# 1NC

## Off

### Politics DA---1NC

#### Infrastructure will pass now but can be derailed

Laura Tyson & Lenny Mendonca 9-14-2021, Laura Tyson, former chair of the US president's Council of Economic Advisers, is professor of the Graduate School at the Haas School of Business and chair of the Blum Centre Board of Trustees at the University of California, Berkeley. Lenny Mendonca, senior partner emeritus at McKinsey & Company, is a former chief economic and business adviser to Governor Gavin Newsom of California and chair of the California High-Speed Rail Authority "Why America must go big on infrastructure," Jordan Times, https://www.jordantimes.com/opinion/project-syndicate/why-america-must-go-big-infrastructure

Economists across the political spectrum have long advocated an increase in infrastructure investment in the United States. Now, Congress is debating infrastructure spending packages that would secure the current economic recovery and boost potential growth over the next decade.

Despite deep partisan divisions on most other issues, the Senate recently passed the $1 trillion Infrastructure Investment and Jobs Act (IIJA) by a large majority. The bill now must pass the House of Representatives, where Speaker Nancy Pelosi has secured an agreement for a vote by the end of September. Approval looks likely but is by no means certain, given complete lack of support from House Republicans and ongoing divisions among House Democrats.

#### Antitrust reform requires PC and trades off with other legislative priorities.

Peter C. Carstensen 21, the Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, February 2021, “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST,” https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

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

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

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

#### Infrastructure bill key to cyber security

Cat Zakrzewski, 8-14-2021, "The Senate’s $1 trillion infrastructure bill includes funding to secure Americans’ water systems and power grids from cyberattacks," https://www.washingtonpost.com/technology/2021/08/14/cybersecurity-infrastructure-senate-legislation/

A Senate bill intended to shore up the nation’s roads, pipes and electric grid includes billions to protect that aging infrastructure from cyberattacks.

With a series of high-profile ransomware attacks fresh in their minds, U.S. Senate negotiators wove cybersecurity investments throughout the bipartisan $1 trillion infrastructure proposal, which passed the Senate in a 69-to-30 vote on Tuesday and now moves to the House for a vote. The allocations are a reflection of the growing realization in Congress that a computer attack could leave Americans without water, power or other essentials.

“This is an incredibly serious threat to this country that’s only growing more serious,” said Sen. Angus King (I-Maine).

The Colonial Pipeline ransomware attack in May was a wake-up call that gave lawmakers and the public “a taste of what is potentially in store,” King said. The attack disrupted fuel supplies in the eastern United States, prompting gasoline shortages and panicked buying that affected millions for days.

The Colonial hack was just one in a series of attacks on lawmakers’ minds. King said he is particularly wary of attacks on the more than 100,000 public water systems in the United States, especially after a hacker in February took control of a water treatment facility in Oldsmar, Fla. The intruder raised the levels of sodium hydroxide to a hazardous point that could have sickened residents. An operator noticed the rising levels and was able to quickly intervene, but the incident highlighted the broader weaknesses at the facilities responsible for ensuring Americans have clean drinking water.

To King, one of the Senate negotiators, these incidents underlined that cybersecurity has to be a part of any work the government does on infrastructure, from broadband to power grids.

The bill directs the Federal Highway Administration to create a new tool to help transportation authorities better detect and respond to cyber attacks, which could range from ransomware attacks on transportation departments or hacks of traffic lights and road signs. It makes emergency funding available to respond to digital attacks on public water systems and makes grants available that can be used to help some water systems increase their ability to deal with cyberattacks as well as natural hazards and extreme weather.

It also calls on the Federal Energy Regulatory Commission to develop incentives to ensure that electric utilities are investing in cybersecurity and sharing data about potential threats.

The bill also authorizes nearly $2 billion in spending for specific cybersecurity initiatives, such as the creation of a $1 billion grant program to provide federal cybersecurity assistance to state and local governments, which experts say are among the most vulnerable institutions to ransomware attacks. The bill also would fund a new cyber director office, so that the federal government can better coordinate its response to major hacks, and would create a $100 million response and recovery fund, which the Department of Homeland Security could use to support both private companies and governments’ recoveries from cyberattacks.

The infusion of funding follows years of warnings from across the federal government of the vulnerability of U.S. critical infrastructure to cyberattacks. A year ago, the National Security Agency and the Cybersecurity and Infrastructure Security Agency warned that critical infrastructure systems, including energy, transportation and water systems, make “attractive targets for foreign powers attempting to do harm to U.S. interests or retaliate for perceived U.S. aggression.”

#### Cyberattacks go nuclear.

Michael T. Klare 19. Professor emeritus of peace and world security studies at Hampshire College and senior visiting fellow at the Arms Control Association. “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation.” https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation

Another initiative incorporated in the strategy document also aroused concern: the claim that an enemy cyberattack on U.S. nuclear command, control, and communications (NC3) facilities would constitute a “non-nuclear strategic attack” of sufficient magnitude to justify the use of nuclear weapons in response.

Under the Obama administration’s NPR report, released in April 2010, the circumstances under which the United States would consider responding to non-nuclear attacks with nuclear weapons were said to be few. “The United States will continue to…reduce the role of nuclear weapons in deterring non-nuclear attacks,” the report stated. Although little was said about what sort of non-nuclear attacks might be deemed severe enough to justify a nuclear response, cyberstrikes were not identified as one of these. The 2018 NPR report, however, portrayed a very different environment, one in which nuclear combat is seen as increasingly possible and in which non-nuclear strategic threats, especially in cyberspace, were viewed as sufficiently menacing to justify a nuclear response. Speaking of Russian technological progress, for example, the draft version of the Trump administration’s NPR report stated, “To…correct any Russian misperceptions of advantage, the president will have an expanding range of limited and graduated [nuclear] options to credibly deter Russian nuclear or non-nuclear strategic attacks, which could now include attacks against U.S. NC3, in space and cyberspace.”1

The notion that a cyberattack on U.S. digital systems, even those used for nuclear weapons, would constitute sufficient grounds to launch a nuclear attack was seen by many observers as a dangerous shift in policy, greatly increasing the risk of accidental or inadvertent nuclear escalation in a crisis. “The entire broadening of the landscape for nuclear deterrence is a very fundamental step in the wrong direction,” said former Secretary of Energy Ernest Moniz. “I think the idea of nuclear deterrence of cyberattacks, broadly, certainly does not make any sense.”2

Despite such admonitions, the Pentagon reaffirmed its views on the links between cyberattacks and nuclear weapons use when it released the final version of the NPR report in February 2018. The official text now states that the president must possess a spectrum of nuclear weapons with which to respond to “attacks against U.S. NC3,” and it identifies cyberattacks as one form of non-nuclear strategic warfare that could trigger a nuclear response.

That cyberwarfare had risen to this level of threat, the 2018 NPR report indicated, was a product of the enhanced cybercapabilities of potential adversaries and of the creeping obsolescence of many existing U.S. NC3 systems. To overcome these vulnerabilities, it called for substantial investment in an upgraded NC3 infrastructure. Not mentioned, however, were extensive U.S. efforts to employ cybertools to infiltrate and potentially incapacitate the NC3 systems of likely adversaries, including Russia, China, and North Korea.

For the past several years, the U.S. Department of Defense has been exploring how it could employ its own very robust cyberattack capabilities to compromise or destroy enemy missiles from such states as North Korea before they can be fired, a strategy sometimes called “left of launch.”3 Russia and China can assume, on this basis, that their own launch facilities are being probed for such vulnerabilities, presumably leading them to adopt escalatory policies such as those espoused in the 2018 NPR report. Wherever one looks, therefore, the links between cyberwar and nuclear war are growing.

The Nuclear-Cyber Connection

These links exist because the NC3 systems of the United States and other nuclear-armed states are heavily dependent on computers and other digital processors for virtually every aspect of their operation and because those systems are highly vulnerable to cyberattack. Every nuclear force is composed, most basically, of weapons, early-warning radars, launch facilities, and the top officials, usually presidents or prime ministers, empowered to initiate a nuclear exchange. Connecting them all, however, is an extended network of communications and data-processing systems, all reliant on cyberspace. Warning systems, ground- and space-based, must constantly watch for and analyze possible enemy missile launches. Data on actual threats must rapidly be communicated to decision-makers, who must then weigh possible responses and communicate chosen outcomes to launch facilities, which in turn must provide attack vectors to delivery systems. All of this involves operations in cyberspace, and it is in this domain that great power rivals seek vulnerabilities to exploit in a constant struggle for advantage.

The use of cyberspace to gain an advantage over adversaries takes many forms and is not always aimed at nuclear systems. China has been accused of engaging in widespread cyberespionage to steal technical secrets from U.S. firms for economic and military advantages. Russia has been accused, most extensively in the Robert Mueller report, of exploiting cyberspace to interfere in the 2016 U.S. presidential election. Nonstate actors, including terrorist groups such as al Qaeda and the Islamic State group, have used the internet for recruiting combatants and spreading fear. Criminal groups, including some thought to be allied with state actors, such as North Korea, have used cyberspace to extort money from banks, municipalities, and individuals.4 Attacks such as these occupy most of the time and attention of civilian and military cybersecurity organizations that attempt to thwart such attacks. Yet for those who worry about strategic stability and the risks of nuclear escalation, it is the threat of cyberattacks on NC3 systems that provokes the greatest concern.

This concern stems from the fact that, despite the immense effort devoted to protecting NC3 systems from cyberattack, no enterprise that relies so extensively on computers and cyberspace can be made 100 percent invulnerable to attack. This is so because such systems employ many devices and operating systems of various origins and vintages, most incorporating numerous software updates and “patches” over time, offering multiple vectors for attack. Electronic components can also be modified by hostile actors during production, transit, or insertion; and the whole system itself is dependent to a considerable degree on the electrical grid, which itself is vulnerable to cyberattack and is far less protected. Experienced “cyberwarriors” of every major power have been working for years to probe for weaknesses in these systems and in many cases have devised cyberweapons, typically, malicious software (malware) and computer viruses, to exploit those weaknesses for military advantage.5

Although activity in cyberspace is much more difficult to detect and track than conventional military operations, enough information has become public to indicate that the major nuclear powers, notably China, Russia, and the United States, along with such secondary powers as Iran and North Korea, have established extensive cyberwarfare capabilities and engage in offensive cyberoperations on a regular basis, often aimed at critical military infrastructure. “Cyberspace is a contested environment where we are in constant contact with adversaries,” General Paul M. Nakasone, commander of the U.S. Cyber Command (Cybercom), told the Senate Armed Services Committee in February 2019. “We see near-peer competitors [China and Russia] conducting sustained campaigns below the level of armed conflict to erode American strength and gain strategic advantage.”

Although eager to speak of adversary threats to U.S. interests, Nakasone was noticeably but not surprisingly reluctant to say much about U.S. offensive operations in cyberspace. He acknowledged, however, that Cybercom took such action to disrupt possible Russian interference in the 2018 midterm elections. “We created a persistent presence in cyberspace to monitor adversary actions and crafted tools and tactics to frustrate their efforts,” he testified in February. According to press accounts, this included a cyberattack aimed at paralyzing the Internet Research Agency, a “troll farm” in St. Petersburg said to have been deeply involved in generating disruptive propaganda during the 2016 presidential elections.6

Other press investigations have disclosed two other offensive operations undertaken by the United States. One called “Olympic Games” was intended to disrupt Iran’s drive to increase its uranium-enrichment capacity by sabotaging the centrifuges used in the process by infecting them with the so-called Stuxnet virus. Another left of launch effort was intended to cause malfunctions in North Korean missile tests.7 Although not aimed at either of the U.S. principal nuclear adversaries, those two attacks demonstrated a willingness and capacity to conduct cyberattacks on the nuclear infrastructure of other states.

Efforts by strategic rivals of the United States to infiltrate and eventually degrade U.S. nuclear infrastructure are far less documented but thought to be no less prevalent. Russia, for example, is believed to have planted malware in the U.S. electrical utility grid, possibly with the intent of cutting off the flow of electricity to critical NC3 facilities in the event of a major crisis.8 Indeed, every major power, including the United States, is believed to have crafted cyberweapons aimed at critical NC3 components and to have implanted malware in enemy systems for potential use in some future confrontation.

Pathways to Escalation

Knowing that the NC3 systems of the major powers are constantly being probed for weaknesses and probably infested with malware designed to be activated in a crisis, what does this say about the risks of escalation from a nonkinetic battle, that is, one fought without traditional weaponry, to a kinetic one, at first using conventional weapons and then, potentially, nuclear ones? None of this can be predicted in advance, but those analysts who have studied the subject worry about the emergence of dangerous new pathways for escalation. Indeed, several such scenarios have been identified.9

The first and possibly most dangerous path to escalation would arise from the early use of cyberweapons in a great power crisis to paralyze the vital command, control, and communications capabilities of an adversary, many of which serve nuclear and conventional forces. In the “fog of war” that would naturally ensue from such an encounter, the recipient of such an attack might fear more punishing follow-up kinetic attacks, possibly including the use of nuclear weapons, and, fearing the loss of its own arsenal, launch its weapons immediately. This might occur, for example, in a confrontation between NATO and Russian forces in east and central Europe or between U.S. and Chinese forces in the Asia-Pacific region.

Speaking of a possible confrontation in Europe, for example, James N. Miller Jr. and Richard Fontaine wrote that “both sides would have overwhelming incentives to go early with offensive cyber and counter-space capabilities to negate the other side’s military capabilities or advantages.” If these early attacks succeeded, “it could result in huge military and coercive advantage for the attacker.” This might induce the recipient of such attacks to back down, affording its rival a major victory at very low cost. Alternatively, however, the recipient might view the attacks on its critical command, control, and communications infrastructure as the prelude to a full-scale attack aimed at neutralizing its nuclear capabilities and choose to strike first. “It is worth considering,” Miller and Fontaine concluded, “how even a very limited attack or incident could set both sides on a slippery slope to rapid escalation.”10

What makes the insertion of latent malware in an adversary’s NC3 systems so dangerous is that it may not even need to be activated to increase the risk of nuclear escalation. If a nuclear-armed state comes to believe that its critical systems are infested with enemy malware, its leaders might not trust the information provided by its early-warning systems in a crisis and might misconstrue the nature of an enemy attack, leading them to overreact and possibly launch their nuclear weapons out of fear they are at risk of a preemptive strike.

“The uncertainty caused by the unique character of a cyber threat could jeopardize the credibility of the nuclear deterrent and undermine strategic stability in ways that advances in nuclear and conventional weapons do not,” Page O. Stoutland and Samantha Pitts-Kiefer wrote in 2018 paper for the Nuclear Threat Initiative. “[T]he introduction of a flaw or malicious code into nuclear weapons through the supply chain that compromises the effectiveness of those weapons could lead to a lack of confidence in the nuclear deterrent,” undermining strategic stability.11 Without confidence in the reliability of its nuclear weapons infrastructure, a nuclear-armed state may misinterpret confusing signals from its early-warning systems and, fearing the worst, launch its own nuclear weapons rather than lose them to an enemy’s first strike. This makes the scenario proffered in the 2018 NPR report, of a nuclear response to an enemy cyberattack, that much more alarming.

### Regulations CP---1NC

#### The United States federal government should separate platforms from commerce for platforms in the private sector 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.

### States CP---1NC

#### The fifty states and other relevant sub-national entities should adopt the principle of separating platforms from commerce for platforms in the private sector.

#### States can pursue autonomous anti-trust enforcement even when conflicting with federal law.

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At the federal level, the U.S. antitrust laws—including the Sherman Act and the Clayton Act, which governs mergers and acquisitions—are enforced by the FTC and DOJ. States also have antitrust laws, which are enforced by state AGs and are often patterned after their federal analogs, but can contain important differences. States frequently collaborate with the federal antitrust agencies and/or other states on merger investigations. However, the Supreme Court has recognized that states are not required to do so, and have the right to make enforcement decisions that differ from other federal and state authorities.[[3]](https://www.jdsupra.com/legalnews/trends-in-state-antitrust-enforcement-42950/#_ftn3) States have sometimes exercised this authority in order to “fill the gap” of perceived under-enforcement at the federal level. For example, in June 2017, the California AG sued to block Valero Energy Partners LP’s acquisition of two petroleum terminals in Northern California, despite the FTC’s decision not to challenge the deal. Several months later, the parties abandoned the transaction. More broadly, in recent years, there has been a growing trend of robust and autonomous state antitrust enforcement, as illustrated by major investigations and enforcement actions by state coalitions in the healthcare, pharmaceutical, telecom, and technology sectors, among others. Consistent with this trend, Colorado AG Phil Weiser—who previously served as Deputy Assistant Attorney General in the DOJ Antitrust Division under the Obama administration—has affirmed his commitment to “protecting all Coloradans from anticompetitive consolidation and practices…whether or not the federal government acts to protect Coloradans.” In keeping with this mandate, the Amendment will bring Colorado increasingly in line with states such as California and New York that have demonstrated an appetite for aggressive, independent antitrust enforcement, even where it may depart (or conflict) with federal action.

