fully satisfied that the scope of the remedy addressed our concerns and would address the anticompetitive effects on the Canadian market. The second one, which is more recent, was a case we cooperated on with the US Department of Justice, UTC/Rockwell last year, which was an aerospace systems review, and in that case just to underscore the importance of the cooperation to get us to the comity, we cooperated closely with the US DOJ and the DG Comp throughout the review. There were waivers in place in both those jurisdictions by all the parties. We shared information and conducted some joint market calls. We discussed issues of market definition, presence of global effective remaining competition and remedies. And we determined that there were likely a substantial lessening of competition in two product markets for pneumatic ice protection system and trimmable horizontal stabilizers actuators, THSAs. And Rockwell’s relevant business -- they were located primarily in the US and Mexico and these products were distributed on a global basis. So we got to a place where we didn’t have any assets relevant to the remedy in our jurisdiction and we were fully satisfied that the remedy addressed our concerns. The other side of comity, which, you know, I’m not sure the parties appreciated at the time, Commissioner Boswell talked about our simultaneous filing of litigation in the Staples/Office Depot merger a couple of years ago. Part of that was we did not see the need to file an injunction the same day because we knew that there would be an injunction proceeding by the FTC. So the parties did actually benefit because they didn’t have to face an injunction proceeding north of the border as well as south of the border. We benefitted greatly from cooperation in that case. Again, we had one of our Department of Justice lawyers come and was seconded and was actually part of the FTC counsel team to see how the injunctive process worked, to see the evidence go in, and at the end of the day, the injunction in the United States took care of the issues in Canada. So they still benefitted. They probably didn’t like it because it was in the form of litigation, but it could have been worse. MS. COPPOLA: You know, in GSK/Novartis, it’s interesting, we did a lot of trilateral calls in that case with the EC, Canada, and the US. And that’s not obvious in a pharmaceutical case where you expect the markets to be very different. But, certainly, in trying to understand the markets, I think the third parties were very happy to have one call and not three. So that’s an interesting case. Nick, we haven’t heard from you yet on remedies coordination or forbearance. Is there anything you want to add? MR. BANASEVIC: The first thing I want to say is I’m going to look up, after this panel, what a trimmable horizontal actuator is. (Laughter.) MS. SCHAEFFER: I was going to say, that’s what you need cooperation for. It takes three agencies to understand that. MS. COPPOLA: Right. MR. BANASEVIC: And there was another adjective there as well. But, anyway, for us, I mean, if you look at mergers and conduct, of course, we have an obligatory notification system in mergers, once you reach certain thresholds. I mean, you have to reason every decision whether it’s a clearance of remedies or a prohibition. So there’s no discretion as such in that sense. But, of course, there’s great benefit in the cases that we’re looking at more closely and we’ve got many examples that have been mentioned in terms of coordinating on the substance, on the timing, and, if appropriate, the remedies and the potential impact and how that might read across. Where we have the discretion in terms of choosing which cases we do and which cases we don’t, with scarce resources that any public body has by definition, is a number of things, but not least the impact -- the potential impact in our market, in our jurisdiction. We’re responsible for a jurisdiction of 500 million people. So I think it’s likely if we believe that there is an issue in that market that we are going to want to look at it more closely, even if there are similar investigations going on or not around the world. So I think that’s the first thing to say. That being said, I think I understand as well the argument, particularly in the sector for which I’m responsible, the high-tech sector, companies operate globally, so the issue is raised, well, could you have different solutions in different jurisdictions? I actually think this risk of diversion is somehow overblown in terms of just perception. It’s not that this is going around willy- nilly in every case in every sector. I think that’s slightly a perception issue and, actually, more generally illustrates my core point in the benefits of really having up front, preemptively with partner agencies, discussions about the approach to be taken. Again, it’s not that one can or need guarantee precisely the same outcome, given the differences possibly in even conduct. I mean, some of our markets are national for some of the products even if the companies are operating globally. But I think there is a great benefit in this up-front shaping, sharing thoughts to, to the extent possible, minimize the risk of divergences. MS. COPPOLA: We have a question from the audience about the ongoing investigations of the tech platforms. The EC, the Japan Fair Trade Commission, are already investigating these firms. What’s important to effectively investigate, including cooperation? Another question, what you can expect from the FTC, but as I’m not a speaker, but a moderator, I think I will punt that to what can you expect from the investigating agencies. And, Nick, according to this week’s Economist, you guys are the determinators. So I’m going to let you answer that question. MR. BANASEVIC: Is that a type of actuator? A determinator? MS. COPPOLA: There’s these like big guns and, yeah, sledgehammers. MR. BANASEVIC: I’m not allowed to say anything about ongoing cases, so – MS. COPPOLA: Right. MR. BANASEVIC: So what was the – MS. COPPOLA: The question was, how can -- I think the question is, how can those agencies effectively investigate? What kind of joint – MR. BANASEVIC: I think I have to go back to my examples from the past. I think that’s the most instructive thing. I mentioned two. There have been others where in the US and in the -- particularly the same cases or the same issues have been looked at. In some, we’ve had waivers; in others, we haven’t. I don’t want to monopolize the last 2 minutes and 30 seconds. MS. COPPOLA: Right. MR. BANASEVIC: It’s really been of tremendous use. And it’s my opening statement, it’s not an add-on. It can really -- for these big cases where they’re very important, sensitive, and you want to get it right, there’s just a great benefit in sharing experiences, knowledge, with colleagues who have the same -- who want to get it right as well and get the best result. So it’s a very good thing that we shouldn’t have just as just a bolt-on. MS. SCHAEFFER: Can I just add on to that? Maybe the Cooperation 2.0 for digital platform investigations is not necessarily between antitrust agencies, but between antitrust agencies, consumer protection, and privacy agencies. Because -- and I think the term “forbearance” might come in there as well, in that not everything involving a digital platform is necessarily an antitrust issue. And we certainly have a lot of intermelding of privacy and consumer protection concerns, as we see with the Australian ACCC report. And how do we jointly investigate those issues or maybe have antitrust not be the primary investigation and enforcement mechanism there? MS. COPPOLA: We are very close to the end of the session. So I guess, Marcus and Jeanne, starting with you, and if there’s time, we’ll move on to Fiona and Nick. What are your last words of advice for the FTC in the area of enforcement cooperation? MS. PRATT: I’m not sure I have advice. I think, as you’ve heard, I have found or we have found that gateway provision in our legislation to be particularly useful and, you know, it might be interesting to consider that in your context and whether it’s appropriate. And I would just want to lastly say thank you very much for having us here. I know the FTC can continue to rely on the Canadian Competition Bureau’s commitment to continuing to build upon the solid cooperation foundation that we have and in particularly dynamic fast-moving markets that we have today. I think the business case for cooperation is only getting stronger and will only get better from here. MR. BEZZI: So I won’t advise the FTC, but the advice that I’ll give to the ACCC is that we need 21st Cooperation and mutual assistance frameworks. MS. COPPOLA: Thanks. Nick, Fiona, anything to add? MR. BANASEVIC; I’ve said it all, I don’t want to repeat. I think it’s don’t underestimate it, use it, and benefit from the interactions and the knowledge you can have with colleagues. MS. COPPOLA: Well, thank you all very much for your insights. These have been tremendous. Coming into the panel, I wasn’t sure I would learn anything since I spend most of my day engaged in enforcement cooperation. But I did. So bravo. Thanks so much for participating. I think we’ll move on to the next panel now. (Applause.) (Brief break.) INTERNATIONAL ENGAGEMENT AND EMERGING TECHNOLOGIES: ARTIFICIAL INTELLIGENCE CASE STUDY MS. WOODS BELL: Hello, everyone. Welcome back from break. I’m Deon Woods Bell. I’m a lawyer in the Office of International Affairs at the Federal Trade Commission. I’m so excited to be here today. It is my extreme pleasure to introduce Julie Brill. Julie is Corporate Vice President and Deputy General Counsel for Global Privacy and Regulatory Affairs at Microsoft. Of course, everybody in the building knows her as a former Commissioner and friend of the Federal Trade Commission. She’s widely recognized for her work on internet privacy and data security issues related to advertising and financial fraud. She’s received so many awards we could not list them all in her bio, nor could I enumerate them here today. One of my favorite is the Top 50 Influencers on Big Data in 2015. And one of my favorite memories is working together with her in Brussels on these same issues. Thank you, and please welcome Julie. (Applause.) MS. BRILL: Thank you, Deon. I remember that event, too, and it was great to work with you there. And it’s really an honor to be here today to contribute to today’s important discussions on the FTC’s international role in a world transformed by digital technology. I am particularly excited to begin this session today that focuses on artificial intelligence. We have a truly distinguished panel, some of whom are -- here they come -- of experts from around the world, who will explore the implications of artificial intelligence at a time when innovative technology calls for innovative thinking about policy and regulation. Today’s discussion comes at a critical moment. During the past few years, how people work, play, and learn about the world has been transformed. Industries have been reinvented. New ways to treat diseases emerge almost every day. Driving all this change are groundbreaking technologies like cloud computing that enable us to collect and analyze data scale that has never before been possible. But what we have experienced so far is just the beginning. Rapid progress in the field of artificial intelligence has delivered us to the threshold of a new era of computing that will transform every field of human endeavor. Already, almost without us noticing, AI has become an essential part of our day- to-day lives. It powers the apps that help us get from place to place, predict what we might want to buy, and protects our systems from malware and viruses. This is just a hint of what’s possible. Artificial intelligence has the potential to improve productivity, drive economic growth, and help us address some of the most pressing challenges in accessibility, health care, sustainability, poverty, and much more. Yet, history teaches us that change of this magnitude has always come with deep doubts and uncertainty. I believe that if we are to realize the promise of artificial intelligence, we must acknowledge these doubts and work to build trust, trust that technology companies are working not just to maximize profits, but to improve people’s lives; trust that we use the personal data we collect safely, responsibly, and respectfully. But as we are learning the hard way, in the technology industry, trust is fragile. In the wake of the Cambridge Analytica scandal and the spectacle of tech industry experts being hauled before Congress to answer for their business practices, people wonder if technology and technology companies can be trusted. The truth is that technology is neither inherently good nor bad. Cloud computing and artificial intelligence are just tools that people can use to be more productive and effective, basically the equivalent of the first Industrial Revolution’s steam engine. But it is also true that because technology has never been more powerful, the potential impact, both positive and negative, has never been greater. So where does trust come from? It begins when companies like Microsoft, that are at the forefront of the digital revolution, acknowledge that in this time of sweeping change, we must consider the impact of our work on individuals, businesses, and societies. Today, we must ask ourselves not just what computers can do, but what they should do. This means there may be times when we have to be willing to decide that there are things that they should not do as well. To guide us as we weigh these decisions at Microsoft, we have adopted six ethical principles for our work on artificial intelligence. It starts with transparency and accountability. We know that trust requires clear information about how AI systems work, coupled with accountability for the people and companies who develop them. We believe strongly in the principles of fairness which means AI must treat everyone with dignity and respect and without bias. Our fourth principle encompasses reliability and safety, particularly when AI makes decisions that affect people. We also are strongly committed to the principles of privacy and security, for people’s personal information. And we believe that AI solutions should be built using inclusive design practices that affect the full range of experiences of all who might use them. Now, while these principles are at the center of every decision we made about artificial intelligence research and development, we also know that the issues at stake are simply too large and too important to be left solely to the private sector. Trust also requires a new foundation of laws. Here in the United States, right now, one area of the law demands our attention above all others. That area is privacy. Because so much of who we are is expressed digitally and so much of how we interact with each other and the world is captured and stored in digital form, how people think about privacy has changed. For more than a century, our understanding of this most fundamental human right has been shaped by the definition set forth by the great American legal thinker and fathers of the FTC, Louis Brandeis, who defined privacy as the right to be let alone. That right will always be important. But, by itself, it is no longer sufficient. Now, modern privacy law must embrace two essential realities of life in the digital age. The first is that people expect to use digital tools and technologies to engage freely and safely with each other and with the world. The second is that people expect to be empowered to control how their personal information is used. Whether we protect these two things is one of the critical challenges of our time. What we need is a new generation of privacy policies that embrace engagement and control without sacrificing interoperability or stifling innovation. This is why we were the first company to extend the rights that are at the heart of the European general protection regulation, and we extended those to our customers around the world, including the right to know what data is collected, to correct that data, and to delete it or take it somewhere else. And over the last year, we’ve seen the rise of a global movement to adopt frameworks that enhance consumer control mechanisms modeled on those required by Europe’s GDPR. With participants here from India, Kenya and Brazil, this panel of distinguished guests is a perfect illustration of this important trend. Brazil’s general data protection law, which goes into effect a year from now, includes provisions that extend new privacy rights to individuals and mandates new requirements for notification, transparency, and governance for organizations. All of these requirements that will be new in Brazil are tightly aligned with GDPR. In India and Kenya, new privacy laws modeled on GDPR are also currently moving through the legislative process. Here in the United States, the California Consumer Privacy Act includes provisions that give people more control over their data. And Washington State is considering legislation based on consumer rights protected by GDPR as well. As part of Microsoft’s commitment to privacy, we offer a dashboard where people can manage their privacy settings. Since May of last year, more than 10 million people around the world have used this tool, with the number growing every day. I think it is telling that while millions of people around the world are using our tool, our data demonstrates that US citizens are the most active in controlling their data. All of this should serve as a wakeup call for US companies and the US Government. At Microsoft, we believe it is time for United States to adopt a new legal framework for access and use of data that reflects our new understanding of the right to privacy. To achieve this, I believe a strong US framework -- frankly, a strong privacy framework anywhere in the world -- should incorporate four core elements, transparency through robust standards that include and appropriate privacy statements within user experiences, individual empowerment that grants people meaningful control of their data and privacy preferences, corporate responsibility that is built on rigorous assessments that weigh the benefits of processing data against the risk to individuals whose data may be processed, and strong enforcement and rule-making. And, here, that means in the United States that should be all embedded at the US Federal Trade Commission. While updated privacy laws are essential to building trust, new uses for artificial intelligence are emerging that will require special consideration for their own specific regulations. Facial recognition is a prime example. This technology has shown that it can provide new and positive benefits when used to identify missing children or diagnose diseases. But there is a real risk that -- there is a real risk which includes the danger that it will reinforce social bias and be used as a surveillance tool that encroaches individual freedom. This is why Microsoft has called on the US Government to regulate facial recognition with a focus on preventing bias, preserving privacy, and prohibiting government surveillance in public places without a court order. It is also one of the reasons we have testified in support of the Washington State privacy bill, which includes provisions that address many of these important concerns about facial recognition technology. We need laws that place appropriate guardrails to ensure that companies don’t take unfair advantage of individuals or violate people’s fundamental rights. That is the essence of trust. We believe that guardrails can be designed in ways that facilitate global interoperability and promote innovation so we can all work together to continue to harness the potential of the digital revolution to improve people’s lives and drive economic growth. This will require a commitment from all of us to engage in ongoing discussions and consultations that span governments and sectors. This means it’s essential for the US Government and its agencies, including the FTC, to engage in a broad range of discussions with other governments on digital issues like we are doing with the honored guests