# Open Source – Round 4 UMW

## Off-Case

### Off

#### Core antitrust laws’ must be economy wide---the aff only effects a subset

Gerber ’20 [David; October; Distinguished Professor of Law at Chicago-Kent College of Law, Illinois Institute of Technology; Oxford Scholarship Online, Competition Law and Antitrust, “What is It? Competition Law’s Veiled Identity,” Ch. 1, p. 14-15]

C. A Core Definition

The Guide uses the terms “competition law” and “antitrust law” to refer to a general domain of law whose object is to deter private restraints on competitive conduct. We look more closely at the terms:

1. “General”—The laws included are those that are applicable throughout an economy and thereby provide a framework for all market operations (there are always some exempted sectors). Laws dealing only with specific markets (e.g., telecommunication) do not play that role.

2. “Domain of Law” here refers to a politically authorized set of norms and the institutional arrangements used to enforce them.

Is it law—or is it policy? The relationship between “competition law” and “competition policy” is not always clear. Often the terms are used interchangeably, but there can be important differences between them. Both can refer to norms used to combat restraints on competition, but they represent two different ways of looking at the relevant laws, and the differences can influence how norms are interpreted and applied. “Law” implies that established methods of interpretation are used to interpret and apply the norms and that established procedures are the sole or primary means of enforcing and changing the norms. In this view, the norms are a relatively stable component of a legal system. Thinking of those same norms as “policy,” on the other hand, implies that they are a tool of whatever government is in power and that it can use and modify them as it wishes.

3. “Restraint” refers to any limitation imposed by one or more private actors that reduces the intensity of competition in a market.

4. “Competition” refers to a process by which firms in a market seek to maximize their profits by exploiting market opportunities more effectively than other firms in the market.

#### Voting issue--- the number of potential subsets is infinite which creates a moral hazard to rush to small non-controversial tweaks that shreds limits and ground

### Off

#### Reconciliation will pass---Biden’s continued push in ongoing negotiations is key

Emily Cochrane et al, Luke Broadwater and Jonathan Weisman 10-1 [NYT ‘‘*We’re going to get this done,’ Biden says after meeting with House Democrats* on his domestic agenda.,” 10-1-21, <https://www.nytimes.com/live/2021/10/01/us/infrastructure-bill-house>, hec]

President Biden emerged from a meeting with House Democrats on Friday expressing confidence that his party would ultimately unite behind his domestic agenda, but he suggested that a deal on a major social safety net and climate policy bill could be as far as weeks off, raising the prospect of a drawn-out negotiation. “I’m telling you, we’re going to get this done,” Mr. Biden said at the Capitol, after huddling with Democrats who have been feuding over his two top-priority bills. He added: “It doesn’t matter when. It doesn’t matter whether it’s in six minutes, six days or six weeks. We’re going to get it done.” One of the measures he is seeking, a $1 trillion bipartisan infrastructure package, is stalled in the House as progressives refuse to support it until they see action on a major budget bill to expand health care, education, climate change initiatives and paid leave. Speaker Nancy Pelosi postponed a planned vote on the infrastructure bill on Thursday, and it was not clear after the meeting with Mr. Biden whether she planned to move forward with it as scheduled on Friday. A closed-door meeting Ms. Pelosi had called on Friday morning did little to resolve the disputes, as lawmakers from swing districts pleaded for passage of the infrastructure bill and liberals in safe Democratic seats said they would not vote yes until the Senate the larger measure. Later, Mr. Biden — who was accompanied by top advisers, including Steve Ricchetti, Cedric Richmond and Louisa Terrell, the White House director of legislative affairs — made his first appearance before the House Democratic Caucus to try to bridge the divides. Many Democrats had issued public pleas for Mr. Biden to become more personally involved in the negotiations, saying he needed to allay the escalating mistrust and frustration among Democrats. “I think the president might be the only person that can bridge both the trust gap and the timing gap,” said Representative Dean Phillips, Democrat of Minnesota.

#### Antitrust reform requires PC and trades off

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.

#### Package failure locks in catastrophic climate change---extinction

Paul Bledsoe 9/4, strategic adviser at the Progressive Policy Institute and a professorial lecturer at American University’s Center for Environmental Policy. He served on the White House Climate Change Task Force under former President Bill Clinton, “Climate devastation is upon us. Congress must act.,” NY Daily News, 9-4-2021, https://www.nydailynews.com/opinion/ny-oped-climate-congress-20210904-mqbe75qni5b77ocke5orzrmjce-story.html?outputType=amp

Many Democrats publicly expressed the need to act on climate change, and offered legislation at the federal and state level. Yet while the ability of Democrats to pass needed legislation was hindered by some divisions within their own ranks, resistance came primarily from Republicans who overwhelmingly opposed any serious actions to limit climate change and the greenhouse gas emissions that cause it. With a few prominent exceptions like former Sen. John McCain, most Republicans derided climate concerns as alarmism and claimed any attempts to limit emissions would be devastating to the U.S. economy. Fast forward 20 years, and our climate situation has grown immeasurably more grave. As predicted climate change impacts are inflicting huge human and economic costs in the U.S., with much worse to come without immediate action. Yet stunningly, our broken politics on climate change seem much the same as decades before. Democrats, beginning with President Biden, are desperately pushing to enact hundreds of billions of dollars in climate change and clean energy measures later this month as part of a wider economic and budget bill. These actions can cut U.S. emissions by 50% below 2005 levels by the end of the decade, and put the U.S. in a stronger position to force other nations to act in key climate negotiations in November. But right now Republicans are unified in opposition to any but cursory climate actions. John Barrasso of Wyoming, the top Republican on the Senate Energy Committee, claimed the Biden climate measure was a “spree to impose this green new disaster on every American,” willfully ignoring the real climate disasters all around us that Biden’s legislation will help limit. This summer, every single Republican member of the key Senate Finance Committee voted against tax incentives for solar, wind, geothermal, electric vehicles and dozens of other clean energy sources. The stakes of the climate crisis are far more profound and long-lasting than most leaders seem to recognize. What’s needed is a united, bipartisan front like that the U.S. created during the Cold War, in part to force other key nations like China to cut their emissions as aggressively as we do. An inkling that this may be possible is found in bipartisan support for recent legislation promoting American technology innovation to compete globally, and significant bipartisan support for infrastructure legislation. But slow action to cut emissions won’t work. We must act decisively and quickly now in Congress this fall to create a clean energy future and cut emissions that are destabilizing our climate. Otherwise, we are consigning ourselves and all of those who come after us to a devastated and denuded world.