### Notice and Comment---1NC

#### Text: The United States federal government should delegate antitrust rulemaking authority to a new expert agency. The agency should begin notice-and-comment rulemaking to adopt the principle of separating platforms from commerce for platforms in the private sector.

#### Solves the case, engages notice and comment, and avoids courts disads.

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Without the informational benefits of expertise and notice-and-comment rulemaking, the Court may be a poor choice to define the broad proscriptions of the Sherman Act. Framed this way, the problem has an obvious solution: give the power to interpret the Act to an expert agency.240 This idea has academic support already, 241 and the case for it is strengthened by this Article's observation that the Court has tried to approximate administrative decision making by relying on amicus briefs. The obvious candidates for reallocation are the two existing antitrust agencies: the Department of Justice's Antitrust Division and the FTC.

A. The Agency Solution

Using agencies to give specific meaning to American antitrust's most important statute means avoiding the problems with the Court's current quasi-administrative process for rulemaking. As adjudicators, agency experts would know what kind of economic evidence is necessary for an efficient solution and would be better able to understand it when it is presented by the parties. Repeat exposure to antitrust cases would only reinforce this advantage, while also giving the administrative judges a broader perspective on what kinds of conflicts commonly arise in competition law, a perspective necessary for efficient policy making in the first instance. A Supreme Court Justice hears about one antitrust case a year, hardly the cross section of controversies necessary to make efficient economic policy writ large.

Agencies could take policy making a step further using notice-and-comment rulemaking. Unlike in adjudication, regulation by rulemaking can be initiated without the formal requirements of a case or controversy and a proper appeal to the Supreme Court. Informal letters of complaint could spark an investigation. A rule-making agency could announce its intention to regulate publicly and provide a convenient venue for, or even solicit, expert opinions on the economic impact of the proposed rule. Not only would it have the benefit of these numerous perspectives, but it would also have the obligation to respond to them in a reasoned manner. Its rule would be subject to judicial review, affording an opportunity to catch mistakes 242 or invalidate rules that do nothing but deliver rents to special interests.

Another advantage of rulemaking, an option for agencies but not for the Court, since it only operates through adjudication, is that rulemaking regulates behavior ex ante, while resolution of economic policy through cases is necessarily ex post. Antitrust courts worry obsessively about "chill"--deterring procompetitive behavior with overly broad rules for liability.2 43 In fact, the overruling of Dr. Miles in Leegin implies that the entire twentieth century was a period of inefficient business practices and stunted innovation in distribution because of an early misunderstanding of RPM. Only after a long and expensive period of litigation was Leegin redeemed for breaking the law by effecting a change in the law, and only after Leegin was issued were similar firms, perhaps walking the Colgate line better than Leegin, redeemed for wanting some control over their product's ultimate retail price.24 4 The problem of ex post rulemaking is made worse by the treble damages afforded successful plaintiffs suing under the Sherman Act.2 4 5 To create a new form of liability, the Court has to punish a firm threefold for complying with standing antitrust norms. Thus Supreme Court lawmaking in antitrust is a kind of one-way ratchet.246

The result of the current ex post scheme is that "antitrust law leaves considerable gaps between what is permissible and what is optimal." 2 47 With judges making the rules one case at a time, this gap is justifiable. As discussed above, when judges are not economically sophisticated enough to know where "optimal" lies, 24 8 laissez-faire is a very inexpensive regulatory regime for courts to follow, and raising the level of regulation would effect a kind of taking of property from firms operating under the status quo. So if the Court is making antitrust policy, laissez-faire may be the only sensible approach. But that is not to say that it is the most sensible approach. An agency could provide firms with the necessary clarity-ex ante-that they need when conducting business in a world where competitive behavior so closely resembles anticompetitive conduct. The current state of affairs is that much more is illegal on the books than antitrust lawyers think is actually likely to be struck down in a court.24 9 Lawyers thrive in such a legally uncertain world, but firm efficiency suffers.

#### Key to democracy and court acquiescence---notice and comment engages participants and creates deference.

Harry First and Spencer Weber Waller 13. Harry First, New York University School of Law. Spencer Weber Waller, Loyola University Chicago School of Law. “Antitrust’s Democracy Deficit”. Fordham Law Review, Volume 81 Issue 5 Article 13. https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4890&context=flr

Redressing antitrust’s democracy deficit on the procedural side can be done with the tools of administrative law. Administrative law is the body of law that controls the procedures of governmental decision making.151 It allows interested persons to participate in decisions that affect their interests. Normally, it requires appropriate notice, the right to be heard, fair procedures, protection of fundamental rights, and judicial review of the resulting decision. These basic features are present in the administrative laws of most foreign legal systems and are part of a growing international consensus.152 The tradeoff is that the decisions of administrative agencies that properly follow these strictures normally are granted a degree of deference as to the interpretation of the laws they enforce.153 Frequently, but not inevitably, private parties also have the right to proceed with actions for damages against private parties who violate their regulatory obligations and even against the government itself when it acts unlawfully, either substantively or procedurally. These tools of administrative law are available to make antitrust enforcement decisions more transparent and more responsive to the interests that the antitrust laws were meant to serve, thereby promoting both better decision making and greater democratic legitimacy.

CONCLUSION

Free markets and free people cannot be assured by the efforts of technocrats. Ultimately, both come about through the workings of democratic institutions, respectful of the legislature’s goals and constrained from engaging in arbitrary action. Antitrust has moved too far from democratic institutions and toward technocratic control, in service to a laissez-faire approach to antitrust enforcement. We need to move the needle back. Doing so will strengthen the institutions of antitrust, the market economy, and the democratic branches of government themselves.

#### Democracy solves war

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Despite Churchill’s famous quip—“Democracy is the worst form of government, except for all those other forms that have been tried from time to time”2—democracy is seen as a source of both domestic and international flourishing. Democracy, understood roughly for now as a political system with wide suffrage in which power is allocated to officials by popular election, can solve or help solve a host of problems with stunning success. It can solve the problem of revolutionary violence that condemns autocratic regimes, because mass politics can work at the ballot box rather than the streets. It can help solve the problem of famine, because the systems of free public communication and discussion that are essential to democratic politics are the backbone of the markets that have made democratic societies far richer than their competitors. It can help solve the problem of environmental despoliation, which occurs when those operating polluting factories (whether private citizens or the state) do not need to answer for harms visited upon a broad public. And democracy has been famously thought to help solve the problem of war, in the guise of the idea of the “peace amongst democratic nations”—an idea emerging with Immanuel Kant in the Age of Enlightenment and given new energy with the wave of democratization at the end of the twentieth century.

### FTC Trade Off---1NC

**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**

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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>

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.”

### Japan---1NC

#### New extraterritorial application of antitrust 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)).

#### Economic alliance solves climate change---business cooperation key to consistency.

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Last week’s bilateral meeting between Biden and Japanese Prime Minister Suga Yoshihide laid the groundwork for the climate summit, with the U.S. and Japan announcing their global climate leadership. The governments seek to use energy cooperation to address climate change, geostrategic challenges raised by China, and other issues of mutual concern. However, the two countries’ track record of volatility and inconsistency makes some countries skeptical about their reliability as partners.

An urgent task for both countries is to institutionalize climate policy through domestic, bilateral, and multilateral mechanisms that outlast any single administration. This means building partnerships that emphasize business opportunities and irreversible investments in energy sector transformation. The institutionalization of initiatives and the creation of vested interests in green technologies and green growth will be critical in preventing future backsliding on climate commitments.

U.S.-Japan Climate Partnership

The U.S.-Japan Climate Partnership on Ambition, Decarbonization, and Clean Energy, announced on April 16 while Suga was in Washington, D.C., is a natural extension of existing bilateral initiatives, but it also signals a meaningful shift from the policies of the previous governments.

The Biden and Suga governments will continue ventures such as the Japan-U.S.-Mekong Power Partnership (JUMPP) and cooperation on nuclear energy technology. But, in keeping with Biden and Suga’s stated intentions to pursue carbon neutrality by 2050, the Japan-U.S. Strategic Energy Partnership (JUSEP) has been upgraded to the Japan-U.S. Clean Energy Partnership (JUCEP), which will move beyond past cooperative activities on technology research and development, in the context of the Paris Agreement and the Free and Open Indo-Pacific strategy.

Most importantly, their joint statements and accompanying rhetoric have emphasized the role of the United States and Japan as emerging leaders in a number of areas connected with climate change mitigation. To exert true leadership, it will be critical to develop concrete measures and policies to not only deepen cooperation but also accelerate domestic decarbonization.

Green Technologies and Green Growth

The COVID-19 pandemic presents a potentially transformative opportunity for governments to overcome entrenched resistance to climate policies. This starts with a green recovery from the pandemic as the first step to sustainable green growth. Emerging green industries can be promoted and entrenched by government investment, support, and international linkages. Green growth can also address energy security challenges, such as Japan’s longstanding dependence on fossil fuel imports. The pandemic further provides a window of opportunity to design multilateral frameworks to more effectively address global dimensions of climate change like taxation, green border adjustment, and asset revaluation.

The U.S.-Japan Climate Partnership expands on existing cooperation to include “renewable energy, energy storage (such as batteries and long-duration energy storage technologies), smart grid, energy efficiency, hydrogen, Carbon Capture, Utilization and Storage/Carbon Recycling, industrial decarbonization, and advanced nuclear power.” The partnership will target both domestic and foreign needs. For example, both the United States and Japan need to upgrade their own grids and integrate renewables into the grid. And, through advancements in and transfer of smart grid technology, they can contribute to the modernization and efficiency of other countries’ energy sectors as well.

Even though Japan is a leader in research and development in clean energy technologies, it has faced impediments in transforming that into profitable ventures in the marketplace. U.S. industry had early successes with clean energy technologies, but China has come to dominate much of the commercial landscape. In partnership, Japan and the United States may be able to compete more effectively with China and reassert their market share.

Offering an Alternative to China

Japan-U.S. energy cooperation is part of a larger geostrategic and geoeconomic strategy in the region and around the world. Their collaboration presents an alternative to China’s Belt and Road Initiative in the energy infrastructure sector. Clean energy is consistent with Japan’s promotion of quality infrastructure in the Indo-Pacific as an alternative to Chinese initiatives. For Japan, committing to a decisive shift away from coal will be critical in making this strategy credible.

Although China and the U.S. will need to cooperate on climate change, they are also likely to be competing in promoting their own visions for the future. The U.S.-Japan Joint Leaders Statement presented a vision of the world where the United States and Japan are on the side of “freedom, democracy, human rights, the rule of law, international law, multilateralism, and a free and fair economic order.” Climate leadership was the missing piece in Japan’s newfound leadership in support of the liberal international order. Multilateral cooperation on green technology, green recovery, green growth, and climate partnerships will be critical areas as the U.S. and Japan seek to re-exert their global leadership and present an alternative to China.

Leading Multilateral Cooperation

The joint statements by the U.S. and Japan have called not only for domestic efforts and bilateral cooperation, but also for promoting a global goal of net zero emissions by 2050. Although the UNFCCC process has important shortcomings and may be sabotaged by future administrations, the two countries should continue to work with global partners to push the agenda forward.

Aside from global multilateral cooperation, the United States and Japan can support Southeast Asian countries to address an expected 6 percent increase in annual electricity consumption without resorting to high-carbon technologies or an overreliance on Chinese debt diplomacy. Building on JUMPP, promoting green technology investments through bilateral and multilateral partnerships can perpetuate the U.S. and Japan as climate leaders and diplomatic partners in the region. It will have the added benefit of integrating U.S. and Japanese businesses and economic interests into the energy infrastructure of the region.

The Japan-U.S. bilateral commitment to climate is a meaningful development and encompasses national security, economic development, energy security, and environmental objectives. It also reflects the domestic and foreign policy interests of Biden and Suga. For Biden, it creates a clear break from the Trump administration and promotes key pillars of his domestic and foreign policy agenda, including a recommitment to allies and multilateralism, countering China’s expanding influence, and clean energy infrastructure. For Suga, it burnishes his bona fides as a steady hand managing the Japan-U.S. relationship and signals Japan’s continued willingness to play a global leadership role.

For both leaders, it will be crucial to move ambitiously and expeditiously in the direction of decarbonization. Future policy reversals can be made more costly through institutionalization, large-scale infrastructure investments, and the growth of successful green businesses that counter vested interests tied to the fossil fuel sector. For the United States and Japan to emerge as undisputed leaders in climate change, it will be critical to expand into new areas of cooperation and overcome potential sources of backsliding at home.

#### Unchecked climate change causes extinction.

Bill McKibben 19. Schumann Distinguished Scholar at Middlebury College; fellow of the American Academy of Arts and Sciences; holds honorary degrees from 18 colleges and universities; Foreign Policy named him to their inaugural list of the world’s 100 most important global thinkers. "This Is How Human Extinction Could Play Out." Rolling Stone. 4-9-2019. https://www.rollingstone.com/politics/politics-features/bill-mckibben-falter-climate-change-817310/

Oh, it could get very bad.

In 2015, a study in the Journal of Mathematical Biology pointed out that if the world’s oceans kept warming, by 2100 they might become hot enough to “stop oxygen production by phyto-plankton by disrupting the process of photosynthesis.” Given that two-thirds of the Earth’s oxygen comes from phytoplankton, that would “likely result in the mass mortality of animals and humans.”

A year later, above the Arctic Circle, in Siberia, a heat wave thawed a reindeer carcass that had been trapped in the permafrost. The exposed body released anthrax into nearby water and soil, infecting two thousand reindeer grazing nearby, and they in turn infected some humans; a twelve-year-old boy died. As it turns out, permafrost is a “very good preserver of microbes and viruses, because it is cold, there is no oxygen, and it is dark” — scientists have managed to revive an eight-million-year-old bacterium they found beneath the surface of a glacier. Researchers believe there are fragments of the Spanish flu virus, smallpox, and bubonic plague buried in Siberia and Alaska.

Or consider this: as ice sheets melt, they take weight off land, and that can trigger earthquakes — seismic activity is already increasing in Greenland and Alaska. Meanwhile, the added weight of the new seawater starts to bend the Earth’s crust. “That will give you a massive increase in volcanic activity. It’ll activate faults to create earthquakes, submarine landslides, tsunamis, the whole lot,” explained the director of University College London’s Hazard Centre. Such a landslide happened in Scandinavia about eight thousand years ago, as the last Ice Age retreated and a Kentucky-size section of Norway’s continental shelf gave way, “plummeting down to the abyssal plain and creating a series of titanic waves that roared forth with a vengeance,” wiping all signs of life from coastal Norway to Greenland and “drowning the Wales-sized landmass that once connected Britain to the Netherlands, Denmark, and Germany.” When the waves hit the Shetlands, they were sixty-five feet high.

There’s even this: if we keep raising carbon dioxide levels, we may not be able to think straight anymore. At a thousand parts per million (which is within the realm of possibility for 2100), human cognitive ability falls 21 percent. “The largest effects were seen for Crisis Response, Information Usage, and Strategy,” a Harvard study reported, which is too bad, as those skills are what we seem to need most.

I could, in other words, do my best to scare you silly. I’m not opposed on principle — changing something as fundamental as the composition of the atmosphere, and hence the heat balance of the planet, is certain to trigger all manner of horror, and we shouldn’t shy away from it. The dramatic uncertainty that lies ahead may be the most frightening development of all; the physical world is going from backdrop to foreground. (It’s like the contrast between politics in the old days, when you could forget about Washington for weeks at a time, and politics in the Trump era, when the president is always jumping out from behind a tree to yell at you.)

