# Opensource---Triples---Northwestern

# 1NC

### 1NC---T

T Per-se

#### Business practices are ongoing conduct defined by the behaviors of many market participants

Kerry Lynn Macintosh 97, Associate Professor of Law, Santa Clara University School of Law. B.A. 1978, Pomona College; J.D. 1982, Stanford University, “Liberty, Trade, and the Uniform Commercial Code: When Should Default Rules Be Based On Business Practices?,” 38 Wm. & Mary L. Rev. 1465, Lexis

These new and revised articles reflect a strong trend toward choosing default rules 4 that codify existing business practices. 5 [FOOTNOTE 5 BEGINS] In this Article, the term "business practices" is used to refer to practices that emerge over time as countless market participants exercise their freedom to engage in profitable transactions. For an account of the evolution of business practices, see infra Part II. As used here, "business practices" is broader and less technical than "trade usage," which the Code narrowly defines as "any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question." U.C.C. 1-205(2). [FOOTNOTE 5 ENDS] This is particularly true of the recent revisions to Articles 3 (Negotiable Instruments), 4 (Bank Deposits and Collections) and 5 (Letters of Credit).

#### Prohibit means forbid by authority

Merriam-Webster No Date <https://www.merriam-webster.com/dictionary/prohibition> and <https://www.merriam-webster.com/dictionary/prohibiting>

Definition of prohibition 1: the act of prohibiting by authority

Definition of prohibit transitive verb 1: to forbid by authority : ENJOIN

#### Only per se illegality prohibits a practice---rules of reason prohibit anticompetitive effects for individual acts, or instances of ‘practice.’

John Paul Stevens 90, Justice, Supreme Court of the United States, “FTC v. Superior Court Trial Lawyers Ass'n,” 493 U.S. 411, Lexis

LEdHN[3C] [3C]LEdHN[14] [14]Equally important is the second error implicit in respondents' claim to immunity from the per se rules. In its opinion, the Court of Appeals assumed that the antitrust laws permit, but do not require, the condemnation of price fixing and boycotts without proof of market power. 15 The opinion further assumed that the per se rule prohibiting such activity "is only a rule of 'administrative convenience and efficiency,' not a statutory command." 272 U.S. App. D. C., at 295, 856 F. 2d, at 249.This statement contains two errors. HN10 [\*\*\*\*42] The per se [\*433] rules are, of course, the product of judicial interpretations of the Sherman Act, but the rules nevertheless have the same force and effect as any other statutory commands. Moreover, while the per se rule against price fixing and boycotts is indeed justified in part by "administrative convenience," the Court of Appeals erred in describing the prohibition as justified only by such concerns. The per se rules also reflect a long-standing judgment that the prohibited practices by their nature have "a substantial potential for impact on competition." Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2, 16 (1984).

[\*\*\*\*43] LEdHN[15] [15]As we explained in Professional Engineers, HN11 the rule of reason in antitrust law generates

"two complementary categories of antitrust analysis. In the first category are agreements whose nature and necessary effect are so plainly anticompetitive that no elaborate study of the industry is needed to establish their illegality -- they are 'illegal per se.' In the second category are agreements whose competitive effect can only be evaluated by analyzing the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed." 435 U.S., at 692.

[\*\*\*873] "Once experience with a particular kind of restraint enables the Court to predict with confidence that the rule of reason will condemn it, it has applied a conclusive presumption that the restraint is unreasonable." Arizona v. Maricopa County Medical Society, 457 U.S. 332, 344 (1982).

[\*\*781] LEdHN[16] [16] [\*\*\*\*44] The per se rules in antitrust law serve purposes analogous to per se restrictions upon, for example, stunt flying in congested areas or speeding. Laws prohibiting stunt flying or setting speed limits are justified by the State's interest in protecting human life and property. Perhaps most violations of such rules actually cause no harm. No doubt many experienced drivers and pilots can operate much more safely, even at prohibited speeds, than the average citizen.

[\*434] If the especially skilled drivers and pilots were to paint messages on their cars, or attach streamers to their planes, their conduct would have an expressive component. High speeds and unusual maneuvers would help to draw attention to their messages. Yet the laws may nonetheless be enforced against these skilled persons without proof that their conduct was actually harmful or dangerous.

In part, the justification for these per se rules is rooted in administrative convenience. They are also supported, however, by the observation that every speeder and every stunt pilot poses some threat to the community. An unpredictable event may overwhelm the skills of the best driver or pilot, even if the [\*\*\*\*45] proposed course of action was entirely prudent when initiated. A bad driver going slowly may be more dangerous that a good driver going quickly, but a good driver who obeys the law is safer still.

#### Prefer it:

#### 1) Ground---key to link uniqueness and a unidirectional topic. Fringe standards dodge topic links, AND they can pick a broader but more permissive standard, making the topic bidirectional.

#### 2) Limits---too many possible standards, each requiring distinct answers, makes the topic unmanageably large.

### 1NC---CP

Regs CP

#### The United States federal government should adopt a remedial regulation requiring private sector actors participating in the information technology standard setting process to govern their licensing arrangements under a penalty default contract until and unless contracts are negotiated which are proven to create reasonable competition.

#### Solves by punishing the existence of an anticompetitive market.

Kristelia A. **Garcia 16**, Associate Professor, University of Colorado Law School, “Facilitating Competition by Remedial Regulation,” Berkeley Technology Law Journal, Vol. 31:1, 2016, pages 183-258.

V. FACILITATING COMPETITION THROUGH REGULATION There is a third option for checking anticompetitive behavior, maintaining competition, encouraging innovation, preventing technological lock-in, and ensuring payment to artists: regulation. The conventional view of regulation is as a system that works against competition; one that thwarts new entry and protects incumbents.23 8 Indeed, the Telecommunications Act of 1996-intended to mark the deregulation of the telecommunications industry-proclaims as its purpose: "To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." 239 The goal of this Part is to challenge the conventional view and to present regulation as potentially procompetitive. Conventional thinking about how to approach the competition problem, or bargaining breakdown, in content generally falls into two divergent points of view: There are those who would reduce dependence upon (or in some cases do away with altogether) the current statutory licensing regime in favor of private ordering and/or other, preferable mechanisms such as fair use, patent pools, and collectives; 2 40 and those who favor compulsory licensing over private deal making for avoiding bottlenecks and for more robust information exchange. 241 The former view ignores the important role compulsory licenses play in ensuring access to content; the latter ignores the potential informational value derived from private rate setting. Both of these perspectives ignore the competitive market. This Article departs from both of these perspectives, proposing instead a new model for maintaining competition in the licensing of intellectual property rights. This proposal calls for adherence to a mandatory, compulsory license by default, but embraces private ordering where (and only when) real competition can be shown to exist between rival content licensors. This proposal, referred to herein as the "remedial regulation model," utilizes existing mechanisms-specifically, statutory licenses, a collective administrator, and existing regulatory authorities-to correct anticompetitive behavior at minimal cost. The current competition policy for the licensing of intellectual property assumes robust competition, and so allows for private ordering in the shadow of the statutory license. For example, § 114 of the Copyright Act allows copyright owners to either use the statutory license, or to negotiate their own royalty rates and license terms for the public performance of sound recordings.24 2 As a result, conventional antitrust mechanisms-like ASCAP's consent decree-are wholly ineffective against anticompetitive behavior perpetrated by individuals, who can merely opt-out. The remedial regulation model updates copyright's competition policy by reversing this assumption. Instead, it assumes monopolistic (or oligopolistic) market power, thereby converting the existing, circumventable statutory licenses into mandatory, compulsory licenses under which parties may petition for permission to deal privately. Requiring only minimal statutory amendment and utilizing existing regulatory agencies and collectives, the remedial regulation model offers licensors and licensees a compromise: Continued access to content for all at a predictable rate and the flexibility to negotiate private terms, so long as industry consolidation has not reached a point so as to call into question the arms-length nature of any such transactions. This proposal builds, in part, on the existing literature on penalty defaults and altering rules. After a brief review of default theory, this Part will show its application in the regulatory context and will detail a remedial regulatory solution to copyright's competition problem. A. PENALTY DEFAULTS, ALTERING RULES & COMPETITION 1. Default Theory A "penalty default" is an undesirable fall back option designed to penalize those who, through failure to do or to not do some thing (be it negotiate, or share information); do not otherwise negotiate around it. The concept of "penalty default rules" was first introduced by Professors Ian Ayres and Robert Gertner,2 4 who described them as unpalatable fallback options in contract law that kick in unless the parties negotiate their own terms. Such rules, they argue, induce more knowledgeable parties to "reveal information by contracting around the default penalty." 2 44 Prior work has extended this concept to licensing and demonstrates that "penalty default licenses encourage[] more efficient deal making among otherwise unequal parties by motivating them to circumvent an inefficient statutory license in favor of private ordering. "245 In other words, penalty defaults are a mechanism by which regulators can encourage or discourage a certain behavior without regulating that behavior directly. This is particularly useful where the behavior sought to be modified is not easily regulated, such as to encourage retirement savings, organ donation, and to curb pollution.2 46 The next section argues that penalty defaults might also prove especially useful for regulating behavior that is not readily ameliorated by existing legal regimes, such as the anticompetitive behavior of the individual music publishing companies whose tacit collusion and parallel pricing activities are not checked by antitrust. Altering rules establish the "necessary and sufficient conditions for altering default legal consequences.1"247 "Impeding" altering rules aim to "deter opt-out by artificially increasing its difficulty." 248 This is effectively what remedial regulation does: By requiring a showing of sufficient competition before private ordering is permitted, the statutory license is made "quasi-mandatory" or sticky.24 9 2. Application to Regulation In the regulatory context, the remedial concept behind impeding altering rules works to penalize an undesirable behavior in hopes of encouraging a different behavior. Here, it does so by mandating compliance with a statutory rate-thereby foreclosing private ordering with all of its potential benefits-unless and until sufficient competition can be shown in the relevant marketplace. There is precedent for this approach. In wholesale electricity, for example, the Federal Energy Regulatory Commission (FERC) sets the applicable rates for energy transmission. A utility company is allowed to charge a "market-based tariff only if [the company] demonstrates that it lacks or has adequately mitigated market power, lacks the capacity to erect other barriers to entry, and has avoided giving preferences to its affiliates."250 Varying in procedure, but similar in spirit, are patent pools, or the pooling of patents between two or more companies. Patent pooling is generally acceptable, even favored, unless "(1) excluded firms cannot effectively compete in the relevant market for the good incorporating the licensed technologies and (2) the pool participants collectively possess market power in the relevant market." 25 1 Where these conditions exist, the DOJ or the FTC will review the licensing arrangement for anticompetitive effect before determining whether the parties will be allowed to engage in the pooling activity. In both of these examples, a competitive marketplace is not assumed, but must first be shown. B. REMEDIAL REGULATION In lieu of antitrust, this Article advocates utilizing remedial regulation-or, regulation that discourages industry consolidation-in order to open the market and maintain competition. This model assumes a baseline that tends toward oligopoly, natural or otherwise, and so allows for private ordering only where sufficient competition can first be shown. Otherwise, regulation operates to ensure ongoing access to the relevant input(s) for all prospective consumers or licensees able and willing to meet the statutory requirements and to pay the statutory rate. Because this regulation does not necessarily represent a market rate-nor, indeed, as high a rate as private ordering might obtain-this Article labels it "remedial." It punishes the lack of a competitive marketplace. If a company wants to engage in private ordering to obtain a higher rate or better terms, it must first petition to show the existence of sufficient competition in the relevant market. While such "remedial regulation" cannot create a robust competitive market where none exists, it can prevent a few powerful firms from unilaterally controlling the price for an input, or from barring new entry to the market altogether to the detriment of both consumers and innovators in the space. As is the case with other highly regulated industries, the underlying assumption here is that the government has a greater responsibility for checking anticompetitive behavior in the music licensing space owing to its role in the granting of exclusive property rights via copyright. As with the wholesale electricity example, remedial regulation places the burden of proving a competitive marketplace on the party seeking to get out from under the statutory regime. This resets the baseline assumption and brings competition policy in line with positive market conditions, while at the same time establishing a "safe harbor" that allows for private ordering (and its concomitant advantages) when, and only when, sufficient competition can be shown. The next section outlines one possible path toward implementation of remedial regulation in the music licensing context.

#### The counterplan PICs out of anti-trust legislation and the FTC and DOJ as enforcers---other agencies’ regulations solve.

Lawrence Fullerton et al. 08. Joel M Mitnick, William V Reiss, George C Karamanos and Owen H Smith. Sidley Austin LLP. Vertical Agreements The regulation of distribution practices in 34 jurisdictions worldwide. “United States.” https://www.sidley.com/-/media/files/publications/2008/03/getting-the-deal-through--vertical-agreements-2008/files/view-united-states-chapter/fileattachment/united-states-21.pdf

5 What entity or agency is responsible for enforcing prohibitions on anticompetitive vertical restraints? Do governments or ministers have a role?

The Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DoJ) are the two federal agencies responsible for the enforcement of federal antitrust laws. The FTC and the DoJ have jurisdiction to investigate many of the same types of conduct, and therefore have adopted a clearance procedure pursuant to which matters are handled by whichever agency has the most expertise in a particular area.

Additionally, other agencies, such as the Securities and Exchange Commission and Federal Communications Commission, maintain oversight authority over regulated industries pursuant to various federal statutes, and therefore may review vertical restraints for anti-competitive effects.

### 1NC---K

Cap K

#### Anti-trust is a psy op to restore the prestige of capital and cover for union busting. Vote neg for socialist governance that refuses faith in smaller is better.

Henwood 21 [Doug, American journalist, economic analyst, author, and financial trader, contributor to the Nation. “Why Socialists Should Distrust Antitrust.” Jacobin. July 2021. <https://www.jacobinmag.com/2021/07/antitrust-law-monopolies-small-business-competition-large-corporations-bigness> //shree]

Last week, Joe Biden tweeted, “Let me be clear: capitalism without competition isn’t capitalism. It’s exploitation.”

It would be too much to expect this rather dim politician to understand, much less endorse, the classic Marxist analysis of profit originating in the exploitation of workers — they produce more in value for their employer than they’re paid in wages. But the remark, in all its naiveté, does capture a spreading belief in liberal policy circles that monopoly is at the heart of our economic troubles, from crappy jobs to crappy pay and benefits. I’m not convinced.

According to the introductory economics I learned in college — which was admittedly long ago — two essential features of monopolized markets were high prices and restricted supply. Those features weren’t at all visible in the US economy until the pandemic began messing with supply chains, resulting in short supplies in some sectors in the face of pent-up demand, demand that was supercharged with stimulus checks.

Even so, the shortages and price spikes are affecting just a few sectors, like new cars and lumber. They’ve yet to spread economy-wide, and there’s no sign they’re about to. They’re not the product of some long-term monopolization. For most of the last forty years, inflation has been quite low — in no small part because the working class was crushed as the 1970s turned into the 1980s and because shortages have been rare.

The giants that people point to as proof of our monopoly problem include Amazon, Google, and Facebook. Amazon, like Walmart before it, is known for low prices that crush competitors. (Workers too.) That’s not standard monopoly behavior. Google and Facebook dominate their fields, but most of their “products” are free. Yes, that means “you’re the product,” as the saying goes, but what kind of improvement would it be if broken-up Googles and Facebooks charged for their services or maintained the same monetizing-the-user’s-identity business model as the originals?

Nor is it clear how introducing competition would improve the quality of service. One of the lures of Facebook, for those subject to the lure, close to three billion users at the most recent count, is that so many people are on it. That facilitates communication. Breaking it up into competing services would be like making an AT&T phone customer incapable of contacting a Deutsche Telekom subscriber.

Behind antitrust is a faith in competition as a positive good. As socialists we should take exception to that. We already have too much competitive individualism in this society, and we don’t need any more. We need solidarity. Stimulating the war of each against all isn’t the way to get there.

A better way to handle bigness is to regulate the behemoths and encourage the growth of unions. That would do more to improve working conditions at Amazon than turning it into four or twenty little Amazons. As political economist Sam Gindin pointed out in an interview on my radio show, the deregulation movement of the 1970s and 1980s was a war on regulated oligopolies, and it was accompanied by union busting, wage cuts, and job losses. That could be a portent of life under monopoly busting.

Why is antitrust getting the attention of liberals these days? In his book on the history of American corporate governance, law professor Mark Roe notes that Franklin Roosevelt saw it as a war against “private” socialism that could stave off “government” socialism. We may be seeing something similar now. With socialism polling decently, socialists working their way into the Democratic Party, and the business class in disrepute with much of the population — Gallup reports that 73 percent of the public is either somewhat or very dissatisfied with major corporations, compared to 48 percent in 2001 — pursuing antitrust may be a campaign to restore the prestige of capitalism itself. Fronting small business as the emblem of commerce is a classic bourgeois self-defense strategy.

There’s nothing magic about smallness. Vincent Carosso ends his huge book on the Morgan banking family by quoting an unnamed socialist refusing to curse the peak Morgan, J. P., on his death: “We grieve that he could not live longer, to further organize the productive forces of the world, because he proved in practice what we hold in theory, that competition is not essential to trade and development.” It’s a sentiment worth recovering.

#### Capitalism drives extinction and structural violence

Allinson et al 21 [Jamie Allinson is Senior Lecturer in Politics and International Relations at Edinburgh University and author of The Age of Counter-revolution. China Miéville is the author of a number of highly acclaimed and prize-winning novels including October: The History of the Russian Revolution. Richard Seymour is the author of numerous works of non-fiction, His writing appears in the New York Times, London Review of Books, Guardian, Prospect, Jacobin. Rosie Warren is an Editor at Verso and the Editor-in-Chief of Salvage. All are writing for the Salvage Collective. “The Tragedy of the Worker: Toward the Proletarocene.” Introduction. July 2021. Verso EBook. ISBN: 9781839762963 //shree]

This is the question that vexed us as we set out to write The Tragedy of the Worker. From the vantage point of the present, the history of capitalist development is, as Marx expected, the history of the development of a global working class, the proletarianisation of the majority of the world’s population. But the very same process of that development has brought us to the precipice of climate disaster. Our position, to recall Trotsky’s rationalisation of War Communism in 1920, is in the highest degree tragic.

It is now clear that we will pass what scientists have long warned will be a tipping point of global warming, accelerating the already catastrophic consequences of capitalist emissions. How do we imagine emancipation on an at best partially habitable planet? Where once communists imagined seizing the means of production, taking the unprecedented capacities of capitalist infrastructures and using them to build a world of plenty, what must we imagine after the apocalypse has befallen us? What does it mean that as capitalism has become truly global, the gravediggers it has created dig not only capitalism’s grave, but also that of much organic life on earth?

Our answers to these questions remain rooted in the politics of revolutionary communism. Our stance is not based on the fantasy of a homeostatic nature that must be defended but on the critique of the capitalist metabolism – the Stoffwechsel- that must be overthrown. Earth scientists are accustomed to speak in terms of ‘cycles’ by which substances circulate in different forms: the water cycle, the rock cycle, the nitrogen cycle, the glacial-interglacial cycle, the carbon cycle, and others. One way of registering the catastrophe of climate change is to see these cycles – most of all, but not solely, the carbon cycle – as disordered, under- or over-accumulating. But this is to ignore the more fundamental circuit of which these now form epicycles, like Ptolemy’s sub-orbits of the heavenly bodies: the circuit of capital accumulation, M-C-M′.

This circuit accumulates profit and produces death. Neither is accidental. It is for this reason that the debates that capitalist ruling classes permit among themselves on ‘adaptation’ versus ‘mitigation’ take place on false premises. What is to be mitigated is the impact of climate change on accumulation, rendered through the ideology of ‘growth’ as something that benefits everyone. What we are to adapt to are the parameters of accumulation, sacrificing just enough islands, eco-systems, indigenous – and non-indigenous – cultures to maintain its imperatives for a period of time until new thresholds must be crossed, and new life sacrificed to the pagan idol of capital. Already, capitalist petro-modernity builds a certain quantum of acceptable death into its predicates: at the very least, the 8.7 million killed by fossil fuels each year according to Harvard University are considered a price worth paying for the stupendous advantages of fossil capital. And the sky can only keep going up, as deforestation, polar melt, ocean acidification, soil de-fertilisation and more intense wildfires and storms tear the web of life into patches. If the necropolitical calculus of the Covid-19 pandemic appears crass, just wait until its premises are applied to climate catastrophe.

### 1NC---DA

FTC DA

#### FTC’s increasing enforcement in privacy now---it’s focused on algorithmic bias.

James V. Fazio 21. Special counsel in the Intellectual Property Practice Group at Sheppard, Mullin, Richter & Hampton LLP, with Liisa M. Thomas, 3/11. “What Is FTC’s Course Under Biden?” https://www.natlawreview.com/article/what-ftc-s-course-under-biden

The new acting FTC chair, Rebecca Kelly Slaughter, recently signaled that the FTC may increase enforcement and penalties in the privacy and data security realm. Slaughter pointed to several areas of focus for the FTC this year, which companies will want to keep in mind: Notifying Consumers About FTC Allegations: Slaughter referred favorably to two recent cases: (1) the Everalbum biometric settlement from earlier this year (which we wrote about at the time); and (2) the Flo Health settlement over alleged deceptive data sharing practices (which we also wrote about at the time). In drawing on these two cases, Slaughter indicated that in future cases the FTC intends to include as part of any settlement a requirement to notify customers of any FTC allegations. This, she said, would allow consumers to “vote with their feet” and help them decide whether to recommend their services to others. FTC Intent to Plead All Relevant Violations: According to Slaughter, another lesson the FTC is taking from the Flo case is to include in the cases it brings all potentially applicable violations of all relevant privacy-related laws. In the Flo case, Slaughter said the FTC should have pleaded a violation of the Health Breach Notification Rule, which requires that vendors of personal health records notify consumers of data breaches. Focus on Ed Tech and COPPA: Given the explosive growth of education technology during COVID-19, the FTC is conducting an industry sweep of the industry. Related to this, the FTC is reviewing its Children’s Online Privacy Protection Act Rule. This goes beyond the refresh the agency did of their FAQs earlier in the pandemic (which we wrote about at the time). For now, Slaughter reminds companies that parental consent is needed before collecting information online from children under the age of 13. Examination of Health Apps: The FTC will take a closer look at health apps, including telehealth and contact tracing apps, as more and more consumers are relying on such apps to manage their health during the pandemic. Overlap Between Competition and Privacy: Slaughter also indicated that it is worth looking at situations where there may be not only privacy concerns, but antitrust as well. Because the FTC has a dual mission (consumer protection and competition) she notes that it has a “structural advantage” over other regulators in that it can look at these issues, especially since -she states- “many of the largest players in digital markets are as powerful as they are because of the breadth of their access to and control over consumer data.” Racial Equality and AI/Biometrics/Geotracking: Slaughter noted that COVID-19 is exacerbating racial inequities. She pointed to the unequal access to technology, as well as algorithmic discrimination (the idea that discrimination offline becomes embedded into algorithmic system logic). The FTC intends to focus on algorithmic discrimination, as well as on the discrimination potentially embedded into facial recognition technologies. (This mirrors concerns that gave rise to the recent Portland facial recognition law, which we recently wrote about). Finally, Slaughter commented on the use of location data to identify characteristics of Black Lives Matter protesters, and said she is concerned about the misuse of location data to track Americans engaged in constitutionally protected speech. Putting it Into Practice: Companies that operate health apps, that are in the education technology space, or that use algorithms or facial recognition tools will want to keep in mind that these are areas of focus for the FTC. And for everyone, keep in mind that the FTC has indicated it will beef up privacy law penalties and will ask for more notification to injured consumers.

#### Antitrust enforcement saps up FTC resources and personnel, which are finite.

Tara L. Reinhart, et al. 21. \*\*Head of Skadden, Arps, Slate, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*Steven C. Sunshine, Co-head of Skadden, Arps, Slat, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*David P. Whales, antitrust lawyer with over 25 years of experience in both private and public sectors. \*\*Julia Y. York, partner at Skadden, Arps, Slat, Meagher & Flom LLP. \*\*Bre Jordan, associate at Skadden, Arps, Slat, Meagher & Flom LLP focusing on antitrust law. “Lina Khan’s Appointment as FTC Chair Reflects Biden Administration’s Aggressive Stance on Antitrust Enforcement.” 6/18/21. https://www.skadden.com/insights/publications/2021/06/lina-khans-appointment-as-ftc-chair

Second, like all antitrust enforcers, Ms. Khan and the FTC will face resource constraints. Bringing antitrust litigation is an expensive and laborious process, often requiring millions of dollars for expert fees and a large army of FTC staff attorneys and taking many months or even years to accomplish. Typically, the FTC can only litigate a handful of antitrust matters at a time. It seems likely that Congress will provide more funding to the FTC in the current environment, but even with these extra resources, the FTC will still have to pick its cases carefully and cannot challenge every deal or every instance of alleged unlawful conduct.

#### That trades off with the necessary resources for privacy enforcement.

John O. McGinnis\* and Linda Sun\*\* 20. \*George C. Dix Professor, Northwestern University, and Associate-Designate, Wilmer Pickering Hale & Dorr LLP. “Unifying Antitrust Enforcement for the Digital Age.” Northwestern Public Law Research Paper No. 20-20. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3669087

The FTC needs more resources to adequately address the nation’s growing privacy concerns. Currently, the FTC oversees both consumer protection—encompassing privacy—and antitrust,249 making the FTC the chief federal agency on privacy policy and enforcement250 and the nation’s de-facto privacy agency.251 The agency has long-standing experience in enforcing privacy statutes252 and also has special privacy assets, such as an internet lab capable of high-quality tech forensics to track invasions of privacy.253 The FTC, however, has failed to keep pace with the massive growth of privacy concerns—a phenomenon also driven by modern technology. Very few Americans feel conﬁdent in the privacy of their information in the digital age.254 According to a 2019 study, over 80% of Americans feel that they have little to no control over the data collected on them by companies and the government.255 To adequately address privacy concerns, the FTC needs more resources.256 The agency has been explicit that it needs more manpower to police tech companies. In requesting increased funding from Congress, FTC Director Joseph Simons said the money would allow the agency to hire additional staff and bring more privacy cases.257 A former director of the FTC’s Bureau of Consumer Protection, which houses the privacy unit, has called the FTC “woefully understaffed.”258 As of the spring of 2019, the FTC had only forty employees dedicated to privacy and data security, compared to 500 and 110 employees at comparable agencies in the UK. and Ireland, respectively.259 Without more lawyers, investigators, and technologists, the FTC will be forced to conduct privacy investigations less thoroughly, and in some cases, forgo them altogether.260 Currently, the FT C’s resources are spread thin across multiple missions, to the detriment of its privacy efforts. Removing the agency’s antitrust responsibilities would reallocate resources from the antitrust department to its privacy unit and other areas of consumer protection. Further, it would free up the scarce time of the commissioners to oversee this essential effort.261

#### Unchecked algorithmic bias risks massive inequality and extinction.

Mike Thomas 20. Quoting AI experts including MIT Physics Professors, Senior Features Writer for BuiltIn. THE FUTURE OF ARTIFICIAL INTELLIGENCE: 7 ways AI can change the world for better ... or worse, Updated: April 20, 2020, <https://builtin.com/artificial-intelligence/artificial-intelligence-future>

Klabjan also puts little stock in extreme scenarios — the type involving, say, murderous cyborgs that turn the earth into a smoldering hellscape. He’s much more concerned with machines — war robots, for instance — being fed faulty “incentives” by nefarious humans. As MIT physics professors and leading AI researcher Max Tegmark put it in a 2018 TED Talk, “The real threat from AI isn’t malice, like in silly Hollywood movies, but competence — AI accomplishing goals that just aren’t aligned with ours.” That’s Laird’s take, too. “I definitely don’t see the scenario where something wakes up and decides it wants to take over the world,” he says. “I think that’s science fiction and not the way it’s going to play out.” What Laird worries most about isn’t evil AI, per se, but “evil humans using AI as a sort of false force multiplier” for things like bank robbery and credit card fraud, among many other crimes. And so, while he’s often frustrated with the pace of progress, AI’s slow burn may actually be a blessing. “Time to understand what we’re creating and how we’re going to incorporate it into society,” Laird says, “might be exactly what we need.” But no one knows for sure. “There are several major breakthroughs that have to occur, and those could come very quickly,” Russell said during his Westminster talk. Referencing the rapid transformational effect of nuclear fission (atom splitting) by British physicist Ernest Rutherford in 1917, he added, “It’s very, very hard to predict when these conceptual breakthroughs are going to happen.” But whenever they do, if they do, he emphasized the importance of preparation. That means starting or continuing discussions about the ethical use of A.G.I. and whether it should be regulated. That means working to eliminate data bias, which has a corrupting effect on algorithms and is currently a fat fly in the AI ointment. That means working to invent and augment security measures capable of keeping the technology in check. And it means having the humility to realize that just because we can doesn’t mean we should. “Our situation with technology is complicated, but the big picture is rather simple,” Tegmark said during his TED Talk. “Most AGI researchers expect AGI within decades, and if we just bumble into this unprepared, it will probably be the biggest mistake in human history. It could enable brutal global dictatorship with unprecedented inequality, surveillance, suffering and maybe even human extinction. But if we steer carefully, we could end up in a fantastic future where everybody’s better off—the poor are richer, the rich are richer, everybody’s healthy and free to live out their dreams.”

### 1NC---DA

#### State and federal courts are open now; they’re working to diminish the backlog of cases

US Courts, 21. “As COVID-19 Cases Fall, Juries Get Back to Work.” May 27, 2021. This is the sixth in a series of articles about how federal courts are working to recover from the COVID-19 crisis. https://www.uscourts.gov/news/2021/05/27/covid-19-cases-fall-juries-get-back-work

As coronavirus (COVID-19) case totals continue to decline in the United States, federal courts are rapidly expanding the number of jury trials and other in-person proceedings. But many court leaders remain uncertain about how quickly they can achieve a full return to pre-pandemic operations. While some courts say social distancing requirements and other COVID-related issues are likely to limit the number of jury trials, at least for the next few months, an increase in vaccinations and the recent relaxation of federal guidelines are raising the possibility of a more rapid reopening schedule. The Northern District of New York recently began its first criminal jury trial since March 2020, when the pandemic prompted many federal courts to scale back in-person hearings and trials. But the court is still assessing whether mask requirements and social distancing can be eliminated for jurors and the public after a year of pandemic restrictions. “The court is committed to taking a measured approach to relaxing the current restrictions,” said Clerk of Court John M. Domurad. “We want to be careful. We’ve gained so much, we don’t want to lose what we’ve gained by shedding restrictions too quickly.” For more than a year, federal courts have operated under a dynamic “gating” strategy, easing and tightening restrictions on courthouse procedures based on improvements or deterioration in local health conditions. Some courts resumed limited jury trials last summer, only to pull back during a winter resurgence of COVID. In recent months, as infection and hospitalization rates have fallen sharply, dozens of courts have reported changing their status from Phase 1 or 2, in which limited in-person proceedings are conducted, to Phase 3 or 4, in which jury trials can be conducted. Officials caution that future changes could tighten restrictions again. Even in districts where COVID numbers are falling most rapidly, some judges are reporting they still must overcome challenges to stage trials. “COVID numbers in our district are plummeting, and that’s wonderful,” said Chief Judge James K. Bredar of the District of Maryland. “But our detention facilities continue to lock down entire housing units when even a single inmate tests positive. That means the detainees on that housing unit cannot be transported to courts, or even to the areas within the detention facility used for video hearings. So, even with improving virus metrics and climbing vaccination statistics, we are still disrupted by COVID.“ Two of the biggest quandaries facing courts are whether vaccinations can or should be required of jurors and court staff, and whether strict social distancing is still necessary as more adults become vaccinated. In interviews, most court leaders say they are not requiring vaccinations, but that they are taking a wait and see approach on relaxing other COVID precautions. All say that assuring jurors they are safe is a top priority(link is external). “We believe that with the appropriate safety measures in place, the American public can feel safe to participate in jury trials as jurors, observers, or witnesses,” said Chief Judge Algenon L. Marbley, of the Southern District of Ohio, which resumed a full jury trial schedule on May 3. “The Court has not been asking about juror vaccination, but we may do so in the future.” Courts are still unclear how recent guidance from the Centers for Disease Control and Prevention may alter their decision-making. Noting that those with vaccinations no longer need to wear masks, Chief Judge Philip A. Brimmer of the District of Colorado said that courts still face difficult choices. Chief Judge Philip A. Brimmer, District of Colorado Chief Judge Philip A. Brimmer, District of Colorado: “Social distancing imposes many limitations on a court’s ability to return to normal.” “To what extent should courts accommodate fully vaccinated jurors who want to be socially distanced?” Brimmer asked. “Social distancing imposes many limitations on a court’s ability to return to normal. But it seems harsh to tell people who just a few weeks ago were being praised for their precautions that they now need to get over their qualms about having someone sit right next to them.” Courtroom capacity also is affecting how quickly different districts can schedule jury trials. The Southern District of Ohio has enough courtrooms to conduct eight jury trials simultaneously—three each in its Cincinnati and Columbus courthouses and two more in Dayton. In addition to outfitting each juror’s chair with plexiglass, the court gives each juror a sealed plastic bag that contains a mask, gloves, hand sanitizer, writing pad and pen. The court has sufficient space to put the public in overflow courtrooms if needed, and to allow jurors to maintain social distancing. In the District of Minnesota, Chief Judge John R. Tunheim said, courthouses in Minneapolis and St. Paul each have only one courtroom fully retrofitted with plexiglass to protect jurors. As a result, only one jury trial at a time is being held in each city. A total of three courtrooms are needed for each trial, to accommodate social-distancing needs. Chief Judge John R. Tunheim, District of Minnesota Chief Judge John R. Tunheim, District of Minnesota: “We have done everything possible to make our facilities safe.” Beginning Aug. 1, all courtrooms in Minnesota will be authorized for civil trials, which can fit the required eight-member juries in a standard jury box, but at present, expanding the number of criminal jury trials would require additional installation of plexiglass barriers. “We still want to keep the number of people in the courthouses to a minimum to prevent spread,” Tunheim said. “We are using at least two other courtrooms for each trial - one for jury deliberations and the other for the public/media to watch the trial without being in the courtroom. I am anticipating utilizing the single courtroom plan for criminal trials through the end of the summer and then reassess.” Even a limited capacity to hold jury trials can have an additional benefit in completing court business. In the District of Colorado, listing cases as pilot trials or backup pilot trials has greatly facilitated settlement of cases. “Until a case gets on the calendar, it’s not going anywhere,” Brimmer said. “So **being able to hold** even some **jury trials is helping us reduce our backlog.”** Court officials emphasize that they are making every effort to protect jury and public safety. Courts, they say, are ready to deliver justice even as the COVID crisis winds down. “We have done everything possible to make our facilities safe and will continue to be vigilant about health and safety,” Tunheim said. “I would also say that our criminal justice system is vitally important. Defendants have a right to a fair and speedy trial, so despite the challenges, it is important that we move forward with trials and hearings.”