### Off

#### The United States federal government should substantially increase prohibitions on extraterritorial business practices by creating regulations that presume against extraterritorial anticompetitive actions

#### Regulation solves market failures best by mandating the competitive outcome. AND competes---it’s distinct from antitrust.

Niamh Dunne 15, lecturer in Law at King’s College London, *Competition Law and Economic Regulation*, Cambridge University Press, 2015.

III. Mechanisms to address market failure (II): the concept of economic regulation

Next, we turn to economic regulation, considering, specifically, its conceptualisation and use as a discrete legal instrument separate from competition law. As legal rules, the antitrust provisions are easily identifiable; disagreements tend to arise instead regarding their purpose and scope. The concept of regulation, by contrast, is much broader and rather amorphous in nature; the question of what it comprises is complex and unsettled.193 This section considers the literature on regulation and builds a functional definition of the concept for the purposes of our analysis. The objective here is primarily to identify and explain those instances of regulation that are likely overlap, in substance, with the operation of competition law, which, in practice, tends to be sector-specific economic regulation. This definitional exercise is not intended to exclude or challenge broader or competing conceptions of regulation as such; rather, we are simply defining the scope of enquiry for the purposes of this work.

We begin by considering the varying conceptions of regulation that have been advanced. Regulation as a concept within politics or social science is construed broadly. A common departure point is the formulation advanced by Selznick, of ‘sustained and focused control exercised by a public agency over activities that are valued by a community’. 194 This provides an expansive and rather abstract definition. More generally, regulation can be viewed as any conscious ordering of activity, meaning the act of controlling, directing or governing according to a rule, principle or system.195 Regulation, in this sense, is a synonym for State action intended to influence or control behaviour. It encompasses all forms of State market supervision, as well as contract and criminal law, and even soft law institutional arrangements.196 This conception of regulation is, however, too broad and insufficiently precise for our purposes, insofar as it fails to address the qualitatively different impact that certain forms of market regulation have on firm behaviour, in contradistinction to competition law’s impact.

Narrowing the definition, the ‘core conception’ of regulation has been described as State intervention into the operation of markets.197 Regulation, thus construed, comprises State activity to remedy market failures or defects. Jarass refined the notion of market intervention: if regulation and public enterprise are separated, regulation means State intervention into the economic conduct of private enterprises.198 Ogus suggested that this rationale of market failure marks regulation as a ‘collectivist’ enterprise, in contradistinction to law implementing ‘the market system’, 199 although few would claim that the mere presence of regulation within a market wholly displaces the latter. While this approach comes closer to our notion of regulation as a mechanism to remedy market defects, it cannot, however, account for the distinction between competition law and other forms of market supervision.

Under this narrower conception, a subdivision into different categories of regulation can be made, typically into economic regulation and social regulation.200 Stewart thus identified a primary distinction between types of regulation: sector-specific economic regulation of competition in particular industries through some combination of entry, service and price controls; and social regulation, comprising environmental, health, safety, anti-discrimination and consumer protection regulation through uniform standards applying to many or all industries.201 Ogus argued that both categories address types of market failure: economic regulation is a substitute for competition in industries with monopolistic tendencies, whereas social regulation corrects information inadequacies in transactions between individuals and firms plus externalities or spill-over effects.202 Although, in practice, competition law can interact and even conflict with social regulation,203 competition enforcement is rarely deployed to remedy the types of market failure that fall within the purview of social regulation.204 Since there is limited substantive overlap between the scope of application of competition law and social regulation – that is, generally these two forms of market regulation are deployed to address different market problems and cannot be considered interchangeable in terms of application – only economic regulation is considered in this work.

Scholars of regulatory economics typically view economic regulation as a relatively narrow concept, limited, in effect, to conventional forms of public utilities regulation. Such regulation has four distinguishing components: control of entry; price-fixing; prescription of quality and conditions of service; and universal service obligations.205 Unlike competition law, which provides a residual mechanism of market supervision applicable in most sectors, economic regulation is sector-specific in nature, and tends to prescribe particular market conduct, rather than merely proscribing broad categories of anticompetitive conduct. Yet often the market difficulties to be remedied through economic regulation stem from the same problem that is addressed by competition law: namely, excessive market power. Economic regulation thus provides a substitute of sorts for the market discipline of competition by emulating the competitive outcome.206 Kahn accordingly described the essence of economic regulation as ‘the explicit replacement of competition with governmental orders as the principal institutional device for ensuring good performance’. 207 Economic regulation as a discrete category of State supervision aimed at controlling market power has been repeatedly recognised by economic policy-makers.208 Within regulatory economics, moreover, competition law has been identified as a third facet in alongside economic and social regulation.209 Accordingly, it is possible to discern a notion of economic regulation that is distinct from, yet has overlapping spheres of application with, competition law, creating a potential for cumulative application of these mechanisms. This possibility is explored later in this work.

The focus on market defects as the rationale for regulation leads some commentators to advance a functional definition, framed in terms of what is to be remedied or achieved.210 Prosser favoured that approach, arguing that it provides a fuller account of what regulators do or should do.211 Considering Yeung’s claim that ‘[t]he aim of any form of regulation is to modify the behaviour of those subject to regulation in order to generate a desired outcome’, 212 the functional approach to regulation should encapsulate ideally both the desired outcome and the means to achieve it. It is necessary, therefore, to give some consideration to the purpose of regulation in order to understand the concept more fully.

The question as to why regulation is enacted can be answered from at least two distinct perspectives: an ‘interest theory’ viewpoint, which focuses on the causes or political motivations for regulation, or a ‘normative justificatory’ viewpoint, which focuses on the social or economic problem to be remedied or other regulatory task that legitimises the imposition of regulation.213 At this juncture, our focus is on the latter, because we are primarily concerned with the substantive issue of the use of regulation to address market defects rather than the political question of why regulation is implemented initially. Interest theory questions remain relevant, of course, given that the motivation behind a regulatory framework may dictate its structure, efficiency and the extent to which it prioritises special interests over general interests. Broadly, two interest theories are discernible, focusing on public interests and private interests (also known as public choice), respectively, while alternative conceptualisations of regulation address institutional aspects or transaction costs.214 These theories are considered further in Chapter 3. Unsurprisingly, where regulation is enacted at the behest of special interests, it is likely to favour those interests rather than society in general. In such circumstances, the ex post application of competition law to correct the resulting sub-optimal distribution may be more likely. Thus, the question arises, which is considered in Chapter 4, of the extent to which competition law can and should be deployed to correct regulatory failures.