But let’s try to occupy ourselves with the most likely scenarios, because they are more than disturbing enough. Long before we get to tidal waves or smallpox, long before we choke to death or stop thinking clearly, we will need to concentrate on the most mundane and basic facts: everyone needs to eat every day, and an awful lot of us live near the ocean.

FOOD SUPPLY first. We’ve had an amazing run since the end of World War II, with crop yields growing fast enough to keep ahead of a fast-rising population. It’s come at great human cost — displaced peasant farmers fill many of the planet’s vast slums — but in terms of sheer volume, the Green Revolution’s fertilizers, pesticides, and machinery managed to push output sharply upward. That climb, however, now seems to be running into the brute facts of heat and drought. There are studies to demonstrate the dire effects of warming on coffee, cacao, chickpeas, and champagne, but it is cereals that we really need to worry about, given that they supply most of the planet’s calories: corn, wheat, and rice all evolved as crops in the climate of the last ten thousand years, and though plant breeders can change them, there are limits to those changes. You can move a person from Hanoi to Edmonton, and she might decide to open a Vietnamese restaurant. But if you move a rice plant, it will die.

A 2017 study in Australia, home to some of the world’s highest-tech farming, found that “wheat productivity has flatlined as a direct result of climate change.” After tripling between 1900 and 1990, wheat yields had stagnated since, as temperatures increased a degree and rainfall declined by nearly a third. “The chance of that just being variable climate without the underlying factor [of climate change] is less than one in a hundred billion,” the researchers said, and it meant that despite all the expensive new technology farmers kept introducing, “they have succeeded only in standing still, not in moving forward.” Assuming the same trends continued, yields would actually start to decline inside of two decades, they reported. In June 2018, researchers found that a two-degree Celsius rise in temperature — which, recall, is what the Paris accords are now aiming for — could cut U.S. corn yields by 18 percent. A four-degree increase — which is where our current trajectory will take us — would cut the crop almost in half. The United States is the world’s largest producer of corn, which in turn is the planet’s most widely grown crop.

Corn is vulnerable because even a week of high temperatures at the key moment can keep it from fertilizing. (“You only get one chance to pollinate a quadrillion kernels of corn,” the head of a commodity consulting firm explained.) But even the hardiest crops are susceptible. Sorghum, for instance, which is a staple for half a billion humans, is particularly hardy in dry conditions because it has big, fibrous roots that reach far down into the earth. Even it has limits, though, and they are being reached. Thirty years of data from the American Midwest show that heat waves affect the “vapor pressure deficit,” the difference between the water vapor in the sorghum leaf’s interior and that in the surrounding air. Hotter weather means the sorghum releases more moisture into the atmosphere. Warm the planet’s temperature by two degrees Celsius — which is, again, now the world’s goal — and sorghum yields drop 17 percent. Warm it five degrees Celsius (nine degrees Fahrenheit), and yields drop almost 60 percent.

It’s hard to imagine a topic duller than sorghum yields. It’s the precise opposite of clickbait. But people have to eat; in the human game, the single most important question is probably “What’s for dinner?” And when the answer is “Not much,” things deteriorate fast. In 2010 a severe heat wave hit Russia, and it wrecked the grain harvest, which led the Kremlin to ban exports. The global price of wheat spiked, and that helped trigger the Arab Spring — Egypt at the time was the largest wheat importer on the planet. That experience set academics and insurers to work gaming out what the next food shock might look like. In 2017 one team imagined a vigorous El Niño, with the attendant floods and droughts — for a season, in their scenario, corn and soy yields declined by 10 percent, and wheat and rice by 7 percent. The result was chaos: “quadrupled commodity prices, civil unrest, significant negative humanitarian consequences . . . Food riots break out in urban areas across the Middle East, North Africa, and Latin America. The euro weakens and the main European stock markets lose ten percent.”

At about the same time, a team of British researchers released a study demonstrating that even if you can grow plenty of food, the transportation system that distributes it runs through just fourteen major choke-points, and those are vulnerable to — you guessed it — massive disruption from climate change. For instance, U.S. rivers and canals carry a third of the world’s corn and soy, and they’ve been frequently shut down or crimped by flooding and drought in recent years. Brazil accounts for 17 percent of the world’s grain exports, but heavy rainfall in 2017 stranded three thousand trucks. “It’s the glide path to a perfect storm,” said one of the report’s authors.

Five weeks after that, another report raised an even deeper question. What if you can figure out how to grow plenty of food, and you can figure out how to guarantee its distribution, but the food itself has lost much of its value? The paper, in the journal Environmental Research, said that rising carbon dioxide levels, by speeding plant growth, seem to have reduced the amount of protein in basic staple crops, a finding so startling that, for many years, agronomists had overlooked hints that it was happening. But it seems to be true: when researchers grow grain at the carbon dioxide levels we expect for later this century, they find that minerals such as calcium and iron drop by 8 percent, and protein by about the same amount. In the developing world, where people rely on plants for their protein, that means huge reductions in nutrition: India alone could lose 5 percent of the protein in its total diet, putting 53 million people at new risk for protein deficiency. The loss of zinc, essential for maternal and infant health, could endanger 138 million people around the world. In 2018, rice researchers found “significantly less protein” when they grew eighteen varieties of rice in high–carbon dioxide test plots. “The idea that food became less nutritious was a surprise,” said one researcher. “It’s not intuitive. But I think we should continue to expect surprises. We are completely altering the biophysical conditions that underpin our food system.” And not just ours. People don’t depend on goldenrod, for instance, but bees do. When scientists looked at samples of goldenrod in the Smithsonian that dated back to 1842, they found that the protein content of its pollen had “declined by a third since the industrial revolution — and the change closely tracks with the rise in carbon dioxide.”

Bees help crops, obviously, so that’s scary news. But in August 2018, a massive new study found something just as frightening: crop pests were thriving in the new heat. “It gets better and better for them,” said one University of Colorado researcher. Even if we hit the UN target of limiting temperature rise to two degrees Celsius, pests should cut wheat yields by 46 percent, corn by 31 percent, and rice by 19 percent. “Warmer temperatures accelerate the metabolism of insect pests like aphids and corn borers at a predictable rate,” the researchers found. “That makes them hungrier[,] and warmer temperatures also speed up their reproduction.” Even fossilized plants from fifty million years ago make the point: “Plant damage from insects correlated with rising and falling temperatures, reaching a maximum during the warmest periods.”

## Case 1

### ---1NC – Terrorism - General

#### The plan disrupts effective surveillance---breaking up big tech undermines information necessary to stop terror attacks.

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But there are dangers in restructuring any U.S. industry. One of the most serious remains largely unrecognized: national-security risk. Despite their faults, tech companies contribute directly to American military and intelligence operations. Their titanic scale can itself be an asset. Any responsible antitrust debate must address the national security risks of breaking up Big Tech—and the parallel risks of keeping these companies intact. Consider cloud computing. The Defense Department is planning a massive global cloud called JEDI. Unlike corporate clouds, the “war cloud” must support life-or-death missions on austere battlefields despite virtual or physical onslaughts. The Pentagon found only two eligible bidders: Amazon and Microsoft. Three defense secretaries, a federal judge and the Government Accountability Office have upheld this bidding process. It is no coincidence the two eligible bidders have a combined market value of $1.9 trillion. Vast resources were needed to fund global networks of hardened data centers linked by undersea cables. The U.S. military’s unique demands required companies of unique scale. Yet one JEDI bidder faces a concerted breakup campaign (Amazon), and the other was nearly dissolved in 2001 (Microsoft). Scale also matters in intelligence collection. The Foreign Intelligence Surveillance Act compels U.S. companies to hand over data on suspected foreign agents. U.S. intelligence analysts increasingly rely on FISA to monitor terrorist communications or warn of cyberattacks. Tech giants have particular FISA value because their sheer popularity attracts users from around the world, including hostile actors. The largest tech companies provide some of the fastest-growing intelligence streams. Splitting up Big Tech would reduce its intelligence value. First, smaller companies would lose global market share to foreign rivals such as Alibaba or Baidu, which can ignore FISA. Small U.S. sites can’t leverage the “network effect,” a gravitational force that helps large sites stay dominant. Intelligence collected from small sites would also be less useful. They see only narrow slices of online activity, whereas tech giants track users across sprawling internet ecosystems. Dismantling these ecosystems would put greater burden on intelligence agencies to “connect the dots” of potential threats.

#### That information is key to hindsight and foresight---absent that, attacks are inevitable.

Pierre Hines 20. Defense Council Member at the Truman Center. “HERE’S HOW METADATA ON BILLIONS OF PHONE CALLS PREDICTS TERRORIST ATTACKS.” <http://trumancenter.org/doctrine-blog/heres-how-metadata-on-billions-of-phone-calls-predicts-terrorist-attacks/>.

One of major benefits of metadata is that it provides hindsight—it gives intelligence analysts a retrospective view of a sequence of events. As Deputy Director Boyce discussed, the ability to analyze previous communications allowed the FBI to reopen the 9/11 investigation and determine who was linked to that attack. It is important to recognize that terrorist attacks are not orchestrated overnight; they take months or years to plan. Therefore, if the intelligence community only catches wind of an attack halfway into the terrorists’ planning cycle, or even after a terrorist attack has taken place, metadata might be the only source of information that captures the sequence of events leading up to an attack. Once a terrorist suspect has been identified or once an attack has taken place, intelligence analysts can use powerful software to sift through metadata to determine which numbers, IP addresses, or individuals are associated with the suspect. Moreover, phone numbers and IP addresses sometimes serve as a proxy for the general location of where the planning has taken place. This ability to narrow down the location of terrorists can help determine whether the intelligence community is dealing with a domestic or international threat.

Even more useful than hindsight is a crystal ball that gives the intelligence community a look into the future. Simply knowing how many individuals are in a chat room, how many individuals have contacted a particular phone user, or how many individuals are on an email chain could serve as an indicator of how many terrorists are involved in a plot. Furthermore, knowing when a suspect communicates can help identify his patterns of behavior. For instance, metadata can help establish whether a suspect communicates sporadically or on a set pattern (e.g., making a call every Saturday at 2 p.m.). Any deviation from that pattern could indicate that the plan changed at a certain point; any phone number or email address used consistently and then not at all could indicate that a suspect has stopped communicating with an associate. Additionally, a rapid increase in communication could indicate that an attack is about to happen.

#### Extinction---terrorists will use CBRNs.

Richard Schoeberl 18. Program Chair of Criminology and Homeland Security at Martin Methodist College; over 22 years of security and law enforcement experience, including the FBI and the CIA’s National Counterterrorism Center; acting unit chief of the International Terrorism Operations Section. “CBRNE Weapons & Islamic State – A Bad Combination.” Domestic Preparedness. 4/25/2018. https://www.domesticpreparedness.com/resilience/cbrne-weapons-islamic-state-a-bad-combination/

**CBRNE – chemical, biological, radiological, nuclear, and explosive**

The black market would be a clear path for the Islamic State to obtain materials that could be used in a CBRNE attack. In 2015, the Federal Bureau of Investigation (FBI) and Moldovan investigators ran a sting operation against a suspected arms smuggler in Moldovia attempting to sell to what he thought was a representative from the Islamic State high-grade uranium (Cesium 137). The smuggler was intentionally seeking a Middle Eastern buyer, so the weapon could be used on “the Americans.” As indicated in the recent 2018 Worldwide Threat Assessment Intelligence report, produced by the Director of National Intelligence, both state and non-state actors have already demonstrated the development and use of CBRNE weaponry. The report emphasizes that, “chemical materials and technologies – almost always dual-use – move easily in the globalized economy, as do personnel with the scientific expertise to design and use them for legitimate and illegitimate purposes.” The Islamic State is the first non-state actor to combine a projectile delivery system with a banned chemical warfare agent, according to the Combating Terrorism Center. According to a NATO Review report, there is a “very real – but not yet fully identified risk – of foreign fighters in the Islamic State’s ranks using chemical, biological, radiological or nuclear (CBRN) materials as weapons of terror against the West.” Like al-Qaida, the Islamic State has also sought the use of chemical and biological weapons. Although al-Qaida’s efforts were merely aspirational at best, the Islamic State actually achieved the goal of chemical weapon acquisition. During congressional testimony in 2016, the then Director of National Intelligence James Clapper stated that the Islamic State’s use of chemical weapons is the first time a terrorist organization has done such since 1995, when the organization Aum Shinrikyo used sarin gas on the subway in Tokyo. The United Nations has been investigating the use of chemical weapons in Syria and Iraq and have concluded the Islamic State has acquired and used chemical weapons on many occasions. According to the 2018 Worldwide Threat Assessment, the Islamic State has been previously linked to sulfur mustard attacks and several chemical weapons attacks within Syria and Iraq. Experts believe the Islamic State’s arsenal of weapons includes mustard gas and chlorine. Michael Morell, former Central Intelligence Agency (CIA) deputy and acting director, stated that “ISIS has for some time said that they want to acquire weapons of mass destruction and to use them and they’ve actually been able to manufacture chemical weapons in Iraq and Syria and use them on the battlefield.” Following a thwarted attack in Paris, France, in 2015, then French Prime Minister Manuel Valls discussed before Parliament the possibility of the Islamic State using CBRNE weaponry against the West, saying, “I say it with all the precautions needed. But we know and bear in mind that there is also a risk of chemical or bacteriological weapons.” The West has reason to be with the Islamic State’s desire to employ CBRNE attacks. A laptop was recovered in the battlefield in 2014 from an Islamic State stronghold inside Syria. Information within the laptop, aside from jihadist instructional propaganda on bomb making, was a 19-page instructional document discussing the development of biological weapons and instructions on how to weaponize the bubonic plague. The laptop also contained a 26-page fatwa on the use of weapons of mass destruction and a passage from Saudi jihadi cleric Nasir al-Fahd stating, “If Muslims cannot defeat the kafir (unbelievers) in a different way, it is permissible to use weapons of mass destruction, even if it kills all of them and wipes them and their descendants off the face of the Earth.” Officials believe the laptop belongs to a Tunisian national who was studying chemistry and physics and was teaching himself biological weaponry. According to NATO Review, an unsettling concern is that the Islamic State had previously stolen 90 pounds of enriched uranium from Mosul University in Iraq. Although it would be extremely difficult for a member or someone pledging their allegiance to the Islamic State to smuggle a CBRNE weapon into the country, the fear looming is that someone already in the country who is radicalized is provided instructions on how to build such weapons. The 2018 Worldwide Threat Assessment Intelligence report stressed that the United States will likely see an increase in homegrown extremism and many will “continue to be inspired by a variety of sources, including terrorist propaganda as well as in response to perceived grievances related to U.S. Government actions.” The Islamic State, known for the “do-it-yourself” propaganda magazine Rumiya, has previously sparked the increase in knife welding and vehicle attacks across the globe by promoting the use of these “homegrown” style attacks through explicit instructions in its popular online magazine. Although a recent issue of Rumiya has not been published instructing how to carry out specific CBRNE attacks in the United States, there has been increased “chatter” intercepted by U.S. Intelligence indicating that the Islamic State has been discussing how to replicate in the United States the deadly chlorine and mustard gas attacks previously carried out in Iraq and Syria. “I think we need to be more worried about them making it here. This stuff is difficult to transport, it’s difficult to get it by customs and immigration. I think it’s more likely that they send the recipe here to their followers and they make it here,” according to Michael Morell, former CIA deputy and acting director. Although the development of this type of weaponry requires advanced technology and sophisticatedly trained personnel, those could be more readily available in the United States as opposed to the battlegrounds in Iraq and Syria. According to the Combating Terrorism Center, a chemical attack by the Islamic State cannot be ruled out should the organization seek to deploy a rudimentary poison gas device in the United States. In 2017, Australian counterterrorism officials disrupted a plot where four men, directed by the Islamic State, planned to use an improvised chemical dispersion device containing hydrogen sulfide. A clear demonstration of the Islamic State’s ambition to use CBRNE attacks in the West, following the model of those carried out by the terrorist organization in Iraq and Syria. The threat of CBRNE use by the Islamic State within the United States is more than plausible. The Department of Homeland Security (DHS) is actively working to thwart this threat, according to DHS official Col. Lonnie Carlson: “We’re putting capabilities out in the field right now to counter this threat that 6 months ago, we probably never would have thought of happening … the bottom line is … the threat is real.” There certainly is an undeniable threat by unknown knowns within the United States. Unfortunately, the threats can come from those inspired and radicalized by the Islamic State – homegrown or those returning from the battlefield in Iraq and Syria – regardless, the threat is real and disturbing. The Islamic State has made use of a widely available industrial chemical – chlorine – abroad and likely could employ the same scenario within the borders of the United States. The use of encrypted technology is increasingly concerning with terrorist groups using encryption that allows them not only the opportunity to radicalize followers online communicate anonymously, but additionally serve as an online institution for furthering the education of wannabe jihadists. Recently, the Islamic State published on its Furat Wilayah channel (encrypted messaging app Telegram), an English-language series promoting lone-wolf jihad encouraging would-be jihadists and supporters to inject food for sale in markets with cyanide poison. Fortunately, thus far in the West, the majority of homegrown terrorists plotting attacks have selected only methods that have not included the employment of CBRNE. However, today’s fearful climate foreshadows looming plots. Although it is perhaps difficult to determine how realistic a chemical attack is from terrorist organizations, the probability rises, mirroring growing fears.

