

Crafting Effective Rules for Internet Platforms

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Lydia DePillis: Briefly explain how you come at the Amazon question, and what you see as the problem, and then [give] your bullet-point solution.

Marshall Steinbaum: Thanks, everyone, for coming. I'm Marshall Steinbaum. I'm research director of the Roosevelt Institute, and it's great to be on a panel specifically talking about remedies for Amazon's market power and domination of online retail. As I see it, the overall, or the nature of, the economic problem we're solving is that Amazon is an enormously powerful platform that is also competing with the other companies that are attempting to do business on that platform. And so I think that the two principles we need to guide any remedy that we [bring] to bear on this issue: one is a set of neutrality rules—common carriage—that we impose on the platform to make sure that everyone who's doing business on it has a fair shake. And that's a sort of regulatory approach. And then the other [principle] that I think is necessary to make that approach work is structural separation. That implies that Amazon, if they're going to be in the business of operating this platform, that is their core business—they can't be in competition with the other sellers on that platform, and that means that, as far as Amazon manufactures goods, that it retails goods, that it sells on the platform, that those businesses should be separated.

Amazon is a very complicated company with multiple lines of business. Not only does it have this online platform that needs to be subjected to a common carrier regime, but it also has a certain logistics network that operates behind the scenes to get all of these goods into your home and delivered, and that also needs to be a common carrier. Whether that needs to be separated from the online platform . . . I have not yet formed an opinion. I'd be curious if other people have views on that.

So the two ideas that I have in mind are, on the one hand, common carriage regulation; on the other hand, structural separation—that's really an antitrust remedy. I wanted to talk about three

specific antitrust-type [issues] that I would say fall under the heading of structural separation. And these are motivated by a recent paper that I wrote with Maurice Stucke, called the “Effective Competition Standard.”

We propose a series of legislative proposals to change antitrust law, and three of them in particular pertain to Amazon and potential antitrust cases against Amazon. One is that we establish a right of market access for suppliers that would mean they could bring a monopolization case against Amazon for discriminating or completely excluding them from the market. Another is that we have a presumption of illegality for vertical mergers where one or both parties has market power. Amazon clearly has market power. There are metrics for that. And that would mean that something like the Whole Foods merger, which was analyzed as a vertical merger by the authority—the part they did analyze, they basically approved it right away—that would be presumptively illegal under our effective competition standard, because Amazon has market power. And so we would be concerned about them extending their market power or defending it by way of a vertical merger.

Finally, the issue of predatory pricing has basically completely fallen off the radar screen vis-à-vis antitrust. We decided that predatory pricing is actually good and therefore we'll just pretend that it never happens. And if it ever did happen, then it would be good. So, we won't prosecute it. I think that Lina Khan and others have shown very definitively that Amazon is engaged in this, at least in economic terms. Certainly, it would be difficult to prove that case under existing precedent for predatory pricing, but that definitely doesn't mean it's an economic problem. And so our effective competition standard establishes presumptive illegality for predatory pricing, and without the need for recoupment as it's defined under existing law. By those three means, you would have a kind of antitrust arsenal to bring against Amazon.

Stacy Mitchell: I'm Stacy Mitchell. I'm the the co-director of the Institute for Local Self-Reliance. We're a national think tank and advocacy organization. We've been tracking and doing research on Amazon for a lot of years, and it's nice to finally see as much interest and concern as there is about this company. We published a big report in 2016 called “Amazon's Stranglehold,” which gives you a sense of our perspective. Someone told me I should have called it “Amazon's Death Grip.”

I also did a cover story for *The Nation* earlier this year called “Amazon Doesn't Just Want to Dominate the Market—It Wants to Become the Market,” which is our essential thesis about the company. Amazon is very much interested in replacing the market, and I think this gets to the heart of why it is a fundamental threat to competition, and ultimately to democracy. As the dominant platform for product search, it means that other firms that want to make and deliver something or retail something to consumers increasingly have no choice but to rely on Amazon. Amazon has become the intermediary, and this means that it has the ability to set terms for every other company in the economy that wants to reach consumers. It often uses this power to privilege its own goods and services and, for things that it doesn't want to deal with, it lets other

companies produce and deliver those things, while levying in effect a kind of tax on their trade—a tax that they have no choice but to pay.