here today. Just as important are gatherings like this that will bring people together from around the world to explore policy approaches to new emerging technologies like artificial intelligence. More than 100 years ago, when Brandeis defined the right to be let alone in his famous Law Review article, The Right to Privacy, he described, with great eloquence, the ongoing process by which rights evolve as humanity progresses and how the law adopts and adapts in response. “Political, social, and economic changes entail the recognition of new rights,” Brandeis wrote, “and the law in its eternal youth grows to meet demands of society.” Brandeis was moved to write this article because of the impact of photography, mechanical printing presses, and other disruptive new technologies of his time. Today, we stand at the beginning of a new era of disruption and change, a time of technology- driven transformation that will require the recognition of new rights and the development of new laws to meet the demands of our societies. It’s a task that will ask us to convene in hearings like this one and in forums, meetings and conferences around the world to grapple openly and honestly with a host of issues that will touch on virtually every aspect of our lives and our businesses. We, at Microsoft, look forward to being a part of these conversations and to working in close partnership with all of you to make sure that technology moves forward within a framework of respect for human dignity and with the goal of serving the greater good. Thank you. (Applause.) INTERNATIONAL ENGAGEMENT AND EMERGING TECHNOLOGIES: ARTIFICIAL INTELLIGENCE CASE STUDY (PANEL) MS. WOODS BELL: Thank you. Thank you very much, Julie, for those remarks. You outlined very well the tremendous potential of AI and that’s one of the reasons why we’re here today, to discuss them even further. Well, I’m still Deon Woods Bell. And my co- moderator here is Ellen Connelly, an Attorney Adviser in the Office of Policy and Planning. And, together, we want to welcome you to our panel on international engagement and emerging technologies focusing on artificial intelligence. You’re in for a treat. As Julie described, we have quite a panel assembled for you here today. This session is a follow-on to the hearings in November, which focus on the same topic. And following the November meetings, colleagues here at the FTC -- and a lot of influence from Ellen here -- said we should go deeper, we should focus on international issues. So today, we’re thrilled to have this impressive group of international officials, practitioners, and academics here and on the line from Harvard. During this panel, we’ll touch upon a variety of issues and we’ll go deeper and let you see what these colleagues have to offer. We won’t go into great detail on their bios, but we couldn’t resist showing off a little bit for you and letting you know who they are. On the line from Harvard is Chinmayi Arun. She’s a fellow at the Harvard Berkman Klein Center for Internet & Society, and she’s the Assistant Professor of Law at the National Law University in Delhi. Her chair is there and her picture will soon be on the line as she can hear us right now. Next, we have, again, he’s still James Dipple-Johnstone. You saw him earlier. He’s a Deputy Commissioner from the UK’s ICO, and prior to the ICO, he was in the Solicitor’s Regulatory Authority where he had been Director of Investigation and Supervision, and he’s not from the ministry of no. (Laughter.) MS. WOODS BELL: Next, Francis Kariuki, Director General of the Competition Authority of Kenya. Mr. Kariuki is the founding member and the current Chairman of the African Competition Forum. He’s also an expert in FinTech. Next over to Marcela. She’s a partner at VMCA Advogados in Brazil focusing on data protection and antitrust. She’s served as Advisor and Chief of Staff for the President of Brazil’s famous CADE. Over to Isabelle. She’s President and Member of the Board Autorité de la Concurrence, as she was previously the President of the Sixth Chamber of the Conseil d'État, the French Supreme Administrative Court, and other governmental capacities. And last but not least, we have Omer Tene. Omer is a Vice President and Chief Knowledge Officer at the International Association of Privacy Professionals. He wears so many hats, we couldn’t list them either. He’s an Affiliate Scholar at Stanford and Senior Fellow at the Future of Privacy Forum. So, before we get started, we want you to be open to looking to questions. We have our colleagues here. We’re going to have short introductory comments from each colleague, and then after this, we’ll have a moderated panel discussion, and we hope that you enjoy. MS. CONNELLY: Great. So I will start us off by giving each of our panelists a chance to make a brief introductory statement to describe for us the key competition, consumer protection and privacy issues that they see emerging around the artificial intelligence field. We will start with Chinmayi. MS. ARUN: Thank you for having me. It’s such an honor to be a part of this panel, and I’m happy to see that the FTC is listening to voices from around the world. If I were to give you the three or four big highlights of how I would think about AI and the right to privacy in data sets in India, it would be -- the first would be in terms of global companies, usually American companies, operating in India versus Indian companies operating both in India, as well as elsewhere in places like Kenya. The second would be in terms of data because, as you know, it’s a very big country and it provides large and rich data sets that can be complicated in ways that I’m going to describe to you shortly. The third is that perhaps some of you have heard that there has been a rich and, again, contentious conversation about the right to privacy in India in the context of state surveillance, but also in the context of state protection. So we’ve had a major case on the right to privacy, and we’ve also got a data protection bill, which is very interesting, so I’m going to describe the highlights of that for you. And the final -- because we’re discussing this in such an international context is this sort of almost a clash of jurisdictions that arises from the Indians, for example, floating proposals of data localization in certain contexts, but also the ways in which India is coping with norms that are emerging from the US and from Europe. So the first is very simple, which is that as you know the major technology platforms, like Facebook and WhatsApp and Google, are used extensively in India and they have huge user bases in India, but there are also many Indian citizens that access them and have their data on them. Although I will focus a little bit more on the information platforms, it’s good to know that Airbnb, Uber, and other technology platform companies are also offering services in India. So our legislation, our new privacy act, our proposed amendment to our information technology act are all coping now with the very real idea that there are many Indian citizens whose lives are affected by these technologies that are designed elsewhere based on rules from elsewhere. At the same time, they’re also trying to keep Indian companies competitive because there are Indian companies offering similar services in India. Our NITI Aayog, which is sort of our version of the planning commission, has described India as the AI garage for 40 percent of the world, and they’ve got a strategy paper on AI. As you know, the big data set question, it’s complicated because, again, India is looking at it as a way towards machine learning, but there are also concerns of data protection and privacy that arise in that context. And the big tension really is that, on one hand, the policymakers want to leverage this and have this data and sort of learn from it and, on the other, of course, there’s the question of the privacy rights of Indian citizens and especially of marginalized citizens, people who are not able to assert their rights in the consumer forum. And the final -- so none of this is law yet, but both in the proposed privacy legislation and in the proposed IT amendment act, the question has arisen of whether foreign companies with a sizable user base in India should be asked to localize data in India. So both these proposed legislations have suggested that these companies might be made to host their data sets in India, and I think that that also is cause for concern if they’re thinking about it from a privacy and data protection point of view. I’m going to stop here. I just wanted to flag all of this in case anyone has questions later. Thank you so much. MS. CONNELLY: Thank you very much for those really interesting comments. We’ll move down the line and next up is James. MR. DIPPLE-JOHNSTONE: Thank you very much and thank you. It’s an honor to be here on this panel with you today. So I’ve got four issues. And I think the first, which has already been very ably covered, which is that about public trust and the risk of losing public trust in the rollout of AI systems and the role of regulators needing to work together both within country, but also internationally, which is my second theme. This is an emerging area, one where I don’t think we still have a clear picture of what AI’s impact on our societies will be. And with that in mind, it’s important that regulators keep themselves up to date, keep relevant and work together with others. And that’s very much the approach we’ve taken in the UK. The ICO has a remit in some of the technology, but actually, we work very closely with, for example, colleagues at the Competition and Market Authority, the Financial Conduct Authority, the Center for Data Ethics and Innovation and the Alan Turing Institute to look at the common issues that face us all and how we can improve our regulation. An important third issue is to look at not only whether the data’s held -- and when we talk about big data sets, we sometimes think of the big tech companies, but in the UK context, the state has large and valuable data sets, too. The UK National Health Service and the UK Education Service have very comprehensive data sets with millions of data points, which would be of value to a number of organizations around the world. And we are seeing increasing use of AI in the public sector as a model of efficiency and to help us all strive to meet our budget considerations. AI is being looked at for use to decide whether UK citizens are likely to commit crimes, which crimes should be investigated, who’s likely to reoffend, who’s likely to pay their rent on time. And that is beginning to introduce issues of fairness, accountability, and transparency. And so that’s why, as a regulator, we are really keen to keep abreast of developments. So we are putting a lot of effort into doing that. We are recruiting post-doctoral researchers to help us look at how to regulate AI. We’ve taken new powers to examine AI’s use and look at AI systems in practice and in operation and we’ve reconfigured the office to set up an entire part of the office that will just focus on innovation and technology. I said it this morning; I’ll keep saying it. We’re not the ministry of no, but we think the GDPR provisions around data protection impact assessments and our work around, for example, regulatory sand boxes and innovation hubs with other regulators. We’re trying to encourage early dialogue to tease through some of these issues together, because I’m not sure any one of us has the perfect answer for all the scenarios. MS. CONNELLY: Thank you. Francis? MR. KARIUKI: Thank you, Ellen and Deon. It’s a pleasure for me to be here and to share my thoughts in regard to AI. And my view is as a competition and consumer protection regulator, what am I worried about? And I have about four issues, and these are transparency and information asymmetries. What I would like to say is that AI has both created positive and external -- externalities. And in terms of competition and consumer protection, there’s an argument which has been found that they bring more efficiency in terms of prices and greater transparency compared to the traditional retail sales channels, and this is an inquiry which has been conducted in Europe and it has shown that. And, also, they provide additional benefits on these platforms. For example, AI [indiscernible], such platforms could improve choice and value for consumers. However, the other challenge of -- an encountered challenge in regard to we don’t appreciate the criteria behind the decisions of AI, they are only known to the designer of these systems, and, therefore, the merchant or the consumer may not be aware of how the system has been created and it’s allocating the prices. So there’s the risk of intentional design of the systems in favor of certain participants in the market. And this could be quite catastrophic in the continent I come from where there’s a lot of market concentration, and, therefore, the companies which are in Africa then can expand their space by being biased against the consumers in Africa. The other areas that’s also barriers or pathways to entry are, in Kenya, I’ve seen some positive externalities especially AI has enabled new innovations, where in Kenya we have seen recent expansion of financial services for people who are not included in the financial services. And, therefore, companies have been enabled to expand financial services through lending positions for previously people who were not captured in the financial services and also in the insurance sector. The challenge I see also from the AI is the line between open and proprietary data. AI often creates what is called, in fair data, an individual that is not perhaps -- not factual but opinion based, and, therefore, we may not get an optimal position for the product which is being offered or the prices which are being offered in the market. And, therefore, the challenge going forward is how do we determine data which is a product and which data is an input, and this choice of where the line is will have significant competitive implications as we move. Besides information asymmetry, I’ve seen AI can also be used in consumer protection issues, discrimination based on other social issues like the region where people come from or even race, as I had mentioned earlier, and these are some of the things where we need, as regulators, both competition and consumer, to look before we fly, because right now is that we are flying blindly and we might be flying into a storm. MS. CONNELLY: Thank you. Marcela? MS. MATTIUZZO: So first of all, thank you, Deon and Ellen, for the invitation for the FTC, to you both for inviting me personally, but also Brazil to be a part of this discussion. A lot of the points that have been raised here focus on procedural challenges of AI. What I would like to also mention is perhaps the difficulty in both attaining international convergence in these topics, not necessarily laws that are exactly the same, but that point in the same direction, and also convergence within the many fields of law that are connected to AI. So here, at the FTC, we’re naturally discussing antitrust, consumer protection, and privacy. And even when we’re speaking only of these three areas of law, we can already see that sometimes the objectives of these policies are not always totally convergent. So, what I would like to -- just to give an example, I guess, that is comparing privacy and antitrust that to me is very clear. What technology has enabled today is for many companies to unilaterally access information and AI has also allowed that information, this data, to be combined and used efficiently for many purposes. So now we can know who bought something, how that person bought it, and so forth, and create, for example, consumer profiles. Perhaps from an antitrust point of view, one of the solutions to a potential problem of unilateral abuse of this information would be to share the databases with other companies. So we would have many companies that have the access to the same set of data and, therefore, of course, we can have problems of collusion. But leaving that aside, we would have a level playing field. If, however, we look from the consumer or data protection side of the discussion, we may come to a very different conclusion. And we may come to realize that, perhaps, consumers don’t want their data shared across different platforms and shared across many companies. So, naturally, both objectives pursued by either antitrust or privacy and consumer protection agencies, in the case of Brazil specifically as I hope to make clear throughout my interventions, we are at very different development stages. When it comes to antitrust and consumer protection, we are much more developed and, as you may be aware and former Commissioner Julie Brill already mentioned, in regards to data protection legislation, our specific legislation was approved just last August, August 2018, and has not yet come into force. So building policy that brings all of these areas of law together in a coherent fashion to address AI challenges seems to me to be a particularly important goal and a particularly important topic for us to focus on. MS. CONNELLY: Thank you, Marcela. Isabelle? MS. DE SILVA: Thanks a lot to the FTC for the invitation. I’m really glad to be here. I would like to say that, for me, the main point is that we think data, artificial intelligence, algorithm, are really key to the competitive process and that is why we must look at it closely. Of course, those processes affect also the way the state is being run. They also affect and they change society, but for us, the main issue is how do they affect the competitive process and the way companies do business? So what we see is that we really need to invest a lot more than before in understanding what is going on in the market, in the companies, and also to use all our different tools, legal tools, to gain a better understanding and also to give better vision to the market, and I will try to illustrate this with some examples. So first of all, we use sector inquiries. That is a tool that is common among agencies. But how do we use it? We really take a lot of time to understand a specific market that we deem to be interesting or a process. So that’s what we did with online advertising last year, and, of course, we had very interesting dialogue and followup with Australia, who has finished a very interesting report on online advertising. And in this way, we get a lot of information from companies. They are sometimes reluctant to give information, but we have the legal framework that enable us to get a lot of information. And also we give information back to the market. I think this is really something interesting because some sectors are moving so fast that even the companies engaging in the sector don’t always have the big picture, and that is something that has been deemed very useful in the field of what we did about programmatic advertising and the way it’s being run because it’s a very complex and new ecosystem. Another type of tool we are using very much is the joint studies with other agencies. That’s what we did with the CMA about closed ecosystem in 2014, what we did with the German agency in 2016 about big data, and what we are doing right now about algorithm still with the German agency. So what is the interest of this? It’s really to show the impact we see that algorithms have on the competitive process and maybe I will tell about a little bit more about this later. This is really something where we draw about, of course, what the experts have written about algorithm, but also in a very practical manner how do companies use algorithm and how does it change the way they do business in the market? And, finally, another tool that we use is the conference or hearings like you have today at the FTC, but really focusing on what is new, for example, in the field of algorithm. Last year, we had lots of meetings with scientists, sociology experts about what is new about algorithm and also about companies. For example, we had meetings with Google and Facebook to know how they use algorithm in a very precise and detailed matter to help us to understand how it’s being used.