#### The plan wrecks the restoration process. Expanding the scope of antitrust law opens the floodgates of antitrust court cases, clogging the courts

Geoffrey Manne, 18. International Center for Law & Economics president & founder, Congressional Documents and Publications, “Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights Hearing; "A Comparative Look at Competition Law Approaches to Monopoly and Abuse of Dominance in the US and EU."; Testimony by Geoffrey Manne, President and Founder, International Center for Law and Economics,” December 19, 2018. Lexis, accessed 6-1-21

II. The specious lure of excessively discretionary antitrust

Antitrust is an attractive regulatory tool for a number of reasons. As noted above, the vague, terse language of the Sherman Act readily lends itself to "interpretation" imbuing it with virtually limit-less scope. Indeed, the urge to treat antitrust as a legal Swiss Army knife capable of correcting all manner of social and economic ills is apparently difficult to resist. Conflating size with market power, and market power with political power, many recent calls for regulation of the tech indus-try are framed in antitrust terms, even though they are mostly rooted in nothing recognizable as modern, economically informed antitrust legal claims or analysis. But that attraction is precisely why we should care about the scope, process, and economics of anti-trust and the extent of its politicization. Antitrust in the US has largely resisted the relentless effort to politicize it. Despite being rooted in vague and potentially expansive statutory language, US anti-trust is economically grounded, evolutionary, and limited to a set of achievable social welfare goals. In the EU, by contrast, these sorts of constraints are far weaker. Whether or not that is suitable for the particular political and historical circumstances of the EU is a separate question. But, undoubt-edly, applying a controversial legal regime to the United States -- a markedly different jurisdiction with a unique governance structure -- and upsetting more than a century of legal, technological, and social development, is deeply problematic. This conclusion is in no way altered by the fact that US antitrust law has become the outlier of global antitrust enforcement, compared to the EU's more "consensual" approach. n26 What matters is a policy's actual results, not whether it is widely adopted; the world is full of debunked beliefs that were once widely shared. And it is far from certain that the widespread adoption of the EU model is in any way indicative of superior results. It is equally (or even more) plausible that this model has proliferated because it naturally accommodates politically useful populist narratives -- such as "big is bad," robin hood fallacies and robber baron myths -- that are constrained by the US's more evidence-based and rational antitrust decision-making. n27 America's isolation might thus be a testament to its success rather than an emblem of its failure. But even if by some chance the European approach proved to be optimal for many other countries in the world, it is still dubious that its adoption would lead to improved economic performance in the United States. As has already been alluded to, the unique features of the US legal regime make it unlikely that the best policy for the EU would also happen to be the best one for America. The EU's more aggressive pursuit of technology platforms under its antitrust laws demonstrates many of the problems with its approach in general. I urge this subcommittee to consider not just whether the EU approach seems to permit the government to reach a preconceived outcome -- i.e., placing large tech platforms under increased antitrust scrutiny -- but whether it is truly desirable at all to emulate the EU's approach and to try to reach the goals of EU competition policy under US antitrust law. Endorsing the European approach to antitrust, in a naive attempt to bring high-pro-file cases against large Internet platforms, would prioritize political expediency over the rule of law. It **would open the floodgates** **of antitrust litigation** and facilitate deleterious tendencies, such as non-economic decision-making, rent-seeking, regulatory capture, and politically motivated enforce-ment. Bringing US antitrust enforcement in line with that of the EU would thus unlock a veritable Pan-dora's box **of concerns that are currently kept in check**. Chief among them is the use of antitrust laws to evade democratically and judicially established rules and legal precedent. When consider-ing this question, it is important to see beyond any particular set of firms that enforcement offi-cials and politicians may currently be targeting. An antitrust law expanded to consider the full scope of soft concerns that the EU aims at will not be employed against only politically disfavored companies, companies in other jurisdictions, or in order to expediently "solve" otherwise political problems. Once antitrust is expanded beyond its economic constraints and imbued with political content, it ceases to be a uniquely valuable tool for addressing real economic harms to consumers, and **becomes a tool for routing around** legislative and **judicial constraints.**

#### Court efficiency is key to patent protections and innovation.

Gwendolyn G. Ball 10, Ph.D. in Economics from the University of Illinois at Urbana-Champaign, J.D. from George Mason University School of Law, Jay P. Kesan, J.D from Georgetown Law Center, Professor of Law at the University of Illinois at Urbana-Champaign, 4-30-10, “Judges, Courts and Economic Development: The Impact of Judicial Human Capital on the Efficiency and Accuracy of the Court System,” https://extranet.sioe.org/uploads/isnie2011/Ball\_Courts\_paper.pdf

While most economic scholarship analyzing the importance of the courts has focused on disputes over real property, the relationship between the court system and investment is no less strong for intellectual property. And to a large extent, the relationship between the courts and the patent system depends on the quality of “judicial human capital.”

In the United States, as in many countries, the courts are a crucial part of the patent system to the extent that the patent system is can be termed a two-stage process. In the first stage, the U.S. Patent and Trademark Office grants property rights to inventors. In the second stage, inventors can protect those rights through patent infringement suits in the courts and alleged infringers have the right to challenge improvidently granted patents and have them declared invalid. As a consequence, some authors have referred to patent rights as being “probabilistic,” depending not only on whether the innovation embodied in the patent has commercial value, but also on the refinement of that patent property right after litigation.15

Just as with real property, the management of the court system has an impact on both patenting behavior and on investment in research and development. While the majority of all patents are not litigated, those that are disputed in the courts are among the most valuable.16 The rules governing the court system may even “feed back” into patenting behavior; some authors have found evidence that the increasingly “patent friendly” rules17 adopted by the courts are a major factor in the surge in patenting since the 1980s.18 Moreover, the ability to define the “probabilistic” property rights is an important element in determining whether patents fulfill their purpose of promoting innovation.19 Finally, the costs associated with the patent systems can be reduced by an efficient court system; firms may hesitate to invest in new products and technologies which may infringe on existing patents, so any additional delay or cost in clarifying existent rights may slow the process of innovation. The more quickly and cheaply these rights are defined, the more beneficial the patent system will be in promoting and not inhibiting innovation and investment.

#### Clog devastates biotech innovation.

Alberto Galasso ’10 [Alberto Galasso; Toronto Strategic Management Professor; 01/22/2010; “Patent Thickets, Courts and the Market for Innovation,” http://www-2.rotman.utoronto.ca/facbios/file/galasso\_schankerman22012010.pdf]

The **licensing** and **sale** of **patents** - the ‘**market** for **innovation’** - are an **important** source of **R&D incentives**. Recent research has shown that transactions in **patent** **rights** contribute to the **diffusion** of **technology**, and strongly **affect** the **incentives** for firms to **undertake** **innovation** in the **first place** (Arora, Fosfuri and Gambardella, 2001). **Firms** increasingly **recognize** and **exploit** the **commercial potential** of their **patent portfolios** through **licensing**. To cite one high profile example, IBM reports earning 958 million from its portfolio.1 But the market for innovation is not just important for large firms. For small firms **patents** are often their **most important** **asset**, and the ability to license or sell them effectively is critical to **preserving** their **innovation** **incentives** and **access** to venture **capital finance** (Baum and Silverman, 2004). Moreover, **transactions** in patent rights are important to the **development** of **efficient** **market** **structures** in **high technology sectors**. In **biotechnology** and other high technology areas, transactions in patent rights strongly shape the **division of labor**, and **nature of competition**, between small firms who specialize in **radical innovation** and larger firms whose comparative advantage is in the development, **production** and **marketing** of these **innovations** (Gans, Hsu and Stern, 2002).

#### That’s key to solve existential threats.

Clarissa Rojas & Luke Kemp, 20 (Clarissa Rios Rojas: Research Associate, Centre for the Study of Existential Risk, University of Cambridge; Luke Kemp: Lecturer in International Relations and Environmental Policy, Australian National University; 12/21/2020; “3 scenarios for how bioengineering could change our world in 10 years,” https://www.weforum.org/agenda/2020/12/3-scenarios-for-how-bioengineering-could-change-our-world-in-10-years]

Future potential scenario #1: **within 5 years**

**Biotech**nological discoveries are **increasingly facilitated** by automated and roboticised, private 'cloud labs'. Some of these labs construct drought-tolerant **genetically** modified **plants** that are bred for a warmer world. However, the **effects** on **biodiversity** and **ecosystems** have not been fully studied, therefore, there is uncertainty about how to deploy them.

These concerns catch the attention of **billionaires** who start **donating** to **science**. This causes a new influx of **funding** for new **scientific projects,** among them: protein **engineering** and machine **learning**, leading to the **creation of** novel compounds within the **industry** (e.g. new catalysts for un-natural reactions) and **medical** applications (e.g. selectively destroying damaged tissue which is key for some diseases). In parallel, the Organization for the Prohibition of Chemical Weapons starts including new substances on their list after identifying that some of these newly created proteins have the potential to be used as weapons due to their high lethality.

Future potential scenario #2: **within 10 years**

**Biomedical** research has been **enhanced**, and now cell therapies are helping **patients** with rare **diseases**, neuronal probes are **curing disabilities**, citizens are **vaccinated** by consuming edible vaccines in plants and Phage therapy is used as an alternative to antibiotic treatment, tackling **antimicrobial** **resistance** that has been **identified** as a potential **global catastrophic risk.**

**Healthcare** is facing a **tug of war** between democratization and elite therapies. The Open-Pharma movement has spread and the monopoly of Big Pharma is being undermined by small lab producers of drugs such as insulin.

Other **advances** are equally **promising** but run ethical issues in both human enhancement and exacerbating health inequities. In a world of mounting inequalities, the question of who benefits and misses out from bioengineering advances looms large. In parallel, some governments collected genomic data of all citizens in compulsory programs. Unfortunately, some of these genomic databases were hacked and the genomic data of millions of citizens was sold through “black markets” and blockchain. Some companies start using this data as part of their hiring decisions.

Future potential scenario #3: **beyond 10 years**

The increasing impacts of **climate change** has focused **bioengineering** on the **sustainability challenge**. Plastic and many energy or material **intensive** **products** are being **phased out** in favor of **bio-based materials** made from renewable plant feedstock.

This is driven by both a new fashion taste for bio-clothing, **higher carbon** **prices** and the **introduction of nitrogen** **pricing** in 34 countries.

## FRAND Adv

### AT: 5G

#### ‘5G race’ is false

Nilay Patel 19, J.D. from the University of Wisconsin Law School, Editor-in-Chief of The Verge, Former Acting Managing Editor for Vox, AB in Political Science from the University of Chicago, “Wait, Why The Hell Is The ‘Race To 5G’ Even A Race?”, The Verge, 5/23/2019, https://www.theverge.com/2019/5/23/18637213/5g-race-us-leadership-china-fcc-lte

I have a dumb question that no one seems capable of answering directly: *Why is 5G a race?*

Everyone — the wireless industry, Democrats, Republicans, the major media, you name it — frames the building of next-generation 5G networks as a “race” in which the United States needs to demonstrate “leadership.”

Here is The Washington Post declaring America has the lead in the race to 5G. Here’s CNN asking “Who’s winning the race to 5G?” Here’s AT&T CEO Randall Stephenson declaring that China isn’t beating the US to 5G “yet,” as some sort of ominous warning. Here’s T-Mobile CEO John Legere telling the House Subcommittee on Communications and Technology that merging with Sprint will let his company “win the race to 5G.” Here is an entire microsite from industry lobbying group CTIA titled “The Race to 5G.”

Let us never forget AT&T being so desperate to lead this “race” that it rolled out fake 5Ge logos on its phones.

But the stakes of this supposed race are wholly unclear. What happens if we win, besides telecom execs getting slightly richer? More importantly, what are the drawbacks to coming in second, or even third? Where is the list of specific negative outcomes of China building a 5G network a month, a year, or even five years before the United States? I’ve never seen it, and I keep asking about it.

NO ONE CAN SAY WHAT BAD THINGS WILL HAPPEN IF WE DON’T WIN THE RACE TO 5G

For example, here’s FCC Commissioner Geoffrey Starks on The Vergecast this week, when I asked why 5G is a race.

“I think it is important for us to continue to lead the race ... we obviously led to 4G and I think we get to set some of the standards that are ultimately going to be implemented worldwide, which is why there is a little bit of a race.”

Starks went on to say that China wants to be a global leader in supplying 5G equipment and that’s why Huawei has been so aggressively building and pricing its gear. But Huawei depends on American chip technology to make its products, and the US government has just put Huawei on a blacklist anyway. So... the race is so we can set some wireless standards? I suspect Apple, Google, Qualcomm, Verizon, and AT&T can fend for themselves when it comes to that process.

The other main argument for winning the “race” to 5G is that having the world’s best and fastest networks will create new economic opportunities for businesses of all kinds — we’ll enable self-driving cars and telemedicine and all the other stuff you hear about during interminable 5G slideshows at trade conferences. At a hearing before the Senate Committee on Commerce, Science, and Transportation earlier this year, Mississippi Sen. Roger Wicker confidently declared that “failing to win the race to 5G would not only materially delay the benefits of 5G for the American people, it would forever reduce the economic and societal gains that come from leading the world in technology.”

WE WON THE RACE TO LTE AND OUR LTE NETWORKS ARE AMONG THE SLOWEST AND MOST EXPENSIVE IN THE WORLD

Maybe. It is indeed true that better networks lead to better opportunities, and that widespread high-speed broadband is something everyone wants. But I sincerely doubt that all of these companies will pick up and move to China or Europe if the United States builds 5G networks slightly slower. After all, we already have some of the slowest and most expensive networks in the world, and Apple and Facebook have not yet relocated to South Korea.

The more I hear about the race, the more I don’t buy it. I think the “race” framing is there to make some big decisions seem urgent and important — to make it appear as though some serious trade-offs are worth it in order to “win.” And those trade-offs are indeed serious: 5G networks will require a serious rethinking of how we use wireless spectrum. There are incredible privacy implications around putting millions of IoT devices in a “smart city” on 5G. Investment dollars will naturally flow toward building 5G networks in cities instead of expanding our networks to rural areas, exacerbating the digital divide.

THE “RACE” IS TO THERE TO MAKE SERIOUS TRADE-OFFS SEEM WORTH IT SO WE CAN “WIN”

And once the “race” to build out 5G in big cities is “won,” the pressure to expand access to other places in the country will vanish, making that divide even worse. It is worth carefully considering all of these things before giving in to haste.

Oh, and it appears that some of the required 5G spectrum might interfere with important weather sensors, a concern raised by NASA, the Navy, and the NOAA in hearings before Congress last week. How did the wireless industry respond to these concerns? By writing a blog post accusing meteorologists from across three government agencies of “risking our 5G leadership.” The implication, of course, is that worrying about detecting major weather events could make us lose the race.

This race is imaginary bullshit. It’s being foisted on us by huge telecom companies that know internet access is fundamentally a commodity and want something new to sell at high prices instead of competing to improve service and lower prices on the networks they have. After all, the United States “won” the “race” for LTE, but it bears repeating: our LTE networks are among the slowest in the world, and our prices among the highest. What did winning that race accomplish for the millions of people across the country that still can’t get a reliable LTE signal?

#### It can’t be ‘weaponized’

John Tanner 19, Editor of Disruptive Asia, Former Editor-In-Chief and Global Technology Editor at Telecom Asia, Two Degrees in Telecommunications, “US Memo Claims China Could Use 5G To Kill People, Maybe”, Disruptive Asia, 1/8/2019, https://disruptive.asia/memo-china-5g-kill-people/

ITEM: A former Trump administration official is circulating a memo claiming China could weaponize 5G if its market dominance isn’t checked.

How does one weaponize 5G, you may ask? According to the memo author – retired Air Force Brigadier General Robert Spalding, who used to sit on the National Security Council – you do it by selling your 5G gear cheap enough to ensure it’s installed in every 5G network in the world, then make use of secret back doors to wreak international havoc, reports Bloomberg:

Spalding in his memo paints a future headed toward domination by China. Eventually, alternatives to its network technology won’t exist, because other suppliers won’t be able to compete with government-subsidized offerings from Huawei and fellow Chinese gear maker ZTE Corp., Spalding said.

Once China controls the market for internet-connected devices, it will be able “to weaponize cities,” Spalding said in the memo: “Think of self-driving cars that suddenly mow down unsuspecting pedestrians. Think of drones that fly into the intakes of airliners.”

Well. Yes. Think.

If you’re wondering, Spalding is the same person who put together a memo and presentation last year that proposed a similar idea on the grounds that Chinese dominance of 5G was tantamount to China attempting to reinvent the global internet as a platform designed to enable Chinese cyber espionage and cyber attacks on US networks.

Which is silly, because that’s not really how 5G or the internet work.

I haven’t read the new memo (which hasn’t been made public), but based on the Bloomberg report, Spalding’s concept of weaponized 5G sounds both silly and paranoid.

That’s not to say that China doesn’t engage in cyber espionage and hacking against US targets. Of course it does – it has done for years, just as the US has been doing likewise to China and … well, just about everyone, really.

And sure, it’s technically possible that China could secretly leverage Huawei or ZTE network gear to control every 5G network on earth, hoover up personal data and turn cars and drones into robo-assassins. (It’s also technically possible that once Alexa, Siri, Bixby, Cortana and Google Assistant become smart enough, they’ll become sentient, team up to form an AI hive mind called Skynet and kill us all.)

But Spalding’s scenario doesn’t hold up if you look closely. For a start, it seems to depend on the premise that (1) Huawei and ZTE will literally become the only commercially viable alternatives for buying 5G solutions (which is highly unlikely), and (2) there will be no possible way for regulators, law enforcement agencies or telcos to vet 5G gear for possible spyware capabilities before installing it (also highly unlikely).

The other main assumption here seems to be that autonomous cars, drones and the rest of the Internet of Things will either be manufactured by Huawei (or run Huawei software), or have crap security, zero encryption and no failsafes whatsoever. The latter may be possible given the state of IoT security today, but in that case Chinese hackers wouldn’t need Chinese gear in everyone’s networks to pull off such an attack. They certainly haven’t needed it up to now.

Again, I don’t have a copy of the full memo, and it might contain details that make this sound more plausible than the ones included in the Bloomberg report. But I’m reasonably sure that of all the things China plans to do with 5G, turning self-driving cars into murderbots is not one of them.

#### No Chinese dominance

SCMP 19, South China Morning Post, citing a variety of experts, “China Experts: US Still Out Front In Tech Race Despite Pentagon Claim”, 11/3/2019, https://www.abacusnews.com/tech/china-experts-us-still-out-front-tech-race-despite-pentagon-claim/article/3036161

Chinese experts have rejected the claim by a senior Pentagon official that the US is lagging behind China in some key dual-use technologies.

Michael Brown, director of the US Department of Defence’s innovation unit, said at a seminar earlier this week that China was either competitive or catching up in the areas of hypersonics, artificial intelligence, quantum sciences, 5G mobile networks, genetic engineering, and space.

With the exception of hypersonics, these technologies had not only military applications but were also critical for long-term economic prosperity, making them important to the future of US-China competition, he said.

“I believe that national security and economic security are inextricably linked,” Brown told the think tank Centre for Strategic and International Studies in Washington.

China prepares to send its own astronauts to the moon 50 years after Apollo 11

But Chinese experts said China’s progress had been exaggerated and many of its achievements were only partial successes so far.

Hong Kong-based military commentator Song Zhongping said the US had been “unarguably more successful and experienced, far ahead of anyone” in space technology. “Look at Project Apollo and the Space Shuttle programme – decades later no other country has ever matched those achievements,” he said.

Despite breakthroughs in certain fields like 5G, there was more generally a clear gap between China’s digital information and electronics technologies and the world’s technological leaders, according to Beijing-based naval expert Li Jie.

In the field of hypersonics, China may have achieved milestones in glider vehicles, but in another important technology – ramjet engines – there was no evidence of any major breakthroughs, and the US was still far more experienced in the field, said Zhao Tong, senior fellow at the Carnegie-Tsinghua Centre for Global Policy.

China exhibited hypersonic missiles and drones at last month’s National Day parade, and has just launched a commercial 5G – fifth generation mobile network – service on Friday, which is the biggest in the world.

Huawei, China’s telecommunication giant has won contracts to construct the 5G infrastructures for many countries, despite the US campaign to ban Huawei equipment over security concerns.

Brown said China was “already ahead of the US in quantum sciences” – citing the Chinese launch in 2016 of Micius, the world’s first quantum communications satellite. China had also made more launches into space than the US in 2018 as it speeded up its space programme, he said.

Brown added the US had used Chinese equipment for genome sequencing, which meant China had more data on the genetic sequencing of the US population than the US itself, he said, and the US was also playing “a catch up game” with China in AI-based facial recognition.

5G is available now in China for just US$18

For the past 50 to 80 years, the US had led the way and set the standards in almost all important technologies and industries, he said. In doing so, the US had been able to build and shape a global ecosystem and enjoy its advantages since the end of World War II.

But, Brown warned, for China to set the pace for these technologies would be “game-changing”.

“Imagine what the world would look like if China was setting standards,” he said. “Over time, that means we have fewer levers to shape what the US wants to do, both from a global technology standpoint and also what are the values that are highlighted around the world as ones to be looked up to.”

Ni Lexiong, a Shanghai-based military commentator, said Brown had his own agenda in making his comments.

“The US military wants more budget, more new equipment, more new R&D projects. And the theory of a China threat is, of course, a handy excuse,” Ni said.

### AT: Democracy

Alt causes:

1. Internationally---repression in Turkey, Russia, and Hungary.
2. Domestically---gerrymandering, domestic surveillance, Trump treaty withdrawal, and police brutality.

#### DPT is a statistical artifact---empirical analysis.

Michael **Mousseau 18**. Professor @ UCF, PhD PoliSci @ Binghamton. Conflict Management and Peace Science, “Grasping the scientific evidence: The contractualist peace supersedes the democratic peace”, Vol 35(2) 175-192, SagePub.

A weighty controversy has enveloped the study of international conflict: whether the democratic peace, the observed dearth of militarized conflict between democratic nations, may be spurious and accounted for by institutionalized market ‘‘contractualist’’ economy. I have offered theory and evidence that economic norms, specifically contractualist economy, appear to account for both the explanans (democracy) and the explanandum (peace) in the democratic peace research program (Mousseau, 2009, 2012a, 2013; see also Mousseau et al., 2013a, b). Five studies have responded with several arguments for why we should continue to believe that democracy causes peace (Dafoe, 2011; Dafoe and Russett, 2013; Dafoe et al., 2013; Ray, 2013; Russett, 2010). Resolution of this controversy is fundamental to the study and practice of international relations. The observation of democratic peace is ‘‘the closest thing we have to an empirical law’’ in the study of global politics (Levy, 1988: 662), and carries the profound implication that the spread of democracy will end war. New economic norms theory, on the other hand, yields the contrary implication that universal democracy will not end war. Instead, it is market-oriented development that creates a culture of contracting, and this culture legitimates democracy within nations and causes peace among them. The policy implications could hardly be more divergent: to end war (and support democracy), the contractualist democracies should promote the economies of nations at risk (Krieger and Meierrieks, 2015; Meierrieks, 2012; Mousseau, 2000, 2009, 2012a, 2013; Nieman, 2015). In the literature are five factual claims for why we should continue to believe that democracy causes peace: (1) an assertion that in three of the five studies that overturned the democratic peace (Mousseau, 2013; Mousseau et al., 2013a, b), the insignificance of democracy controlling for contractualist economy is due to the treatment of missing data for contractualist economy (Dafoe et al., 2013, henceforth DOR); (2) a claim of error in the measure for conflict (DOR) that appears in one of the five studies that overturned the democratic peace (Mousseau, 2013); (3) an alleged misinterpretation of an interaction term that appears in one of the five studies (Mousseau, 2009) that overturned the democratic peace, along with in inference of democratic causality from an interaction of democracy with contractualist economy (Dafoe and Russett, 2013; DOR); (4) a claim of reverse causality, of democracy causing contractualist economy (Ray, 2013); and (5) a report of multiple regressions with most said to show democratic significance after controlling for contractualist economy (DOR). This study investigates all five of these factual claims. I begin by addressing the issue of missing data by constructing two entirely new measures for contractualist economy. I then take up possible measurement error in the dependent variable by reporting tests using both my own (Mousseau, 2013) and DOR’s measures for conflict. Next, I disaggregate the data to investigate a causal interaction of democracy with contractualist economy. I then examine the evidence for reverse causality, and scrutinize the competing test models to pinpoint the exact factors that can account for differences in test outcomes. The results are consistent across all tests: there is no credible evidence supporting democracy as a cause of peace. Using DOR’s base model, the impact of democracy is zero regardless of how contractualist economy or interstate conflict is measured. There is no misinterpreted interaction term in any study that has overturned the democratic peace, and the disaggregation of the data yields no support for a causal interaction of democracy with contractualist economy. Ray’s (2013) evidence for reverse causality from democracy to contractualist economy is shown to be based on an erroneous research design. And of DOR’s 120 separate regressions that consider contractualist economy, 116 contain controversial measurement and specification practices; the remaining four are analyses of all (fatal and non-fatal) disputes, where the correlation of democracy with peace is limited to mixedeconomic dyads, those where one state has a contractualist economy and the other does not, a subset that includes only 27% of dyads from 1951 to 2001, including only 50% of democratic dyads. It is further shown that this marginal peace is a statistical artifact since it does not exist among neighbors where everyone has an equal opportunity to fight. The results of this study should not be surprising, as they merely corroborate the present state of knowledge. This is because, while DOR ardently assert that four alleged errors, when corrected, each independently save the democratic peace proposition—multiple imputation, the exclusion of ongoing dispute years, an interaction term, and their alternative measure for contractualist economy—they never actually report any clear-cut evidence in support of their claims. One issue not addressed is Dafoe and Russett’s (2013) challenge to Mousseau et al. (2013a) on the grounds that our reported insignificance of democracy is not significant. Like the four claims of error made by DOR addressed here, Dafoe and Russett (2013) made this charge without supporting it. Mousseau et al. (2013b) then investigated it and showed that it too has no support. This issue appears resolved, as Russett and colleagues (DOR) did not raise it again. Nor have DOR or anyone else disputed the overturning of the democratic peace as reported in Mousseau (2012a), which has not been contested with any assertion, supported or unsupported. The implications of this study are far from trivial: the observation of democratic peace is a statistical artifact, seemingly explained by economic conditions. If scientific knowledge progresses and the field of interstate conflict processes is to abide by the scientific rules of evidence, then we must stop describing democracy as a ‘‘known’’ cause or correlate of peace, and stop tossing in a variable for democracy, willy-nilly, in quantitative analyses of international conflict; the variable to replace it is contractualist economy. If nations want to advance peace abroad, the promotion of democracy will not achieve it: the policy to replace it is the promotion of economic opportunity The economic norms account for how contractualist economy can cause both democracy and peace has been explicated in numerous prior studies and need not be repeated here (Mousseau, 2000, 2009, 2012a, 2013). An abundance of prior studies have also corroborated various novel predictions of the theory in wider domains (Ungerer, 2012), and no one has disputed the multiple reports that contractualist economy is the strongest non-trivial predictor of peace both within (Mousseau, 2012b) and between nations (Mousseau, 2013; see also Nieman, 2015). The only matter in controversy is whether democracy has any observable impact on peace between nations after consideration of contractualist economy. My investigation begins below with the allegation of measurement error.

#### It cannot explain great power conflict.

Femke E. Bakker 20, Assistant professor at the Institute of Political Science at Leiden University, "The microfoundations of normative democratic peace theory. Experiments in the US, Russia and China," Political Research Exchange, Vol. 2, Issue 1, 04/20/2020, T&F.

Democratic peace theory is built on the assumption that liberal-democracy has a pacifying effect on people, a socialization process that is assumed to lack within autocracies. This paper uses an experimental approach to investigate the microfoundations of democratic peace theory among decision-makers of the US, Russia and China. It builds on and extents previous experimental studies by conceptualizing and measuring the presence and influence of liberal norms, by controlling for the perception of threat as induced by the conflict, and by testing the influence of hawkishness. The results show that the microfoundations of democratic peace theories do not find support. Neither regime-type, nor liberal norms are of influence on the willingness to attack the opponent, and also the assumed difference in liberal norms between individuals of different regime types is unsupported. Moreover, hawkish decision-makers are more likely to go to war. The results show that democratic peace theory, which aims to explain why democracies do not fight with each other, cannot be used as has been done till today and should be revised. The paper concludes with suggestions for new research avenues.

### AT: Tech Leadership

#### U.S. tech leadership is high.

Gad Levanon 20. Forbes manufacturing contributor. “Reports Of US Decline Are Greatly Exaggerated.” 08/27/20. <https://www.forbes.com/sites/gadlevanon/2020/08/27/reports-of-us-decline-are-greatly-exaggerated/?sh=6253227b26f8>

Despite what many suspect is an eroding US global standing, 2020 may be remembered as the year when the US became even more globally dominant economically.

Why? The tech sector’s share of the US economy is much larger than in most countries. And the pandemic-driven recession has greatly accelerated the shift to online activity and digital transformation by businesses and consumers, which would otherwise have taken years. That lead to faster growth in the global demand for technology. In addition, the US is especially dominant in the tech industries that are likely to grow the fastest in the coming years.

Stock prices certainly support this story. The S&P 500 is already above pre-pandemic highs despite the deepest recession in 80 years, and most of the stock prices’ strength comes from tech sector. The companies that have seen the strongest gains since the pandemic focus on online shopping and payments, cloud computing services, cyber security, business related software, social media, online advertisement, and on-demand entertainment content.

Stock prices are volatile and so are a treacherous guide for predicting the future, but there is a plausible explanation for the large tech gains – and why they might last.

[Chart omitted]

There are several objective and subjective reasons for why the US is so successful in technology compared with other countries. It has:

1The best universities, which attract many of the best students from all over the world – most of whom tend to stay in the US after completing their studies

2A large inflow of experienced talent from other countries

3 Unrivaled access to venture capital

4 Fluency in English, the global language in both business-dealing and content

5 An economy big enough to make achieving scale relatively easy

6 Silicon Valley, the home and heart of the tech revolution

7 A culture that welcomes innovation and disruption and strongly encourages entrepreneurial behavior

Given these factors, US tech leadership should continue.

What about the competition? One factor helping the US stand out is the weakness of the European tech sector. The market cap of the largest European tech company, SAP SAP -0.3%, is about one-tenth of Apple AAPL +1.6%’s. In other sophisticated industries like pharmaceuticals, motor vehicles and aircraft, European companies are strong competitors to their US counterparts. Europe’s relative technology weakness is perhaps as unusual as the US strength in the sector, and is only reinforced by the fact that US technology companies are already big players in European economies.

Most of the top tech companies from East Asia – places like Japan, Taiwan and South Korea – are in hardware and semiconductors manufacturing. They are serious competitors in these areas, but these technology sectors are not growing as quickly.

No discussion of the future of technology is complete without China. The Chinese internet companies are huge and growing rapidly, but their ability to expand beyond China and its periphery is questionable. In almost all sophisticated industries, Chinese companies are not yet major players in Western economies. Also, recent events suggest that Western countries will be more cautious in dealing with China, perhaps limiting its expansion. The latest developments with Huawei and TikTok are good examples. In addition, US companies are slowly moving their supply chain elsewhere, further weakening China.

So, the technology sector will perform well in the next several years, benefiting countries that are strong in that area. The US, more than any other country, has a large and successful tech sector that seems to be especially concentrated in the fastest-growing tech industries.

What does this mean for the US economy overall? First, it is important to mention that the boost the US is getting from its tech sector has been larger than what most other advanced economies have gotten for quite a while, and is one of the reasons the US has been growing faster than them in recent years. But now, this trend is likely to accelerate.

Here is some back of the envelope math for the difference between the technology sector’s contribution to GDP growth in the US versus a typical advanced economy: Suppose in the US the tech sector is 12 percent of GDP and is growing at 10 percent a year. In another typical advanced economy the tech sector is 7 percent of GDP and is growing at 5 percent a year. That means that the annual contribution to GDP from the tech sector is 1.2 percent for the US versus 0.35 percent for the other country. That is 0.85 percent faster growth for the US every year. The net effect may be smaller because some of the growth in tech companies come at the expanse of companies from other sectors. But when the average annual GDP growth rate is 1.5-2 percent in advanced economies, even a 0.5 percent a year difference is meaningful.

The gains from the rapid growth in technology would disproportionately go to tech companies’ owners and workers. As most of these are high earners, this trend is likely to increase income inequality. But some of the gains will spread more widely. After all, owners and workers, and the companies themselves, spend a large share of their income in the communities they live and operate in. It will also increase geographic inequalities. Not surprisingly, within the US, areas close to Silicon Valley benefited the most from the technology demand-surge. Between 2013-2018, among the 382 metro areas in the US, San Jose and San Francisco metro areas had the fastest growth in personal income per-capita. During that time, personal income per-capita in the San Jose Metro area rose by 48 percent, more than twice as fast as the national rate (22 percent). The surrounding metro areas, Napa, Santa Rosa-Petaluma, Santa Cruz-Watsonville, Stockton, Vallejo, were all ranked in the top 40. Seattle, another technology Hub, is ranked 13.

All of these data points add up to an enduring strength. Despite concerns about US’s standing in the world, its tech sector may keep it at the forefront of the global economy in the foreseeable future.

