# Harvard R5 Wiki Doc

## 1nc

### 1NC – OFF

#### First off is the regulations cp.

#### The United States federal government should The United States federal government should regulate wholly-owned or controlled subsidiaries of parent companies of the United States through non-antitrust regulations.

#### 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 – OFF

#### Next off is the cap k.

#### Anti-trust is a capitalist psy op to pacify the working class, buy time to mystify unsustainable accumulation, and map competition onto subjectivity – homo economicus devalues life.

Lebow 19 [David Lebow – Lecturer on Social Studies at Harvard University and lawyer, “Trumpism and the Dialectic of Neoliberal Reason,” Perspectives on Politics 18(2):380-398, doi:10.1017/S1537592719000434]

I. Neoliberal Reason

As Michel Foucault and others have argued, neoliberalism entails far more than an economic doctrine favoring deregulated markets.4 It is a novel form of governmentality—a rationality linked to technologies of power that govern conduct, not just through direct state action but through liberty itself.5 Not isolated to the traditionally demarcated sphere of economics, neoliberal society entails a whole economic-juridical order.

The central program of neoliberal governmentality is the absolute generalization of competition as a universal behavioral norm. Whereas in liberal thought, the root principle of capitalism was exchange of equivalents, for neoliberal reason it is competition entailing inequality. The key result of market processes goes from specialization to selection. The competitive market is the exclusive site of rationality. It processes information, indicated by price, and is the only mechanism of producing knowledge, defined as what is profitably utilizable. Because consumers are free to refuse inferior goods or services, the price mechanism of the market system ensures optimal solutions and maximal satisfaction of preferences.

Liberal capitalism, as Karl Polanyi argued, required the construction of “fictitious” commodities like land and labor.6 These abstract, exchangeable factors of production had to be disembedded from concrete non-market social relations, norms, and values. Instead of merely disembedding commodities, neoliberalism intervenes to make competitive mechanisms regulate every moment and point in society. It strives to build an empire of market choice that invades every domain of life, and deposes all other social, political and solidaristic institutions and values.

Neoliberalism does not allege that markets are natural; competition must be constructed. Rather than endorsing laissez-faire overseen by a night watchman, it stipulates a strong state engaged in permanent vigilance, activity, and intervention to maintain artificial competition. It must not plan outcomes, which would upset the market’s innate rationality, and must be insulated from political disturbances. Economic interventionism leads down the road to serfdom; fascism and unlimited state power are its necessary results. A “minimum of economic interventionism” on the “mechanisms of the market” must be accompanied by “maximum legal interventionism” on the “conditions of the market.”7 Fixed, formal rules make up an economic constitution that inhibits planning, repulses political disruptions, and impartially safeguards competition. The state is the executor of the market and growth is the basis of public legitimacy. Governance depoliticizes public power, promotes ostensibly post-ideological technical problem-solving by experts, and relies on “best-practices” that dissolve the distinction between public and private organization.8

Unlimited generalization of competition yields an enterprise society in which calculations of supply/demand and cost/benefit become the model of all social relations. Neoliberal reason renders homo economicus, based on this model of the enterprise, the exhaustive figuration of human subjectivity. The center of economic thought shifts from labor and processes of production, exchange, and consumption to human capital and rational decision-making under conditions of scarcity. Capital is everything that can generate future income; wages are reconceived as income from capital. Labor is no longer comprehended as a commodity exchanged for a wage, but as a combination of human capital (the worker’s education and abilities) and the income stream it generates. This neoliberal subject is an aggregate of human capital who invests in his own income-generating abilities.

Neoliberalism replaces the invariant identity of the moral person as a rights-bearing citizen with a formally empty receptacle filled up through enterprising choices. It brushes aside models of freedom as self-rule achieved through moral autonomy or popular sovereignty.9 In the neoliberal “democracy of consumers,” individual consumers together constitute the sovereign that monopolizes the issuance of legitimate commands.10 Sovereign will is expressed not through political channels, but by choices in the “plebiscite of prices.”11 Whereas producers have particular interests like protectionism, consumers have a consensual and common interest; all favor the impartial functioning of market processes. In the neoliberal free society, consumers exercise their right to choose in complete independence.

II. From Keynesian State Capitalism to Neoliberal Deregulation

Situating the 2008 crisis in a historical account of American political and economic development clarifies its broader significance. The early twentieth-century Progressives were disdainful of what they took to be the chaos and waste of fin de siècle laissez-faire society. They strove to build a new American state that would replace the structural and rights-based formalisms of the nineteenth century with direct democracy and expert administration. It took the Great Depression and New Deal to bring into full bloom the Progressive commitment to pragmatic rationality. Thereafter, the “policy state” was authorized to pursue designated social goals and develop the means to accomplish them.12 The slew of New Deal innovations included state oversight of labor negotiations, invigorated antitrust, Keynesian countercyclical deficits to stimulate demand and increase purchasing power, an expansive public sector sheltered from the business cycle, aggressive banking regulation, and social insurance. Regulation and redistribution ensured the conditions necessary for an economic system based on capital accumulation, private property, and corporate profit to endure.

To many, the differences between the New Deal and Nazi political economies appeared less significant than their common response to monopoly capitalism. Both erased boundaries between state and society by politicizing the private sphere and authorizing public bureaucracies to rationalize crisis-prone economies. Frankfurt School member Friedrich Pollock suggested that this common “state capitalism” had solved the contradiction between the forces and relations of production, and thus overcome the economy’s crisis tendencies. It seemed to him that management had become merely technical and “nothing essential” had been “left to the laws of the market.”13 Worries abounded that the private law sphere of property and contract was necessary for individual freedom. Despite salient differences between Nazi and New Deal state capitalism, many feared that intervention into society was a waystation to domination. Unease about the specter of American despotism motivated development of mechanisms to ensure that interventionism did not devolve into arbitrary rule.14 Expertise was one justification and limitation of the policy state. Authority could be safely delegated to a new corps of public-spirited administrators because their scientific knowledge would not only make them effective, but also counsel restraint. Enduring misgivings led later to new laws of administrative process. The procedural state was legitimated by its defenders as being a substantively value-neutral and instrumentally rational machine serving goals set by society. Regulatory decision-making was shunted into the abstruse procedures of courtrooms and bureaucracies. Defenders of the state emphasized that its processes of allocating authority were neutral, impartial, and open to all. The balanced accommodation of all interest groups seeking to exercise influence would yield an equilibrium corresponding to the public interest.15

The intermeshing of state and society through interest groups, agencies, and professionalized parties marginalized the public. The sovereign public opinion that Progressives had hoped would rationalize government gave way to the rationality supposedly inherent in processes of public law, public-private negotiation, and regulated markets. The state was endowed with a diffuse legitimacy in exchange for a growing economy, broad distribution, and ongoing household capacity to consume.16 The Keynesian welfare settlement pacified the working class, protecting the market economy from more radical political pressures. Newly available, mass-produced commodities encouraged leveled-down notions of citizenship as welfare clientelism and privatistic consumption. As the state expanded and routinized, the initial politicization of private property relations through public intervention developed into depoliticized economic management by lawyers and social scientists organized by administrative and judicial processes.

The terms of the social contract preserving the coexistence of capitalism and democracy had been set. In exchange for a pacified citizenry and depoliticized regulatory authority, the policy state promised to deploy instrumental reason to sustain both capital accumulation and widely distributed capacity to consume (supported, always, by the exclusion of African Americans). During the decades of postwar growth, these twin responsibilities seemed attainable and compatible. Capitalism functioned smoothly enough and potentially delegitimating inequality was clipped by inflation, tax-based welfare, and collectively negotiated wages. But in the late 1960s and early 1970s, weakening growth, stagflation, trade deficits, and the collapse of Bretton Woods revealed that state capitalism had not solved the problems of economics. As the Great Depression had enabled construction of the instrumentally rational policy state, economic disturbances in the 1970s opened the breach into which neoliberal reason entered to reconfigure the political economy. Rather than shielding rational policy-making from political pressure and assuring broadly distributed welfare, neoliberalism promised growth driven by depoliticized markets freed from regulation and downwards redistribution. Believing in the optimal rationality of competitive markets, neoliberals sought to reinvigorate capital accumulation through deregulation, lowered taxes, financialization, privatization, and market expansion.

Liberating accumulation from the restrictions and obligations incurred under state capitalism might have imperiled capitalism’s peace treaty with democracy. For deregulation to proceed without impairing the system’s legitimacy, the quid pro quo—depoliticization for consumption—had to continue. Over the ensuing decades, as Wolfgang Streeck explains, the state “bought time” by finding new ways to generate illusions of widely distributed prosperity that prolonged the capacity of the lower and middle classes to consume.17 Each successive attempt exhausted itself, leading to new and escalating disturbances. In the 1970s, inflation safeguarded social peace by compensating workers for inadequate growth until stagflation ended this mode of buying time. A subsequent reliance on public debt enabled the government to pacify conflict with borrowed money. Rising debt and balking creditors delimited this phase, which was brought to a definitive close with the Clinton administration’s social spending cuts and balanced budgets. In a final stage that dawned in the 1980s but grew increasingly paramount over time, debt-based support of purchasing power was privatized. Household spending was financed through mortgages, student loans, and credit cards. This “privatized Keynesianism” buoyed consumption up through 2008, despite cuts to social spending, falling wages, and tightening employment markets.18

Each device for upholding spending maintained the legitimacy of the depoliticized political economy, even as liberalization continued to strip the wage-dependent population of regulatory and redistributive safeguards. The end of the inflation era brought structural unemployment and weakened trade unions. The passing of the public debt regime meant cuts to social rights, privatization of social services, and a trimmed public sector. Growing private debt enabled people to hold on despite lost savings, and rising under- and unemployment. At every step, the neoliberal project was “dressed up” as a consumption project.19 Continuing consumption ensured legitimacy long enough to enact total transformation of the political economy.

The state could not buy time indefinitely. The 1970s had already witnessed the beginning of the transition from a manufacturing, production-oriented economy that exported surpluses to an import-based, finance and services economy focused on consumption. As the United States went from creditor to debtor, a system of “balanced disequilibrium” took hold.20 With impunity granted as the world’s reserve currency, the United States ran mounting budget and trade deficits. To finance them, it absorbed surplus capital from abroad, much of which wended its way to Wall Street. Banks used these profits to extend credit to the working- and middle- classes. Household debt funded consumption of imported goods, returning the surplus capital abroad, and completing the circuit of global trade. This system depended on the unsustainable condition of ever-increasing debt-based consumption. Consumption was notoriously reinforced by secondary markets in what was essentially private money (securitized derivatives and collateralized debt obligation) that was much riskier than assumed. Because increasingly irresponsible lending was integral to continuing the consumption that stabilized the macroeconomic system, it became a sort of vicious collective good that progressively magnified the scale of the inevitable crash.21 When in 2008 the debt finally proved unserviceable and the housing bubble burst, the private money disappeared and the disequilibrated global economic system fell into crisis.

Consumption based on private debt had provided an unstable bridge over the yawning inequality brought about by deregulation, financialization, globalization, and the diminished welfare state. When the 2008 crisis dried up credit, it revealed a divided “dual economy.”22 On one side is the primary sector of elite, highly-educated professionals who are collected in coastal urban centers and tied in to corporate management, technological innovation and oversight of global capital flows. On the other is the secondary sector of low-skilled workers primarily fixed in the heartland, for whom deregulated competition has brought under- or unemployment, job instability, depressed wages, exploding debt, and diminished prospects.

Unable to buy more time, the state’s breach of the postwar social contract has been exposed. The neoliberal system of capital accumulation was entrenched at the expense of broad and sustainable consumption. The results have been the politicization of defrauded citizens and a political economy plunged into legitimation crisis. Time has belied the premature conclusion that contradiction and crisis potential had been overcome by state capitalism. Contradiction was relocated into cross-cutting imperatives for the state to enable capital accumulation and distribute consumption. In hindsight, we find only a window of stabilization of an enduring crisis potential built into capitalist political economy. As Nancy Fraser puts it “on the one hand, legitimate, efficacious public power is a condition of possibility for sustained capital accumulation; on the other hand, capitalism’s drive to endless accumulations tends to destabilize the very public power on which it relies.”23 The political fallout from the 2008 crisis marks the end of the postwar social contract that had established conditions ensuring the continued coexistence of capitalism and democracy.

#### 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.

#### Vote neg for anti-capitalist commons – collectives should refuse commitments to competitive principle and the straitjacket of what’s “realistic”

Rose 21 [Nick. PhD in Political Ecology from RMIT University. Executive Director of Sustain: The Australian Food Network. From the Cancer Stage of Capitalism to the Political Principle of the Common: The Social Immune Response of “Food as Commons.” Int J Health Policy Manag 2021. 3-31-21. DOI: 10.34172/ijhpm.2021.20 //shree]

Silvia Federici provides a longer historical perspective, noting that ‘commoning is the principle by which human beings have organised their existence for thousands of years;’ and that to ‘speak of the principle of the common’ is to speak ‘not only of small-scale experiments [but] of large-scale social formations that in the past were continent-wide.’87 Hence a commons-based society is neither a utopia or reducible to fringe projects, and the commons have persisted despite the many and continuing enclosures, ‘feeding the radical imagination as well as the bodies of many commoners.’87 Federici acknowledges that commons and practices of commoning are diverse, that many are susceptible to cooptation and many are consistent with the persistence of capitalism; indeed some, such as charities providing social services (including foodbanks) during the years of austerity budgets in the United Kingdom (2010-2015), reinforce and stabilise capitalism.87 What matters to Federici is the character and intentionality of the commons as anti-capitalist, as ‘a means to the creation of an egalitarian and cooperative society…no longer built on a competitive principle, but on the principle of collective solidarity [and commitments] to the creation of collective subjects [and] fostering common interests in every aspect of our lives.’87

Federici’s analysis resonates with the political thought and proposals developed by Dardot and Laval in their 2018 work, ‘On Common: Revolution in the 21st century.’11 For Dardot and Laval, the common is likewise understood as a principle of political struggle, a demand for ‘real democracy’ and a major driving force behind the emerging articulation of a political vision and programme that transcends and overcomes the straitjacket logic of neoliberal ideological hegemony and its ‘policy grammar’ which appears to foreclose all alternatives and lock us forever into a capitalist realism in which ‘it is easier to imagine the end of the world than it is to imagine the end of capitalism.’89 Eschewing Bollier’s ‘triarchy’ of a market/state/ commons coexistence, Dardot and Laval argue for a politics of the common based on an engaged citizenry that directly participates and deliberates in all decisions which impact it, and in the process not merely transforms the institutions responsible for the management of services and allocation of resources, but creates new institutions and new ways of being in the world.11

Dardot and Laval describe this form of politics as ‘instituent praxis’: the common, they argue, is ‘not produced but instituted.’11 This acknowledges the conventional understanding of Ostrom, Bollier and others of ‘the commons’ as residing in the rules – the laws – that a community establishes for the collective management and use of shared resources, but extends it much further and in a more radical direction. The essence of the commons, they argue, is not in the goods per se such as land or a forest or a seed bank ‘held in common,’ but rather in the process of their establishment as well as the ongoing negotiation that will surround their use and governance. Hence, Dardot and Laval distinguish the commons from the ‘rights’ tradition of property, arguing that ‘the commons are above all else matters of institution and government…the use of the commons is inseparable from the right of deciding and governing. The practice that institutes the commons is the practice that maintains them and keeps them alive and takes full responsibility for their conflictuality through the coproduction of rules.’90 To ‘institute’ in this context should not be misunderstood as ‘to institutionalise [or] render official;’ rather it is ‘to recreate with, or on the basis of, what already exists.’ 90 This messy, conflictual and evolving process is what Dardot and Laval insist will ultimately bring about a revolution, not in the form of a violent uprising or insurrection, but rather through the ‘reinstitution of society’ via the transformation of politics and economy from its current state of ‘representative oligarchy’ to full participatory and deliberative democracy.11 Such a vision is premised on a mass politicisation of society; in effect a return of mass popular political contestation and a turn away from the postpolitical era of the neoliberal consumer.91-92

### 1NC – OFF

#### Next off is the advantage CP.

#### The United States federal government should

#### Pass the PAID Act

#### Substantially increase funding allocated to social insurance programs, increase investment in green infrastructure and public universities, and increase the minimum wage.

#### Reshape its cyber posture by modernizing the grid, increasing network visibility, and increasing information sharing with the private sector.