#### Upside AND downside risks of AI are existential---effective governance is key

Themistoklis Tzimas 21, Aristotle University of Thessaloniki, Faculty of Law, “Chapter 2: The Expectations and Risks from AI,” Legal and Ethical Challenges of Artificial Intelligence from an International Law Perspective, Springer, 2021, pp. 9–32 Open WorldCat, https://doi.org/10.1007/978-3-030-78585-7

Therefore, it is only natural to be at least skeptical towards a future with entities possessing equal or superior intelligence and levels of autonomy; the prospect even of existential risk looms as possible.7 AI that will have reached or surpassed our level of intelligence make us wonder why would highly autonomous and intelligent AI want to give up control back to its original creators?8 Why remain contained in pre-deﬁned goals set for it by us, humans? Even AI in its current form and narrow intelligence poses risks because of its embedded-ness in an ever-growing number of crucial aspects of our lives. The role of AI in military, ﬁnancial,9 health, educational, environmental, governance networks-among others—are areas where risk generated by AI—even limited— autonomy can be diffused through non-linear networks, with signiﬁcant impact— even systemic.10 The answer therefore to the question whether AI brings risk with it is yes; as Eliezer Yudkowski comments the greatest of them all is that people conclude too early that they understand it11 or that they assume that they can achieve it without necessarily having acquired complete and thorough understanding of what intelli- gence means.12 Our projection of our—lack of complete—understanding of the concept of intelligence on AI is owed to our lack of complete comprehension of human intelligence too, which is partially covered by the prevalent and until now self- obvious, anthropomorphism because of which we tend to identify higher intelligence with the human mind. Yudkowski again however suggests that AI “refers to a vastly greater space of possibilities than does the term “Homo sapiens.” When we talk about “AIs” we are really talking about minds-in-general, or optimization processes in general. Imagine a map of mind design space. In one corner, a tiny little circle contains all humans; within a larger tiny circle containing all biological life; and all the rest of the huge map is the space of minds-in-general. The entire map ﬂoats in a still vaster space, the space of optimization processes.”13 Regardless of what our well-established ideas are, there are many, different intelligences and even more signiﬁcantly, there are potentially, different intelli- gences equally or even more evolved than human. From such a perspective, the unprecedented—ness of potential AI developments and the mystery surrounding them emerges as not only the outcome of pop culture but of a radical transformation of our—until recently—self—obvious identiﬁcation of humanity with highly evolved and dominant intelligence.14 The lack of understanding of intelligence and therefore of AI may be frightening but does not lead necessarily to regulation—at least to a proper one. We could even be led into making potentially catastrophic choices, on the basis of false assumptions. On top of our lack of understanding, we should add a sentiment of anxiety as well as of expectations, which intensiﬁes as an atmosphere of emergency and of expected groundbreaking developments grows. The most graphic description of this feeling is the potential of a moment of singularity, as mentioned above according to the description by Vinge and Kurzweil. As the mathematician I. J. Good–Alan Turing’s colleague in the team of the latter during World War II—has put it: “Let an ultraintelligent machine be deﬁned as a machine that can far surpass all the intellectual activities of any man however clever. Since the design of machines is one of these intellectual activities, an ultraintelligent machine could design even better machines; there would then unquestionably be an “intelligence explosion,” and the intelligence of man would be left far behind. Thus the ﬁrst ultraintelligent machine is the last invention that man need ever make, provided that the machine is docile enough to tell us how to keep it under control.”15 This is in a nutshell the moment of singularity. The estimates currently foresee the emergence of ultra or super intelligence—as it is currently labelled—or in other words of singularity, somewhere between 20 and 50 years from today, further raising the sentiment of emergency.16 We cannot even foretell with precision how singularity would look like but we know that because of its expected groundbreaking impact, both states and private entities compete towards gaining the upper hand in the prospect of the singularity.17 Despite the fact that such predictions have been proven rather optimistic in the past18 and therefore up to some extent inaccurate, there are reasons to assume that their materialization will take place and that the urgency of regulation will be proven realistic. After all, part of the disappointments from AI should be blamed on the fact that certain activities and standards, which were considered as epitomes of human intelligence have been surpassed by AI, only to indicate that they were not eventu- ally satisfactory thresholds for the surpassing of human intelligence.19 Partially because of AI progress we realize that human intelligence and its thresholds are much more complicated than assumed in the past. The vastness’s of deﬁnitions of intelligence, as well as its etymological roots are enlightening of the difﬁculties: “to gather, to collect, to assemble or to choose, and to form an impression, thus leading one to ﬁnally understand, perceive, or know”.20 As with other relevant concepts, the truth is that until recently our main way to approach intelligence for far too long was “we know it, when we see it”. AI is an additional reason for looking deeper into intelligence and the more we examine it, the most complicated it seems. The combination of lack of complete understanding of intelligence, the unpredictability of AI, its rapid evolution and the prospect of singularity explain both the fascination and the fear from AI. Once the latter emerges, we have no real knowledge about what will happen next but only speculations, which until recently belonged to the area of science ﬁction. We are for example pretty conﬁdent that the speed of AI intelligence growth will accelerate, once self—improvement will have been achieved. The expected or possible chain of events will begin from AI capacity to re-write its own algorithms and exponentially self—improve, surpassing human intelligence, which lacks the capacity of such rapid self—improvement and setting its own goals.21 We can somehow guess the speed of AGI and ASI evolution and possibly some of its initial steps but we cannot guess the directions that such AI will choose to follow and the characteristics that it will demonstrate. Practically, we credibly guess the prospects of AI beyond a certain level of development. Two existential issues could emerge: ﬁrst, an imbalance of intelligence at our expense—with us, humans becoming the inferior species—in favor of non-biological entities and secondly a lack of even fundamental conceptual communication between the two most intelligent “species”. Both of them heighten the fear of irreversible changes, once we lose the possession of the superior intelligence.22 However, we need to consider the expectations as well. The positive side focuses on the so-called friendly AI, meaning AI which will beneﬁt and not harm humans, thanks to its advanced intelligence.23 AI bears the promise of signiﬁcantly enhancing human life on various aspects, beginning from the already existing, narrow applications. The enhanced automation24 in the industry and the shift to autonomy,25 the take—over by AI of tasks even at the service sector which can be considered as “tedious”—i.e. in the banking sector—climate and weather forecasting, disaster response,26 the potentially better cooperation among different actors in complicated matters such as in matters of information, geopolitics and international relations, logistics, resources ex.27 The realization of the positive expectations depends up to some extent upon the complementarity or not, of AI with human intelligence. However, what friendly AI will bring in our societies constitutes a matter of debate, given our lack of unanimous approach on what should be considered as beneﬁcial and therefore friendly to humans—as is analyzed in the next chapter. Friendly AI for example bears the prospect of freeing us from hard labor or even further from unwanted labor; of generating further economic growth; of dealing in unbiased, speedy, effective and cheaper ways with sectors such as policing, justice, health, environmental crisis, natural disasters, education, governance, defense and several more of them which necessitate decision-making, with the involvement of sophisticated intelligence. The synergies between human intelligence and AI “promise” the enhancement of humans in most of their aspects. Such synergies may remain external—humans using AI as external to themselves, in terms of analysis, forecasts, decision—making and in general as a type of assistant-28 or may evolve into the merging of the two forms of intelligence either temporarily or permanently. The second profoundly enters humanity, existentially—speaking, into uncharted waters. Elon Musk argues in favor of “having some sort of merger of biological intelligence and machine intelligence” and his company “Neuralink” aims at implanting chips in human brain. Musk argues that through this way humans will keep artiﬁcial intelligence under control.29 The proposition is that of “mind design”, with humans playing the role that God had according to theologies.30 While the temptation is strong—exceeding human mind’s capacities, far beyond what nature “created”, by acquiring the capacity for example to connect directly to the cyberspace or to break the barriers of biology31—the risks are signiﬁcant too: what if a microchip malfunction? Will such a brain be usurped or become captive to malfunctioning AI? The merging of the two intelligences is most likely to evolve initially by invoking medical reasons, instead of human enhancement. But the merging of the two will most likely continue, as after all the limits between healing and enhancement are most often blurry. This development will give rise, as is analyzed below, to signif- icant questions and issues, the most of crucial of which is the setting of a threshold for the prevalence of the human aspect of intelligence over the artiﬁcial one. Human nature is historically improved, enhanced, healed and now, potentially even re-designed in the future.32 Can a “medical science” endorsing such a goal be ethically acceptable and if yes, under what conditions, when, for whom and by what means? The answers are more difﬁcult than it seems. As the World Health Organi- zation—WHO—provides in its constitution, “Health is a state of complete physical, mental and social well-being and not merely the absence of disease or inﬁrmity”.33 Therefore, why discourage science which aims at human-enhancement, even reaching the levels of post-humanism?34 Or if restrictions are to be imposed on human enhancement, on what ethics and laws will they be justiﬁed? How ethically acceptable is it to prohibit or delay technological evolution, which among several other magniﬁcent achievements, promises to treat death as a disease and cure it, by reducing soul to self, self to mind, and mind to brain, which will then be preserved as a “softwarized” program in a hardware other than the human body?35 After all, “According to the strong artiﬁcial intelligence program there is no fundamental difference between computers and brains: a computer is different machinery than a person in terms of speed and memory capacity.”36 While such a scientiﬁc development and the ones leading potentially to it will be undoubtedly, groundbreaking technologically-speaking, is it actually—ethically- speaking—as ambivalent as it may sound or is it already justiﬁed by our well— rooted human-centrism?37 Secular humanism may have very well outdated religious beliefs about afterlife in the area of science but has not diminished the hope for immortality; on the contrary, science, implicitly or explicitly predicts that matter can in various ways surpass death, albeit by means which belong in the realm of scientiﬁc proof, instead of that of metaphysical belief.38 If this is the philosophical case, the quest for immortality becomes ethically acceptable; it can be considered as embedded both in the existential anxiety of humans, as well as in the human-centrism of secular philosophical and political victory over the dei-centric approach to the world and to our existence. From another perspective of course and for the not that distant philosophical reasons, the quest for immortality becomes ethically ambiguous or even unacceptable.39 By seeking endless life we may miss all these that make life worth living in the framework of ﬁniteness. As the gerontologist Paul Hayﬂick cautioned “Given the possibility that you could replace all your parts, including your brain, then you lose your self-identity, your self-recognition. You lose who you are! You are who you are because of your memory.”40 In other words, once we begin to integrate the two types of intelligence, within ourselves, until when and how we will be sure that it is human intelligence that guides us, instead of the AI? And if we are not guided completely or—even further—at all by human intelligence but on the contrary we are guided by AI which we have embodied and which is trained by our human intelligence, will we be remaining humans or we will have evolved to some type of meta-human or transhumant species, being different persons as well?41 AI promises tor threatens to offer a solution by breaking down our consciousness into small “particles” of information—simplistically speaking—which can then be “software-ized” and therefore “uploaded” into different forms of physical or non-physical existence. Diane Ackerman states that “The brain is silent, the brain is dark, the brain tastes nothing, the brain hears nothing. All it receives are electrical impulses--not the sumptuous chocolate melting sweetly, not the oboe solo like the ﬂight of a bird, not the pastel pink and lavender sunset over the coral reef--only impulses.”42 Therefore, all that is needed—although it is of course much more complicated than we can imagine—is a way to code and reproduce such impulses. Even if we consider that without death, we will no more be humans but something else, why should we remain humans once technologies allow us be something “more”, in the sense of an enhanced version of “being”? Why are we to remain bound by biological evolution if we can re-design it and our future form of existence? Why not try to achieve the major breakthrough, the anticipated or hoped digita- lization of the human mind, which promises immortality of consciousness via the cyberspace or artiﬁcial bodies: the uploading of our consciousness so that it can live on forever, turning death into an optional condition.43 Either through an artiﬁcial body or emulation-a living, conscious avatar—we hope—or fear—that the domain of immortality will be within reach. It is the prospect of a “substrate-independent minds,” in which human and machine consciousness will merge, transcending biological limits of time, space and mem- ory” that fascinates us.44 As Anders Sandberg explained “The point of brain emulation is to recreate the function of the original brain: if ‘run’ it will be able to think and act as the original,” he says. Progress has been slow but steady. “We are now able to take small brain tissue samples and map them in 3D. These are at exquisite resolution, but the blocks are just a few microns across. We can run simulations of the size of a mouse brain on supercomputers—but we do not have the total connectivity yet. As methods improve, I expect to see automatic conversion of scanned tissue into models that can be run. The different parts exist, but so far there is no pipeline from brains to emulations.”45 The emulation is different from a simulation in the sense that the former mimics not only the outward outcome but also the “internal causal dynamics”, so that the emulated system and in this particular case the human mind behaves as the original.46 Obviously, this is a challenging task: we need to understand the human brain with the help of computational neuroscience and combine simpliﬁed parts such as simulated neurons with network structures so that the patterns of the brain are comprehended. We must combine effectively “biological realism (attempting to be faithful to biology), completeness (using all available empirical data about the system), tractability (the possibility of quantitative or qualitative simulation) and understanding (producing a compressed representation of the salient aspects of the system in the mind of the experimenter)”.47 The technological challenges are vast. Technologically speaking, the whole concept is based on some assumptions which must be proven both accurate and feasible.48 We must achieve technology capable of scanning completely the human brain, of creating software on the basis of the acquired information from its scanning and of the interpretation of information and the hardware which will be capable of uploading or downloading such software.49 The steps within these procedures are equally challenging. Their detailed analysis evades the scope of this book. Some critical questions—they are further analyzed in the next chapters—emerge however: how will we interpret free will in emulation? What will be the impact of the environment and of what environment? How will be missing parts of the human brain re-constructed and emulated? What will be the status of the several emulations which will be created—i.e. failed attempts or emulations of parts of the human brain—in the course of the search for a complete and functioning emulation? Will they be considered as “persons” and therefore as having some right or will they be considered as mere objects in an experimental lab? How are we going to decode the actual subjective sentiments of these emulations? Essentially, are emulations the humans “themselves” who are emulated or a different person? Even further what will human and person mean in the era of emulation? From a different perspective, the victory over death may be seen as a danger of mass extinction, absorption or de-humanization. In this new, vast universe of emulations will there be place for humans?50 From the above—mentioned discussion, it becomes obvious that at a large extent, the prospect of risk or of expectation is a matter of perspective, for which there is no unanimous agreement in the present. This may be the greatest danger of all, for which Asimov warned us: unleashing technology while we cannot communicate among us, in the face of it. The existential prospect as well as the risks by AI may self-evidently emerge from technological advances but are determined on the basis of politico—philosophical or in the wider sense, ethical assumptions. This is where the need for legal regulation steps in. Such a need was often underestimated in the past in favor of a solely technologically oriented approach—although exceptions raising issues other than technological can be found too.51 The gradual raising of ethic—political, philosoph- ical and legal issues constitutes a rather recent development, partially because of the realization of the proximity of the risks and of the expectations. The public debate is often divided between two “contradictory” views: fear of AI or enthusiastic optimism. The opinions of the experts differ respectively. Kurzweil, who has come with a prediction for a date for the emergence of singularity—until 2045—expects such a development in a positive way: “What’s actually happening is [machines] are powering all of us,” Kurzweil said during the SXSW interview. “They’re making us smarter. They may not yet be inside our bodies, but, by the 2030s, we will connect our neocortex, the part of our brain where we do our thinking, to the cloud.”52 In a well-known article—issued on the occasion of a ﬁlm—Stephen Hawking, Max Tegmark, Stuart Russell, and Frank Wilczek shared a moderate position: “The potential beneﬁts are huge; everything that civilization has to offer is a product of human intelligence; we cannot predict what we might achieve when this intelligence is magniﬁed by the tools AI may provide, but the eradication of war, disease, and poverty would be high on anyone’s list. Success in creating AI would be the biggest event in human history. . . Unfortunately, it might also be the last, unless we learn how to avoid the risks.”53