It has the ability to pick winners and losers. Increasingly, we no longer have winners and losers being chosen by the market, but increasingly chosen by Amazon. This is a problem. This is not only a fundamental threat to competition—in effect what Amazon is doing is assuming a kind of governing role. Markets should be defined by public rules, and we can think about this in the most traditional sense. What day is the village gonna have its market on? Who's going to be allowed to set up there? Where can people locate their stands? and so on. How are we going to make sure that the scales are fair? Those kinds of questions.

We're moving into this world where trade is going to be happening in a private arena controlled by a private actor that sets the rules and the regulations. You couldn't really think of any more fundamental a threat to the nature of competition, and ultimately to government at the very same time, because as I said that's very much a public function that Amazon is assuming. So I agree with a lot of what Marshall said in terms of solutions. There does need to be a structural separation, a breakup of Amazon—at the very least a splitting off of its retailing and manufacturing division from its role as a platform, and possibly also separating AWS, Amazon Web Services, which it uses to cross-subsidize and engage in predatory pricing, which Marshall referred to. So there does need to be a structural breakup of the company along some of those lines.

I also agree that the platform needs to have some sort of public interest oversight, that this is a kind of essential facility, or it's a common carrier or utility—there are different ways to go—but it's necessary to regulate that. I agree about resurrecting prosecuting predatory pricing as well.

I think one of the questions we face is, How do we regulate e-commerce platforms in a way that we have more than one? How do we cultivate other platforms that can compete with Amazon? I think it's going to be a small enough number in the future that we're still going to have to apply some sort of common carrier rules to them, but we'll be better off if sellers and buyers have options about which platform . . . if we let competition do some of the work for us and not rely exclusively on regulation. So I think one of the questions is, How do we regulate that platform in such a way that we don't lock in Amazon's dominance but we actually open the way for other companies to come along and get to fulfill that service?

Denise Hearn: Hi, I'm Denise Hearn, co-author with Jonathan on the book. We're colleagues at Variant Perception research, the investment strategy firm. My research for the book primarily focused on how concentration is affecting worker and worker bargaining power, and I think that Amazon is a great example of some of the ills that we see in this regard. Ten percent of Amazon contract workers in Ohio are on food stamps, according to one study that was done. We see some of the worst labor standard practices, where warehouse workers are not able to take bathroom breaks because the building is so large, and you only get 15 minutes and you can't walk to the bathroom, there and back, by the time your break is over. So, I certainly agree with all of the points around the fact that Amazon now dominates multiple different industries.

It's a retailer, it's a manufacturer, it's an e-commerce platform, it's cloud-hosting, publisher of content, and grocer. What will it take up next?

But I think one of the aspects that is important to consider are the workers that are contributing to this massive amount of value. They are seeing, and we've seen, private-sector union rates massively decline over the last number of decades. There was a time where one in five workers in America were part of a union. Now that's closer to one in 10. To take a slightly different angle, something that I would like to see is a resurgence of the labor movement and some worker organization around fighting for some better labor practices. That hopefully would then allow them to be a countervailing force against some of [tech monopoly's] ill effects.

DePillis: I want to continue in the vein of Amazon's impacts on workers, which everybody's written about from various angles. One of the interesting events of the past couple of months in this ramp-up to the Amazon HQ2 announcement was, it just it decided to raise the minimum wage to \$15 an hour, which is pretty impressive, considering the very slow steps that other large retailers have taken over the years. If Amazon's thinking is monopsonous, it at the moment seems to be using that power for good. And it says it's going to advocate for a higher minimum wage nationally. What's the problem here?

Steinbaum: It is a good sign. There's a long history of basically securing company-specific minimum wages from powerful companies that, in turn, become benchmarks that you can then take to their competition and say, "Well, your competition can pay \$15 an hour. If you can't, then why should we care whether you still exist?" Stacy is probably not going to be too happy to hear about Amazon taking yet more power as the only company that can pay \$15 an hour.

What I would say the problem here is is that they're actually not going to be paying that, or potentially not going to be paying that, to all of their workers. The idea that they would have employees of Amazon working alongside contractors and employees of contractors raises the possibility that they can basically continue to use the threat of outsourcing work to create disparate working conditions for people doing essentially the same job. I actually think that that should be considered—that there are already ways in which that would be a violation of labor regulations. Unfortunately, those are under-enforced. I also think that there's an argument that those should be considered antitrust violations because the idea would be that this is monopsonous abusing of market power, to prolong and extend a monopsony by outsourcing labor and treating workers in essentially the same economic situation in disparate ways as a way of disciplining bargaining power.