#### Solves 5G race and China fill-in

Abbott et al. 21 – Alden Abbott is a Senior Research Fellow at the Mercatus Center. Prior to joining Mercatus, he served as the General Counsel of the Federal Trade Commission (FTC). As the Commission’s chief legal officer and adviser, he represented the agency in court and provides legal counsel to the Commission and its bureaus and offices. Hon. Paul R. was appointed to the United States Court of Appeals for the Federal Circuit in March of 1988 by President Ronald Reagan. On December 25, 2004, he assumed the duties of Chief Judge. After his elevation to Chief Judge, he served as one of 27 judges on the Judicial Conference of the United States, the governing body of the Judicial Branch. In 2005 he was appointed by Chief Justice Rehnquist to also serve on the Judicial Conference’s seven-judge Executive Committee. On May 31, 2010, Chief Judge Michel stepped down from the bench after serving more than 22 years on the court. Michel Adam Mossoff is a Professor of Law at Antonin Scalia Law School, George Mason University. He teaches a wide range of courses at the law school, including property, patent law, trade secrets, trademark law, remedies, and internet law. He has published extensively on the theory and history of how patents and other intellectual property rights are private property rights that should be legally secured to their owners and licensed or otherwise transferred as commercial assets in the marketplace. His academic research has been cited by the Supreme Court, by the Court of Appeals for the Federal Circuit, and by federal agencies. Professor Mossoff has been invited to testify several times before the Senate and the House on proposed patent legislation, and he has spoken at numerous congressional staff briefings and academic conferences, as well as at the U.S. Patent & Trademark Office, the Federal Trade Commission, the Department of Justice, the National Academy of Sciences, and the Smithsonian Museum of American History. His writings on patent law and policy have appeared in the Wall Street Journal, New York Times, Forbes, Investors Business Daily, The Hill, Politico, and in other media outlets. He is a member of the Public Policy Committee of the Licensing Executives Society, the Intellectual Property Rights Policy Committee of ANSI, and the Academic Advisory Committee of the Copyright Alliance. He has served as past Chair and Vice-Chair of the Intellectual Property Committee of the IEEE-USA. Kristen Osenga teaches at the University of Richmond School of Law and writes in the areas of intellectual property, patent law, law and language, and legislation and regulation. Some of her recent scholarship focuses on patent eligible subject matter, patent licensing firms, standard setting organizations, patent law reform, and claim construction. She has written numerous law review articles on these and other topics, as well as book chapters and op eds on various aspects of patent law. And Brian O’Shaughnessy was the past president and chair of the board of the Licensing Executives Society (USA and Canada), Inc. (LES), is an internationally recognized authority in technology licensing agreements and commercial transactions involving intellectual property rights. He is a partner in the Washington DC office of Dinsmore & Shohl LLP, and chair of its IP Transactions and Licensing Group. He counsels clients in the strategic development and utilization of intellectual property portfolios. He represents innovators before the U.S. Patent and Trademark Office, including contested proceedings before the USPTO Patent Trial and Appeal Board; and in the resolution of contested matters before the federal courts and the International Trade Commission. 3-10-2021, "Aligning Intellectual Property, Antitrust, and National Security Policy," Regulatory Transparency Project, [https://regproject.org/paper/aligning-intellectual-property-antitrust-and-national-security-policy/](about:blank)

Innovative U.S. companies need help to continue to be active participants in the global 5G race.  Filing lawsuits in U.S. courts, however, is too slow and not necessarily advantageous.  An alternative to court litigation would be to authorize mechanisms for executive agency actions to address foreign abuses of patented inventions created and owned by U.S. innovators. There are several options available to the U.S. government to implement alternative forums for addressing these unique legal and policy problems at the nexus of international relations, intellectual property policy, and U.S. national security policy. One draft bill proposes a solution: The Protecting American Innovation and Development Act of 2021 (PAID) would authorize the Secretary of Commerce to create and maintain a list of foreign “bad actors” who are engaging in patent infringement of a standard essential patent in wireless communication technologies like 5G.29 If a U.S. company can demonstrate that it owns a valid patent and a foreign entity is using that patent without a license from this patent owner, then the foreign entity would be moved to the “bad actor” list for one year, during which time the foreign entity would be required to negotiate a license or engage in binding arbitration with the U.S. patent owner. To protect the leadership of American companies in the development of 5G, and in turn protect U.S. national security, the PAID Act should be enacted by Congress, creating a more efficient and alternate institutional mechanism for securing key U.S. intellectual property rights.

#### Solves inequality---bolsters productivity via laborer benefits

Andres Vinelli & Christian E. Weller 21. “The Path to Higher, More Inclusive Economic Growth and Good Jobs.” [https://www.americanprogress.org/issues/economy/reports/2021/04/27/498794/path-higher-inclusive-economic-growth-good-jobs/](about:blank).

Relief efforts, such as President Biden’s American Rescue Plan, primarily support the demand side of the economy. The federal funds going to households, businesses, and state and local governments are desperately needed to support all parts of the economy that are struggling from an unprecedented onslaught on their financial health. These payments are an important first step to lift the economy back up to its previous levels, reducing unemployment, stabilizing economic growth, and improving financial stability. More is needed, though, to return the economy to much faster growth and build a sustainable economy that works for everybody. The goal is to raise economic capacity by emphasizing the economy’s supply side. Faster productivity growth, and thus faster economic growth, will create even more opportunities for employment and wage gains. It will also make it easier to address the country’s looming challenges of massive economic inequality, climate change, lackluster caregiving support, and crumbling public health and other infrastructure, to name a few. The ARP already includes some measures, such as financial support for higher education, that would have positive supply-side effects. Importantly, public policies can break the interconnected trends of high inequality, widespread insecurity, and low investment that underlie low productivity growth. First, policies can reduce income inequality by strengthening workers’ wages and benefits. Second, a number of policies can substantially reduce income uncertainty and volatility for households. Most notably, social insurance programs, such as unemployment insurance, health insurance, and Social Security, are critical tools to give working families some peace of mind. Third, more federal funding for research and development, a green infrastructure, and more support for education—all purviews of the public sector—can lift up productivity growth. All three types of policies will boost productivity growth. Higher incomes due to increased pay and better benefits, such as paid family and medical leave, make it less likely that workers leave an employer. Less turnover boosts workers’ on-the-job experience and their productivity, while more income stability reduces financial, psychological, and health stress for workers. This makes it easier for workers to concentrate on their work since they are typically worrying less about how to pay their bills. Less income uncertainty also makes it easier for workers to plan for, save for, and invest in their own future—for example, by moving to a new location when better opportunities arise, starting a business, or supporting their children’s education. All of these steps mean that households will have more skills and be able to better use those skills, thereby increasing productivity across the economy. Moreover, large-scale public investments will create new technologies for companies and reduce the financial risks associated with new ventures. In the end, businesses and people will be better positioned to use scarce resources.

#### Prevents grid intrusions and deters attacks

Buchanan and Sulmeyer ’16 (Ben and Michael; 12/13/2016; post-doctoral fellow at the Belfer Center’s Cyber Security Project, director of the Belfer Center’s Cyber Security Project; “Russia and Cyber Operations: Challenges and Opportunities for the Next U.S. Administration,” [http://carnegieendowment.org/2016/12/13/russia-and-cyber-operations-challenges-and-opportunities-for-next-u.s.-administration-pub-66433](about:blank); Date Accessed: 7/10/2017; DS)

To better position the United States against increased Russian cyber operations, an approach designed to improve American operations in three areas is essential: defense, detection, and deterrence. Implementing these recommendations in these areas will enable U.S. policymakers to have greater confidence in the baseline level of security in key networks, a better chance of quickly identifying and thwarting Russian intrusions when they do occur, and a clearer posture for limiting Russian behavior. The standard of baseline defenses must improve, both in government networks and in privately operated critical infrastructure. Network defenders should prioritize deploying audited code—software that has been checked for vulnerabilities—and applying security updates in order to minimize the opportunities for intrusion as much as possible. Ideally, such efforts will minimize the percentage of successful intrusion attempts, enabling defenders to focus their time on more sophisticated threats, such as those potentially posed by Russia. This will likely involve replacing older so-called legacy systems that were not built with security in mind. In the case of federal networks, Congress should authorize the modernization of important information technology infrastructure; the 2016 budget request from President Barack Obama contains initiatives that are a useful starting point.21 A related component of defense is detection. The faster adversaries can be spotted and removed from a network, the **less damage** the adversaries will be able to do. Better perimeter defenses are a fundamental part of cybersecurity, but they are not by themselves sufficient. Within both the private and public sector, networks should be designed or, where applicable, redesigned to increase the visibility defenders have into all activity taking place. With better network visibility, defenders should monitor their own networks for anomalous activity that could indicate the presence of an intruder.22 Older systems will likely have to be replaced over time in order to achieve this; President Obama’s proposal for information technology modernization in government is also a good start.23 To aid this effort, the United States government should increase its information sharing with the private sector. It should prioritize efforts to declassify as much as possible threat intelligence on sophisticated foreign actors, including Russian operators, and share this data with the relevant sector-specific information sharing and analysis organizations. When this threat intelligence is married with better network architecture, ongoing detection of malicious activity becomes a more tractable problem. Where appropriate, the United States should **increase its intelligence collection** in order to inform this effort. In addition, the U.S. government should lead or encourage a widespread effort to detect adversaries already lurking in American critical infrastructure. This mission, which will likely involve a private-public partnership in some areas, should seek to identify intrusions that have already taken place and remove them from the affected networks. The goal should be to reduce, as much as possible, the Russian ability to perform ongoing collection and to hold key U.S. targets at risk. Decontamination of networks is a challenging and resource-intensive undertaking, but it is vital. The last recommendation relates to deterrence. The United States should make it clear that there are costs for intrusive cyber operations, especially when those operations exceed acceptable norms of behavior. In order to make this deterrent credible, the United States must be prepared to retaliate for activities it deems inappropriate. But this response does not need to be limited to cyber operations. Indeed, there is already a precedent for non-cyber-operation responses to intrusions, a concept known as cross-domain deterrence. In response to cases like the hacking of campaign officials and the leaking of their personal emails, the United States should identify the perpetrators and consider an unambiguous public rejoinder. The Department of Justice has obtained indictments against Chinese and Iranian cyber operators; where appropriate, it should consider using that tool against Russian actors. This naming and shaming, combined with the possible restrictions on travel—due to fear of arrest—that accompany indictments indicates to operators that the United States is capable of doing attribution and that there perhaps will be consequences for their actions. In addition, sanctions in response to cyber activity may also be merited. The 2015 executive order signed by President Obama enables the United States to impose sanctions on other nations for their behavior in cyberspace. With Russia, there are already sanctions in place due to the conflict in Ukraine, but additional targeted sanctions for cyber activity may be warranted.24

### 1NC – OFF

#### Next off is the 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, suffering, and extinction**

**Thomas 20** – Quoting AI experts including MIT Physics Professors, Senior Features Writer for BuiltIn

Mike Thomas, 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](about:blank)

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 – OFF

#### Next off is the Japan DA.

#### Antitrust application extraterritorially ends the Japan economic alliance---they respond with diplomatic protest to new extraterritorial antitrust.

Takaaki **Kojima 02**. Fellow, Weatherhead Center for International Affairs, 2001-2002. “International Conflicts over the Extraterritorial Application of Competition Law in a Borderless Economy”. https://datascience.iq.harvard.edu/files/fellows/files/kojima.pdf

We are witnessing increasingly **widespread** and penetrating economic **globalization** today. As a result of trade liberalization, import restrictions or regulations on trade and investment have decreased substantially, and trans-border business activities face less barrier. At the same time, the role of trans-border business activities, especially those by so-called **multinational** or **global enterprises**, have become increasingly important and even dominant in some sectors.

As far as the territorial scope of business activities are concerned, state borders are more or less **diminishing** to become almost borderless; as for legal regimes, **however**, sovereign states retain in principle exclusive jurisdiction over their territories and nationals under international law. Business activities are regulated by the domestic laws of sovereign states or by international agreements concluded among sovereign states. The pertinent question is how to coordinate “borderless” business activities within the existing legal regimes governed by sovereign states. In the field of trade law, the measures of each state are restricted by international agreements, in particular under the GATT/WTO regime. In the field of competition law, such **an international regime is lacking** and the domestic laws of each state regulate private restraints of trade in the relevant markets.

Serious **jurisdictional conflicts** have transpired in the last several decades between the United States and other states over the so-called extraterritorial **application of U.S. antitrust laws on anticompetitive conducts** abroad. This problem has also caused **diplomatic frictions** between the United States and other states, as it concerns state sovereignty. In this essay, the author will review the historical development of **international conflicts** caused by the extraterritorial application of competition law and attempt to examine the options available to circumvent or solve these conflicts. The main focus will be U.S. antitrust law and its relation with other jurisdictions, mainly the European Union and **Japan**, considering the **grave implications** to competition law and policy as well as to the world economy. 2

II. Extraterritorial Application of U.S. Antitrust Laws

Problems concerning the extraterritorial application of U.S. antitrust laws have been discussed in many publications. Of the U.S. antitrust laws, the Sherman Act applies to “commerce … with foreign nations ” (Section 1) without qualifying provisions concerning its territorial scope as “within the United States” (Section 2) or “in any section of the country” (Section 3) as specified in the Clayton Act. In the past, U.S. courts interpreting the Sherman Act of 1890 and other antitrust laws commonly followed the traditional territorial principle with regard to its jurisdictional reach. In the American Banana case (213 U.S. 347 (1909)), where all the acts complained of were committed outside the territory of the United States, including the defendant’s alleged inducements of the Costa Rican government to monopolize the banana trade, the U.S. Supreme Court dismissed the complaint on the ground, inter alia, that acts committed outside of the United States are not governed by the Sherman Act. In this case, the territorial principle in the classic sense was applied.

In later decisions such as the American Tobacco case (221 U.S. 106 (1911)) and the Sisal case (274 U.S. 268 (1927)), jurisdiction was exercised over the defendants on the ground that although the agreements in question were concluded by foreigners outside the United States, jurisdiction was limited to what was performed and intended to be performed within the territory of the United States. In these cases, the territorial principle was applied more flexibly, but it has been observed that this application cannot be argued other than as a sensible and reasonable deployment of the objective territorial theory. 3

An entirely different approach was taken in the Alcoa case (148 F.2d. 416 (1944)), in which foreign companies outside the United States had concluded the agreements. The Court of Appeal for the Second Circuit held it settled law that any State may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders. It went on further to state that the agreements, although made abroad, were unlawful if they were intended to affect imports and did affect them.

This theory of the intended effect (the effects doctrine) elaborated in the Alcoa case was criticized by many as an excess of jurisdiction under public international law. For instance, R.Y. Jennings noted that “in this new guise it apparently comprehends the exercise of jurisdiction over agreements made abroad, by foreigners with foreigners provided only that the agreement was intended to have repercussions upon American imports or exports,” 4 while F.A. Mann argued that “the type of effect within the meaning of the Alcoa ruling has nothing in common with the effect which by virtue of established principles of international jurisdiction confers that right of regulation.” 5 Neverthele ss, since the Alcoa case, U.S. courts have continued to follow the new jurisdictional formula of the effects doctrine.

In response to excessive application of U.S. antitrust laws, especially with respect to courts’ orders to produce documents such as subpoena duces tecum located abroad, a considerable number of states have issued **diplomatic protests**. Australia, France, the United Kingdom, the Netherlands, and New Zealand have even enacted blocking legislation. 6 The protesting states maintain that taking evidence abroad, including an order to produce documents, is an exercise of extraterritorial enforcement of jurisdiction that, under international law, requires the consent of the state where the evidence is located. The United Kingdom has been one of the strongest opponents to U.S. claims of extraterritorial jurisdiction. The U.K. government stated for instance that “HM Government considers that in the present state of international law there is no basis for the extension of one country’s antitrust jurisdiction to activities outside of that country of the foreign national.” 7 The Protection of Trading Interest law was enacted in 1980, which provides to extensively thwart the extraterritorial application of U.S. antitrust laws. The U.K. government invoked the provisions in the Laker Airways case (1983 W.L.R. 413) in 1983.