## 4

#### Expanding antitrust solidifies a durable bipartisan populist movement.

Mark Glennon 21, Founder and Executive Editor of Wirepoints, previously a financial consultant, 7/27/21, “Who will own economic populism? Biden's new competition order, antitrust policy and their future,” <https://madisonrecord.com/stories/605949408-who-will-own-economic-populism-biden-s-new-competition-order-antitrust-policy-and-their-future>

“This is from the Biden Administration?” If you’re a believer in free enterprise and the virtues of robust competition, that may be your initial reaction if you read through the fact sheet on President Biden’s new executive order to promote competition in the economy. More importantly, if you review reactions to the order, you’ll see the issues that may determine both political control and direction of part of the populist surge in America, both nationally and at the state level. Resolution of those issues may fundamentally reshape our economy. The driver is the huge majority of Americans who are now fed up with large corporations, particularly big tech platforms. Seventy-three percent say they are dissatisfied with major corporations, including 42% who are “deeply dissatisfied” with them, way up from earlier years. By numbers at least that large, Americans say big tech must be reined in and, most importantly, they support breaking up Amazon, Google and Facebook. The matter is playing out in a broad debate about antitrust policy and what to do about tech companies, which may significantly change what America’s economy looks like. Team Biden has noticed the space left empty after Trump. As reported by Politico, one of Biden’s lead campaign pollsters said Trump engaged repeatedly in cultural warfare but also weaved in economic populist threads. Now, however, they seem to be only doing one right now. “That’s surprising and it’s ceding a lot of terrain to us,” she said. Who will ultimately hold that terrain? At the national level, it’s unclear because deep fissures are already apparent within both the left and right. Failing national consensus, some of the answer may default to the states, including Illinois. But the most recent headlines are on Biden’s executive order on competition, so let’s start there. The order covers 72 distinct matters, some very specific and some broadly thematic. It’s written in language free marketeers probably will be comfortable with, not the leftist crazy talk so common in Washington today. That’s thanks no doubt to its primary author, Tim Wu, who is no stranger to free market thinking. He was a law clerk for Judge Richard Posner, who is regarded as perhaps America’s leading legal scholar on free market virtues (though Posner’s devotion thereto has diminished in recent years). Wu says Posner is “probably America’s greatest living jurist, and Posner called him Genius Wu. “He’s very, very, very smart,” says Posner. Most free marketeers will find some of the order’s 72 items at least directionally appealing. For example, a Wall Street Journal editorial endorsed the order to expedite deregulation of the hearing aid market by allowing Americans to purchase hearing aids over the counter rather than by prescription. Retailers and other cargo owners cheered the order to crack down on what they see as rigged pricing by freight carriers. And most conservatives will applaud the effort to limit occupational licensing restrictions, which are widely criticized as barriers to labor mobility. But, geez, what a philosophical clash with the rest of what’s coming out of the Biden Administration and Congress! If the sting of competition is healthy, why are we paying millions of Americans not to work? What sense is there setting a minimum, worldwide corporate income tax, which the Biden Administration supports? Why is the administration trying to federalize most everything, undermining the competition among states that has served America so well since its founding? Why are government mandates of all sorts micro-managing huge parts of the energy sector? Why are so many in Washington enthralled by the concept of universal basic income – money for nothing at all? That clash is reason enough to worry how the new order will be implemented in practice. That worry is heightened by some of the vagueness in the order. Much of it requires later rule making, which means who-knows-what. It calls for creation of a new White House Competition Council ”to monitor progress on finalizing the initiatives in the Order and to coordinate the federal government’s response to the rising power of large corporations in the economy.” Who will be on it and what will they do? Nobody knows. Far more important than the specific items in the order itself, however, is the broader policy on competition and antitrust of which it is a part. The order calls on the leading antitrust agencies, the Department of Justice (DOJ) and Federal Trade Commission (FTC), to enforce the antitrust laws vigorously and “recognizes that the law allows them to challenge prior bad mergers that past Administrations did not previously challenge.” That’s a repudiation of antitrust policy that has been in place since the Reagan Administration. It’s a reference to a new approach whose champions will hold the two key positions – Lina Khan,who has already been sworn in as Chair of the FTC, and Jonathan Kanter, recently nominated to lead the DOJ’s Antitrust Division. Khan and Kanter, like Wu, want tougher legislation and stricter enforcement of competition and antitrust laws, particularly against big tech companies. Also like Wu, they are different from so many others in the Biden Administration – they are smart, credentialed and respected by many on both sides of the aisle. Real change, however, requires legislation. Biden’s new order has limited scope. Broadly speaking, the new call for tougher antitrust legislation is in line with many congressional Republicans. Rep. Ken Buck (Colo.), the top Republican on the House Judiciary antitrust subcommittee, recently formed a new “Freedom From Big Tech Caucus” along with a handful of other GOP lawmakers who supported antitrust bills advanced by the committee last month. The caucus will aim to unite Republicans in Congress to “rein in Big Tech” through “legislation, education, and awareness,” as reported by The Hill. On the Senate side, Senator Josh Hawley (R-MO) is pushing a bill block big tech mergers and acquisitions outright. That makes for an unusual alignment with progressives, at least in broad terms. For months, many progressives have been posting images with mugs emblazoned with “Wu, Khan & Kanter, reports CNBC. But agreement on specific legislation has been elusive, no doubt stemming in part from each side hoping to claim ownership of any results. Moreover, many in both parties are beholden to big tech contributors. On the conservative side, however, there’s further reluctance. “There are some Republican members that are concerned with any proposal that might give the Biden government more authority to harass businesses along ideological lines,” Rachel Bovard, senior director of policy for the Conservative Partnership Institute, told Axios. “It’s Republicans thinking the cure is worse than the disease in terms of giving the Biden DOJ and Biden-controlled FTC broad powers to rework corporate America in their vision,” a GOP aide told Axios. Those are legitimate concerns that apply to Biden’s new order as well. Selective prosecution for political reasons has become a major concern, for good reason. Wu, Khan and Kanter didn’t come out of the Washington swamp, but the swamp corrupts people and the swamp has final say. Perhaps most importantly, there’s a fundamental disagreement coming from adherents to the hands-off attitude toward antitrust that has been in place since the 1980s. Big is by no means bad, under that approach, and the government should stay away absent solid evidence of harm to consumers. That has been the thinking from the Reagan Administration through Obama’s. As a result, between 2009 and 2019, antitrust enforcers did not block a single one of the more than 400 acquisitions by the five biggest online tech platforms. The Obama administration failed to prevent Facebook from acquiring Instagram and Whatsapp — “enabling Facebook to co-opt its most promising potential competitors,” as The Hill put it. A less charitable characterization of that old approach is summarized by what a former colleague of mine told me about his antitrust class when he was at Stanford Law School. It was taught by William Baxter, who championed the old approach and later headed DOJ’s Antitrust Division under Reagan. Students called his antitrust class “protrust.” In stark contrast, the new, aggressive approach of Wu, Kahn and Kanter “identifies concentrated corporate power — something both parties previously encouraged — as actually contributing to a broad range of harms for workers, innovation, prosperity and a resilient democracy overall,” said Sarah Miller, executive director of the American Economic Liberties Project. Democrats are particularly anxious to embrace the new approach to shake the growing perception that they are now the party of wealth and big corporations, not populism. It’s not just perception, as Victor David Hansen recently documented nicely. What if Congress is unable to overcome its differences and no legislation is passed? The struggle then may devolve to the states. To a significant extent, it already has, as catalogued here. Illinois, for example, already passed a law restricting the use of covenants not to compete in employment contracts, which is one of the items in Biden’s competition order. Legislation is pending in Illinois that would prevent certain technology companies from requiring use of their own preferred payment system, which is also the subject of an antitrust case brought against Google by 36 states. Legislation is also pending in Illinois on “right to repair,” another item in Bidens’s order. I’m not about to make any predictions on how this will all shake out. However, it’s clear that much is at stake, for both the economy and politicians.

#### That cements authoritarian populism.

Justin H. Vassallo 20, freelance researcher and analyst, M.A. in political science from Brooklyn College, 8/26/20, “Populism After Trump,” <https://prospect.org/politics/populism-after-trump-josh-hawley/>