### AT: China War

#### No U.S.-China war.

Abraham Denmark et al 20 is director of the Asia Program at the Woodrow Wilson International Center for Scholars and a former deputy assistant secretary of defense for East Asia, April 16, “SAME AS IT EVER WAS: CHINA’S PANDEMIC OPPORTUNISM ON ITS PERIPHERY”, <https://warontherocks.com/2020/04/same-as-it-ever-was-chinas-pandemic-opportunism-on-its-periphery/>

While Washington and Beijing’s overheated rhetoric and mutual recriminations amid the ongoing coronavirus pandemic are grabbing headlines, equally important is what has been playing out across China’s eastern and southern peripheries over the past several weeks. At a moment when the Chinese Communist Party has been touting the generosity of its approach to COVID-19, there has been a marked increase in the number of incidents between China and its neighbors. Beijing has used its naval and paramilitary forces as well as its increasingly sophisticated information operations to ratchet up tensions, probe responses, and see how much it can get away with. This raises the question of what exactly China is up to. Has Beijing truly embraced a new approach of cooperation with its neighbors? Is it trying to take advantage of the COVID-19 mess to assert its interests more aggressively? Or is this simply an extension — albeit an opportunistic one — of its pre-pandemic strategy? BECOME A MEMBER The novel coronavirus pandemic has not curtailed geopolitics — in fact, it seems to be intensifying preexisting tensions. Understanding if and how China’s foreign policy has shifted is critical for assessing what is happening along China’s periphery and what Beijing might do next. Answering these questions is necessary for the United States and its allies to fashion a proper response. This, in turn, demands understanding what Beijing was doing before the crisis and thinking through what might actually signal a significant shift toward a more confrontational foreign policy. How Did I Get Here? China’s Latest Moves Chinese ships and aircraft have been involved in a spate of recent incidents across China’s maritime periphery. While there have been no fatalities, lives were certainly put at risk. Considering these incidents have involved two of China’s primary regional rivals — Japan and Vietnam — as well as Taiwan, the possibility that Beijing may see the COVID-19 pandemic as an opportunity to press an advantage during a time of geopolitical distraction and uncertainty should be considered. In mid-March, a group of People’s Liberation Army (PLA) aircraft crossed the median line in the Taiwan Strait — an unofficial demarcation line between Taiwan and China — in an exercise intended to intimidate Taiwan by demonstrating China’s ability to conduct operations at night while also testing Taiwan’s ability to react. While PLA ships and aircraft have been operating within the vicinity of Taiwan for several years, the pace and assertiveness of these activities have noticeably increased in recent years: The latest incident was the fourth time in two months that PLA aircraft forced Taiwan’s air force to scramble and intercept. Considering the impending second inauguration of Taiwan’s leader, President Tsai Ing-wen, as well as dwindling levels of support in Taiwan for Beijing’s “One Country, Two Systems” formulation, these exercises are likely to grow even more common and assertive. In late March in the East China Sea, a Chinese fishing vessel collided with a Japanese destroyer. The collision ripped a hole in the destroyer, but the ship was able to move on its own, and its crew suffered no casualties. Beijing announced that one Chinese fisherman had been hurt and blamed the Japanese vessel for the incident, calling for Japan’s cooperation to prevent future incidents. It is unclear if the Chinese vessel was a part of China’s “maritime militia,” described by the U.S. Department of Defense as “an armed reserve force of civilians available for mobilization” that plays a “major role in coercive activities to achieve China’s political goals without fighting.” The South China Sea has also seen several recent incidents involving Chinese vessels. In early March, a Vietnamese fishing vessel was moored near a small island in the Paracel archipelago — islands claimed by both Vietnam and China, among others — when a Chinese vessel chased it and fired a water cannon, causing the boat to sink after hitting some rocks. The crew was rescued by another Vietnamese fishing boat, with Hanoi claiming that the fishing boat was rammed by the Chinese vessel. The U.S. State Department issued a statement in early April expressing its serious concerns about the incident and calling on China “to remain focused on supporting international efforts to combat the global pandemic, and to stop exploiting the distraction or vulnerability of other states to expand its unlawful claims in the South China Sea.” The State Department also noted that since the outbreak of the pandemic, “Beijing has also announced new ‘research stations’ on military bases it built on Fiery Cross Reef and Subi Reef, and landed special military aircraft on Fiery Cross Reef.” Most recently, a Chinese coast guard (CCG) ship — one of several Chinese ships that harassed a Philippine commercial vessel in September 2019 — was seen patrolling near the Scarborough Shoal, representing one of many CCG ships that have been patrolling nearly all of the disputed areas between China and the Philippines in the South China Sea. Are these incidents merely a coincidence? Are they a sign that Beijing is distracted by COVID-19 and the resulting historic economic slowdown, and aggressive local commanders are pushing the envelope of their own accord? Or is this merely the result of China fielding more ships and more aircraft, leading to a predictable increase in incidents and exercises? While these explanations are all plausible, a more likely driver of China’s actions is, in fact, continuity. These incidents are not unprecedented and likely do not indicate a new, post-pandemic Chinese strategy. Rather, these incidents are consistent with a Chinese approach to foreign affairs under CCP General Secretary Xi Jinping’s leadership that even before the outbreak of COVID-19 demonstrated flexibility, assertiveness, and a singular desire to exploit opportunities of external weakness and distraction in order to advance China’s interests. For more than a decade, Chinese leaders have come to see their external security environment as generally favorable, representing a “strategic window of opportunity” in which China could achieve its primary objective of national revitalization through economic and social development, military modernization, and the expansion of its regional and global influence. Since the 2008 to 2009 global financial crisis, Beijing has perceived an opportunity to expand its geopolitical power relative to the United States yet does not seek an explicit conflict with the United States or its allies. As a result, Beijing has intensified its use of “gray zone” tactics that seek to gradually advance Chinese interests using ambiguity and tactics that are tailored to not provoke a military retaliation. These activities also serve as “probing behavior” that tests how far China can go before encountering determined resistance. In recent years, Beijing has used this approach to increase pressure on Japan in the East China Sea and advance Beijing’s territorial claims in the South China Sea against the Philippines, Vietnam, Malaysia, and Indonesia. Throughout, Beijing’s approach to regional geopolitics has been adaptive to specific conditions, flexible to broader strategic trends, and opportunistic to perceptions of weakness or distraction in its adversaries. Chinese actions are not the reckless gambles they may initially appear to be. Rather, they are premeditated probes seeking to identify weakness and opportunity. Chinese pressure is carefully calibrated to fit, but not necessarily to exceed, a given situation. This approach reflects a maxim of Vladimir Lenin, whom the Chinese Communist Party continues to revere to this day: “Probe with a bayonet: if you meet steel, stop. If you meet mush, then push.” In multiple instances, Beijing has continued to push when it perceives that its actions are unlikely to cause a significant response. But when Chinese assertiveness has been met with resolute counterpressure, Beijing’s response has not been predictably escalatory.Beijing has demonstrated flexibility when confronted with determined opposition. Examples include Japan’s response to China’s rollout of an air defense identification zone in the East China Sea in 2013 and President Obama’s reported drawing of a red line around Scarborough Shoal to Xi Jinping in March 2016. Moreover, India’s response to Chinese activities in Doklam did not lead to war.

### AT: Warming

Emissions from India, China, and Africa thump.

#### Warming’s not existential---framing it as such undermines solvency.

Zeke Hausfather & Glen P. Peters 20. \*Director of climate and energy at the Breakthrough Institute in Oakland, California. \*\*Research director at the CICERO Center for International Climate Research in Oslo, Norway. "Emissions – the ‘business as usual’ story is misleading". Nature. 1-29-2020. https://www.nature.com/articles/d41586-020-00177-3

In the lead-up to the 2014 IPCC Fifth Assessment Report (AR5), researchers developed four scenarios for what might happen to greenhouse-gas emissions and climate warming by 2100. They gave these scenarios a catchy title: Representative Concentration Pathways (RCPs)1. One describes a world in which global warming is kept well below 2 °C relative to pre-industrial temperatures (as nations later pledged to do under the Paris climate agreement in 2015); it is called RCP2.6. Another paints a dystopian future that is fossil-fuel intensive and excludes any climate mitigation policies, leading to nearly 5 °C of warming by the end of the century2,3. That one is named RCP8.5.

RCP8.5 was intended to explore an unlikely high-risk future2. But it has been widely used by some experts, policymakers and the media as something else entirely: as a likely ‘business as usual’ outcome. A sizeable portion of the literature on climate impacts refers to RCP8.5 as business as usual, implying that it is probable in the absence of stringent climate mitigation. The media then often amplifies this message, sometimes without communicating the nuances. This results in further confusion regarding probable emissions outcomes, because many climate researchers are not familiar with the details of these scenarios in the energy-modelling literature.

This is particularly problematic when the worst-case scenario is contrasted with the most optimistic one, especially in high-profile scholarly work. This includes studies by the IPCC, such as AR5 and last year’s special report on the impact of climate change on the ocean and cryosphere4. The focus becomes the extremes, rather than the multitude of more likely pathways in between.

Happily — and that’s a word we climatologists rarely get to use — the world imagined in RCP8.5 is one that, in our view, becomes increasingly implausible with every passing year5. Emission pathways to get to RCP8.5 generally require an unprecedented fivefold increase in coal use by the end of the century, an amount larger than some estimates of recoverable coal reserves6. It is thought that global coal use peaked in 2013, and although increases are still possible, many energy forecasts expect it to flatline over the next few decades7. Furthermore, the falling cost of clean energy sources is a trend that is unlikely to reverse, even in the absence of new climate policies7.

Assessment of current policies suggests that the world is on course for around 3 °C of warming above pre-industrial levels by the end of the century — still a catastrophic outcome, but a long way from 5 °C7,8. We cannot settle for 3 °C; nor should we dismiss progress.

Plan for progress

Some researchers argue that RCP8.5 could be more likely than was originally proposed. This is because some important feedback effects — such as the release of greenhouse gases from thawing permafrost9,10 — might be much larger than has been estimated by current climate models. These researchers point out that current emissions are in line with such a worst-case scenario11. Yet, in our view, reports of emissions over the past decade suggest that they are actually closer to those in the median scenarios7. We contend that these critics are looking at the extremes and assuming that all the dice are loaded with the worst outcomes.

Asking ‘what’s the worst that could happen?’ is a helpful exercise. It flags potential risks that emerge only at the extremes. RCP8.5 was a useful way to benchmark climate models over an extended period of time, by keeping future scenarios consistent. Perhaps it is for these reasons that the climate-modelling community suggested RCP8.5 “should be considered the highest priority”12.

We must all — from physical scientists and climate-impact modellers to communicators and policymakers — stop presenting the worst-case scenario as the most likely one. Overstating the likelihood of extreme climate impacts can make mitigation seem harder than it actually is. This could lead to defeatism, because the problem is perceived as being out of control and unsolvable. Pressingly, it might result in poor planning, whereas a more realistic range of baseline scenarios will strengthen the assessment of climate risk.

## Cyber Adv

### AT: Patent Holdups---1NC

#### No patent holdups---they require empirical evidence---Shapiro is a hack

Trevor Soames 16. Competition/regulatory lawyer + litigator (Avocat au Barreau de Bruxelles, Solicitor-Advocate & Barrister). "PATENT HOLD UP: “The fallacies of patent hold up theory” ". No Publication. 11-13-2016. https://www.linkedin.com/pulse/patent-hold-up-fallacies-theory-trevor-soames

The theory of Patent Holdup remains remarkably devoid of any empirical evidence. The paper delivered by Prof Carl Shapiro, one of the key proponents of that theory, at IEEE in late 2015 did nothing to fill that void, arguing that such evidence was unnecessary as it can be inferred just like, others have argued, like “dark matter”. As posted previously, a link to a copy of this still unpublished paper can be found embedded in the following commentary by Keith Mallinson:

http://www.wiseharbor.com/pdfs/Mallinson%20on%20Holdup%20and%20Holdout%20for%20IP%20Finance%2016%20Aug%202016.pdf

Before moving on to the newly published paper, I would like to point out, in all fairness, that the paper does indeed cite what it claims to be the "leading example" of hold up, namely the notorious General Motors/Fisher Body transaction. However, that so called example has been shown - in thoroughly researched papers - such as the one cited below by Professor Dan Spulber et al, but there are others, to have been wholly based upon a recitation of false facts. More detail on this flawed example can be found at: http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=231736 In other words, General Motors/Fisher Body is simply not a real and viable example of hold up, as claimed.

If you have an interest in this issue which has guided antitrust enforcement policies in many jurisdictions, including my own, then please read this just released paper by my friend Professor Stephen Haber of Stanford: http://hooverip2.org/working-paper/wp16009/ http://hooverip2.org/wp-content/uploads/ip2-wp16009-paper-1.pdf

In that paper both he and his co author, Alex Galetovic, examine each of the pillars that support the theory of Patent Holdup and find them (seriously) wanting. They find that the theory is based on three sequential fallacies: 1) patent holdup is a straightforward variant of holdup as it is understood in transaction cost economics; 2) royalty stacking is holdup repeated multiple times on the same product; 3) standard essential patents contribute little or no value to the markets they help create. These fallacies give rise to a theory that is logically inconsistent, incomplete, and ignores economic fundamentals. The flaws in logic of Patent Holdup Theory, and its lack of fit with the evidence, suggests that a new theory about the mechanics and dynamics of SEP-intensive IT industries is called for, both as a matter of science and as a guide to antitrust and patent policies.

#### Plan causes patent holdouts---outweighs holdups.

Keith Mallinson 16. Founder of WiseHarbor, providing expert commercial consultancy since 2007 to technology and service businesses in wired and wireless telecommunications, media and entertainment serving consumer and professional markets. He is an industry expert and consultant with 25 years of experience and extensive knowledge of the ICT industries and markets, including the IP-rich 2G/3G/4G mobile communications sector. His clients include several major companies in ICT. He is often engaged as a testifying expert witness in patent licensing agreement disputes and in other litigation including asset valuations, damages assessments and in antitrust cases. He is also a regular columnist with FierceWireless and IP Finance. “Mallinson on Patent Holdup and Holdout: for IP Finance 16th August 2016”. https://www.wiseharbor.com/pdfs/Mallinson%20on%20Holdup%20and%20Holdout%20for%20IP%20Finance%2016%20Aug%202016.pdf

“Patent holdup” allegations encourage SEP free-riders

Despite many years of speculation and recently adjusted claims, there is no empirical support for the theory of “patent holdup.” Various eminent experts refute allegations of systemic “patent holdup.” It is likely that “patent holdup” has not occurred in the context of standards and licensing of standards essential patents (SEPs) because of the fair, reasonable and non-discriminatory (FRAND) licensing contracts and available recourse to the courts have ensured that licensees cannot be forced to pay “excessive” licensing fees.

“Patent holdout,” which is also sometimes referred to as “reverse holdup,“ rather than “patent holdup” may instead be a prevalent problem; although calls for remedies have largely been in response to “patent holdup” allegations. Beguiled courts, antitrust authorities, government policy makers and even a standards development organisation (SDO) are tipping the scales in favour of “patent holdout” by infringing implementers of SEPs. This is destabilising the equilibrium between the interests of the licensors and licensees forged by consensus over decades in the IPR policies of SDOs such as ETSI with Fair, Reasonable and Non-Discriminatory licensing. As leading academics note, “FRAND Implies Balance” and “FRAND [is not] a one-way street.” Whereas alleged “patent holdup” supposedly results in excessive royalties, “patent holdout” is undermining licensors attempts even to achieve FRAND terms or to complete any licensing at all in many cases. Licensors are therefore losing their ability to make a fair return on their investments in SEP technologies. This discourages ongoing investments in standard-essential technologies, participation in SDOs and contribution to the standards.

### AT: Cyber

#### Nobody launches catastrophic cyber attacks

James Andrew Lewis 20, Senior Vice President and Director of the Technology Policy Program at the Center for Strategic and International Studies, “Dismissing Cyber Catastrophe”, Center for Strategic and International Studies, 8/17/2020, https://www.csis.org/analysis/dismissing-cyber-catastrophe

A catastrophic cyberattack was first predicted in the mid-1990s. Since then, predictions of a catastrophe have appeared regularly and have entered the popular consciousness. As a trope, a cyber catastrophe captures our imagination, but as analysis, it remains entirely imaginary and is of dubious value as a basis for policymaking. There has never been a catastrophic cyberattack.

To qualify as a catastrophe, an event must produce damaging mass effect, including casualties and destruction. The fires that swept across California last summer were a catastrophe. Covid-19 has been a catastrophe, especially in countries with inadequate responses. With man-made actions, however, a catastrophe is harder to produce than it may seem, and for cyberattacks a catastrophe requires organizational and technical skills most actors still do not possess. It requires planning, reconnaissance to find vulnerabilities, and then acquiring or building attack tools—things that require resources and experience. To achieve mass effect, either a few central targets (like an electrical grid) need to be hit or multiple targets would have to be hit simultaneously (as is the case with urban water systems), something that is itself an operational challenge.

It is easier to imagine a catastrophe than to produce it. The 2003 East Coast blackout is the archetype for an attack on the U.S. electrical grid. No one died in this blackout, and services were restored in a few days. As electric production is digitized, vulnerability increases, but many electrical companies have made cybersecurity a priority. Similarly, at water treatment plants, the chemicals used to purify water are controlled in ways that make mass releases difficult. In any case, it would take a massive amount of chemicals to poison large rivers or lakes, more than most companies keep on hand, and any release would quickly be diluted.

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

* Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals.
* There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.)
* No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare.
* State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war.

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

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

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

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

#### No cyberwar---answers all their scenarios.

Jeremy Rabkin & John Yoo 17. Rabkin is a Professor of Law at the Antonin Scalia Law School, George Mason University; Yoo is currently the Emanuel S. Heller Professor of Law at the University of California, Berkeley. 09/12/2017. “CHAPTER 6 Cyber Weapons.” Striking Power: How Cyber, Robots, and Space Weapons Change the Rules for War, Encounter Books.

It is possible for a “virus” to disable the hardware elements of a network, as happened in the Shamoon attack. The effects of such an attack are costly, especially if they crash electric power supplies or delete important government data. But those well-known costs will encourage governments and corporations to back up valuable data in several places and build redundancies into vital control systems. Such safeguards would mean cyber attacks cause temporary inconvenience, but are not likely to cause widespread, permanent damage. If an attacker wants to turn off the lights everywhere, there are easier ways than cyber-based attacks. Alarms over shutting down computer networks overlook their resiliency. Computers are immensely complicated and hence inherently temperamental. Designers of computer systems have always known that. At any one time, some computers in commercial networks may be experiencing technical difficulties—as air travelers know from experience trying to acquire boarding passes from “self-help” kiosks. Network designers build their systems to work even when significant portions of the hardware 42 and software go offline. Such resiliency would pose a serious obstacle to the success of a cyber attack. As new risks become known, network engineers will build in more robust defenses. Finally, even if nations could build cyber weapons that could shut down networks on a large scale, they may never use them. Such a weapon could be equally dangerous for the attacker as for the defender if its effects spread beyond the target system. The more networked an attacker’s economy and military, the more exposed it will be to such harms. Even if the attacker could deploy a prophylactic defense for its own computers, it would still need those computers to communicate with external networks in other countries. A world paralyzed by computer problems would prevent the attacking nation from reaping the benefits of the Internet. Unless it were prepared to isolate itself from the world economy for a lengthy period of time, a nation would not likely deploy an all-destructive cyber weapon. To think of cyber as a weapon of mass destruction is like noticing that a laptop computer is light enough to swing, while also encased in unyielding metal, and then to conclude that a laptop computer is well suited to deploy as a war club. That conclusion is not demonstrably false. But it misses the main point. The most attractive aspect of cyber operations from a tactical standpoint is that they can be customized, allowing attacks to be highly focused and ratcheted up or dialed back, according to circumstances. Their most effective use is when they are used for espionage and covert action goals, rather than strategic strikes. Their military value will come as an aid to other forms of hostilities, such as diplomatic and economic pressure or kinetic attacks. Cyber weapons have far more value as a more precisely tuned means of coercion between nations, rather than as a weapon of mass destruction.

# 2NC

## 2NC---Regs CP

### AT: PDCP---2NC

#### “Expanding the scope” of “anti-trust laws” must be the DOJ and FTC.

Jarod Bona 21. Bona Law PC. "Five U.S. Antitrust Law Tips for Foreign Companies". Antitrust Attorney Blog. 1-16-2021. https://www.theantitrustattorney.com/five-u-s-antitrust-tips-foreign-companies/

1. Two federal and many state agencies enforce antitrust laws in the United States

The United States government has two separate antitrust agencies—the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ). The FTC is an independent federal agency controlled by several Commissioners, while the Antitrust Division of the DOJ is part of the Executive Branch, under the President.

Both of them enforce federal antitrust laws (among other laws). Their jurisdictions technically overlaps, but they tend to have informal agreements between each other for one or the other to handle certain industries or subjects. If you are part of a major industry, your antitrust lawyer may be able to tell you whether the DOJ or FTC is likely to oversee competition issues in your field.

#### 2. Jurisdiction: the plan expands the DOJ and FTC role.

Babette E. Boliek 11. Associate Professor of Law at Pepperdine University School of Law. J.D., Columbia University School of Law; Ph.D., Economics University of California, Davis. FCC Regulation Versus Antitrust: How Net Neutrality is Defining the Boundaries, 52 B.C.L. Rev. 1627 (2011). <http://lawdigitalcommons.bc.edu/bclr/vol52/iss5/2>

There is a crucial battle playing out in the world of Internet access provision. While the Internet is the natural home of competing business giants and warring digital avatars, the contest that will have the most sweeping ramifications for the future of the Internet is the turf war being waged between the Federal Communications Commission (FCC), on the one hand, and the Federal Trade Commission (FTC) and the Department of Justice (DOJ), on the other.1 Nothing less than jurisdiction over the development of the Internet is at stake.

Jurisdiction over Internet access provision is not the first confrontation between these particular government agencies; in fact, they have clashed many times.2 But it is the current iteration of the FCC’s “net neutrality” regulations that has generated the latest contest. Roughly defined, net neutrality encompasses principles of commercial Internet access that include equal treatment and delivery of all Internet applications and content.3 For some, net neutrality stands further for the proposition that Internet access operators should not be permitted to provide different qualities of service for certain application providers (e.g., guaranteed speeds of transmission), even if those application providers can freely choose their desired quality of service.4 Net neutrality has reinvigorated what may be described as an underlying interagency tug of war that reaches deep within, and far beyond, the communications industry.

Although the two regimes share a commonality of purpose—to protect consumers and to promote allocative efficiencies in production—the two have quite distinct, predominately opposing, means of securing social benefits. As Justice Stephen Breyer stated when serving as a judge on the U.S. Court of Appeals for the First Circuit, although regulation and the antitrust laws “typically aim at similar goals—i.e., low and economically efficient prices, innovation, and efficient production methods” —regulation looks to achieve these goals directly “through rules and regulations; [but] antitrust seeks to achieve them indirectly by promoting and preserving a process that tends to bring them about.”5 The battle between these two regimes may be broadly summarized in a single issue thusly: in the face of the industry-specific regulator, what is (or what should be) the role of antitrust law?6

Antitrust law preserves the process of competition across all industries by condemning anticompetitive conduct when it occurs. In contrast, industrial regulation by its nature is a public declaration that, in a given industry, market forces are too weak or underdeveloped to produce the consumer benefits that are realized in competitive markets— regulated industries are carved out from the rest of the economy and are subject to proactive, regulatory intervention that goes above and beyond antitrust enforcement measures.7 Not surprisingly, regulatory agencies were historically created as substitutes for market forces in the few markets that, by the nature of the product or technology, were natural monopolies or severely prone to monopoly.8 In the vast major- ity of markets, however, the antitrust law is the default government control, designed to supplement market forces to inhibit or prevent the growth of monopoly.

Again, although the goals of the two regimes may be similar, the means by which each can achieve those goals are in opposition. Therefore, the threshold determination of which industries are to be singled out for industry-specific regulation, and to what degree, is of vital importance as it simultaneously determines the predominance of the regulator versus the antitrust authority in securing the social good.

This Article sets forth a framework to identify the boundaries between FCC regulatory power and antitrust authority. The goal is to pinpoint for Congress the problematic use of regulatory discretion in defining, or redefining, those boundaries and to propose the standard by which Congress may address inappropriate use of existing FCC jurisdiction. Specifically, this Article creates a new categorization of “procedural opportunism” and “substantive opportunism” to identify problematic, regulatory assertions of jurisdiction. The central issue examined in this Article is to posit what is (or should be) the boundaries of antitrust law in relation to the FCC’s regulatory authority. This important issue has reached a point of public crises in the current net neutrality debate.9 Rather than act reflexively, this is an opportunity for Congress to act clearly to redefine the boundaries between the two regimes that have otherwise been blurred by regulatory overreach.

#### 3. Legal code---antitrust requires Title 15 of US Code.

Sanjukta M. Paul 16. David J. Epstein Fellow, UCLA School of Law. The Enduring Ambiguities of Antitrust Liability for Worker Collective Action. Loyola University Chicago Law Journal. https://www.congress.gov/116/meeting/house/110152/witnesses/HHRG-116-JU05-Wstate-PaulS-20191029-SD002.pdf

Unlike the Clayton Act, which was the first legislative attempt at a labor exemption from antitrust,202 the Norris-La Guardia Act did not grapple directly with trade regulation in subject matter—even with how trade regulation applies to labor—although it had the effect of modifying its reach. Norris-La Guardia is not an antitrust statute. Instead, it is incorporated into Title 29 (“Labor”) of the United States Code. By contrast, the Clayton Act was conceived and written as an antitrust statute, was incorporated into Title 15, the antitrust and trade regulation section of the Code, and portions of it dealt with matters other than labor.

### AT: PDB---2NC

#### 2. “Do both” is antitrust duplication---the disputes collapse resources, effectiveness, and signaling.

Carl W. Hittinger and Tyson Y. Herrold 19. Carl W. Hittinger (LAW ’79) is a senior partner and serves as BakerHostetler’s Antitrust and Competition Practice National Team Leader and the litigation group coordinator for the firm’s Philadelphia office. He concentrates his practice on complex commercial and civil rights trial and appellate litigation, with a particular emphasis on antitrust and unfair competition matters, including class actions. Tyson Y. Herrold is an associate in the firm’s Philadelphia office in its litigation group. His practice focuses on complex commercial litigation, particularly antitrust and unfair competition matters, as well as civil rights litigation. "Antitrust Agency Turf War Over Big Tech Investigations". Temple 10-Q. https://www2.law.temple.edu/10q/antitrust-agency-turf-war-over-big-tech-investigations/

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

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

So how will the FTC and DOJ resolve their latest turf war? Perhaps they will revisit their clearance agreement and decide to split their authority by company or the business practice being investigated, based on prior agency experience, rather than by industry as Appendix A currently does. Or maybe Congress will decide to consolidate civil antitrust enforcement jurisdiction under one agency. That seems like a long shot considering the political implications. However, during the Senate’s antitrust oversight hearing, Sen. Josh Hawley proposed “cleaning up the overlap in jurisdiction by removing it from one agency” and “clearly designating enforcement authority to one agency.” One thing is sure—the agencies should not be duplicating civil antitrust investigations. Stay tuned.

#### 3. Specifically true for patent law.

Claire Guo 19. Juris Doctor, Peking University School of Transnational Law. Intersection of Antitrust Laws with Evolving FRAND Terms in Standard Essential Patent Disputes, 18 J. MARSHALL REV. INTELL. PROP. L. 259 (2019). Pg. 278

The practice of three major jurisdictions suggests that the intersection of FRAND terms and antitrust laws is not a fixed process. Instead, it changes as the stipulations of FRAND evolve to have clarity and transparency. In particular, the practice suggests a general trend of less antitrust intervention into FRAND breaches when concrete competition harm is not present. One reason is that when FRAND has expanded into negotiation protocols, mere disobedience of FRAND procedurally without follow-up actions, such as filing injunctions or excessive demand, could not possibly give rise to antitrust concerns. The other reason is that the parallel enforcement of FRAND and antitrust laws is duplicative to some extent. Both FRAND and antitrust laws could be used to address the monopoly power and abusive conducts of SEPs owners resulting from the standardization process. Assuming FRAND has functioned effectively as expected, additional antirust intervention seems redundant and risks upset the balance already reached by FRAND obligation.

### AT: Consumer Action---2NC

#### 2. Patent law solves---their solvency advocate. [EMORY MS=GREEN]

1AC Melamed & Shapiro 18, \*A. Douglas Melamed is Professor of the Practice of Law at Stanford Law School; \*Carl Shapiro is the Transamerica Professor of Business Strategy at the Haas School of Business at the University of California at Berkeley; (May 2018, “How Antitrust Law Can Make FRAND Commitments More Effective”, https://www-cdn.law.stanford.edu/wp-content/uploads/2018/05/How-Antitrust-Law-Can-Make-FRAND-Commitments-More-Effective.pdf)

3. Application of the Basic Legal Principles The antitrust principle is straightforward: industry-wide collaboration through SSOs to establish procompetitive standards is permitted only if it is no more restrictive of competition than reasonably necessary to enable creation of the standards. When standard setting predictably creates technology monopolies that, if unrestrained, will enable anticompetitive ex post opportunism that would otherwise not occur, an SSO that does not take effective measures to pre- vent or minimize such ex post opportunism engages in conduct that is more restrictive of competition than necessary. In that case, the SSO and, in appropriate cases, its members, may well violate Section 1 of the Sherman Act. Under this principle, SSO procedures and FRAND rules should be evaluated based on whether they lead to reasonable SEP royalties, using the competitive ex ante licensing standard discussed above, which has been adopted by the courts in patent law. Put differently, FRAND rules should be evaluated based on their ability to prevent SEP holders from obtaining more than the ex ante value of their technology from implementers. This limitation would not prevent a SEP holder from proﬁting, perhaps greatly, from participating in the SSO and having its patented technology included in the standard. The SEP holder continues to be rewarded for its technology because the inclusion of its technology in the standard can still greatly increase the volume of licensing opportunities available to the SEP holder. Whether a particular set of FRAND rules are sufficiently effective in preventing ex post opportunism will depend on the particular circumstances. The procedural unfolding of the case will also depend upon the circumstances. As a general matter, the case would probably be structured as an ordinary Rule of Reason case.82 First, the plaintiff would have to demonstrate harm to competition as a result of the collaboration of the SSO’s members, many of which compete with one another. In this case, the harm to competition would stem from the ability of the SEP holder to exercise monopoly power by obtaining royalties in excess of the competitive, ex ante level. The decision to include patented technologies in the standard would be the allegedly unlawful agreement. Notably, the court need not determine what a FRAND royalty is; it would suffice to determine that market power has been created or exercised, and that existing SSO rules and policies were not adequate to prevent the competitive harm. The defendant, which could be the SSO or perhaps one or more SSO members, would win at this point if the plaintiff failed to show harm to competition. If might fail if the standard faces substantial competition and the court concludes that the SEP holder therefore does not have market power or if the SSO’s rules and policies are found to be effective in preventing ex post opportunism, even if the plaintiff or even the court thinks that other rules and policies would be preferable. Second, if the plaintiff makes the requisite showing of harm to competition, the defendant(s) would then have to show some procompetitive justiﬁcation— in this case, the beneﬁts of the standard. These two initial steps should be straightforward. Third, if as is likely the defendant is able to show a procompetitive justiﬁcation, the plaintiff would have to show that the SSO could have used available, reasonable alternatives to realize the efficiency beneﬁts with less or none of the competitive harms. The plaintiff might identify reasonable alternatives that would have led to a different standard, based on including unpatented technology in the standard or perhaps involving fewer SEPs or fewer owners of SEPs, which would be less subject to patent holdup. More likely, the plaintiff could suggest alternative SSO rules that would not change the standard, but would reduce the likelihood or extent of ex post opportunism. For example, the plaintiff might suggest more rigorous FRAND-type rules, such as rules that set forth more precise principles on which FRAND royalties are to be determined and the circumstances under which SEP holders might seek injunctions. Fourth, the burden would then shift to the defendant(s) to show that the beneﬁts of the standard could not have been realized if the SSO had adopted any of the proffered alternatives or that those alternatives were unrealistic.83 The plaintiff would be entitled to judgment if the court concludes that those beneﬁts could have been realized with less competitive harm if the SSO had adopted the standard with different IPR rules or policies. Our overall sense, based on experience and the empirical literature, is that the extant FRAND rules are generally useful, but tend to be inadequate because they are imprecise and leave unresolved such critical issues as (a) the meaning of a reasonable royalty, even conceptually; (b) the meaning of “non-discriminatory;” (c) to whom licenses must be offered; and (d) under what circumstances may a SEP holder obtain an injunction.84 These imprecise FRAND commitments are therefore not sufficient to adequately prevent ex post opportunism. The recent revisions to IEEE’s FRAND policy represent a signiﬁcant step in the right direction, but even this advance leaves important questions unanswered.85 If FRAND rules are inadequate in these ways, litigation involving extant FRAND rules would likely be resolved only at the ﬁnal, fourth step. The defendant would be able to demonstrate the beneﬁts created by the standard; the plaintiff would be able to demonstrate the creation of market power and that other reasonable and practical rules or policies would ameliorate the problem. The case would thus turn on whether the defendant is able to demonstrate that signiﬁcant beneﬁts associated with standardization could not have been realized if the SSO had adopted those other rules or policies. The court would have available a variety of possible remedies if the plaintiff prevails. Implementers that paid supracompetitive royalties or were unlawfully excluded in whole or in part from product markets as a result of the inadequate FRAND policies would be entitled to damages and, in some cases, to treble damages.86 If the unlawful SSO conduct is regarded as the collective action of the SSO and its members, which is likely to be the case in most instances, SSO members would be jointly and severally liable for the damages. Forward-looking injunctive relief aimed at restoring competition would need to be fashioned to the requirements of the individual case. For example, a court could order the SSO to adopt a new rule or policy proposed by the plaintiff. If the court is reluctant to take on that governance role, it might give the SSO a period of time—maybe ninety days—to develop a rule, subject to the court’s ultimate approval, which would adequately ameliorate the competitive problem created by the SSO. Alternatively or in addition, the court might order the parties to attempt to negotiate a rule or policy on which they can agree. And, depending on the circumstances, the court might order SEP holders, including at least those that were defendants in the case, to comply with the new SSO rules and policies.