Considering the second dimension – the normative justificatory viewpoint – a standard explanation for economic regulation is to correct inefficiencies that result from market failure.215 Yet, economic efficiency is not the sole imperative, and often not even the primary objective, in regulatory policy-making. In fact, the various rationales for regulation – described by Yeung as the ‘collective goals justifying regulatory intervention’ 216 – might be divided, roughly, into two categories. The economic rationale for regulation prompts intervention to maximise economic efficiency, correct spill-over costs or address information inadequacies. The social rationale focuses on distributional issues, seeking to avoid undesirable distributions of wealth or opportunity.217 It is important to emphasise that the division between economic and social rationales for regulation is not coextensive with concepts of economic and social regulation, considered earlier. Rather, Prosser pointed to a distinction in terms of regulatory goals that is more akin to the division between efficiency and equity, considered previously. Hence, for example, considerations of a social nature can inform the necessity for and content of economic regulation. In practice, furthermore, while some justifications for regulation conform to the economic/social divide (control of monopoly firms as an example of the former, continuity of service issues as the latter), others may contain aspects of both (e.g., internalising externalities may have distributive and economic aspects.) It is important to note, additionally, that the question of the substantive policy goals pursued by regulation is distinct from (although, of course, not unrelated to) the issue of whether that regulation is effective at achieving those goals, an issue considered further in Chapter 3. 218

The role of non-commodity or social values within the regulatory sphere is widely accepted, even within the realms of economic regulation. Insofar as regulation has social functions, it may therefore serve social ends that even perfectly functioning competitive markets cannot achieve.219 Bator, who viewed market failure as a static institutional problem, nevertheless suggested that market efficiency is ‘neither sufficient nor necessary for market institutions to be the “preferred” mode of social organisation’. Assuming that ‘markets might be ends as well as means’, it might be the case that alternative political, social and/or organisational values are so much better served by non-efficient market institutions as to require selection.220 Thus, Stewart argued that regulation may legitimately reflect a variety of non-commodity values, such as aspiration, diversity, mutuality, civic virtue, distributional equity, condemnation of behaviour viewed as morally wrong, access to justice, legitimate expectations and certainty.221 In distilling guiding principles for regulation, Sunstein applied the Rawlsian ‘original position’ to derive two criteria – welfare and autonomy – in an approach that is clearly at odds with pure efficiency-focused wealth-maximisation.222

Moreover, a regulatory regime may promote non-commodity values even while it addresses an ostensibly ‘economic’ problem, such as regulation of a natural monopoly. For example, regulated utilities are often subject to universal service obligations, under an equity rationale, in addition to regulatory requirements that aim more directly at remedying the problem of monopoly, such as rate regulation or mandatory access requirements.223 Indeed, Areeda and Hovenkamp argued that the primary objective of much economic regulation is the prevention of consumer exploitation,224 an approach that blurs the boundary between avoiding the inefficiencies of monopoly and securing distributive justice. The primary difficulty is that, by introducing non-economic goals into the equation, this complicates and can sometimes even work against realisation of the economic principles that underlie many regulatory regimes.225 Non-commodity values might, therefore, introduce considerable indeterminacy into regulatory analysis.226

The parameters of regulation as a legal or economic term of art are inherently unsettled.227 Insofar as this work considers the substantive legal relationship between competition law and regulation as mechanisms of market control, it focuses upon economic regulation alone, because it is within this area where questions of substantive overlap typically arise. Yet a precise definition of economic regulation as a legal construct remains elusive, principally because, in practical terms, economic regulation is imposed on a case-by-case basis in many different market sectors to solve individual market failures. The elements contained within a particular regulatory regime are therefore dictated by the specifics of the market problem to be addressed, as well as the political environment and societal disposition towards market intervention. A broad range of potential regulatory strategies or techniques exist: from, for example, classical ‘command and control’ approaches such as centralised price-setting, or licensing requirements that set entry and/or services standards within the market; to incentive-based regulation such as emissions trading schemes that seek to induce efficient or desirable conduct by market actors; to disclosure obligations intended to address information asymmetries; and even self-regulatory or ‘meta-regulatory’ approaches. Moreover, as will be discussed in Chapter 3, recent decades have seen a concerted effort to improve the quality and effectiveness, howsoever this is defined, of much economic as well as social regulation. The choice of regulatory instrument can be of central importance to the success of the regulated outcome, and thus is of relevance for our purposes, insofar as ineffective regulation may prompt calls for deregulation or the concurrent application of competition law in regulated markets. A detailed account of the full range potential regulatory strategies approaches available is, however, beyond the scope of this work.228

### Off

#### The fifty states and all relevant entities through the **N**ational **A**ssociation of **A**ttorneys **G**eneral Antitrust Task Force should establish presumption against extraterritoriality on comity grounds in antitrust case

#### The Supreme Court of the United States ought to not preempt state antitrust laws.

#### States solve

Arteaga 21 [Juan and Jordan Ludwig; January 28; former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, J.D. from Columbia Law School; partner in the Antitrust and Competition Group at Crowell and Moring firm, J.D. from Loyola Law School; Global Competition Review, “The Role of US State Antitrust Enforcement,” <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement>]

In the United States, competition laws have been implemented and enforced through a dual system where the state and federal governments play distinct, yet complementary, roles in regulating the competitive process. While the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) are widely viewed as the stewards of US antitrust laws, state attorneys general have long played an important, albeit varying, role within the United States’ antitrust enforcement regime. This has been especially true during the past 30 years because state attorneys general have become much more effective at coordinating their antitrust enforcement efforts to ensure that they have a meaningful seat at the table in any actions brought jointly with their federal counterparts or are able to bring their own actions when the DOJ and FTC decide not to do so.

Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition.[[2]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-126) In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions.[[3]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-125) This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage.[[4]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-124) Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.[[5]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-123)

In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process.[[6]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-122) As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States.[[7]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-121) This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.[[8]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-120)

In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring parens patriae suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations.[[9]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-119) Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices.[[10]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-118) These laws had their intended effect of reinvigorating state antitrust enforcement.

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints.[[11]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-117) The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’.[[12]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-116) No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications.[[13]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-115) To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.[[14]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-114)

### Off

#### ‘Prohibitions’ must cease all behavior. They regulate.

Broaddus ’50 [James; February 6; Judge on the Kansas City Court of Appeals, Missouri; Westlaw, “City of Meadville v. Caselman,” 240 Mo. App. 1220]

‘Under power conferred on cities of the fourth class ‘to regulate and license’ dramshops, there is no authority to wholly prohibit or suppress. Where there is mere power in a municipality to regulate in a state, with a general policy of conducting licensed saloons, authority to prohibit is excluded. ‘The difference between regulation and prohibition is clear and well marked. The former contemplates the continuance of the subject-matter in existence or in activity. The latter implies its entire destruction or cessation.’' (Citing text writers and cases.)