Having faced the antagonistic reactions of other states, U.S. courts began to show some restraint in assuming extraterritorial jurisdiction. In the Timberlane case (549 F.2d. 9 th Cir. (1976)), the court concluded that it had jurisdiction over alleged anticompetitive conducts in Honduras but refrained from asserting extraterritorial jurisdiction after having applied three tests: first, whether the challenged conduct had had some effect on the commerce of the United States; second, whether the conduct in question imposed a burden on U.S. commerce; and third, whether the complaint’s interests of and links to the United States were sufficiently strong vis-à-vis those of other nations to justify an assertion of extraterritorial authority. The Foreign Trade Antitrust Improvements Act enacted in 1976 applies to foreign conduct that has a direct, substantial and reasonably foreseeable effect on U.S. commerce, The U.S. enforcement agencies, the Department of Justice (DOJ) and the Federal Trade Commission (FTC), have adopted this jurisdictional rule of reason formula since the Enforcement Guidelines for International Operations of 1988. However, divergent views exist as to whether the third test of balancing the interests of other states is a rule of international law or just a comity. 8 Furthermore, not all U.S. courts have consistently applied the test of balancing interests. 9

In 1993, the Supreme Court decision in the Hartford Fire Insurance case (113 S. Ct. 2891 (1993)) reaffirmed the effects doctrine, stating that the Sherman Act **applies to foreign conduct** that was meant to produce and did in fact produce some substantial effect in the United States. The Court then **took a restrictive view on** the test of **balancing** interests, stating that the only substantial question is whether there is a true conflict between domestic and foreign law, and held that no such conflict seemed to exist because British law did not require defendants to act in a manner prohibited by U.S. law. 10

Japan maintains the territorial principle and **rejects the effects doctrine**, stating that the effects doctrine cannot be regarded as an established rule of international law. In the view of the Government of **Japan**, the extraterritorial application **of U.S.** domestic laws (including U.S. **antitrust laws**) based on the **effects doctrine is not allowed** under general international law. 11 In the Nippon Paper case, where a Japanese company was prosecuted under the Sherman Act, the Japanese government submitted a brief of amicus curiae where it stated, inter alia, that the extraterritorial application of the Sherman Act to a conduct of a Japanese company engaged in business in Japan is unlawful under international law. 12 Nonetheless, the U.S. Supreme Court **affirmed** the Court of Appeal decision, which assumed the extraterritorial application of the Sherman Act to a criminal case for the first time (118 S. Ct. 685 (1998)).

**Japan economic alliance is key to prevent Chinese challenges to the ILO---recovering now but smooth sailing is not guaranteed.**

Shihoko **Goto 21**. deputy director for geoeconomics and senior associate for Northeast Asia at the Wilson Center. "When Trade No Longer Hampers U.S.-Japan Ties". 4-20-2021. https://www.wilsoncenter.org/blog-post/when-trade-no-longer-hampers-us-japan-ties

The April 16th meeting between President Joe Biden and Japanese Prime Minister Yoshihide Suga marked several milestones: not only was it the first foreign leader’s visit to the Biden White House, but it was also the first visit to the United States by Yoshihide Suga as the Japanese prime minister. It was also the first in-person summit meeting between the United States and Japan since the outbreak of a global pandemic. It marked a number of firsts in terms of content too, not least that it was the first time since the 1980s in which trade was not a sore point of contention between the two sides. Instead, trade relations projected as a **way forward** for further bilateral cooperation in **confronting the China threat**.

That isn’t to say trade relations between Japan and the United States are now **smooth sailing**. The U.S. trade deficit with the world’s third-largest economy runs to nearly $68 billion, and although the two sides signed a merchandise trade deal in 2019, the Japanese auto industry remains a point of contention for the United States. Indeed, Japan’s auto exports account for about $54 billion, or close to 80 percent, of the overall trade deficit. Meanwhile, the Biden administration is not expected to lift tariffs on steel and aluminum anytime soon, nor is it expected to make efforts to join the CPTPP in the near future, much to the frustration of Tokyo.

Yet instead of trying to negotiate a breakthrough on the trade front, the Biden-Suga meeting focused on **bilateral economic relations** based on their **shared threat of** dealing with **China’s ambitions to challenge the regional status quo**. Until recent months, Tokyo had aspired to maintain solid relations with China whilst furthering ties with the United States, most notably by endeavoring to decouple economic interests with Beijing from the security threat that China has increasingly been posing upon Tokyo. After the joint 2+2 joint security meeting in Tokyo in March, however, the two countries declared that China’s behavior is “**inconsistent with** the existing **international order**, presents political, economic, military, and technological challenges to the **Alliance** and to the **international community**.”

Since then, Tokyo has moved even **closer to Washington** publicly in pushing back against China, as the bilateral statement noted “the importance of peace and stability across the **Taiwan Strait**,” marking the first time since 1969 that Japan and the United States publicly referred to Taiwan which remains a core interest for China. In short, **Japan’s hedging against the United States** and maintaining a balancing act between China and the United States **is** now **over**. Not only is its security interests even more closely aligned with that of the United States, Japan’s economic interests are now more **intertwined with** that of **the United States** than ever.

Rather than focusing on the trade balance, Tokyo and Washington’s economic relations will concentrate more on economic resilience and maintaining free and fair economic rules of engagement in the Indo-Pacific. At the same time, the two countries are expected to **work** more **closely together on competing against China** in emerging technologies, from 5G to AI and information sciences.

For Japan, one of the biggest takeaways from the Biden-Suga meeting will be that **the days of Japan posing an economic threat to the United States are now over**. It will also be putting increasing pressure not only for Tokyo to be prepared to fight back against China on the **economic** as well as security **fronts** together **with Washington**, but it will also push Tokyo to step up its own efforts to compete in the innovation economy that goes beyond manufacturing.

**ILO is sustainable and prevents great power war but can’t run on autopilot---preventing Chinese aggression is key.**

Alan W. **Dowd 21**. Senior fellow with the Sagamore Institute, where he leads the Center for America’s Purpose. "Capstones: China’s Dream, the World’s Nightmare – Sagamore Institute". No Publication. 4-5-2021. https://sagamoreinstitute.org/capstones-chinas-dream-the-worlds-nightmare/

If China is indeed the future, if China is primed to “rule the world,” if China **remakes the international order** in its image, **it won’t be pretty**. A future dominated by the People’s Republic of China (PRC) will be **demonstrably worse** than the world we know. Just look at how Xi Jinping’s regime treats its own subjects—and plays its current role on the global stage.

NO RIGHTS

Those predictions aren’t outlandish. China already is the world’s top manufacturing nation, top exporting nation and second-largest economy. The PRC was the only major economy to emerge from 2020 claiming GDP growth (if we are to trust Beijing’s books). In the pandemic’s wake, China dislodged the U.S. as the world’s primary destination for foreign direct investment. PRC-backed firms are leaders in the global 5G and AI race. On the strength of a 517-percent binge in military spending since 2000, China bristles with anti-ship and anti-aircraft missiles, deploys a high-tech air force, has a growing and openly hostile presence in space, is doubling its nuclear arsenal, and boasts a 350-ship navy (now the world’s largest). Beijing’s growing cultural reach is evident in everything from its influence over Hollywood, to its puppet-master relationship with the NBA, to its 480 Confucius Institutes (designated by Washington as “part of the Chinese Communist Party’s global influence and propaganda apparatus”).

As President Joe Biden concludes, China is “the **only competitor** potentially capable of combining its economic, diplomatic, military, and technological power to mount a sustained challenge to a **stable and open international system**.”

**Xi is doing exactly that**. But the China challenge starts inside the PRC.

Xi is pursuing what he calls the “China Dream,” which enfolds goals such as sustained economic development, military power modeled after and matching that of the U.S., ideological conformity, “rejuvenation of the Chinese nation” and “**complete unification** of our country.” Making Xi’s “China Dream” come true is turning into a nightmare for his subjects.

Before leaving his State Department post, Secretary of State Mike Pompeo described what Xi is doing to Uighur Muslims as “**genocide**,” noting that Beijing has “forced more than a million people into internment camps in the Xinjiang region” and detailing “torture, sexual abuse…rape, forced labor…and unexplained deaths in custody.” As he took the baton from Pompeo, Secretary of State Antony Blinken agreed, affirming that “The forcing of men, women and children into concentration camps, trying to, in effect, re-educate them to be adherents to the ideology of the Chinese Communist Party—all of that speaks to an effort to commit genocide.”

The U.S. government isn’t alone. The Uighur Muslim region, according to a UN human-rights watchdog, “resembles a massive internment camp…a no-rights zone.” More accurately, all of China is a no-rights zone.

Xi’s China is a place where Christian churches are smashed and followers of Christ are sent to reeducation camps; Buddhist temples are bulldozed; Uighur men are packed into freight trains, Uighur women are forcibly sterilized and Uighur babies are forcibly aborted; and bishops and Nobel Peace Prize laureates die in prison. Under Xi, “Religious persecution has increased…with four communities in particular experiencing a downturn in conditions—Protestant Christians, Tibetan Buddhists, and both Hui and Uighur Muslims,” Freedom House reports. Amnesty International adds that “hundreds of thousands of people” are subjected to arbitrary arrest and detention in China, many of them for “peacefully exercising their rights to freedom of expression and freedom of belief.”

There’s a brutal logic to Xi’s brutal response to religious activity. The common denominator of most every religion is that there’s something above, something beyond, something bigger, more enduring and more important than the state. That notion represents a mortal threat to the legitimacy and durability of Xi’s regime, which is founded on the premise that people exist to serve the state—not to use their God-given gifts to serve others and God.

Xi’s capacity to control is growing ever more insidious. The PRC’s new “social credit system” is using mega-databases to monitor and catalogue every aspect of life of China’s 1.3 billion people—financial transactions, civil infractions, social-media postings, online activity—and then reward or sanction Xi’s subjects by feeding all that information to the National Development and Reform Commission, banking system and judicial system. PRC subjects with good social credit scores enjoy waived fees, lower utility bills, promotions and expedited overseas-travel approval, while those with poor social credit scores can be fired from their jobs, expelled from school, blocked from universities, or barred from accessing transportation.

An **Orwellian surveillance state**, more than a billion people denied religious freedom and other human rights, uncounted numbers tortured in reeducation camps, physicians jailed for following the Hippocratic Oath—that’s the kind of future and the kind of world Xi wants to build. As dissident leader Xu Zhangrun observed in the wake of Beijing’s criminal mishandling of COVID-19, “A polity that is blatantly incapable of treating its own people properly can hardly be expected to treat the rest of the world well.”

NO LIMITS

That idea—the notion that the PRC is incapable of treating the world any better than it treats its own—is not particularly profound. After all, this is a regime that over the decades has erased some 35 million of its subjects and tortured millions more. Regimes like this see no limits on their power. Since they believe nothing is above the state, they rationalize everything they do in the name of the state, the revolution, the Supreme Leader, the Dear Leader, the Core Leader (Xi’s new title). With no moral constraints on what they do, they believe their ends always justify their means.

That backwards worldview informs every aspect of decision-making in the PRC. This doesn’t mean Washington should refuse to talk with Beijing. But we must be ever vigilant when dealing with Xi. A regime that can justify imprisoning, torturing and killing its own people for peacefully practicing their faith can and will justify anything: **seizing foreign lands, annexing international waterways, absorbing free peoples**, stealing proprietary information, leveraging a **pandemic to gain geopolitical advantage**, breaking treaties. The godless USSR did those sorts of things, and so has the godless PRC.

“It is difficult to imagine that a government that continues to repress freedom in its own country,” President Ronald Reagan said of the USSR, “can be trusted to keep agreements with others.” And here we are yet again.

Experts in policy analysis, academia and military-security affairs conclude that Xi’s response to COVID-19 “was in breach of international law.” It pays to recall that COVID-19 was a local public-health problem that metastasized into a global pandemic due to Beijing’s incompetence or intention (either cause is reason not to entrust the future to Xi); that Xi’s regime lied about human-to-human transmission; that Xi’s regime willfully allowed millions to leave the epicenter in Wuhan for destinations around the world; that Xi’s regime carried out a premeditated plan to hoard 2.5 billion pieces of protective equipment as the virus swept the globe; that Xi’s regime blocked scientists from sharing findings about genome sequencing for weeks; that Xi’s regime continues to refuse to cooperate with international health agencies.

Xi’s intervention in Hong Kong and assertion of rule by remote-control is a brazen violation of an international treaty.

In and above the East China Sea, Beijing is constantly violating Japanese airspace and illegally loitering PRC coast guard vessels in Japanese waters. All the while, Beijing illegally claims some 90 percent of the South China Sea. Xi has backed up those claims by building 3,200 acres of illegal islands beyond PRC waters. These islands feature SAM batteries and warplanes. Xi promised the PRC wouldn’t militarize these islands. But as America and its allies learned at enormous cost last century, words don’t matter to men like Xi. Strength and the will to wield it are all that matters. Xi has both.

His goal is to **control** the resource-rich South and East China Seas, assert sovereignty claims in **fait accompli** fashion, and bring Chinese-speaking lands under his heel. Hong Kong—where only PRC-approved “patriots” are allowed to serve in government—was his first objective. **Taiwan is next**. Xi has made clear that democratic Taiwan “must and will be” absorbed by the communist Mainland. “We make no promise to abandon the use of force,” he warns. That explains Beijing’s ground-unit exercises, naval drills and bomber sorties around the island democracy.

Nor are Xi’s dreams and designs limited to his immediate neighborhood. Beijing is buying loyalty via development projects (see the Belt and Road Initiative), gaining a toehold in strategically located regions (see PRC control over ports in 18 countries), **building an authoritarian bloc** (see **Russia, Serbia, North Korea, Iran, Venezuela**), and fielding a power-projecting military capable of **challenging the Free World** across every region and every domain—land, sea, air, space and cyberspace. Xi’s relentless cybersiege of the Free World is siphoning away inventions, discoveries, technologies and wealth, penetrating defense firms, and interfering in elections.

For those with eyes to see—who know about the laogai camps and brutalization of Muslims and oppression of Tibet and assault on Christianity—none of this comes as a surprise. What’s surprising is that for 40 years, the trade über alles caucus convinced itself that such a regime could somehow be reformed by access to Buicks and Kentucky Fried Chicken.

TAKING AIM

Xi vows to build what he calls “a more just and reasonable new world order”—one that would supplant the liberal democratic order the United States and its allies began building after World War II. Importantly, the PRC not only has the intent to build a **new world order**; it has the resources and capabilities to do so—which helps explain why those who designed and uphold the existing world order are answering China’s challenge.

The PRC is a country of 1.3 billion people. Its GDP is already $14.1 trillion. Its economic tendrils—trade, banking, manufacturing, logistics, shipping, technology, super-computing, artificial intelligence—stretch into every part of the globe. All of this is fueling the PRC’s relentless military modernization and buildup. The PRC’s annual military expenditure is at least $261 billion. (Beijing recently announced an increase in military spending of 6.8 percent for 2021). The PRC has a 2-million-man military, the world’s largest navy and an intense focus on its neighborhood.

None of this would be a particularly worrisome if China embraced the values of liberal democracy—the rule of law, individual freedom, religious liberty, free enterprise and free trade, majority rule with minority rights. These are the foundation stones of what Churchill and FDR envisioned when they drafted the Atlantic Charter in 1941. Their vision led to what some call the “rules-based democratic order,” others the “**l**iberal **i**nternational **o**rder,” still others the “free world order.” These terms aim to describe how the peoples of the West have tried to make the world work and indeed manage the world: They embraced and encouraged democratic governance; developed rules and norms of behavior; promoted liberal (freedom-oriented) political and economic institutions; and called upon governments to live up to the responsibilities of nationhood by respecting international borders and promoting good order within those borders. The result has been an unparalleled spread of **prosperity**, an unprecedented expansion of free government and an unexpected **remission of great-power war** (which had become an increasingly-destructive feature of the centuries leading up to 1945).

To be sure, many regimes reject the values of liberal democracy. But the PRC, like the USSR before it, not only rejects those values; it possesses the military-technological-industrial-economic assets to challenge those values, erode the liberal international order built upon those values, and forge a new international order or at least bend the existing order toward its own goals. But don’t take my word for it.

“Some seek to challenge the international order—that is, the rules, values and institutions **that reduce conflict and make cooperation possible** among nations,” Blinken and Defense Secretary Lloyd Austin warn, pointedly adding that “China in particular is all too **willing to use coercion** to get its way.”

Former national security advisor Gen H.R. McMaster concludes that PRC “leaders believe they have a narrow window of strategic opportunity to…revise the international order in their favor.”

Before he retired as Indo-Pacific commander ,Adm. Phil Davidson told the Senate Armed Services Committee that Xi and his lieutenants are “accelerating their ambitions to supplant the United States and our leadership role in the rules-based international order.”

A NATO panel noted late last year that Beijing’s “approach to human rights and international law challenges the fundamental premise of a rules-based international order.”

These political, diplomatic and military leaders recognize that the **liberal order has promoted the peace and prosperity** of the Free World for nearly 75 years. But it **doesn’t run on autopilot**. If we want the benefits of a liberal order that sustains our way of life, we need to sustain the liberal order. As Robert Kagan of the Brookings Institution observes, “The present order will last only as long as those who favor it and benefit from it retain the will and capacity to defend it.” He adds, “Every international order in history has reflected the beliefs and interests of its strongest powers, and every international order has changed when power shifted to others with different beliefs and interests.”