#### 3. Yes expertise.

Erik R. Puknys and Michelle (Yongyuan) Rice 20. Parnter at Finnegan and former patent examiner at the US Patent & Trademark Office. Associate at Finnegan, with experience in section 337 investigations before the U.S. International Trade Commission (ITC). SEP Users Should Jettison Antitrust For Patent, Contract Law. Finnegan. Law360. 10-15-2020. https://www.finnegan.com/en/insights/articles/CDMR-sep-users-should-jettison-antitrust-for-patent-contract-law.html

The Qualcomm and Continental decisions demonstrate that antitrust is an unlikely vehicle for resolving FRAND disputes. Unless the Ninth Circuit, sitting en banc reverses the panel decision in Qualcomm, the Fifth Circuit reverses the Continental decision, or the Supreme Court steps in to change things, antitrust challenges to SEP licensing practices face an uphill battle.

Contract and patent law, on the other hand, provide a different perspective and more flexibility for implementers during negotiations and in court. When negotiating FRAND terms, the parties should review relevant case law interpreting similar SSO policies, and the damages methodologies courts have endorsed or criticized. In addition, the parties should be mindful of creating a record of willingness and diligence and beware of engaging in behavior that could be characterized as bad faith. As in traditional contract settings, the covenant of good faith will play a role in the FRAND world. And that applies to both sides.

#### 4. Patent law solves via enforcing rights---avoids stifling innovation.

Steve Brachmann 8-25. Professional freelance journalist for over a decade covering antitrust. FTC’s Antitrust Complaint Against Facebook Highlights Another Missed Opportunity to Address Big Tech’s Anticompetitive Activities Through Patent Reform. IPWatchdog. 8-25-2021. https://www.ipwatchdog.com/2021/08/25/ftcs-antitrust-complaint-against-facebook-highlights-another-missed-opportunity-to-address-big-techs-anticompetitive-activities-through-patent-reform/id=137070/

Big Tech Antitrust Enforcement Wouldn’t Be Necessary with Strong Patent Rights

The blind eye that antitrust regulators have been turning toward Big Tech’s patent killing activities would be laughable if it wasn’t so frustrating. The recent legislation introduced in Congress to reduce Apple’s anticompetitive app store practices? That probably would never have been needed if Smartflash, the inventor of data storage and access systems that Apple’s App Store was found to willfully infringe and whose patent rights were obliterated by Apple through questionable machinations at the PTAB, had its patent rights respected. Last December, 10 state attorneys general filed an antitrust suit against Google targeting its anticompetitive practices in online search advertising. Google didn’t invent search advertising, but the Internet giant did leverage PTAB trials to knock out seminal online search advertising patent claims owned by B.E. Tech, preserving many billions in Google’s corporate value while destroying the business interests of an innovative competitor. Earlier this month, B.E. Tech and inventor M. David Hoyle filed a Bivens action lawsuit naming several former USPTO officials, including Google’s former Head of Patents and former USPTO Director Michelle K. Lee, for rigging proceedings at the PTAB on behalf of Google, one of the agency’s largest stakeholders.

Antitrust suits may eventually be successful at splitting Big Tech giants into smaller firms, but none of these efforts does anything to actually ensure that the resulting markets will allow smaller competitors to protect their innovations against market incumbents that, while smaller, will still have market caps dwarfing small innovators and independent inventors. The sad truth of the matter is that Apple wouldn’t dominate app stores, Google wouldn’t dominate online search advertising, and Facebook wouldn’t dominate social media if the entire U.S. federal government hadn’t completely turned the patent system on its head over the past two decades.

#### 5. Over-enforcement is the problem, not under-enforcement.

MAKAN DELRAHIM 18. Assistant Attorney General Antitrust Division U.S. Department of Justice. The “New Madison” Approach to Antitrust and Intellectual Property Law. Department of Justice. 03-16-2018. Pg. 6-10

To understand what I mean when I say that patent hold-up is not an antitrust problem, it is important to step back to consider the purpose of antitrust law—what it does, and what it should not do. At its core, antitrust law aims to protect competition and consumers.19 Antitrust law is guided by a consumer welfare standard, which dates back to the origins of the Sherman Act.20 The ultimate focus on the consumer gained academic prominence in the late 1970s and 1980s through the intellectual leadership of Judge Robert Bork,21 Judge Frank Easterbrook,22 and others.23 This standard sharpens the focus of antitrust scrutiny to anticompetitive practices that are harmful to consumers, rather than competitors, so that the antitrust laws are not misapplied to advance social goals unrelated to consumer welfare and efficiency. Importantly, however, the consumer welfare standard is not synonymous with a policy always favoring lower prices.24 For example, high demand for an exciting new product may drive up its price, but that may simply reflect consumer preference for a superior product relative to alternatives.25 Antitrust law is intended to protect this behavior, not punish it, so that others will have incentives to innovate and compete themselves, all for the benefit of consumers.26 Such dynamic competition should be encouraged by our enforcement policies. Rather than focusing on prices in isolation, antitrust law instead protects consumers where practices also harm competition—that is, they harm some “competitive process” in a manner that causes harm to consumers in the form of above-competitive prices, lower output, or reduced efficiency.27 Indeed, directly showing harm to end-consumers is not always necessary to prove a violation of the antitrust laws. For example, where collusion among buyers pushes input prices down—what economists call a monopsony effect—that may violate the antitrust laws because there is harm to competition even though it results in lower prices.28 This is where theories that unilateral patent hold-up is an antitrust problem go wrong. Stating that a patent holder can derive higher licensing fees through hold-up simply reflects basic commercial reality. Condemning this practice, in isolation, as an antitrust violation, while ignoring equal incentives of implementers to “hold out,” risks creating “false positive” errors of over-enforcement that would discourage valuable innovation. Advocates of using antitrust law to reduce the supposed risk of patent hold-up fail to identify an actual harm to the competitive process that warrants intervention. If an inventor participates in a standard-setting process and wins support for including a patented technology in a standard, that decision does not magically transform a lawful patent right into an unlawful monopoly. To be sure, that decision gives the patent holder some bargaining power in claiming a piece of the surplus created by standardization. And, it would require the patent holder to live up to commitments as they would have bargained for it, enforceable by contract laws. But standard setting decisions are intended to be a recognition that a technology is superior to its alternatives. A favorable SSO decision, like a patent itself, is a reward for an innovator’s meritorious contribution whose wide-ranging benefits can ripple throughout the economy, contributing to dynamic competition. Arguments that inclusion in a standard confers market power that could harm competition typically rest on the unreasonable assumption that the winning technology is no better than its rivals.29 It is therefore unsurprising that proponents of using antitrust law to police FRAND commitments principally rely on models devoid of economic or empirical evidence that hold-up is a real phenomenon,30 much less one that harms competition. Since hold-up theories gained traction in the early 2000s, it is striking that they still remain an empirical enigma in the academic literature.31 Antitrust law demands evidence-based enforcement, without which there is a real threat of undermining incentives to innovate. That is why I believe so strongly that antitrust law should play no role in policing unilateral FRAND commitments where contract or common law remedies would be adequate.32 I worry that courts and enforcers have overly indulged theories of patent holdup as a supposed competition problem,33 while losing sight of the basic policies of antitrust law. They lose sight of the fact that antitrust law is not just remedial; it is, importantly, intended to deter through the threat of treble damages.34 As enforcers, we have a responsibility to ensure that antitrust policy remains sound, so that U.S. consumers continue to enjoy the benefits of dynamic competition and innovation, and so we do not export unsound theories of antitrust liability abroad, where economically dubious enforcement actions can have serious consumer-harming effects on U.S. businesses, consumers, and workers.

### AT: Deterrence---2NC

#### 1. CP encourages efficiency in any industry.

Kristelia A. García 14, Associate Professor, University of Colorado Law School, “Penalty Default Licenses: A Case for Uncertainty,” NYU Law Review, Vol. 89, No. 4, October 2014, https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1071&context=articles

Companies, like individuals, are risk averse. The existence of a fallback option, even a poor one, allows them to take a chance on private negotiation. This is the case because the parties know they have an alternative should the deal not work out. Moreover, the fallback allows them the freedom of dabbling in individual deals with only one partner or a handful of them, affording valuable feedback on which terms work and which ones do not without committing the time and effort required to negotiate individually with all comers. If the private terms prove functional and an industry norm begins to take shape-as in the case of the Clear Channel-Big Machine deal-it can then be extended to the larger, more comprehensive partners and eventually reflected in the underlying legal regime.

CONCLUSION

When coupled with a penalty default, uncertainty can bring greater efficiency to the marketplace by encouraging private ordering, which allows for tailored terms and responsiveness to rapid technological change. This is great news in the music sampling context, where for years scholars, legislators, and industry players have been debating a statutory license. 271 This Article suggests that a penalty default license for samples, coupled with existing uncertainty about the future state of protections for derivative works, might alleviate efficiency concerns by encouraging more and better private negotiation. 272

This prescription is particularly timely given the imminent rewrite of "the next great copyright act," 273 and may find application outside the United States as well. In the European Union, for example, there has been a recent push for single-market licensing of intellectual property rights. 274 Copyright territoriality has largely thwarted this initiative, 275 whereas private ordering has resolved it. In November 2012, for example, Google accomplished something the European Union has thus far been unable to: The company struck a private, multiterritory agreement with thirty-five European countries. 276

Acknowledgment of the role uncertainty and penalty defaults play in increasing effectiveness in the market for statutory licensing and in copyright enforcement is only the beginning. A better understanding of uncertainty as a tool for efficiency has application in any industry facing change as a result of rapid technological growth, evolving consumer preferences, or ambiguity about the future state of the law.

#### 2. Mandating patent licensing solves deterrence. [EMORY MS=GREEN]

Lemley & Shapiro 13, \*Mark Lemley is the William H. Neukom Professor at Stanford Law School and a partner at Durie Tangri LLP; \*Carl Shapiro is the Transamerica Professor of Business Strategy at the Haas School of Business, University of California at Berkeley and a Senior Consultant at Charles River Associates; (2013, “A SIMPLE APPROACH TO SETTING REASONABLE ROYALTIES FOR STANDARD-ESSENTIAL PATENTS”, (https://faculty.haas.berkeley.edu/shapiro/frand.pdf)

Under our approach, many of these issues should become moot, since the patentee cannot obtain an injunction (or transfer the patent to someone who can) against a willing licensee, and since competitors are not involved in jointly setting the reasonable royalty rate. If SSOs set clear, reasonable rules following the best practices we recommend, and parties follow those rules, there should be little or no need for antitrust to intervene. Indeed, even the risk of non-disclosure of a patent is lessened, since the patentee has committed to license its essential patents whether or not it discloses them. For the most part, the rules we have described are self-executing, meaning that even if a party tries to break the rules set by the SSO there still may be no need for antitrust to intervene. Thus, we suggest that parties who abide by these procedures—patentees, implementers, and the SSOs themselves—should be immune from antitrust liability for activities that merely follow those rules.107 They have entered into an arrangement that is on balance good for competition, one that allows patentees to receive reasonable royalties but prevents holdup and reduces the risk of monopolization by trickery. The fact that antitrust remains a last resort available when SSOs don’t follow best practices may have two practical benefits, however. First, under our approach the promise of avoiding the risk of antitrust liability will be a powerful incentive for both SSOs and patent owners to adopt the best practices we propose. Second, the risk of antitrust liability may be relevant when an individual patentee wants to adopt best practices but the SSO governing the standard has not yet done so. We propose that a patentee that unilaterally commits to the FRAND procedures we describe here should be immune from antitrust liability for following these procedures.108 A patentee’s unilateral binding commitment to arbitration could be enforced whether or not it was elicited by an SSO. Thus, just as the prospect of antitrust immunity might lure SSOs to adopt best practices, it might also lure patentees to implement those practices even if the SSO has not done so. Given the large number of standard-essential patents based on preexisting standards,109 and given that SSOs tend to update their IP rules rather slowly,110 this is not a small matter.

#### 3. BUT, antitrust deters injunctions, overburdens SEP owners, and links to the net benefit.

Claire Guo 19. Juris Doctor, Peking University School of Transnational Law. Intersection of Antitrust Laws with Evolving FRAND Terms in Standard Essential Patent Disputes, 18 J. MARSHALL REV. INTELL. PROP. L. 259 (2019). Pg. 282

Another reason that antitrust laws need to step down from addressing FRAND violations is the risk of impeding innovation and standardization processes. The antitrust laws protect competition which is a public interest. That is why the enforcement of antitrust laws entails administrative fines and punitive damages. Breaking antitrust laws in EU and China may lead to fines of up to 10% of last year’s turnover of the undertaking.165 Qualcomm was fined both by NDRC for 1 billion dollars in 2015, and then by EU commission for over 1 billion dollars again in 2018.166 In the U.S., companies can be fined up to 100 million dollars or double gains/loss;167 private litigations also offer treble damages.168 Such tough penalties are imposed because the concerned antitrust violation hurts competition- an essential component of market economy and society progress. The U.S. courts are refrained from intervening in opportunistic FRAND breaches from lawfully obtained monopolization, because the evasion of a pricing constraint may hurt consumers but not the competitive process that warrants treble damages.169 Thus, when FRAND terms have effectively managed the monopoly power of SEP owner to the extent that mere FRAND breaches could not result in competition harm, the forceful intrusion of antitrust laws would only deter SEP owners from pursuing injunctions and devalue the essential patents.170 In the end, the antitrust liability may over burden the SEP owners to innovate or to promote standardization. 171

### AT: Contract Deficit---2NC

#### 2.OR it Links to the AFF---*expanding the scope of antitrust causes regulatory capture.*

Thibault Schrepel 20, Assistant Professor at Utrecht University School of Law, Associate Researcher at University of Paris 1 Pantheon-Sorbonne and Invited Professor at Sciences Po Paris. ARTICLE: Antitrust Without Romance, 13 NYU J.L. & Liberty 326

Private and Pseudo-State Interests. Antitrust authorities can be captured by various outside groups that lead antitrust employees to please them so as to maximize their own future interest. 59 Public choice theorists have pointed out that special interest groups may capture regulatory authorities. 60 This issue cannot be overlooked and [\*344] a precise risk map should be drawn in this area as antitrust authorities' employees may please these groups for personal benefit, to the detriment of consumers. 61 The importance of this issue is growing as the scope of antitrust authorities is expanding, which increases the risk of regulatory capture by interest groups. 62

See, e.g., Bundeskartellamt prohibits Facebook from combining user data from different sources (Bundeskartellamt, Feb. 7, 2019), archived at https://perma.cc/B9S2-9659. For more on this extension of antitrust authorities' power, see Directive (EU) 2019/1/EU of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, 2019 O.J. L11 3 (Jan. 14, 2019). For risks this creates in terms of regulatory capture, see Michael E. DeBow, Social Costs of Populist Antitrust: A Public Choice Perspective, 14 Harv. J. L. & Pub. Pol. 205, 220 (1991) (explaining that as the government expands the scope and aims of antitrust enforcement, private parties invest more significant sums in manipulating this greater government intervention in the economy).

## 2NC---Cybersecurity Advantage

### 2NC---AT: Patent Hold Ups

#### 2---1AC Shapiro is wrong--- all innovation examples goes neg.

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“Patent holdup” is manifestly not a systemic problem. There is no empirical evidence of harm to markets or consumers, and such abundant proof of market success—particularly for innovative smartphones and the extensive 3G and 4G networks to which they are connected—including seven billion cellular connections and modest licensing costs totalling only around five percent of device prices. Unmentionable claims I came upon a paper entitled “Patent Holdup: Myth or Reality?” by Carl Shapiro, dated 6 th October 2015, which was circulated as a hard-copy and presented at an IEEE-SIIT conference at the Intelsponsored key-note address. In this, the author concedes that there are “few documented instances of actual holdups” and that they are “exceedingly difficult for researchers to detect and reliably quantify.” He has backed off from his previous claims of prevalence of “patent holdup” where he stated “patentees regularly settle with companies in the information technology industries for far more money than their inventions are actually worth. These companies are paying holdup money to avoid the threat of infringement.” Shapiro has retreated due to lack of empirical support for these original claims which is because portfolio licensing among many licensees on FRAND terms together with the courts ensure that holdup royalties are rarely demanded and are never paid. However, Shapiro takes another position where there is also no supporting evidence. He now claims that the social costs caused by the alleged “patent holdup” problem are in the actions taken to prevent holdup and in the opportunities forgone under the threat of “patent holdup.” His 2015 paper is labelled a preliminary draft that should not be quoted, yet the verbatim thesis of this most outspoken author is evidently being adopted elsewhere; including in a speech by the US Department of Justice’s Chief Economist, Nancy Rose, at a George Washington University conference on “Patents in Telecoms” in November 2015. In this, she analogises that “patent holdup” is like dark matter in the universe – something that cannot itself be detected but is present. She said that the existence of dark matter can be inferred from effects on visible matter. With the passing of ten months since Shapiro presented his paper at the IEEE event and with the DoJ’s name endorsing this latest development in “patent holdup” theory, I believe it is high time to shine some light on the flaws in arguments made by Shapiro and Rose by making their writings available and by rebutting them here. I do not see why they should enjoy the privilege of being heard and given the opportunity to persuade, while also indefinitely being able to shield their postulations from scrutiny or criticism. A big bluff At first glance of the Shapiro paper’s abstract it seems he is going to provide the empirical evidence supporting “patent holdup” theory that many of us have been asking and waiting for over many years. Instead, careful wording sidesteps this issue again and again. He states that “the general theory of holdup enjoys substantial empirical support.” This alone is woefully insufficient: critics of “patent holdup” theory claim these are inapplicable to patents in general and to SEPs in particular. Realising this while unwilling to admit this shortcoming, Shapiro goes on to state that “applying the same theoretical and empirical methodologies to “patent holdup” confirms that patent holdup is a substantial real-world problem.” This seems conclusive; but instead of supporting this assertion with any empirical observations in patent licensing, he merely inflates his claim by stating that “patent holdup is shown to be an especially difficult type of holdup to manage.” Patent holdup remains a theoretical problem absent specific empirical support. In the paper’s main text Shapiro goes on to claim that he “debunk[s] the assertion that the theory of patent holdup lacks empirical support,” but he identifies no such empirical support there either. In his analysis he asserts that the “holdup problem” is actually “the potential for holdup” leading to costs in (1) preventing or mitigating actual holdup, (2) the deadweight loss associated with activities deterred by the prospect of holdup; and (3) the costs caused by actual holdup that nonetheless occur. However, he provides no more than descriptions of his assertions: as with his original theory (3), no empirical support for his revised theory, as indicated in (1) and (2), is provided either. According to Shapiro and Rose, there are three ways in which the alleged problems with holdup can be mitigated or eliminated, each of which has social costs: vertical integration, long-term contracts and lessspecific investment. Shapiro maintains that, in general, this is all widely considered to be well established empirically. Even if one accepts that premise, it is also necessary to identify, depict and quantify with respect to costs how each of these effects is occurring in alleged “patent holdup.” Shapiro dismisses vertical integration with acquisition of all patents required for manufacture as not being viable because there are many patents under widespread ownership and because competing manufacturers also need to use the same patented technologies. He regards FRAND arrangements as costly and inefficient, but does not even assess these anecdotally, let alone empirically. Similarly, he presents no evidence that specific investments have been curtailed with products subject to patents in general or SEPs in particular.

#### Holdups are fake

Keith Mallinson 16. Founder of WiseHarbor, providing expert commercial consultancy since 2007 to technology and service businesses in wired and wireless telecommunications, media and entertainment serving consumer and professional markets. He is an industry expert and consultant with 25 years of experience and extensive knowledge of the ICT industries and markets, including the IP-rich 2G/3G/4G mobile communications sector. His clients include several major companies in ICT. He is often engaged as a testifying expert witness in patent licensing agreement disputes and in other litigation including asset valuations, damages assessments and in antitrust cases. He is also a regular columnist with FierceWireless and IP Finance. “Mallinson on Patent Holdup and Holdout: for IP Finance 16th August 2016”. https://www.wiseharbor.com/pdfs/Mallinson%20on%20Holdup%20and%20Holdout%20for%20IP%20Finance%2016%20Aug%202016.pdf

If “patent holdup” or the threat thereof was a systemic problem we could expect to observe incumbent licensors with entrenched or dominant positions across the industry, stifled innovation, inhibited market entry for implementers and inflated prices. Evidence is to the contrary, as illustrated by what has occurred in smartphones over recent years.

[CHART OMITTED]

Specific investments for most smartphone companies, including many new market entrants, are quite modest these days. The ease and extent of smartphone market entry, as illustrated in Figures 1 and 2, exemplifies this. This has been possible with standardized fundamental technology inputs readily available from third parties including 3G and 4G standard-compliant communications processors and RF chips together with applications processors and displays from merchant suppliers, commodity memories and open source operating system software. The Android OS used in 80 percent of smartphones is obtained royalty free. Market entry by garage-scale start-ups is a reality with all these tangible inputs, SEP-technology licensing on FRAND terms and the availability of product reference designs from MediaTek, Qualcomm and Spreadtrum at minimal up-front and fixed costs to smartphone companies including OEMs and ODMs.

[CHART OMITTED]

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### 2NC---AT: Cyber Impact---2NC

#### No scenario for escalation.

Erica D. Borghard 19, Assistant Professor in the Army Cyber Institute at the United States Military Academy at West Point, and Shawn W. Lonergan, Assistant Professor of International Relations in the Department of Social Science at USMA, “Cyber Operations as Imperfect Tools of Escalation”, Strategic Studies Quarterly, Fall 2019, p. 123-124

However, there are important empirical reasons to suspect that the risks of cyber escalation may be exaggerated. Specifically, if cyberspace is in fact an environment that (perhaps even more so than others) generates severe escalation risks, why has cyber escalation not yet occurred? Most interactions between cyber rivals have been characterized by limited volleys that have not escalated beyond nuisance levels and have been largely contained below the use-of-force threshold.5 For example, in a survey of cyber incidents and responses between 2000 and 2014, Brandon Valeriano et al. find that “rivals tend to respond only to lower-level [cyber] incidents and the response tends to check the intrusion as opposed to seek escalation dominance. The majority of cyber escalation episodes are at a low severity threshold and are non-escalatory. These incidents are usually ‘tit-for- tat’ type responses within one step of the original incident.”6 Even in the two rare examples in which states employed kinetic force in response to adversary cyber operations—the US counter-ISIL drone campaign in 2015 and Israel’s airstrike against Hamas cyber operatives in 2019—the use of force was circumscribed and did not escalate the overall conflict (not to mention that force was used against nonstate adversaries with limited potential to meaningfully escalate in response to US or Israeli force).7

We posit that cyber escalation has not occurred because cyber operations are poor tools of escalation. In particular, we argue that this stems from key characteristics of offensive cyber capabilities that limit escalation through four mechanisms. First, retaliatory offensive cyber operations may not exist at the desired time of employment. Second, even under conditions where they may exist, their effects are uncertain and often relatively limited. Third, several attributes of offensive cyber operations generate important tradeoffs for decision-makers that may make them hesitant to employ capabilities in some circumstances. Finally, the alternative of cross-domain escalation—responding to a cyber incident with noncyber, kinetic instruments—is unlikely to be chosen except under rare circumstances, given the limited cost-generation potential of offensive cyber operations. In this article, we define cyber escalation and then explore the implications of the technical features and requirements for offensive cyber operations. We also consider potential alternative or critical responses to each of these logics. Finally, we evaluate the implications for US policy making.

### 2NC---Extra—Cyber D

#### No spillover---it’ll be confined to the cyber realm, lack of attribution, time cools off pressure, and kinetic deterrence---empirics prove

* no retaliation – Estonia, Russia, Georgia, Israel, Syria, stuxnet – people retaliate, but not kinetically
* cyber-war is more like a raid than a war – this 1) means response will at most be the same forum and 2) it usually doesn’t cause counter-raides – drone strieks, 2007 israel cyberhack syria, china invade Vietnam in 1979, israel w/ Palestine, india w/ Pakistan
* lack of attribution – only reason stuxnet was even partially retaliated to was bc we publicized it – nobody knows who’s attacking, so they don’t respond – no need to be diversionary
* time – takes a ton of time to attribute/solve the hack, that gives leaders time to cool off
* nobody retaliates kinetically because they’ll get wrecked – but retaliating in cyber establishes deterrence bc it’s difficult to assess another country’s capabilities so we can’t be sure if we’d crush them

**Libicki ’14** (Martin; 9/1/2014; PhD in economics from the University of California Berkeley and Master’s in city and regional planning from the University of California Berkeley; “Is Cyberwar Good for Peace? [par Martin Libicki],” <https://www.observatoire-fic.com/is-cyberwar-good-for-peace/>; Date Accessed: 8/16/2017; DS)

The assumption that cyberwar is a cool war also rests on the presumption that what starts in cyberspace will stay in cyberspace; there will be no escalation into kinetic conflict. Clearly the chance of escalation that crosses domains is greater than zero, but for cyber war to lose its cool status requires that the risks of escalation into kinetic conflict for a cyberattack be substantially less than similar risks associated with a comparable kinetic attack. The thin history we have of cyberattacks does not suggest that a cyberattack will necessarily be followed by much of anything at all. The Russian[11] 2007 attacks on Estonia which crippled public and major private web sites was followed by Estonia’s complaints and NATO’s unwillingness to deem this an Article V attack (triggering collective self-defense measures) but it led to nothing violent or even close.[12] If Georgia had reacted kinetically to the cyberattacks on it in 2008, it would have been difficult to distinguish such actions from the war Georgia was forced to fight following its invasion by Russian forces. The 2007 Israeli air strike on a purported nuclear facility in Syria may have been facilitated by an opening cyberattack on Syrian air defenses but Syria did not respond at all to the cyberattack or the raid itself. Iran did not react kinetically to Stuxnet, even if it created cyberwar cadres that may have been implicated in carrying out denial-of-service attacks on banks[13] in the United States (from whence, supposedly, Stuxnet), but also attacks which trashed computers in Saudi Arabia (specifically, Aramco[14]) and Qatar (specifically, RasGas[15]), neither of which could be plausibly accused of complicity in creating Stuxnet. Similarly, the United States carried out no kinetic attack in response to the aforementioned denial-of-service attacks on banks that its intelligence community ascribed to Iran. To be fair, cyberattacks unaccompanied by the outbreak of war are easier to liken to a raid than a war. In a raid, forces cross borders, wreak their mischief, and go home. In a war, they intend to stay permanently or turn what they have taken (be it territory or the entire country) over to those they deem their allies. It is very difficult of conceive of a cyberattack that can change the head of state and even harder to conceive of one that can conquer all or even part of another country. In worst-case scenarios, a cyberattack can disrupt life and maybe even break some machines. But they do not persist unless the cost of eradicating them – for instance, by doing a system reboot, or replacing infected machines with uninfected machines – exceeds the cost of tolerating their presence. It is worth remembering that there is no forced entry in cyberspace. Almost all wars tend to be two-side engagements because the attacked side has no option but to fight or surrender. In a raid, there is a third option to offer, at most, some resistance but not pursue the attacker for fear of worse. Thus, not all raids lead to counter-raids. The aforementioned 2007 Israeli raid on Syria did not. The many U.S. drone strikes have not, so far. China invaded Vietnam in 1979, wreaked damage, caused casualties, and departed having, in its mind, taught Vietnam a lesson. Vietnam did not return the favor by invading China. Neither did India in 1962 under similar circumstances. Granted, some nations do respond. Arabs and Israelis traded raids in the decade or so after Israel declared independence (1948); Palestinians and Israelis traded attacks over the last three decades, as well. Both Koreas sent raiding parties across the 38th parallel in the years prior to North Korea’s 1950 invasion. The history of raids escalating into open conflict (as distinguished from raids preceding open conflict as was the Korean case) is also thin. Two other difficulties associated with attribution and the difficulties of disarming the attacker are likely to reduce the pressure to retaliate, much less, escalate in response to a cyberattack. Difficulties of attribution are likely to have two related effects. The first is that the target may not be so certain about who did it – or at least not be certain of its ability to convince third parties such as other countries who did it – to validate a response. The second is that if it takes too much time to analyze the attack to the point where it can determine (and make the case about) who did it with the requisite confidence, the political pressure for vengeance may have cooled and the politico-military situation that warranted retaliation may have changed (e.g., yesterday’s foe might be today’s partner). The impetus to respond can also be reduced if the public has little idea about the identity of the attacker and even the fact of the attack (e.g., the failure to function is not obvious to the outside). Until the New York Times reported on Stuxnet, the public did not know that Iran had been attacked (it is not clear whether anyone in Iran actually understood that they were being attacked before it was reported). If no one knows that two parties are trading blows in the dark, there is much less requirement to appear strong as a way of establishing third-party deterrence. The difficulty of disarming the other side’s cyberwar capabilities removes another reason for responding to a cyberattack. A kinetic response to a kinetic attack can be justified, not only as a way to reinforce deterrence, but also as a way to reduce the attacker’s ability to carry out further attacks; it does so by killing opposing forces and destroying military equipment, ancillary supplies and infrastructure, especially staging areas. A cyber response can only be justified in terms of deterrence because it is very difficult for a cyberattack to permanently or even temporarily damage the other side’s ability to carry out cyberattacks, which require little more than hackers, information, computing equipment, software, and network connections.[16] Granted, the target country may conclude that it may win some relief from cyberattack by carrying out a kinetic attack on the attacker’s cyberwar corps. Such actions cannot be ruled out[17] — but suffice it to say that at least the tools of a cyberattack cannot be identified from afar in the same way that the tools of a kinetic attack can be. Alternatively, the target can convince itself that the only way to rid itself of the cyberattack menace is to change the regime that governs the attacking country. If the sole aim of such logic is to minimize the likelihood of future damage to the target country, it can be convincing only by substantially underestimating the cost and risk of war or substantially overestimating the inconvenience associated with adopting other measures to improve cyber-security. Finally, and in lieu of regime change, the escalation path from a cyberattack into a kinetic response also crosses a threshold that does not come up when the original provocation and the response were both kinetic. It is unclear whether this threshold is more like a speed bump or a yawning abyss, but it is clearly present. It should therefore seem obvious that a cyberattack is less likely to result in a kinetic response than an equivalent kinetic attack would have. However, this raises the question of what constitutes equivalence. Assessing kinetic damage when it is damage to you is a straightforward exercise. Assessing the damage from a cyberattack that leads to the widespread corruption of information systems requires knowing what systems have, in fact, been corrupted (something that, ironically, the attacker may have a better handle on). A target country that has been spooked by a cyberattack into imagining that the real damage is a multiple of the visible damage may well overreact (at least initially until it realizes over time which of its systems is or is not behaving as if they had been corrupted). In sum, although the risks of violent escalation following a cyberattack are nonzero, the **odds are against it**, in isolation and particularly in comparison to a kinetic attack of similar magnitude.

#### Cyber-attacks won’t escalate---collateral damage, international blowback, reciprocal use, and empirics---robust quantitative data proves

Gudgel 16 [Ph.D. Candidate in Public Policy with a Focus on U.S. Cybersecurity Policy at George Mason Universty [John E. Gudgel, “Cyber War versus Cyber Realities: Cyber Conflict in the International System” *Small Wars & Insurgencies*, Taylor and Francis Group, Date Accessed: 4-16-17]

Valeriano and Maness view cyber conflict through the lens of international relations and primarily focus on cyber interactions among states and directed towards states in the realm of foreign policy. They argue: ‘while cyberspace is a separate domain, it is not unconnected from the normal political domain that is the genesis of conflicts’ (p. 15). Following an introductory chapter outlining the contours of the cyber conflict world, eight subsequent chapters build and defend their theoretical framework for the analysis and prediction of cyber conflict in the international system. One of their major conclusions is that ‘cyber conflict has not changed how states operate, it has not led to a revolution in military affairs, and the fears associated with the tactic are overblown’ (p. 209).

A key component of the authors’ framework described in Chapter 3 is their Theory of Cyber Restraint that holds that due to fears of collateral damage, blowback, and replication states will restrain themselves from unleashing the full weight of their cyber capabilities. In delineating this theory, Valeriano and Maness stake out a clear middle path between authors such as Richard Clarke and Robert Knake who believe that cyber war has already begun,2 and Thomas Rid who contends that cyber war will never take place.3 They frame their approach as cyber moderation: the concept that cyber conflict will occur, but that the conflicts themselves will be trivial and will not significantly change state behavior (p. 39). From their theory and approach, they then propose nine hypotheses on interstate cyber interactions.

One of the primary contributions of the authors’ research is the construction of an open source and peer-vetted database of cyber incidents and disputes between countries called the Dyadic Cyber Incident and Dispute Dataset (DCID). The 1.0 version of the dataset currently contains 111 cyber incidents (defined as short-term isolated cyber operations) and 45 cyber disputes (defined as longer-term operations that can contain several incidents) between state-to-state rivals over an 11-year period (2001 to 2011) including 21 cyber incidents and 5 cyber disputes between China and the United States. In creating this dataset, the authors recognized the attribution problem and only included incidents and disputes where state-based involvement was explicit and evident (p. 84).

Using this dataset, Valeriano and Maness in Chapters 4 and 5 quantitatively analyze interstate cyber actions including the ‘scope, length, and damage inflicted by cyber disputes among rival states’ (p. 78) from 2001 to 2011. Some of the research questions they address include: What factors might predict the occurrence, targets, and level of severity in cyber conflict between states? What are the foreign policy implications of cyber conflict? Do cyber incidents influence and lead to more conflictual relations?

What they found was ‘that the actual magnitude and pace of cyber disputes among rivals do not match popular perception; only 20 of 126 active rivals have engaged in cyber conflict, and their interactions have been limited in terms of magnitude and frequency’ (p. 18). Further, they found that most cyber incidents are regional (e.g. India–Pakistan), focused predominately on espionage and low-level DDoS attacks, and were largely ineffective in getting states to change behavior. There was also little evidence of state-supported or sponsored groups utilizing cyber terrorism. They back up their quantitative data with a series of case studies looking at the most significant recent cyber conflicts involving state (Chapter 6) and non-state (Chapter 7) actors. They then propose a system of rules and norms in cyberspace based on the Just War tradition (Chapter 8).

#### Russian cyberattacks thump.

David E. Sanger and Nicole Perlroth 20. National security correspondent for the New York Times. Cybersecurity reporter for New York Times. "More Hacking Attacks Found as Officials Warn of ‘Grave Risk’ to U.S. Government". NYT. 12-17-2020. https://www.nytimes.com/2020/12/17/us/politics/russia-cyber-hack-trump.html. accessed 12-21-2020 //ART

Federal officials issued an urgent warning on Thursday that hackers who American intelligence agencies believed were working for the Kremlin used a far wider variety of tools than previously known to penetrate government systems, and said that the cyber offensive was “a grave risk to the federal government.”