### ---AT: Big Tech Monopolies Bad

#### Concerns about Big Tech monopolistic behavior are overstated.

Allison Schrager, 20. Senior fellow at the Manhattan Institute. “Don’t Break Up Big Tech.” July 30, 2020. https://www.city-journal.org/reining-in-big-tech

We should be grateful for the FANGs. Throughout the Covid-19 pandemic, they provided a lifeline—Amazon delivered goods, social media and search helped us feel connected, and streaming media entertained us. The size and scope of these firms meant that we could move our lives online in ways that were unimaginable even ten years ago. And the breakout star of the pandemic suggests that competition is not dead: Zoom prevailed over more established technology companies like Skype, Gchat, or Microsoft Teams to emerge as the critical technology that made work and even social events possible. The Zoom story demonstrates that a large network is not a durable market advantage the way that a power grid is. Users are fickle; it’s not hard to find another search engine, social media platform, or video chat interface if a better one is available. If a firm fails to innovate and offer a superior product, the market will eventually shrink it. A few years ago, everyone, especially Europeans, worried that Microsoft had too much monopoly power. Despite many lawsuits, eventually it was the market, or better products from competitors, that reduced the feared reach of Bill Gates. Facebook is already dwindling. Young people don’t use it. Ever since data-usage scandals emerged, I and many of my “friends” log in less frequently. As people post less content, they use the platform less, and the “network effect” diminishes. Facebook’s other products will experience the same fate as users age and new ones avoid their parents’ network. Even Amazon’s future is not assured. Just 20 years ago, it was unthinkable that any retailer could displace Walmart, which was criticized as monopolistic. Walmart still brings in more revenue than Amazon, but no one today would characterize it as a monopoly. Amazon’s share of the e-commerce market is much larger and growing, but there is no guarantee that the next generation will be dependent on it to the same degree.

### AT: China War

#### No violent China rise, territorial conflict, or trade war—economics come first

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

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

, not assertiveness or aggressiveness, will be the order of the day **in Beijing’s foreign policy in the coming years**. Even as it continues to modernize and expand its military, **China will** carefully avoid pressing issues **that might lead to war with the United States, such as those related to the South China Sea, cybersecurity, and the weaponization of space**. NEW RULES? Indeed, much as Chinese leaders hope to be on par with their counterparts in Washington, they worry about the strategic implications of a bipolar U.S.-Chinese order. American leaders balk at the idea of relinquishing their position at the top of the global food chain and will likely go to great lengths to avoid having to accommodate China. Officials in Beijing, in no hurry to become the sole object of Washington’s [apprehension](https://www.foreignaffairs.com/articles/united-states/2018-02-13/china-reckoning) and scorn, would much rather see a multipolar world in which other challenges—and challengers—force the United States to cooperate with China. Chinese leaders worry about the strategic implications of a bipolar U.S.-Chinese order. In fact, the United States’ own rise in the nineteenth and early twentieth centuries provides something of a model for how the coming power transition may take place. Because the United Kingdom, the world’s undisputed hegemon at the time, was preoccupied with fending off a challenger in its vicinity—Germany—it did not bother much to contain the rise of a much bigger rival across the pond. China is hoping for a similar dynamic now, and recent history suggests it could indeed play out. In the early months of George W. Bush’s presidency, for instance, relations between Beijing and Washington were souring over regional disputes in the South China Sea, reaching a boiling point when a Chinese air force pilot died in a midair collision with a U.S. surveillance plane in April 2001. Following the 9/11 attacks a few months later, however, Washington came to see China as a useful strategic partner in its global fight against terrorism, and relations improved significantly over the rest of Bush’s two terms. Today, unfortunately, the list of common threats that could force the two countries to cooperate is short. After 17 years of counterterrorism campaigns, the sense of urgency that once surrounded the issue has faded. Climate change is just as unlikely to make the list of top threats anytime soon. The most plausible scenario is that a new global economic crisis in the coming years will push U.S. and Chinese leaders to shelve their disagreements for a moment to avoid economic calamity—but this, too, remains a hypothetical. To make matters worse, some points of potential conflict are here to stay—chief among them [Taiwan](https://www.foreignaffairs.com/articles/asia/2018-07-27/storm-brewing-taiwan-strait). Relations between Beijing and Taipei, already tense, have taken a turn for the worse in recent years. Taiwan’s current government, elected in 2016, has questioned the notion that mainland China and Taiwan form a single country, also known as the “one China” principle. A future government in Taipei might well push for de jure independence. Yet a Taiwanese independence referendum likely constitutes a redline for Beijing and may prompt it to take military action. If the United States were to respond by coming to Taiwan’s aid, a military intervention by Beijing could easily spiral into a full-fledged U.S.-Chinese war. To avoid such a crisis, Beijing is determined to nip any Taiwanese independence aspirations in the bud by political and economic means. As a result, it is likely to continue lobbying third countries to cut off their diplomatic ties with Taipei, an approach it has already taken with several Latin American countries. Cautious or not, China set somewhat different emphases in its approach to norms that undergird the international order. In particular, a more powerful China will push for a stronger emphasis on national sovereignty in international law. In recent years, some have [interpreted](https://www.ft.com/content/67ec2ec0-dca2-11e6-9d7c-be108f1c1dce) public statements by Chinese leaders in support of globalization as a sign that Beijing seeks to fashion itself as the global liberal order’s new custodian, yet such sweeping interpretations are wishful thinking: China is merely signaling its support for a liberal economic order, not for ever-increasing political integration. Beijing remains fearful of outside interference, particularly relating to Hong Kong, Taiwan, Tibet, and [Xinjiang](https://www.foreignaffairs.com/articles/china/2018-06-20/reeducation-returns-china), as well as on matters of press freedom and online regulations. As a result, it views national sovereignty, rather than international responsibilities and norms, as the fundamental principle on which the international order should rest. Even as a new superpower in the coming decade, China will therefore pursue a less interventionist foreign policy than the United States did at the apex of its power. Consider the case of Afghanistan: even though it is an open secret that the United States expects the Chinese military to shoulder some of the burden of maintaining stability there after U.S. troops leave the country, the Chinese government has shown no interest in this idea. Increased Chinese clout may also bring attempts to promote a vision of world order that draws on ancient Chinese philosophical traditions and theories of statecraft. One term in particular has been making the rounds in Beijing: wangdao, or “humane authority.” The word represents a view of China as an enlightened, benevolent hegemon whose power and legitimacy derive from its ability to fulfill other countries’ security and economic needs—in exchange for their acquiescence to Chinese leadership. BIPOLARITY IN PRACTICE Given the long shadow of nuclear escalation, **the** [**risk of a direct war**](https://www.foreignaffairs.com/articles/china/2018-10-15/beijings-nuclear-option) **between China and the United States will** remain minimal, even as military, technological, and economic competition between them intensifies. Efforts on both sides to build ever more effective antimissile shields are unlikely to change this, since neither China nor the United States can improve its antimissile systems to the point of making the country completely impervious to a nuclear counterattack. If anything, the United States’ withdrawal from the Intermediate-Range Nuclear Forces Treaty will encourage both sides to build up their nuclear forces and improve their second-strike capabilities, ensuring that neither side will be confident it can launch a nuclear attack on the other without suffering a devastating retaliation. The threat of nuclear war will also keep Chinese tensions with other nuclear-armed powers, such as India, from escalating into outright war. Proxy wars, however, cannot be ruled out, nor can military skirmishes among lesser states. In fact, the latter are likely to become more frequent, as the two superpowers’ restraint may embolden some smaller states to resolve local conflicts by force. Russia, in particular, may not shy away from war as it tries to regain its superpower status and maintain its influence in eastern Europe and the Middle East. Faced with calls to reform the UN Security Council, fraying powers such as France and the United Kingdom may seek to buttress their claim to permanent membership in the council through military interventions abroad. In the Middle East, meanwhile, the struggle for regional dominance among Iran, Turkey, and Saudi Arabia shows no signs of abating. Across the globe, secessionist conflicts and terrorist attacks will continue to occur, the latter especially if competition between China and the United States reduces their cooperation on counterterrorism measures. China’s emphasis on national sovereignty, together with Western societies’ turn away from globalism, will deal an additional blow to multilateralism. In the economic realm, export-driven economies, such as China, Germany, and Japan, will ensure the survival of a global liberal trade regime built on free-trade agreements and membership in the World Trade Organization—no matter what path the United States takes. On other matters of global governance, however, cooperation is likely to stall. Even if a future U.S. administration led a renewed push toward multilateralism and international norm setting, China’s status as a junior superpower would make it difficult for the United States to sustain the strong leadership that has traditionally spurred such initiatives in the past. Differences in ideology and clashing security interests will prevent Beijing and Washington from leading jointly, but neither will have enough economic or military clout to lead on its own. To the extent that multilateral initiatives persist in such a world, they will be limited to either side’s respective sphere of influence. China’s emphasis on national sovereignty, together with Western societies’ turn away from globalism, will deal an additional blow to multilateralism. The European Union is already fraying, and a number of European countries have reintroduced border controls. In the coming decade, similar developments will come to pass in other domains. As technological innovation becomes the primary source of wealth, countries will become ever more protective of their intellectual property. Many countries are also tightening control of capital flows as they brace for a global economic slump in the near future. And as concerns over immigration and unemployment threaten to undermine Western governments’ legitimacy, more and more countries will increase visa restrictions for foreign workers. Unlike the order that prevailed during the Cold War, a bipolar U.S.-Chinese order will be shaped by fluid, issue-specific alliances **rather than rigid opposing blocs** divided along clear ideological lines. Since the immediate risk of a U.S.-Chinese war is vanishingly small, **neither side appears willing to build or maintain an extensive**—and expensive—**network of alliances**. China still avoids forming explicit alliances, and the United States regularly complains about free-riding allies. Moreover, neither side is currently able to offer a grand narrative or global vision appealing to large majorities at home, let alone to a large number of states. For some time to come, then, **U.S.-Chinese bipolarity will not be an ideologically driven, existential conflict over the fundamental nature of the global order**; rather, it will be a competition over consumer markets and technological advantages, playing out in disputes about the norms and rules governing trade, investment, employment, exchange rates, and intellectual property. And rather than form clearly defined military-economic blocs, most states will adopt a two-track foreign policy, siding with the United States on some issues and China on others. Western allies, for instance, are still closely aligned with the United States on traditional security matters inside NATO, and Australia, India, and Japan have supported the U.S. strategy in the Indo-Pacific. At the same time, these states still maintain close trade and investment relations with China, and several of them have sided with Beijing in trying to reform the World Trade Organization. This two-track strategy shows just how far down the road to bipolarity the world has already advanced. And the fundamental driver of this process—the raw economic and military clout on which American and, increasingly, Chinese dominance rests—will further cement Beijing’s and Washington’s status as the two global heavyweights in the coming decade. **Whether or not the United States recovers from its Trumpian fever and leads a renewed push for global liberalism is**, ultimately, of little consequence to the outcome: **opposed in their strategic interests but evenly matched in their power, China and the United States will be unable to challenge each other directly and settle the struggle for supremacy definitively**. As during the Cold War, each side’s nuclear warheads will prevent proxy conflicts from easily escalating into a direct confrontation between the two superpowers. More important still, **China’s leadership is** acutely aware of the benefits **its country derives from the status quo**, for now—**it is chief among the conditions for China’s continued economic and soft-power expansion**—**and will** avoid **putting these** benefits on the line anytime soon, unless China’s core interests are in the balance. Chinese leaders will therefore work hard to avoid setting off alarm bells in already jittery Western capitals, and their foreign policy in the coming years will reflect this objective. **Expect recurring tensions and fierce competition, yes, but** not a descent into global chaos.

## Case 2

### ---No Solvency – General

#### Plan doesn’t solve – the big tech companies are too different, the same solution won’t solve

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2 Digital platforms are highly heterogeneous in terms of their incentives, and the problems we are trying to solve differ across them The concerns we associate with large digital platforms are not homogeneous. The unifying feature is their size and scope, which imply vast bargaining power and enables them to impose one-sided terms on third parties. The DMA’s reference to fairness as one of its animating principles is indeed about this: protecting businesses and users from unfair bargains arising from market power. But beyond this, there are vast differences in the way that power is wielded. I have expressed this before in terms that correlate with monetisation, or business model:7 digital platforms that monetise in different ways will also tend to have different incentives driving what they do and how they engage with rivals and customers. Google is an advertising empire based around its Search function. It monetises on one side of its platform, by exploiting data from user searches to sell advertising – search ads on its Search page or display ads it places on its own properties (e.g. YouTube) and third parties’ estate (publishers). Its goal is protecting the search monopoly, ‘occupying’ new environments consumers may be performing searches from: mobile after desktop, and then wearables and IoT and cars. It also secured control of the vertical chain of intermediation services between online advertisers and publishers. Its incentives are on the user side, to extract data to enrich profiles and place targeted ads; to maximise revenues by directing traffic to its own properties rather than third parties’, especially where it faces a ‘zero price constraint’ and cannot monetise directly; to extract as much rent as possible from the vertical stack; and dynamically, to pre-empt challenges by ensuring no vertical could become a broader search rival, and no one could succeed in getting a chunk of search as it swings to a new environment. Facebook is also an advertising empire based around its social network. Facebook also monetises on the advertisers’ side, by exploiting data from users’ private life, connections and app use, and placing ads on both its own properties and third-party websites. It operates advertising intermediation services allowing advertisers to buy ads on Facebook’s social platforms as well as on a network of third-party apps and websites. The main concerns around Facebook (see FTC Amended Complaint)8 have been documented acquisitions to pre-empt the growth of rival social networks which could challenge its position. There is also a concern around selectively degrading interconnection or shutting down access to core Facebook services (APIs) to nascent apps viewed as potential threats. One important dimension of these concerns is around extraction, wholesaling, and retailing of private personal life details and amplification of toxic content which increases engagement and creates additional monetization opportunities. Amazon is a giant ecommerce platform that intermediates between consumers and third-party sellers, and also sells on its own behalf. Amazon is a transaction platform that monetises both through a commission on 3P sales and a margin on its own branded products (i.e. it makes money either way). This makes a big difference when thinking of incentives, relative to an ad-funded model subject to a zero-price constraint. When it launches its own version of a product, is it because it has incentives to displace 3P sellers, giving itself priority position through its own selection algorithm (e.g. surfacing them as Buy-Box recommendations, which get most conversions), and crowding out/excluding 3P sellers in the process? Or is it because it can offer a cheaper/better version? Other questions include whether it has incentives to extract too high commission from 3P sellers to increase their price and marginalise them, or to force them to use its own logistics instead of their own fulfilment/logistic to harm logistic operators. Dynamically, there are questions about whether it is using ‘seller data’ to launch its own competing versions, and whether this undermines sellers’ innovation effort; and questions about the pricing strategy and the role of Prime. Apple is a device seller with a very successful complement, the App Store, monetising through sale of devices, services and commissions from developers. The business model involves a walled garden for the OS and the App Store, with monetisation taking place through multiple levers (device sales, commission from developers on digital sales and subscriptions, and own services). As the app economy has grown hugely in recent years, commission revenues for Apple on the App Store side have soared, driven mostly by games. As Apple also launched a few apps of its own (e.g. music, TV, games), is there an inevitable incentive for it to favour its own apps and disadvantage third parties? Is charging a commission by an integrated operator a way of ‘raising rivals’ costs’ to foreclose rival 3P apps? What about services where it does not have its own app and the commission is the same? Then there are questions about whether the level of the commission is excessive and developers are foreclosed or their innovation undermined. Should regulation aim to shift rent from Apple to app developers? How much, what is ‘fair’? Do we want to eliminate commissions? How should the App Store be monetised? If Apple is to open up to third party app stores, who sets and guarantees acceptable quality levels? Microsoft is a software and increasingly cloud provider. It also operates a search engine and has a growing games business. It thus monetises variously through the sale of software, the sale of cloud services, as well as the sale of consoles, games and subscriptions, and through some advertising. There are vast differences across these business models that make it hard to discipline the exercise of market power and foster meaningful entry through a handful of general rules extrapolated from a handful of antitrust cases (some recent, some just underway).