Precision and clash---regulation affs distort the legal meaning of the rez and explode into unpredictable tweaks and mechanisms, undermining testing.

### Off

#### The United States federal government should establish a framework for contingent international cooperation that prohibits extraterritorial anticompetitive practices

#### The CP’s framework multilateralizes antitrust---explicit reciprocity bypasses generic barriers AND spills over to deep economic integration

Dr. Daniel Francis 21, Climenko Fellow and Lecturer on Law at Harvard Law School, Doctorate of Laws Degree from the NYU School of Law, Master of Laws Degree from Harvard University, JD from Trinity College at Cambridge University, Former Deputy Director of the Federal Trade Commission, “Choices and Consequences: Internationalizing Competition Policy after TPP”, in Megaregulation Contested: The Global Economic Order After TPP, Ed. Kingsbury, Revised 8/26/2021, p. 40-48

B. Between Contracts and Networks: Frameworks

Another dichotomy that dominates the integration of competition policy pertains to the forms of internationalization, which in the competition policy space have generally been dominated by contract-style treaties on the one hand and by open networks on the other.166 Between these two models lies what seems to be an under-utilized alternative, which I call a “framework for contingent cooperation.”

[FOOTNOTE] 166 This binary view dominates the literature. See, e.g., Edward M. Graham, “Internationalizing” Competition Policy: An Assessment of the Two Main Alternatives, 48 Antitrust Bull. 947, 949 (2003) (“[M]echanisms [for antitrust internationalization] range from bilateral treaties creating arrangements for cooperation between or among national competition law enforcement agencies to informal working arrangements among agencies.”); Eleanor M. Fox, International Antitrust and the Doha Dome, 43 Va. J. Int’l L. 911, 912 (2003) (contrasting “horizontalism” with “globalism”); Anu Piilola, Assessing Theories of Global Governance: A Case Study of International Antitrust Regulation, 39 Stan. J. Int'l L. 207, 247 (2003) (“Rather than drafting overarching multilateral agreements on antitrust laws, cooperation efforts in the immediate future are more likely to succeed in managing existing diversity and promoting voluntary convergence based on approximation of domestically applied standards. Networks of antitrust authorities are well-suited to facilitate this process of cooperation and voluntary convergence.”). [END FOOTNOTE]

A “framework” in the sense that I am using that term is a facilitative arrangement that does not constitute a treaty under international law,167 and which does not carry the charge of international legal obligation, but which involves an exchange of specific and reciprocally contingent commitments by participant jurisdictions to engage in mutually beneficial conduct. Specifically, each party states that it will extend certain benefits to each other party so long as each other does likewise; the parties may also create supplementary mechanisms to monitor and/or adjudicate compliance with these commitments.168

A framework of this kind is not a treaty: it is what Kal Raustiala calls a “pledge,”169 and what Charles Lipson calls an “informal” agreement,170 involving no legal obligation, and it involves no commitment of the parties’ reputation for law-abiding behavior.171 On the other hand, it differs from an open, information-sharing network because it precisely specifies behavioral commitments, and because each of the parties shares an understanding that concrete consequences will promptly follow—exclusion from the benefits provided by others—if its behavior materially deviates from the terms of the commitment.172 A framework is therefore essentially a specific declaration of intention to engage in conduct that benefits others, contingent upon parallel behavior by other participating states, without obligatory status under international law.

This is, in some sense, the direct opposite of the approach typically taken in competition policy chapters in trade agreements. The provisions of competition policy chapters partake of the substance of treaty law, but are generally framed in broad terms rather than specifics, and generally do not reflect a shared understanding that specific consequences will attend breach. By contrast, frameworks do not bind in international law, are framed in specific terms than aspirational generalities, and reflect an understanding that the benefits of cooperation will be withdrawn in the event of violation.

Contingent cooperation thus depends for its effectiveness primarily upon three important dynamics. The first and most important of these is the rationality of strategic cooperation. A familiar mainstream view holds that to a significant extent states behave in international society in ways that rationally serve their interests.173 And when cooperation over a series of interactions is overall in the interests of each member of a group, but when each member faces a rational incentive to defect from the terms of cooperation in individual cases, familiar economic theory teaches that a strategic cooperative equilibrium can be maintained among the parties.174 In contingent cooperation, each party understands that if it defects materially from the terms of the framework, the other participants will withdraw the excludable benefits of cooperation, and this provides the incentive to comply.175

Contingent cooperation can be made more stable by the introduction of certain structures designed to monitor compliance (just as with a cartel among private companies).176 This might among other things involve the creation of a central “facilitator” that is responsible, in a general sense, for obtaining, collecting, and processing information necessary to sustain a cooperative equilibrium.177 Depending on the purpose and scope of the cooperation project, this could include (for example): reviewing the text of laws, regulations, and policy documents for consistency with the terms of the framework; conducting peer-review-style evaluations and certifications; hosting voluntary dispute resolution processes, including mediation and/or arbitration, to determine whether and when the framework has been violated; or even receiving and handling complaints of violations ombudsman-fashion (i.e., receiving the complaint, giving the subject of the complaint an opportunity to respond, and publishing findings and conclusions). A central facilitator could also go beyond a policing function and offer a common forum for certain forms of cooperation and information sharing. The nature of such broader functions, and the extent to which they would be useful or desirable, would depend on the nature and purpose of the cooperation.

The second dynamic that powers contingent cooperation is the normative appeal of the project itself. The point here is not unlike what Gráinne de Búrca calls “mission legitimacy”: the normative force of the underlying purpose of a cooperative project, and specifically the power of that normativity to secure the acceptance and cooperation of those who participate.178 Parties joining projects of contingent cooperation can be expected to be in some sense self-selecting: they join such endeavors because, in part, they are genuinely committed to promoting and achieving the ends that the project represents, and they embrace the project of cooperation as worthwhile.179 It may sound a little naïve to suggest that a project of cooperation may be more likely to “stick” if it has some normative appeal to the participating polities, but legal scholarship has long recognized that states do what they undertake to do more often than strictly rational analysis would predict.180 And I think the proposition that genuine commitment to a goal can contribute to compliance is in truth somewhat less naïve than the converse idea that compliance is just as likely without it.