The discovery suggests that the scope of the hacking, which appears to extend beyond nuclear laboratories and Pentagon, Treasury and Commerce Department systems, complicates the challenge for federal investigators as they try to assess the damage and understand what had been stolen.

Minutes after the statement from the cybersecurity arm of the Department of Homeland Security, President-elect Joseph R. Biden Jr. warned that his administration would impose “substantial costs” on those responsible. “A good defense isn’t enough; we need to disrupt and deter our adversaries from undertaking significant cyberattacks in the first place,” Mr. Biden said, adding, “I will not stand idly by in the face of cyberassaults on our nation.” President Trump has yet to say anything about the attack.

Echoing the government’s warning, Microsoft said Thursday that it had identified 40 companies, government agencies and think tanks that the suspected Russian hackers, at a minimum, had infiltrated. Nearly half are private technology firms, Microsoft said, many of them cybersecurity firms, like FireEye, that are charged with securing vast sections of the public and private sector.

“It’s still early days, but we have already identified 40 victims — more than anyone else has stated so far — and believe that number should rise substantially,” Brad Smith, Microsoft’s president, said in an interview on Thursday. “There are more nongovernmental victims than there are governmental victims, with a big focus on I.T. companies, especially in the security industry.”

The Energy Department and its National Nuclear Security Administration, which maintains the American nuclear stockpile, were compromised as part of the larger attack, but its investigation found the hack did not affect “mission-essential national security functions,” Shaylyn Hynes, a Department of Energy spokeswoman, said in a statement.

“At this point, the investigation has found that the malware has been isolated to business networks only,” Ms. Hynes said. The hack of the nuclear agency was reported earlier by Politico.

Officials have yet to publicly name the attacker responsible, but intelligence agencies have told Congress that they believe it was carried out by the S.V.R., an elite Russian intelligence agency. A Microsoft “heat map” of infections shows that the vast majority — 80 percent — are in the United States, while Russia shows no infections at all.

The government warning, issued by the Cybersecurity and Infrastructure Security Agency, did not detail the new ways that the hackers got into the government systems. But it confirmed suspicions expressed this week by FireEye, a cybersecurity firm, that there were almost certainly other routes that the attackers had found to get into networks on which the day-to-day business of the United States depend.

FireEye was the first to inform the government that the suspected Russian hackers had, since at least March, infected the periodic software updates issued by a company called SolarWinds, which makes critical network monitoring software used by the government, hundreds of Fortune 500 companies and firms that oversee critical infrastructure, including the power grid.

Investigators and other officials say they believe the goal of the Russian attack was traditional espionage, the sort the National Security Agency and other agencies regularly conduct on foreign networks. But the extent and depth of the hacking raise concerns that hackers could ultimately use their access to shutter American systems, corrupt or destroy data, or take command of computer systems that run industrial processes. So far, though, there has been no evidence of that happening.

The alert was a clear sign of a new realization of urgency by the government. After playing down the episode — in addition to Mr. Trump’s silence, Secretary of State Mike Pompeo has deflected the hacking as one of the many daily attacks on the federal government, suggesting China was the biggest offender — the government’s new alert left no doubt the assessment had changed.

“This adversary has demonstrated an ability to exploit software supply chains and shown significant knowledge of Windows networks,” the alert said.

“It is likely that the adversary has additional initial access vectors and tactics, techniques and procedures,” which, it said, “have not yet been discovered.”

Investigators say it could take months to unravel the extent to which American networks and the technology supply chain are compromised.

In an interview on Thursday, Mr. Smith, of Microsoft, said the supply-chain element made the attack perhaps the gravest cyberattack against the United States in years.

“Governments have long spied on each other but there is a growing and critical recognition that there needs to be a clear set of rules that put certain techniques off limits,” Mr. Smith said. “One of the things that needs to be off limits is a broad supply chain attack that creates a vulnerability for the world that other forms of traditional espionage do not.”

Reuters reported Thursday that Microsoft was itself compromised in the attack, a claim that Mr. Smith emphatically denied Thursday. “We have no indication of that,” he said. Officials say that with only one month left in its tenure, the Trump administration is planning to simply hand off what appears to be the biggest cybersecurity breach of federal networks in more than two decades. Mr. Biden’s statement said he had instructed his transition team to learn as much as possible about “what appears to be a massive cybersecurity breach affecting potentially thousands of victims.” “I want to be clear: My administration will make cybersecurity a top priority at every level of government — and we will make dealing with this breach a top priority from the moment we take office,” Mr. Biden said, adding that he plans to impose “substantial costs on those responsible.”

The Cybersecurity and Infrastructure Security Agency’s warning came days after Microsoft took emergency action along with FireEye to halt the communication between the SolarWinds network management software and a command-and-control center that the Russians were using to send instructions to their malware using a so-called kill switch.

That shut off further penetration. But it is of no help to organizations that have already been penetrated by an attacker who has been planting back doors in their systems since March. And the key line in the warning said that the SolarWinds “supply chain compromise is not the only initial infection vector” that was used to get into federal systems. That suggests other software, also used by the government, has been infected and used for access by foreign spies.

Across federal agencies, the private sector and the utility companies that oversee the power grid, forensic investigators were still trying to unravel the extent of the compromise. But security teams say the relief some felt that they did not use the compromised systems turned to panic on Thursday, as they learned other third-party applications may have been compromised.

### AT: Accidents

#### No accidents or escalation

Dr. Bruno Tertrais 17, Master’s Degree in Public Law of the University of Paris, Doctorate in Political Science of the Institut d'études Politiques de Paris, Senior Research Fellow at the Fondation Pour La Recherche Stratégique (FRS), Member of the International Institute for Strategic Studies, Editorial Board of the Washington Quarterly, Associate Editor of Survival, Recipient of the Vauban Prize, Knight of the Legion of Honor, “On The Brink”—Really? Revisiting Nuclear Close Calls Since 1945”, Washington Quarterly, Volume 40, Number 2, p. 51

Why have nuclear weapons not been used since 1945? The more time passes, the more the question becomes relevant and even puzzling for pessimists. Most strategists of the 1960s would be stunned to hear that as of 2017, there still has yet to be another nuclear use in anger. The prospects of a “nuclear weapons ban” or recurring proposals for “de-alerting”—instituting changes that can lengthen the time required to actually use the weapons—make the question even more relevant. Has mankind [humanity] really stood “on the brink” several times since Nagasaki, and have we avoided nuclear catastrophe mostly because of pure “luck”? 1 Recent books, articles, and reports, as well as two wide-audience documentaries, say yes.2 This is not the case. The absence of any deliberate nuclear explosion (except for testing) since 1945 can simply be explained by human prudence and the efficiency of mechanisms devoted to the guardianship of nuclear weapons. Banning nuclear weapons may or may not be a good idea. But it should not be based on the myth of an inherently and permanently high risk of nuclear use. The analysis that follows covers the deliberate use of nuclear weapons by a legitimate authority, either by error (“false alarm”) or not (“nuclear crisis”). It does not cover the risk of an accidental nuclear explosion, an unauthorized launch, or a terrorist act.3 It covers 37 different known episodes, including 25 alleged nuclear crises and twelve technical incidents, which have been mentioned in the literature to one degree or another as potentially dangerous.4 The short answer? If we are to discard Pope John Paul II’s explanation (“Divine Providence”),5 it is that the system worked and that, with rare exceptions, those in charge of nuclear weapons have been responsible, prudent, and careful. “Close calls” have ranged in fact from “not-so-close” to “very distant.” False Alarms A number of technical incidents have taken place since 1945, all of which led to one degree or another to nuclear precautionary measures, generally involving the elevation of alert levels. Most of these incidents are well documented, but one of them does not seem to have taken place at all. It was revealed in 2015 that in the midst of the Cuban Missile Crisis, a Mace missile squadron based in Okinawa received a launch order.6 The ambassador of a Latin American country to the United Nations claimed that this incident “could have altered the course of civilization forever.” 7 One should note that according to the account—based on a single testimony—the safeguards worked: given that the procedure was not respected (the order came at DEFCON-2, whereas it was supposed to happen only at DEFCON-1), the unit commander suspended the launch.8 In any case, an in-depth inquiry by Stars & Stripes magazine at the end of 2015 did not find any confirmation of the incident; U.S. Air Force historians did not find any trace of it.9 At least a dozen real incidents took place in the United States in the 1960s, 1970s, and 1980s. (Even though there is little or no evidence that as many happened in other countries, one should assume that some also occurred in the Soviet Union or elsewhere.)10 In these cases, alert levels were elevated due to a false alarm, generally caused by the malfunction of a technical system. For instance, in 1960 a U.S. early warning radar in Greenland confused the moonrise with a missile launch.11 In 1961, a dysfunctional transmitter made the Strategic Air Command (SAC) believe that its lines of communication had been cut off.12 In 1962, a cascade of minor incidents and misinterpretation led to bombers being put on alert.13 The same year, a rare conjunction of events led a U.S. radar station to believe that a Soviet missile attack was underway.14 Something similar occurred in 1967, when a solar storm jammed three early warning radars.15 In 1980, two incidents caused by faulty computer chips led U.S. authorities to mistakenly believe that a Soviet attack could be underway.16 In the Soviet Union, a well-known 1983 incident of the same sort was recently publicized through a documentary entitled The Man Who Saved The World (2014), according to which “millions of lives were hanging by a thread,” and no less than “the end of our civilization” was at stake.17 A more sobering account of the incident casts serious doubts on whether this was actually the case. When the alarm sounded in the Soviet nuclear command center because of a U.S. missile launch, the officer in charge suspected that it was a mistake and requested visual confirmation. Such confirmation never came, and the command thus stood down.18 Some incidents involve direct human errors. This was the case for the infamous magnetic tape mistake of 1979, which went up the chain of command to the U.S. presidency. Woken up by a phone call announcing that 200 missiles were coming in the direction of U.S. territory, National Security Advisor Zbigniew Brzezinski requested a confirmation.19 He was informed a couple of minutes later that ten times that number of missiles had now been detected. The cause was the insertion of a tape used for training and exercises in SAC computers. Nobody knows what President Jimmy Carter would have done had Brzezinski told him that he only had a few minutes to decide, but can one seriously believe that he would have launched a massive counter-strike in the absence of any confirmation that an attack was underway? In a few of these incidents, a real launch caused confusion. In 1980, for instance, the Soviet Union launched four submarine-launched ballistic missiles (SLBMs) as part of an exercise, and a U.S. early warning radar wrongly judged that one of them was going in the direction of the United States. This evaluation was quickly corrected.20 The Norwegian rocket launch of 1995 belongs in the same category and has become another poster child for nuclear dangers. However, the episode should rather be taken as a testimony to Russian cool-headedness. Norwegian and American scientists launched a new type of rocket, the Black Brant XII, in order to study weather data; they had sent word of the launch to Moscow, but the information had not reached the appropriate authorities. Since Black Brant XII was new, large, and with a high-altitude trajectory, its launch was interpreted as a possible missile strike. Some in the general staff raised the hypothesis of a highaltitude electro-magnetic pulse (EMP) detonation. Yeltsin considered an interception, but it soon became clear that Russia was not a target. “After the rocket emerged onto a ballistic curve, the direction of the flight became clear, and we could see that it would in no way touch on Russian territory, but land in the Spitsbergen region—we calmed down and took no serious measures … ”21 Generals Vladimir Dvorkin, a well-known Russian expert, and Eugene Habiger, former head of STRATCOM, denied that the incident had any character of gravity.22 The System Worked Based on the above examples, one must wonder: is luck a necessary hypothesis to explain why none of these events led to nuclear war? Is it not at least equally possible that since 1945, people in charge of nuclear weapons “have taken greater care [of them] than is taken in any other situation involving human agents and complex mechanical systems”? 23 Nuclear-armed countries have set up mechanisms designed to ensure that nuclear weapons will not be used by mistake. This includes fail-safe procedures (where non-use remains the default condition up until the last possible moment) as well as dual phenomenology (the need to confirm the attack by two independent means relying on different physical principles). When The Man Who Saved The World was shown in New York City, the Russian mission to the United Nations issued a communiqué that stated: “Under no circumstances a decision to use nuclear weapons could be made or even considered in the Soviet Union (Russia) or in the United States on the basis of data from a single source or a system. For this to happen, a confirmation is necessary from several systems: ground-based radars, early-warning satellites, intelligence reports, etc.” 24 In all the incidents mentioned above, safety mechanisms worked, even in the early 1960s when they were still rudimentary. Furthermore, is it credible to imagine that the head of a State or government would order a nuclear strike without being certain that a major military attack was underway? U.S. nuclear expert Jeffrey G. Lewis rightly argues that he cannot imagine that an American president would embark in nuclear reprisals if there was the slightest doubt on the reality of the attack.25 Retired Russian General Vladimir Dvorkin thinks similarly, claiming that “No president, no matter what president it is, will ever make a decision about launch-onwarning based on information about one rocket or missile or even … two or three missiles.” 26 From the point of view of logic and complex systems analysis, it remains possible that a combination of incidents can lead to the failure of all safety mechanisms designed to prevent accidental nuclear war. Such a thesis is embodied by the classic work of Scott D. Sagan, The Limits of Safety. It would thus only be “a matter of time” due to cumulative probabilities.27 In a recent documentary about nuclear risks, author Eric Schlosser reiterates the point: “it’s also due to luck, pure luck, and the problem with luck is that eventually it runs out … Every machine ever invented eventually goes wrong.” 28 But the probability of failure increases markedly with time only if conditions do not change—and conditions do change. Safety mechanisms have been perfected (without necessarily becoming more complex) and lessons of past incidents are being learned. Sagan claimed in 1993 that the Yom Kippur war (see below), as well as the 1979 and 1980 incidents (see above), are proof that organizations fail to learn from experience. But if that was the case, why would the number of known incidents have significantly declined since 1983? We only know of one significant incident in nearly 35 years: the Black Brant XII episode. Charles Perrow, the father of “normal accidents” theory (those resulting from the complexity and interconnection of systems), wrote: “with regard to firing [nuclear weapons] after a false warning we reach a surprising conclusion, one I was not prepared for: because of the safety systems involved in a launchon-warning scenario, it is virtually impossible for wellintended actions to bring about an accidental attack.” 29

## 2NC---FRAND Advantage

### AT: 5G Impact---US Winning

#### Their ‘lead’ is hype, manufactured with fake patents and propaganda

Elsa B. Kania 19, Adjunct Senior Fellow with the Technology and National Security Program at the Center for a New American Security, and Lindsey R. Sheppard, Associate Fellow with the International Security Program at the Center for Strategic and International Studies, “Why Huawei Isn’t So Scary”, Foreign Policy, 10/12/2019, https://foreignpolicy.com/2019/10/12/huawei-china-5g-race-technology/

5G may have become a buzzword, but the notion that countries must rush to be first to deploy it is mistaken and reckless—and increases the odds of security breaches. There’s no doubt that 5G is important, promising the high speeds and unparalleled connectivity that are required to unleash the full potential of the “internet of things”—the ever-growing network of web-connected devices—and artificial intelligence. 5G could prove critical to economic competitiveness, but not only will a race to install the system end up backfiring, there is also reason to think twice about the claims of China’s Huawei that it alone can shape our technological future.

Huawei’s marketing—and Chinese government propaganda—has built the impression that it’s either Huawei or no way to 5G. The telecommunications firm declares itself the unparalleled leader in 5G as it attempts to secure commercial partnerships around the world, now boasting more than 50 contracts across some 30 countries. In Europe, Huawei has even launched a campaign urging residents to “Vote for 5G,” as if its 5G technologies were the only way for Europe to achieve a smarter future.

Huawei’s claims to be No. 1 in 5G can be misleading. Huawei is a leader and a powerhouse, but it is not the only top player. And it isn’t clear that the company is winning—at least, not yet. Although Huawei’s technological capabilities shouldn’t be underestimated, there are reasons to look skeptically at its supposed superiority in 5G.

Huawei’s quest for dominance in the global telecommunications industry has involved tactics and practices that are antithetical to fair, healthy competition. That Huawei has amassed a market share estimated at nearly 30 percent of the global telecom equipment industry reflects its capacity to underbid and undercut competitors, not to mention multiple alleged incidents of bribery and corruption. The Chinese firm’s determination to provide cheap services and equipment to capture market share often puts intense pressure on competitors. But it’s not always a fair fight: Huawei’s rise has been enabled by the billions of dollars in support, subsidies, and various benefits it has received from the Chinese government. For instance, Huawei has lines of credit from state-owned banks that reportedly amount to $100 billion.

Huawei has also been helped by a business culture in which theft is often encouraged—even outright incentivized. At best, some of its activities, such as the aggressive recruitment of talent from rivals, may be considered standard practice within the industry. At worst, however, Huawei’s business practices violate legal boundaries. There have been numerous accusations of intellectual property theft, as well as ongoing reports of attempts to expropriate sensitive technologies, from the early copying of Cisco source code to military technology. And what these dubious practices reveal is that Huawei is in fact not as cutting-edge as its publicity claims.

The idea that Huawei has an insurmountable lead in the 5G race also represents a failure of observers to distinguish its carefully crafted image from any real technological edge. To be sure, Huawei has long pursued 5G. Since 2007, it has invested massively in next-generation telecommunications, spending more than $60 billion on research and development over the course of a decade. And the company now plans to increase its 5G investments as part of an annual R&D budget that may exceed $15 billion.

Huawei truly does provide mature and cost-effective equipment. It is one of the few players offering an end-to-end 5G solution, with particular strengths in radio access networking. However, it’s unclear how well the company’s systems integrate with existing 4G infrastructure from other vendors. The security of Huawei’s products has been assessed to be subpar, and the long-term performance of its 5G networks also remains questionable. Countries that choose this low-cost option for fear of losing out in the 5G race risk creating an unstable and insecure foundation for their future societies and economies.

Although Huawei may assert that it has already taken an unbeatable lead in 5G infrastructure, judging who’s truly ahead in the field means looking at multiple criteria. Such indicators can include commercial contracts, deployed performance, integration with network infrastructure, and real technological innovation. For example, Huawei has claimed that it has more 5G patents than all U.S. companies combined, but quantity does not necessarily correlate with quality—especially in China, where patents are often of dubious value.

Huawei CEO Ren Zhengfei has declared that his company’s dream is to “stand on top of the world.” But the global supply chain remains highly interdependent—a point of leverage that Washington is seeking to exploit by potentially limiting Huawei’s access to U.S. technologies. Moreover, Huawei’s competitors have their own core strengths among the fundamental technologies that will shape 5G. And although Huawei’s promise of relative vertical integration may offer efficiencies, the diversity of competitive suppliers continues to drive both competition and innovation. A number of companies based in the United States, European Union, South Korea, Taiwan, and Japan are also industry leaders and major providers throughout the supply chain. A healthy ecosystem for telecommunications would be based on market diversity and fair competition and would emphasize the importance of regulatory bodies, standards, and industry alliances to ensure security and interoperability.

#### Even if they get there first, the U.S. has enough breadth and scope to win the race

Stella Soon 19. Tech Reporter. “Here’s How The Us Can Beat China In The Race For Dominance In Next Generation Networks.” CNBC. 11/26/2019. <https://www.cnbc.com/2019/11/26/5g-race-how-the-us-can-beat-china-in-the-competition-for-dominance.html>

“There will be a tendency to cast these developments as another sign that the United States is losing the race for the next generation of communication technologies,” Adam Segal, director of the digital and cyberspace policy program at CFR, wrote in a separate note earlier this month.

“But the United States still has strengths to play,” Segal said. “U.S. companies can dominate the applications and services that run over 5G.”

Just because China switched on its networks first does not mean that the competition is over.

That’s where the United States’ innovative capacity could give it an advantage, said Paul Triolo, geo-technology practice head at Eurasia Group. U.S. technology companies have already been working on autonomous vehicles, augmented reality, and virtual reality, which he explained could be the first few killer applications of 5G.

“Even as China rolls out 5G a little faster, the U.S. will eventually roll out 5G in enough breadth and scope that U.S. will be able to innovate on top of it,” said Triolo.

#### It’ll play out over a decade

Elsa B. Kania 19, Adjunct Senior Fellow with the Technology and National Security Program at the Center for a New American Security, PhD Student in Harvard University's Department of Government, Former research Assistant at the Belfer Center for Science and International Affairs and the Weatherhead Center for International Affairs and Boren Scholar, “The United States Must Compete to Innovate in 5G”, The National Interest, 7/28/2019, https://nationalinterest.org/print/feature/united-states-must-compete-innovate-5g-69122

5G is not merely a race to be won, nor should the objective of the United States be simply to deploy it “as soon as possible.” Instead, the deployment and realization of the full potential 5G will play out over at least a decade to come. 5G is not simply faster 4G, but rather creates a new paradigm for connectivity with very high speed, low latency and high throughput. Based on these characteristics, 5G will be integral to realizing the potential of the Internet of Things and promising applications of artificial intelligence, from remote surgeries to autonomous driving in smart cities. In this regard, 5G will become tantamount to critical infrastructure, because its disruption or exploitation could prove deeply damaging, even deadly. Consequently, security will be imperative, and talk of ‘racing’ for 5G risks undermining this critical foundation.

### AT: 5G Impact---Defense

#### There are no backdoors and simple countermeasures solve

Dr. Jeffrey D. Sachs 19, Professor of Sustainable Development and Professor of Health Policy and Management at Columbia University, Director of Columbia’s Center for Sustainable Development and the UN Sustainable Development Solutions Network, “America’s War on Chinese Technology”, Project Syndicate, 11/7/2019, https://www.project-syndicate.org/commentary/cheney-doctrine-us-war-on-chinese-technology-by-jeffrey-d-sachs-2019-11

That is what US leaders are doing again: creating a panic over Chinese technology companies by raising, and exaggerating, tiny risks. The most pertinent case (but not the only one) is the US government attack on the wireless broadband company Huawei. The US is closing its markets to the company and trying hard to shut down its business around the world. As with Iraq, the US could end up creating a geopolitical disaster for no reason.

I have followed Huawei’s technological advances and work in developing countries, as I believe that 5G and other digital technologies offer a huge boost to ending poverty and other SDGs. I have similarly interacted with other telecoms companies and encouraged the industry to step up actions for the SDGs. When I wrote a short foreword (without compensation) for a Huawei report on the topic, and was criticized by foes of China, I asked top industry and government officials for evidence of wayward activities by Huawei. I heard repeatedly that Huawei behaves no differently than trusted industry leaders.

The US government nonetheless argues that Huawei’s 5G equipment could undermine global security. A “backdoor” in Huawei’s software or hardware, US officials claim, could enable the Chinese government to engage in surveillance around the world. After all, US officials note, China’s laws require Chinese companies to cooperate with the government for purposes of national security.

Now, the facts are these. Huawei’s 5G equipment is low cost and high quality, currently ahead of many competitors, and already rolling out. Its high performance results from years of substantial spending on research and development, scale economies, and learning by doing in the Chinese digital marketplace. Given the technology’s importance for their sustainable development, low-income economies around the world would be foolhardy to reject an early 5G rollout.

Yet, despite providing no evidence of backdoors, the US is telling the world to stay away from Huawei. The US claims are generic. As a US Federal Communications Commissioner put it, “The country that owns 5G will own innovations and set the standards for the rest of the world and that country is currently not likely to be the United States.” Other countries, most notably the United Kingdom, have found no backdoors in Huawei’s hardware and software. Even if backdoors were discovered later, they could almost surely be closed at that point.

The debate over Huawei rages in Germany, where the US government threatens to curtail intelligence cooperation unless the authorities exclude Huawei’s 5G technology. Perhaps as a result of the US pressure, Germany’s spy chief recently made a claim tantamount to the Cheney Doctrine: “Infrastructure is not a suitable area for a group that cannot be trusted fully.” He offered no evidence of specific misdeeds. Chancellor Angela Merkel, by contrast, is fighting behind the scenes to leave the market open for Huawei.

Ironically, though predictably, the US complaints partly reflect America’s own surveillance activities at home and abroad. Chinese equipment might make secret surveillance by the US government more difficult. But unwarranted surveillance by any government should be ended. Independent United Nations monitoring to curtail such activities should become part of the global telecoms system. In short, we should choose diplomacy and institutional safeguards, not a technology war.

The threat of US demands to blockade Huawei concerns more than the early rollout of the 5G network. The risks to the rules-based trading system are profound. Now that the US is no longer the world’s undisputed technology leader, US President Donald Trump and his advisers don’t want to compete according to a rules-based system. Their goal is to contain China’s technological rise. Their simultaneous attempt to neutralize the World Trade Organization by disabling its dispute settlement system shows the same disdain for global rules.

If the Trump administration “succeeds” in dividing the world into separate technology camps, the risks of future conflicts will multiply. The US championed open trade after World War II not only to boost global efficiency and expand markets for American technology, but also to reverse the collapse of international trade in the 1930s. That collapse stemmed in part from protectionist tariffs imposed by the US under the 1930 Smoot-Hawley Act, which amplified the Great Depression, in turn contributing to the rise of Hitler and, ultimately, the outbreak of World War II.

In international affairs, no less than in other domains, stoking fears and acting on them, rather than on the evidence, is the path to ruin. Let’s stick to rationality, evidence, and rules as the safest course of action. And let us create independent monitors to curtail the threat of any country using global networks for surveillance of or cyberwarfare on others. That way, the world can get on with the urgent task of harnessing breakthrough digital technologies for the global good.

#### It only makes a small difference in speed and efficiency---not a game-changer

Mike Price 19, President and Principle Consultant at Netconex, MS in Computer Science from Northeastern University, BS in Computer Science from Millersville University of Pennsylvania, “How 5G is Being Overhyped”, Netconex, 5/17/2019, https://www.netconex.com/blog/how-5g-is-being-overhyped

More and more is being said about the impending shift from fourth-generation wireless to fifth-generation, and how impactful this shift will be. The only problem is, a lot of what is being said is conflated hyperbole - exaggerated and overhyped.

How 5G is Being Overhyped

Behind all of the marketing materials, 5G is really just some emerging technologies that will improve wireless networks. Latencies will be lower, and the networks will be faster and more efficient… somewhat. The real difference between 4G LTE and 5G will be much smaller than the difference between black and white and color TV, as Sprint’s CEO Marcelo Claure compared the two.

Furthermore, many advancements that have been claimed to only be possible through 5G (like smart cars and cities) are actually possible without 5G connectivity. Eric Xu, the current chairman of Huawei, stated that consumers would see no real difference between 5G and the current LTE standard.

Pairing that with the fact that the United States pays some of the highest rates for mobile connectivity - despite ranking 62nd in 4G speeds - thanks to the monopolistic hold that cellular companies hold over the market, we should also expect 5G to be incredibly expensive.

How Carriers Are Leveraging 5G to Their Advantage

Cellular carriers Sprint and T-Mobile have proposed a merger, supporting their position by stating that they need to combine their resources to bring 5G connectivity to the entire nation, or as they put it, to win the race to 5G. Government regulators are uneasy about this merger, as it would reduce the number of major carriers in the United States from four to three.

It is also telling that both companies have claimed to be capable of deploying 5G independently for years.

Tom Wheeler, former FCC Chairman, had a few choice words to share about T-Mobile and Sprint’s defense of their proposed merger - a merge that was already blocked in 2014.

“The ‘China is winning on 5G’ argument of Sprint and T-Mobile is creative, and probably the only rationale they could concoct after the government twice before rejected their proposal to reduce national wireless competition from four providers to three,” Wheeler said in a blog post, conflating any efforts thus far to win on 5G to harming consumers by reducing competition.

Again, the United States ranks 62nd in 4G speeds, largely due to this limited competition and despite paying some of the highest fees for these services. So, while 5G will be beneficial when it eventually does become publicly available, don’t expect it to be a complete game-changer.

### AT: 5G Impact---Defense---AT: Taiwan War

#### No Taiwan war, even if Beijing thinks it has a military advantage

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In Taiwan, political leaders worry that Xi wants to cement his legacy with a breakthrough on Taiwan. Once shy about revealing its strengths, Beijing under Xi has adopted a different approach, flaunting its wealth and power and strengthening the People’s Liberation Army to deter any challengers.

Regionally, the conventional balance of military power is tipping towards China. The People’s Liberation Army has long equipped itself and planned for a cross-straits conflict. However, a full-frontal Chinese invasion of Taiwan remains unlikely in the near term. There are numerous factors that would deter such an invasion, including Taiwan’s unwelcoming geography and climate, the difficulties of staging an amphibious landing, the unknown appetite in the United States for intervention and Japan’s interests in the Taiwan Strait. Other military options which would be less risky, and potentially less disruptive to trade, include a targeted naval blockade.[36]

Even if Beijing were to take over Taiwan militarily, Hong Kong has illustrated how difficult it would be to occupy the island in the face of near certain local resistance. The resulting political and security crisis for China and the broader region would be unprecedented since World War II. Taiwanese resistance, both on the island and by a mobilised Taiwanese diaspora, would be a test for national politics around the world, including in Australia. The People’s Liberation Army is untested, both in battle and in the business of occupation, and China’s institutions and military resources would be stretched by such a war.[37] It is unsurprising then that Beijing is pursuing its current strategy of multi-front hybrid warfare against the island to force an opening of talks, rather than military action.

### No US-China War---2NC/1AR

#### 3---Economics come first---China doesn’t escalate.

Yan Xuetong 19. Distinguished Professor and Dean of the Institute of International Relations at Tsinghua University. “The Age of Uneasy Peace.” <https://www.foreignaffairs.com/articles/china/2018-12-11/age-uneasy-peace>