### AT: Liberal Order

#### Liberal order resilient---institutional factors matter more than individuals---all states have a vested economic interest in the squo.

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But the existing order is more resilient than this assessment suggests. There is no doubt that Trump represents a meaningful threat to the health of both American democracy and the international system. And there is a nonnegligible risk that he could drag the country into a constitutional crisis, or the world into a crippling trade war or even an all-out nuclear war. Yet despite these risks, rumors of the international order’s demise have been greatly exaggerated. The system is built to last through significant shifts in global politics and economics and strong enough to survive a term of President Trump. This more optimistic view is offered not as comfort but as a call to action. The present moment demands resolve and affirmative thinking from the foreign policy community about how to sustain and reinforce the international order, not just lamentations about Trump's destructiveness or resignation about the order's fate. No one knows for certain how things will turn out. But fatalism will become a self-fulfilling prophecy. The order can endure only if its defenders step up. It may be durable, but it also needs an update to account for new realities and new challenges. Between fatalism and complacency lies urgency. Champions of the order must start working now to protect its key elements, to build a new consensus at home and abroad about needed adjustments, and to set the stage for a better approach, before it's too late. A RESILIENT ORDER In a world where the major trends seem to spell chaos, it is fair to place the burden of proof on those who claim that the current order can continue. Yet well before Trump, it had already demonstrated its capacity to adapt to changes in the nature and distribution of power. Three basic factors account for such resilience-and demonstrate why the emphasis now should be on protecting and improving the order rather than planning for the aftermath of its demise. First, most of the world remains invested in major aspects of the order and still counts on the United States to operate at its center. The passing of U.S. dominance need not mean the end of U.S. leadership. That is, the United States may not be able to direct outcomes from a position of preeminent economic, political, and military influence, but it can still mobilize cooperation

on shared challenges and shape consensus on key rules. In the years ahead, although Washington will not be the only destination for countries seeking capital, resources, or influence, it will remain the most important agenda-setter. Some context is important. The U.S.- led order was built at a unique moment, at the end of World War II. Europe's and Asia's erstwhile great powers were reduced to rubble, and a combination of dominance abroad and shared economic prosperity at home allowed the United States to serve as the architect and guarantor of a new order fashioned in its own image. It had not just the material power to shape rules and drive outcomes but also a model many other countries wanted to emulate. It used the opportunity to build an order that benefited itself as well as others, with clear advantages for populations at home and abroad. As the international relations scholar G. John Ikenberry has put it in this magazine, the resulting system was "hard to overturn and easy to join.' The end of the Cold War and the fall of the Soviet Union served to reinforce and extend American preeminence. This precise state of affairs was never going to last forever. Other powers would eventually rise, and the basic bargain would one day need to be revisited. That day has arrived, and the question now is, do other countries want a fundamentally different bargain or simply some adjustments? A comprehensive 2016 RND analysis found that few powers display an appetite for dismantling the international order or transforming it into something unrecognizable. And while Trump's election has forced countries to contemplate a world without a central role for the United States, many still view the president as an aberration and not a new American normal, especially given that the United States has bounced back before. Even China has concluded that it largely benefits from the order's continued operation. Around the time of Trump's inauguration, breathless reports interpreted Chinese President Xi Jinping's comments on an open international economy and climate change as indicators that China planned to somehow take over for the United States. But what Xi was really signaling was that China does not want near-term radical change in the global system, even as it seeks to gain more influence by taking advantage of the vacuum left by Trump. And to the extent that Beijing has set out to construct its own parallel institutions, particularly when it comes to trade and investment, thus far these institutions largely supplement the existing order rather than threatening to supplant it. Other emerging powers chafe at certain features of the order, and some seek a more prominent place in institutions such as the UN Security Council. Yet rhetorical flourishes aside, they, like China, talk in terms of reform rather than replacement—and their continued participation sends a similar message. For example, leaders of the major emerging powers eagerly accepted U.S. President Barack Obama's invitation to join the first Nuclear Security Summit, in 2010; less eagerly but still willingly, they joined the global sanctions regime against Iran's nuclear program. Richard Fontaine and Daniel Kliman of the Center for a New American Security quote a Brazilian official who captured a broader sentiment among emerging powers: "Brazil wants to expand its room in the house, not tear the house down." And indeed, Brazil has taken on a leading role in defending important aspects of the order, such as the multistakeholder system for Internet governance. Emerging powers' quest for a greater voice in regional and global institutions is not a repudiation of the order but evidence that they see increasing their participation as preferable to going a different way. FROM DOMINANCE TO LEADERSHIP The second factor accounting for the order's resilience is that the United States has managed the transition from dominance to leadership more effectively than most appreciate. Over the past decade, U.S. diplomacy has facilitated a shift from formal, legal, top-down institutions to more practical, functional, and regional approaches to managing transnational issues-"coalitions of the willing" (in the real, non-Iraq-war sense of the term). This shift has not only expanded the prospects for shared problem solving; it has also made the rules-based order less rigid, and therefore more lasting. Consider climate change. Formal legal structures, such as the Kyoto Protocol, which failed largely because the United States refused to participate and emerging powers were exempt, have given way to less formal structures, such as the Paris climate accord. Unlike Kyoto, Paris achieved broadbased participation because its substantive commitments are voluntary and states have flexibility in how to meet them. It can survive a temporary U.S. withdrawal because other countries had already factored their targets into their national energy plans and because the United States can meet or exceed its own targets even without the help of Washington (points Brian Deese, a former climate adviser to Obama, has made in this magazine). On nuclear proliferation, formal Nuclear Nonproliferation Treaty review conferences have not advanced the ball on new legal norms. But during the negotiations that led to the Iran nuclear deal, the P5+1 (the five permanent members of the UN Security Council plus Germany) joined together to develop a rules-based plan to address a major global proliferation problem. The resulting agreement, the Joint Comprehensive Plan of Action, involved practical commitments from the negotiating parties but also incorporated key international institutions-the International Atomic Energy Agency and the Security Council-for oversight and enforcement. And although Trump may eventually withdraw from the agreement, the broad participation and buy-in that it achieved, and the fact that it is working as intended, have thus far constrained him from doing so, despite his claim that it is "the worst deal ever." On trade and economics, although universal rule-making in the World Trade Organization has stalled, "plurilateral" and regional initiatives of various shapes and sizes have proliferated, from the East African Community to Latin America's Pacific Alliance. The United States is not party to some of these platforms, but it has helped promote them with technical and diplomatic support. Viewed from this perspective, Beijing's establishment of the Asian Infrastructure Investment Bank is largely in line with the "variable geometry" that the United States has encouraged. (Washington erred in resisting the AIU3 rather than working to shape its standards.) And on global health, the World Health Organization has recognized the need for more flexible arrangements to deal with major health crises, including publicprivate partnerships, such as the Global Fund to Fight AIDS, Tuberculosis and Malaria and Gavi, the Vaccine Alliance. Meanwhile, various emerging regional and subregional arrangements are playing larger roles in local problem solving. One could add other examples to the list, but the point is this: the overall trend toward practicality and flexibility, encouraged by the United States, has generated more resilience in the rules-based order. For one thing, more practical and flexible approaches are better suited to handle the diffuse and complex nature of transnational challenges today. For another, the rest of the world can continue to participate even when the United States pulls back. The new structures are designed to extract greater participation and contributions from a greater number of actors in a greater number of places-even when the most important of those actors temporarily relinquishes its leadership role. There is a concern about whether this trend will water down rules. But the record so far suggests this is not the case. For example, the 11 nations currently pursuing the Trans-Pacific Partnership without U.S. participation might produce a trade agreement with weaker labor or environmental provisions than those in the U.S.-brokered version, which the Trump administration withdrew from last year. But those provisions would still represent an improvement over existing rules, and a new baseline against which future rules would be measured. Nor is this broader trend mutually exclusive with action in the UN system. The rise of informal mechanisms of cooperation has not detracted from basic global standardsetting on issues such as civil aviation. To the contrary, the informal and the formal can be mutually reinforcing. Progress conceived in smaller formats outside the UN system can help catalyze universal action. BINDING TRUMP Finally, although Trump has created a temporary vacuum of global leadership and keeps raising questions about his basic fitness for office, he has thus far been unable to do the level of systemic damage in foreign affairs that he threatened on the campaign trail. He has again, thus far-been constrained by Congress, by his own national security team, and by reality. Consider the U.S. alliance system, a central feature of the U.S.-led order. Trump continues to deride U.S. allies as free riders. But Washington's policy toward its alliances in both Europe and Asia has been marked more by continuity than change. Trump's advisers have helped ensure that, as have outside advocacy and congressional oversight. And European leaders have sought to sustain the alliance, despite their misgivings about Trump, by working around him. Similarly, whatever the administration's desire to ease pressure on Russia for violations of Ukraine's territorial integrity-a foundational norm of the rules-based order-Congress overwhelmingly approved new sanctions, tying Trump's hands. (The administration subsequently surprised most observers by announcing that it would provide lethal assistance to Ukraine, a move pushed by top members of Trump's national security team.) Perhaps most important, Trump has found that whatever his contempt for the rules-based order, he needs it. Here he follows a line of American politicians who have chafed at perceived limits on U.S. freedom of action but ultimately recognized that the order protects and advances U.S. interests. To counter North Korea, he needs both strong Asian alliances and a working relationship with Beijing (contrary to everything he said during the campaign). To defeat the Islamic State (also known as isis), he needs the allies and partners that made up the coalition, built during the Obama administration, that helped eject isis from Mosul and Raqqa. Trump has therefore been forced to embrace elements of the order he would rather dismiss. Trump's own lack of focus has helped. The international relations expert Thomas Wright is correct to warn that "since World War II, the foreign policy of every administration has been defined by the character and opinions of its president," not anybody else. And Trump's worst impulses may yet win out, with disastrous consequences. But unlike his predecessors, Trump has displayed relatively little interest in translating his impulses into consistent policy actions. That can potentially allow the system around him, including voices outside government, to play a more powerful constraining role than usual.

# 2NC

## Trade

### AT: Trade War/Protectionism

**Trade doesn’t solve war---commerce just re-routes.**

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The findings we report show that the Great War led to a **rerouting**, rather than a wholesale breakdown, of trade. This did not come as a surprise to states: the historical record shows that states anticipated wartime shifts in their trade channels. Most belligerents nonetheless incurred efficiency losses as a consequence of the shifts, but the losses pale in light of the aggregate costs the war imposed on them. These findings suggest that neglecting wartime trade channels can **overstate** the deterrent power of ex ante trade. It is reasonable to question the extent to which wartime trade can, in general, substitute for its ex ante counterpart. This depends, as we noted above, on the composition of trade. The dominance of homogenous products in trade at the time of World War I made substitution a feasible option. For the same reason, other wars that occurred during the first half of the twentieth century seem likely to have precipitated the same trade dynamics as did the Great War. Preliminary empirical analyses are consistent with this argument. 95 After World War II, however, intra-industry trade – that is, trade in differentiated products between countries with similar factor endowments – came to account for a much larger share of commerce. Krugman notes, for example, that intra-industry rose from about 22 per cent of trade between the industrialized countries in 1962 to about 50 per cent in 2006. 96 This trade tends to involve ‘highly specialized imported varieties for which domestic imports are hard to find’, 97 raising the estimated gains from trade that accrue to countries shifting from autarky to free trade. Trade in these products can magnify wartime trade costs to the extent that trade across enemy lines engages imports that cannot easily be obtained from other trading partners. Production networks also spread more widely across countries over time. This implies that conflicts in the more recent past might indeed have wreaked havoc on trade, raising the deterrent power of ex ante trade. But the composition of conflicts also shifted over time. After 1945, no war would ever again split the major trading states. As we noted above, the advent of the Cold War transformed them into each other’s sturdiest allies. Because the advanced industrialized countries account for a large share of **intra-industry trade**, post-World War II conflicts **did not endanger** the exchange of differentiated products. The same is true of foreign direct investment: for most of the twentieth century, it was largely the major developed country trading partners that were both its home and host countries. 98 The **changing composition of warring dyads** after World War II may help explain the findings in the empirical literature on this period that conflict and ex ante trade are inversely related. The effects of conflicts on wartime commerce in this period have yet to be examined, however. Conclusion That the First World War unleashed tremendous destruction is indisputable. It marked the inception of what has been described as the long European civil war. It resulted in sixteen million deaths and twenty million wounded and destroyed large amounts of physical capital. 99 In its wake, the great powers never established anything remotely similar to the Concert of Europe that succeeded the Napoleonic Wars. Their best efforts produced a League of Nations that was unable to resolve the conflicts of interest that stymied co-operation among them. They could agree neither on the enforcement of the Versailles Treaty nor on a collective response to the Great Depression, which set the stage for the outbreak of the Second World War. The Great War also reputedly destroyed the large trade flows that existed during the first golden age of globalization. For this reason, it has become central to debates about the liberal peace. Its outbreak seemed to destroy any hope that leaders had internalized the idea that war had become a ‘great illusion’, more likely to impose costs than benefits because of the concomitant destruction of the trade that had become integral to the growth of national power. 100 Because its belligerents had been each other’s major trading partners ex ante, the Great War seemed to destroy hopes that economic linkages would secure peace. Yet, the evidence we present here suggests that one of the largest wars in history did not induce a breakdown of trade. Instead, large shifts occurred in interstate commerce, privileging trade between allies, penalizing commerce between adversaries and increasing trade with neutrals. The composition of early twentieth-century trade helped to mitigate the welfare losses these shifts imposed, as it enabled states to switch trading partners and transit routes more easily than might seem possible later in the twentieth century. Because ex ante commerce between belligerents is not necessarily a good indicator of their ex post trade, estimates of the deterrent power of trade need to take both into account.

## CP

### AT: PDB---2NC

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

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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.