Mitchell: I think there are a lot of devils in the details about the \$15, and the number of sub-contracted workers and so on—the workers who are losing other kinds of benefits in this process. The context of that announcement is important; the context is of a very tight labor market, and Amazon needed to hire 100,000 people temporarily over the holidays. And the other context is the campaign that Senator Bernie Sanders and Ro Khanna were running against Amazon.

So the context is a lot of political peril for Amazon. I think they made a very astute political decision to not only raise wages in a tight labor market, which they were going to have to do anyway, but to go for 15 specifically as a number that has a lot of political currency, particularly on the left, and at a moment when there's growing scrutiny of Amazon's power. This was very much a way to kind of divide the left. What you saw simultaneously was Amazon employ something very astute on the right—politically navigating the fact that the only real existential threat that this company faces is a potential for government intervention.

On the wage front, Amazon's long-range strategy for cutting labor costs is to get rid of workers, to automate, and they're moving quite rapidly in that direction. Already, they use about half as many workers for every \$10 million in business that they do as brick-and-mortar retailers use. As they grow, we're actually losing more jobs than we're gaining, and over time that's accelerating. They're in fact using fewer workers per unit of sales now than they were just two years ago. So that's their long-range strategy for cutting labor costs.

The last thing I'll say about \$15 is, when you look metro by metro—we have done some of this analysis—average warehouse wages for similar kinds of work at other companies across that job category or those job categories are *higher* than \$15 an hour. So this is a company that's still very much using its market power to hold down and push down the wages in this sector.

Frank Pasquale: I am really interested in this concept of functional sovereignty. This was a talk that I gave in 2017 for [unintelligible, German] associated with the Social Democratic Party in Germany. A lot of the parts of Europe are very concerned about, how do older political parties, how do older political movements, deal with the growing importance of very large corporations? My worry is that many areas of contemporary life are moving from territorial sovereignty, where the government has effective power over a region, to functional sovereignty, where different companies have power over different parts of our life. That that is particularly felt with, say, Uber—they have sovereignty over how are rides being done. Airbnb has a certain level of sovereignty over how room-sharing arrangements are done. And, with respect to Amazon, there's certainly a way in which the aspiration to a universal logistical function raises a similar type of very high-level concern.

One of the things that I think is really interesting—and I know it's a narrow part of the problem, but I think it actually helps illuminate a larger area of dispute here—is the question of disputes among people who are on Amazon's platform and Amazon itself, or between buyers and sellers on it. There's a lot of legal work coming out now, led by an article called “The Corporation as Courthouse,” which says that the future of dispute resolution will be having these very large platforms essentially take on judicial functions. Sort of the sovereign future. I went to a talk in Hong Kong in the summer where they talked about Tencent juries. If there's a dispute on Tencent, they actually have the system of juries, where you can join the jury and help decide between buyer and seller, who's right, who's wrong.

I'm not necessarily going to come out against that as a form of dispute resolution, although I think there are many things to worry about in it. Do we know the extent to which, when we

abdicate this sort of quasi-function to a large platform, the platform's interest itself might play a dominant role in deciding who wins and who loses those types of disputes? One thing I might think about—savvy buyers might think about, or sellers—is whether to think about how much of their purchases to allocate to Amazon or how much of their sales to allocate to Amazon. If there's a significant worry about disputes and other types of issues that comes on here, do I get a certain tilt to my favor if I'm a big part of this platform? I think that really undermines concepts of due process. The first element of due process is an unbiased tribunal—that goes back to Judge Henry Friendly's work on due process. Because of that, we really have to think deeply about, if we are allowing these large platforms to take on this type of function of dispute settlement, are they fair? Can they be unbiased? How could there potentially be some solutions?

I admit, that's regulatory; that's not about breaking up. I actually just tweeted a good article about breaking up these things. But this is just my unique angle on it, to have a sense of what could be lost if they take over this traditional role.

DePillis: That's really fascinating, because Amazon's position on arbitrating disputes is that the customer's always right. And you, as a seller, don't have the option to not participate because that's the only way to reach customers. But I do hear from sellers, when I talk to them, who say, "This is an awesome way to reach customers. Before, I would have had to convince some distributor to pick up my product, or I had to convince a publisher that I was a big-enough deal to put out a book, but now I can just publish myself." From a seller's perspective, does it maybe offer some greater access to a market than it used to, in a slightly more fair way because it's all automated? This is all devil's advocacy, by the way. I recognize the flaws in the argument already, but I want you to point them out. So what are the pitfalls for sellers, despite the fact there's this universe of customers that are now available?