The third source of a framework’s effectiveness is to be found in the acculturative and socializing effects of interaction in an environment in which values and practices are shared and reinforced as normative, and in which attention is paid to the existence and nature of violations. There is a rich and complex literature on the ways in which states, state actors, and the individuals within them may be “socialized” or “acculturated” by repeated engagement with others through common institutions and shared environments of normativity, eventually contributing to the emergence of obligations with genuine normative force.181 Jutta Brunnée and Stephen Toope have pointed out ways in which the force of legal obligation itself arises from shared communities of practice grounded in social reality and shared understandings, not formal commitments.182 As they put it, “[s]tability may be aided by explicit articulation of a norm in a text, but it is ultimately dependent upon [an] underlying shared understanding and a continuous practice of legality.”183

Participation in an endeavor of contingent cooperation may help to engender the development of such understandings and practices, and these may contribute to the effectiveness of the framework. In the longer term, this may even result in the creation of a legal instrument. But this progression is not necessary for acculturation to exert a reinforcing effect: for, as Anu Bradford accurately notes, there is no reason to think that “the pathway from nonbinding to binding rules” is an inevitable or even a natural one.184

The distinctive value of a framework is that it provides a low-cost way for jurisdictions to explore and participate in possible arrangements of mutual benefit that depend upon shared concrete understandings regarding future behavior, but without bearing the burden of an obligation under international law, without running the reputational risk of having to break a treaty, and without facing the domestic hurdles (or political scrutiny) that a treaty would necessitate.185 Use of such a framework may help to reduce the concerns grounded in political morality that might otherwise attend inter-jurisdictional action in sensitive areas:186 to use a term I have coined elsewhere, as contingent practices from which states could withdraw at any time, frameworks would benefit from considerable resources of “exit legitimacy.”187

Frameworks are not suited to every application. They seem particularly apt for types of international cooperation that generate excludable benefits for other participants and can be reasonably well monitored: in the sphere of competition policy, for example, this would include commitments to provide nondiscriminatory access to procurement markets as well as many forms of antitrust cooperation (including cooperation with one another’s investigations, coordination of enforcement activity, the operation of joint filing systems for merger review and cartel leniency programs, and so on). Certain guarantees of nondiscriminatory treatment by SOEs could also be extended on a selective basis. On the other hand, contingent cooperation is much less suitable for projects that require strong and highly credible guarantees of commitment from the participants (in which case a traditional treaty-contract would seem more appropriate188) or groups of parties still lacking the prerequisite agreement on the terms and ambit of desirable cooperation. Nor is it suitable in the absence of sufficient confidence in the ability or incentive of other parties to deliver on their commitments: in these cases, open dialogue and information exchange through a network would seem preferable. Nor, obviously, is it a good fit for projects in which the benefits of cooperation are non-excludable.189 To pick an obvious example, contingent cooperation would not recommend itself as a natural choice for an international project to introduce SOE discipline: the benefits are non-excludable (there is no obvious way to withdraw them selectively in the event of defection) and compliance is very difficult to monitor, so the use of a framework is unlikely to make much of a contribution.190

#### The plan sends a protectionist shockwave that ends the last semblance of global free trade.

Allison Murray 19, JD from the Loyola Law School, Los Angeles Law School, BS in Business Administration from the University of Redlands, Judicial Law Clerk at the U.S. Bankruptcy Courts, Former Corporate Paralegal at Boeing, Degree in Economics and Management from the University of Oxford, “Given Today's New Wave of Protectionism, Is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade's Coffin?”, Loyola of Los Angeles International and Comparative Law Review, Volume 42, Number 1, 42 Loy. L.A. Int'l & Comp. L. Rev. 117, Winter 2019, p. 117-119

INTRODUCTION

Trump. Le Pen. Brexit. Protectionist rhetoric has consumed the international political stage. Western countries and their leaders were once the drivers of economic globalization, relying on free-market speeches and the prospect of removing trade barriers to appeal to their constituents. 1They pointed fingers at other countries engaging in or encouraging protectionist behavior and challenged them in the court of public opinion and elsewhere to stop their antics. The "our country first, world trade after" mentality was widely politicized and vilified. Now, it seems that Western national leaders are championing the very protectionism that they once criticized. 2

Although a system of truly free world trade has never been perfected, past world leaders have eliminated most of the protectionist trade mechanisms that once ran rampant in the international economy. They did so by implementing multilateral and bilateral trade agreements. These webs of agreements have bolstered decades of support for free trade, or at least some version of it. By and large, tariff policies and other forms of protectionism were either eliminated or dramatically reduced. [\*118] Now, as we have seen in the media, when a government imposes a tariff, it becomes a rather extreme political statement which sends a shockwave of significant global consequences.

Protectionism did not end when the age of overbearing tariff policies did, despite then-leaders' best efforts to vilify it. Rather, the end of the tariff era forced nations to achieve protectionist goals through more subtle trade vehicles, like antitrust law. 3So, the recent resurgence of protectionist rhetoric should mean that these subtle trade vehicles, including antitrust law, will be relied on more heavily. It is a fear of many that antitrust law may become overused and inequitably applied to achieve and combat protectionist aims.

Notwithstanding the recent uptick in tariff threats, it is unlikely that all Western leaders will revamp or terminate the trade agreements set forth by their predecessors and bring back the kinds of tariff policies that once existed in their place. Although in the United States ("U.S."), President Trump recently imposed tariffs on steel imports, it appears that his intent is to limit this behavior to a specific industry rather than institute a widespread policy favoring the use of tariffs generally. 4To remedy bad behavior in a specialized set of industries is not to instigate a global paradigm shift. This purpose is underscored by his use of the national security exemption, which is largely interpreted as being used for individual situations rather than general policy schemes. 5 Many still hope that his course of action will be retracted and is merely a strong negotiation tactic. However, there is no doubt that Trump is far more comfortable than past leaders with subverting the status quo on trade relations.

Trump is not the only high-profile leader flirting with staunch protectionism. Western leaders in the E.U. appear to be growing more comfortable than their predecessors with considering similar policies. However, Western lawmakers themselves do not seem as persuaded by the statements of their leadership. The general sentiment among international policymakers is that there has been too much political wherewithal spent on loosening international trade barriers to take actions [\*119] that could counteract that progress. 6Presidential actions taken because of dissatisfaction with current global trade relations aside, a complete overhaul of trade agreements may be too daunting and difficult a task, especially absent ample political support in legislative bodies.

Given the anticipated continuation of cooperative trade agreements and the proliferation of protectionist rhetoric as the new norm of public opinion, leaders will be forced to rely on existing avenues to meet protectionist aims. Again, we find ourselves relying squarely on antitrust law, the more subtle and widely accepted mechanism of restricting trade, to address perceived inequities. In the words of the World Trade Organization ("WTO"), "once formal trade barriers come down, other issues become more important." 7 Among the important issues lies antitrust law. Antitrust and competition laws can form a subtle trade barrier resulting in the imposition of tariff-like measures.

Antitrust law can be enforced to reach protectionist aims and to combat them. It is a tool that allows nations to achieve individual protectionist aims without undermining the future of trade between countries and the cooperative framework underpinning the relatively delicate global free trade enjoyed today. However, the perception of enforcement of antitrust laws as an abusive and solely protectionist mechanism may cause the death of even the smallest semblance of international free trade that remains in the international marketplace today.