Indeed, the liberal order and its guarantors have arrived at a **turning point** or breaking point: Either they will marshal the means and will to update, strengthen and preserve the existing order, or Beijing will dramatically transform it. Xi’s callous treatment of his own subjects and contempt for international norms offer a glimpse of what his “more reasonable new world order” would look like.

## Extraterritoriality

### Dollar Resiliant

#### Dollar heg resilient---weaknesses would be short-term and resolvable.

B Prasanna 10-27. Financial reporter for NBC. "The Quandary around Dollar hegemony." cnbctv18. https://www.cnbctv18.com/views/the-quandary-around-dollar-hegemony-7308611.htm

The sharp 10 percent depreciation in the value of the US Dollar (measured in terms of Dollar Index) over the past six months had again led to a concern that the greenback is on its way out as the premier global reserve currency. This debasement theory has gained momentum as US debt zoomed past 100 percent of GDP, the Fed monetized more than $3 trillion in new debt issued in 2020 and more recently adopted flexibility to its long-held inflation target of 2 percent by advocating an average inflation targeting framework.

A peek into history reveals that the US Dollar has remained an anchor currency for the global economy in the post-World War II period. The initial Dollar weakness following the collapse of the Bretton Woods' system in the early 1970s which led a transition to a floating exchange rate system had only increased the dominant role of the US Dollar in the global economy. The Dollar recent weakness is largely driven by shorter-term cyclical factors and is unlikely to overpower in the long run.

The US dollar plays a central role in the international monetary and financial system. First and foremost, around half of international trade is invoiced in US dollars and 40 percent of international payments are executed in dollar terms. Around 85 percent of all foreign exchange transactions occur against the US dollar.

Moreover, the deep and vibrant Dollar funding market plays a pivotal role in cross-border loans and international debt securities. The amount of outstanding international debt securities and cross-border loans that are denominated in US dollars is $22.6 trillion as of Q4 2019, or 26 percent as a share of world GDP, corresponding to about 50 percent of all outstanding international debt securities and cross-border loans. Given such share of Dollar funding in the global bank’s balance sheet as well as the increasing length and complexity of global supply chains, the spillovers of US monetary policy to the rest of the world has only strengthened over past few decades.

Second, in part because of its prominence in trade and financial transactions, the dollar is also the main currency of intervention for central banks. The US Dollar accounts for 61 percent of the official foreign exchange reserve of $12 trillion among various economies. Not surprisingly, given its dominance, most of the central banks aim to stabilize their own currency with respect to Dollar value.

Overall, the role of the dollar as both an intervention currency and an anchor currency helps propagate US monetary policy impulses from the center to the periphery and provides a common component to the global monetary environment.

Third, the dollar is viewed as the safest currency not only because the US has – by far – the world’s most liquid bond market, but mostly because investors trust the US system: its rule of law, protection of property rights and the independence of technocratic institutions. It is evident that at the time of financial and economic crises, the demand for dollar safe assets rises.

The simple reality is that we live in a dollar world –on the real side, where dollar invoicing is dominant, on the financial side, where dollar funding is important to global banks and non-financial corporations, and on the policy side, where dollar anchoring and the dollar reserves are prevalent. If anything, this dominance of the dollar has increased over time.

### Circumvention

**Expand the scope of antitrust refers exclusively to formal law not enforcement---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.**

## Cartels

### AT: Emerging Tech---1NC

#### Tech fear mongering is always wrong

Brad Allenby, December 2015. Lincoln Professor of Engineering and Ethics; President’s Professor of Civil, Environmental, and Sustainable Engineering, and of Law; and founding chair of the Consortium for Emerging Technologies, Military Operations and National Security at Arizona State University. “Emerging technologies and the future of humanity.” Bulletin of the Atomic Scientists 71(6): 29-38. Emory Libraries.

Although it was not clear at the time, Bill Joy’s article warning of the dangers of emerging technologies was to spawn a veritable “dystopia industry.” More recent contributions have tended to focus on artificial intelligence, or AI; electric car and space technology entrepreneur Elon Musk has warned that AI is “summoning the demon” (Mack, 2015), while physicist Stephen Hawking has argued that “the development of full artificial intelligence could spell the end of the human race” (Cellan-Jones, 2014). The Future of Life Institute (2015) recently released an open letter signed by many scientific and research notables urging a ban on “offensive autonomous weapons beyond meaningful human control.” Meanwhile, the UN holds conferences and European activists mount campaigns against what they characterize as “killer robots” (see, e.g., Human Rights Watch, 2012). Headlines reinforce a sense of existential crisis; in the military and security domain, cyber conflict runs rampant, with hackers accessing millions of US personnel records, including sensitive security clearance documents. Technologies such as uncrewed aerial vehicles, commonly referred to as “drones,” are highly contentious in both civil and conflict environments, for many different reasons. A recent US Army Research Laboratory report foresees genetically and technologically enhanced soldiers networked with their battlespace robotic partners and remarks that “the presence of super humans on the battlefield in the 2050 timeframe is highly likely because the various components needed to enable this development already exist and are undergoing rapid evolution” (Kott et al., 2015: 19). How is one to think about this outpouring of analysis, hypothesis, events, and existential angst? A useful first step is to realize that there are three levels to such discussions of technology.2 Level I is the instrumental level: a gun shoots a bullet and kills someone; a watch is used to tell time; a vaccine is used to prime an individual’s immune system to protect against a disease. Level II is the systems level: an uncrewed aerial vehicle conducting surveillance is part of a battlefield intelligence system; watches function in a globally standardized time system that was only institutionalized in the United States by an act of Congress in 1918; vaccinations are part of a public health system. Level III, the effect of a technology on individual psychology, society and culture, economic patterns, geopolitical status, and other Earth systems, is unpredictable and uncertain. One of the major drivers for standardized time, for example, was railroad technology, which was certainly not foreseen by those who first began developing steam locomotives. It is important to remember, however, that even if the specifics of Level III impacts cannot be predicted a priori, they will occur. Level I effects are usually not difficult to figure out: They are the reasons that a technology is commercialized. For example, the Level I effect of a bomb-dismantling robot is clear: It helps save the lives of soldiers who would otherwise have to be doing that job. Level II effects can be more complex and may point in different directions than first-order effects. A robotic hummingbird surveillance device may have entirely beneficial effects if used in counterinsurgency, because it can improve targeting and thus reduce collateral damage (Level I effect). But if the same technology becomes widely available to political parties and divorce lawyers, it could have very negative effects on privacy and public discourse (a Level II effect). And, hypothetically, robotic bugs and hummingbirds, combined with data-mining software and massive databases, could become important tools of techno-totalitarian elites, a possible, but hypothetical, Level III effect. This distinction among Level I, Level II, and Level III is useful because much of the confusion regarding emerging technologies comes from conflating relatively predictable Level I aspects of an emerging technology with highly unpredictable Level III hypotheticals, and treating them as equally valid insights into future technological trajectories. Not so. A concern about the use of drones to attack human targets in countries that are not participants in a conflict is qualitatively different than polemics against “killer robots,” and while conflating the two for purposes of argumentation may be effective, it is profoundly misleading. We have historical and operational data that enable us to evaluate the former; we don’t even know what a “killer robot” really is, except as an evocative term, and virtually no idea what would happen if such technologies became widespread in the real world. An analogous analytical mistake occurs when a particular use of a technology is treated as if it were separable from the technology itself. A medical advance in computer-brain interfaces in prosthetics, for example, is the same technology that might be used in the near future to directly connect a soldier to a remote weapons system. Any effort to ban “military AI” will fail because “military AI” is not a relevant technology category; rather, it is the advance of the underlying technology as a whole that ensures at some point that AI will be integrated into military devices. (Notably and presumably unintentionally, the proselytizing against “military AI” fails to admit that such a policy implicitly favors powers, such as Russia and ISIS, that are operating under doctrines of asymmetric warfare that privilege non-traditional tactics, technologies, and conflict.) It is precisely this confusion that one notes in the language used in many of the comments on and critiques of emerging technologies, including some of the examples given above. It is not so much a question of whether these popular dystopian visions are accurate predictions: They almost certainly are not, because the ability to predict the future paths and implications of complex and powerful technology systems is simply nonexistent. Level I assertions of knowledge are being extended to inherently unpredictable Level III systems without understanding that an important conceptual shark has been jumped. But it is useful to explore the assumptions underneath the current rage for dystopian visions of emerging technologies, which are not as implausible as some have suggested. To reduce such confusion, let me be clear from the beginning. Because much recent commentary regarding emerging technologies is generic and apocalyptic, that is what this essay will focus on. In other words, I will not concern myself with whether a particular weapon system, or smart phone app, or cyber worm, or AI tool is good or bad or competitively successful, a Level I question. Nor will I address the foreseeable Level II effects, an analysis which, as in the case of Level I, would focus on particular technological artifacts or applications and their systemic effects. Rather, since apocalyptic tends to be Level III stuff, that’s where we’ll go. Emerging technologies as an Earth system The first question to ask about emerging technologies is deceptively simple: Is today really that different? Is there something about today’s emerging technologies—which for purposes of this analysis include nanotechnology, biotechnology, information and communication technology (ICT), robotics, applied cognitive science, humtech (design and engineering of the human as a foundational emerging technology), and their various combinations and permutations—that is qualitatively different from those that characterized other eras of technological change? If there isn’t, much of today’s dramatic language can be understood as simply a reflection of the emphasis that all humans give to the particular era and landscape and culture within which they exist. Each generation tends to overemphasize the degree of change that it experiences, partly because of the immediacy of the stresses to which it is exposed, and partly because it is easy to underestimate how difficult and unpredictable life was in the past**,** since when one looks back at history it seems to flow logically and necessarily. Indeed, apocalyptic fears have been common when many major technology systems first emerged because of this immediacy, even as subsequent generations grew to view the technology as banal, even boring. In the early days of railroads, for example, there was a widespread belief that traveling at the heretofore unimaginable speed of 25 miles per hour would kill the passengers, in part because such technology was against the obvious will of God. As an Ohio school board put it, If God had designed that His intelligent creatures should travel at the frightful speed of 15 miles an hour by steam, He would have foretold it through His holy prophets. It is a device of Satan to lead immortal souls down to Hell. (Nye, 1994: 57)3 In this case, however, a strong argument can be made that emerging technologies today are different not just in degree, but in kind, from those of the past. To begin with, the scope, scale, and speed of technological change are unprecedented. Where previous waves of technological change have involved a few core technologies, such as railroads or electrification, today technological evolution is occurring across the entire technological frontier. Partially as a result of such technologies rippling across a population of seven billion people, we now live on a terraformed planet, the first world we know of anywhere that has been shaped by the deliberate activities of a single species. That is not a discontinuous process, but it is qualitatively new. Moreover, as the discussion of the engineered warrior of 2050 suggests, the human itself has become a design space. It is certainly true that people have always changed themselves in many ways, from consuming intoxicants of all kinds, to medicine, to education, but there is little question that the direct interventions that are now possible, combined with accelerating advances in fields such as neuroscience, genetics and molecular biology, and prosthetics, make virtually all aspects of the human, including cognitive and psychological domains, potentially subject to design. That the designer is not just engineering external systems, but him- or herself, adds a degree of reflexivity, nonlinearity, and complexity that makes simple predictions about particular technologies tangential and irrelevant at best. It is worth emphasizing in passing that the argument that humans are at risk from emerging technologies is in an important sense circular. Humans are increasingly both designer and designed; they are, in other words, increasingly an emerging technology in their own right. People are many things, but they are now, and certainly will be in the future, a design project. Thus, in a meaningful way the argument that people are at risk from emerging technologies becomes the argument that emerging technologies are at risk from emerging technologies, which makes little sense, and isn’t very helpful analytically, or in guiding policy or practice. Additionally, technological evolution is accelerating, which has significant implications. Past rates of technological change were slow enough that psychological, social, and institutional adjustments were possible, but today technology changes so rapidly that technology systems decouple from governance mechanisms of all kinds. All these factors, operating together, synergistically increase the impact, speed, and depth of change. Any technology potent enough to be interesting will inevitably destabilize existing institutions, power relationships, social structures, reigning economic and technological systems, and cultural assumptions. Previous waves of technological change—from steam and coal, to electricity, to rail and automotive technologies—have destabilized and restructured human and natural systems at all scales, interacting unpredictably with contemporary natural, human, and built systems. Railroads, for example, opened up continental interiors, creating the underlying transportation infrastructure necessary to support industrialized agriculture, which, coupled to advances in production of artificial fertilizers and innovation in farm machinery, created the potential for dramatic increases in global human population. It also dramatically changed ecologies and landscapes; the American Midwest is an agricultural breadbasket, not a large swamp, because railroads provided the link between that farming region and the demand of the East Coast and, via steamship, Europe. The Earth’s atmosphere has been in part restructured by development of internal combustion engine technology coupled to a psychologically potent automotive technology, which is in turn based on a massive fossil fuel infrastructure. Proposals to address climate change through so-called “geoengineering technologies,” from designing the atmosphere to reflect incoming sunlight to deploying devices that capture carbon dioxide in the atmosphere, are explicitly intended to engineer major natural systems and cycles. In short, major new technologies are not just about artifacts; rather, they represent an unpredictable, sometimes apparently discontinuous, shift in the structure of integrated Earth systems. Moreover, these shifts are not predictable a priori; railroads, for example, required new systems of time, of communication, and, more subtly, of finance and of corporate management. Development of a mass consumption economy, with washing machines from new merchandising giants and cars from Detroit, required innovation in the development of consumer credit, and massive coupled innovation in everything from road systems to supply-chain management. Widespread consumer credit, in turn, generated an ability to consume, and a concomitant quality of life, that was beyond imagining for those generations of humans that lived prior to the 20th century. It is thus highly likely that the first implicit assumption of the dystopian perspective is correct: Things are indeed different today, and the difference is fundamental and qualitative, not simply one of degree. Emerging technologies are making everything from individual molecules, to the human, to the planet itself, design spaces. Moreover, it is also likely that technological evolution, and all the concomitant changes in coupled institutional, social, economic, and cultural systems, will be more challenging and complex than anything humans have yet experienced. The remaining two issues, then, are: First, what can we do about it; and second, is this the end of humanity? What can we do about it? Precisely because new technologies are disruptive, they inevitably call forth opposition, both by conservative social forces and by threatened economic interests. Historical examples abound. With railroad technology, for example, conservative states such as the Austro-Hungarian Empire and Russia resisted rapid deployment, in part because it was feared that railroads might create social unrest in the still somewhat feudal and highly stratified cultures that characterized such countries; the French held back because of concerns it would destroy rural culture. The predictable result was that modernizing states that realized the commercial and military potential of railroad technology, such as Prussia, rapidly overtook the laggards in building rail infrastructure, with an eventual shift in geopolitical stature. In the United States, railroads were bitterly opposed by river transportation interests; in fact, Abraham Lincoln, when still a practicing lawyer, argued and won the seminal case for the Rock Island Railroad.4 (River shippers at the time were arguing that any railroad bridge over a river was an unlawful obstruction of commerce; had they been successful, railroads would have been limited to operating between rivers and streams, but not crossing them.) A more recent example is provided by the thousands of people sued by the Recording Industry Association of America in its vain effort to defend a technologically obsolete business model for the distribution of music. There are plenty of reasons, in other words, why emerging technologies might be regarded as dangerous and disruptive, and thus worth stifling. History, however, indicates that while local opposition can be successful, it will not halt the evolution of technology. Consider, for example, the Japanese attempt to limit gunpowder technology to preserve traditional Samurai culture; successful in the short term, it left Japan open to subjugation by Western naval forces with gunpowder technology. Similarly, environmentalists and governments in Europe have aggressively opposed genetic engineering (GMOs, or “genetically modified organisms”) in agriculture. Outside Europe, however, GMO technology has been one of the most rapidly adopted agricultural technologies in history. Efforts to regulate the proliferation of nuclear weapon technology have been somewhat successful, but it appears unrealistic to assume that the technology can be uninvented. Especially given today’s globalized culture, and the strategic and military advantages that emerging technologies can provide, it is highly unlikely that meaningful constraints on technological evolution, whether derived from cultural, competitive, or religious foundations, will be successful. That is particularly true as all players in the global Great Game understand that leadership in science and technology domains is a necessary, if not sufficient, prerequisite for dominance. Moreover, given the complexity of many emerging technology systems, especially as they co-evolve with other natural, built, and human systems, it is unfortunately also likely that projecting their effects and evolutionary paths before they are actually adopted and become embedded in their social and cultural context is not just hard, but for all practical purposes impossible. One can, and should, generate scenarios. But exhortations that purport to elevate hypotheticals to predictions and implications of certainty about future states are misplaced. In short, there is no certainty, and the genie is well and truly out of the bottle. However, that doesn’t necessarily imply that we can’t modulate future technological evolution, but that the way we think about it today may be too simple, and our institutions too slow and maladaptive, to be up to the task. Beyond simplistic dystopianism This analysis suggests that, as dystopians might argue, emerging technologies are indeed potent, and that, especially as the human is becoming an active design space, if AI doesn’t destroy humanity, something will. But this is a grossly incomplete perspective. Humanity, as it appears at any particular time, is always doomed. Foragers and hunter-gatherers were doomed, as were the serfs of medieval Europe with their small plots and lives lived within a radius of a few miles of where they were born. And so, in our turn, are we. Doom is, in other words, evolution, and it is unlikely that we will stop it—or, really, that we should want to. In fact, the images that we cling to, personally and institutionally and culturally, are already obsolete. The ethics and values that we insist we will impose on the future are not only historically and culturally contingent, but already obsolete as well. We want the physical and cultural landscape we live in now to propagate into tomorrow, because we all unconsciously privilege the present, but that is not how complex systems work. They evolve, and indeed our world is evolving at a remarkable and accelerating clip. The fallacy of the dystopians, then, is not in their analysis of the power of technology, or the accelerating and destabilizing rates of change. The fallacy is in equating evolution with dystopia, and, without admitting it, privileging the present over the promise and inevitability of the future. What is at risk is the limited mental model of “human” that all of us carry with us, not “humans” as an ongoing process. This is actually a common category mistake in modern discourse: Sustainability advocates and environmental activists often claim that “the planet is at risk,” but of course it is not. The planet is a large mass of rock and a film of various carbon compounds, and that is not at risk at all. What is at risk is a particular mental model of what the world should look like, a constructed snapshot. That does not mean that there aren’t many environmental issues that require attention; of course there are. But, as in the case of the emerging technology discourse, it does mean that existential catastrophe language is not only invalid, but can actually prevent seeking constructive adaptations to accelerating change. Our only recourse is neither technological fatalism nor ethical relativism. It is true that we have not yet appreciated, much less begun to respond to, the challenge of a future that will indeed be more complex and difficult than anything we have experienced as a species. Nonetheless, we can already identify several important principles. For example, we need to stop thinking of “problems” with “solutions,” and think more in terms of “conditions” that will require long-term, adaptive management. Challenges such as ISIS and climate change will not be solved, but they can and must be managed in light of other relevant goals. In this, the experience with nuclear weapons is instructive: They are not a problem that can be unmade, but they are a condition that can be, and has so far been, relatively successfully managed. We also need to focus on creating option spaces—portfolios of social, institutional, and technological choices that can be adaptively and flexibly deployed in complex environments. Similarly, we need to play with scenarios: If dystopian pronouncements are instead taken as scenarios—“What would you do if…?”—they are far more useful and informative than suggestions of doom. Socially and institutionally, we need to become more agile and adaptive. This is uncomfortable for many, because it implies a degree of contingency and uncertainty, but that is precisely why such skills are necessary. The rate of technological change is unforgiving and has already decoupled to a large extent from traditional governance mechanisms. So we need to develop new ones. Individually, we need to become far more humble about our ability to visualize and prognosticate on a complex and dynamic future. Cautionary scenarios and hypotheticals are welcome exercises in practicing to adjust to the unknowable that lies in front of us, but they are not appropriate foundations for policy or legal action in the present. Nightmares are seldom reality, and when bad things do happen they are seldom the ones we thought about. Fear and anger in the face of change are popular responses—witness the rise of far right and far left factions, and fundamentalisms of all stripes, around the world—but they are maladaptive, and those in responsible positions at least cannot afford such luxuries.