Mitchell: There are a lot there. I'll start with the notion that it's an even playing field. It's automated. Of course the positioning of sellers is all driven by algorithms that are structured to favor Amazon.

You mentioned book authors, for example—people who do self-publishing. This is a good example of a whole set of people who initially felt very empowered by Amazon to self-publish their own books and find an audience for them. And certainly, there are some that have done very well doing that, but what we've seen is that Amazon has locked down the e-book market. I think they now have 90 percent of e-book sales and have really locked down the self-publishing market, including buying up other self-publishing platforms. They are increasingly changing the terms for sellers, and it's becoming less and less lucrative for sellers—for publishers, I mean, for authors. And [authors] are increasingly being squeezed in various ways, including by having to sign exclusive deals to have their works published only through Amazon and not to be available through other platforms and through other retailers.

More broadly, if you think about what retail is all about, it's about how we connect people who produce things with people who want to buy things. The more varied and diverse that interface is, the more channels that producers have to reach buyers, and the better off we are.

We've interviewed a lot of manufacturers, like small toy manufacturers, midsize toy manufacturers. That's a good industry to look at in this context because it's one where there's a lot of innovation and new product development. What they've told us is that, in a world where everything collapses to a single channel, they have no way to introduce new products. Traditionally, the way that they introduced a new product is they found a handful of local toy stores. They go in and talk to them about what the product is; the owner really likes it; they put it in their store; they start hand-selling it, word of mouth; other toy stores pick it up, and maybe it gets really big and it's at Target and Walmart and Amazon, eventually. That's the pathway, and in order to get that rolling, you only have to find a few retailers who really care about the product.

Amazon is great for search, but it's terrible for discovery, and if you're a small or midsize company without a big national advertising budget, without any sway with Amazon, your product is going to be how many pages down? I mean, it's going to be utterly lost. And it becomes very difficult in that context.

And there's data on this. Codex Group, for example, has found that you're three times more likely to discover a book that you'd like to read that you didn't know about if you're shopping in a brick-and-mortar bookstore than if you're browsing on Amazon. We can see this in the data about books where, collectively, we're reading a smaller number of best sellers and fewer midlist titles. We're not only seeing that in books, it's happening across the product spectrum.

Hearn: One of the difficulties is that, now with Amazon as the dominant e-commerce platform, it puts it in a compromised position with its suppliers. It now has access to incredibly vast amounts of data on what products are selling well, what products consumers are interested in. And now that it's actually manufacturing its own products, it can use that information that it's received directly from its suppliers selling on the platform to be able to essentially undercut those suppliers by producing those products itself potentially, or by advertising favored suppliers of others. So I think that definitely puts it in a compromised position. Going back to the data piece, I think that that's an important aspect of its dominance that puts it in that compromised position.

Steinbaum: I think those are both excellent statements as to the reality of how Amazon operates and how that may seem to be beneficial to suppliers: by providing this great market and channels of distribution that don't otherwise exist that they then turn to their advantage steadily over time. You're basically doing business as a supplier on behalf of Amazon as opposed to on behalf of yourself.

I want to point out an inconsistency between the way Amazon presents itself in this context, the way that Lydia voiced it in the question, as enabling small businesses to reach the market. That has a certain appeal to a certain audience. On the other hand, when Amazon is presenting itself to an antitrust audience, they tend to go for, "Actually, it's really good that we're putting all these

small businesses out of business, because we're so much more efficient than they are." They're wringing all of the rents out of the system. This was especially apparent at an FTC hearing the other week, where Jonathan Nuechterlein presented this paper that supposedly shows that Amazon's great. And it's just like the A&P, which was great, and it would be terrible to bring an antitrust case against Amazon, just like it was terrible to bring the antitrust case against the A&P. It was full of all these economic assumptions about how this great platform is so beneficial to consumers and makes life harder for middlemen and wholesalers that were really light on any actual proof that that's really true.

That's true of the critique of the A&P case, and it's also very much true of the kind of backlash to the questioning of Amazon's market power and the potential for an antitrust case against it. So I just wanted to highlight that this is like other tech platforms. They present their business model and themselves very differently to different audiences in order to escape any type of regulatory scrutiny.