### AT: PDCP---2NC

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### AT: FTC/DOJ Expertise---2NC

#### 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

## Adv 1

### No China War---2NC

#### Finishing

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

, not assertiveness or aggressiveness, will be the order of the day **in Beijing’s foreign policy in the coming years**. Even as it continues to modernize and expand its military, **China will** carefully avoid pressing issues **that might lead to war with the United States, such as those related to the South China Sea, cybersecurity, and the weaponization of space**. NEW RULES? Indeed, much as Chinese leaders hope to be on par with their counterparts in Washington, they worry about the strategic implications of a bipolar U.S.-Chinese order. American leaders balk at the idea of relinquishing their position at the top of the global food chain and will likely go to great lengths to avoid having to accommodate China. Officials in Beijing, in no hurry to become the sole object of Washington’s [apprehension](https://www.foreignaffairs.com/articles/united-states/2018-02-13/china-reckoning) and scorn, would much rather see a multipolar world in which other challenges—and challengers—force the United States to cooperate with China. Chinese leaders worry about the strategic implications of a bipolar U.S.-Chinese order. In fact, the United States’ own rise in the nineteenth and early twentieth centuries provides something of a model for how the coming power transition may take place. Because the United Kingdom, the world’s undisputed hegemon at the time, was preoccupied with fending off a challenger in its vicinity—Germany—it did not bother much to contain the rise of a much bigger rival across the pond. China is hoping for a similar dynamic now, and recent history suggests it could indeed play out. In the early months of George W. Bush’s presidency, for instance, relations between Beijing and Washington were souring over regional disputes in the South China Sea, reaching a boiling point when a Chinese air force pilot died in a midair collision with a U.S. surveillance plane in April 2001. Following the 9/11 attacks a few months later, however, Washington came to see China as a useful strategic partner in its global fight against terrorism, and relations improved significantly over the rest of Bush’s two terms. Today, unfortunately, the list of common threats that could force the two countries to cooperate is short. After 17 years of counterterrorism campaigns, the sense of urgency that once surrounded the issue has faded. Climate change is just as unlikely to make the list of top threats anytime soon. The most plausible scenario is that a new global economic crisis in the coming years will push U.S. and Chinese leaders to shelve their disagreements for a moment to avoid economic calamity—but this, too, remains a hypothetical. To make matters worse, some points of potential conflict are here to stay—chief among them [Taiwan](https://www.foreignaffairs.com/articles/asia/2018-07-27/storm-brewing-taiwan-strait). Relations between Beijing and Taipei, already tense, have taken a turn for the worse in recent years. Taiwan’s current government, elected in 2016, has questioned the notion that mainland China and Taiwan form a single country, also known as the “one China” principle. A future government in Taipei might well push for de jure independence. Yet a Taiwanese independence referendum likely constitutes a redline for Beijing and may prompt it to take military action. If the United States were to respond by coming to Taiwan’s aid, a military intervention by Beijing could easily spiral into a full-fledged U.S.-Chinese war. To avoid such a crisis, Beijing is determined to nip any Taiwanese independence aspirations in the bud by political and economic means. As a result, it is likely to continue lobbying third countries to cut off their diplomatic ties with Taipei, an approach it has already taken with several Latin American countries. Cautious or not, China set somewhat different emphases in its approach to norms that undergird the international order. In particular, a more powerful China will push for a stronger emphasis on national sovereignty in international law. In recent years, some have [interpreted](https://www.ft.com/content/67ec2ec0-dca2-11e6-9d7c-be108f1c1dce) public statements by Chinese leaders in support of globalization as a sign that Beijing seeks to fashion itself as the global liberal order’s new custodian, yet such sweeping interpretations are wishful thinking: China is merely signaling its support for a liberal economic order, not for ever-increasing political integration. Beijing remains fearful of outside interference, particularly relating to Hong Kong, Taiwan, Tibet, and [Xinjiang](https://www.foreignaffairs.com/articles/china/2018-06-20/reeducation-returns-china), as well as on matters of press freedom and online regulations. As a result, it views national sovereignty, rather than international responsibilities and norms, as the fundamental principle on which the international order should rest. Even as a new superpower in the coming decade, China will therefore pursue a less interventionist foreign policy than the United States did at the apex of its power. Consider the case of Afghanistan: even though it is an open secret that the United States expects the Chinese military to shoulder some of the burden of maintaining stability there after U.S. troops leave the country, the Chinese government has shown no interest in this idea. Increased Chinese clout may also bring attempts to promote a vision of world order that draws on ancient Chinese philosophical traditions and theories of statecraft. One term in particular has been making the rounds in Beijing: wangdao, or “humane authority.” The word represents a view of China as an enlightened, benevolent hegemon whose power and legitimacy derive from its ability to fulfill other countries’ security and economic needs—in exchange for their acquiescence to Chinese leadership. BIPOLARITY IN PRACTICE Given the long shadow of nuclear escalation, **the** [**risk of a direct war**](https://www.foreignaffairs.com/articles/china/2018-10-15/beijings-nuclear-option) **between China and the United States will** remain minimal, even as military, technological, and economic competition between them intensifies. Efforts on both sides to build ever more effective antimissile shields are unlikely to change this, since neither China nor the United States can improve its antimissile systems to the point of making the country completely impervious to a nuclear counterattack. If anything, the United States’ withdrawal from the Intermediate-Range Nuclear Forces Treaty will encourage both sides to build up their nuclear forces and improve their second-strike capabilities, ensuring that neither side will be confident it can launch a nuclear attack on the other without suffering a devastating retaliation. The threat of nuclear war will also keep Chinese tensions with other nuclear-armed powers, such as India, from escalating into outright war. Proxy wars, however, cannot be ruled out, nor can military skirmishes among lesser states. In fact, the latter are likely to become more frequent, as the two superpowers’ restraint may embolden some smaller states to resolve local conflicts by force. Russia, in particular, may not shy away from war as it tries to regain its superpower status and maintain its influence in eastern Europe and the Middle East. Faced with calls to reform the UN Security Council, fraying powers such as France and the United Kingdom may seek to buttress their claim to permanent membership in the council through military interventions abroad. In the Middle East, meanwhile, the struggle for regional dominance among Iran, Turkey, and Saudi Arabia shows no signs of abating. Across the globe, secessionist conflicts and terrorist attacks will continue to occur, the latter especially if competition between China and the United States reduces their cooperation on counterterrorism measures. China’s emphasis on national sovereignty, together with Western societies’ turn away from globalism, will deal an additional blow to multilateralism. In the economic realm, export-driven economies, such as China, Germany, and Japan, will ensure the survival of a global liberal trade regime built on free-trade agreements and membership in the World Trade Organization—no matter what path the United States takes. On other matters of global governance, however, cooperation is likely to stall. Even if a future U.S. administration led a renewed push toward multilateralism and international norm setting, China’s status as a junior superpower would make it difficult for the United States to sustain the strong leadership that has traditionally spurred such initiatives in the past. Differences in ideology and clashing security interests will prevent Beijing and Washington from leading jointly, but neither will have enough economic or military clout to lead on its own. To the extent that multilateral initiatives persist in such a world, they will be limited to either side’s respective sphere of influence. China’s emphasis on national sovereignty, together with Western societies’ turn away from globalism, will deal an additional blow to multilateralism. The European Union is already fraying, and a number of European countries have reintroduced border controls. In the coming decade, similar developments will come to pass in other domains. As technological innovation becomes the primary source of wealth, countries will become ever more protective of their intellectual property. Many countries are also tightening control of capital flows as they brace for a global economic slump in the near future. And as concerns over immigration and unemployment threaten to undermine Western governments’ legitimacy, more and more countries will increase visa restrictions for foreign workers. Unlike the order that prevailed during the Cold War, a bipolar U.S.-Chinese order will be shaped by fluid, issue-specific alliances **rather than rigid opposing blocs** divided along clear ideological lines. Since the immediate risk of a U.S.-Chinese war is vanishingly small, **neither side appears willing to build or maintain an extensive**—and expensive—**network of alliances**. China still avoids forming explicit alliances, and the United States regularly complains about free-riding allies. Moreover, neither side is currently able to offer a grand narrative or global vision appealing to large majorities at home, let alone to a large number of states. For some time to come, then, **U.S.-Chinese bipolarity will not be an ideologically driven, existential conflict over the fundamental nature of the global order**; rather, it will be a competition over consumer markets and technological advantages, playing out in disputes about the norms and rules governing trade, investment, employment, exchange rates, and intellectual property. And rather than form clearly defined military-economic blocs, most states will adopt a two-track foreign policy, siding with the United States on some issues and China on others. Western allies, for instance, are still closely aligned with the United States on traditional security matters inside NATO, and Australia, India, and Japan have supported the U.S. strategy in the Indo-Pacific. At the same time, these states still maintain close trade and investment relations with China, and several of them have sided with Beijing in trying to reform the World Trade Organization. This two-track strategy shows just how far down the road to bipolarity the world has already advanced. And the fundamental driver of this process—the raw economic and military clout on which American and, increasingly, Chinese dominance rests—will further cement Beijing’s and Washington’s status as the two global heavyweights in the coming decade. **Whether or not the United States recovers from its Trumpian fever and leads a renewed push for global liberalism is**, ultimately, of little consequence to the outcome: **opposed in their strategic interests but evenly matched in their power, China and the United States will be unable to challenge each other directly and settle the struggle for supremacy definitively**. As during the Cold War, each side’s nuclear warheads will prevent proxy conflicts from easily escalating into a direct confrontation between the two superpowers. More important still, **China’s leadership is** acutely aware of the benefits **its country derives from the status quo**, for now—**it is chief among the conditions for China’s continued economic and soft-power expansion**—**and will** avoid **putting these** benefits on the line anytime soon, unless China’s core interests are in the balance. Chinese leaders will therefore work hard to avoid setting off alarm bells in already jittery Western capitals, and their foreign policy in the coming years will reflect this objective. **Expect recurring tensions and fierce competition, yes, but** not a descent into global chaos.

## Adv 2

#### Finishing

Jake Sullivan 18. Senior Fellow at the Carnegie Endowment for International Peace; served in the Obama administration as Director of Policy Planning at the U.S. Department of State and as National Security Adviser to the Vice President. “The World After Trump.” Foreign Affairs. March/April. https://www.foreignaffairs.com/articles/2018-03-05/world-after-trump.

on shared challenges and shape consensus on key rules. In the years ahead, although Washington will not be the only destination for countries seeking capital, resources, or influence, it will remain the most important agenda-setter. Some context is important. The U.S.- led order was built at a unique moment, at the end of World War II. Europe's and Asia's erstwhile great powers were reduced to rubble, and a combination of dominance abroad and shared economic prosperity at home allowed the United States to serve as the architect and guarantor of a new order fashioned in its own image. It had not just the material power to shape rules and drive outcomes but also a model many other countries wanted to emulate. It used the opportunity to build an order that benefited itself as well as others, with clear advantages for populations at home and abroad. As the international relations scholar G. John Ikenberry has put it in this magazine, the resulting system was "hard to overturn and easy to join.' The end of the Cold War and the fall of the Soviet Union served to reinforce and extend American preeminence. This precise state of affairs was never going to last forever. Other powers would eventually rise, and the basic bargain would one day need to be revisited. That day has arrived, and the question now is, do other countries want a fundamentally different bargain or simply some adjustments? A comprehensive 2016 RND analysis found that few powers display an appetite for dismantling the international order or transforming it into something unrecognizable. And while Trump's election has forced countries to contemplate a world without a central role for the United States, many still view the president as an aberration and not a new American normal, especially given that the United States has bounced back before. Even China has concluded that it largely benefits from the order's continued operation. Around the time of Trump's inauguration, breathless reports interpreted Chinese President Xi Jinping's comments on an open international economy and climate change as indicators that China planned to somehow take over for the United States. But what Xi was really signaling was that China does not want near-term radical change in the global system, even as it seeks to gain more influence by taking advantage of the vacuum left by Trump. And to the extent that Beijing has set out to construct its own parallel institutions, particularly when it comes to trade and investment, thus far these institutions largely supplement the existing order rather than threatening to supplant it. Other emerging powers chafe at certain features of the order, and some seek a more prominent place in institutions such as the UN Security Council. Yet rhetorical flourishes aside, they, like China, talk in terms of reform rather than replacement—and their continued participation sends a similar message. For example, leaders of the major emerging powers eagerly accepted U.S. President Barack Obama's invitation to join the first Nuclear Security Summit, in 2010; less eagerly but still willingly, they joined the global sanctions regime against Iran's nuclear program. Richard Fontaine and Daniel Kliman of the Center for a New American Security quote a Brazilian official who captured a broader sentiment among emerging powers: "Brazil wants to expand its room in the house, not tear the house down." And indeed, Brazil has taken on a leading role in defending important aspects of the order, such as the multistakeholder system for Internet governance. Emerging powers' quest for a greater voice in regional and global institutions is not a repudiation of the order but evidence that they see increasing their participation as preferable to going a different way. FROM DOMINANCE TO LEADERSHIP The second factor accounting for the order's resilience is that the United States has managed the transition from dominance to leadership more effectively than most appreciate. Over the past decade, U.S. diplomacy has facilitated a shift from formal, legal, top-down institutions to more practical, functional, and regional approaches to managing transnational issues-"coalitions of the willing" (in the real, non-Iraq-war sense of the term). This shift has not only expanded the prospects for shared problem solving; it has also made the rules-based order less rigid, and therefore more lasting. Consider climate change. Formal legal structures, such as the Kyoto Protocol, which failed largely because the United States refused to participate and emerging powers were exempt, have given way to less formal structures, such as the Paris climate accord. Unlike Kyoto, Paris achieved broadbased participation because its substantive commitments are voluntary and states have flexibility in how to meet them. It can survive a temporary U.S. withdrawal because other countries had already factored their targets into their national energy plans and because the United States can meet or exceed its own targets even without the help of Washington (points Brian Deese, a former climate adviser to Obama, has made in this magazine). On nuclear proliferation, formal Nuclear Nonproliferation Treaty review conferences have not advanced the ball on new legal norms. But during the negotiations that led to the Iran nuclear deal, the P5+1 (the five permanent members of the UN Security Council plus Germany) joined together to develop a rules-based plan to address a major global proliferation problem. The resulting agreement, the Joint Comprehensive Plan of Action, involved practical commitments from the negotiating parties but also incorporated key international institutions-the International Atomic Energy Agency and the Security Council-for oversight and enforcement. And although Trump may eventually withdraw from the agreement, the broad participation and buy-in that it achieved, and the fact that it is working as intended, have thus far constrained him from doing so, despite his claim that it is "the worst deal ever." On trade and economics, although universal rule-making in the World Trade Organization has stalled, "plurilateral" and regional initiatives of various shapes and sizes have proliferated, from the East African Community to Latin America's Pacific Alliance. The United States is not party to some of these platforms, but it has helped promote them with technical and diplomatic support. Viewed from this perspective, Beijing's establishment of the Asian Infrastructure Investment Bank is largely in line with the "variable geometry" that the United States has encouraged. (Washington erred in resisting the AIU3 rather than working to shape its standards.) And on global health, the World Health Organization has recognized the need for more flexible arrangements to deal with major health crises, including publicprivate partnerships, such as the Global Fund to Fight AIDS, Tuberculosis and Malaria and Gavi, the Vaccine Alliance. Meanwhile, various emerging regional and subregional arrangements are playing larger roles in local problem solving. One could add other examples to the list, but the point is this: the overall trend toward practicality and flexibility, encouraged by the United States, has generated more resilience in the rules-based order. For one thing, more practical and flexible approaches are better suited to handle the diffuse and complex nature of transnational challenges today. For another, the rest of the world can continue to participate even when the United States pulls back. The new structures are designed to extract greater participation and contributions from a greater number of actors in a greater number of places-even when the most important of those actors temporarily relinquishes its leadership role. There is a concern about whether this trend will water down rules. But the record so far suggests this is not the case. For example, the 11 nations currently pursuing the Trans-Pacific Partnership without U.S. participation might produce a trade agreement with weaker labor or environmental provisions than those in the U.S.-brokered version, which the Trump administration withdrew from last year. But those provisions would still represent an improvement over existing rules, and a new baseline against which future rules would be measured. Nor is this broader trend mutually exclusive with action in the UN system. The rise of informal mechanisms of cooperation has not detracted from basic global standardsetting on issues such as civil aviation. To the contrary, the informal and the formal can be mutually reinforcing. Progress conceived in smaller formats outside the UN system can help catalyze universal action. BINDING TRUMP Finally, although Trump has created a temporary vacuum of global leadership and keeps raising questions about his basic fitness for office, he has thus far been unable to do the level of systemic damage in foreign affairs that he threatened on the campaign trail. He has again, thus far-been constrained by Congress, by his own national security team, and by reality. Consider the U.S. alliance system, a central feature of the U.S.-led order. Trump continues to deride U.S. allies as free riders. But Washington's policy toward its alliances in both Europe and Asia has been marked more by continuity than change. Trump's advisers have helped ensure that, as have outside advocacy and congressional oversight. And European leaders have sought to sustain the alliance, despite their misgivings about Trump, by working around him. Similarly, whatever the administration's desire to ease pressure on Russia for violations of Ukraine's territorial integrity-a foundational norm of the rules-based order-Congress overwhelmingly approved new sanctions, tying Trump's hands. (The administration subsequently surprised most observers by announcing that it would provide lethal assistance to Ukraine, a move pushed by top members of Trump's national security team.) Perhaps most important, Trump has found that whatever his contempt for the rules-based order, he needs it. Here he follows a line of American politicians who have chafed at perceived limits on U.S. freedom of action but ultimately recognized that the order protects and advances U.S. interests. To counter North Korea, he needs both strong Asian alliances and a working relationship with Beijing (contrary to everything he said during the campaign). To defeat the Islamic State (also known as isis), he needs the allies and partners that made up the coalition, built during the Obama administration, that helped eject isis from Mosul and Raqqa. Trump has therefore been forced to embrace elements of the order he would rather dismiss. Trump's own lack of focus has helped. The international relations expert Thomas Wright is correct to warn that "since World War II, the foreign policy of every administration has been defined by the character and opinions of its president," not anybody else. And Trump's worst impulses may yet win out, with disastrous consequences. But unlike his predecessors, Trump has displayed relatively little interest in translating his impulses into consistent policy actions. That can potentially allow the system around him, including voices outside government, to play a more powerful constraining role than usual.