#### Nuclear war.

Dr. Michael F. Oppenheimer 21, Clinical Professor at the Center for Global Affairs at New York University, Senior Consulting Fellow for Scenario Planning at the International Institute for Strategic Studies, Former Executive Vice President at The Futures Group, Member of the Council on Foreign Relations, The Foreign Policy Roundtable at the Carnegie Council on Ethics and International Affairs, and The American Council on Germany, “The Turbulent Future of International Relations”, in The Future of Global Affairs: Managing Discontinuity, Disruption and Destruction, Ed. Ankersen and Sidhu, p. 23-30

Four structural forces will shape the future of International Relations: globalization (but without liberal rules, institutions, and leadership)1; multipolarity (the end of American hegemony and wider distribution of power among states and non-states2); the strengthening of distinctive, national and subnational identities, as persistent cultural differences are accentuated by the disruptive effects of Western style globalization (what Samuel Huntington called the “non-westernization of IR”3); and secular economic stagnation, a product of longer term global decline in birth rates combined with aging populations.4 These structural forces do not determine everything. Environmental events, global health challenges, internal political developments, policy mistakes, technology breakthroughs or failures, will intersect with structure to define our future. But these four structural forces will impact the way states behave, in the capacity of great powers to manage their differences, and to act collectively to settle, rather than exploit, the inevitable shocks of the next decade.

Some of these structural forces could be managed to promote prosperity and avoid war. Multipolarity (inherently more prone to conflict than other configurations of power, given coordination problems)5 plus globalization can work in a world of prosperity, convergent values, and effective conflict management. The Congress of Vienna system achieved relative peace in Europe over a hundred-year period through informal cooperation among multiple states sharing a fear of populist revolution. It ended decisively in 1914. Contemporary neoliberal institutionalists, such as John Ikenberry, accept multipolarity as our likely future, but are confident that globalization with liberal characteristics can be sustained without American hegemony, arguing that liberal values and practices have been fully accepted by states, global institutions, and private actors as imperative for growth and political legitimacy.6 Divergent values plus multipolarity can work, though at significantly lower levels of economic growth-in an autarchic world of isolated units, a world envisioned by the advocates of decoupling, including the current American president. 7 Divergent values plus globalization can be managed by hegemonic power, exemplified by the decade of the 1990s, when the Washington Consensus, imposed by American leverage exerted through the IMF and other U.S. dominated institutions, overrode national differences, but with real costs to those states undergoing “structural adjustment programs,”8 and ultimately at the cost of global growth, as states—especially in Asia—increased their savings to self insure against future financial crises.9

But all four forces operating simultaneously will produce a future of increasing internal polarization and cross border conflict, diminished economic growth and poverty alleviation, weakened global institutions and norms of behavior, and reduced collective capacity to confront emerging challenges of global warming, accelerating technology change, nuclear weapons innovation and proliferation. As in any effective scenario, this future is clearly visible to any keen observer. We have only to abolish wishful thinking and believe our own eyes.10

Secular Stagnation

This unbrave new world has been emerging for some time, as US power has declined relative to other states, especially China, global liberalism has failed to deliver on its promises, and totalitarian capitalism has proven effective in leveraging globalization for economic growth and political legitimacy while exploiting technology and the state’s coercive powers to maintain internal political control. But this new era was jumpstarted by the world financial crisis of 2007, which revealed the bankruptcy of unregulated market capitalism, weakened faith in US leadership, exacerbated economic deprivation and inequality around the world, ignited growing populism, and undermined international liberal institutions. The skewed distribution of wealth experienced in most developed countries, politically tolerated in periods of growth, became intolerable as growth rates declined. A combination of aging populations, accelerating technology, and global populism/nationalism promises to make this growth decline very difficult to reverse. What Larry Summers and other international political economists have come to call “secular stagnation” increases the likelihood that illiberal globalization, multipolarity, and rising nationalism will define our future. Summers11 has argued that the world is entering a long period of diminishing economic growth. He suggests that secular stagnation “may be the defining macroeconomic challenge of our times.” Julius Probst, in his recent assessment of Summers’ ideas, explains:

…rich countries are ageing as birth rates decline and people live longer. This has pushed down real interest rates because investors think these trends will mean they will make lower returns from investing in future, making them more willing to accept a lower return on government debt as a result.

Other factors that make investors similarly pessimistic include rising global inequality and the slowdown in productivity growth…

This decline in real interest rates matters because economists believe that to overcome an economic downturn, a central bank must drive down the real interest rate to a certain level to encourage more spending and investment… Because real interest rates are so low, Summers and his supporters believe that the rate required to reach full employment is so far into negative territory that it is effectively impossible.

…in the long run, more immigration might be a vital part of curing secular stagnation. Summers also heavily prescribes increased government spending, arguing that it might actually be more prudent than cutting back – especially if the money is spent on infrastructure, education and research and development.

Of course, governments in Europe and the US are instead trying to shut their doors to migrants. And austerity policies have taken their toll on infrastructure and public research. This looks set to ensure that the next recession will be particularly nasty when it comes… Unless governments change course radically, we could be in for a sobering period ahead.12

The rise of nationalism/populism is both cause and effect of this economic outlook. Lower growth will make every aspect of the liberal order more difficult to resuscitate post-Trump. Domestic politics will become more polarized and dysfunctional, as competition for diminishing resources intensifies. International collaboration, ad hoc or through institutions, will become politically toxic. Protectionism, in its multiple forms, will make economic recovery from “secular stagnation” a heavy lift, and the liberal hegemonic leadership and strong institutions that limited the damage of previous downturns, will be unavailable. A clear demonstration of this negative feedback loop is the economic damage being inflicted on the world by Trump’s trade war with China, which— despite the so-called phase one agreement—has predictably escalated from negotiating tactic to imbedded reality, with no end in sight. In a world already suffering from inadequate investment, the uncertainties generated by this confrontation will further curb the investments essential for future growth. Another demonstration of the intersection of structural forces is how populist-motivated controls on immigration (always a weakness in the hyper-globalization narrative) deprives developed countries of Summers’ recommended policy response to secular stagnation, which in a more open world would be a win-win for rich and poor countries alike, increasing wage rates and remittance revenues for the developing countries, replenishing the labor supply for rich countries experiencing low birth rates.