Questioner 1: Hi, my name is Drew Clark. I'm with BroadbrandBreakfast.com. I'm wondering if there can be anything done on algorithms and kind of wresting algorithms out of Facebook or Amazon or Google. Because when we get to the issue of how they're self-dealing or benefitting themselves over others, it really has to come back to the way they're sorting through searches in the data. I'm just asking if anyone has any thoughts on a way that that could be gotten.

Pasquale: I've thought a bit about this algorithm problem, in the Google or Facebook context, and I haven't written directly on Amazon, but I think this would be directly applicable.

I have this 2010 article called "Beyond Innovation and Competition: The Need for Qualified Transparency in Internet Intermediaries." My idea there is that you always run into, in the question of the algorithms, this conflict between the public interest in transparency and the corporate interest in trade secrecy. So the idea there is that you have the qualified transparency of a small-enough group of people—and in that article I call it an internet intermediary regulatory council. That group of people could try to understand what's going on, in the same manner as the Office of Financial Research set up by Dodd-Frank, to understand some of the more difficult-to-illuminate corners of financial markets.

Given that we've done that type of intervention within the financial system, it would not be that heavy a lift to try to develop similar types of intelligence about the tax system, particularly when we think about the parallels there—and these are parallels that I developed in my book *The Black Box Society*—between the role of funding and a role of finding.

In the 19th and 20th century, part of the rationale for the separation of banking and commerce is because we think the entities that fund others in the economy are so important that they bear special regulatory burdens and that there are certain systems of structural separation you need to impose upon them. Just like funding, the finding function is something so fundamental that you would have a similar type of response in terms of policymakers needing to deeply understand what's going on. That's going to be the work of people—computer programmers,

lawyers, others—who can do this together. But sometimes they come back at us and say, “Oh, machine learning is too complicated for anyone to understand.”

Well, I've addressed that in this little post called "Bittersweet Mysteries of Machine Learning," where I say, at the very least, what's not too complicated to understand is what data's going in, and what's coming out of the system. You can regulate it, at the very least, at those two points. Even if you have an account of machine learning that says it is too complex for the ordinary person to understand—or for anybody to understand, which is the at the most extreme end of those claims.

DePillis: I think that's a good point, because it's usually used as a reason we're not regulating these companies: They're way too complicated, the technology moves so fast, no regulator could possibly understand. But also, sadly, the Office of Financial Research, which was set up under Dodd-Frank, has been defunded and dissolved essentially by Treasury. I would love to have an office that did get into how these companies work. And I would hope it would be more protective than the last one we set up.

Steinbaum: The issue of algorithms setting prices and fixing prices between independent sellers has potential for liability under Section 1 of the Sherman Act. This is something I've written about with respect to Uber. Because of this question of whether Amazon is one entity, and therefore a monopoly, versus fixing prices among multiple entities, that is to say a cartel under the framework of Section 1—they're kind of very good at straddling that boundary—and therefore falling into neither category. But I think we need to look at, given how much easier it is to prove cases under Section 1, if this algorithm, if the point of it is to fix prices, which has been shown to be the case in Amazon in certain cases, that the price-setting algorithm amounts to cartelization. Then, given that the whole point of it is to basically have a company that's managing a cartel that's a third party, that should not be a bar to liability under Section 1.

Questioner 2: I'm John with an anti-Amazon citizens group over in Arlington. I wanted to ask about the opinion you have on the relationship between political power and commercial power. Adolf Hitler famously told the CEOs of German companies: “You don't have democracies in corporations, why should you have democracies in government?” But I know that there's been this narrative, maybe within the last 20 to 30 years, of corporate power dominating governmental power. How do you see that going now? Especially because Bezos's income seems to be at a tipping point. It's been getting bigger, but now it's getting bigger, faster and faster, almost astonishingly so. What kind of danger are we in, in the political world?

Mitchell: There's so much to say on that question, and especially today, with Amazon's announcement that its HQ2—if we can really even refer to it as that—is going to go to Crystal City, just across the river here, and also in New York. It's not surprising that Amazon is going to build a significant presence in the center of government power and in the center of media power. Those are two traditionally important ways of checking concentrated economic power, and that this is a company that wants to be close to both is notable and obvious for why.