### US Wins Now---1NC

#### US 5G win is unstoppable

DAN MAHAFFEE AND JAMES KITFIELD 7/29/21. Dan Mahaffee is senior vice president at the Center for the Study of the Presidency & Congress (CSPC). James Kitfield is a senior fellow at CSPC. “Bipartisan policies put America back into the 5G race against China.” https://thehill.com/opinion/technology/565456-bipartisan-policies-put-america-back-into-the-5g-race-against-china

Fortunately, in strengthening our digital infrastructure at home and meeting the technological challenge from abroad, the United States has a successful playbook in the recent race to field fifth generation, or “5G,” mobile networks that are designed to connect virtually everyone and every electronic device, and are poised to change the way the world communicates.

Just a few years ago, China was so far ahead in deploying 5G networks that many experts believed the United States had already ceded the race. “China and other countries may be creating a 5G tsunami, making it near impossible [for America] to catch up,” analysts at the accounting firm Deloitte wrote. Analysts at Ernst & Young were equally blunt. “China is already in a leading role in the 5G development,” they wrote a few years ago, and “is poised to win the race to 5G.”

The math bore out those grim predictions. Excessive regulatory red tape meant that U.S. carriers were spending nearly three times as much as their counterparts in other countries to generate 5G network capacity. Between 2012 and 2016, the United States constructed on average three new cell sites a day when thousands are needed for 5G. At the time China was building roughly 460 new cell sites per day. As Federal Communications Commission (FCC) Commissioner Brendan Carr pointed out in a recent discussion hosted by the Center for the Study of the Presidency & Congress, “What it was taking us four years to do, China was doing every nine days.”

Fast forward to today. While the race for 5G leadership and onwards to 6G is far from over, the United States is now positioned to successfully compete thanks to measures that have empowered innovation, entrepreneurialism, and enterprise. Rather than trying to “be like China to beat China,” Carr noted, the FCC instead took steps to unleash America’s free enterprise mojo. The FCC thus moved to streamline approvals and cut the fees local governments levied on cell site construction. Freeing up spectrum across low-, mid-, and high-band frequencies allowed for U.S. carriers to innovate by using different frequencies and combinations of coverage.

Once again the numbers tell the tale. In 2019, with that more streamlined framework in place, U.S. carriers built over 46,000 new cell sites, a 65 fold increase. Meanwhile, internet speeds in the United States have more than tripled over the past four years, and more than 270 million Americans are now covered by 5G networks, helping to cut the digital divide separating the “haves” and “have nots” of this critical technology nearly in half.

In recent years both the Trump and Biden administrations have also taken a strong stand against reliance on Chinese companies such as Huawei and ZTE for 5G technology. Under China’s national intelligence law, these companies are legally required to conduct intelligence gathering when asked to by the Chinese Communist Party, which routinely engages in digital spying on dissidents, steals intellectual property, and hacks foreign governments and corporations.

With Huawei already having finalized more 5G contracts than any other telecom company, more still needs to be done to convince allies and partners of the serious risks of relying on Chinese firms for critical digital infrastructure. The Biden administration took a positive step in calling out Beijing’s digital transgressions when it recently rallied a broad and unprecedented group of allies — including the European Union and for the first time, the NATO alliance — to publicly condemn Beijing for malign activities in cyberspace that include hacking Microsoft email systems used by many governments and international corporations.

The good news is that the 5G race is afoot, and the United States is now in it to win it. That success offers clear lessons for the way forward. First, when it comes to infrastructure, we need to pair investments with streamlined deregulatory measures that ensure we are not, as Carr put it, “hitting the brake and the gas at the same time.” Thus unleashed, the American free enterprise system is more than a match for China’s centralized planning model and insistence on iron-gripped government control of the private sector.

### 1NC---Innovation High Now

#### Innovation high now---the industry is growing, big tech is breaking now ground, and simulations mean shortages don’t matter

Don Clark 21. Don Clark joined The Wall Street Journal in 1993, and serves as an editor and reporter in the San Francisco bureau. He has covered technology since 1980, currently focusing for the Journal on semiconductors and component companies. He is also interested in startups and in intellectual property and antitrust issues. "Despite Chip Shortage, Chip Innovation Is Booming." The New York Times. 5-7-2021.

The trends are not necessarily good news for chip customers, at least for the short term. Scarce supplies of many chips have manufacturers scrambling to increase production, and are adding to worries in Washington about reliance on foreign suppliers. Extra demand could extend the shortages, which are already expected to last into 2022.

High demand was evident in earnings for chip companies last quarter, which ended in March. Revenue grew 27 percent, for example, at NXP Semiconductors, a big maker of auto, communications and industrial chips, even though it temporarily closed two Texas factories because of a cold snap.

The industry has historically been notorious for booms and busts, usually driven by purchasing swings for particular products like PCs and smartphones. Global chip revenue slumped 12 percent in 2019 before bouncing back with 10 percent growth last year, according to estimates from Gartner, a research firm.

But there is widening optimism that the cycles should moderate because chips are now used in so many things. Philip Gallagher, chief executive of the big electronics distributor Avnet, cited examples like sensors to track dairy cows, the flow of beer taps and utility pipes, and the temperature of produce. And the number of chips in mainstay products like cars and smartphones keeps rising, he and other executives say.

“This is a lasting growth cycle, not a short spike,” said Kurt Sievers, NXP’s chief executive.

A longtime industry watcher, Handel Jones, who heads the consultancy International Business Strategies, sees total chip revenues rising steadily to $1.2 trillion by 2030 from roughly $500 billion this year.

That growth could arrive just as the industry fundamentally changes. More companies are concluding that software running on standard Intel-style microprocessors is not the best solution for all problems. For that reason, companies like Cisco Systems and Hewlett Packard Enterprise have long designed specialty chips for products such as networking gear.

Giants like Apple, Amazon and Google more recently have gotten into the act. Google’s YouTube unit recently disclosed its first internally developed chip to speed video encoding. And Volkswagen even said last week that it would develop its own processor to manage autonomous driving.

Chip design teams are no longer working just for traditional chip companies, said Pierre Lamond, a 90-year-old venture capitalist who joined the chip industry in 1957. “They are breaking new ground in many respects,” he said.

Little of that activity would be possible, Mr. Keller and others said, without advances in design software by Synopsys and its biggest rival, Cadence Design Systems.

Chip design software gained popularity in the 1980s to streamline tasks that engineers once carried out with pencils and drafting tables, painstakingly drawing clusters of transistors and other components on chips. The software tools have continually evolved; some carmakers, for example, use Synopsys-powered simulations of how future chips will work to write software for them in advance, Mr. de Geus said.

## 2nc

### Regs CP

#### Targeted regulations solve better --- key to standardized rules, beneficial digitalization, and innovation

Maurits Dolmans & Tobias Pesch 19. Dolmans is a partner, Pesch is an associate at Cleary Gottlieb Steen & Hamilton LLP. “Should we Disrupt Antitrust Law?” Cleary Gottlieb Steen & Hamilton LLP. July 18, 2019. https://www.clearygottlieb.com/-/media/files/should-we-disrupt-antitrust-law-pdf.pdf

Conclusion

The various expert reports issued in Europe recently are thoughtful and useful. They are right not to recommend a broadening of goals to a vague notion of fairness,82 and not to call for the softening of rules for national champions. They are right to review critically whether competition policy is fit for the digital age. But should we go so far as to “disrupt” antitrust? First, while digitization and globalization of the economy present new challenges, many are not antitrust concerns because they do not derive from a lack of competition but, at least in some cases, from an intensification of competition from online business models and more efficient, global producers. Making online firms the scapegoats for society’s problems and breaking them up is not the answer – as the reports issued in the EU, UK, and Germany fortunately recognize. Problems such as loss of privacy, unfair taxation, wealth disparity, job displacement, fake news and hate speech, online bullying and exploitation deserve their own, targeted, regulatory or legislative solutions, like privacy rules, tax reform, social security, media plurality, libel and criminal laws (as well as a ban on unidentified bots and false impersonation on social networks, a duty for platforms to employ fact checkers and suppress distribution of fake news and “deep fakes”, an effective duty to publish corrections on social networks and news sites, a realtime database of online ads with a duty to visibly identify and imprint the person on whose behalf the ad is published, and an Electoral Commission with online skills and effective policies). This should be combined with digital literacy and citizenship education, prudent financial regulation, and policies tackling the roots of inequality (e.g. better retraining initiatives for the unemployed, basic income policies). Marketbased and technology-based solutions should not be ignored either – including judicious use of AI as a tool for detection and enforcement of the regulation suggested above. Finally, effective rules are needed for the design and use of artificial intelligence.83

#### Antitrust authorities will share expertise with regulators.

FTC 06. “Creating Constructive Relationships Between Competition Policy and Sectoral Regulators: Submission of the United States”. (Paper presented at the Latin American Competition Forum Fourth Annual Meeting, San Salvador, 2006). https://web.archive.org/web/20070910185812/http://www.iadb.org/europe/files/news\_and\_events/2006/LACF2006/SesI\_USA\_EN.pdf

The relationships between sectoral regulators in the United States and the two federal antitrust authorities, the Antitrust Division of the Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC”), have evolved over the past 30 years. Prior to the 1970s, the regulators and the agencies interacted with each other relatively infrequently. At that time, the antitrust agencies began to engage in competition advocacy, through which they attempted to explain how various regulatory policies impacted competition and consumer welfare and the potential benefits of deregulation. As understanding of the economics of regulation has grown, federal sectoral regulators today increasingly embrace the goals of competition policy and tend to share a common set of policy objectives with the antitrust agencies. While differences remain in the case of some regulators, the competition agencies and sectoral regulators today increasingly coordinate and cooperate with each other, sharing industry and market expertise

**The CP increases knowledge of the role that uncertainty plays in 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. “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.

**2. Antitrust laws are enforced by the DOJ and FTC.**

**DOJ and FTC 16**. Antitrust Guidance for Human Resource Professionals Department of Justice Antitrust Division Federal Trade Commission. https://www.justice.gov/atr/file/903511/download

This document is intended to alert human resource (HR) professionals and others involved in hiring and compensation decisions to potential violations of the antitrust laws. The Department of Justice Antitrust Division (**DOJ** or Division) **and** Federal Trade Commission (**FTC**) (collectively, the **federal antitrust agencies**) **jointly enforce the U.S. antitrust laws**, which apply to competition among firms to hire employees. An agreement among competing employers to limit or fix the terms of employment for potential hires may violate the antitrust laws if the agreement constrains individual firm decisionmaking with regard to wages, salaries, or benefits; terms of employment; or even job opportunities. HR professionals often are in the best position to ensure that their companies’ hiring practices comply with the antitrust laws. In particular, HR professionals can implement safeguards to prevent inappropriate discussions or agreements with other firms seeking to hire the same employees.

**3. It is a jurisdictional question---antitrust authorities don’t intervene in regulatory concerns.**

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](about:blank)

As argued in this Article, the recent Comcast decision should not be dismissed as an inconvenient hurdle to be sidestepped by reclassification; rather it marks a **pivotal invitation** to Congress to redefine the **boundaries** between the FCC and **antitrust authorities**. In the long wake of assorted jurisdictional tugs of war between the two regimes, and amidst a legacy of accusations of regulatory capture and administrative overreach,29 the net neutrality debate accentuates historic preferences for **antitrust versus regulation**, a subject which should be revisited and **squarely addressed**. Before that can be done, however, the rules of the road—the issue of **jurisdiction**—must be **clearly decided**.

The analysis of the relevant jurisdiction is broken into two rival camps: (1) **regulatory jurisdiction** and (2) **antitrust jurisdiction**. The first camp, regulatory jurisdiction, the more complex of the two, is further divided into two subparts of particular concern (a) legacy-based regulation and (b) “satellite jurisdiction.” The first subpart of regulatory jurisdiction, legacy-based regulation, refers to the FCC’s congressionally designated core industry. The concern with legacy-based regulation is that the FCC will engage in procedural opportunism: that is, the agency may exploit the service classification process to extend its own regulatory authority.

#### Bilateral cooperation solves the entire aff

DOJ. "Chapter 5 Where Trade and Competition Intersect." Department of Justice Advisory Committee. https://library.unt.edu/gpo/icpac/chapter5.htm

This Advisory Committee therefore believes that the United States should continue with its vigorous expansion of bilateral cooperation agreements and positive comity provisions, but that it must also continue to develop its broader multilateral engagement on competition policy matters. These efforts should encompass a variety of forums and should seize opportunities for developing more nearly seamless markets as well as facilitating meaningful cooperation on practical enforcement problems. In short, efforts should be made to:

Develop a more broadly international perspective toward competition policy, with the goal of reducing parochial actions by governments and firms;

Foster greater soft harmonization of competition policy systems;

Develop improved ways of resolving conflicts;

Develop a greater appreciation for the negative spillovers from domestic firm or governmental actions; and

Develop a degree of consensus among nations on what constitutes best practices in competition policy and its enforcement.