Illiberal Globalization

Economic weakness and rising nationalism (along with multipolarity) will not end globalization, but will profoundly alter its character and greatly reduce its economic and political benefits. Liberal global institutions, under American hegemony, have served multiple purposes, enabling states to improve the quality of international relations and more fully satisfy the needs of their citizens, and provide companies with the legal and institutional stability necessary to manage the inherent risks of global investment. But under present and future conditions these institutions will become the battlegrounds—and the victims—of geopolitical competition. The Trump Administration’s frontal attack on multilateralism is but the final nail in the coffin of the Bretton Woods system in trade and finance, which has been in slow but accelerating decline since the end of the Cold War. Future American leadership may embrace renewed collaboration in global trade and finance, macroeconomic management, environmental sustainability and the like, but repairing the damage requires the heroic assumption that America’s own identity has not been fundamentally altered by the Trump era (four years or eight matters here), and by the internal and global forces that enabled his rise. The fact will remain that a sizeable portion of the American electorate, and a monolithically pro- Trump Republican Party, is committed to an illiberal future. And even if the effects are transitory, the causes of weakening global collaboration are structural, not subject to the efforts of some hypothetical future US liberal leadership. It is clear that the US has lost respect among its rivals, and trust among its allies. While its economic and military capacity is still greatly superior to all others, its political dysfunction has diminished its ability to convert this wealth into effective power.13 It will furthermore operate in a future system of diffusing material power, diverging economic and political governance approaches, and rising nationalism. Trump has promoted these forces, but did not invent them, and future US Administrations will struggle to cope with them.

What will illiberal globalization look like? Consider recent events. The instruments of globalization have been weaponized by strong states in pursuit of their geopolitical objectives. This has turned the liberal argument on behalf of globalization on its head. Instead of interdependence as an unstoppable force pushing states toward collaboration and convergence around market-friendly domestic policies, states are exploiting interdependence to inflict harm on their adversaries, and even on their allies. The increasing interaction across national boundaries that globalization entails, now produces not harmonization and cooperation, but friction and escalating trade and investment disputes.14 The Trump Administration is in the lead here, but it is not alone. Trade and investment friction with China is the most obvious and damaging example, precipitated by China’s long failure to conform to the World Trade Organization (WTO) principles, now escalated by President Trump into a trade and currency war disturbingly reminiscent of the 1930s that Bretton Woods was designed to prevent. Financial sanctions against Iran, in violation of US obligations in the Joint Comprehensive Plan Of Action (JCPOA), is another example of the rule of law succumbing to geopolitical competition. Though more mercantilist in intent than geopolitical, US tariffs on steel and aluminum, and their threatened use in automotives, aimed at the EU, Canada, and Japan,15 are equally destructive of the liberal system and of future economic growth, imposed as they are by the author of that system, and will spread to others. And indeed, Japan has used export controls in its escalating conflict with South Korea16 (as did China in imposing controls on rare earth,17 and as the US has done as part of its trade war with China). Inward foreign direct investment restrictions are spreading. The vitality of the WTO is being sapped by its inability to complete the Doha Round, by the proliferation of bilateral and regional agreements, and now by the Trump Administration’s hold on appointments to WTO judicial panels. It should not surprise anyone if, during a second term, Trump formally withdrew the US from the WTO. At a minimum it will become a “dead letter regime.”18

As such measures gain traction, it will become clear to states—and to companies—that a global trading system more responsive to raw power than to law entails escalating risk and diminishing benefits. This will be the end of economic globalization, and its many benefits, as we know it. It represents nothing less than the subordination of economic globalization, a system which many thought obeyed its own logic, to an international politics of zero-sum power competition among multiple actors with divergent interests and values. The costs will be significant: Bloomberg Economics estimates that the cost in lost US GDP in 2019- dollar terms from the trade war with China has reached $134 billion to date and will rise to a total of $316 billion by the end of 2020.19 Economically, the just-in-time, maximally efficient world of global supply chains, driving down costs, incentivizing innovation, spreading investment, integrating new countries and populations into the global system, is being Balkanized. Bilateral and regional deals are proliferating, while global, nondiscriminatory trade agreements are at an end.

Economies of scale will shrink, incentivizing less investment, increasing costs and prices, compromising growth, marginalizing countries whose growth and poverty reduction depended on participation in global supply chains. A world already suffering from excess savings (in the corporate sector, among mostly Asian countries) will respond to heightened risk and uncertainty with further retrenchment. The problem is perfectly captured by Tim Boyle, CEO of Columbia Sportswear, whose supply chain runs through China, reacting to yet another ratcheting up of US tariffs on Chinese imports, most recently on consumer goods:

We move stuff around to take advantage of inexpensive labor. That’s why we’re in Bangladesh. That’s why we’re looking at Africa. We’re putting investment capital to work, to get a return for our shareholders. So, when we make a wager on investment, this is not Vegas. We have to have a reasonable expectation we can get a return. That’s predicated on the rule of law: where can we expect the laws to be enforced, and for the foreseeable future, the rules will be in place? That’s what America used to be.20

The international political effects will be equally damaging. The four structural forces act on each other to produce the more dangerous, less prosperous world projected here. Illiberal globalization represents geopolitical conflict by (at first) physically non-kinetic means. It arises from intensifying competition among powerful states with divergent interests and identities, but in its effects drives down growth and fuels increased nationalism/populism, which further contributes to conflict. Twenty-first-century protectionism represents bottom-up forces arising from economic disruption. But it is also a top-down phenomenon, representing a strategic effort by political leadership to reduce the constraints of interdependence on freedom of geopolitical action, in effect a precursor and enabler of war. This is the disturbing hypothesis of Daniel Drezner, argued in an important May 2019 piece in Reason, titled “Will Today’s Global Trade Wars Lead to World War Three,”21 which examines the pre- World War I period of heightened trade conflict, its contribution to the disaster that followed, and its parallels to the present:

Before the First World War started, powers great and small took a variety of steps to thwart the globalization of the 19th century. Each of these steps made it easier for the key combatants to conceive of a general war. We are beginning to see a similar approach to the globalization of the 21st century. One by one, the economic constraints on military aggression are eroding. And too many have forgotten—or never knew—how this played out a century ago.

…In many ways, 19th century globalization was a victim of its own success. Reduced tariffs and transport costs flooded Europe with inexpensive grains from Russia and the United States. The incomes of landowners in these countries suffered a serious hit, and the Long Depression that ran from 1873 until 1896 generated pressure on European governments to protect against cheap imports.

…The primary lesson to draw from the years before 1914 is not that economic interdependence was a weak constraint on military conflict. It is that, even in a globalized economy, governments can take protectionist actions to reduce their interdependence in anticipation of future wars. In retrospect, the 30 years of tariff hikes, trade wars, and currency conflicts that preceded 1914 were harbingers of the devastation to come. European governments did not necessarily want to ignite a war among the great powers. By reducing their interdependence, however, they made that option conceivable.