I think that Amazon really wants to envelop government. There are aspects of what it's doing—really usurping government power—that are taking on the functions of government in terms of setting the rules for the economy, setting the rules of trade, being able to levy certain kinds of taxes, being an arbiter of disputes . . . all of those kinds of things. It is assuming the functions of government, and then it also wants to control government data and government purchasing. Amazon not only has become a huge host for data—all the intelligence agencies and, increasingly, other parts of government, its cloud services host and manage a lot of that data—but Amazon is moving to position itself as the portal through which . . .

[break in the video]

Mitchell: They've done this at the local level. We did a report in July about a contract that Amazon quietly signed last year that we know at least 1,500 cities, counties, and school districts have signed on to, where essentially Amazon is becoming the supplier for everything that they use. And the contract violates every norm you can think of in public-sector procurement. It has no fixed prices, for example. The prices fluctuate according to a dynamic formula established by Amazon. So there's no protection for your tax dollars, there's no transparency. And Amazon's also using the contract, we found, to expand its monopoly power, because what it's doing is it's going to local governments and saying, "Well, you can still do business with those local companies that you've always been doing business with—they can just become sellers on our platform, and we'll then know everything about their business, take a 15 percent cut of their trade, which is more than their profit margin, and sideline them ultimately as competitors." And there are lots of governments going along with this, just as we're seeing today with these proposals in New York and here in northern Virginia to give Amazon . . . I think we're at 2 or 3 billion dollars of subsidies on the table for this company.

A lot of people are mobilizing, and there are some really interesting things happening both in New York and here, so I don't think those things are a done deal, and I'm looking forward to the fight.

Pasquale: There's a relatively centrist antitrust commentator, Dan Crane, who wrote a whole article on this antitrust-fascism connection, which was fascinating, and I can follow up with you afterwards on this one and a couple of others. Rafael [unintelligible] has done some work on the German example of how, you know, these huge companies in Germany.

I think also what's so fascinating and troubling is the degree to which some of these very large internet firms are being seen as potential infrastructure for war-fighting. It shows up in, for example, in the book *Ghost Fleet*, by Peter Singer and August Cole, where there's some imagination on both the Chinese and the American side that critical to the war-fighting effort will be efforts to either appropriate or otherwise use the power of these very large internet firms. Really thinking deeply about that, it becomes an issue—not just of economic but also of national-security importance. But then the question becomes, What type of national security do we want? Do we want one that would be underwritten by the potential alliances between the

largest firms and the largest governments, or do we think there are other ways to organize the political economy globally? It raises some very difficult questions.

I think that the fascism questions should be on table, because there's been a lot of concern. In Germany, immediately after World War II, they tried to ensure that the Länder, as opposed to the central government, were the media regulators. I've actually done some consultations with the media authority of Berlin and Brandenburg state where I learned some of this history. Part of that was because of the concern about how to let these nation-level, massive firms exercise so much power.

DePillis: I've asked Amazon how many contracts it has with government agencies for cloud procurement, and they would not answer that question. Interestingly, looking through the subsidies that just came out this morning from New York and Virginia, the per-employee subsidy in Virginia is less than half of what it is in New York, which suggests two things. One, Amazon really had to be in the D.C. area, so they were willing to give up a little bit. And, two, those subsidies have to be appropriated by the Virginia General Assembly, whereas the ones in New York do not—they're just going through the governor. So democratic accountability is really important here.

Questioner 3 (Hal Singer): Frank, you raise this interesting question about quasi-judicial function of the platform in adjudicating disputes, and it reminded me of an episode that broke news this weekend. And I don't know if you saw, but Amazon, Apple, and Amazon agreed to kick off independent refurbishers and resellers of all Apple products, including iPhones. When I read that, I was thinking, boy, that's quite a win for Apple, because it basically gives them protection in the aftermarket, both in the repair of Apple products but also, to the extent that used phones or refurbished phones bring down the pressure on the price of new phones, that would be another win for Apple. So it seems to me that that was quite a gift. Is that the kind of example you have in mind of how we would take away the adjudication function from a platform and give it to some third party? Or did you have something else in mind?

Pasquale: No, I meant some of these really mundane examples of, you know, I've ordered something, and I thought it was a certain size, and it's in the wrong size. But I think that's an even better example because that deal reminds me of the TRIPS, or TPP agreement between sovereign states. It's like when sovereign states try to harmonize their intellectual property laws and protections; they might have a TRIPS or a TPP agreement that says, you're not going to allow certain forms of manufacture of these drugs to protect our intellectual property. Here, there's something where there's an assertion of something even beyond intellectual property rights, something like the right to control a device on the aftermarket, which is explicitly disallowed under law. But then you could get what you are not allowed under law via a contract with an entity that has such power over that marketplace.