When Joe Biden asserted a year ago that “history will treat this administration’s time as an aberration,” he captured the mainstream belief that Donald Trump’s populism can be erased through a return to “normal” government. Among corporate-friendly Democrats and “Never Trump” Republicans, the presumption is that American politics will return to the neoliberal path set by Reagan, and core ideas about limited government and free markets will remain static. Progressives are resisting this return to the default settings of American politics, pressuring Biden to set a new course. On the right, the future is more uncertain. However, at least one prominent Republican, Sen. Josh Hawley (R-MO), is gesturing toward refining Trump’s populism into a far more disciplined counterrevolution to the goals of the left. Although inchoate, post-Trump populism is evolving into a right-wing conception of statecraft that allows for a mixed economy dominated by “patriotic” firms—something long considered alien to mainstream American conservatism. Hawley’s politics advances the communitarian nationalist framework of heterodox conservative intellectuals and “anti-globalist” media personalities, which Sens. Tom Cotton (R-AR) and Marco Rubio (R-FL) have also flirted with. Of course, it’s far from guaranteed that this will become Republicans’ dominant philosophy; it’s just as likely that the right will further descend into rank conspiracy-mongering. But with an emphasis on productive national capitalism, as opposed to global capitalism, the populist right could very well coalesce the GOP around a figure whose platform resembles the “social” nationalism of Europe’s radical right, marrying industrial policy and a moderately expanded welfare state with conservative social values and an anti-immigrant agenda. If there is one ascendant Republican leader who could undertake that transformation, it’s Hawley. AMONG HAWLEY’S STRENGTHS is his deceptive appearance, in which he comes across as merely another soldier for the Christian right whose populist rhetoric belies his elite résumé. A Stanford- and Yale-educated lawyer who led Hobby Lobby’s Supreme Court fight against the contraception mandate in the Affordable Care Act and later tried to overturn the ACA as Missouri’s attorney general, Hawley decisively won Claire McCaskill’s Senate seat in 2018, continuing the GOP’s rout of purple- and red-state Senate Democrats that began in the 2014 midterms. Early profiles of Hawley in national publications like The Atlantic and New Republic painted him as a folksier yet more intellectual version of your standard congressional Republican. His ties to Koch money and support for a right-to-work bill in Missouri during his campaign for attorney general, these articles concluded, did not differentiate him from his party’s reflexive embrace of big business. Indeed, in most respects, Hawley remains an unremarkable Trump loyalist. FiveThirtyEight calculates that he agrees with the Trump administration almost 85 percent of the time, which has included supporting the border wall, co-sponsoring legislation to restrict legal immigration, and attempting to formally dismiss the impeachment process as “bogus.” Consistent with his party’s deepening suspicion of international institutions and Trump’s flirtation with trade wars, Hawley is also an avowed China hawk. Before the pandemic, Hawley stood out for his fixation on how to curb the concentrated power of Big Tech. His critique has encompassed anti-monopoly and data privacy stances, as well as hackneyed assertions about the censorship of conservative speech on social media and search engines. To the extent they’re sincere, Hawley’s antitrust beliefs possibly date to the book he wrote in his twenties on Theodore Roosevelt. But as far as policy niches go, his crusade against Big Tech was visible but safe terrain for a new Republican senator courting coverage on partisan cable news. More recently, Hawley has amplified his call to revive American industry and challenge international trade priorities. In May, he drew attention for proposing to “abolish” the World Trade Organization in a New York Times op-ed, arguing that a new trade system should be developed “without compromising nations’ economic sovereignty and their internal control of their own economies.” Though he fumbled the origins of the post–Cold War acceleration of free trade and outsourced manufacturing, Hawley has evinced a clear grasp of how deindustrialization has afflicted smaller cities and towns, unlike his mostly indifferent Republican colleagues. Powerful U.S. multinationals and financial firms have for decades encouraged conservatives to ignore this consequence of globalization, yet Hawley makes it one of his core themes. Hawley’s critique overlaps in part with progressive concerns over the effects of trade liberalization, which have grown since China’s accession to the WTO in 2001. During the Democratic presidential primary, for example, Elizabeth Warren unveiled a new trade plan as part of her vision of “economic patriotism,” emphasizing the loss of U.S. jobs to China and other countries due to corporations seeking lax regulatory environments. Hawley’s attacks on the WTO reflect a greater preoccupation with China’s economic might and geopolitics, with no mention of climate change or social justice, but his convergence with progressive dissent from the conventional wisdom on trade points to the role industrial policy will increasingly play in a post-COVID-19 economy. Hawley’s professed support for mutually respected “economic sovereignty,” moreover, is indicative of how certain traditionally left-wing attacks on globalization have migrated into the discourse of the modern populist right. Beneath Hawley’s preppy exterior and unwavering loyalty to Trump lies a deeply ideological interpretation of political purpose and social order. It reflects the conviction that conservatism equals moral governance, not anti-government politics. As such, Hawley is invested in a narrative of national betrayal that holds both parties culpable for moral, social, and economic decline. This expands upon Trump’s theme of American carnage, threatening to turn his superficial, fleeting challenge to entrenched economic elites into a more forceful critique. In a speech at last summer’s National Conservatism Conference—a title whose foreboding historical echoes organizers and attendees must have willfully ignored—Hawley decried a “cosmopolitan consensus,” determined to implement “closer and closer economic union, more immigration, more movement of capital, more trade on whatever terms.” According to Hawley, this consensus has enriched elites in finance, tech, and entertainment, while leaving Middle America “with flat wages, with lost jobs, with declining investment and declining opportunity.” The themes resembled Hawley’s first Senate speech, which also pitted an “arrogant aristocracy” against a disrespected, lonely, despairing American middle. Hawley largely eschews the “individual responsibility” politics of traditional conservative thought, instead attempting a philosophical fusion between communitarianism, as expressed in his praise for “strong religious communities” and traditional marriage, and a right-wing vision of an activist state. Far more than any Republican angling to extend the party’s hold on working-class whites, Hawley is assimilating the “social” nationalism characteristic of European right-wing populists like France’s Marine Le Pen and Poland’s Jarosław Kaczyński. While tailored to the political dynamics of each country, “social” nationalism reflects a strategic move toward the left on economic issues, often encompassing welfare benefits, higher wages, public services, housing, infrastructure, and industrial policy. Beyond the familiar welfare chauvinism that seeks to exclude immigrants and refugees from state benefits, Europe’s most prominent right-wing populists aim to prove they represent a vast precariat alienated from the continent’s global cities, and that only they can restore each country’s national cohesion through a strong state. Since Europe’s widespread imposition of austerity measures following the financial crisis of 2008-2009, these populists have honed a policy-based vision of right-wing solidarity that recalls early strands of fascism that were more overtly critical of capitalism, which split labor’s support for social democratic and communist parties. Amidst an unprecedented economic crisis, it is a political model primed for export and Americanization, especially in light of the United States’ stark regional inequalities. IN HIS MOST ideological speeches, Hawley has already employed the Euro-populist framework to dramatize his calls for a new social contract. However, the global pandemic has created an opportunity for Hawley to test the boundaries of Republican policymaking. The objective is twofold: to elevate Hawley as a future savior of the party, and to hone an image as a sincere public servant that can transcend polarization, without giving the appearance of betraying Trump. As the pandemic cratered the economy, Hawley emerged as one of the few Republican senators calling for direct cash assistance as well as a solution to keep workers on payroll. Before passage of the CARES Act and its weekly provision of $600 in additional unemployment insurance through July, Hawley introduced a plan to provide monthly transfers of $1,446 to $2,206 for families with one to three children. While the proposal excluded individuals and was modest compared to progressive calls for a monthly universal basic income of $2,000 for the pandemic’s duration, it demonstrated Hawley’s eagerness to position himself as a rare figure on the right willing to provide economic relief to working families beyond a single stimulus check. More surprising was his “Rehire America” plan, which aimed to stave off the explosion of unemployment insurance claims as the national lockdown went into effect in late March. The plan envisioned the federal government covering up to 120 percent of business payroll for all rehired workers and 80 percent of wages for businesses facing revenue shortfalls, capped at $50,000 per worker. In a New York Times interview in late April, Hawley flexed his relative independence from Republican economic orthodoxy, touting that he consulted economists across the political and ideological spectrum to develop his plan. Although it went nowhere in the Senate, it notably tilted toward the recovery programs implemented by Western and Northern Europe. A more expansive version of this payroll-support concept has been embraced across the Democratic ideological spectrum, from Sen. Bernie Sanders (I-VT) to Sen. Doug Jones (D-AL), though the House version didn’t make it into the Democrats’ pandemic response bill, the HEROES Act. Part of Hawley’s broader strategy is to be recognized as a responsible public servant “just doing [his] job,” which has entailed occasional bipartisanship with some of the Senate’s more economically progressive Democrats. Last summer, he introduced a bill with Sen. Tammy Baldwin (D-WI) to close the U.S. trade deficit through new taxes on foreign capital inflows. Following reports that debt collectors and some banks were seizing stimulus payments from indebted people, Hawley joined Sen. Sherrod Brown (D-OH) in demanding the Treasury Department act to ensure no one was denied their full relief check. When the dire shortage in medical supplies came to light in advance of the shutdown, Hawley introduced an act to secure critical supply chains; he has since signaled interest in working further with Baldwin and Brown on industrial policy. As public-interest watchdogs and investigative reporters sounded the alarm over the gargantuan corporate bailouts in the CARES Act and related bills, Hawley took aim at United Airlines for reducing thousands of employees’ hours despite protections against this in the airline bailout terms, insisting that United return the money if it did not reverse course. Most of these forays into areas of government oversight and public welfare have been just that: loose threads of public statements, letters of concern, and proposed legislation. Despite having no major legislative impact, Hawley’s shrewd instinct for a long-term political calculus has been on display throughout the pandemic. He has earned bursts of attention for acknowledging the severity of the economic crisis, while most of his party has resisted extending more aid to struggling Americans. This has given him the luxury of building a policy portfolio with a few seemingly bold, heterodox positions that could distinguish him from his party’s leadership in the event of an electoral collapse in November, without having to singularly own a piece of actual legislation. Of course, Hawley’s rhetorical flourishes and gestures toward economic heterodoxy cannot entirely mask his evasion of deeper, more structural causes of inequality. His silence, for instance, on the penurious federal minimum wage and obfuscation of the role of unions in securing shared prosperity illustrate the limits to his attempt to assemble a few pro-worker bona fides. Because he cannot possibly denounce the litany of firms, executives, and dark-money entities behind decades of Republican assault on the U.S. welfare state, Hawley’s narrow critique of capitalism can only serve to advance an illiberal conception of the social peace. On one hand, his ideas echo the century-old Republican prescription that a protective tariff serves industry and labor alike. On the other hand, his patchwork approach to industrial policy suggests a neo-corporatist agenda, in which a privileged segment of labor can have input on wages and benefits, but not challenge the broader regulatory environment. That trade-off, which would strain and divide the labor movement, would also create major obstacles to a worker-led and internationalist Green New Deal as the country and the globe near an irreversible climate crisis. Like his European counterparts, Hawley is much more in his element lambasting the depredations of foreign or “cosmopolitan” capital that sap the national strength embodied by humble, “left behind” citizens. His lamentations over today’s “shrinking middle” reflect the ahistorical view that economic life is shaped between virtuous, patriotic capitalism and its parasitic opposite. This stokes Trumpian resentment toward “globalist” elites for their support of multiculturalism and immigration, which in Hawley’s worldview most jeopardize Middle America’s cohesion and traditions. What is clear enough is that Hawley’s modulated apostasy on free-market ideology is no mere exercise. His political icon is Theodore Roosevelt, whose “new nationalism” attempted to curtail labor’s ratcheted militancy through moderate concessions from capital and the state. Should he seek the presidency in 2024, Hawley’s favorable attributes—he is telegenic, has intellectual curiosity, and lacks overt malice—wildly surpass those of Tom Cotton, another contender for Trump’s heir. IT REMAINS TO be seen whether Hawley is the kind of politician who would actually follow through on a few measures that would anger Wall Street and the Republican donor class in the pursuit of higher office. The appeals to working people that would be required in 2024, however, are contingent on who is elected in November and what is done to maximize economic recovery. Against a backdrop of mounting bottom-up pressure, improving the real economy would at a minimum include meaningful antitrust legislation, a revamped industrial policy, expanded child care and paid family leave, raising the minimum wage, and a major infrastructure plan. A figure like Hawley, who could manipulate mainstream media into portraying him as the right’s answer to Elizabeth Warren, will have ample ideological space to confound corporate Democrats while making a forceful pitch to voters willing to trade zombie neoliberalism for a modicum of economic well-being. Between the country’s extreme polarization and worsening inequality, the stakes couldn’t be higher for Democratic policymakers over the next four years. This summer’s nationwide revival of Black Lives Matter protests granted a glimmer of hope that public opinion is recognizing how deleterious and pervasive racism and white supremacy continues to be in the United States. In a matter of weeks, protesters exposed the vulnerabilities of complacent Democrats, but more significantly, they blindsided the right. The reactions have varied between authoritarian bloodlust, disbelief of calls to defund the police, and somber appeals to perhaps a now fictive silent majority. Two days before Cotton previewed his unvarnished neofascism in a notorious New York Times op-ed, Hawley gave a speech on the Senate floor that tried to reconcile the outmoded principle of color blindness with a circumspect condemnation of the police brutality George Floyd and other Black Americans have suffered. He then pivoted to a rebuke of rioters, a defense of the overall integrity of American police departments, and a sermonizing message that economic policies that provided dignity from rural America to the “urban core” could bring about national healing. That speech could be seen as evidence of an idea to run as a “uniter” in 2024, but Hawley does not seem prepared for how rapidly political ground is shifting. The same, though, could be said for Joe Biden. Despite a new political reality defined by the pandemic and protests against police violence, Biden’s general-election campaign strategy has mostly affirmed the perception that the country’s crises begin and end with Trump. Yet the myriad forms of racial, economic, and other social inequalities that have crystallized into the most sweeping rejection of American political order since the 1960s demonstrate that a return to the status quo ante Biden represents is no less morally bankrupt for America’s multiracial working class than the routine perfidy of contemporary Republicanism. Insofar that a Democratic victory in November is predicated on a voter desire for normalcy, the dramatic decline in Trump’s support among boomers suggests Biden’s resolutely nonideological appeal to decency, stability, and competence is the surest path. Recent signals about Biden’s actual agenda, from both his advisers and Biden himself, have oscillated considerably, reflecting as much the pressures of satisfying a diverse and economically polarized coalition as the looming institutional constraints that would impede a forthright pursuit of wide-ranging reforms. But if Biden governs under the myth that society prefers gradualism at any cost, he will be as hard-put as ever in meeting progressive demands that are antithetical to his conception of what American politics is fundamentally about. Set next to Biden’s promise to “restore the soul of this nation,” Hawley’s own vision of national cohesion seems no more corny or quixotic. It adapts Sherrod Brown’s refrain about “the dignity of work” while weaving a narrative about an honorable middle and working class under the foot of self-serving elites. The untrained ear will miss the anti-Semitic connotations in Hawley’s attacks on cosmopolitanism, but it might perceive in his critique of America’s power structure a broad agreement with Bernie Sanders. Hawley’s attempt to acknowledge grievances of the “urban core” is likewise more deliberate than innocuous. Where Trump’s white nationalism fuses shock-jock provocation with the crude invective of George Wallace, Hawley has a preacher’s conviction in the rightness of a patriarchal social order, one that would reinforce the country’s racial hierarchy but not openly disparage the basic dignity of racial minorities—at least those who are citizens. Anachronistic appeals to color blindness may well provide a balm to sections of the middle and working classes fatigued or threatened by the more militant calls for justice that today’s activists utilize. Therein lie the qualities that make Hawley’s ascent in national politics both compelling and unnerving to watch. His deft fluctuation between solemn tributes to traditional values and community and fiery, anti-elite rhetoric exemplifies the choreographed mass politics of the radical right. In order to rehabilitate the Republican Party, it is very likely that its next presidential nominee will offer a Faustian bargain to reform the country’s miserly social contract, dividing the working class and further siphoning off white moderates who fetishize, above all else, romantic notions of decency, decorum, and leadership. Of the foreseeable contenders, Hawley has shown every inclination to sanitize and yet further radicalize the Trumpist trajectory. Such a ploy would be especially potent if Washington’s chronic dysfunction fails to abate. Should Hawley ultimately helm the post-Trump Republican Party, it is unlikely he will fully emulate Trump, in either style or governance. For one thing, he simply doesn’t radiate over-the-top, authoritarian swagger. At present, he is an uncertain bridge between the intellectual realm of heterodox conservatives and the libidinal nationalism of Trump’s base. But his own charisma may yet make him the ideal political vehicle for the “common-good constitutionalism” espoused by Harvard Law School professor Adrian Vermeule, which echoes the fusion of “moral” economics, a strong state, and a defense of national culture and Christian heritage endemic to Europe’s anti-globalization right. Were Hawley to breach conservative opposition to the welfare state, or at least impose regulations to compel big business to spur investment in the real economy alongside novel fiscal expenditures for redevelopment in the aging industrial belt, it would serve to veil the authoritarianism that Trump has activated in Republican politics while leaving the central theme of “law and order” undisturbed. The mounting clash between an activist left, a neoliberal center depleted of vision and mandate, and an ever more illiberal right is dissolving one myth of American exceptionalism: that the modern fragmentation and realignment of political parties endemic to Europe’s developed democracies cannot happen here. Another myth is also in the process of being disproven: that a critique of capitalism could not possibly take form on the right, let alone within the top ranks of a political party more associated with the zealous expansion of “free markets” than any other in the history of the world. As the economy continues to undergo grave turmoil, the left and the mainstream of the Democratic Party, while antagonists, remain bound in their fear of Republican nihilism. But a more potent fusion of economic nationalism and traditionalism could radically reshape our politics, depriving the warring factions of the center and left of a sound way forward. While fossil fuel industries and Wall Street would still profit handsomely under a future President Josh Hawley, “America First” would become an entrenched creed among anyone who felt Republican policies had rescued them. The dangers for society and the climate should be explicit, and yet the Democratic Party remains dangerously unprepared, fearing more its own metamorphosis than that of its opposition.