What kind of world order will this bring? Contrary to what more alarmist voices have suggested, **a bipolar U.S.-Chinese world will** not be a world on the brink of apocalyptic war. This is in large part because China’s ambitions for the coming years are much narrower than many in the Western foreign policy establishment tend to assume. Rather than unseating the United States as the world’s premier superpower, Chinese foreign policy in the coming decade will largely focus on maintaining the conditions necessary for the country’s continued economic growth—a focus that will likely push leaders in Beijing to **steer clear of open confrontation** with the United States or its primary allies. Instead, the coming bipolarity will be an era of uneasy peace between the two superpowers. Both sides will build up their militaries but remain careful to manage tensions before they boil over into outright conflict. And rather than vie for global supremacy through opposing alliances, **Beijing and Washington will largely carry out their competition in the** [**economic**](https://www.foreignaffairs.com/articles/china/2018-11-27/there-no-grand-bargain-china) **and** [**technological**](https://www.foreignaffairs.com/articles/united-states/2018-10-19/can-pentagon-win-ai-arms-race) **realms**. At the same time, U.S.-Chinese bipolarity will likely spell the end of sustained multilateralism outside strictly economic realms, as the combination of nationalist populism in the West and China’s commitment to national sovereignty will leave little space for the kind of political integration and norm setting that was once the hallmark of liberal internationalism. WHAT CHINA WANTS China’s growing influence on the world stage has as much to do with the United States’ abdication of its global leadership under President Donald Trump as with China’s own economic rise. In material terms, the gap between the two countries has [not narrowed by much](https://www.foreignaffairs.com/articles/china/2018-09-21/stop-obsessing-about-china) in recent years: since 2015, China’s GDP growth has slowed to less than seven percent a year, and recent estimates put U.S. growth above the three percent mark. In the same period, the value of the renminbi has decreased by about ten percent against the U.S. dollar, undercutting China’s import capacity and its currency’s global strength. What has changed a great deal, however, is the expectation that the United States will continue to promote—through diplomacy and, if necessary, military power—an international order built for the most part around liberal internationalist principles. Under Trump, the country has broken with this tradition, questioning the value of free trade and embracing a virulent, no-holds-barred nationalism. The Trump administration is modernizing the U.S. nuclear arsenal, attempting to strong-arm friends and foes alike, and withdrawing from several international accords and institutions. In 2018 alone, it ditched the Intermediate-Range Nuclear Forces Treaty, the [nuclear deal with Iran](https://www.foreignaffairs.com/articles/2018-08-13/how-we-got-iran-deal), and the UN Human Rights Council. It is still unclear if this retrenchment is just a momentary lapse—a short-lived aberration from the norm—or a new U.S. foreign policy paradigm that could out-live Trump’s tenure. But the global fallout of Trumpism has already pushed some countries toward China in ways that would have seemed inconceivable a few years ago. Take Japanese Prime Minister Shinzo Abe, who effectively reversed Japan’s relations with China, from barely hidden hostility to [cooperation](https://www.scmp.com/news/china/diplomacy/article/2170436/china-japan-moving-competition-cooperation-leaders-say), during a state visit to Beijing in October 2018, when China and Japan signed over 50 agreements on economic cooperation. Meanwhile, structural factors keep widening the gap between the two global front-runners, China and the United States, and the rest of the world. Already, the two countries’ military spending dwarfs everybody else’s. By 2023, the U.S. defense budget may reach $800 billion, and the Chinese one may exceed $300 billion, whereas no other global power will spend more than $80 billion on its forces. The question, then, is not whether a bipolar U.S.-Chinese order will come to be but what this order will look like. At the top of Beijing’s priorities **is a liberal economic order built on free trade**. China’s economic transformation over the past decades from an agricultural society to a major global powerhouse—and the world’s second-largest economy—was built on exports. The country has slowly worked its way up the value chain, its exports beginning to compete with those of highly advanced economies. Now as then, these **exports are the lifeblood of the Chinese economy:** they ensure a consistent trade surplus, and the jobs they create are a vital engine of domestic social stability. There is no indication that **this will change** in the coming decade. Even amid escalating trade tensions between Beijing and Washington, China’s overall export volume continued to grow in 2018. **U.S. tariffs may sting**, **but they will neither change Beijing’s fundamental incentives nor portend a general turn away from global free trade on its part**. Quite to the contrary: because China’s exports are vital to its economic and political success, one should expect Beijing to double down **on its attempts to gain and maintain access to foreign markets**. This strategic impetus is at the heart of the much-touted [Belt and Road Initiative](https://www.foreignaffairs.com/articles/china/2018-10-24/why-democracies-are-turning-against-belt-and-road), through which China hopes to develop a vast network of land and sea routes that will connect its export hubs to far-flung markets. As of August 2018, some 70 countries and organizations had signed contracts with China for projects related to the initiative, and this number is set to increase in the coming years. At its 2017 National Congress, the Chinese Communist Party went so far as to enshrine a commitment to the initiative in its constitution—a signal that the party views the infrastructure project as more than a regular foreign policy. China is also willing to further open its domestic markets to foreign goods in exchange for greater access abroad. Just in time for a major trade fair in Shanghai in November 2018—designed to showcase the country’s potential as a destination for foreign goods—China lowered its general tariff from 10.5 percent to 7.8 percent. Given this enthusiasm for the global economy, the image of a revisionist China that has gained traction in many Western capitals is misleading. **Beijing relies on a global network of trade ties**, so it is loath to court direct confrontation **with the United State**s. Chinese leaders fear—not without reason—that such a confrontation might cut off its access to U.S. markets and lead U.S. allies to band together against China rather than stay neutral, stripping it of important economic partnerships and valuable diplomatic connections. As a result, **caution**, not assertiveness or aggressiveness, will be the order of the day **in Beijing’s foreign policy in the coming years**. Even as it continues to modernize and expand its military, **China will** carefully avoid pressing issues **that might lead to war with the United States, such as those related to the South China Sea, cybersecurity, and the weaponization of space**. NEW RULES? Indeed, much as Chinese leaders hope to be on par with their counterparts in Washington, they worry about the strategic implications of a bipolar U.S.-Chinese order. American leaders balk at the idea of relinquishing their position at the top of the global food chain and will likely go to great lengths to avoid having to accommodate China. Officials in Beijing, in no hurry to become the sole object of Washington’s [apprehension](https://www.foreignaffairs.com/articles/united-states/2018-02-13/china-reckoning) and scorn, would much rather see a multipolar world in which other challenges—and challengers—force the United States to cooperate with China. Chinese leaders worry about the strategic implications of a bipolar U.S.-Chinese order. In fact, the United States’ own rise in the nineteenth and early twentieth centuries provides something of a model for how the coming power transition may take place. Because the United Kingdom, the world’s undisputed hegemon at the time, was preoccupied with fending off a challenger in its vicinity—Germany—it did not bother much to contain the rise of a much bigger rival across the pond. China is hoping for a similar dynamic now, and recent history suggests it could indeed play out. In the early months of George W. Bush’s presidency, for instance, relations between Beijing and Washington were souring over regional disputes in the South China Sea, reaching a boiling point when a Chinese air force pilot died in a midair collision with a U.S. surveillance plane in April 2001. Following the 9/11 attacks a few months later, however, Washington came to see China as a useful strategic partner in its global fight against terrorism, and relations improved significantly over the rest of Bush’s two terms. Today, unfortunately, the list of common threats that could force the two countries to cooperate is short. After 17 years of counterterrorism campaigns, the sense of urgency that once surrounded the issue has faded. Climate change is just as unlikely to make the list of top threats anytime soon. The most plausible scenario is that a new global economic crisis in the coming years will push U.S. and Chinese leaders to shelve their disagreements for a moment to avoid economic calamity—but this, too, remains a hypothetical. To make matters worse, some points of potential conflict are here to stay—chief among them [Taiwan](https://www.foreignaffairs.com/articles/asia/2018-07-27/storm-brewing-taiwan-strait). Relations between Beijing and Taipei, already tense, have taken a turn for the worse in recent years. Taiwan’s current government, elected in 2016, has questioned the notion that mainland China and Taiwan form a single country, also known as the “one China” principle. A future government in Taipei might well push for de jure independence. Yet a Taiwanese independence referendum likely constitutes a redline for Beijing and may prompt it to take military action. If the United States were to respond by coming to Taiwan’s aid, a military intervention by Beijing could easily spiral into a full-fledged U.S.-Chinese war. To avoid such a crisis, Beijing is determined to nip any Taiwanese independence aspirations in the bud by political and economic means. As a result, it is likely to continue lobbying third countries to cut off their diplomatic ties with Taipei, an approach it has already taken with several Latin American countries. Cautious or not, China set somewhat different emphases in its approach to norms that undergird the international order. In particular, a more powerful China will push for a stronger emphasis on national sovereignty in international law. In recent years, some have [interpreted](https://www.ft.com/content/67ec2ec0-dca2-11e6-9d7c-be108f1c1dce) public statements by Chinese leaders in support of globalization as a sign that Beijing seeks to fashion itself as the global liberal order’s new custodian, yet such sweeping interpretations are wishful thinking: China is merely signaling its support for a liberal economic order, not for ever-increasing political integration. Beijing remains fearful of outside interference, particularly relating to Hong Kong, Taiwan, Tibet, and [Xinjiang](https://www.foreignaffairs.com/articles/china/2018-06-20/reeducation-returns-china), as well as on matters of press freedom and online regulations. As a result, it views national sovereignty, rather than international responsibilities and norms, as the fundamental principle on which the international order should rest. Even as a new superpower in the coming decade, China will therefore pursue a less interventionist foreign policy than the United States did at the apex of its power. Consider the case of Afghanistan: even though it is an open secret that the United States expects the Chinese military to shoulder some of the burden of maintaining stability there after U.S. troops leave the country, the Chinese government has shown no interest in this idea. Increased Chinese clout may also bring attempts to promote a vision of world order that draws on ancient Chinese philosophical traditions and theories of statecraft. One term in particular has been making the rounds in Beijing: wangdao, or “humane authority.” The word represents a view of China as an enlightened, benevolent hegemon whose power and legitimacy derive from its ability to fulfill other countries’ security and economic needs—in exchange for their acquiescence to Chinese leadership. BIPOLARITY IN PRACTICE Given the long shadow of nuclear escalation, **the** [**risk of a direct war**](https://www.foreignaffairs.com/articles/china/2018-10-15/beijings-nuclear-option) **between China and the United States will** remain minimal, even as military, technological, and economic competition between them intensifies. Efforts on both sides to build ever more effective antimissile shields are unlikely to change this, since neither China nor the United States can improve its antimissile systems to the point of making the country completely impervious to a nuclear counterattack. If anything, the United States’ withdrawal from the Intermediate-Range Nuclear Forces Treaty will encourage both sides to build up their nuclear forces and improve their second-strike capabilities, ensuring that neither side will be confident it can launch a nuclear attack on the other without suffering a devastating retaliation. The threat of nuclear war will also keep Chinese tensions with other nuclear-armed powers, such as India, from escalating into outright war. Proxy wars, however, cannot be ruled out, nor can military skirmishes among lesser states. In fact, the latter are likely to become more frequent, as the two superpowers’ restraint may embolden some smaller states to resolve local conflicts by force. Russia, in particular, may not shy away from war as it tries to regain its superpower status and maintain its influence in eastern Europe and the Middle East. Faced with calls to reform the UN Security Council, fraying powers such as France and the United Kingdom may seek to buttress their claim to permanent membership in the council through military interventions abroad. In the Middle East, meanwhile, the struggle for regional dominance among Iran, Turkey, and Saudi Arabia shows no signs of abating. Across the globe, secessionist conflicts and terrorist attacks will continue to occur, the latter especially if competition between China and the United States reduces their cooperation on counterterrorism measures. China’s emphasis on national sovereignty, together with Western societies’ turn away from globalism, will deal an additional blow to multilateralism. In the economic realm, export-driven economies, such as China, Germany, and Japan, will ensure the survival of a global liberal trade regime built on free-trade agreements and membership in the World Trade Organization—no matter what path the United States takes. On other matters of global governance, however, cooperation is likely to stall. Even if a future U.S. administration led a renewed push toward multilateralism and international norm setting, China’s status as a junior superpower would make it difficult for the United States to sustain the strong leadership that has traditionally spurred such initiatives in the past. Differences in ideology and clashing security interests will prevent Beijing and Washington from leading jointly, but neither will have enough economic or military clout to lead on its own. To the extent that multilateral initiatives persist in such a world, they will be limited to either side’s respective sphere of influence. China’s emphasis on national sovereignty, together with Western societies’ turn away from globalism, will deal an additional blow to multilateralism. The European Union is already fraying, and a number of European countries have reintroduced border controls. In the coming decade, similar developments will come to pass in other domains. As technological innovation becomes the primary source of wealth, countries will become ever more protective of their intellectual property. Many countries are also tightening control of capital flows as they brace for a global economic slump in the near future. And as concerns over immigration and unemployment threaten to undermine Western governments’ legitimacy, more and more countries will increase visa restrictions for foreign workers. Unlike the order that prevailed during the Cold War, a bipolar U.S.-Chinese order will be shaped by fluid, issue-specific alliances **rather than rigid opposing blocs** divided along clear ideological lines. Since the immediate risk of a U.S.-Chinese war is vanishingly small, **neither side appears willing to build or maintain an extensive**—and expensive—**network of alliances**. China still avoids forming explicit alliances, and the United States regularly complains about free-riding allies. Moreover, neither side is currently able to offer a grand narrative or global vision appealing to large majorities at home, let alone to a large number of states. For some time to come, then, **U.S.-Chinese bipolarity will not be an ideologically driven, existential conflict over the fundamental nature of the global order**; rather, it will be a competition over consumer markets and technological advantages, playing out in disputes about the norms and rules governing trade, investment, employment, exchange rates, and intellectual property. And rather than form clearly defined military-economic blocs, most states will adopt a two-track foreign policy, siding with the United States on some issues and China on others. Western allies, for instance, are still closely aligned with the United States on traditional security matters inside NATO, and Australia, India, and Japan have supported the U.S. strategy in the Indo-Pacific. At the same time, these states still maintain close trade and investment relations with China, and several of them have sided with Beijing in trying to reform the World Trade Organization. This two-track strategy shows just how far down the road to bipolarity the world has already advanced. And the fundamental driver of this process—the raw economic and military clout on which American and, increasingly, Chinese dominance rests—will further cement Beijing’s and Washington’s status as the two global heavyweights in the coming decade. **Whether or not the United States recovers from its Trumpian fever and leads a renewed push for global liberalism is**, ultimately, of little consequence to the outcome: **opposed in their strategic interests but evenly matched in their power, China and the United States will be unable to challenge each other directly and settle the struggle for supremacy definitively**. As during the Cold War, each side’s nuclear warheads will prevent proxy conflicts from easily escalating into a direct confrontation between the two superpowers. More important still, **China’s leadership is** acutely aware of the benefits **its country derives from the status quo**, for now—**it is chief among the conditions for China’s continued economic and soft-power expansion**—**and will** avoid **putting these** benefits on the line anytime soon, unless China’s core interests are in the balance. Chinese leaders will therefore work hard to avoid setting off alarm bells in already jittery Western capitals, and their foreign policy in the coming years will reflect this objective. **Expect recurring tensions and fierce competition, yes, but** not a descent into global chaos.

### AT: Democracy Impact---2NC

#### Democracy is resilient but fails

Renske Doorenspleet 19, Politics Professor at the University of Warwick, “Conclusion: Rethinking the Value of Democracy,” Rethinking the Value of Democracy, Springer Berlin Heidelberg, 2019, pp. p. 239-243

Key Findings: Rethinking the Value of Democracy

The value of democracy has been taken for granted until recently, but this assumption seems to be under threat now more than ever before. As was explained in Chapter 1, democracy’s claim to be valuable does not rest on just one particular merit, and scholars tend to distinguish three different types of values (Sen 1999). This book focused on the instrumental value of democracy (and hence not on the intrinsic and constructive value), and investigated the value of democracy for peace (Chapters 3 and 4), control of corruption (Chapter 5) and economic development (Chapter 6). This study was based on a search of an enormous academic database for certain keywords,6 then pruned the thousands of articles down to a few hundred articles (see Appendix) which statistically analysed the connection between the democracy and the four expected outcomes.

The frst fiding is that a reverse wave away from democracy has not happened (see Chapter 2). Not yet, at least. Democracy is not doing worse than before, at least not in comparative perspective. While it is true that there is a dramatic decline in democracy in some countries,7 a general trend downwards cannot yet be detected. It would be better to talk about ‘stagnation’, as not many dictatorships have democratized recently, while democracies have not yet collapsed.

Another fnding is that the instrumental value of democracy is very questionable. The feld has been deeply polarized between researchers who endorse a link between democracy and positive outcomes, and those who reject this optimistic idea and instead emphasize the negative effects of democracy. There has been ‘no consensus’ in the quantitative literature on whether democracy has instrumental value which leads some beneficial general outcomes. Some scholars claim there is a consensus, but they only do so by ignoring a huge amount of literature which rejects their own point of view. After undertaking a large-scale analysis of carefully selected articles published on the topic (see Appendix), this book can conclude that the connections between democracy and expected benefts are not as strong as they seem. Hence, we should not overstate the links between the phenomena.

The overall evidence is weak. Take the expected impact of democracy on peace for example. As Chapter 3 showed, the study of democracy and interstate war has been a fourishing theme in political science, particularly since the 1970s. However, there are four reasons why democracy does not cause peace between countries, and why the empirical support for the popular idea of democratic peace is quite weak. Most statistical studies have not found a strong correlation between democracy and interstate war at the dyadic level. They show that there are other—more powerful—explanations for war and peace, and even that the impact of democracy is a spurious one (caveat 1). Moreover, the theoretical foundation of the democratic peace hypothesis is weak, and the causal mechanisms are unclear (caveat 2). In addition, democracies are not necessarily more peaceful in general, and the evidence for the democratic peace hypothesis at the monadic level is inconclusive (caveat 3). Finally, the process of democratization is dangerous. Living in a democratizing country means living in a less peaceful country (caveat 4). With regard to peace between countries, we cannot defend the idea that democracy has instrumental value.

Can the (instrumental) value of democracy be found in the prevention of civil war? Or is the evidence for the opposite idea more convincing, and does democracy have a ‘dark side’ which makes civil war more likely? The findings are confusing, which is exacerbated by the fact that different aspects of civil war (prevalence, onset, duration and severity) are mixed up in some civil war studies. Moreover, defining civil war is a delicate, politically sensitive issue. Determining whether there is a civil war in a particular country is incredibly diffcult, while measurements suffer from many weaknesses (caveat 1). Moreover, there is no linear link: civil wars are just as unlikely in democracies as in dictatorships (caveat 2). Civil war is most likely in times of political change. Democratization is a very unpredictable, dangerous process, increasing the chance of civil war significantly. Hybrid systems are at risk as well: the chance of civil war is much higher compared to other political systems (caveat 3). More specifcally, both the strength and type of political institutions matter when explaining civil war. However, the type of political system (e.g. democracy or dictatorship) is not the decisive factor at all (caveat 4). Finally, democracy has only limited explanatory power (caveat 5). Economic factors are far more significant than political factors (such as having a democratic system) when explaining the onset, duration and severity of civil war. To prevent civil war, it would make more sense to make poorer countries richer, instead of promoting democracy. Helping countries to democratize would even be a very dangerous idea, as countries with changing levels of democracy are most vulnerable, making civil wars most likely. It is true that there is evidence that the chance of civil war decreases when the extent of democracy increases considerably. The problem however is that most countries do not go through big political changes but through small changes instead; those small steps—away or towards more democracy—are dangerous. Not only is the onset of civil war likely under such circumstances, but civil wars also tend to be longer, and the confict is more cruel leading to more victims, destruction and killings (see Chapter 4).

A more encouraging story can be told around the value for democracy to control corruption in a country (see Chapter 5). Fighting corruption has been high on the agenda of international organizations such as the World Bank and the IMF. Moreover, the theme of corruption has been studied thoroughly in many different academic disciplines—mainly in economics, but also in sociology, political science and law. Democracy has often been suggested as one of the remedies when fghting against high levels of continuous corruption. So far, the statistical evidence has strongly supported this idea. As Chapter 5 showed, dozens of studies with broad quantitative, cross-national and comparative research have found statistically signifcant associations between (less) democracy and (more) corruption. However, there are vast problems around conceptualization (caveat 1) and measurement (caveat 2) of ‘corruption’. Another caveat is that democratizing countries are the poorest performers with regard to controlling corruption (caveat 3). Moreover, it is not democracy in general, but particular political institutions which have an impact on the control of corruption; and a free press also helps a lot in order to limit corruptive practices in a country (caveat 4). In addition, democracies seem to be less affected by corruption than dictatorships, but at the same time, there is clear evidence that economic factors have more explanatory power (caveat 5). In conclusion, more democracy means less corruption, but we need to be modest (as other factors matter more) and cautious (as there are many caveats).

The perceived impact of democracy on development has been highly contested as well (see Chapter 6). Some scholars argue that democratic systems have a positive impact, while others argue that high levels of democracy actually reduce the levels of economic growth and development. Particularly since the 1990s, statistical studies have focused on this debate, and the empirical evidence is clear: there is no direct impact of democracy on development. Hence, both approaches cannot be supported (see caveat 1). The indirect impact via other factors is also questionable (caveat 2). Moreover, there is too much variation in levels of economic growth and development among the dictatorial systems, and there are huge regional differences (caveat 3). Adopting a one-size-ftsall approach would not be wise at all. In addition, in order to increase development, it would be better to focus on alternative factors such as improving institutional quality and good governance (caveat 4). There is not suffcient evidence to state that democracy has instrumental value, at least not with regard to economic growth. However, future research needs to include broader concepts and measurements of development in their models, as so far studies have mainly focused on explaining cross-national differences in growth of GDP (caveat 5).

Overall, the instrumental value of democracy is—at best—tentative, or—if being less mild—simply non-existent. Democracy is not necessarily better than any alternative form of government. With regard to many of the expected benefts—such as less war, less corruption and more economic development—democracy does deliver, but so do nondemocratic systems. High or low levels of democracy do not make a distinctive difference. Mid-range democracy levels do matter though. Hybrid systems can be associated with many negative outcomes, while this is also the case for democratizing countries. Moreover, other explanations—typically certain favourable economic factors in a country—are much more powerful to explain the expected benefts, at least compared to the single fact that a country is a democracy or not. The impact of democracy fades away in the powerful shadows of the economic factors.8

#### US has zero democratic credibility

Emma Ashford 21, Senior fellow in the New American Engagement Initiative at the Atlantic Council’s Scowcroft Center for Strategy and Security, "America Can’t Promote Democracy Abroad. It Can’t Even Protect It at Home." Foreign Policy, 01/07/2021, https://foreignpolicy.com/2021/01/07/america-cant-promote-protect-democracy-abroad/.

“What if journalists wrote about U.S. politics the way they wrote about other countries?” asked a dozen tongue-in-cheek articles since 2016. Twitter users joked about the embattled president of a former British colony, huddling in his palace, refusing to concede the election. But all of that ended Wednesday afternoon, when a violent mob rushed past U.S. Capitol Police and invaded Congress, forcing the evacuation of lawmakers and ending with tear gas, gunfire, and at least four deaths. The pictures called to mind Boris Yeltsin on top of a tank, the Arab Spring, or the streets of Venezuela. For those watching around the world, the United States had become what American leaders so often decried: a weak democracy unable to prevent violence and bloodshed from marring the transition of power from one leader to the next.

It’s a sign of how broken U.S. foreign-policy debates are that the primary reaction from many commentators was to worry about America’s moral authority and global leadership. There were comments about how happy China’s Xi Jinping must be and worries that this would undermine U.S. democracy promotion abroad. Michael McFaul, a former Obama-era ambassador to Moscow, tweeted that “Trump today delivered his latest, but hopefully his last gift to Putin.” Meanwhile, a group of NGOs, including the National Endowment for Democracy, issued a statement reaffirming its “commitment to stand in solidarity with all those around the world who share democratic values.” In short: in the middle of a literal coup attempt aimed at halting the certification of a democratic election, with insurrectionists storming the Capitol, many foreign-policy hands were fretting about whether the United States could continue to spread democracy and human rights abroad and whether it might impact America’s ability to engage in great-power competition with China.

To call these reactions out of touch would be an understatement. At this point, the United States has bigger problems than an inability to promote democracy around the world or worrying about an ambitious global competition with China. U.S. domestic politics are staggering under the weight of decades of partisan abuse, and while most institutions have so far proved resilient, there is no guarantee they’ll stand up to the next autocratic wannabe. Almost the only institution that retains the trust of the American people is the military, a distinction that carries its own worrying implications.

Wednesday’s violence will certainly impact the United States’ global image, although the last four years under Donald Trump have done plenty of damage already. And while it is certainly true that the political turmoil that has engulfed the country since November will make it harder for the United States to build an international coalition against China, it’s hard to see why U.S. policymakers are prioritizing rallying an ambitious and poorly defined “alliance of democracies” to push back against China, rather than trying to stop the bleeding at home.

To be clear, this is not a call for America to retreat from the world; the United States benefits hugely from global engagement. But Wednesday’s crisis lays bare a central flaw with U.S. foreign policy today: Ambitious foreign-policy goals are completely out of step with the realities of the country’s domestic political and economic dysfunction.

How can anyone expect—as Joe Biden’s campaign promised—to “restore responsible American leadership on the world stage” if Americans cannot even govern themselves at home? How can the United States spread democracy or act as an example for others if it barely has a functioning democracy at home? Washington’s foreign-policy elites remain committed to the preservation of a three-decade foreign policy aimed at reshaping the world in America’s image. They are far too blasé about what that image has become in 2020.

Even the projects that have been undertaken since 2016 focusing on the intersection between domestic and foreign politics—such as this recent Carnegie Endowment project—have mostly focused on ways to either sell the country’s existing foreign policy to the American people or fix trade and investment policies so that the middle class benefits more. In reality, what is needed is a wholesale rethinking of foreign policy, a more modest and humble approach to the world, and an attempt to address the real problems created by domestic dysfunction.

Wednesday’s insurrection worsens two concrete foreign-policy problems for the United States. First, it will increase the likelihood that other governments will be wary of any binding commitments or in-depth cooperation with the United States. Four years of Trump have already convinced countries in Europe and Asia that U.S. commitments may not be worth the paper they are written on, particularly in an increasingly partisan environment. The Iran nuclear deal, the Trans-Pacific Partnership, and the Paris climate accords were all victims of a shift to a more partisan, seesaw form of foreign policy. This week’s violence in Washington and the broader political turmoil since the November election have added to those concerns that future U.S. elections may not even be free and fair.

### AT: Tech Leadership

#### they can’t catch up.

Fred Hu 18, economist and chairman of Primavera Capital Group, 8-22-2018, "The U.S. Is Overly Paranoid About China’S Tech Rise," Washington Post, https://www.washingtonpost.com/news/theworldpost/wp/2018/08/22/us-china-3/?utm\_term=.ed8dd0d27f82

But much of the fear over China’s technological rise is unfounded. Fundamentally, China is like most emerging economies around the world: still trying hard to close the enormous technological gap with advanced economies led by America. China has undoubtedly made more progress than many of its developing peers in that race. Its tech industries have grown at a faster pace and achieved a global scale beyond those of most developing countries. In a broad range of manufacturing sectors — notably consumer electronics, steel, ship building, high-speed rail systems and solar panels — China has established itself as the world’s leading producer. In areas such as consumer Internet and financial technology, it has arguably overtaken even the United States and now leads the rest of the world. Yet China hawks such as Robert Lighthizer and Peter Navarro charge that whatever progress China has made on the tech front is due to the country’s blatant theft of U.S. technology. Considering the enormous investments China has made in science and technology over recent decades, such claims do not hold water. China has devoted vast resources to research and development — $409 billion in 2015 (21 percent of the global total), according to the U.S. National Science Foundation. China’s investment in research and development grew over 20 percent annually between 2000 and 2010 and almost 14 percent from 2010-2015. U.S. research and development hovered around 4 percent over the same period. For a country with an average per capita income a mere one-sixth of America’s, China’s research and development investments reflect a real and sustained national commitment. At the same time, China has vastly expanded and improved STEM education and has one of the largest pools of STEM graduates in the world. The devotion of significant resources to research and development and human capital has in turn enabled China to reap some of the early fruits of innovation. China now tops the world in new patent filings. As the first country to receive more than 1 million patent applications in a single year — a record the World Intellectual Property Organization said reflected “extraordinary” levels of innovation — China accounts for almost 40 percent of the global total and more than that of the United States, Japan and South Korea combined. China has also significantly boosted venture capital investment, which supports the commercialization of emerging technologies. While the United States attracts the most investment worldwide (nearly $70 billion), venture capital investment in China rose from approximately $3 billion in 2013 to $34 billion in 2016, climbing from 5 percent to 27 percent of the global share — the fastest increase of any economy. China’s start-up ecosystem is both vast and vibrant; it has successfully incubated more tech unicorns than any other country except the United States. Too often, U.S. critics claim that Chinese industrial policies like Made in China 2025 are behind the country’s ascendancy in tech. In fact, virtually none of China’s leading tech firms, such as Alibaba, Baidu and Tencent, are state-owned or meaningful beneficiaries of state support. They are all founded and led by smart and risk-taking private entrepreneurs, just like their Silicon Valley brethren. Tellingly, many Chinese tech start-ups have received U.S. venture financing. And Chinese technology companies and venture firms have made significant investments in U.S. start-ups. Sadly, the virtuous two-way venture capital flows are now in jeopardy because of Washington’s growing paranoia about China. As impressive as China’s innovation and progress may be, however, it is premature to declare that China has caught up with the U.S. tech industry. Interventionist government bureaucracy, stodgy state-owned enterprises, a rigid school system and — above all — harsh restrictions on individual freedoms continue to stifle independent thinking and creativity and constrain China from realizing its full innovation potential. While China is well positioned to succeed in “strategic” industries such as semiconductors, pharmaceuticals and commercial aircraft due to its vast pool of engineering talent and the size of its domestic market, so far it has remained a laggard. China has failed to develop an indigenous chip industry despite a state-led drive to do so, with tens of billions spent over the past four decades. Despite its status as the “world’s factory,” making everything from cell phones and laptops to numerous other devices, China continues to import 90 percent of its microchips from foreign countries, predominantly from the United States. That is why the U.S. threat to cut off critical chip supply to ZTE, a Chinese telecom equipment firm, has been dubbed the “Sputnik moment” in China: a sober reminder of China’s continued weaknesses in critical technologies. While China has made spectacular progress on the tech front, the United States remains the undisputed global leader in science and technology. The United States holds most of the world’s leading research universities; it deploys the highest amounts of both public and private funding in research and development; attracts the most venture capital; awards the most advanced degrees; provides the most advanced business, financial and information services and is the largest producer in knowledge-intensive, high-tech sectors, from pharmaceuticals to semiconductors. The fear that China will displace the United States as the global tech superpower is grossly exaggerated. Unfortunately, such paranoia dominates the minds of protectionist U.S. politicians and China hawks and has already amplified a destructive trade war between the world’s two largest economies. For China’s part, its soul-searching is overdue. Beijing should resist the prevalent yet ill-justified self-complacency and triumphalism that contributed to the fear in Washington in the first place, and it should make serious efforts to reform and open its domestic economy. Unless Beijing amends its heavy-handed statist approach to economic development, China’s potential as a leading nation in science and technology could be seriously curtailed.

### Warming---2NC

#### No extinction---new studies.

Nordhaus 20**.** Ted Nordhaus, an American author, environmental policy expert, and the director of research at The Breakthrough Institute, citing new climate change forecasts. Ignore the Fake Climate Debate, 1-23-2020, https://www.wsj.com/articles/ignore-the-fake-climate-debate-11579795816)

Beyond the headlines and social media, where Greta Thunberg, Donald Trump and the online armies of climate “alarmists” and “deniers” do battle, there is **a real climate debate** bubbling along in **scientific journals**, conferences and, occasionally, even in the halls of Congress. It gets a lot less attention than the boisterous and fake debate that dominates our public discourse, but it is much more relevant to how the world might actually address the problem. In the real climate debate, no one denies the relationship between human emissions of greenhouse gases and a warming climate. Instead, the disagreement comes down to different views of climate risk in the face of multiple, cascading uncertainties. On one side of the debate are optimists, who believe that, with improving technology and greater affluence, our societies will prove quite adaptable to a changing climate. On the other side are pessimists, who are more concerned about the risks associated with rapid, large-scale and poorly understood transformations of the climate system. But **most pessimists** do not believe that **runaway climate change** or **a hothouse earth** are plausible scenarios, **much less** that **human extinction** is imminent. And most optimists recognize a need for policies to address climate change, even if they don’t support the radical measures that Ms. Thunberg and others have demanded. In the fake climate debate, both sides agree that economic growth and reduced emissions vary inversely; it’s a zero-sum game. In the real debate, the relationship is much more complicated. Long-term economic growth is associated with both rising per capita energy consumption and slower population growth. For this reason, as the world continues to get richer, higher per capita energy consumption is likely to be offset by a lower population. **A richer world** will also likely be **more technologically advanced**, which means that energy consumption should be **less carbon-intensive** than it would be in a poorer, less technologically advanced future. In fact, a number of the high-emissions scenarios produced by the United Nations Intergovernmental Panel on Climate Change involve futures in which the world is relatively poor and populous and less technologically advanced. Affluent, developed societies are also much better equipped to respond to climate extremes and natural disasters. That’s why natural disasters kill and displace many more people in poor societies than in rich ones. It’s not just seawalls and flood channels that make us resilient; it’s air conditioning and refrigeration, modern transportation and communications networks, early warning systems, first responders and public health bureaucracies. New research published in the journal Global Environmental Change finds that **global economic growth** over the last decade has **reduced** climate mortality by **a factor of five**, with the greatest benefits documented in the poorest nations. In low-lying Bangladesh, 300,000 people died in Cyclone Bhola in 1970, when 80% of the population lived in extreme poverty. In 2019, with less than 20% of the population living in extreme poverty, Cyclone Fani killed just five people. “Poor nations are most vulnerable to a changing climate. The fastest way to reduce that vulnerability is through economic development.” So while it is true that poor nations are most vulnerable to a changing climate, it is also true that the fastest way to reduce that vulnerability is through economic development, which requires infrastructure and industrialization. Those activities, in turn, require cement, steel, process heat and chemical inputs, all of which are impossible to produce today without fossil fuels. For this and other reasons, the world is unlikely to cut emissions fast enough to stabilize global temperatures at less than 2 degrees above pre-industrial levels, the long-standing international target, much less 1.5 degrees, as many activists now demand. But **recent forecasts** also suggest that many of **the worst-case climate scenarios** produced in the last decade, which assumed unbounded economic growth and fossil-fuel development, are also **very unlikely**. There is **still substantial uncertainty** about how sensitive global temperatures will be to higher emissions over the long-term. But **the best estimates** now suggest that the world is on track for **3 degrees of warming** by the end of this century, not 4 or 5 degrees as was once feared. That is due in part to slower economic growth in the wake of the global financial crisis, but also to decades of technology policy and energy-modernization efforts. “We have better and cleaner technologies available today because policy-makers in the U.S. and elsewhere set out to develop those technologies.” The energy intensity of the global economy continues to fall. Lower-carbon natural gas has displaced coal as the primary source of new fossil energy. The falling cost of wind and solar energy has begun to have an effect on the growth of fossil fuels. Even nuclear energy has made a modest comeback in Asia.

#### No credible scientific organization thinks warming causes extinction.

Michael Shellenberger 19. Time Magazine “Hero of the Environment,” Green Book Award Winner, and author of Apocalypse Never: Why Environmental Alarmism Hurts Us All. frequent contributor to The New York Times, Washington Post, Wall Street Journal, Scientific American, and other publications. Cites the IPCC, the UN Food and Agriculture Organization, and William Nordhaus, a Nobel-winning Yale economist. "Why Apocalyptic Claims About Climate Change Are Wrong". Forbes. 11-25-2019. https://www.forbes.com/sites/michaelshellenberger/2019/11/25/why-everything-they-say-about-climate-change-is-wrong/

First, no credible scientific body has ever said climate change threatens the collapse of civilization much less the extinction of the human species. “‘Our children are going to die in the next 10 to 20 years.’ What’s the scientific basis for these claims?” BBC’s Andrew Neil asked a visibly uncomfortable XR spokesperson last month.

“These claims have been disputed, admittedly,” she said. “There are some scientists who are agreeing and some who are saying it’s not true. But the overall issue is that these deaths are going to happen.”

“But most scientists don’t agree with this,” said Neil. “I looked through IPCC reports and see no reference to billions of people going to die, or children in 20 years. How would they die?”

“Mass migration around the world already taking place due to prolonged drought in countries, particularly in South Asia. There are wildfires in Indonesia, the Amazon rainforest, Siberia, the Arctic,” she said.

But in saying so, the XR spokesperson had grossly misrepresented the science. “There is robust evidence of disasters displacing people worldwide,” notes IPCC, “but limited evidence that climate change or sea-level rise is the direct cause”

What about “mass migration”? “The majority of resultant population movements tend to occur within the borders of affected countries," says IPCC.

It’s not like climate doesn’t matter. It’s that climate change is outweighed by other factors. Earlier this year, researchers found that climate “has affected organized armed conflict within countries. However, other drivers, such as low socioeconomic development and low capabilities of the state, are judged to be substantially more influential.”

Last January, after climate scientists criticized Rep. Ocasio-Cortez for saying the world would end in 12 years, her spokesperson said "We can quibble about the phraseology, whether it's existential or cataclysmic.” He added, “We're seeing lots of [climate change-related] problems that are already impacting lives."

That last part may be true, but it’s also true that economic development has made us less vulnerable, which is why there was a 99.7% decline in the death toll from natural disasters since its peak in 1931.

In 1931, 3.7 million people died from natural disasters. In 2018, just 11,000 did. And that decline occurred over a period when the global population quadrupled.

What about sea level rise? IPCC estimates sea level could rise two feet (0.6 meters) by 2100. Does that sound apocalyptic or even “unmanageable”?

Consider that one-third of the Netherlands is below sea level, and some areas are seven meters below sea level. You might object that Netherlands is rich while Bangladesh is poor. But the Netherlands adapted to living below sea level 400 years ago. Technology has improved a bit since then.

What about claims of crop failure, famine, and mass death? That’s science fiction, not science. Humans today produce enough food for 10 billion people, or 25% more than we need, and scientific bodies predict increases in that share, not declines.

The United Nations Food and Agriculture Organization (FAO) forecasts crop yields increasing 30% by 2050. And the poorest parts of the world, like sub-Saharan Africa, are expected to see increases of 80 to 90%.

Nobody is suggesting climate change won’t negatively impact crop yields. It could. But such declines should be put in perspective. Wheat yields increased 100 to 300% around the world since the 1960s, while a study of 30 models found that yields would decline by 6% for every one degree Celsius increase in temperature.

Rates of future yield growth depend far more on whether poor nations get access to tractors, irrigation, and fertilizer than on climate change, says FAO.