#### Regs CP solves cartels

Anna Maria Tri Anggraini, 17. Dr. Anna Maria Tri Anggraini, SH., MH. Faculty of Law, Trisakti University, Jakarta. "Joint fighting against cartel practices in the member states of the regional economic zone." (2017). http://libprint.trisakti.ac.id/id/eprint/1348/1/FinalPaper\_Cartel\_%20Cover\_Page-%20AM%20Tri%20Anggraini%202017.pdf

C. Conclusion

Based on the foregoing discussion on handling cartels in economic regions the following conclusions can be made: 1. All member states in the region have agreed to handle cartels, in view of their highly damaging impact on consumers and the barrier to entry impact on potential new entrants to the market. Member states of the ASEAN Economic Region have agreed to join efforts in combating cartels by adopting antimonopoly legislation in their respective countries by the year 2015. Such agreement has been the embryo of cooperation in handling cartels. Harmonization efforts are bound to encounter challenges in the form of the existing divergent legal systems and approaches to cartels in the respective member states. 2. Cooperation in handling cartels in the economic region requires harmonization by developing common understanding, which can be followed up by adopting competition regulations and a supervisory authority at the regional level. There is a need for trained human resources as well as clearly articulated rules concerning the boundaries of the functions and authorities of such an institution.

#### Regs CP solves cartel price fixing

Alden Abbott, 18. Alden Abbott is a Senior Research Fellow focusing on anti-trust issues. Before joining Mercatus, Mr. Abbott served as the Federal Trade Commission’s General Counsel from 2018 to early 2021. “Foreign Export Cartels, Comity, and the Separation of Powers.” February 15, 2018. https://truthonthemarket.com/2018/02/15/foreign-export-cartels-comity-and-the-separation-of-powers/

Over the last two decades, the United States government has taken the lead in convincing jurisdictions around the world to outlaw “hard core” cartel conduct.  Such cartel activity reduces economic welfare by artificially fixing prices and reducing the output of affected goods and services.  At the same, the United States has acted to promote international cooperation among government antitrust enforcers to detect, investigate, and punish cartels. In 2017, however, the U.S. Court of Appeal for the Second Circuit (citing concerns of “international comity”) held that a Chinese export cartel that artificially raised the price of vitamin imports into the United States should be shielded from U.S. antitrust penalties—based merely on one brief from a Chinese government agency that said it approved of the conduct. The U.S. Supreme Court is set to review that decision later this year, in a case styled [*Animal Science Products, Inc., v. Hebei Welcome Pharmaceutical Co. Ltd*.](about:blank)  By overturning the Second Circuit’s ruling (and disavowing the overly broad “comity doctrine” cited by that court), the Supreme Court would reaffirm the general duty of federal courts to apply federal law as written, consistent with the constitutional separation of powers.  It would also reaffirm the importance of the global fight against cartels, which has reflected consistent U.S. executive branch policy for decades (and has enjoyed strong support from the International Competition Network, the OECD, and the World Bank). Finally, as a matter of economic policy, the *Animal Science Products* case highlights the very real harm that occurs when national governments tolerate export cartels that reduce economic welfare outside their jurisdictions, merely because domestic economic interests are not directly affected.  In order to address this problem, the U.S. government should negotiate agreements with other nations under which the signatory states would agree: (1) not to legally defend domestic exporting entities that impose cartel harm in other jurisdictions; and (2) to cooperate more fully in rooting out harmful export-cartel activity, wherever it is found.

#### It fails

DOJ. "Chapter 5 Where Trade and Competition Intersect." Department of Justice Advisory Committee. https://library.unt.edu/gpo/icpac/chapter5.htm

To aid its inquiry into the utility of private litigation as a means of enhancing market access, the Advisory Committee invited the Section of Antitrust Law of the American Bar Association to prepare a submission discussing this issue. The resulting paper noted that the total number of private antitrust cases had declined dramatically from 1978 to 1998.(162) The paper also pointed out that private antitrust litigation against export restraints faces many of the same difficulties as governmental enforcement.(163) Obstacles to obtaining jurisdiction, gathering evidence and developing effective remedies all exist in private export restraint litigation.

Besides the hurdles inherent in litigation, whether public or private, tackling foreign-based restraints that bar access or sales through private antitrust litigation poses additional problems. First, while the U.S. Department of Justice considers principles of comity before considering whether to bring an enforcement action, private parties are not bound by such strictures. U.S. law gives little guidance to governments and international business executives where U.S. competition policy comes into direct conflict with the competition policy of foreign governments.(164) Thus, the Advisory Committee believes that significant improvements should be sought in the process and standards by which competing interests are balanced for comity purposes or otherwise. Moreover, federal, state and local judges hearing private disputes that raise claims or defenses based on considerations of governmental policy should invite concerned governments at an early stage in the litigation to submit their views, which commonly takes the form of amicus curiae submission.

Second, the previously dormant application of the doctrine of forum non conveniens in antitrust litigation may be revived. This doctrine applies when another forum has superior contacts with the subject matter of the litigation and is better able to conduct the litigation.(165) Until recently, few nations had competition law systems sophisticated enough to offer litigants antitrust remedies and many nations opposed private rights of action. Thus, U.S. courts were unwilling to use the doctrine to dismiss transnational antitrust cases.(166) Recently, however, a U.S. court applied the doctrine to dismiss a private antitrust claim. In Capital Currency Exchange, N.V. v. National Westminster Bank PLC, the court ruled that the English courts, which are bound to enforce competition provisions of the Treaty of Rome, provided for a more convenient alternative forum to resolve a private antitrust dispute because the conduct was alleged to have taken place in England and most witnesses and documents were located there.(167) As other nations develop more sophisticated competition law structures, the doctrine of forum non conveniens may play a greater role in private international antitrust litigation.

### Extraterritoriality

#### No inequality impact

Brian Nolan 19, Professor of Social Policy and Director, Equity Employment and Growth Research Programme, University of Oxford, 8/13/19, “Why we can’t just blame rising inequality for the growth of populism around the world,” https://theconversation.com/why-we-cant-just-blame-rising-inequality-for-the-growth-of-populism-around-the-world-120951

The idea is now commonplace that income inequality is inexorably on the rise. The US experience in particular has become central to a new grand narrative prominent in public debate and taken to apply across rich countries: globalisation and technological change have polarised society into a small elite with highly paid, secure jobs on one side, and on the other side are growing numbers of people, including an increasingly “squeezed” middle class, in insecure, poorly-paid work.

This growing inequality is held responsible for a wide range of social and political ills. Not least the erosion of solidarity, social trust and faith in democratic institutions. And, politically, it caused the election of Donald Trump, the UK’s Brexit vote, and the broad rise of populism seen as threatening democracy.

This “grand narrative” undoubtedly captures important aspects of the US experience. But it does not represent the whole picture. And as far as other rich countries are concerned, examining the evidence highlights the diversity of their experiences over recent decades. As I’ve found in my research, this story is more often than not a poor fit for various countries around the world.

Different experiences

Household surveys show that income inequality has risen significantly since the 1980s in about two-thirds of the rich countries of the OECD – leaving one-third where it has not. The following graph shows what has happened to the Gini coefficient, the most commonly-used indicator of income inequality. Inequality did not rise everywhere and, where it did, the scale of that increase varied widely. Countries such as the UK and Sweden did see inequality go up as sharply as the US. But for others the increase was often much more modest and even decreased for some.

Inequality rose decade by decade in the US, but the UK’s increase was mostly concentrated in the Thatcher years of the 1980s, Sweden’s in the 1990s, and these contained “episodes”, rather than continuous rises, are also common elsewhere. Tax data show pre-tax income shares at the very top increasing in many countries, but again this varies widely across countries.

When it comes to ordinary living standards, middle class income growth has been even more varied. The next chart shows that middle incomes have stagnated in purchasing power terms since the early 1980s in Japan and Italy, as well as the US, and grown only modestly in Germany. But these are the poorest performers.

The UK, for example, saw substantial income growth around the middle from the late 1980s up to the mid-2000s, in sharp contrast to its lack of growth since then. Countries such as Australia, Belgium, Canada, Denmark, Finland and Sweden also saw periods of quite strong growth.

Crucially, across rich countries the relationship between inequality and middle income growth is weak – throwing into question the link that gets made between the so-called squeezed middle and populism. Middle incomes have generally lagged behind growth in GDP per head but again to widely varying extents, and rising income inequality is only one factor. Knowing what happened to inequality in a given country would have been of little help in predicting whether growth in middle incomes was strong or weak.

Not just the economy

The extent to which rising inequality and stagnating living standards over decades have driven the recent rise in populism across the rich countries is also open to question. Yes, the white working class population whose livelihoods have been hurt through decades of manufacturing decline provided the core constituency supporting Trump for president. But economic dysfunction combines with cultural and demographic factors in a way that makes them very hard to disentangle.

The fact that support for populist parties has risen in countries where inequality has been fairly stable over time (such as Austria and France), as well as ones where inequality has risen, and in countries where income growth has been quite robust (such as Poland), as well as ones where median incomes have stagnated (such as Hungary), illustrates the complexity of the factors at work.

#### GSCs don’t matter---contraints create creativity---the US is pulling farther ahead in innovation

Don Clark 21. Don Clark joined The Wall Street Journal in 1993, and serves as an editor and reporter in the San Francisco bureau. He has covered technology since 1980, currently focusing for the Journal on semiconductors and component companies. He is also interested in startups and in intellectual property and antitrust issues. "Despite Chip Shortage, Chip Innovation Is Booming." The New York Times. 5-7-2021. https://www.nytimes.com/2021/05/07/technology/semiconductor-chip-innovation-boom.html

OAKLAND, Calif. — A [global shortage of semiconductors](about:blank) has cast a cloud over the [plans of carmakers](about:blank) and other companies. But there’s a silver lining for Silicon Valley executives like Aart de Geus.

He is chairman and co-chief executive of Synopsys, the biggest supplier of software that engineers use to design chips. That position gives Mr. de Geus an intimate perspective on a 60-year-old industry that until recently was showing its age.

Everyone now seems to want his opinion, as shown by the dozens of emails, calls and comments he received after addressing a recent online gathering for customers. Synopsys says people tuned in from 408 companies — more than double the number for an in-person event last held in 2019 — and many weren’t conventional chip makers.

They came from [cloud services](about:blank), [consumer electronics companies](about:blank), defense contractors, auto component providers, U.S. government agencies, universities, two Bitcoin mining companies and a furniture maker. Their overriding question: How do you develop chips more quickly?

Even as a chip shortage is causing trouble for all sorts of industries, the semiconductor field is entering a surprising new era of creativity, from industry giants to innovative start-ups seeing a spike in funding from venture capitalists that traditionally avoided chip makers.

Taiwan Semiconductor Manufacturing Company and Samsung Electronics, for example, have managed the increasingly difficult feat of packing more transistors on each slice of silicon. IBM on Thursday announced another leap in miniaturization, **a sign of continued U.S. prowess in the technology race.**

Perhaps most striking, what was a trickle of new chip companies is now approaching a flood. Equity investors for years viewed semiconductor companies as too costly to set up, but in 2020 plowed more than $12 billion into 407 chip-related companies, according to CB Insights.

Though a tiny fraction of all venture capital investments, that was more than double what the industry received in 2019 and eight times the total for 2016. Synopsys is tracking more than 200 start-ups designing chips for artificial intelligence, the ultrahot technology powering everything from smart speakers to self-driving cars.

Cerebras, a start-up that sells massive artificial-intelligence processors that span an entire silicon wafer, for example, has attracted more than $475 million. Groq, a start-up whose chief executive previously helped design an artificial-intelligence chip for Google, has raised $367 million.

“It’s a bloody miracle,” said Jim Keller, a veteran chip designer whose résumé includes stints at Apple, Tesla and Intel and who now works at the A.I. chip start-up Tenstorrent. “Ten years ago you couldn’t do a hardware start-up.”

### Cartels

#### US leadership in 5G now.

Steven P. Bucci 20. Ph.D., visiting fellow who focuses on cybersecurity, military special operations, and defense support to civil authorities @ Heritage, 10/9/20. “Nationalizing 5G Is the Wrong Way for the U.S. to Compete With China.” https://www.heritage.org/technology/commentary/nationalizing-5g-the-wrong-way-the-us-compete-china

The U.S. is maintaining its leadership in 5G, and the nation’s carriers are already far into their respective deployments of secure 5G networks. The DOD’s recent request for information for a single, nationwide wholesale network will not lead to a tangible solution to the race to 5G, rather it will lead to a solution in search of a problem.

Driving a DOD-centric, or a DOD proxy-centric, solution is a fool’s errand. It is founded on a belief that the federal government can move faster and more effectively than the private sector. This has not been true for decades.

This assumption ignores the great strides that have been made by the existing American players on the 5G field already. These private sector companies are the repositories of the expertise and experience in the telecom field, not the government. Thinking that the government or a jerry-rigged organization with political connections will somehow pull together the expertise out of thin air is nonsense.

#### The US will win the 5G race---antitrust not key.

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](about:blank)

While China has embraced next generation networks at a faster pace, experts say the U.S. still has some advantages in the competition for dominance.

U.S. technology companies have already been working on autonomous vehicles, augmented reality, and virtual reality, which one analyst explained could be the first few killer applications of 5G.

While China has embraced next generation networks at a faster pace, experts say the U.S. still has some advantages in the competition for dominance.

China rolled out its 5G networks nationwide on Nov. 1, with three of its state-owned carriers offering plans for the service. One week later, Beijing said it launched research and development efforts into 6G networks.

5G refers to mobile networks with super-fast data speeds that can support technologies like driverless cars. While 6G refers to the next generation of networks, 5G is still in its early stages as much of the world still operates on 4G networks.

“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.

#### Batteries don’t solve grid storage or resiliency

Gregory Barber, 21. Staff writer at WIRED who writes about blockchain, AI, and tech policy. He graduated from Columbia University with a bachelor’s degree in computer science and English literature and now lives in San Francisco. “When the Grid Goes Down, can a Fleet of Batteries Replace It?” February 24, 2021. https://www.wired.com/story/when-the-grid-goes-down-can-a-fleet-of-batteries-replace-it/

A grid backed by 10 million Teslas is unlikely to be the top priority of most energy experts thinking about how to prevent future Texas-style crises. Yes, people need to drive. And yes, it would be impractical, if not impossible to coordinate. Experts have identified plenty of sensible ways to make the Texan grid better: weatherization of existing power plants and lines, improved connections to other grids, and regulations that encourage various forms of resilience as well as low prices. Better planning, basically. But as Grubert puts it, the crisis pointed to many possible futures for a more reliable electric grid. Batteries, both large and small, are becoming more ubiquitous, whether we consciously tie them into the power grid or not. So how could we harness them to make the grid more nimble and keep the power on? “What I was getting at was, there are many ways we could think about planning for the future,” she says. In states like California, finding ways to store energy has long been on the minds of regulators and utility operators. The primary reason is the state’s goal of relying on 100 percent clean energy by the year 2045. The problem with that is that the sun doesn’t always shine and the wind doesn’t always blow—at least not everywhere across the state and not all at once. And so, since 2013, utilities have been required to procure energy storage systems that suck up otherwise wasted power when renewables produce more than is needed, and disburse it when there’s a gap in supply. It’s a matter of balancing a load that’s uneven, but often predictably so, such as when solar panels go offline at night. There’s a basic business proposition in that: Storage operators make money because they can store energy when it’s cheap and sell it when it’s in demand and prices are higher. In many places, including Texas, that’s driven a battery boomlet, helped along by the growth of variable renewable energy sources and falling battery prices. In California, that’s been eased by clean energy goals and rebates. Those batteries themselves often take the form of large, utility-scale installations attached to solar and wind plants. But in some cases those are augmented by a battalion of smaller ones enlisted to share power with the grid, including batteries nestled into neighborhoods or hung inside garages—and, yes, even sitting in private cars. The other possible use is in a crisis. In California, that occurred last August, when Death Valley sizzled past 130 degrees and lingering overnight heat across the state meant people kept running air conditioners long after solar farms had stopped harnessing rays. Natural gas plants that should have stepped in to handle the mismatch of supply and demand didn’t run as efficiently in the heat, and others that should have been on standby were unexpectedly offline. And so, the grid started to fritz. Millions of people lost power. That left some wondering why there shouldn’t be more energy stored to make up the gaps, after gas had failed to do its job as a last-ditch savior. “Diversifying into storage is something that we need everywhere,” says Daniel Kammen, a professor of energy at the University of California, Berkeley, who helped craft the law requiring energy storage in California. He points to similar issues last week in Texas, where gas plants, unable to source the fuel they needed to keep running, represented the bulk of the energy supply lost during the cold weather. Even without a renewable energy goal similar to California’s, Kammen thinks the Texas crisis should invite a discussion in that state about how to install more storage. Batteries alone would not be able stave off a Texas-style crisis. The scale and the duration of the outage, with over 4 million homes in the dark and about half of the usual energy supply missing, was far too large. “Even if you took all the storage assets everywhere in the United States, it wouldn’t be enough,” says Michael Craig, a professor of energy systems at the University of Michigan. The essential problem is that batteries do not produce any energy themselves. At full blast, lithium-ion batteries can distribute power back to the grid for only a few hours at a time. When the grid goes down for a week, as it did in some parts of Texas, you’re out of luck. Even with shorter outages, the batteries themselves would also need their own special protections in cases of extreme weather—as anyone who’s taken their iPhone out on a cold winter day can attest.