#### Populism is an independent existential risk and magnifies all others.

Andrew Leigh 21, Australian member of Parliament, former professor of economics at the Australian National University, 2021, What's the Worst That Could Happen?: Existential Risk and Extreme Politics, unpaginated ebook version

How likely is it that humanity could end? Experts working on catastrophic risk have estimated the chances of disaster for a wide range of the hazards that our species faces. Adding up the threats, philosopher Toby Ord estimates the odds that humanity could become extinct over the next century at one in six, with an out-of-control superintelligence, bioterrorism, and totalitarianism among the largest risks. He argues that most of the risks have arisen because technology has advanced more rapidly than safeguards to keep it in check. To encapsulate the situation facing humanity, Ord titled his book The Precipice. A one in six chance of going the way of dodos and dinosaurs effectively means we are playing a game of Russian roulette with humanity’s future. Six chambers. One bullet. Even the most foolhardy soldier usually finds an excuse not to play Russian roulette. And that’s when just their own life is at stake. In considering extinction risk, we’re contemplating not one fatality but the death of billions or possibly trillions of people—not to mention countless animals. It can seem impossible to imagine our species becoming extinct due to a catastrophe such as nuclear war, asteroids, or a pandemic. But in reality, the danger surpasses plenty of perils we already worry about. One way to put catastrophic risk into perspective is to compare it with more familiar risks. If extinction risk poses a one in six risk to our species over the next century, then it means that it is far more hazardous than many everyday risks. Specifically, it suggests that the typical US resident is fifteen times more likely to die from a catastrophic risk—such as nuclear war or bioterrorism—than in car crash.2 Extinction risk outstrips other dangers too. Ask people about their greatest fears, and you’ll get answers like “street violence,” “snakes,” “heights,” and “terrorism."4 But in reality, these are much less hazardous than catastrophic risks. People in the United States are 31 times more likely to die from a catastrophic risk than from homicide. Catastrophic risk is 3,519 times likelier to kill than falls from a height, and 6,194 times more likely to kill than venomous plants and animals. If you have ever worried about any of these threats, you should be more fearful about cata- strophic risk. Extinction risks aren’t just more dangerous than any of them; they are more hazardous than all of them put together. Catastrophic risk poses a greater danger to the life of the typical US resident than car accidents, murder, drowning, high falls, electrocution, and rattlesnakes put together. A one in six risk is just the danger in a single century. Suppose that the risk of extinction remains at one in six for each century. That means there’s a five in six chance humanity makes it to the end of the twenty-first century, but less than an even chance we survive to the end of the twenty-fourth century. The odds that we survive all the way to the year 3000 are just one in six. In other words, if we continue playing Russian roulette once a century, it’s probable that we blow our brains out before the millennium is halfway through, and there’s only a small chance that we make it to the end of the millennium. Part of the reason humans undervalue the future is that it’s hard to get our heads around the idea that our genetic code could live on for millions of years. At present, the best estimates are that our species, Homo sapiens, evolved around three hundred thousand years ago.1 That means we have existed for about ten thousand generations. But we have another one billion years before the increasing heat of our sun brings most plant life to an end.1 That’s plenty of time to figure out how to become an interstellar species and move to a more suitable solar system. Humans could live to enjoy another thirty million generations on earth. Thinking about the mind-boggling scale of these numbers, I’m reminded of the Total Perspective Vortex machine, created by Douglas Adams in The Restaurant at the End of the Universe. Anyone brave enough to enter sees a scale model of the entire universe, with an arrow indicating their current position. As a result, their brain explodes. As Adams reflects, the machine proves that “if life is going to exist in a universe of this size, then the one thing it cannot afford to have is a sense of proportion.” Still, let’s try. Imagine your ancestors a hundred generations ago. They are your great-great-great-great-great-great-great- great-great-great-great-great-great-great-great-great-great-great- great-great-great-great-great-great-great-great-great-great-great- great-great-great-great-great-great-great-great-great-great-great- great-great-great-great-great-great-great-great-great-great-great- great-great-great-great-great-great-great-great-great-great-great- great-great-great-great-great-great-great-great-great-great-great- great-great-great-great-great-great-great-great-great-great-great- great-great-great-great-great-great-great-great-great-great-great- great-great-great-grandparents. These people lived around 1000 BCE, at the start of the Iron Age. They might have been part of Homeric Greece, ancient Egypt, Vedic age India, the preclassic Maya, or Zhou Dynasty China. Contemplate for a moment about what the hundred genera- tions between our Iron Age ancestors and today have achieved. They built the Taj Mahal and Sistine Chapel, the Angkor Wat and Empire State Building. Thanks to them, we can relish the poetry of Maya Angelou, novels of Leo Tolstoy, and music of Ludwig van Beethoven. An abundance of inventions has delivered us deli- cious food, homes that are comfortable year-round, and technol- ogy that provides online access to a bottomless well of entertain- ment. If time machines existed, we might pop in to visit our great100 grandparents, but few would volunteer to stay in the Iron Age. Yet humanity is really just getting started. If things go well, it’s ten thousand generations down, thirty million to go. Imagine what those future generations could do, and how much time they have to enjoy. Here’s one way to think about what it means to have thirty million generations ahead. Suppose humanity’s potential time on the planet was shrunk down to a single eighty- year life span. In that event, we would now be a newborn baby— just nine days old. Homo sapiens is a mere 0.03 percent through all we could experience on earth. We won’t meet most of those who follow us on the planet, but we should cherish future generations all the same. If you value humanity’s past achievements—the Aztec and Roman civiliza- tions, art of the Renaissance, and breakthroughs of the Industrial Revolution—then the generations to come are just as worthy. This is what political philosopher Edmund Burke meant when he described society as “a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born.’- To appreciate the past is akin to admiring the achievements of distant places. Like geography, his- tory helps us better understand the way of the world. Politicians like me like to speak fondly about looking after "our children and our grandchildren.” But it usually stops after a generation or two. Policy pays little heed to the many generations that will follow. For my own part, it took a coronavirus-induced shutdown to have the time to spend reflecting deeply about the long term. This book had been rattling around in my head for years, but it was only when all my meetings, events, and travel were canceled that I had the time to write it. Pandemics are one of the threats to humanity that I’ll discuss in this book, but in this instance, it provided a chance to reflect on the long term. It’s tempting to ignore the distant future. It’s easier to love the grandchildren whom we hug than the great-great-great-grand- children whom we’ll never get to smile on. But that doesn’t make those far-flung generations any less important. Via my wife, our children can trace their lineage to Benjamin Franklin, but I’m more excited about the potential achievements of the generations yet to be born. For companies and governments, a major impediment to long- term thinking is the idea of discounting the future. When investing money, this is a reasonable approach. A dollar in a decade’s time is less valuable than a dollar today for the simple reason that a dollar today could be invested and earn a real return. Share markets have good and bad years, but based on returns from the past 120 years, someone who put $1,000 into the US stock market for an average year could expect it to be worth $1,065 after twelve months (accounting for dividends and inflation).2 Approximating these returns, when governments contemplate making investments, they often apply a discount rate of around 5 percent, while companies use rates that are higher still.2 When it comes to growing your greenbacks, this makes perfect sense. If Kanesha offered you $ 1,000 today, and Jane offered you $ 1,000 in a year’s time, most of us would think that Kanesha was making the more generous offer. Kanesha’s cash can be put to productive use and would be worth more than Jane’s when the year is out. But what if we’re talking about Kanesha and Jane themselves? Suppose Kanesha is alive today, and Jane is yet to be born. When discounting is applied to lives, it suggests that Kanesha’s life to- day is worth twice as much as Jane’s life in fifteen years’ time. It implies that Kanesha today is worth 132 times as much as Jane in a century’s time. So if we’re spending money to keep them safe, a 5 percent discount rate indicates that we should spend more than a hundred times as much to protect Kanesha today than to pro- tect Jane in a century’s time. The further we stretch the time period, the more ridiculous the results become. Discounting at a rate of 5 percent implies that Christopher Columbus is worth more than all eight billion people on the planet today.— Naturally, it also implies that your life is worth more than eight billion lives in five hundred years’ time. Even if you value the hug of a loved one over the unseen successes of next century’s generations, is it fair to ruthlessly dis- miss the distant future? Discounting is the enemy of the long term. As philosopher Will MacAskill points out, there is something morally repugnant about concluding that the happiness of those who will be alive in the 2100s is inconsequential simply because they live in the future. MacAskill coined the term “presentism” to refer to prejudice against people who are yet unborn.” Just like racism, sexism, or other forms of bigotry, he argues that mis- treating those who live a long way in the future is unfair. To dis- criminate in favor of Kanesha against unborn Jane is a form of presentism. If you traveled back in time to the 1500s and met someone who claimed that they were worth more than everyone alive in the 2000s, you’d rightly regard them as an egomaniac. Isn’t it equally narcissistic to ignore the happiness of people in the 2500s? Some have contended that we should favor the living over the unborn for the same reason that philanthropy favors the down- trodden over the wealthy. If incomes rise over time, the argument goes, then asking today’s citizens to help those in the future is like taking from the poor to give to the rich.— But this reasoning ignores the fact that we are talking about the survival of future generations. Theoretical riches won’t do them any good if they are practically dead—or if planetary apocalypse snuffs out their chance to be born. Similarly, it misses the possibility that future pandemics, wars, or climate disasters could make coming genera- tions significantly poorer.— Insights from behavioral science help explain why humans aren’t good at understanding extinction risk.— Our thinking about dangers is skewed by an “availability bias”: a tendency to focus on familiar risks. Like the traders who failed to forecast the collapse of the securitized housing debt market, we are lousy at judging the probability of rare but catastrophic events. Most important, our instincts fail us as the magnitudes grow larger. In research titled "The More Who Die, the Less We Care,” psychologists Paul Slovic and Daniel Vastfjall argue that we become numb to suffering as the body count grows.— Humans’ compassionate instincts are aroused by stories, not statistics. Indeed, one study found that people were more likely to donate to help a single victim than they were to assist eight victims. This may help explain why the international community has been so slow to respond to genocide, including recent incidents in Rwanda, Darfur, and Myanmar. As artificial intelligence researcher Eliezer Yudkowsky notes, human neurotransmitters are unable to feel sorrow that is thousands of times stronger than a single funeral.— The problem is starker still when it comes to extinction risk. Our emotional brains cannot multiply by billions. Add to this a media cycle that has become a media cyclone, in which stories explode in a matter of minutes, and “outrage porn” seems to drive the news choices of many outlets. In the 2016 US election, researchers found that for every piece of professional news shared on Twitter, there was one piece of “junk news.’’— Conflict fueled by social media keeps us in a primal state of rage and retaliation. And this isn’t the only force that makes politics myopic. Campaign contributions tend to come from donors who have an immediate interest in a “today” issue rather than from people aiming to solve long-term problems. This kind of “instant noodle” politics prioritizes quick results and sidelines fundamental challenges. In this environment, a special style of politics has thrived: populism. The term “populist" gets thrown around a lot—typically as an insult—so it’s worth taking a moment to define it precisely.— Populists see politics as a conflict between crooked elites and the pure mass of people. Many candidates trying to defeat an incumbent will criticize “insiders,” but populists make a stronger attack on elites, claiming that they are dishonest or corrupt. Populists then claim that they—and only they—represent the “real people.” Populists combine a fierce critique of elites and personal appeal to the “silent majority.” The political strategy of populists involves critiquing intellectuals, institutions, and internationalism. The political style of populists tends to be fierce. They do not strive for unity and calm consensus. Populists share with revolutionaries a desire for sudden and dramatic change. They have little respect for experts and the systems of government. Populists’ priorities tend to be immediate issues such as crime, migration, jobs, and taxes. Consequently, the electoral success of populists has served to sideline work on long-term dangers such as climate change and nuclear war. Donald Trump may have lost his presidential reelection bid, but he has transformed the Republican Party, which has jettisoned its longstanding commitment to free trade, immigration, and global alliances. Many moderate Republicans, who might have served comfortably under Ronald Reagan or George H. W. Bush, have quit the party or been defeated by Trump-supporting populists. The Republican Party, which holds nearly half the seats in Congress and controls a majority of state legislatures, has embraced populism to a degree that was unimaginable when it was led by George W. Bush, John McCain, or Mitt Romney. After four years under President Trump, the Republican Party is now more cynical and isolationist, focused on immediate grievances rather than long-term challenges. Yet while the strength of populism threatened to sideline issues of catastrophic risk, coronavirus did the opposite. The worst pandemic in a century led to the most severe economic crisis since the Great Depression. Churches and concert halls fell silent. International travel collapsed. The Summer Olympics were postponed. Stocks plunged, and for a brief moment, the price of a barrel of oil went negative. Globally, millions lost their jobs, and millions more faced famine. COVID-19 never threatened to extinguish humanity, but it highlighted our vulnerability to infectious diseases. More than at any time in living memory, people focused on the dangers of pandemics. The popularity of Geraldine Brooks’s Year of Wonders, Stephen King’s The Stand, Emily St. John Mandel’s Station Eleven, and Albert Camus’s The Plague vividly illustrates the way in which fear of pandemics has become more acute. We know that disasters can remake society. The black death helped usher in the Renaissance.— The Great Depression made a generation of investors more risk averse.— World War II spawned the United Nations and formed the modern welfare state. In autocracies, droughts and floods can topple dictators.— Coronavirus is reshaping the world in numerous ways.— Handwashing is in. Cheek kissing is out. The rise of big cities is slowing as people consider the downsides of density. Firms that automated their production systems to deal with physical dis- tancing requirements and stay-at-home orders are discovering that they can get by permanently with fewer staff. More tele- working and less business travel is leading to a drop in demand for receptionists, bus drivers, office cleaners, and security guards. When it comes to our use of technology, coronavirus suddenly accelerated the world to 2030. When it comes to globalization, the pandemic took us back to 2010. But it’s still an open question as to how COVID-19 will affect humanity’s ability to think about the long term. Most of the examples I’ve listed are instances in which crises affected societies organically: the shock came, and it changed our behavior. But accentuating the long term requires taking risk more seriously and placing greater emphasis on saving our species. Linebackers are swift to respond when an offensive player suddenly takes a step to the right. But it takes longer to recognize that a team’s offensive plays are skewed to the right and modify the defensive formation accordingly. Like a football team that adapts its tactics, this book argues that we should lengthen our thinking. At minimal cost, society can massively reduce the odds of catastrophe. By ensuring that the big threats get the attention and resources they need, we can safeguard the future of our species. As insurance policies go, this one is a bargain. In the chapters that follow, I’ll outline the biggest risks facing humanity. I’ll begin in chapter 2 with pandemics, such as the possibility that the next virus might combine the infectiousness of COVID-19 with the deadliness of Ebola. What can we do to shut down exotic animal markets, speed up vaccine develop- ment, and create surge capacity in hospitals? I’ll then delve into bioterrorism, and the danger of extremists developing their own versions of smallpox or the bubonic plague. How difficult is it for them to create these devilish diseases, and what can we do to prevent it? In chapter 3, I’ll then explore climate change—perhaps the in- tergenerational issue that has received the most public attention in recent years. While much of the modeling looks at how global warming could be bad, my focus is on the chances that it’s catastrophic. This isn’t about climate change shortening the ski season; it’s about the possibility of temperatures rising by 18°F (10°C), rendering large sections of the planet uninhabitable. What does the risk of cataclysmic climate change mean for energy policy? Next, I’ll turn to nukes. As a child in the 1980s, I vividly re- member watching The Day After. My classmates and I agreed that a nuclear war was inevitable. When the Cold War ended, the world seemed safer, but in the three decades since, the threat from new nuclear powers has made the problem less predictable. As I discuss in chapter 4, what we used to call an arms race now looks more like a bar fight, with hazards coming from unexpected directions, including terrorist groups. Yet just as there are practical ways to avoid pub brawls (don’t drink past midnight, avoid the stairs, look out for the glass), so too are there sensible strategies that can reduce the odds of nuclear catastrophe (adopt a “no first use" policy, reduce the stockpiles, control loose nukes). A superintelligence has been dubbed the “last invention” we’ll ever make. An artificial intelligence machine whose abilities exceed our own could turbocharge productivity and living stan- dards. But it could also spell disaster. If we program our artificial intelligence to maximize human happiness, it could fulfill our wishes literally by immobilizing everyone and attaching electrodes to the pleasure centers of our brains. As chapter 5 notes, what makes artificial intelligence different from every other risky technology is its runaway potential. Once a superintelligence can improve itself, it is unstoppable. So we need to build the guardrails before the highway. What are the odds? In chapter 6,1 complete the discussion of catastrophic danger by examining less risky risks, including asteroids and supervolcanoes. I also consider the prospect of “unknown unknowns.” For example, prior to the first atomic bomb test, some scientists thought there was a chance it could set the atmosphere on fire, destroying the planet. When the Large Hadron Collider was being built, critics warned that the particle collisions inside it could create micro black holes. Although neither situation eventuated, they raise the question of what other doomsday scenarios could be lurking around the corner. How should the prospect of these unexpected risks change our approach to cutting-edge science? Drawing together these dangers with the major hazards, I report the likely probability of each, benchmarking existential risks such as nuclear war and pandemics against individual risks such as being struck by lightning or dying on the battlefield. Ultimately, tackling existential risks is a political problem. Private citizens can achieve many things, but preventing nuclear war, averting bioterrorism, and curbing greenhouse emissions are fundamentally problems of government. Governments control the military, levy taxes, and provide public goods. So the values of those who run the country will determine how much of a priority the nation places on averting catastrophe. That’s why the rise of populists is crucial to humanity’s long- term survival. In chapter 7,1 discuss the factors that have led to the electoral success of populists during recent decades, and why populists tend to be uninterested in dealing with long-term threats. Populists’ focus on the short term means that—like a driver distracted by a back seat squabble—we’re in danger of missing the threats that could kill us. I’ll explore why populists around the world struggled to respond to COVID-19, and what this says about the dangers that populism poses to our species. Most critics of populism have concentrated on the present day. They’re missing the bigger picture. Populists are primarily endangering the unborn. Bad politics doesn’t just exacerbate other dangers; it represents a risk factor in itself through the possibility of a totalitarian turn —in which democracy is replaced by an enduring autocracy. The road to democracy is not a one-way street. Over the centuries, dozens of countries have backslid from democracy into autocracy —abandoning the institutions of fair elections, protection for minorities, and free expression. Such an outcome could be deadly for dissenters and miserable for the multitudes. Chapter 8 explores why democracy dies and identifies the signs that institutions are being undermined. Chapter 9 suggests how we might strengthen democracies to allow citizens to have a greater say, and lower the chances of the few taking over from the many. Chapter 10 concludes the book. When COVID-19 hit, many rushed out to buy life insurance.— In our personal lives, we know that spending a small amount on insurance can guard against financial ruin. Societies can take a similar approach: implementing modest measures today to safe- guard the immense future of our species. For each of the existential risks we face, there are sensible approaches that could curtail the dangers. For all the risks we face, a better politics will lead to a safer world. Because of its focus on the urgent over the important, populist politics should perhaps bear the label, “Warning: populism can harm your children." But what is the alternative? In the conclusion, I argue that the answer lies in the ancient philosophy of stoicism. A stoic approach to politics isn’t about favoring one side of the ideological fence over another. Instead, it’s about the temperament of good political leadership. Stoicism emphasizes that character matters and holds that virtue is the only good. Decisions are based on empirical evidence, not emotion. Anger has no place in effective leadership. Strength comes from civility, courage, and endurance. Stoics make a sharp distinction between the things they can change and those they cannot.