# 1NR

### Top Level---2NC

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 3. Link turns case. Expanded antitrust enforcement of anticompetitive practices causes backlash. Don’t read vs affs that say further anti-trust enforcement is bad.

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

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

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

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

### 2AC 1

#### \*2. Privacy enforcement now---resources are limited.

Andrea Vittorio 20 – Reporter, Bloomberg Tax, 12/16. “FTC’s Demand for Tech Company Data Shows ‘Underutilized’ Power.” https://news.bloombergtax.com/privacy-and-data-security/ftcs-demand-for-tech-company-data-shows-underutilized-power

The Federal Trade Commission’s orders to Amazon.com Inc., Facebook Inc., and seven other companies to turn over information on their use of consumer data shows how a little-used inquiry authority has been exercised lately to regulate the tech industry. The authority comes from Section 6(b) of the FTC Act, which allows for wide-ranging studies that don’t have a specific law enforcement purpose. The FTC has used this power to launch a handful of similar studies in recent years. There’s some skepticism over the studies’ impact, since they can take years to complete, but they can signal future agency action. Earlier this month, for example, the commission sued Facebook for alleged violations of antitrust laws after launching a similar ongoing study in February on acquisitions by large tech companies. Seeing FTC action before the study’s completion makes it an outlier amid heightened scrutiny of the tech industry, as other studies from 2019, including one on broadband privacy, are still pending. The study on tech companies’ data collection and use could reveal information that’s later used for enforcement action against some or all of the nine companies targeted in the order, according to Rory Van Loo, a law professor at Boston University. “It seems pretty clearly like the FTC is informing itself about what kinds of cases it might bring against these companies in the future,” Van Loo said. That could include pursuing any alleged consumer privacy violations as unfair or deceptive trade practices, he said. Privacy Policy The FTC has faced pressure to more regularly use its “underutilized” authority to demand data from companies, according to Justin Brookman, a former FTC official who’s now director of consumer privacy and technology policy at Consumer Reports. That’s especially true for privacy policy, where Brookman said the FTC is seen as “understaffed,” “under-resourced,” and regulating industry without a federal consumer privacy law. “So this is the FTC trying to use relatively novel tools to move the debate and inform policymakers,” he said. Brookman added that the study could lead to the FTC calling on Congress to provide more power to oversee privacy protections for consumer data. The FTC is seeking information on the tech companies’ data privacy policies and practices. The agency is also asking about the companies’ advertising and user engagement practices, and how their practices affect children and teens. The information gathered could shed light on data flows in Silicon Valley, according to Quentin Palfrey, president of the International Digital Accountability Council, a tech watchdog group. The group investigates issues such as apps sharing the data they collect with third parties and brings concerns to app platforms like Apple Inc. and Alphabet Inc.'s Google. “It’s important for the FTC to use the tools it has to get a handle on some of the unseen data flows and what the companies are doing that’s not visible to consumers,” said Palfrey, who used to work in the Obama administration and the Massachusetts attorney general’s office.

### 2AC 2

#### Going after big tech requires rulemaking groups---wrecks limited FTC resources

Kim Hart, 21. National Technology Correspondent at Axios. She covers the intersection of politics and innovation in Washington D.C. and around the country. "Big Tech's big D.C threat: the FTC." Axios. April 5, 2021. https://www.axios.com/ftc-biden-tech-facebook-amazon-antitrust-3b70d7cc-a20e-4e36-b2e7-d2809c7f1b29.html

While antitrust lawsuits and Capitol Hill hearings get headlines, Big Tech's biggest threat in Washington may come from the Federal Trade Commission. Why it matters: The FTC is gearing up to flex its muscle, by both enforcing current rules and trying to draft new ones. And it may be able do so relatively quickly. Driving the news: Acting FTC chair Rebecca Kelly Slaughter has created a new "rulemaking group" within the agency's general counsel's office, positioning the FTC to draft new rules cracking down on anti-competitive corporate behavior. The move signals that Slaughter aims to be more aggressive than her recent predecessors, who focused on consumer protection issues like fraud. It's also a signal to the Biden administration — which hasn't nominated a permanent FTC chair yet — that if Slaughter gets the gig, she's open to testing all the agency's legal authority to keep Big Tech in check. FTC rulemakings could apply to multiple companies at once. For the platform companies, potential regulations could focus on app stores, data security and transparency in algorithms. Big Tech can also expect the FTC, which has the power to police companies' "unfair and deceptive" practices, to take more aggressive enforcement actions under the Biden administration, including lawsuits. Slaughter has suggested the FTC's recent settlements didn't go far enough, and she argues that executives should be held personally liable for violations. She [criticized](https://www.ftc.gov/system/files/documents/public_statements/1536918/182_3109_slaughter_statement_on_facebook_7-24-19.pdf) the agency's $5 billion fine against Facebook in 2019, stemming from the Cambridge Analytica data leak, saying it was too small and that Facebook and CEO Mark Zuckerberg should have been referred to the Justice Department for litigation. Yes, but: The FTC is a relatively small agency with limited resources. New rulemaking is a cumbersome process, and there are chances for stakeholders to slow it down even further. Congress added some speed bumps to the FTC’s processes in the 1970s, as lawmakers believed it was overstepping its bounds with moves like trying to ban some [children's TV advertising](https://www.nationalaffairs.com/public_interest/detail/the-kid-vid-crusade). Rulemakings are used sparingly on relatively narrow issues or when directed by Congress. Expanding the use of its rulemaking authority would be new ground for the FTC, and there's no guarantee it will work. Antitrust suits don't always work out, either. The agency last week [abandoned](https://www.zdnet.com/article/ftc-drops-antitrust-case-against-qualcomm/) its 4-year-long case accusing Qualcomm of using its dominance to squash competition. Slaughter said she still believes Qualcomm broke antitrust laws, but that the FTC faced "significant headwinds." Still, even failure to enact new rules could help the FTC argue that it doesn't have the tools it needs and persuade Congress to give it more authority. What to watch: President Biden recently nominated Lina Khan for FTC commissioner. Khan's legal analysis on Amazon helped propel the narrative that the Big Tech companies have too much power. Biden hasn't yet named a replacement for the panel's third Democrat, Rohit Chopra, who's been nominated to lead the Consumer Financial Protection Bureau. Khan was previously a legal adviser to Chopra, who has [argued](https://www.ftc.gov/system/files/documents/public_statements/1568663/rohit_chopra_and_lina_m_khan_the_case_for_unfair_methods_of_competition_rulemaking.pdf) that the FTC has the authority to make new rules targeting anti-competitive practices. What's next: The FTC's actions have been relatively bipartisan and noncontroversial in the past. But antitrust attorneys and former staffers say the FTC will likely become more partisan as it tries to take full advantage of its legal authorities.

They fell into a Jevons paradox---even if they are right that the new system is more efficient, the aff still forces the antitrust policy to enforce prohibitions, which results in just more of that resource being used, undermining the original efficiency.

#### Big Tech suits sap resources --- pulls the FTC away from other responsibilities

Olive Morris, 21. Policy analyst with The New Center, . "Lina Khan Has Big Plans For Big Tech — But She Might Not Have the Tools." RealClearPolicy. July 12, 2021. https://www.realclearpolicy.com/articles/2021/07/12/lina\_khan\_has\_big\_plans\_for\_big\_tech\_\_but\_she\_might\_not\_have\_the\_tools\_785004.html

Lina Khan, a 32-year-old Columbia Law professor and strong advocate for updating antitrust laws to deal with Big Tech companies, was recently [sworn in](https://www.ftc.gov/news-events/press-releases/2021/06/lina-khan-sworn-chair-ftc) as chair of the Federal Trade Commission (FTC). Her confirmation came just days after [Congress introduced](https://www.businessinsider.com/congress-big-tech-bills-facebook-google-apple-amazon-antitrust-2021-6) five antitrust bills specifically targeting Amazon, Google, Apple, and Facebook (the so-called “Big Four”) for alleged anticompetitive practices. The FTC launched more than 40 antitrust lawsuits during the pandemic, including a [landmark case](https://www.ftc.gov/news-events/press-releases/2020/12/ftc-sues-facebook-illegal-monopolization) against Facebook over its illegal monopolization of social network services. Khan will be joining an agency juggling a monumental lawsuit with very few resources. [Leaked audio](https://www.theverge.com/2019/10/1/20892354/mark-zuckerberg-full-transcript-leaked-facebook-meetings) from Mark Zuckerberg in 2019 indicated that Facebook wouldn’t go down easy, with the social media mogul stating, “I don’t want to have a major lawsuit against our own government… But look, at the end of the day, if someone’s going to try to threaten something that existential, you go to the mat and you fight.” But the FTC may not be equipped for that fight. Cases taken up by the FTC cost the agency enormously in fees paid to outside consultants and economists, who can charge as much as [$1,350 an hour](https://www.propublica.org/article/these-professors-make-more-than-thousand-bucks-hour-peddling-mega-mergers). At the same time, corporate merger filing fees, which traditionally serve as a major cash flow for the agency, have fallen during the pandemic. According to emails obtained by [POLITICO](https://www.politico.com/news/2020/12/10/ftc-cash-facebook-lawsuit-444468), the lack of funding is also taking its toll on FTC staffing and resources. “[W]e will either need to bring fewer expert intensive cases or significantly decrease our litigation costs (e.g. experts, transcripts, litigation support contractors, etc.),” Executive Director David Robbins said in an October 29, 2020 email. Robbins said in later emails that the agency would be freezing all hiring, promotions, and end-of-the-year bonuses indefinitely. The FTC may see more funding in 2021 if Congress passes bills like the [U.S. Innovation and Competition Act](https://www.democrats.senate.gov/imo/media/doc/DAV21A48.pdf), which would allow the agency to increase their merger filing fees. However, it’s still unclear how much these fees would be raised and when the new payment schedule could be applied. But even if the FTC had all the funding and staffing it needed, it almost certainly doesn’t have the expertise or the resources to handle the challenges posed by Big Tech companies alone, especially because the FTC has countless other responsibilities. Washington needs a new agency whose only focus is dealing with the challenges — to privacy, competition, and speech —presented by the rise of the tech companies. President Biden and Congress need to stand up a new Digital Commerce Agency.

#### Antitrust against big tech saps essential FTC resources ---- trades off with more focused privacy enforcement

Alex Kantrowitz, 20. Writer for Big Technology. "‘It’s Ridiculous.’ Underfunded FTC and DOJ Can’t Keep Fighting the Tech Giants Like This." Big Technology. September 17, 2020. https://bigtechnology.substack.com/p/its-ridiculous-underfunded-us-regulators

As politicians, the press, and the public scrutinize the tech giants and grow wary of their power, the most important organizations tasked with restraining them — the U.S. regulatory agencies — aren’t getting enough funding to do the job. “The agencies are severely resource-constrained,” Michael Kades, an-ex FTC trial lawyer who spent 11 years at the agency, told Big Technology. The Federal Trade Commission and Department of Justice’s antitrust division have a combined annual budget below what Facebook makes in three days. The FTC runs on [less than $350 million](https://www.ftc.gov/system/files/documents/reports/fy-2021-congressional-budget-justification/fy_2021_cbj_final.pdf) per year, the DOJ’s antitrust division on [less than $200 million](https://www.justice.gov/doj/page/file/1246781/download#:~:text=Mission%3A,over%20the%20FY%202020%20Enacted.). Facebook made [$18 billion](https://investor.fb.com/investor-news/press-release-details/2020/Facebook-Reports-Second-Quarter-2020-Results/default.aspx) last quarter alone. The funding disparity between the tech giants and their regulators leads to an unbalanced fight, current and ex-staffers said: The agencies can’t investigate the tech giants to the extent they’d like. They might shy away from complex cases fearing a resource-draining battle. And when they investigate the tech giants, they often see former colleagues with intricate knowledge of their strategy and ability to act (or lack thereof) representing these companies. Without significant budget increases, the tech giants may well continue to act unrestrained with little fear of repercussions. “DOJ is under-resourced, FTC it’s ridiculous,” one ex DOJ-staffer told Big Technology.  This doesn’t mean these agencies are entirely hamstrung; they can typically marshall the resources to bring a clear-cut case. “They want to win,” one ex-FTC official said. “If it's really egregious, and they find that in discovery, the attorneys are going to put a case together and go after it.” But when you can only take up a limited number of cases due to resource constraints, things inevitably slip through. “When I was there, the privacy wing had maybe 50 people, and that's probably generous. That's lawyers, support staff, everyone,” Justin Brookman, the former policy director at the FTC’s office of technology research and investigation, told Big Technology. “If they were to bring a case, that would tie up half the resources of the group. And they had two litigations ongoing and that took up most of everyone's time.” The agency’s budget has barely increased since Brookman left in 2017, while the tech giants have added trillions of dollars to their market caps. Inside the FTC and DOJ, employees are aware of the tech giants’ ability to fight, and the corporations’ budgets tend to live inside their heads. “Facebook will have the ability to raise every single issue, if they want to,” Kades said. “It doesn't have to be a winner, doesn't have to be close to winner. If they wanted to take this position in litigation, they can make every procedural maneuver difficult, they can not cooperate on discovery, they can fight on scheduling, they don't have to win even half of those, but it would just suck up resources.” The ability to do this, not even the action itself, can impact regulators’ thinking.

#### causes Congress to strip funding and authority from the FTC.

J. Howard Beales 03. Former Director, Bureau of Consumer Protection. “The FTC's Use of Unfairness Authority: Its Rise, Fall, and Resurrection.” https://www.ftc.gov/public-statements/2003/05/ftcs-use-unfairness-authority-its-rise-fall-and-resurrection

The breadth, overreaching, and lack of focus in the FTC's ambitious rulemaking agenda outraged many in business, Congress, and the media . Even the Washington Post editorialized that the FTC had become the "National Nanny."(16) Most significantly, these concerns reverberated in Congress. At one point, Congress refused to provide the necessary funding, and simply shut down the FTC for several days. Entire industries sought exemption from FTC jurisdiction, fortunately without success. Eventually, Congress acted to restrict the FTC's authority, including legislation preventing the FTC from using unfairness in new rulemakings to restrict advertising.(17) So great were the concerns that Congress did not reauthorize the FTC for fourteen years. Thus chastened, the Commission abandoned most of its rulemaking initiatives, and began to re-examine unfairness to develop a focused, injury-based test to evaluate practices that were allegedly unfair.

#### Backlash kills other areas of FTC enforcement.

Adam Speegle 12. J.D. Candidate, May 2012. “Antitrust Rulemaking as a Solution to Abuse of the Standard-Setting Process”. Michigan Law Review. March 2012, Vol. 110, No. 5 (March 2012), pp. 847-873. https://www.jstor.org/stable/23216802

Another major concern with bringing cases under an independent Section 5 is that, as the application of the provision expands and the bounds of its flexibility are tested, the FTC risks eventual backlash from the courts or Congress similar to the backlash it experienced in the 1980s.129 The FTC relies on Section 5 in both antitrust and consumer protection actions. A negative holding on Section 5's use in the standard-setting context may not only bear on future patent holdup enforcement efforts but may also severely impede the FTC's efforts in other areas. If the FTC fails to limit the application of Section 5, it risks subjecting Section 5 to the same or more severe judicial and congressional treatment than it experienced in the past.130 Additionally, many states have their own statutes that are modeled after the FTCA. These state statutes are interdependent with the federal FTCA, and state courts interpret them using federal FTCA precedent.131 Because holdings related to the FTCA at the federal level can, for better or for worse, impact these state statutes, unfavorable Section 5 precedent could also undermine actions at the state level.

#### Empirics prove.

Joshua D. Wright 16. “The FTC, Unfair Methods of Competition, and Abuse of Prosecutorial Discretion,” in *Liberty's Nemesis: The Unchecked Expansion of the State*, p. 352.