#### Batteries don’t solve grid storage

James Temple, 18. Senior editor for energy at MIT Technology Review. “The $2.5 trillion reason we can’t rely on batteries to clean up the grid.” July 27, 2018. https://www.technologyreview.com/2018/07/27/141282/the-25-trillion-reason-we-cant-rely-on-batteries-to-clean-up-the-grid/

The California projects are among a growing number of efforts around the world, including Tesla’s 100-megawatt battery array in South Australia, to build ever larger lithium-ion storage systems as prices decline and renewable generation increases. They’re fueling growing optimism that these giant batteries will allow wind and solar power to displace a growing share of fossil-fuel plants. But there’s a problem with this rosy scenario. These batteries are far too expensive and don’t last nearly long enough, limiting the role they can play on the grid, experts say. If we plan to rely on them for massive amounts of storage as more renewables come online—rather than turning to a broader mix of low-carbon sources like nuclear and natural gas with carbon capture technology—we could be headed down a dangerously unaffordable path. Small doses Today’s battery storage technology works best in a limited role, as a substitute for “peaking” power plants, according to a 2016 analysis by researchers at MIT and Argonne National Lab. These are smaller facilities, frequently fueled by natural gas today, that can afford to operate infrequently, firing up quickly when prices and demand are high. Lithium-ion batteries could compete economically with these natural-gas peakers within the next five years, says Marco Ferrara, a cofounder of Form Energy, an MIT spinout developing grid storage batteries “The gas peaker business is pretty close to ending, and lithium-ion is a great replacement,” he says. This peaker role is precisely the one that most of the new and forthcoming lithium-ion battery projects are designed to fill. Indeed, the California storage projects could eventually replace three natural-gas facilities in the region, two of which are peaker plants. But much beyond this role, batteries run into real problems. The authors of the 2016 study found steeply diminishing returns when a lot of battery storage is added to the grid. They concluded that coupling battery storage with renewable plants is a “weak substitute” for large, flexible coal or natural-gas combined-cycle plants, the type that can be tapped at any time, run continuously, and vary output levels to meet shifting demand throughout the day. Not only is lithium-ion technology too expensive for this role, but limited battery life means it’s not well suited to filling gaps during the days, weeks, and even months when wind and solar generation flags.

#### No EMP impact

Rebecca Boyle, 17. Journalist, contributing writer for The Atlantic “How We'll Safeguard Earth From a Solar Storm Catastrophe.” June 14, 2017. https://www.nbcnews.com/mach/space/how-we-ll-safeguard-earth-solar-storm-catastrophe-n760021

Part of the challenge is understanding how transformers and circuit breakers would respond to the heat and high voltages of an EMP. If they’re exposed to extreme heat for just an instant, they might be fine, much the same way that people can quickly walk across hot coals without getting burned. But a longer-lasting flash would cause real damage. The Electric Power Research Institute is in the middle of a three-year study exploring these questions. The Department of Energy is also studying possible effects of high-energy EMPs.

Related: NASA's Mars Rover Looks Right At Home on the Red Planet

Odds are an EMP attack would be on a local scale, which means the grid would likely be fine overall, notes Scott Aaronson, senior director of national security policy at the Edison Electric Institute. There's no single point of failure in the country’s electrical system. The grid is somewhat of a misnomer because it’s really hundreds of independently operated utilities, each of which manages resources in its own way. Private industry owns 85 percent of the U.S.'s critical electrical infrastructure.

“To incidents on a smaller scale, the grid is extraordinarily resilient," Aaronson says. "There are 50,000 substations, and hundreds of control centers. The failure of one, or even several of those, has very limited impact on the broader set of infrastructure.”

He argues an EMP is less of a concern than everyday problems — from solar storms to Earth generated lightning, to the most mundane threats.

“I can promise you, at this very minute there is a squirrel meeting his or her demise by chewing through a power line somewhere,” Aaronson says.

"Your cell phone might survive just fine, but the cell towers would not. So you would have a very nice calculator with a limited battery life.”

## 1nr

### Japan DA

#### 2. Relations outweigh, solve, and turn the case.

Brooke Singman 21. Political Reporter. "Biden says US, Japan 'committed to working together' on challenges from China, North Korea". Fox News. 4-16-2021. https://www.foxnews.com/politics/biden-japan

President Biden on Friday said he and Japanese Prime Minister Yoshihide Suga affirmed their "ironclad support" of the U.S.-Japanese alliance, saying the two nations committed to take on challenges posed by China and North Korea together to "ensure a future of a free and open Indo-Pacific."

Suga is the first foreign leader to meet in person with Biden, signaling strengthening ties between the United States and Japan amid diplomatic tensions with China—as intelligence officials warn that Beijing poses one of the greatest long-term threats to U.S. national security.

"The commitment to meet in person is indicative of the importance and the value we both place on this relationship between Japan and the United States," Biden said Friday during a joint press conference in the White House Rose Garden.

The president said that the two had a "very productive discussion" Friday, discussing their commitment to cooperate on shared challenges.

"We affirmed our ironclad support for the U.S.-Japanese alliance and for our shared security," Biden said. "We committed to working together to take on challenges from China, the East China Sea--South China Sea, North Korea and to ensure a future of a free and open Indo-Pacific."

Biden said that Japan and the U.S. are "two strong democracies in the region and are committed to defending and advancing our shared values, including human rights and the rule of law."

"We’re going to work together to prove that democracies can still compete and win in the 21st century, and still deliver for our people in the face of a rapidly changing world," Biden said.

Suga, during the press conference, said the two leaders committed to a "global partnership for a new era," which he said "strongly demonstrates our solidarity toward the realization of a free and open Indo-Pacific."

The two leaders, on Friday, said they would work together to get the COVID-19 pandemic "under control," ensure equitable access to vaccines, and focus on climate change and clean energy.

Biden also said that the U.S. and Japan will work together to "protect" new technologies, and "maintain and sharpen a competitive edge" based on "shared Democratic norms set by democracies—not autocracies"—in an apparent swipe at China.

Biden said that the United States and Japan will work together to promote "secure and reliable 5G networks," a secure supply chain—specifically for semiconductors, and to drive joint research in artificial intelligence, genomics, quantum computing and more.

The Biden Administration and Japan have been working to strengthen technology supply chains, in a way to ensure U.S. and Japanese independence from unreliable partnerships with China—whose trade war with the U.S. coupled with the coronavirus pandemic has led to the crippling semiconductor chip shortages.

Japan is also expected to announce an investment in 5G cellular networks, boosting alternatives to China’s network, as part of that supply chain cooperation. Biden and Suga on Friday also discussed ramping up a new trade alliance to bolster semiconductor production.

The new supply chain agreement would ensure U.S. and Japanese independence from vulnerable regions like Taiwan and unreliable partnerships with China—whose trade war with the U.S. coupled with the coronavirus pandemic has led to the crippling semiconductor chip shortages.

The focus on the U.S. supply chain comes after the president in February signed an executive order demanding a 100-day review of supply chains in four areas—computer chips, large capacity batteries, pharmaceuticals, and critical minerals and rare earth materials.

Intelligence and national security officials, as well as lawmakers on both sides of the aisle, have warned that China poses a threat to the U.S. supply chain, but the executive order did not mention China but instead focuses on other vulnerabilities.

Suga, during the press conference on Friday, said that he and Biden discussed China’s "influence" in the Indo-Pacific, and said the two leaders "agreed to oppose any attempts to change the status quo by force."

Before the press conference, the two met in the White House State Dining Room Friday, where Biden said the two nations have a "big agenda."

"We are two important democracies in the Pacific region," Biden said. "And our cooperation is vital, in my view, and I think in both our view, to meeting the challenges facing our nations and to ensuring that the future of the region remain free and prosperous."

Suga, who succeeded former Prime Minister Shinzo Abe in September, after serving as his chief Cabinet secretary, said Friday that "freedom, democracy, human rights and the rule of law are universal values that make a difference that is prevalent in the Indo-Pacific."

"This is the very foundation of prosperity and stability of the region and the globe," Suga said, highlighting the "importance of such values," while saying he wishes to "reaffirm" a strong U.S.-Japan alliance.

Suga also expressed a desire to focus on ways the U.S. and Japan can cooperate on a number of common challenges, including the COVID-19 pandemic and climate change.

#### Economic alliance is key to Indo-Pacific cyber security---only coop allows them to leverage technology.

Patrick M. Cronin 4/15/21. Asia-Pacific Security Chair @ Hudson. "U.S.-Japan Alliance in Full Bloom". https://www.hudson.org/research/16835-u-s-japan-alliance-in-full-bloom

Even if seldom mentioned by name, China is the unmistakable fulcrum around which alliance policy on all issues turns. Competition with China is primarily economic and technological, but these issues often spill over into security and human rights.

Economically, a rebounding U.S. economy and Japan will collaborate to strengthen the resilience of vital supply chains. Semiconductor chips are essential for all electronics, and Suga and Biden are determined to ensure their availability. Equally, the U.S. and Japan have an opportunity to leverage their two-year-old digital trade agreement to help negotiate a multilateral accord and establish high international standards for finance and commerce in the cyber age.

As a dominant player in semiconductor manufacturing and a member of APEC and the World Trade Organization, Taiwanshould play a part in both supply chain security and digital trading standards. Indeed, bolstering Taiwan’s place in the global economy of other democracies is a far better means of thwarting Beijing’s intimidation strategy against Taiwan than just sailing near the Taiwan Strait with an aircraft carrier.

The commanding heights of the 21st century economy center on technology. So, while the United States and Japan retain a strong interest in economic cooperation with China, those relations become considerably sharper over leading-edge technologies such as 5G telecommunications, artificial intelligence and quantum computing. Biden and Suga should showcase their commitment, not against China, but in favor of technological innovation and secure connectivity.

An excellent way for the alliance to demonstrate a commitment to practical technology cooperation would be to work together to expand investment in 5G Open Radio Access Networks (ORAN). Given the concerns surrounding allowing China to dominate fifth-generation telecommunications infrastructure, the United States and Japan need to scale up a cloud-based software alternative. The good news is that Japan’s Rakuten is already a leader in demonstrating ORAN’s feasibility, and there is bipartisan support in Congress for increasing U.S. investment in modular 5G.

The alliance also requires deeper cooperation on cybersecurity. Of five issues highlighted at the recent 2 + 2 meeting between U.S. and Japan defense and foreign ministers, cyberspace was the most traditional national security issue. Japan is inching closer toward becoming a de facto sixth member of the Five Eyes intelligence-sharing arrangement, and the Biden administration should encourage that trajectory. A stronger digital alliance can, in turn, advance cyber resilience throughout the Indo-Pacific region.

#### Extinction---Indo-Pak nuclear war.

Ahyousha Khan 20. "Research Associate" at Islamabad Based Think-tank "Strategic Vision Institute". "Artificial Intelligence without Cyber Resilience in South Asia". South Asia Journal. 7-16-2020. http://southasiajournal.net/artificial-intelligence-without-cyber-resilience-in-south-asia/

With increased dependence on information technology and rapid digitization of systems, term cybersecurity gained momentum. However, these systems not only need to be securitized but they should be resilient against the threats. Cyber resilience is the ability of the system to operate during an attack and achieve a minimum level of operationalization while responding to an attack. It also enables the system to develop a back-up system that works in case of attack. Cyber resilience is a step forward from cybersecurity because it not only ensures the security of the system, but also identifies the threats to it and then proposes the system that could work amidst such attacks. Most military systems are resilient against kinetic attacks because resilience and survivability go hand in hand. But, with modernizations in the military, it is necessary that the state’s cyber networks which are working on artificial intelligence must be resilient against kinetic and non-kinetic attack.

Today states are in a race to use the AI in their military systems to achieve maximum military gains and denying their adversary the same. The situation is not so different in South Asia where two nuclear rivals of the region are paving the way towards the use of artificial intelligence for military purposes. India has developed the Center for Artificial Intelligence and Robotics (CAIR) in DRDO, with the aim to develop AI within the military systems to improve geographical information system technology, decision support systems, and object detection and mapping. Moreover, companies like Bharat Electronics Limited (BEL) are already in the process of developing and incorporating AI into military equipment. This includes an AI-enabled patrol robot developed by BEL built in the hope to be utilized by the Indian military. Moreover, in 2019 India’s Gen. Bipin Rawat said adversary in the north is spending a huge amount on AI and cyber warfare, so we cannot be left behind in this race. It is mostly projected by the Indian policymakers and many international scholars that India is facing adversaries at two fronts (China-Pakistan), to justify India’s military expenditure and modernization. However, recently, events like Galwan Valley clash evidently exposed that India’s military capabilities are mostly against Pakistan. Moreover, South Asia’s security dynamics are heavily characterized by the action-reaction chain. To avoid the security dilemma vis-à-vis India, Pakistan would also invest in AI. At the moment Pakistan has also started working towards achieving expertise in AI. In 2019 President of Pakistan launched PIAIC with a focus on the development of skills in AI to strengthen economy and defence systems. Moreover, there are centers like the National Center of Artificial Intelligence and the Department of Robotics and Intelligent Machine Learning in NUST, which are working to improve AI-based knowledge in Pakistan. Besides that Pakistan recently launched a program named “Digital Pakistan” to increase access and connectivity, digital infrastructure, e-government, digital killing, and training and introduce innovation and entrepreneurship.

There are many studies done on the implications of AI on nuclear deterrence and strategic stability in South Asia. These studies highlight that due to prevalent asymmetry in the conventional military build-up, the introduction of AI into military technology would worsen the already fragile deterrence stability of the region. This assumption is based on the argument that due to AI in reconnaissance systems, high-level intelligence collection would affect the survivability of nuclear weapons, which is based on diversification and concealment. However, AI would also enable both states to have more response options in a short time with the help of decision-making tools in case of a crisis, especially in aerial battles.

Moreover, both states are moving towards the massive digitalization of their military systems and society without building cyber-resilient systems. Resilience can be built against vulnerabilities like human factors, massive speed of the systems, protection, and storage of data and advanced persistent threats (ATPs). Artificial intelligence-based systems must be incorporated in societies and militaries along with mechanisms to strengthen the cybersecurity systems. A front runner in AI like the US has also expressed concerns over the need for modern equipment to operate on “internet-like networks” and subsequently increased vulnerabilities due to their applicability. Therefore, military modernization can happen effectively through cyber resiliency in military systems, network processes, and cyber architecture. A cyber-resilient system would enable the state to develop a system that would remain functional during a phishing attack. Steps like cyber deception, agility, and clone defense could increase resilience in the existing systems. This is important to understand in already lacking strategic stability, military systems based on artificial intelligence would be an ideal target of AI advanced persistent threats in South Asia.

Therefore, as the process of digitalization is increasing in the Pakistan-India equation, it is also becoming very important that both states should develop resilience in their cyber systems so that the technologies could give them an advantage rather than becoming a security peril for them.

#### Don’t run on autopilot---frictions prevent effectiveness of the alliance.

Michael J. Green 20. Senior vice president for Asia and Japan Chair at the Center for Strategic and International Studies and director of Asian Studies at the Edmund A. Walsh School of Foreign Service at Georgetown University. Jeffrey W. Hornung is a political scientist at the nonprofit, nonpartisan RAND Corporation. "Are US-Japan relations on the rocks?". TheHill. 7-17-2020. https://thehill.com/opinion/international/507880-are-us-japanese-relations-on-the-rocks

There is not cause for concern about Japan abandoning the alliance with the United States. Abe came back to power promising a stronger U.S.-Japan alliance and has given no indication that he is abandoning that promise. Nor are any of the major political figures trying to replace him challenging the alliance relationship. Moreover, the growing threat from China means that Washington and Tokyo need each other more than ever. But the growing points of friction and uncertainty in the relationship carry negative consequences, particularly given that even though polls show that the Japanese public supports the alliance, they also reveal that trust in the United States and President Trump has dropped precipitously. And it sends the wrong message to Tokyo that the next U.S. envoy is cooling his heels waiting for confirmation.