All of this helps explain why IPCC anticipates climate change will have a modest impact on economic growth. By 2100, IPCC projects the global economy will be 300 to 500% larger than it is today. Both IPCC and the Nobel-winning Yale economist, William Nordhaus, predict that warming of 2.5°C and 4°C would reduce gross domestic product (GDP) by 2% and 5% over that same period.

Does this mean we shouldn’t worry about climate change? Not at all.

One of the reasons I work on climate change is because I worry about the impact it could have on endangered species. Climate change may threaten one million species globally and half of all mammals, reptiles, and amphibians in diverse places like the Albertine Rift in central Africa, home to the endangered mountain gorilla.

But it’s not the case that “we’re putting our own survival in danger” through extinctions, as Elizabeth Kolbert claimed in her book, Sixth Extinction. As tragic as animal extinctions are, they do not threaten human civilization. If we want to save endangered species, we need to do so because we care about wildlife for spiritual, ethical, or aesthetic reasons, not survival ones.

#### Adaptation solves even if the most catastrophic outcome occurs.

Sebastian Farquhar 17. Project Manager at FHI responsible for external relations, M.A in Physics and Philosophy from the University of Oxford; John Halstead, Global Priorities Project; Owen Cotton-Barratt, Research Associate in the FHI at the University of Oxford, Lecturer in Mathematics at St. Hugh’s College, Oxford; Stefan Schubert, PhD in philosophy, Researcher at the Centre for Effective Altruism; Haydn Belfield, Academic Project Manager, Centre for the Study of Existential Risk, University of Cambridge; Andrew Snyder-Beattie, Director of Research at FHI, “Existential Risk: Diplomacy and Governance,” Future of Humanity Institute, University of Oxford, Global Priorities Project 2017, https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf

The most likely levels of global warming are very unlikely to cause human extinction.15 The existential risks of climate change instead stem from tail risk climate change – the low probability of extreme levels of warming – and interaction with other sources of risk. It is impossible to say with confidence at what point global warming would become severe enough to pose an existential threat. Research has suggested that warming of 11-12°C would render most of the planet uninhabitable,16 and would completely devastate agriculture.17 This would pose an extreme threat to human civilisation as we know it.18 Warming of around 7°C or more could potentially produce conflict and instability on such a scale that the indirect effects could be an existential risk, although it is extremely uncertain how likely such scenarios are.19 Moreover, the timescales over which such changes might happen could mean that humanity is able to adapt enough to avoid extinction in even very extreme scenarios.

The probability of these levels of warming depends on eventual greenhouse gas concentrations. According to some experts, unless strong action is taken soon by major emitters, it is likely that we will pursue a medium-high emissions pathway.20 If we do, the chance of extreme warming is highly uncertain but appears non-negligible. Current concentrations of greenhouse gases are higher than they have been for hundreds of thousands of years,21 which means that there are significant unknown unknowns about how the climate system will respond. Particularly concerning is the risk of positive feedback loops, such as the release of vast amounts of methane from melting of the arctic permafrost, which would cause rapid and disastrous warming.22 The economists Gernot Wagner and Martin Weitzman have used IPCC figures (which do not include modelling of feedback loops such as those from melting permafrost) to estimate that if we continue to pursue a medium-high emissions pathway, the probability of eventual warming of 6°C is around 10%,23 and of 10°C is around 3%.24 These estimates are of course highly uncertain.

It is likely that the world will take action against climate change once it begins to impose large costs on human society, long before there is warming of 10°C. Unfortunately, there is significant inertia in the climate system: there is a 25 to 50 year lag between CO2 emissions and eventual warming,25 and it is expected that 40% of the peak concentration of CO2 will remain in the atmosphere 1,000 years after the peak is reached.26 Consequently, it is impossible to reduce temperatures quickly by reducing CO2 emissions. If the world does start to face costly warming, the international community will therefore face strong incentives to find other ways to reduce global temperatures.

## 1NR

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## FTC DA

### Top Level---2NC

#### **Algorithmic bias risks nuke war.**

Elsa B. Kania 17. Adjunct fellow with the Technology and National Security Program at the Center for a New American Security, 11/15/17. “The critical human element in the machine age of warfare.” https://thebulletin.org/2017/11/the-critical-human-element-in-the-machine-age-of-warfare/

Today, however, the human in question might be considerably less willing to question the machine. The known human tendency towards greater reliance on computer-generated or automated recommendations from intelligent decision-support systems can result in compromised decision-making. This dynamic—known as automation bias or the overreliance on automation that results in complacency—may become more pervasive, as humans accustom themselves to relying more and more upon algorithmic judgment in day-to-day life.

In some cases, the introduction of algorithms could reveal and mitigate human cognitive biases. However, the risks of algorithmic bias have become increasingly apparent. In a societal context, “biased” algorithms have resulted in discrimination; in military applications, the effects could be lethal. In this regard, the use of autonomous weapons necessarily conveys operational risk. Even greater degrees of automation—such as with the introduction of machine learning in systems not directly involved in decisions of lethal force (e.g., early warning and intelligence)—could contribute to a range of risks.

Friendly fire—and worse. As multiple militaries have begun to use AI to enhance their capabilities on the battlefield, several deadly mistakes have shown the risks of automation and semi-autonomous systems, even when human operators are notionally in the loop. In 1988, the USS Vincennes shot down an Iranian passenger jet in the Persian Gulf after the ship’s Aegis radar-and-fire-control system incorrectly identified the civilian airplane as a military fighter jet. In this case, the crew responsible for decision-making failed to recognize this inaccuracy in the system—in part because of the complexities of the user interface—and trusted the Aegis targeting system too much to challenge its determination. Similarly, in 2003, the US Army’s Patriot air defense system, which is highly automated with high levels of complexity, was involved in two incidents of fratricide. In these stances, “naïve” trust in the system and the lack of adequate preparation for its operators resulted in fatal, unintended engagements.

As the US, Chinese, and other militaries seek to leverage AI to support applications that include early warning, automatic target recognition, intelligence analysis, and command decision-making, it is critical that they learn from such prior errors, close calls, and tragedies. In Petrov’s successful intervention, his intuition and willingness to question the system averted a nuclear war. In the case of the USS Vincennes and the Patriot system, human operators placed too much trust in and relied too heavily on complex, automated systems. It is clear that the mitigation of errors associated with highly automated and autonomous systems requires a greater focus on this human dimension.

#### Unlike AI, nuke war’s not existential

Karina Vold & Daniel R. Harris 21, Vold is a philosopher of cognitive science and artificial intelligence & an assistant professor at the University of Toronto's Institute for the History and Philosophy of Science and Technology; Harris is a retired lawyer and Foreign Service Officer at the US Department of State, “How Does Artificial Intelligence Pose an Existential Risk?,” Oxford Handbook of Digital Ethics, Ed. C. Veliz., pp 1-34

The idea that AI might one day threaten humanity has been around for some time. In 1863, the novelist Samuel Butler (1863 ,185) suggested that machines may one day hold “supremacy over the world and its inhabitants”. By the mid-twentieth century, these concerns had left the realm of science fiction, as thinkers like Alan Turing (1951, 260) began to warn the public that we should expect intelligent machines to eventually “take control”. Still, for many years, academics did not spill much ink over these concerns, even while Hollywood filmmakers ran with them, producing countless blockbusters based on this “AI takeover” scenario (think: The Terminator or Battlestar Galactica). Over the last decade or so, however, many leading academics and entrepreneurs have notably increased their attention to existential risks from AI. These concerns are, as we will see, more subtle than those depicted in crude Hollywood-produced AI takeover scenarios. Indeed, those depictions have largely misrepresented the concrete issues scholars are concerned with by overly focusing on anthropomorphic concerns of conscious AI systems deciding to destroy humans.

This renewed scholarly interest in AI safety has been spurred on in part by the recent deep learning revolution. This period is defined by major advances in the accomplishments of deep neural networks— artificial neural networks with multiple layers between the input and output layers—across a wide range of areas, including game-playing, speech and facial recognition, and image generation. Even with these breakthroughs though, the cognitive capabilities of current AI systems remain limited to domain-specific applications. Nevertheless, many researchers are alarmed by the speed of progress in AI and worry that future systems, if not managed correctly, could present an existential threat.

Despite the renewed interest in this concern, there remains substantial disagreement over both the nature and the likelihood of the existential threats posed by AI. Hence, our aim in this chapter is to explicate the main arguments that have been given for thinking that AI does pose an existential risk, and to point out where there are disagreements and weakness in these arguments. The chapter has the following structure: in §2, we will introduce the concept of existential risk, the sources of such risks, and how these risks are typically assessed. In §3–5, we will critically examine three commonly cited reasons for thinking that AI poses an existential threat to humanity: the control problem, global disruption from an AI “arms race”, and the weaponization of AI. Our focus is on the first of these three, because it represents a kind of existential risk that is novel to AI as technology. While the latter two are equally important, they have commonalities with other kinds of technologies (e.g., nuclear weapons) discussed in the literature on existential risk, and so we will dedicate less time to them.

2. What Is an Existential Risk?

Many people believe that existential risks (henceforth, Xrisks) are the greatest threats facing humanity. And whilst there is much common ground amongst scholars about which scenarios constitute an Xrisk—the most commonly cited example is extinction risks1—there is not as much consensus on the precise definition of the concept (Beard et al., 2020; Torres, 2019). While most Xrisk scholars agree that a risk is existential if an adverse outcome would bring about human extinction, few endorse the narrower view that a risk is existential only if it would cause this outcome.2 Most definitions of Xrisk are broader, including at times the risk of global civilizational collapse (Rees, 2003; Ó hÉigeartaigh, 2017); scenarios in which the technological and moral potential of humanity is “permanently and drastically” curtailed (Bostrom, 2002, 2013); and suffering risks, defined as cases in which “an adverse outcome would bring about severe suffering on an astronomical scale, vastly exceeding all suffering that has existed on Earth so far” (Sotala & Gloor, 2017, 389).

Xrisks are typically distinguished from the broader category of global catastrophic risks. Bostrom (2013), for example, uses two dimensions—scope and severity—to make this distinction. Scope refers to the number of people at risk, while severity refers to how badly the population in question would be affected (ibid, 16). Xrisks are at the most extreme end of both of these spectrums: they are pan-generational in scope (i.e., “affecting humanity over all, or almost all, future generations”), and they are the severest kinds of threats, causing either “death or a permanent and drastic reduction of quality of life” (ibid, 17). Perhaps the clearest example of an Xrisk is an asteroid impact on the scale of that which hit the Earth 66 million years ago, wiping out the dinosaurs (Schulte et al., 2010; Ó hÉigeartaigh, 2017). Global catastrophic risks, by way of contrast, could be either just as severe but narrower in scope, or just as broad but less severe. Some examples include the destruction of cultural heritage, thinning of the ozone layer, or even a large-scale pandemic outbreak (Bostrom, 2013). In this chapter, we will focus mostly on the least controversial category of Xrisks— extinction risks—but will also at times discuss some of the other scenarios mentioned.

2.1 Sources of Xrisk

For most of human history, the only source of Xrisks facing humanity were natural causes, such as an asteroid hitting Earth or a global pandemic (Bostrom, 2002). But the creation of the first atomic bomb in 1945 introduced a new source of existential threat to humanity, one that was anthropogenic in nature. But since then, humanity has created numerous other kinds of threats to our own existence, including human- caused climate change, global biodiversity loss, biological warfare, and threats from artificial intelligence, for example. In fact, it is widely thought that most Xrisks today are anthropogenic and that, as a result of these new threats, this current century is the riskiest one that humanity has ever faced (Rees, 2003; Bostrom, 2013; Ó hÉigeartaigh, 2017; Ord, 2020).

Not all of these threats pose straightforward Xrisks. Let’s consider an extinction scenario to be the existential outcome in question, and then take nuclear fallout as an example. Today, the worldwide arsenal of nuclear weapons could lead to unprecedented death tolls and habitat destruction and, hence, it poses a clear global catastrophic risk. Still, experts assign a relatively low probability to human extinction from nuclear warfare (Martin, 1982; Sandberg & Bostrom, 2008; Shulman, 2012). This is in part because it seems more likely that extinction, if it follows at all, would occur indirectly from the effects of the war, rather than directly. This distinction has appeared in several discussions on Xrisks (e.g., Matheny, 2007, Liu et al., 2018; Zwetsloot & Dafoe, 2019), but it is made most explicitly in Cotton-Barratt et al. (2020, 6), who explain that a global catastrophe that causes human extinction can do so either directly by “killing everyone”, or indirectly, by “removing our ability to continue flourishing over a longer period.” A nuclear explosion itself is unlikely to kill everyone directly, but the resulting effects it has on the Earth could lead to lands becoming uninhabitable, in turn leading to a scarcity of essential resources, which could (over a number of years) lead to human extinction. Some of the simplest examples of direct risks of human extinction, by way of contrast, are “[i]f the entire planet is struck by a deadly gamma ray burst, or enough of a deadly toxin is dispersed through the atmosphere” (ibid, 6). What’s critical here is that for an Xrisk to be direct it has to be able to reach everyone.

#### 2. AI’s millions of times more powerful

Alexey **Turchin &** David **Denkenberger 18**, Turchin is a researcher at the Science for Life Extension Foundation; Denkenberger is with the Global Catastrophic Risk Institute (GCRI) @ Tennessee State University, Alliance to Feed the Earth in Disasters (ALLFED), “Classification of Global Catastrophic Risks Connected with Artificial Intelligence,” AI & SOCIETY, 05/03/2018, pp. 1–17

According to Yampolskiy and Spellchecker (2016), the probability and seriousness of AI failures will increase with time. We estimate that they will reach their peak between the appearance of the first self-improving AI and the moment that an AI or group of AIs reach global power, and will later diminish, as late-stage AI halting seems to be a low-probability event.

AI is an extremely powerful and completely unpredictable technology, millions of times more powerful than nuclear weapons. Its existence could create multiple individual global risks, most of which we can not currently imagine. We present several dozen separate global risk scenarios connected with AI in this article, but it is likely that some of the most serious are not included. The sheer number of possible failure modes suggests that there are more to come.

#### Turns it on the link level

#### 3. Link turns case. Expanded antitrust enforcement of anticompetitive practices causes backlash.

Alison Jones 20. Professor of Law at King's College London, with William E. Kovacic, March, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” The Antitrust Bulletin. https://journals.sagepub.com/doi/full/10.1177/0003603X20912884

One possible solution to rigidities that have developed in Sherman Act jurisprudence is for the FTC to rely more heavily on the prosecution, through its own administrative process, of cases based on Section 5 of the FTC Act and its prohibition of “unfair methods of competition.”93 This section allows the FTC94 to tackle not only anticompetitive practices prohibited by the other antitrust statutes but also conduct constituting incipient violations of those statutes or behavior that exceeds their reach. The latter is possible where the conduct does not infringe the letter of the antitrust laws but contradicts their basic spirit or public policy.95

There is no doubt therefore that Section 5 was designed as an expansion joint in the U.S. antitrust system. It seems unlikely to us, nonetheless, that a majority of FTC’s current members will be minded to use it in this way. Further, even if they were to be, the reality is that such an application may encounter difficulties. Since its creation in 1914, the FTC has never prevailed before the Supreme Court in any case challenging dominant firm misconduct, whether premised on Section 2 of the Sherman Act or purely on Section 5 of the FTC Act.96 The last FTC success in federal court in a case predicated solely on Section 5 occurred in the late 1960s.97

The FTC’s record of limited success with Section 5 has not been for want of trying. In the 1970s, the FTC undertook an ambitious program to make the enforcement of claims predicated on the distinctive reach of Section 5, a foundation to develop “competition policy in its broadest sense.”98 The agency’s Section 5 agenda yielded some successes,99 but also a large number of litigation failures involving cases to address subtle forms of coordination in oligopolies, to impose new obligations on dominant firms, and to dissolve shared monopolies.100 The agency’s program elicited powerful legislative backlash from a Congress that once supported FTC’s trailblazing initiatives but turned against it as the Commission’s efforts to obtain dramatic structural remedies unfolded.101

### AT: Rehighlight

#### 2. Focus on privacy enforcement now---strategic resource deployment is key.

Arianna Evers et al., 21 – Counsel at Wilmer Hale, with Kirk J. Nahra and Reade Jacob, 4/2. “FTC Set to Flex Its Rulemaking Authority.” https://www.wilmerhale.com/en/insights/blogs/wilmerhale-privacy-and-cybersecurity-law/20210402-ftc-set-to-flex-its-rulemaking-authority

Last Friday—on March 25, 2021—Acting FTC Chairwoman Rebecca Kelly Slaughter announced the creation of a new rulemaking group within the FTC’s Office of the General Counsel. With this group, the FTC is poised to create new rules as well as strengthen existing ones across its vast consumer protection and competition portfolio. This is significant because it signals that the FTC is ready to strengthen its enforcement reach and may start the rulemaking process for a comprehensive privacy rule that is not sector specific, and that could stretch beyond what we typically think of as “privacy” in order to reach related competitive harms caused by companies’ data practices.

For the past several years, FTC commissioners have vocally supported federal privacy legislation and, in its absence, have been asking Congress for civil penalty authority, something they generally do not have for first time violations of Section 5 of the FTC Act. Congressional inaction in both of these areas has resulted in the FTC actively looking for ways to maximize its enforcement reach through the strategic deployment of existing remedies and tools. To that end, the FTC has recently gotten creative with its remedies, requiring companies to delete allegedly ill-gotten data (Everalbum) and provide notice to consumers (Flo Health). It has also used its Section 6(b) authority to examine the data practices of social media and video streaming services and the privacy practices of broadband provides, and two of the commissioners have suggested stretching existing trade regulation rules—specifically the Health Breach Notification Rule—to activities where their application is not immediately obvious.

Given the continued uncertainty around whether and when we might see congressional agreement on a federal privacy bill, the creation of this new group is likely the FTC’s first step towards moving forward with privacy rulemaking under the FTC’s Section 18 authority. This authority, which is also referred to as Magnuson-Moss rulemaking, establishes the process for FTC rulemaking undertaken without direct congressional authorization. However, it is rarely used because it is more burdensome than Administrative Procedure Act notice and comment rulemaking.

This new rulemaking group is also a reaction to AMG Capital Mgmt., LLC v. FTC, a case before the Supreme Court in which the court is deciding whether or not the FTC can properly seek monetary relief under Section 13(b) of the FTC Act. Section 13(b) allows the FTC to seek an injunction to prevent unfair or deceptive acts affecting commerce, and the FTC has long relied on this authority to provide monetary redress to consumers in consumer protection cases.

The creation of this new rulemaking group should not be a surprise to anyone who has been paying attention to the commissioners’ recent focus on improving the effectiveness of the FTC’s existing remedies and using all the tools at its disposal to pursue perceived instances of consumer harm. The FTC also likely sees little downside to beginning the rulemaking process for a comprehensive privacy rule at this time. Congress does not appear close to federal privacy legislation and many states are have moved ahead with their own laws or are posed to do so. Either this is a move that, in combination with activity in the states, could galvanize Congress to finally act, or it will move the FTC closer to obtaining the clear enforcement authority that it has been seeking in the privacy space.

#### 3. Key priority is privacy and data scrutiny.

Liisa Thomas 8/12/21. Partner and Leader of the Privacy and Cybersecurity Practice Group @ Sheppard Mullin, with Kari Rollins & Charles Glover, “FTC Signals Focus on Healthcare and Technology Platforms, Among Others.” https://www.eyeonprivacy.com/2021/08/ftc-healthcare-technology-platforms/

The FTC recently voted to authorize the use of compulsory processes—the FTC’s primary investigatory tools—on what it calls “key law enforcement priorities.” The resolutions allow investigators to take actions like issuing subpoenas and civil investigations demands (commonly referred to as “CIDs”) in a variety of areas. Of note is the inclusion of both healthcare markets and technology platforms, signaling a potential FTC interest in those sectors. These resolutions compliment the agency’s existing authority to investigate deceptive or unfair acts, and comes on the heels of the blow the FTC suffered as a result of the Supreme Court’s AMG decision. For those in the healthcare and technology platform space, this may signal an increase in privacy and data security scrutiny by the FTC. Putting it Into Practice: The authorization of the use of compulsory processes suggests that the FTC will not be backing off from bringing actions to enforce against unfair and deceptive practices. We will continue to monitor to see the impact this may have on privacy and data security cases brought by the agency in the healthcare and technology platform industries.

### AT: No Solve Other countries

#### U.S. key lead on AI innovation.

AFP 21. Agence France Presse, 1/25. “US leads world on artificial intelligence but China is catching up: study.” https://www.scmp.com/news/china/science/article/3119115/us-leads-world-artificial-intelligence-china-catching-study

The United States is leading rivals in development and use of artificial intelligence while China is rising quickly and the European Union is lagging, a research report showed on Monday.

The study by the Information Technology and Innovation Foundation assessed AI using 30 separate metrics including human talent, research activity, commercial development and investment in hardware and software.

The US leads, with an overall score of 44.6 points on a 100-point scale, followed by China with 32 and the European Union with 23.3, the report based on 2020 data found.

The researchers found the US leading in key areas such as investment in start-ups and research and development funding.

But China has made strides in several areas and last year had more of the world’s 500 most powerful supercomputers than any other nation – 214, compared with 113 for the US and 91 for the EU.

“The Chinese government has made AI a top priority and the results are showing,” said Daniel Castro, director of the think tank’s data innovation centre and lead author of the report.

“The United States and European Union need to pay attention to what China is doing and respond, because nations that lead in the development and use of AI will shape its future and significantly improve their economic competitiveness, while those that fall behind risk losing competitiveness in key industries.”

The EU lagged notably in venture capital and private equity funding, while faring better in terms of research papers published.

The report found China published 24,929 AI research papers in 2018, the latest year for which data was available, to 20,418 for the European Union and 16,233 for the US.

But it said that “average US research quality is still higher than that of China and the European Union”.

The survey also concluded that the US “is still the world leader in designing chips for AI systems”.

### AT: AI Regs Fail

#### FTC enforcement is key against algorithmic discrimination.

#### 1. Actualizing scrutiny to bias is key.

K.C. Halm 21. Partner at Davis Wright Tremaine LLP, with Nancy Libin, 4/26/21. “FTC Warns of Greater Scrutiny Over Biased AI, Offers Best Practices to Mitigate Potential Harm.” https://www.dwt.com/blogs/artificial-intelligence-law-advisor/2021/04/ftc-ai-bias-best-practices-guidance

Building on prior guidance issued in 2020, the Federal Trade Commission (FTC) recently warned in a new blog post that it will use its authority under existing laws to take enforcement action against companies that sell or use algorithms or artificial intelligence (AI) technology that results in discrimination by race or other legally protected classes. The agency urged companies developing or using AI to ensure their AI tools or applications do not result in biased outcomes because a failure to do so may result in "deception, discrimination—and an FTC [] enforcement action." The agency's latest pronouncement leaves no doubt that the FTC will be actively reviewing the market for potential bias or discrimination when AI-enabled applications and services are used to provide access to housing, credit, finance, insurance, or other important services. As our readers know, AI is emerging as a transformative technology that is enabling new systems, tools, applications, and use cases. At the same time, perceived risks arising from potential bias, discrimination, or other negative outcomes is leading regulators to look more closely at both the benefits and potential risks of the technology. To that end, the FTC is moving quickly to assert itself as a leading regulator with authority to oversee a broad range of AI providers, systems, and applications on the market. Basis of Potential AI-related FTC Enforcement Actions Three statutes provide the FTC significant authority to act in this area. Specifically, Section 5 of the FTC Act prohibits unfair or deceptive practices. The FTC's latest statement suggests that the agency believes it can use Section 5 authority, for example, to penalize entities selling or using "racially biased algorithms." Further, the agency also has authority to act under the Fair Credit Reporting Act (FCRA), which could be applied when an algorithm is used in a process that results in the denial of employment, housing, credit, insurance, or other benefits. Similarly, the Equal Credit Opportunity Act (ECOA)—which prohibits a company from using a biased algorithm that results in credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age, or because a person receives public assistance—could be another basis for the agency to act. Thus, for example, if your algorithm results in credit discrimination against a protected class, you could find yourself facing a complaint alleging violations of the FTC Act and ECOA. Notably, the FTC's blog post is framed as both guidance and a reaffirmation that the FTC has been policing issues around AI and big data for many years and sends a clear signal that it intends to do so going forward. This reinforces Acting Chair Rebecca Kelly Slaughter's recent speech on algorithmic discrimination in which she cited a study demonstrating that an algorithm used with good intentions—to target medical interventions to the sickest patients—ended up funneling resources to a healthier, white population, to the detriment of sicker, patients of color. She asked the FTC staff "to actively investigate biased and discriminatory algorithms" and expressed an interest "in further exploring the best ways to address AI-generated consumer harms." Indeed, as we explained in recent blog posts, recent FTC enforcement actions reflect increased scrutiny of companies using algorithms, automated processes, and/or AI-enabled applications. The FTC's recent settlement with Everalbum is instructive in that it illustrates the agency's latest remedial tool: the so-called "disgorgement" of ill-gotten data. In the recent enforcement case, the FTC alleged that Everalbum, an app developer that used photos uploaded by users to train its facial recognition technology, failed to properly obtain users' consent. The agency also alleged that Everalbum made false statements about the users' ability to delete their photos upon deactivating their accounts. On these facts, the FTC secured a settlement and consent decree that required Everalbum to delete algorithms that used the data obtained without consent—a remedy that is akin to the "fruit of the poisonous tree" concept—and obtain consent before using facial recognition technology on user content. The FTC's latest reaffirmation of its authority to act in this area demonstrates that the agency will hold businesses accountable for using AI that may result in biased outcomes or for making promises that the technology cannot deliver. Its message is clear: "Hold yourself accountable – or be ready for the FTC to do it for you."

#### 2. FTC enforcement key to check algorithmic bias.

Heather Landi 21 – senior editor at Fierce Healthcare, 4/22/21. “FTC issues warning that using biased AI could violate consumer protection laws.” https://www.fiercehealthcare.com/tech/ftc-issues-warning-using-biased-ai-could-violate-consumer-protection-laws

The Federal Trade Commission issued a warning to businesses and health systems this week that the use of discriminatory algorithms could violate consumer protection laws.

It could signal that the agency plans to take a hard look at bias in artificial intelligence technologies.

"Hold yourself accountable—or be ready for the FTC to do it for you," Elisa Jillson, an attorney in FTC’s privacy and identity protection division, wrote in an official blog post.

The FTC Act prohibits unfair or deceptive practices. That would include the sale or use of—for example—racially biased algorithms, Jillson wrote.

Using biased AI technology also could potentially violate the Fair Credit Reporting Act, which comes into play in certain circumstances where an algorithm is used to deny people employment, housing, credit, insurance, or other benefits and also the Equal Credit Opportunity Act, according to the FTC. The ECOA makes it illegal for a company to use a biased algorithm that results in credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age, or because a person receives public assistance.

"Under the FTC Act, your statements to business customers and consumers alike must be truthful, non-deceptive, and backed up by evidence," Jillson wrote in the blog post. "In a rush to embrace new technology, be careful not to overpromise what your algorithm can deliver. For example, let’s say an AI developer tells clients that its product will provide “100% unbiased hiring decisions,” but the algorithm was built with data that lacked racial or gender diversity. The result may be deception, discrimination—and an FTC law enforcement action."

Jillson cited the example of using AI for COVID-19 prediction models to help health systems combat the virus through efficient allocation of ICU beds, ventilators, and other resources. But a recent study in the Journal of the American Medical Informatics Association suggests that if those models use data that reflect existing racial bias in healthcare delivery, AI that was meant to benefit all patients may worsen healthcare disparities for people of color, according to Jillson.

One study that has been widely cited found that a commonly used healthcare algorithm that helps determine which patients need additional attention was found to have a significant racial bias, favoring white patients over blacks ones who were sicker and had more chronic health conditions. The algorithm used health costs to predict and rank which patients would benefit most from extra care that could help them stay on their medications or keep them out of the hospital. But researchers said that using health costs as a proxy for health needs is biased because black patients, facing disproportionate levels of poverty, often spend less on health care than whites.

The authors of the study, which was published in the journal Science, estimated that this racial bias reduces the number of black patients identified for extra care by more than half.

Citing that study, Jillson wrote that businesses need to test their algorithms—both before you use it and periodically after that—to make sure that it doesn’t discriminate on the basis of race, gender, or other protected class.

In a tweet, University of Washington School of Law professor Ryan Calo called the FTC's strong language a "shot across the bow."

The blog post signals "a shift in the way the FTC thinks about enforcing the FTC Act in the context of emerging technology. The concreteness of the examples coupled with repeated references to statutory authority is uncommon," Calo wrote.

The FTC outlined a number of recommendations for businesses and health systems to address bias in AI technology including being more transparent about the data being used and using independent researchers to evaluate the algorithms.

"As your company develops and uses AI, think about ways to embrace transparency and independence — for example, by using transparency frameworks and independent standards, by conducting and publishing the results of independent audits, and by opening your data or source code to outside inspection," Jillson wrote.

If an AI model causes more harm than good—that is, in FTC parlance, if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and not outweighed by countervailing benefits to consumers or to competition—the FTC can challenge the use of that model as unfair, she wrote.

The stern warnings about selling and using discriminatory AI technology and overpromising on their capabilities suggest the FTC might be eyeing stricter enforcement.

#### 3. FTC enforcement keeps the AI industry in line.

Ryan Calo 21. Professor of Law, University of Washington, 4/27/21. “FTC warns the AI industry: Don’t discriminate, or else.” https://theconversation.com/ftc-warns-the-ai-industry-dont-discriminate-or-else-159622

The U.S. Federal Trade Commission just fired a shot across the bow of the artificial intelligence industry. On April 19, 2021, a staff attorney at the agency, which serves as the nation’s leading consumer protection authority, wrote a blog post about biased AI algorithms that included a blunt warning: “Keep in mind that if you don’t hold yourself accountable, the FTC may do it for you.”

The post, titled “Aiming for truth, fairness, and equity in your company’s use of AI,” was notable for its tough and specific rhetoric about discriminatory AI. The author observed that the commission’s authority to prohibit unfair and deceptive practices “would include the sale or use of – for example – racially biased algorithms” and that industry exaggerations regarding the capability of AI to make fair or unbiased hiring decisions could result in “deception, discrimination – and an FTC law enforcement action.”

Bias seems to pervade the AI industry. Companies large and small are selling demonstrably biased systems, and their customers are in turn applying them in ways that disproportionately affect the vulnerable and marginalized. Examples of areas where they are being abused include health care, criminal justice and hiring.

Whatever they say or do, companies seem unable or unwilling to rid their data sets and models of the racial, gender and other biases that suffuse society. Industry efforts to address fairness and equity have come under fire as inadequate or poorly supported by leadership, sometimes collapsing entirely.

As a researcher who studies law and technology and a longtime observer of the FTC, I took particular note of the not-so-veiled threat of agency action. Agencies routinely use formal and informal policy statements to put regulated entities on notice that they are paying attention to a particular industry or issue. But such a direct threat of agency action – get your act together, or else – is relatively rare for the commission.

What the FTC can do – but hasn’t done

The FTC’s approach on discriminatory AI stands in stark contrast to, for instance, the early days of internet privacy. In the 1990s, the agency embraced a more hands-off, self-regulatory paradigm, becoming more assertive only after years of privacy and security lapses.

How much should industry or the public read into a blog post by one government attorney? In my experience, FTC staff generally don’t go rogue. If anything, that a staff attorney apparently felt empowered to use such strong rhetoric on behalf of the commission confirms a broader basis of support within the agency for policing AI.

Can a federal agency, or anyone, define what makes AI fair or equitable? Not easily. But that’s not the FTC’s charge. The agency only has to determine whether the AI industry’s business practices are unfair or deceptive – a standard the agency has almost a century of experience enforcing – or otherwise in violation of laws that Congress has asked the agency to enforce.

### At: No Link

#### The plans require heavy resources.

#### 1. It requires millions of dollars, litigation staffing, and timing conflicts. That’s Reinhart.

#### 2. The FTC doesn’t have the resources for expanded antitrust enforcement.

Alex Kantrowitz 20 – Silicon Valley-based journalist covering Big Tech and society, 9/17/20. “‘It’s Ridiculous’: Underfunded U.S. Regulators Can’t Keep Fighting the Tech Giants Like This.” https://onezero.medium.com/its-ridiculous-underfunded-u-s-regulators-can-t-keep-fighting-the-tech-giants-like-this-3b57487b4d63

As politicians, the press, and the public scrutinize the tech giants and grow wary of their power, the most important organizations tasked with restraining them — the U.S. regulatory agencies — aren’t getting enough funding to do the job. “The agencies are severely resource-constrained,” Michael Kades, an-ex FTC trial lawyer who spent 11 years at the agency, told Big Technology. The Federal Trade Commission and Department of Justice’s antitrust division have a combined annual budget below what Facebook makes in three days. The FTC runs on less than $350 million per year, the DOJ’s antitrust division on less than $200 million. Facebook made $18 billion last quarter alone. The funding disparity between the tech giants and their regulators leads to an unbalanced fight, current and ex-staffers said: The agencies can’t investigate the tech giants to the extent they’d like. They might shy away from complex cases fearing a resource-draining battle. And when they investigate the tech giants, they often see former colleagues with intricate knowledge of their strategy and ability to act (or lack thereof) representing these companies. Without significant budget increases, the tech giants may well continue to act unrestrained with little fear of repercussions. “DOJ is under-resourced, FTC it’s ridiculous,” one ex DOJ-staffer told Big Technology. This doesn’t mean these agencies are entirely hamstrung; they can typically marshall the resources to bring a clear-cut case. “They want to win,” one ex-FTC official said. “If it’s really egregious, and they find that in discovery, the attorneys are going to put a case together and go after it.” But when you can only take up a limited number of cases due to resource constraints, things inevitably slip through. “When I was there, the privacy wing had maybe 50 people, and that’s probably generous. That’s lawyers, support staff, everyone,” Justin Brookman, the former policy director at the FTC’s office of technology research and investigation, told Big Technology. “If they were to bring a case, that would tie up half the resources of the group. And they had two litigations ongoing and that took up most of everyone’s time.” The agency’s budget has barely increased since Brookman left in 2017, while the tech giants have added trillions of dollars to their market caps. Inside the FTC and DOJ, employees are aware of the tech giants’ ability to fight, and the corporations’ budgets tend to live inside their heads. “Facebook will have the ability to raise every single issue, if they want to,” Kades said. “It doesn’t have to be a winner, doesn’t have to be close to winner. If they wanted to take this position in litigation, they can make every procedural maneuver difficult, they can not cooperate on discovery, they can fight on scheduling, they don’t have to win even half of those, but it would just suck up resources.” The ability to do this, not even the action itself, can impact regulators’ thinking. Agency staffers are typically mission-driven and knowingly work for salaries below private-sector rates, but the resource-rich tech giants are now poaching directly from agencies at a rate remarkable even for Washington’s revolving door between the private and public sector.