The FTC's consumer protection activity in the 1960s and 1970s drew the attention of numerous critics from across the political and ideological spectrum, including Ralph Nader and “Nader‘s Raiders,” as well as then professor Richard Posnerk all of whom raised serious con—cerns about the ineffectiveness of the FTC and questioned the wisdom of the agency's continued existence.4 The FTC‘s questionable activities culminated infamously in an attempt to ban advertising to children, prompting the *Washington Post* to declare the FTC a “national nanny."s The agency's overreach also garnered the attention of Congress, which allowed the FTC‘S funding to lapse, allowed the agency to shut down for a brief-period. and then passed a law speciﬁcally limiting the FTC's “unfairness" rulemaking authority with respect to children's advertising.6 In response. the FTC adopted a series of policy statements describing how it would evaluate conduct under its UDAI’ authority: Doing so alleviated the public and Congress’s concerns. and it legitimized and revitalized the F'I‘C's consumer protection program. lts “unfairness" guidelines have even been codiﬁed into law.8 'lhe FTC has also had considerable success with its Horizontal Merger Guidelines, which have been widely adopted by federal courts and had broad inﬂuence upon antitrust thinking and doctrine.

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

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

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

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

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

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

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

### 2AC 3

Aff’s not able to solve---it undermines regulations that would deter bias in algorithms---the LIO tries to solve after the fact, AND maintaining the edge increases bias because of a lack of regulation

#### Algorithmic bias turns the economy---drains business profitability.

Kalinda Ukanwa 21. Assistant professor of marketing at the University of Southern California’s Marshall School of Business, 5/23/21. “Algorithmic bias isn’t just unfair — it’s bad for business.” https://www.bostonglobe.com/2021/05/23/opinion/algorithmic-bias-isnt-just-unfair-its-bad-business/

These moves respond to growing concerns that algorithms have been reproducing discrimination in situations such as home lending, the allocation of health care, and decisions about who deserves parole. While many people hoped machines could help us make fairer decisions, as the use of AI has exploded it’s become clear that all too often they simply replicate and even amplify our existing prejudices.

An important part of the story has been missing, however. It’s one that might make businesses more amenable to regulation or even preclude the need for it by motivating them to act on their own. Algorithmic bias is not only a pressing ethical and societal concern — it’s also bad for business.

My research shows that over time, word of mouth about algorithmic bias among customers will hurt demand and sales and cut into profits. This damage won’t just hit a few unlucky companies that find themselves embroiled in public controversy around algorithmic discrimination. It can occur even if the inner workings and biases of an algorithm remain invisible to the public.

To understand how this can happen, consider one tech giant’s failed attempts at algorithmic design. In 2014, Amazon launched an internal tool to evaluate resumes. Although the algorithm was not programmed to look at the gender of the job applicants, it was trained using data from the company’s previous decade of hiring decisions, and the applications in that period mainly came from men. Based on past patterns, the algorithm learned to downgrade resumes that mentioned certain women-only colleges or women’s sports or clubs.

Amazon dropped that tool once these biases were discovered, but companies still widely use algorithms for recruiting and hiring. Not only are employers potentially missing out on valuable candidates, but over time these losses will compound through word of mouth. People learn about opportunities from members of their social circles, who often have race, age, gender, and other demographic characteristics in common. When women hear that their female friends and colleagues have been passed over for jobs at a particular company, they are less likely to apply, even if they know nothing about why these other candidates were rejected.

Using group characteristics to make decisions about whether and how to provide services to individual consumers may seem logical in some cases and may even be profitable in the short term. For example, a property manager might believe there are legitimate business reasons to choose tenants based on their age or education level. But my research, which uses computational methods to simulate consumer behavior, shows that these types of “group-aware” algorithms will tend to become less profitable over time.

In a study I conducted with Roland Rust, we simulated how customers would respond to two banks. One bank is “group-aware” and has various loan-approval thresholds for members of different groups. For example, women might have to meet a higher standard than men to get a loan. The other bank in the model is “group-blind”: It has the same approval threshold for every applicant.

Our model indicates that most members of the favored group meet the loan threshold at both banks, so they are likely to apply to either. But members of the group being discriminated against learn from one another to avoid the group-aware bank in favor of the group-blind one. Furthermore, members of the group experiencing discrimination also influence some members of the favored group to avoid the group-aware bank. As time passes, there is a net movement of customers toward the group-blind bank, hurting the profitability of the group-aware bank.

In short, when consumers learn from one another that a company is less likely to serve them, even if the discrimination is unintentional, they’ll avoid that company and it’ll lose revenue.

Algorithms often become group-aware when they aren’t intended to be. AI teases out correlations in the data that serve as stand-ins for group membership. For example, in our geographically segregated society, ZIP codes and other location data are a common proxy for race. Ride-sharing companies discovered the problem when a study revealed that their location-based pricing algorithms charge customers more for rides to or from neighborhoods primarily occupied by people of color. In other words, programming an AI system to ignore people’s gender or race or leaving this information out of the data set entirely isn’t enough to ensure an algorithm is group-blind.

What can companies do to make algorithms treat people fairly? Here are three key steps they can take:

1. Rather than removing group identifiers, businesses should include demographic characteristics in their data so they can continually audit their algorithms to determine whether they inadvertently discriminate against certain groups. There are a number of tools to evaluate whether bias is creeping in. IBM’s AI Fairness 360 is an open-source tool kit that helps detect bias in machine learning models. Microsoft’s FATE research group produces reports and tools aimed at reducing bias and increasing transparency and accountability in AI.

2. Companies can model how their systems’ decisions will affect demand over the long run among consumers who learn that some groups are treated differently. For example, if a bank used a model similar to the one in my study, it could easily see the long-term impact of a group-aware algorithm for making loans.

3. Whenever possible, algorithms should be designed to make decisions using context-specific data about individuals — looking at someone’s bill payment frequency in loan decisions, for example, or a patient’s cholesterol levels in health care, or a student’s grades in education — rather than trying to infer such information from other data points like their education level or where they live. The data used to train the algorithm is important too. Increasing the variation among and representation of different kinds of consumers allows algorithms to better evaluate individuals on their own merits.

Algorithms can lead to fairer outcomes, but only if they are designed and managed carefully. As computers increasingly make influential decisions about our lives, from the health care and financial services we receive to our educational and career prospects, we must remain alert to the potential for bias. There are strong ethical and moral reasons to do so, but there is also a business case to be made. We need to make sure companies understand how algorithmic bias can hurt their bottom lines.

### Extra

#### Algorithmic bias destroys democracy.

Karl Manheim\* and Lyric Kaplan\*\*, 19 – \*Professor of Law, Loyola Law School, and \*\*Associate in Privacy & Data Security Group, Frankfurt Kurnit Klein & Selz. “Artificial Intelligence: Risks to Privacy and Democracy.” 21 Yale J.L. & Tech. 106. https://yjolt.org/sites/default/files/21\_yale\_j.l.\_tech.\_106\_0.pdf

This article explores present and predicted dangers that AI poses to core democratic principles of privacy, autonomy, equality, the po- litical process, and the rule of law. Some of these dangers predate the advent of AI, such as covert manipulation of consumer and voter preferences, but are made all the more effective with the vast pro- cessing power that AI provides. More concerning, however, are AI’s sui generis risks. These include, for instance, AI’s ability to generate comprehensive behavioral profiles from diverse datasets and to re- identify anonymized data. These expose our most intimate personal details to advertisers, governments, and strangers. The biggest dan- gers here are from social media, which rely on AI to fuel their growth and revenue models. Other novel features that have gener- ated controversy include “algorithmic bias” and “unexplained AI.” The former describes AI’s tendency to amplify social biases, but covertly and with the pretense of objectivity. The latter describes AI’s lack of transparency. AI results are often based on reasoning and processing that are unknown and unknowable to humans. The opacity of AI “black box” decision-making14 is the antithesis of democratic self-governance and due process in that they preclude AI outputs from being tested against constitutional norms.

We do not underestimate the productive benefits of AI, and its inev- itable trajectory, but feel it necessary to highlight its risks as well. This is not a vision of a dystopian future, as found in many dire warnings about artificial intelligence. Humans may not be at risk as a species, but we are surely at risk in terms of our democratic institutions and values.

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

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

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

# 2NR

### Solvency

Graphical user interface, text, email

Description automatically generated

### Solvency---International Effect

#### Rehighlight---Emory Blue

Johannsen & Gonzalez ’21 [German; PhD Candidate and LLM @ Max Planck Institute for Innovation and Competition; and Andrés; LLM and Chilean Competition Law Compliance Officer; “Digital Platforms & Economic Dependence in Chile Any Room for Competition Theories of Harm without Dominance?”; <https://law.haifa.ac.il/images/ASCOLA16/GJAG.pdf>; 15 June 2021; AS]

1. Platforms and economic dependence

As transactions —both economic and social— move to the Internet, the role of digital intermediary platforms (hereinafter "platforms") in the economy has increased as facilitators of interactions between the several economic agents (users, buyers, sellers, advertisers, suppliers, etc.). At a global level, some platforms have reached a large size, in some cases becoming part of digital conglomerates with a multinational presence, among which are the so-called TechGiants.7 In Chile, while there is a consolidated presence of platforms that base their business on exploiting the attention of users (e.g. social networks or video platforms), in other sectors platforms are in early stages of expansion8 (e.g. e-commerce in Chile9 ).

In their expansive or developing stage, the platforms seek to increase the amount of users who interact through them. In general terms, more users on one side of the platform, gives more value to the users of that side and/or the other sides (direct and indirect network effects). Already in the world-renowned US Microsoft case this effect was reported when it was pointed out that developers preferred writing applications for operating systems that had enough consumers, and consumers preferred operating systems that already had multiple applications, an effect that is recognized as a barrier to entry.10 Additionally, in the data economy, the more members, the more and better data, which allows for improved service/user experience (databased network effects).11 In other words, by acting as an intermediary, the platform captures revenue, but also internalizes positive externalities, adding value to its whole infrastructure. The positive feedback generated by network effects, in addition to economies of scale and scope, can lead to a platform reaching a size where, for its rivals, it is no longer profitable to compete.12 Once this tipping point is reached, it is easier for the platform to win the whole market.13 This economic rationale defines how and for what purpose platforms compete. On the other hand, the platforms' business models seek to create a long-term relationship with users and suppliers.14 In this regard, the platform can track those who participate in it (via personal accounts and devices) and extract data to create profiles, study preferences and predict behaviour.15 This generates efficiencies related to the personalization of services, which reduces the efforts to match supply and demand. The information obtained from the data analysis generates value that, added to the positive network externalities, increases switching cost for users and suppliers.16 Regarding users, switching costs could be lower if they interact through several platforms (multi-homing).17 However, many times this is not the case since users incur in convenience costs or the platform sets strategies to make muti-homing unlikely.

18 Regarding suppliers, switching costs also depend on whether they had to adapt their technology and business model to the platform’s requirements. 19 Increasing switching costs can make it unrealistic for a provider to switch platforms and still operate in an economically viable way.20 The result is an asymmetry of bargaining power to the detriment of those who depend on the platform. In other words, there is an economic dependence, asis known in comparative doctrine.21 The brick-and-mortar retail sector,22 several agro-industrial sectors,23 and in the context of digital platforms show different market structures leading to dependence. 24 Yet, in the latter, there are two major differences. On one hand, economic dependence can be a decisive factor in the winner-takes-all race. On the other hand, platforms can be placed in a strategic position, as the orchestrator of marketplaces where other players —most of them not rivals of the platform— are going to compete. Therefore, it is critical to understand to what extent economic dependence regarding a platform may affect the wellfunctioning of the market.

2. Dominant power and uneven bargaining power

Economic dependence accounts for an unequal distribution of bargaining power.25 This imbalance allows the holder of such power to exercise aggressive negotiation strategies both at the contractual level (e.g. tied sales, arbitrary interruption of trade relations) and extracontractual level (e.g. refusal to buy or sell), which end up imposing an excessive economic burden on the weaker party. In comparative law, this type of uneven bargaining power is often called superior bargaining position or relative market power26 (hereinafter, indistinctly, “bargaining power” or “relative power”). The exercise of relative market power can have, in turn, a feedback-loop effect, as it reinforces the existing situation of economic dependence.

Regarding digital platforms that provide services as a distribution channel, their strategic position as an intermediary and the size of suppliers who offer goods through it —many of which are small or medium businesses— allows them to be in a position of relative power visà-vis many suppliers. Under these circumstances, the platform can incur in various forms of abuses. The most obvious would be to increase unilaterally the commissions for transactions or enter into exclusivity contracts. A less obvious would be to use the information it obtains as intermediary to favour the marketing of its own branded products 27 or deny access to data that is relevant to users (e.g. about recommendations) and suppliers (e.g. about ranking).28 Not being able to access such data can increase the cost of switching platforms, as it makes data portability more difficult, which in turn may increase the degree of dependence.

While these commercial practices are a manifestation of economic and contractual freedom, in some cases they might be abusive as they could undermine good faith and/or fairness in commercial relationships. In other words, these normative foundations serve as a basis for establishing a boundary between practices with relative market power that are socially acceptable and those which are not. Both at a national and comparative law, the materialization of this dividing line is found mainly in the field of contract law and unfair commercial practices laws. 29

On the other hand, from the perspective of the market’s functioning, although imbalances of bargaining power are inherent in all markets —so much so that they are usually considered a sign of competition—, 30 the exercise of relative market power could, under certain circumstances, cause negative effects on the market structure. As such, a second normative foundation for limiting relative market power could be competition. 31

For instance, taking the commissions’ example, if the platform’s relative market power allows it to raise commissions only to certain suppliers, the resulting differentiated charges can lead to a downstream distortion of competition. 32 On the other hand, in the refusal to grant access to data example, while a vertical-bilateral approach would enable a claim for damages generated on those who cannot access their data, a horizontal-collective approach allows an analysis of whether there are artificial barriers that obstruct competition in the platform market. Moreover, the imposition of exclusive distribution clauses or other formulas that increases switching costs can cause the same effect. 33

Platforms have incentives to be the first to adopt this type of strategy, because by doing so they can take advantage in the winner-takes-all race. 34 In this context, one of the main questions is when these aggressive strategies should be regarded as anti-competitive. To this end, competition law usually resorts to the rule of dominance.35 Dominant power is a legal fiction that —based on economic parameters— distinguishes whether a firm has sufficient market power to behave with independence from competitors36 and/or customers37 on a constant basis. If so, their behaviour is scrutinised to assess whether it has an economic justification or, on the contrary, whether it was carried out to exclude competitors or exploit the market. Yet, in digital platform markets (and in the data economy in general) this rule faces several difficulties.38 First, since platforms have multiple sides, it is complex to understand the distribution of power among them.

39 Second, in the data economy it is complex to know what the true utility or value of a company's accumulated data is and how important it is to access this data for third parties to compete.40 On the other hand, the rule of dominance seems not able to handle all cases of economic dependence threatening competition. Indeed, according to the examples we saw, a third difficulty is that there could be a scenario of dependence distorting downstream or upstream competition (where the platform does not compete, or competes, but is not dominant). Finally, a fourth difficulty is that, even without dominance, a platform can make strategic use of dependence to reach a position of dominance that will later allow it to win the whole market.

### Competition

#### Distinct not effect

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Competition Policy Research in this field consists of **two broad areas**. The first area – **Theory and Implementation of Competition Law and Policy** – refers to fundamental and applied research into topics that are traditionally seen as the core of competition policy. The second area – **Scope of Competition Law and Policy** – refers to all research on the effect and desirability of including new considerations in competition law and policy in order to address the challenges of our time, such as the increasing power of big tech firms, or global warming. **Theory and Implementation of Competition Policy** This covers for instance collusion, abuse of dominance, mergers, market regulation and state aid. Some examples of research topics are: the practices firms can use to engage in collusion and its welfare consequences; the practices firms can use to abuse a dominant position and its welfare consequences; which practices can be considered proof of such activities; how to regulate access to a market; how to properly assess the effects of a particular practice or merger; the practices, by which the state and public authorities distort competition such as subisidies and tax measures the interpretation and application of EU and national competition law by Competition Authorities and Courts and the extent to which they achieve the goals of competition policy **Scope of Competition Policy** The effectiveness of European competition law and policy in combination with rapid technological changes have raised questions about its proper scope**. Which policy objectives can and should be pursued by means of competition law and policy, and which should be delegated to other legal fields and policies**? Some examples of specific research questions include: Can and should competition law be used to protect the privacy of consumers on the internet? Information gathered by firms can be used to increase their own profits. How does this affect consumers, and what does this depend on? Can and should competition law deal with market power derived from information gathering? For instance, should the big five tech giants be forced to divest activities? Should competition policy also include considerations of economic inequality or environmental effects? Can competition law remain effective if it is used for more than safeguarding fair competition?