## Case

### Framing

#### The aff’s theorization of race is white eugenics and allows for the real and psychic extermination of blackness to prioritize “threats” to the white body – this flips their try or die calculus

Preston 17, John, Bath Spa University, “Rethinking Existential Threats and Education”, Competence Based Education and Training (CBET) and the End of Human Learning, <https://www.researchgate.net/publication/316728254_Rethinking_Existential_Threats_and_Education>, Accessed 12/5/21 VD

Various contemporary educational theories consider the equity and social justice implications of different forms of education with regard to race. The work of Sleeter and Grant (2007) makes the ethical and pragmatic case for multicultural social justice as a key value of education. This has been followed in contemporary work that attempts to consider the various dimensions of social justice. For example, Bhopal and Shain (2014), consider the twin axis of recognition and redistribution as goals of education. Other work examines the role of social distancing from the ‘Other’ by white students as a dynamic process in which Black, Asian and Minority Ethnic (BAME) and working-class students are disadvantaged. In many ways denial of social justice in terms of lack of resources, recognition or access to social space can be considered to be a form of dehumanisation. However, whilst work on social justice and education might consider the lack of humanity in these systems of oppression (applying concepts such as ‘bare life’, Lewis 2006; or ‘othering’ Lebowitz 2016) they do not consider directly existential threats. Threats to humanity on the basis of difference may arise from totalitarianism as much as through war and threats to the environment. The various genocides which have taken place throughout human history have often had a racial, or ethnic, cleansing purpose to them. They have been eugenic threats that are based upon spurious ideas of genetic and moral superiority. Writers on race from Fanon to Du Bois have considered that the threat posed to racial groups may be existential and that there is a short step from psychic, to real extermination. The negation of individuals through economic, social and psychological processes allows for their physical extermination. Du Bois (2014) deals explicitly with existential threat in his short story ‘The Comet’ where humanity is almost wiped out by a threat from space, leaving only a small number of people to carry on. As one of the survivors of the comet is an African American, this leads Du Bois to consider the state of race relations in the USA. The implication of the story is that the existential threat of the comet (which allows the African American character to live in a world entirely free of racial prejudice) allows release from the existential threat of eugenic attitudes. Building on Du Bois, in other work (Preston 2012), I have considered the ways in which preparation for threats, including existential threats such as pandemics and nuclear war, has been in many ways eugenic in that it prioritises the survival of some more than others based upon criteria which include race and ethnicity (Preston 2012). Preparing for disasters and emergencies often prioritises the interests of white people above those of other ethnic minorities. One reason for this is tacit intentionality which means that policymakers and practitioners do not consider human diversity in considering how people may respond to disaster. Policy is often biased as policymakers expect that people will be ‘like me’ which (at least in the UK and USA) means they will often be white, middle-class, educated, English-speaking men. In planning for threats, there will be various ways in which such biases are included. For example, they may not consider publishing advice in a number of languages, the resources necessary to survive a disaster, the mobility of people and the attitudes of emergency responders. This is unwitting prejudice in that by not considering diversity they are actually making it less likely for BAME people to survive, or protect themselves against, the disaster. Although these biases may lead to a gradient in terms of survival by different groups in a disaster, they do not appear to relate to existential threat. However, existential threat can be interpreted in a different way in perspectives from critical whiteness studies and CRT. In critical whiteness studies, whiteness is taken to be not a racial identity, but rather a system of power and oppression (Leonardo 2009). Whiteness was created as an identity not simply as a mode of social classification but as a way of exploiting and controlling others. There are obviously periods in history where this was objectively the case. During slavery in the USA, for example, whiteness was used as a means to distinguish between those people who had the right to own property (whites) and those who could not (Africans), Moreover, whiteness was the obverse of property in that only Africans could ‘be’ assets or property. Enslaved Africans were therefore treated as property and did not have access to the basic rights which would constitute humanity in American society (such as access to education, the right to own property, the right to decide who they should have relationships with). There are obviously parallels between this experience and holocaust when Jewish people (and other individuals) were dehumanised by the Nazis and denied access to basic resources. During imperialism there was also a period whereby other races were categorised to be less worthy than white people and this provided the justification for colonial control, exploitation and often extermination. Advocates of whiteness studies go further than this and consider that whiteness is not merely a past system of oppression, but a continuing system of white supremacy (Leonardo 2009). The economy and society is comprised in such a way that white people will usually benefit, and BAME people will usually not. This is not only an economic and social system but also a psychological system whereby existence as a full human depends upon one’s racial categorisation. This idea has its roots in the work of Fanon (1986) who wrote that black identity was shaped by the white gaze, but also contemporary writers also consider the notion of whiteness as ‘death’, a categorisation that is rooted in past oppression and extermination, whose remnants exist to this day. This perspective on race and existence leads us to consider what is meant by life, and whether we are not currently living to our full potential (as Marxists would also propose) when existential threat is actually amongst us. For Marxists this would be the expansion of the ‘social universe’ of capitalism that flows between and through us, ‘capitalising humanity’. For critical whiteness studies, this existential threat would be one of whiteness and the negation of existence for a racially classified group of people. In order to make this idea of constant existential threat more tangible (although the term is not used) critical race theorists use what are known as ‘counter-stories’ to consider how racial dynamics might develop in the future, or to highlight inequalities in the present (Delgado 1996). Derrick Bell (1992) who is considered to be the founder of CRT, uses a much cited counter-story ‘The Space Traders’ to consider the ways in which black people’s lives are classed as being not equal to those of whites in the USA. In ‘The Space Traders’ a race of aliens offer the USA a trade: all of America’s black citizens in return for unlimited, environmentally friendly, energy and technology. After some debate, the American people vote on the proposal and decide to give up all of America’s black citizens to the space traders in return for the futuristic technical goods. Of course, Bell is proposing an analogy between slavery in the past and the present situation of black people in the USA, and perhaps even suggesting that such a thing might happen again. On another level, though, there is also the idea that the existence of black people in America is categorised at a different level of metaphysical worth to that of white people. That life could be traded so cheaply, even plausibly (in the thought experiment) makes us pause for thought in terms of how we classify existential threat. Although the relationship between CRT and black existentialism may not always seem obvious we can see that there is a nihilistic streak in the work of Bell (1992) with regard to the prospects for survival. In addition, the drawing on the work of Fanon by authors who use CRT as part of their work which shows the perpetual violence encountered by people of colour in education as well as the enduring influence of Du Bois on CRT (Delgado and Stefancic 2001) shows the close connection between the two theories. What links CRT and black existentialism is a basic concern with existence and the meaning of human life under constant threat that can be thought to underpin any concern with social justice. From CRT and black existentialism, we therefore see that existential threat is one of negation through economic, social and political systems and there are degrees of graduation between these forms of existential threats and actual genocide or extermination. The links between these points and CBET might be considered as obtuse but, as we shall see in the next chapter, systems of education can play a role in forms of negation. Obviously, there are social justice implications in the way in which people are treated in terms of race and ethnicity in education. The ‘triaging’ by race and ethnicity of access to education courses, the ways in which certain groups are rationed access to educational routes and the fragility of links between education and the labour market for BAME groups are all part of marginalisation, in which vocational education plays a large part. As part of this process, and probably not coincidentally, these groups are also more likely to find themselves in vocational, CBET courses. However, social justice is not the whole story, and there is a more profound form of equality associated with the right to existence. It is this that CBET threatens through the reduction of the subject to a digital organism as I will show in the next chapter.

#### No, just do it

Dillon 13 [Stephen, Prof. Queer Studies @ Hampshire College, “‘It’s here, it’s that time:’ Race, queer futurity, and the temporality of violence in *Born in Flames*,” *Women & Performance: A Journal of Feminist Theory* vol. 23 no. 1,pp. 45-7//ak]

In his 1972 text Blood in My Eye, published shortly after he was shot and killed by guards at San Quentin prison, Jackson writes of racism, death, and revolution: Their line is: “Ain’t nobody but black folks gonna die in the revolution.” This argument completely overlooks the fact that we have always done most of the dying, and still do: dying at the stake, through social neglect or in U.S. foreign wars. The point is now to construct a situation where someone else will join in the dying. If it fails and we have to do most of the dying anyway, we’re certainly no worse off than before. (Jackson 1972, 6) Here, Jackson argues that the social order of the United States is saturated with an anti-blackness that produces, in the words of Ruth Wilson Gilmore, “the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death” (2007, 28). Jackson’s text is littered with a polemic that links race and death in a way that preemptively echoes Michel Foucault’s declaration that racism is the process of “introducing a break into the domain of life that is under power’s control: the break between what must live and what must die” (Foucault 2003, 254). When Jackson, Gilmore, and Foucault define race as the production of premature death, they make a connection between race and the future. Race is the accumulation of premature death and dying. For Jackson, race fractures the future so that the future looks like incarceration or the premature death of malnutrition, disease, and exhaustion. The future was not the hopefulness of unknown possibilities. It was rather the devastating weight of knowing that death was coming cloaked in abandonment, neglect, incarceration, or murder. In other words, according to Jackson, death was always and already rushing towards the present of blackness. In the last line of No Future: Queer Theory and the Death Drive, Lee Edelman similarly connects the future to premature death when he references the murder of Matthew Shepard. He writes: “Somewhere, someone else will be savagely beaten and left to die – sacrificed to a future whose beat goes on, like a pulse or a heart – and another corpse will be left like a mangled scarecrow to frighten the birds who are gathering now, who are beating their wings, and who, like the death drive, keep on coming” (Edelman 2004, 154). For Edelman, the future will necessarily continue to produce a world that is unlivable for queer people. In this way, the polemics of black liberation and Edelman’s anti-social thesis share an affinity around the theorization of the future as overdetermined by premature death, yet they diverge in how they imagine death’s relationship to race and power. For Edelman, the future looks like repetition of the death of Matthew Shepard (a white gay man), while for Jackson, it looks like the premature death of incarceration, the ghetto, and chattel slavery’s haunting contortion of the present. In other words, the state and anti-blackness were central to the anti-sociality of the black liberation movement. Within Jackson’s analysis, the state is the primary mechanism for unevenly distributing racialized regimes of value and disposability. Following the writing of Fanon, Jackson argued that for this relationship to be abolished: “The government of the U.S.A and all that it stands for, all that it represents, must be destroyed. This is the starting point, and the end” (Jackson 1972, 54). Jackson’s polemic crescendos when he describes the future he desires: We must accept the eventuality of bringing the U.S.A to its knees; accept the closing off of critical sections of the city with barbed wire, armed pig carriers criss-crossing the city streets, soldiers everywhere, tommy guns pointed at stomach level, smoke curling black against the daylight sky, the smell of cordite, house-to-house searches, doors being kicked down, the commonness of death. (Jackson 1972, 55) If the past and present have produced the accumulation of the premature death of black people, then Jackson imagines the complete undoing of the social order as the way out of temporal capture. The future of the social order means no future, and so the future must come to an end. Fanon similarly imagines the relationship between the native and the future of the social order: “They won’t be reformed characters to please colonial society, fitting in with the morality of its rulers; quite on the contrary, they take for granted the impossibility of their entering the city save by hand grenades and revolvers” (Fanon 1963, 130). Here, the invitation to the safety and security of the city (or the social order as it is) is an offer to continue a life that is a half-life. Possibility comes from a starting point that is an end. In her writing from captivity, Angela Davis articulates this logic in relationship to the prison. In the 1971 essay “Political Prisoners, Prisons, and Black Liberation,” Davis argues that the sole purpose of the police was to “intimidate blacks” and “to persuade us with their violence that we are powerless to alter the conditions of our lives” (39). Davis theorizes the violence of police and prisons as pervasive and unrelenting. Throughout the essay, Davis names the complicity between an anti-blackness as old as liberal freedom and new forms of penal and policing technologies that emerged in the 1970s in response to political upheaval and insurrection. Davis calls for the abolition of what she terms the “law-enforcement-judicial-penal network” in addition to arguing for the construction of a mass movement that could contest the “victory of fascism” (50). Yet, in line with the political imaginaries at the time – an imaginary articulated by Born In Flames – Davis wanted more than an end to the prison and the violence of the police. Like other early black feminist writing, Davis did not just call for the overthrow of one form of state power so that a new one may take its place. Instead, Davis implied that the social order itself must be undone. For Davis, the prison was not the primary problem. The prison was made possible by the libidinal, symbolic, and discursive regimes that actualized the uneven institutionalized distribution of value and disposability along the lines of race, gender, and sexuality. Davis called for the total epistemological and ontological undoing of the forms of knowledge and subjectivity that were produced by the racial state. In short, hope, for Davis, meant that the prison could not have a future, and more so, that a world that could have the prison would need to end as well. Critically, Jackson did not understand the end of the future of the social order as particularly different from his present because “I’ve lived with repression every moment of my life, a repression so formidable that any movement on my part can only bring relief” (1972, 7). Jackson’s understanding of the future arose from his critique of reform. Derived from his correspondence with Davis, Jackson argued that the essence of fascism was reform or more specifically “economic reform” (118).11 Every reform that modified or improved the operations of global capitalism and white supremacy only extended the life of the social order. And the life of the social order, according to Jackson and Fanon, is parasitic on the control, exploitation, incarceration, and premature death of black people. The creation of a new world could not rely on “long term politics” because patience, reform, and change meant nothing to “the person who expects to die tomorrow” (10). For Jackson, the future is a time those without a future cannot risk. The future was not coming and so the present could not wait.