So it's really interesting where, when these corporations lose in the legislature, they can kind of take that back via deals with the entities that control commerce.

Questioner 3 (Singer): I hadn't heard that news. And that gets at collaboration between two of the four, or whatever, tech bad guys. So there's a thread that there's competition between these four, and there is clearly a competition between these four. But if there's also kind of a conspiratorial aspect, I'm wondering if you all could make more out of that.

Mitchell: It's interesting to watch how Amazon selectively polices its platform. One example of this is counterfeits. On its platform, there are zillions of sellers, and a fair number of them are overseas, and there's a fair number of counterfeit products on the site. Amazon can get rid of those if it wants to, but it often won't. It uses its ability to selectively decide whether or not to police that as a way of strong-arming manufacturers and getting them to agree to its terms. Apple in this case presumably either agreed to Amazon's terms or had enough bargaining power to come to some arrangement, where we've seen a lot of other companies who simply had to give in.

Nike is a good example. Nike complained for years about the counterfeit Nikes, had no ability really to go after them itself, because Amazon shields the seller. You, as a manufacturer, can't get information, and if you do succeed in shutting it down, the seller just starts up again under a new name almost immediately. Amazon has no interest; there's nothing in it for them to police any of that. Nike, like a lot of companies, sells its niche products to brick-and-mortar stores that do a lot of marketing and customer support for it; you know, places that do shoe fittings and take returns and promote the Nike brand and create running clubs and do all that stuff that supports Nike and supports the overall industry. As a way of sort of paying back for that, [Nike] reserves its new products and niche products just for those brick-and-mortar stores. Well, of course, Amazon wants to sell it stuff too, and take all that business.

And that's what Nike agreed to do. It agreed to sell its entire line to Amazon in exchange for finally getting rid of the counterfeits, something that's totally not in Nike's interests, but it had to pick between a rock and a hard place.

It's just an example of why the fact that Amazon is multiple things is the problem. There are conflicts of interest that are fundamental across those things and there's no way to adjudicate what's happening on the platform if we don't separate Amazon as a retailer and manufacturer, because no matter how we try to police that from the outside, it's always going to be compromised by Amazon's self-interest, if those things are connected.

Pasquale: One of the things, as an academic thinking about this stuff, I find so interesting is that there are these leading academics that look at some of the business practices of these companies and try to sort of sanctify them as the business model of the future. So when you're talking about the simultaneous cooperation and competition, it reminds me of this book by Adam Brandenburger and Barry Nalebuff called *Co-opetition*. And my thought when I saw that book was just, "Co-opetition? Is that really? . . ." It seems as though the idea behind it was, Oh, well, then they can figure out the best ways to compete and when to cooperate. But then, shouldn't antitrust have been a bigger part of that discussion? Similarly, Hal Varian's work—I think of that very similarly, with respect to the way that he's treated Google's business models.

But, thanks to this new book called *Virtual Competition*, by Ezrachi and Stucke, you get the opposite account. You get co-opetition, and it's not just this cutely branded name, but they have these sort of ecological metaphors where they say, Well, that actually is kind of like the way that lions hunt gazelles, the way that Apple and Amazon work together. So it all comes down to the metaphor. Certain academics, I think, have really worked to sanctify these practices, or to make them look better than they are, with these sort of folksy, homely metaphors. But what Stucke and Ezrachi do is they recharacterize them in ways that really dramatize the threat. And that's what I really love about a lot of what Roosevelt Institute and a lot other institutes do—they help us see this more clearly, or see that there's an alternative narrative to be [told].

Questioner 4: I'm Alec MacGillis with ProPublica. Generally, the skepticism and opposition to corporate power in this country comes more from the left, but there was a poll just a week or two ago, a survey asking people on both sides of the spectrum how they view different institutions in America. Democrats gave their highest marks of all, above their view of higher education and unions and local government and the press, to Amazon.

DePillis: Was that Republicans or Democrats?

Questioner 4 (MacGillis): Democrats. It was still pretty high for Republicans, but it was higher, though, with Democrats. And so, it's a company that's viewed, generally, very well by [people] left of center. It seems like that point actually got exacerbated now with HQ2 because, as the company moves into these two metropolitan centers, where you've got a lot of Democrats, New York and Washington, the company becomes almost one of us, becomes like your neighbor. And you're going to know the programmer living next door is an Amazon guy. So, I'm just curious how you build political will to take on all these ideas you have, given this problem that you have: how well the company is viewed by the country in general, but especially by the people you normally expect to be more skeptical.