The concern is not that Japan somehow defects, but that Tokyo and Washington could let growing irritation and uncertainty distract them from the increased work that must be done to preserve a truly free and open Indo-Pacific. The White House website and the campaign website of presumptive Democratic presidential nominee Joe Biden both speak to the importance of the U.S.-Japan alliance. That is a very good thing, but alliances do not run on auto pilot. They take work. Lest the allies are prepared to let the current troublesome trends continue, more attention should be paid to what has otherwise been a reliably solid relationship.

#### The alliance is not locked-in---an exogenous shock could tip Japan toward rearm

Dr. Adam Liff 19. Assistant Professor of East Asian International Relations at the Hamilton Lugar School of Global and International Studies at Indiana University, Ph.D. and M.A. in Politics from Princeton University, and B.A. from Stanford University, “Unambivalent Alignment: Japan’s China Strategy, The US Alliance, and the ‘Hedging’ Fallacy”, International Relations of the Asia-Pacific, July 2019, p. 31

Nevertheless, **what is at present is not necessarily what shall forever be**. Japan’s leaders will continue to face a complex, dynamic, and potentially volatile strategic environment. Increasingly **difficult trade-offs** may **manifest**, especially if China’s military power, economic wherewithal, and willingness to attempt to drive wedges between the United States and its allies grow. An **exogenous shock** could also upset Japan’s basic trajectory. Indeed, this possibility appears **less remote** today given China’s and North Korea’s recent policies, geopolitical and **geo-economic shifts**, **US** relative decline, and President **Trump's skepticism** of alliances and free trade. Yet, even in this case, Japan’s continued pursuit of more **independent military capabilities** and strategic autonomy while simultaneously bolstering security cooperation with the United States and its regional partners seems more likely than a strategic realignment toward Beijing.

#### Relations are based on mutual respect---unilateral antitrust fractures it.

Stephen D. Piraino 12. J.D. Candidate, 2013; Hofstra University School of Law; B.A, 2010; Boston College. "A Prescription for Excess: Using Prescriptive Comity to Limit the Extraterritorial Reach of the Sherman Act," Hofstra Law Review: Vol. 40: Iss. 4, Article 10. Available at: http://scholarlycommons.law.hofstra.edu/hlr/vol40/iss4/10

Similar to the United Kingdom and Canada, Japan and the United States have a close relationship.262 However, Japan is a frequent target of the extraterritorial application of the Sherman Act.263 In September 2011, a Japanese company faced $200 million in fines and three Japanese nationals entered into plea bargains to each serve more than a year of jail time as a result of price-fixing and bid-rigging in the automotive industry.264 Twenty-five Japanese companies have been held liable for Sherman Act violations that each resulted in a fine of more than $10 million.265 As of December 2011, the DOJ had only collected eightynine fines that were more than $10 million.266 On that same list compiled by the DOJ, only fifteen U.S. companies faced fines of more than $10 million.267 Japan, not the United States, was the most represented nation on the DOJ's list.268

Japan, in Nippon Paper, filed an amicus brief in favor of defendant NPI, which strongly opposed the extraterritorial application of the Sherman Act. 269 The amicus brief acknowledged the close relationships between the two nations.270 However, it reasoned that the relationship was based on "mutual respect for each Nation's sovereignty., 271 Japan saw extraterritorial applications of law as "infring[ing] the sovereign rights of other countries. 272 Because Nippon Paper was a criminal matter, the government of Japan found the extraterritorial application to be "particularly problematic. 273 One of the problems Japan articulated was the inability of foreign defendants to "foresee or predict that their conduct could expose them to criminal punishment abroad., 274

The government of Japan illustrated that if a Japanese court tried to use Japanese law to regulate domestic conduct in the United States, the United States would find it unreasonable.2 75 There would be a conflict between U.S. law and policy and Japanese law and policy.276 Therefore, Japan viewed the extraterritorial application of the Sherman Act in Nippon Paper to be "an offensive interference with Japanese jurisdiction., 277 Japan instead advocated for coordination on antitrust laws between nations without any unilateral assertions of jurisdiction.278

#### Extraterritorial antitrust fractures diplomacy---kills relations with allies.

S. Nathan Park 17. Career in Law Teaching Fellow, Columbia Law School; Adjunct Professor of Law, Georgetown Law Center; Of Counsel, Kobre & Kim LLP. “Equity Extraterritoriality”. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1515&context=djcil

2. Strife in Diplomatic Relations

Because Equity Extraterritoriality infringes upon a foreign sovereign’s interest, it frequently causes diplomatic strife. The Argentina bond case, litigated before a New York federal court, provided anti-American fodder to Argentina’s politicians.232 Reporters for the Restatement have noted the level of friction and acrimony caused by extraterritorial discovery orders.233 Extraterritorial orders issued pursuant to U.S. antitrust laws have “provoked the loudest and most consistent foreign protests.”234 Discussing American antitrust laws, a Canadian government official did not mince words: “For one government to seek to resolve the conflict in its favor by invoking its national law before its domestic tribunals is not the rule of law but an application, in judicial guise, of the principle that economic might is right.”235 Foreign governments would file amicus curie briefs objecting to U.S. extraterritoriality, but the U.S. court’s deference to such views is not consistent. The In re Uranium Antitrust Litigation opinion is an example of hostility, in which the Seventh Circuit called the governments of Australia, Canada, South Africa, and the United Kingdom “surrogates” of the foreign corporation defendants who “subversively presented for them their case.”236 The Uranium court’s hostility toward the foreign states prompted the State Department to inform the court that the opinion “has caused serious embarrassment to the United States in its relations with some of our closest allies.”237

It is a significant problem that the unelected judiciary, which is often a state court or a federal court applying state law, is effecting foreign policy consequences. When a court issues an extraterritorial order, it is conducting an indirect type of diplomacy against its constitutional mandate.238 The problem is worse when a state law is involved. Territoriality principles prohibit a state law from being applied beyond state borders, much less beyond U.S. borders.239 Yet under Equity Extraterritoriality, a state law may be applied anywhere in the world, causing diplomatic strife with foreign sovereigns.

#### Unilateral link---The plan’s unilateral approach breaks the Japan antitrust agreement---courts and agencies apply case law extraterritorially.

Takaaki Kojima 02. Fellow, Weatherhead Center for International Affairs, 2001-2002. “International Conflicts over the Extraterritorial Application of Competition Law in a Borderless Economy”. https://datascience.iq.harvard.edu/files/fellows/files/kojima.pdf

Bilateral approach. The OECD has played a leading role in international efforts to avoid international conflicts over the extraterritorial application of competition law through the decades, “recognizing that the unilateral application of national legislation, in cases where business operations in other countries are involved, raises questions as to the respective sphere of sovereignty of countries concerned” and that “anticompetitive practices, investigations and proceedings by one Member country may, in certain cases, affect important interests of other Member countries.”41 Since 1967, the OECD has adopted and revised a series of recommendations concerning cooperation between member countries that aim for two goals: more effective law enforcement and avoiding jurisdictional conflicts. In the context of the OECD recommendations, the concept of comity describes a voluntary policy calling for a country to give full and sympathetic consideration of other countries’ important interests while deciding the enforcement of its own competition law. Comity involves two aspects: first, a country’s consideration of how it may prevent its law enforcement actions from harming another country’s important interests, and second, a country’s consideration of another country’s request that it open or expand a law enforcement proceeding in order to remedy conduct that is substantially and adversely affecting that country’s interest. These aspects have come to be referred to as “negative comity” and “positive comity,” respectively. 42

Following the OECD recommendations, bilateral cooperation agreements have been concluded between the United States and several other industrialized states such as Australia, Canada, and Germany to avoid friction in competition law enforcement.43 The milestone would be the U.S. and E.U. agreement of 1991 that set forth, inter alia, positive comity as well as negative comity for the first time in a bilateral agreement. This agreement was supplemented by a more detailed agreement on positive comity in 1998, which even provides for the deferral of enforcement proceedings by the requesting side under certain conditions. Although enforcement cooperation has been strengthened, the European Commission has explained that eliminating the jurisdictional “imbalance” was one of the main reasons the E.C. negotiated the positive comity provisions in the supplement agreement.44 In the Commission’s view, “it is clearly preferable … that the United States avail itself of the principle of positive comity when considering anticompetitive behavior taking place within the European Community rather than seeking to apply U.S. competition law. Through positive comity the Commission can retain control, where it wishes, of enforcement procedures addressing such behaviour.”45

Bilateral conflicts have frequently arisen between Japan and the United States over the latter’s extraterritorial application of antitrust laws, as the two countries hold divergent positions with regard to state jurisdiction under international law and against the background of increasingly expanding trade between the two countries. The Japan-U.S. Agreement, which was concluded in October 1999, should be the test case as to how effective a bilateral agreement could work for avoiding or mitigating potential bilateral conflicts. Several points should be elaborated upon here.

First, Article II stipulates the obligation of the competition authority of each party to “notify the competition authority of the other party with respect to enforcement activities” that may “affect the important interests of the other party. ” This notification procedure is the foundation of cooperation and coordination in the agreement and “important interests” are interpreted to include not only interests concerning competition law enforcement but also interests concerning sovereignty and other legal or policy matters.46

Second, Article VI stipulates that “each party shall give full consideration to the important interests of the other party throughout all phases of its enforcement activities.” In seeking an appropriate accommodation of competing interests, such factors as the conduct’s relative significance to the anticompetitive activities, the relative impact of the anticompetitive activities on the important interests, etc., should be considered. These provisions represent so-called “negative comity” and are expected to work toward avoiding jurisdictional conflicts, which may be caused, for instance, by the extraterritorial application of U.S. antitrust law, through such consideration for balancing interests tests. However, the fundamental gap with regard to their respective positions on jurisdictional justification or sovereignty, as shown in the Nippon Paper case, could not be bridged by this provision of (negative) comity itself.

Although an unilateral attempt to extend the application of domestic legislation extraterritorially violates the basic principle of territoriality in international law, the need for regulatory measures to be applied across national borders has also become a reality with the growth of transnational economic and social relations and the consequent emergence of a borderless society on a global basis. In this respect, the position of Japan is too rigid in resisting to accept the need for the extraterritorial adjustment of national competence, as evidenced in the negotiations between Japan and the United States for regulating transnational activities involving unfair competition across national borders.47

As seen above, the Government of Japan still formally rejects the effects doctrine; however, adjustment of extraterritorial jurisdiction that justifies extending jurisdiction with respect to foreign companies’ conduct abroad could be based on (a modified version of) the objective territorial principle, as has been applied in the Wood Pulp cases by the European Court. This justification could be compatible with the recent practice of the JFTC on the Nordion case and on the Exxon Mobil merger review.

Third, Article V stipulates that if the competition authority of a party believes that anticompetitive activities “in the other country adversely affect the important interests of the former party … [it] may request that the competition authority of the other party initiate the appropriate enforcement activities.” The requested competition authority shall carefully consider whether to initiate enforcement activities. These provisions represent the so-called “positive comity” and the requested competition authority is expected to take into account “the importance of avoiding conflicts regarding jurisdiction,” which is explicitly set forth in the article.

Positive comity may play an important role in export restrains (market access) cases where the requesting country’s interest is protection of its exporters’ interests.48 It has been observed that the Soda Ash case has positive comity aspects, where after U.S. trade officials complained that U.S. soda ash producers faced barriers to access in Japan, the JFTC conducted an investigation and issued a cease and desist order against Japanese producers.49 In such cases as the Fuji Kodak case, the United States could have invoked positive comity; however, U.S. enforcement agencies would have had to consider the similar position of Kodak in the U.S. market as that of Fuji in the Japanese market. Positive comity’s role may be limited in certain categories of export cartel cases because of the exemptions under the Export Trade Act in Japan and under the Webb Pomerene Act, etc., in the United States.

Positive comity under the Agreement raised concerns that it would further intensify U.S. demands for more vigorous law enforcement against anticompetitive conduct relating to market access while requests of positive comity from Japan to the United States would be rare. Nevertheless, such concerns seem off the mark. Apart from the voluntary nature of positive comity, the alleged conduct’s illegality under the requested state is a prerequisite to invocation of positive comity, and if any complaint is filed on an alleged illegal conduct, the JFTC would consider the possibility of enforcement in any case. Furthermore, Japan may request positive comity in such cases as alleged abuse of antidumping procedures against Japanese exporters by a U.S. company in the United States, even though Japanese competition law does not apply to protect Japanese exporters’ interests. Again, if Japan considers that a U.S. film maker’s conduct in the United States is anticompetitive, it may request positive comity to the United States, regardless of the fact that Japan claims to have no extraterritorial jurisdictional reach over the film maker’s conduct in the United States. In these situations, jurisdictional “imbalance” between the two countries could, to some extent, be eliminated.

The effectiveness of this agreement in terms of avoiding conflicts remains to be judged from how it will be applied in practice. Although this agreement is an executive agreement that is to be implemented within the framework of existing laws and regulations of the two states, the obligation to consider negative and positive comity will facilitate cooperation and coordination with a view to reducing conflicts. Comity is essentially voluntary but its flexibility may work better in solving a potential conflict, which ultimately depends on good working relations between the two governments, especially between the enforcement agencies, based on mutual trust. At the same time, it must be remembered that U.S. courts will not be bound by this agreement; therefore, effectiveness of both negative and positive comity under this agreement has significant institutional limitations with respect to U.S. case law.

#### 2---FTAIA is toothless---everything substantially effects commerce.

Samuel F. Kava 19. J.D./M.B.A. Candidate, 2020, University of Maryland Francis King Carey School of Law and Johns Hopkins University Carey School of Business. “The Extraterritorial Application of the Sherman Anti-Trust Act in the Age of Globalization: The Need to Amend the Foreign Trade Antitrust Improvements Act (FTAIA) & Vigorously Apply International Comity.” 15 J. Bus. & Tech. L. 135 (2019). Available at: https://digitalcommons.law.umaryland.edu/jbtl/vol15/iss1/5

Initially, courts across the United States were skeptical that the Sherman Act was to be applied extraterritorially—generally opting to apply U.S. law only when transactions took place solely within its territory.7 However, after World War II courts began to expand the extraterritorial application of the Sherman Act to conduct that had an anticompetitive effect on U.S. commerce.8 While this expansive application of the Sherman Act has its origins in case law, Congress went on to codify the court’s view of the Sherman Anti-Trust Act with the passage of the Foreign Trade Antitrust Improvement Act (“FTAIA”).9 The FTAIA was an express act of Congress that the Sherman Anti-Trust Act was to be applied extraterritorially to any conduct that had a “direct, substantial, and reasonably foreseeable effect on commerce in the United States.”10 However, in an increasingly globalized market nearly all transactions have a “direct, substantial, and reasonably foreseeable effect on commerce in the United States.”11 Thus, because the test for determining the scope of the Sherman Act has become toothless in the age of globalization, this paper advocates for a more comprehensive analysis that respects international comity. Specifically, this paper focuses on the adverse effects and potential retaliatory response of the international community if the Sherman Act goes through another iteration of expansion by permitting consumers standing against Consumer-to-Consumer (“C2C”) e-commerce platforms that merely “connect buyers and multiple sellers online.”12

#### 3---DOJ Proves.

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Most trades that take place today have a direct impact that is both: (1) of immediate consequence, and (2) the reasonable proximate causal nexus. Especially with C2C e-commerce platforms, which serve to create “liquidity” in the market by connecting sellers with many buyers, it is foreseeable that this platform will proximately cause a multi-national transaction that causes an immediate consequence to a U.S. producer.72 For example, if Alibaba were selling adidas sneakers on its platform, at an anti-competitive price, Nike would be instantly harmed because a customer (whether a U.S. or foreign citizen) will buy the cheaper and similar product on the platform rather than purchase through Nike. This harm is of immediate consequence to the Nike’s of the world, and Alibaba certainly is able to foresee it being the proximate causal nexus to this harm. Thus, the FTAIA has become an obsolete and toothless statute in the age of globalization.

The United States Department of Justice has exemplified the ease of proving a transaction has a “direct, substantial, and reasonably foreseeable effect on commerce in the United States.”73 The success of the Justice Department has led to its aggressive pursuit of criminal anti-trust claims against foreign companies operating outside the United States.74 Since 1999, “about 90 percent of fines of $10 million for criminal violations of U.S. antitrust laws [] have been levied against nonU.S. defendants for conduct occurring outside the U.S. Twenty-eight percent of those fines have been in excess of $100 million, with the largest, a fine of $650 million, levied in 2017.”75