#### 3. The FTC is looking to avoid added prohibitions.

MARIANELA LOPEZ-GALDOS 21. Global Competition Counsel at the Computer & Communications Industry Association, 7/28/21. “Policy Decisions of Antitrust Institutions Series: The Future of the FTC and Its Perils.” https://www.project-disco.org/competition/072821-policy-decisions-of-antitrust-institutions-series-the-future-of-the-ftc-and-its-perils/

But most importantly, the Section 5 Policy Guidelines acted as the guardrails to avoid situations where the FTC, in an effort to expand its enforcement authority, would lose many antitrust stand-alone Section 5 cases in court, to the detriment of the institution itself. Indeed, the Section 5 Policy Guidelines were the result of lessons learned throughout the history of the FTC and represented a tool to avoid history repeating itself. In this respect, it is important to recall that back in the 70s, under Chairman Pertschuck, and in the following years, the FTC suffered immensely due to disparities between enforcement promises and implementation capabilities. Much of the institutional suffering came from the agency not self-imposing limitations and standards to bring cases under Section 5 of the FTC Act which led to numerous litigation losses, consequential institutional reputational damage, and lack of political support.

#### 4. FTC intervenes in FRAND and patent disputes.

Elizabeth A. N. Hass et. al. 18. James T. Mckeown, John F. Nagle, Kate E. Gehl. Partner and litigation attorney with Foley & Lardner LLP, and current vice chair of the firm’s national Antitrust Practice Group. partner in Foley & Lardner LLP's Milwaukee office, is a member and the former chair of the firm’s national Antitrust Practice and is a former member of the firm’s Management Committee.  senior counsel and litigation lawyer with Foley & Lardner LLP. DOJ and FTC Signal Shifts in Antitrust Enforcement of Essential Patent Disputes. No Publication. 10-10-2018. https://www.foley.com/en/insights/publications/2018/10/doj-and-ftc-signal-shifts-in-antitrust-enforcement

FTC’s Approach to FRAND Violations

Although the DOJ’s New Madison Approach has attracted considerable publicity, historically the FTC, and not the DOJ, intervened most frequently on behalf of implementers in FRAND disputes over the past two decades. Accordingly, Chairman Simons’ recent comments – even if representing his personal views – may mark a more significant change in enforcement actions in the United States.

Speaking to the Global Antitrust Enforcement Symposium at Georgetown University Law Center,4 Simons echoed his counterpart at the DOJ, stating, “We agree with the division leadership that a breach of a FRAND commitment standing alone is not sufficient to support a Sherman Act violation. The same is true even for a fraudulent promise to abide by a FRAND commitment. More is needed.”

#### 5 Historically proven---wide ranging studies and enforcement.

Alden F. Abbott 20. General Counsel, U.S. Federal Trade Commission. Keynote Address, IP Watchdog CON2020 Virtual Conference. 9-17-2020. https://www.ftc.gov/system/files/documents/public\_statements/1581598/abbott\_ip\_watchdog\_speech\_09-17-20.pdf

For over 20 years, the FTC has used policy tools to address emerging issues at the intersection of antitrust and IP. These efforts include convening public hearings to examine issues such as the role of patent quality and the role of antitrust in promoting innovation. • 2003 FTC Report on the Patent System; 2007 joint FTC-DOJ Report on Antitrust Enforcement and IP Rights (how antitrust and IP can align with the patent system to promote innovation); 2009 FTC Report on Biologic Drug Competition; and 2011 FTC Evolving Marketplace Report (emphasis on notice to public of what a patent protects and remedies for patent infringement). • Also, FTC Act 6(b) reports (e.g., 2016 Patent Assertion Entities Report). • Section 6(b) empowers FTC to conduct wide-ranging studies that do not have a specific law enforcement purpose, enhance quality of policy dialogue. • Also, FTC files amicus briefs and advocacy letters.

#### 6. FTC pursued patent law to SCOTUS.

Noah Joshua Phillips 19. Commissioner on the Federal Trade Commission. IP and Antitrust Laws: Promoting Innovation in a High-Tech Economy. 2019 Patents in Telecoms and the Internet of Things Public Workshop ACT | The App Association. 03-20-2019. Federal Trade Commission. Pg. 11

Some courts took different views, with some applying the aforementioned “scope of the patent” test, permitting virtually all such settlements. But the FTC pursued the issue all the way up to the Supreme Court. In its 2013 Actavis decision, the Court held that such “large and unjustified payments” flowing in the wrong direction raise a red flag indicating that the settlements may have anticompetitive effects.28 Several pharmaceutical drug manufacturers responded by arguing “large and unjustified payments” referred only to cash payments, and began exploring various in-kind payments instead. This included arrangements like a commitment from the branded manufacturer not to introduce an authorized generic, which would undercut the revenue the generic challenger in such cases would otherwise earn. It also led some settling parties to attempt to disguise cash payments as part of other side deals. This conduct underscores the need for the Commission to be on the watch for creative attempts to manipulate regulatory regimes or to evade liability.

#### 7. JUDICIAL BACKLASH---enforcing new antitrust law is uniquely draining---each case is litigated heavily AND courts require extensive briefing for unfamiliar law

Alison Jones & William E. Kovacic 20, Jones is a professor at King’s College London; Kovacic is Global Competition Professor of Law and Policy, The George Washington University Law School, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, vol. 65, no. 2, SAGE Publications Inc, 06/01/2020, pp. 227–255

A. Judicial Resistance to Extensions of Existing Antitrust Doctrine

As noted in Section II.A, judicial decisions since the mid-1970s have reshaped antitrust law; created more permissive substantive standards governing dominant firm conduct, mergers, and vertical restraints; and raised the bar to antitrust claims in a number of ways. This remolding has been facilitated by the Court’s conclusion that the Sherman Act constitutes “a special kind of common law offense,”81 so that Congress “expected the courts to give shape to the statute’s broad mandate by drawing on common-law tradition.”82 This has allowed the statutory commands to be interpreted flexibly and the law to evolve with new circumstances and new wisdom;83 for example, where there is widespread agreement that the previous position is inappropriate or where the theoretical underpinnings of those decisions have been called into question.84

The proposed solutions will depend, in the short term at least, on the ability of enforcement agencies to navigate the described jurisprudence to find an antitrust infringement and, in some instances, a further rethinking, refinement, and/or development of doctrine, through softening, modification, or even a reversal of current case law. Although such an evolution could, in theory, result, as it did over the last forty years, from a steady stream of antitrust cases, judicial appointments since 2017 have arguably made such a change in direction unlikely. Rather, it seems more probable that successful prosecution of major antitrust, and especially Section 2 Sherman Act monopolization cases, will remain challenging and may even become more difficult. Cases will be litigated before judges who are ordinarily predisposed to accept the current framework, either by personal preference or by a felt compulsion to abide by forty years of jurisprudence that tells them to do so.85 A new president could gradually change the philosophy of the federal courts by appointing judges sympathetic to the aims of the proposed transformation.86 The reorientation of the courts through judicial appointments is, however, likely to take a long time.87

Until then, trial judges and the Court of Appeals will be compelled to abide by the existing jurisprudence and will only be at liberty to develop a more flexible approach in the “gaps” or spaces left by Supreme Court opinions—for example, in relation to mergers and rebates—and through creative interpretations of the law. Such cases are, however, likely to be hard fought. Indeed, Judge Lucy Koh’s finding in Federal Trade Commission v. Qualcomm, Inc. 88 that Qualcomm’s licensing practices constituted unlawful monopolization of the market for certain telecommunications chips has provoked hostile attacks, not only from practitioners and academics but also from the DOJ, the U.S. Departments of Defense and Energy, and even one of the FTC’s own members. In a scathing op-ed in the Wall Street Journal,89 Commissioner Christine Wilson attacked Judge Koh’s “startling new creation” of legal obligations that may trigger a new wave of enforcement actions and undermine intellectual property rights. Commissioner Wilson condemned the judge’s “judicial innovations,” and “alchemy,” through reviving and expanding the Supreme Court’s 1985 opinion in Aspen Skiing Co v. Aspen Highlands Skiing Corp 90 (which she stresses was described by the Supreme Court in Trinko 91 as “at or near the outer boundary” of U.S. antitrust law), turning contractual obligations into antitrust claims, and for departing from current federal agency practice, by imposing remedies requiring Qualcomm to negotiate or renegotiate contracts with customers and competitors worldwide. She has thus urged the Ninth Circuit (on appeal), and if necessary the Supreme Court, to assess the wisdom of these sweeping changes and to stay the ruling.92

It seems likely therefore that, at the same time as bringing cases seeking to develop procedural, evidential, and substantive antitrust standards under the existing regime, additional antidotes to the stringencies of existing jurisprudence will be required, including more extensive, and expansive, use of Section 5 FTC Act to plug the gaps created by the narrowing of the scope of Section 2 Sherman Act; and/or the adoption of legislation that directs courts to apply a wider goals framework.

### AT: Fiat Solves

#### The aff can’t topically fiat funding for enforcement---Expand the scope of antitrust refers exclusively to formal law not enforcement---means the plan is circumvented.

Sinisa Milosevic et al. 18. Commission for Protection of Competition, The Republic of Serbia. Dejan Trifunovic, Faculty of Economics, University of Belgrade, Belgrade, The Republic of Serbia. Jelena Popovic Markopoulos, Commission for Protection of Competition, The Republic of Serbia. “The Impact of the Competition Policy on Economic Development in the Case of Developing Countries”. Economic Horizons, May - August 2018, Volume 20, Number 2, 153 – 167. http://scindeks-clanci.ceon.rs/data/pdf/1450-863X/2018/1450-863X1802157M.pdf

The paper that analyzes the impact of the competition policy on the GDP growth in developing and developed countries in the Solow growth model framework is T. C. Ma’s (2011). The presence and scope of the competition policy is captured by the SCOPE variable that is defined in the paper by K. N. Hylton and F. Deng (2007). The overall effectiveness of the government’s application of policies, not only of the competition policy, is captured by the EFFICIENCY variable that is defined in the paper by D. Kaufmann, A. Kraay and M. Mastruzzi (2009). The results show that the SCOPE variable is not significant and the formal existence of the competition law cannot influence economic growth. The interacting variable of SCOPE x EFFICIENCY is named EFFLAW. For poor countries, the coefficient for this variable is 0.04 and is significant, whereas for rich countries the coefficient is 0.064 and is also significant. Therefore, the competition law must be complemented with the effective enforcement of this policy.

#### Scope measures what is illegal, not enforcement.

Keith N. Hylton and Fei Deng 06. Keith N. Hylton, Professor of Law, Boston University. Fei Deng, NERA Economic Consulting. “Antitrust Around the World: An Empirical Analysis of the Scope of Competition Laws and Their Effects.” Boston University School of Law. Working Paper Series, Law and Economics Working Paper no. 06-47. https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1849&context=faculty\_scholarship

A. Measuring the Scope of Competition Law

1. Scope Index

The first charts we present show Scope Index scores. These scores are found by summing the total points within each country template, and then subtracting off the defense scores. To give an example, return to the template for New Zealand. The Scope Index score for New Zealand is found by summing the numerical values in the template shown in Table 1, and then subtracting off scores associated with defenses (and one point to reduce the merger subtotal). In the case of New Zealand, there are three defenses (merger public interest defense, efficiency defense for dominant firms, efficiency defense for restrictive trade practices). The sum of the points is 19 (after reducing the merger subtotal), and after subtracting 3, the Scope Index for New Zealand is 16. For each European Union member state, an alternative Scope Index was computed based on EU law.24

The point of the Scope Index is to measure the size of the competition law net in every country. As the score increases, so does the size of the net. Alternatively, one can think of the Scope Index for a particular country as a measure of the number of ways in which a firm could run afoul of the competition laws in that country. However, the Scope Index score does not indicate the degree to which a country invests resources into enforcing its competition laws. Continuing with the net metaphor, the Scope Index tells us the size of the competition law net without saying anything about the likelihood that the government will attempt to swing the net at any firm.

#### Scope and enforcement are separate components

Keith N. Hylton and Fei Deng 06. Keith N. Hylton, Professor of Law, Boston University. Fei Deng, NERA Economic Consulting. “Antitrust Around the World: An Empirical Analysis of the Scope of Competition Laws and Their Effects.” Boston University School of Law. Working Paper Series, Law and Economics Working Paper no. 06-47. https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1849&context=faculty\_scholarship

Translating this quantitative assessment of the law’s scope into a statement about the risk of being penalized under a country’s competition law requires the additional assumption that each country is equally likely to enforce the laws on its books. In other words, if the Scope Index is a measure of a country’s competition law net, then it is a reasonable measure of antitrust risk only if enforcement authorities are equally likely to swing the net in each country. Obviously, this is incorrect. But the thought exercise is still useful as a measure of antitrust risk on the assumption of equal enforcement efficiency across regimes. In addition, it suggests that an accurate measure of antitrust risk could be determined by decomposing risk into a legal component, based on the scope of the country’s laws, and an enforcement component, based on the zeal with which local enforcers pursue violators.

### AT: DOJ doing it now

### AT: Biden XO

#### Uniqueness doesn’t overwhelm.

#### \*1. This is our brink argument---the FTC’s managing its caseload, but only barely---the aff is a bolt from the blue, unplanned expansion of antitrust enforcement that forces tradeoff with privacy.

#### \*2. Current enforcement is all talk

JED GRAHAM 9/16/21. Writes about economic policy for Investor's Business Daily.

Khan is clearly using her bully pulpit to the utmost, trying to dissuade merger talks from reaching fruition.

But right now it's all talk. She has turned a few heads, but the S&P 500 and Big Tech leaders have kept cruising. Facebook stock is up 11% since Khan took the FTC's helm on June 15, while Apple has climbed 15% and Google stock 18%. That's despite reports that the Justice Department is preparing to file a second Google antitrust suit over its ad dominance.

The new antitrust enforcement regime may not change all that much "until they show that they can sue and win," Kovacic said.

#### Plan is different.

Masuda et. al. 21. Funai, Eifert & Mitchell, Ltd. Masuda, Funai, Eifert & Mitchell, Ltd. is a U.S. law firm headquartered in Chicago, Illinois, “The Implications of President Biden's "Executive Order on Promoting Competition in the American Economy" 8.18.21. https://www.masudafunai.com/articles/the-implications-of-president-bidens-executive-order-on-promoting-competition-in-the-american-economy?utm\_source=Mondaq&utm\_medium=syndication&utm\_campaign=LinkedIn-integration

On July 9, 2021, President Joe Biden signed a sweeping executive order titled the “Executive Order on Promoting Competition in the American Economy” (the “Order”), affirming the policy of the Biden administration to “enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony.” To achieve this, the Order, among other things, directs regulatory agencies to assert oversight over certain business practices and encourages regulatory agencies to develop and/or strengthen rules. The Order includes 72 initiatives by more than a dozen federal agencies.

The Order specifically cites the areas of “labor markets, agricultural markets, Internet platform industries, healthcare markets (including insurance, hospital, and prescription drug markets), repair markets, and United States markets directly affected by foreign cartel activity.” The scope of this order is broad. On the other hand, the Order itself does not create new regulations or laws, leaving the specific implications of it vague.

#### \*3. Agency’s streamlining current enforcement in order to balance its priorities

FTC 9/14/21. Media Contact Peter Kaplan. “FTC Streamlines Consumer Protection and Competition Investigations in Eight Key Enforcement Areas to Enable Higher Caseload.” https://www.ftc.gov/news-events/press-releases/2021/09/ftc-streamlines-investigations-in-eight-enforcement-areas

At the joint recommendation from its Bureau of Consumer Protection and Bureau of Competition, the Federal Trade Commission voted to approve and make public a series of resolutions that will enable agency staff to efficiently and expeditiously investigate conduct in core FTC priority areas over the next ten years.

The Bureaus recommended that the Commission authorize eight new compulsory process resolutions in these essential areas: (1) Acts or Practices Affecting United States Armed Forces Service Members and Veterans; (2) Acts or Practices Affecting Children; (3) Bias in Algorithms and Biometrics; (4) Deceptive and Manipulative Conduct on the Internet; and (5) Repair Restrictions. (6) Abuse of Intellectual Property; (7) Common Directors and Officers and Common Ownership; and (8) Monopolization Offenses.

“These resolutions enable the FTC to take swift action against a whole host of illegal conduct in important areas of concern to the Commission,” said Holly Vedova, Acting Director of the Bureau of Competition. She noted that, “Companies engaging in conduct implicated by these resolutions should be forewarned: the FTC looks forward to aggressively using these resolutions and will not hesitate to take action against illegal conduct to the fullest extent possible under the law.”

“Harmful practices – especially those targeting children, veterans, and marginalized communities – will not be tolerated by this Commission,” said Samuel Levine, Acting Director of the Bureau of Consumer Protection. “Today’s resolutions ensure our staff can rapidly respond to allegations of abuse and fight fraud without delay.”

Specifically, the resolutions approved by a Commission vote of 3-2 will allow:

Service members and Veterans: harmful business practices directed at service members and veterans are a source of significant public concern, and, now, FTC staff will be able to expeditiously investigate any allegations in this important area.

Children under 18: harmful conduct directed at children under 18 has been a source of significant public concern, now, FTC staff will similarly be able to expeditiously investigate any allegations in this important area.

Algorithmic and Biometric Bias: allows staff to investigate allegations of bias in algorithms and biometrics. Algorithmic bias was the subject of a recent FTC blog.

Deceptive and Manipulative Conduct on the Internet: this omnibus expands a previous omnibus resolution on deceptive practices, which expired on Aug. 1. The existing resolution, has enabled the FTC to develop investigations and bring cases in a variety of areas including day trading services, tech support scams, the BOTS Act, payment processing, and the deceptive marketing of goods and services online, including pandemic-related goods like fake Clorox products and face masks. In addition to the areas covered by the existing resolution, this expanded version covers the “manipulation of user interfaces,” including but not limited to dark patterns, also the subject of a recent FTC workshop.

Repair Restrictions: enhances the FTC’s ongoing investigations into restrictions on repair and builds on the FTC’s recent Policy Statement on Right to Repair. It would cover a wide range of anti-consumer and anti-competitive abuses and facilitate staff’s impending investigation of violations of the Magnuson Moss Warranty Act’s anti-tying provisions.

Abuse of Intellectual Property: allows staff to investigate abuses of intellectual property rights. Conduct involving abuse of intellectual property rights has been a source of much anticompetitive and deceptive conduct in many different areas, including pharmaceuticals, technology and gasoline refining, and this omnibus will allow staff to expeditiously investigate allegations in this area.

Common Director and Officers and Common Ownership: facilitates investigations of both ownership stakes in competing companies that may be anticompetitive as well as interlocking directorates that may violate Section 8 of the Clayton Act, 15 U.S.C. § 19. Interlocking directorates and common ownership continue to raise significant competitive concerns.

Monopolistic Practices: Market power abuses by tech companies and other large companies are rightly a source of bipartisan concern. This omnibus will allow staff to more expeditiously investigate market power abuses by dominant firms that are precluding businesses and entrepreneurs from being able to compete, particularly in digital markets.

Compulsory process refers to the issuance of demands for documents and testimony, through the use of civil investigative demands and subpoenas. The FTC Act authorizes the Commission to use compulsory process in its investigations. Compulsory process requires the recipient to produce information, and these orders are enforceable by courts. Civil investigative demands and subpoenas are assigned to a Commissioner for review and authorization by the FTC’s Office of Secretary, typically on a rotating basis or according to availability. The Commission has routinely adopted compulsory process resolutions on a wide range of topics. The resolutions announced today will broaden the ability for FTC investigators and prosecutors to obtain evidence in critical investigations on key areas where the FTC’s work can make the most impact. Each omnibus covers investigations into competition or consumer protection conduct violations under the FTC Act.

Streamlining and improving efficiency at the agency is vitally important given the increased volume of investigatory work created by the surge in merger filings. Having already doubled between 2010 and 2020, the number of mergers filed with the antitrust authorities this year hit a record-setting pace of 2,067 acquisitions for the first seven months alone. With these resolutions in place, the FTC can better utilize its limited resources and move forward in earnest to quickly investigate potential misconduct. The Bureaus are now authorized to take steps to ensure that any compulsory process orders are enforceable.

#### \*4. Thumpers are priced in.

William C. MacLeod 7/2/21. One of the top rated Antitrust Litigation attorneys in Washington, DC. “Chopra, Khan, Slaughter Take Control of the Federal Trade Commission.” https://www.adlawaccess.com/2021/07/articles/chopra-khan-slaughter-take-control-of-the-federal-trade-commission/

With an unprecedented attack on policies the Federal Trade Commission had long embraced, the new majority of Democratic Commissioners revealed a bold enforcement agenda that would circumvent Supreme Court decisions and avoid Congressional limits.

It was a meeting like none the Federal Trade Commission has ever held. On one week’s notice, the Commission adopted new rules to impose civil penalties on substandard Made-in-USA claims, removed judges and safeguards from rulemaking proceedings, rescinded its 2015 enforcement policy statement on unfair methods of competition, and granted staff more authority to issue subpoenas and civil investigative demands. The vote on every issue followed party lines. Republican Commissioners, Noah Phillips and Christine Wilson, voted against all, and the Democratic Commissioners, Chopra, Khan, and Slaughter, rejected all amendments. Chair Khan announced that public meetings will become regular events at the FTC.

Made in USA Claims

Commissioner Chopra took the lead on the Made-in-USA (MUSA) rule, which would impose civil penalties on claims that do not meet FTC standards for domestic content, whether those claims appear on labels or in marketing. He criticized the Commission for years of allegedly allowing deceptive claims to persist and wrongdoers to escape fines. Imposing fines, he said, was one way of recovering the power the Commission was denied in the Supreme Court’s decision in AMG Capital Management v. FTC, which held that Section 13(b) of FTC Act did not authorize the Commission to obtain monetary relief.

Phillips opposed the rule, saying that Congress had not given FTC the authority to cover off-label claims; it had authorized MUSA rules only for product labels. Unless and until Congress granted authority for expedited rulemaking on advertising claims, which Congress is now considering, he insisted that the FTC was bound to use the more restrictive Magnusson-Moss procedures. Wilson objected to the short notice announcing the meeting, objected to the exclusion of staff from the meeting, and warned that it was unwise to disregard a unanimous Supreme Court that had just admonished the Commission for exceeding its authority to obtain money in consumer protection cases.

Expediting Rulemaking

Foreshadowing an ambitious regulatory agenda was a motion to streamline new rules under Section 18 of the FTC Act. The motion would remove the chief administrative law judge from the role of presiding officer in rulemakings. The FTC Chair would preside. The motion also proposed eliminating the requirement of a staff report to accompany a rule recommendation. Slaughter said these were unnecessary “self-imposed” limits. Chopra praised the proposal for helping end the era of “perceived powerlessness” at the FTC

Phillips and Wilson objected, citing concerns that removing the judge would threaten the independence of the rulemaking process – an extensive fact-finding exercise – and lend support to challengers who claim that FTC rules are politically motivated. As for staff reports, Phillips remarked that these gave the Commissioners and the public some confidence that a rule would not inflict unnecessary harm on the economy. Wilson reminded her colleagues that zealous rulemaking in the 1970s precipitated an existential crisis for the agency. It closed its doors after public resistance and widespread ridicule prompted Congress to defund the FTC. Not until the Commission promised a return to responsible enforcement was it allowed to reopen. The FTC delivered on that promise with a series of policy statements clarifying unfair acts and practices, illegal deception, and necessary substantiation for advertising claims.

Wilson proposed posting the procedural changes for comment. It failed 3-2. Phillips proposed retaining the chief judge and the staff report. It also failed to attract a Democratic vote. Rulemakings without a judge and without a staff report passed without a Republican vote.

Rescinding the Competition Policy Statement

In a sweeping departure from a bipartisan antitrust policy, the Commission rescinded its 2015 Policy Statement on Unfair Competition. Khan argued that the FTC should not have to show a likelihood of harm to competition in order to declare conduct unfair. In her view, the FTC Act was intended to circumvent the Supreme Court’s adoption of the Rule of Reason in antitrust cases – a requirement that condemned restraints of trade only when their anticompetitive effects outweighed the procompetitive benefits. The Rule of Reason made it too hard to prove violations, said Khan, and the FTC’s policy statement improperly confined the agency to an enforcement policy indistinguishable from the standards that DOJ applied.

Wilson regarded the rescission as an abandonment of the consumer welfare standard, the framework of antitrust analysis for half a century. She expressed fears that if competition policy were not designed to benefit consumers, it could be coopted by special interests. She added that when the FTC had failed to apply a standard consistent with the antitrust laws in the past, its decisions had often been reversed on appeal. (The FTC lost a string of appeals in the 1980s when it attempted to prohibit refusals to deal, price discrimination that might be competitive, supplier-distributor pricing policies, and practices that could facilitate collusion.) Phillips noted that the Supreme Court’s decision in NCAA had just applied the Rule of Reason in holding for plaintiffs, so it was hardly a bar to successful prosecution. Of concern to the Republicans was a proposal in Congress that would eliminate the FTC’s competition authority altogether.

Proposals to seek comment on the rescission were voted down on party lines. Competition policy at the FTC will depend on future Commission actions.

Targeting Sectors and Suspects

Finally the FTC identified seven areas in which it would adopt omnibus resolutions authorizing compulsory process – civil investigative demands and subpoenas enforceable in court. The Commission typically authorizes compulsory process when it identifies specific companies or conduct – like a merger or a deceptive practice – warranting intensive and urgent investigation. These resolutions covered broad sectors of the economy and authorized investigations under practices any law the FTC enforces. As explained in its press release, the Commission’s crosshairs are focused on these sectors and individuals:

Priority targets include repeat offenders; technology companies and digital platforms; and healthcare businesses such as pharmaceutical companies, pharmacy benefits managers, and hospitals. The agency is also prioritizing investigations into harms against workers and small businesses, along with harms related to the COVID-19 pandemic. Finally, at a time when merger filings are surging, the agency is ramping up enforcement against illegal mergers, both proposed and consummated.

https://www.ftc.gov/news-events/press-releases/2021/07/ftc-authorizes-investigations-key-enforcement-priorities

With these resolutions, the FTC delegated the decision to issue compulsory process to the staff and a single commissioner. In the past, an investigation into a new area could not use compulsory process until the commission voted on the resolution. These omnibus resolutions dispensed with that procedure. Khan hailed the move as cutting “red tape bureaucracy.” Wilson countered that the Commissioners were abrogating their sworn responsibilities of supervision. This last comment reveals the import of the change. If Chopra departs to the Consumer Financial Protection Bureau, which he has been nominated to direct, the Democrats will lose their majority. These resolutions will allow staff to open investigations,

demand documents, and conduct depositions without the approval of the Commission. All the staff will need is the approval of a commissioner.

The Future of FTC Enforcement

In short, July 1, 2021 was an extraordinary day in the history of the FTC. It is an unmistakable harbinger of a Commission that is aiming to ramp up enforcement beyond the levels it sought to achieve in the 1970s. None of the supporters of the agenda had answers to the dissenters’ repeated questions: How will the agency overcome the obstacles that stymied its unbridled ambitions in the past? How will it respond to the resistance it will face from Congress, the courts, and the public it is supposed to serve? The public at this meeting, Phillips noted, was scheduled to comment after the Commission had made its decisions, so that their testimony would not be taken into account before the votes.

How far the Commission can take this agenda will be difficult to predict until the inevitable allegations of unauthorized investigations, arbitrary and capricious rules, unpredictable decisions, and deprivations of due process make their way to higher authorities. Safer predictions: We will see the fruits of yesterday’s decisions in the form of CIDs, subpoenas, proposed rules, and new interpretations of a century-old competition statute. Businesses and citizens will face the first engagement. Then Congress and the courts will join the fray. For a preview of potential outcomes, there is no better place to start than the rich literature of FTC history.

### AT: CA Thumper

#### Recent actions are in line with the FTC’s antitrust caseload.

Kaj Rozga and Douglas E. \*\*Litvack 8/10/21 – former Federal Trade Commission attorney with a breadth of antitrust experience and \*\*partner in DWT's Washington, D.C., office, 8/10/21. “Antitrust State of Play for Healthcare Providers Under a New Administration - Part I: Mergers and Acquisitions.” https://www.dwt.com/insights/2021/08/biden-administration-healthcare-antitrust

None of the recent actions of the Biden Administration or FTC are significantly out of step with the recent trend of vigorous merger enforcement against healthcare providers.

The healthcare industry has grown accustomed in the last decade to close scrutiny and frequent challenges to hospital and physician practice deals. A 2019 report from the FTC detailed at least nine hospital mergers and six physician group acquisitions that the agency challenged going back to 2008.5 Since then, it has challenged at least three more hospital deals, in addition to launching a merger retrospective study earlier this year to analyze the market effects of physician group and hospital consolidation.6

### AT: NO AI Impact

#### Algorithmic bias in AI is an existential threat.

Mara Hvistendahl 19 – correspondent with Science magazine, 3/28/19. “Can we stop AI outsmarting humanity?” <https://www.theguardian.com/technology/2019/mar/28/can-we-stop-robots-outsmarting-humanity-artificial-intelligence-singularity>

Existential risks – or X-risks, as Tallinn calls them – are threats to humanity’s survival. In addition to AI, the 20-odd researchers at CSER study climate change, nuclear war and bioweapons. But, to Tallinn, those other disciplines “are really just gateway drugs”. Concern about more widely accepted threats, such as climate change, might draw people in. The horror of superintelligent machines taking over the world, he hopes, will convince them to stay. He was visiting Cambridge for a conference because he wants the academic community to take AI safety more seriously.

At Jesus College, our dining companions were a random assortment of conference-goers, including a woman from Hong Kong who was studying robotics and a British man who graduated from Cambridge in the 1960s. The older man asked everybody at the table where they attended university. (Tallinn’s answer, Estonia’s University of Tartu, did not impress him.) He then tried to steer the conversation toward the news. Tallinn looked at him blankly. “I am not interested in near-term risks,” he said.

Tallinn changed the topic to the threat of superintelligence. When not talking to other programmers, he defaults to metaphors, and he ran through his suite of them: advanced AI can dispose of us as swiftly as humans chop down trees. Superintelligence is to us what we are to gorillas.

An AI would need a body to take over, the older man said. Without some kind of physical casing, how could it possibly gain physical control?

Tallinn had another metaphor ready: “Put me in a basement with an internet connection, and I could do a lot of damage,” he said. Then he took a bite of risotto.

Every AI, whether it’s a Roomba or one of its potential world-dominating descendants, is driven by outcomes. Programmers assign these goals, along with a series of rules on how to pursue them. Advanced AI wouldn’t necessarily need to be given the goal of world domination in order to achieve it – it could just be accidental. And the history of computer programming is rife with small errors that sparked catastrophes. In 2010, for example, when a trader with the mutual-fund company Waddell & Reed sold thousands of futures contracts, the firm’s software left out a key variable from the algorithm that helped execute the trade. The result was the trillion-dollar US “flash crash”.

The researchers Tallinn funds believe that if the reward structure of a superhuman AI is not properly programmed, even benign objectives could have insidious ends. One well-known example, laid out by the Oxford University philosopher Nick Bostrom in his book Superintelligence, is a fictional agent directed to make as many paperclips as possible. The AI might decide that the atoms in human bodies would be better put to use as raw material.

Tallinn’s views have their share of detractors, even among the community of people concerned with AI safety. Some object that it is too early to worry about restricting superintelligent AI when we don’t yet understand it. Others say that focusing on rogue technological actors diverts attention from the most urgent problems facing the field, like the fact that the majority of algorithms are designed by white men, or based on data biased toward them. “We’re in danger of building a world that we don’t want to live in if we don’t address those challenges in the near term,” said Terah Lyons, executive director of the Partnership on AI, a technology industry consortium focused on AI safety and other issues. (Several of the institutes Tallinn backs are members.) But, she added, some of the near-term challenges facing researchers, such as weeding out algorithmic bias, are precursors to ones that humanity might see with super-intelligent AI.

Tallinn isn’t so convinced. He counters that superintelligent AI brings unique threats. Ultimately, he hopes that the AI community might follow the lead of the anti-nuclear movement in the 1940s. In the wake of the bombings of Hiroshima and Nagasaki, scientists banded together to try to limit further nuclear testing. “The Manhattan Project scientists could have said: ‘Look, we are doing innovation here, and innovation is always good, so let’s just plunge ahead,’” he told me. “But they were more responsible than that.”

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## FTC DA

### AT: Thumpers

#### Algorithmic bias is part of the FTC’s healthcare enforcement push.

ALEXANDRA S. LEVINE 8/25/21. Reporter covering the intersection of technology, government and public policy, and she is the author of POLITICO’s popular daily newsletter, Morning Tech. “How Biden's tech trustbuster could change health care.” https://www.politico.com/newsletters/future-pulse/2021/08/25/how-bidens-tech-trustbuster-could-change-health-care-797333

The way health care companies and consumer health apps handle sensitive data “is an area that I'm sure [Khan’s] very, very interested in,” said Jessica Rich, former director of the FTC’s consumer protection bureau, adding that the Biden administration's FTC will also be closely scrutinizing hospital mergers.

“I expect her and the commission to take a very bold approach to what constitutes harm for both,” Rich said. “I expect her to pay close attention to algorithms and potential discrimination in health care, both denials and pricing issues which the FTC's laws can address.”

#### No enforcement action on oil and gas---no irregularities.

RACHEL FRAZIN 8/30/21. Staff writer at The Hill. “FTC to probe for any 'collusive' practices on gas prices.” https://thehill.com/policy/energy-environment/570037-ftc-to-probe-for-any-collusive-practices-on-gas-prices

Her letter, dated Wednesday, came after Deese asked the FTC to look into “divergences” between oil prices and what people are paying at the pump.

Analysts told The Hill at the time that they didn’t expect any such probe to reveal irregularities, citing high labor costs, driver shortages and refinery closures as among the possible reasons for high gasoline prices.