Steinbaum: Amazon has a lot of appeal as a company that gives consumers what they want very quickly and at a low price, and there's clearly work to be done in terms of elucidating how those business models wreak havoc on the rest of the economy. I think one thing I look to is labor activism against the company. I think there's a lot of interest in doing that, especially as the canonical low-wage job for a while has been a sort of Walmart retail worker, and I think there many people in that category even now. But it's sort of migrating more toward an Amazon warehouse worker, and there's consequently a lot of interest in seeing that as a place to determine where the floor is in the labor market. I think that that would go a long way to changing public views of the company.

I would disagree with the very last thing that you said about HQ2's location and the headquarters of liberalism, meaning that there would be more support for it among people who identify with the left of the political spectrum. They're fleeing Seattle for a reason, or at least not expanding there for a reason. If you think of that being a place where there would be a lot of cultural affinity for the company . . . maybe there was at one time, but I think they've really worn out their welcome there, even among the kind of constituency that they may be seeking in D.C.

and New York. And now I think they may wear out their welcome before they even arrive, in these latter cases, but it certainly won't take as long.

Hearn: I actually live in Seattle, and so I just wanted to say that, yes, there is in fact “Kill Bezos” graffiti in my neighborhood. Thinking back to the 2016 elections, what I found really fascinating is that one point of convergence with the left and the right is that you have both Sanders and Trump gaining huge favor with their bases by saying that the economy is rigged. I think that we could better make the connection for people between the types of discussions that we're having here and the implicit understanding that most Americans feel that the economy and their ability to participate in it in a way that will directly benefit them is dissolving. If we can help make that link for them, I think that there would be more political will on both sides of the aisle for people that are affected. And you are starting to see that in Seattle; you have the progressives who work for Amazon and who get very defensive when you have these conversations, and the progressives who are working on labor issues, as you mentioned. So I think there is increasing awareness, but it's up for us to continue that.

Mitchell: There's so much about whether liberals and the Democratic Party are going to be willing to confront concentrated power. That's the big question, and there's something about that poll that sort of speaks to how we have lost our sense of being able to exercise our muscle as citizens. The government no longer actually works to solve the problems that we face in our own lives, and therefore we increasingly look to these big, powerful companies to support gay rights or to do whatever it is that Amazon does that people think is appealing and on their side of the issue, because they no longer have the ability to affect government. I'm surprised at how many emails I get from people who read my articles—which all address people as citizens and talk about policy in the context of Amazon, not addressing people as consumers—how often most of those emails come back, and they say, “Wow, it's really affected my thinking about Amazon. I'm getting rid of my Prime membership,” or, “Let's organize a boycott.” It's like, Wow, we're always just going to that consumer muscle, which is incredibly weak.

I've also struck by the fact that Adam Schiff, who's coming in as the chair of the Intelligence Committee, I believe, of the House, is talking about investigating whether Donald Trump has somehow interfered with Amazon's sweetheart deal from the Postal Service. And, you know, Donald Trump tweeting about Amazon and his desire to use his presidential post to take on these enemies—the *Washington Post* and so on—absolutely against all of that. But I think that the difference between him doing that and the governor of Virginia negotiating a huge subsidy deal, or the government of New York negotiating a huge subsidy deal behind closed doors to hand Amazon billions of dollars—there's not a whole lot of difference, I think, in most Americans' minds between those two things. If that activity being done by Democrats is not confronted within the party, I think they have a real problem.

Pasquale: That really makes a lot of sense to me, too, both of those points. I would also say, I think part of it is how we tell the story of a lot of big-type firms. I think that after the financial crisis, it was relatively easy to tell the story that the banks . . . where we used to have a story of, These are the smartest people in the world—they know math that we could never hope to

comprehend, they know how to run the economy . . . after the global financial crisis, it's like, Oh, maybe not. Rana Foroohar, who wrote this wonderful book called *Makers and Takers*, has now directed her attention to the tech sector. She was the one who first was trying to debunk myths about the omnipotence and benevolence of the financial sector, and now she's writing almost continually about tech. So I think that, just as you saw a finance-sector comeuppance—at least culturally, I don't know to what extent it's been effective politically or legally yet—a similar thing could happen, at least with respect to the public.

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