#### We must adopt an ethic that is willing to risk total extinction in order to form the ethical subjectivities that are actually oriented towards a world without antiblackness.

Pinkard 13, Lynice Pinkard, “Revolutionary Suicide: Risking Everything to Transform Society and Live Fully”, Tikkun 2013 Volume 28, Number 4: 31-41, http://tikkun.dukejournals.org/content/28/4/31.full]

I’d like to present an alternative to conventional identity politics, one that requires that we understand the way that capitalism itself has grown out of a very particular kind of identity politics — white supremacy — aimed at securing “special benefits” for one group of people. It is not sufficient to speak only of identities of race, class, and gender. I believe we must also speak of identities in relation to domination. To what extent does any one of us identify with the forces of domination and participate in relations that reinforce that domination and the exploitation that goes with it? In what ways and to what extent are we wedded to our own upward mobility, financial security, good reputation, and ability to “win friends and influence people” in positions of power? Or conversely, do we identify (not wish to identify or pretend to identify but actually identify by putting our lives on the line) with efforts to reverse patterns of domination, empower people on the margins (even when we are not on the margins ourselves), and seek healthy, sustainable relations? When we consider our identities in relation to domination, we realize the manifold ways in which we have structured our lives and desires in support of the very economic and social system that is dominating us. To shake free of this cycle, we need to embrace a radical break from business as usual. We need to commit revolutionary suicide. By this I mean not the killing of our bodies but the destruction of our attachments to security, status, wealth, and power. These attachments prevent us from becoming spiritually and politically alive. They prevent us from changing the violent structure of the society in which we live. Revolutionary suicide means living out our commitments, even when that means risking death. When Huey Percy Newton, the cofounder of the Black Panther Party, called us to “revolutionary suicide,” it appears that he was making the same appeal as Jesus of Nazareth, who admonished, “Those who seek to save their lives will lose them, and those who lose their lives for the sake of [the planet] will save them.” Essentially, both movement founders are saying the same thing. Salvation is not an individual matter. It entails saving, delivering, rescuing an entire civilization. This cannot be just another day at the bargain counter. The salvation of an entire planet requires a total risk of everything — of you, of me, of unyielding people everywhere, for all time. This is what revolutionary suicide is. The cost of revolutionary change is people’s willingness to pay with their own lives. This is what Rachel Corrie knew when she, determined to prevent a Palestinian home in Rafah from being demolished, refused to move and was killed by an Israeli army bulldozer in the Gaza Strip. This is what Daniel Ellsberg knew when he made public the Pentagon Papers. It’s what Oscar Schindler knew when he rescued over 1,100 Jews from Nazi concentration camps, what subversive Hutus knew when they risked their lives to rescue Tutsis in the Rwandan genocide. This call may sound extreme at first, but an unflinching look at the structure of our society reveals why nothing less is enough. Before returning to the question of revolutionary suicide and what it might mean in each of our lives, let’s look at what we’re up against.

### Advantage

#### No space war impact – limited response and low credibility of attacks

Elbridge Colby, 1-27-2016, “*From Sanctuary to Battlefield: A Framework for a U.S. Defense and Deterrence Strategy for Space*,” CNAS, pg. 17-18, <https://www.cnas.org/publications/reports/from-sanctuary-to-battlefield-a-framework-for-a-us-defense-and-deterrence-strategy-for-space>. ZKMSU

But such a threat is of substantially decreasing credibility. In today’s much different context, no one really believes that a limited space attack would necessarily or even plausibly be a prelude to total nuclear war. Would the United States respond with a major strategic strike if China or Russia, in the context of a regional conflict with the United States, struck discriminately at implicated U.S. space assets in the attempt to defang U.S. power projection, all while leaving the broader U.S. space architecture alone? Not only does such a massive response seem unlikely – it would be positively foolish and irresponsible. Furthermore, would other nations regard attacks on assets the United States was actively employing for a local war as off limits to attack? Indeed, any reasonable observer would have to judge that such discriminate attacks on U.S. space assets would not necessarily be illegitimate, as, by the United States’ own admission, it relies greatly on its space architecture for conventional power projection. Moreover, official U.S. statements on how the United States would respond to attacks on its space assets – to the limited extent such statements exist and the degree to which those given are clear – offer no indication it would respond massively to such strikes.53 Perhaps more to the point, senior responsible U.S. officials have telegraphed that the United States would indeed not necessarily respond massively to attacks against its space assets.54 In light of these factors, any U.S. space deterrence strategy that is predicated on an all-or-nothing retaliation to space attacks will become increasingly incredible and thus decreasingly effective – and indeed might even invite an adversary’s challenge in order to puncture or degrade U.S. credibility.

#### No miscalc or escalation

James Pavur 19, DPhil Researcher at the Cybersecurity Centre for Doctoral Training at Oxford University, and Ivan Martinovic, Professor of Computer Science in the Department of Computer Science at Oxford University, “The Cyber-ASAT: On the Impact of Cyber Weapons in Outer Space”, 2019 11th International Conference on Cyber Conflict: Silent Battle, https://ccdcoe.org/uploads/2019/06/Art\_12\_The-Cyber-ASAT.pdf

A. Limited Accessibility

Space is difficult. Over 60 years have passed since the first Sputnik launch and only nine countries (ten including the EU) have orbital launch capabilities. Moreover, a launch programme alone does not guarantee the resources and precision required to operate a meaningful ASAT capability. Given this, one possible reason why space wars have not broken out is simply because only the US has ever had the ability to fight one [21, p. 402], [22, pp. 419–420].

Although launch technology may become cheaper and easier, it is unclear to what extent these advances will be distributed among presently non-spacefaring nations. Limited access to orbit necessarily reduces the scenarios which could plausibly escalate to ASAT usage. Only major conflicts between the handful of states with ‘space club’ membership could be considered possible flashpoints. Even then, the fragility of an attacker’s own space assets creates de-escalatory pressures due to the deterrent effect of retaliation. Since the earliest days of the space race, dominant powers have recognized this dynamic and demonstrated an inclination towards de-escalatory space strategies [23].

B. Attributable Norms

There also exists a long-standing normative framework favouring the peaceful use of space. The effectiveness of this regime, centred around the Outer Space Treaty (OST), is highly contentious and many have pointed out its serious legal and political shortcomings [24]–[26]. Nevertheless, this status quo framework has somehow supported over six decades of relative peace in orbit.

Over these six decades, norms have become deeply ingrained into the way states describe and perceive space weaponization. This de facto codification was dramatically demonstrated in 2005 when the US found itself on the short end of a 160-1 UN vote after opposing a non-binding resolution on space weaponization. Although states have occasionally pushed the boundaries of these norms, this has typically occurred through incremental legal re-interpretation rather than outright opposition [27]. Even the most notable incidents, such as the 2007-2008 US and Chinese ASAT demonstrations, were couched in rhetoric from both the norm violators and defenders, depicting space as a peaceful global commons [27, p. 56]. Altogether, this suggests that states perceive real costs to breaking this normative tradition and may even moderate their behaviours accordingly.

One further factor supporting this norms regime is the high degree of attributability surrounding ASAT weapons. For kinetic ASAT technology, plausible deniability and stealth are essentially impossible. The literally explosive act of launching a rocket cannot evade detection and, if used offensively, retaliation. This imposes high diplomatic costs on ASAT usage and testing, particularly during peacetime.

C. Environmental Interdependence

A third stabilizing force relates to the orbital debris consequences of ASATs. China’s 2007 ASAT demonstration was the largest debris-generating event in history, as the targeted satellite dissipated into thousands of dangerous debris particles [28, p. 4]. Since debris particles are indiscriminate and unpredictable, they often threaten the attacker’s own space assets [22, p. 420]. This is compounded by Kessler syndrome, a phenomenon whereby orbital debris ‘breeds’ as large pieces of debris collide and disintegrate. As space debris remains in orbit for hundreds of years, the cascade effect of an ASAT attack can constrain the attacker’s long-term use of space [29, pp. 295– 296]. Any state with kinetic ASAT capabilities will likely also operate satellites of its own, and they are necessarily exposed to this collateral damage threat. Space debris thus acts as a strong strategic deterrent to ASAT usage.

#### MAD checks escalation – solves taiwan scenario

Bowen 18 [Bleddyn Bowen, Lecturer in International Relations at the University of Leicester. The Art of Space Deterrence. February 20, 2018. https://www.europeanleadershipnetwork.org/commentary/the-art-of-space-deterrence/]

Fourth, the ubiquity of space infrastructure and the fragility of the space environment may create a degree of existential deterrence. As space is so useful to modern economies and military forces, a large-scale disruption of space infrastructure may be so intuitively escalatory to decision-makers that there may be a natural caution against a wholesale assault on a state’s entire space capabilities because the consequences of doing so approach the mentalities of total war, or nuclear responses if a society begins tearing itself apart because of the collapse of optimised energy grids and just-in-time supply chains. In addition, the problem of space debris and the political-legal hurdles to conducting debris clean-up operations mean that even a handful of explosive events in space can render a region of Earth orbit unusable for everyone. This could caution a country like China from excessive kinetic intercept missions because its own military and economy is increasingly reliant on outer space, but perhaps not a country like North Korea which does not rely on space. The usefulness, sensitivity, and fragility of space may have some existential deterrent effect. China’s catastrophic anti-satellite weapons test in 2007 is a valuable lesson for all on the potentially devastating effect of kinetic warfare in orbit.

#### No impact to debris – it hits stations all the time.

Cain ’15 (Fraser; 12/23/15; writer for Universe Today; “How Do Astronauts Avoid Debris”; http://www.universetoday.com/121067/how-do-astronauts-avoid-debris)

So, just how do we keep our space stations, ships and astronauts from being riddled with holes from all of the space junk in orbit around Earth? We revel in the terror grab bag of all the magical ways to get snuffed in space. Almost as much as we celebrate the giant brass backbones of the people who travel there. We’ve already talked about all the scary ways that astronauts can die in space. My personal recurring “Hail Mary full of grace, please don’t let me die in space” nightmare is orbital debris. We’re talking about a vast collection of spent rockets, dead satellites, flotsam, jetsam, lagan and derelict. It’s not a short list. NASA figures there are **21,000 bits of junk** bigger than 10 cm, **500,000 particles** between 1 and 10 cm, and more than **100 million** smaller than 1 cm. Sound familiar, humans? This is our high tech, sci fi great Pacific garbage patch. Sure, a tiny rivet or piece of scrap foil doesn’t sound very dangerous, but consider the fact that astronauts are orbiting the Earth at a velocity of about 28,000 km/h. And the Tang packets, uneaten dehydrated ice cream, and astronaut poops are also traveling at 28,000 km/h. Then think about what happens when they collide. Yikes… or yuck. Here’s the International Space Station’s solar array. See that tiny hole? Embiggen and clarinosticate! That’s a tiny puncture hole made in the array by a piece of orbital crap. The whole station is **pummeled by tiny pieces of space program junk drawer contents**. Back when the Space Shuttle was flying, NASA had to **constantly replace their windows because of the damage they were experiencing** from the orbital equivalent of Dennis the Menace hurling paint chips, fingernail clippings, and frozen scabs.

**Probability – 0.1% chance of a collision.**

**Salter 16** [(Alexander William, Economics Professor at Texas Tech) “SPACE DEBRIS: A LAW AND ECONOMICS ANALYSIS OF THE ORBITAL COMMONS” 19 STAN. TECH. L. REV. 221 \*numbers replaced with English words] TDI

The probability of a collision is currently low. Bradley and Wein estimate that the maximum probability in LEO of a collision over the lifetime of a spacecraft remains below one in one thousand, conditional on continued compliance with NASA’s deorbiting guidelines.3 However, the possibility of a future “snowballing” effect, whereby debris collides with other objects, further congesting orbit space, remains a significant concern.4 Levin and Carroll estimate the average immediate destruction of wealth created by a collision to be approximately $30 million, with an additional $200 million in damages to all currently existing space assets from the debris created by the initial collision.5 The expected value of destroyed wealth because of collisions, currently small because of the low probability of a collision, can quickly become significant if future collisions result in runaway debris growth.