…the backlash to globalization that preceded the Great War seems to be reprised in the current moment. Indeed, there are ways in which the current moment is scarier than the pre-1914 era. Back then, the world’s hegemon, the United Kingdom, acted as a brake on economic closure. In 2019, the United States is the protectionist with its foot on the accelerator. The constraints of Sino-American interdependence—what economist Larry Summers once called “the financial balance of terror”—no longer look so binding. And there are far too many hot spots—the Korean peninsula, the South China Sea, Taiwan—where the kindling seems awfully dry.

### Off

#### Changing the legal standards of antitrust spills over to crush otherwise surging growth.

Thierer ’21 [Adam; February 25; Senior Research Fellow with the Mercatus Center at George Mason University; The Hill, “Open-ended antitrust is an innovation killer,” <https://thehill.com/opinion/technology/540391-open-ended-antitrust-is-an-innovation-killer>]

Unfortunately, the calls for more bureaucracy and regulation emanating from all corners of the political world could have an unintended consequence: discouraging the sort of vibrant innovation and consumer choice that made America’s tech companies household names across the globe.

Sen. [Amy Klobuchar](https://thehill.com/people/amy-klobuchar) (D-Minn.) is leading one charge. Klobuchar, who chairs the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, [recently introduced](https://www.klobuchar.senate.gov/public/_cache/files/e/1/e171ac94-edaf-42bc-95ba-85c985a89200/375AF2AEA4F2AF97FB96DBC6A2A839F9.sil21191.pdf) the “Competition and Antitrust Law Enforcement Reform Act.” This sweeping measure seeks to expand the powers and budgets of antitrust regulators at the Federal Trade Commission and the Department of Justice. It also includes new filing requirements and potentially hefty civil fines.

The most important feature is the proposed change to the legal standard by which regulators approve business deals. It would allow the government to stop any deal that creates an “appreciable risk of materially lessening competition,” and it also defines exclusionary behavior as, “conduct that materially disadvantages one or more actual or potential competitors.”

These may sound like simple, semantic tweaks, but – much like some of the other policy ideas currently circulating – they would upend decades of settled law and create a sea change in U.S. antitrust enforcement. This change could undermine business dynamism, innovation and investment in ways that inhibit the global competitiveness of U.S. businesses.

Critics of merger and acquisition (M&A) activity by large tech firms include not only Sen. Klobuchar but also Republicans such as Sen. [Josh Hawley](https://thehill.com/people/joshua-josh-hawley) (R-Mo.). Hawley recent [offered an amendment](https://www.axios.com/josh-hawley-big-tech-merger-ban-1467081d-216c-45a2-9d09-9416dfbde330.html) to a budget bill that would preemptively prohibit mergers and acquisitions by dominant online firms. Klobuchar and Hawley believe that M&A skews the market in favor of today’s largest firms, entrenching their market power and discouraging innovation.

History teaches a different lesson. Consider DirecTV and Skype, both once considered innovative market leaders in their respective fields of satellite TV and internet telephony. Both firms stumbled, however, and they might not even be with us today without creative business deals. DirecTV has been partially or fully controlled by Hughes Electronics, News Corp., Liberty Media and now AT&T. Skype has swapped hands multiple times, moving from eBay, to a private investment firm and now to Microsoft.

These were complex deals, and some didn’t work, leading to divestitures. But each was a learning experience that illustrated how dynamic media and technology markets can be with firms constantly searching for value-added arrangements that serve their customers and shareholders. If we make this type of activity presumptively illegal, we’re imagining that government bureaucrats are better suited to make these calls than businesspeople and the consumers who choose whether or not to buy the product.

Worse yet, legal tests like those Klobuchar proposes – “conduct that materially disadvantages potential competitors” – are remarkably open-ended and could be easily abused. The system will be gamed by opponents of deals for business reasons. They will claim that their own failure to attract investors or customers must all be the fault of more creative rivals. That’s a recipe for cronyism and economic stagnation.

Those who worry about today’s largest tech giants becoming supposedly unassailable monopolies should consider how similar fears were expressed not so long ago about other tech titans, many of which we laugh about today. Just 14 years ago, headlines [proclaimed](https://www.technewsworld.com/story/55185.html) that “MySpace Is a Natural Monopoly,” and [asked](https://www.theguardian.com/technology/2007/feb/08/business.comment), “Will MySpace Ever Lose Its Monopoly?” We all know how that “monopoly” ceased to exist.

At the same time, pundits [insisted](https://www.marketwatch.com/story/apple-should-pull-the-plug-on-the-iphone) “Apple should pull the plug on the iPhone,” since “there is no likelihood that Apple can be successful in a business this competitive.” The smartphone market of that era was viewed as completely under the control of BlackBerry, Palm, Motorola and Nokia. A few years prior to that, critics lambasted the merger of AOL and TimeWarner as a new [corporate “Big Brother”](http://www.ojr.org/ojr/workplace/1017966109.php?__cf_chl_jschl_tk__=67a5f6a101935b8e3586ca48216d31ba6d4e03de-1612467283-0-AXvbGCtUx-p_N4T-8_2m8OHezQUhQ9kelg9-pVuD6IzKvFfXrllJujU9ERvjqjyIsAeCovUw9bfZqq75_NYasBM87SnQT_027hDJOhjXeowzK1QQH_7vcmr1tS4XgCGC_NNx6UGbAvVgcJNFhSkqkVKKeRJ-BjdDA7Vus-gwmr7wQXcS7KKfTtHyqxdRfureL9alpZHU2IJcbbdYaZpTjTrfcJHCKa8pIZcdiScjaRJmON9X1Ip20Vuv7tyDHbZSvcrn88WrY_9N_qBpKvZhQ4PAe90w5Fx5iHjjNIzoNMKSpToTFGLbPdqawgge9PVubSQbkS7xXDXxCBMA2Sh-Y_U) that would decimate digital diversity and online competition.

Today, we know these tales of the apocalypse ended up instead becoming case studies in the continuing power of “creative destruction.” New innovations and players emerged from many unexpected quarters, decimating whatever dreams of continued domination the old giants once had.

Today’s biggest players face similar pressures, and it’s better to let rivalry and innovation emerge organically, not through the wrecking ball of heavy-handed antitrust regulation.

#### Extinction---recovery caps numerous geopolitical crises.

Baird ’20 [Zoe; October 2020; C.E.O. and President of the Markle Foundation, Member of the Aspen Strategy Group and former Trustee at the Council on Foreign Relations, J.D. and A.B. from the University of California at Berkeley; Domestic and International (Dis)order: A Strategic Response, “Equitable Economic Recovery is a National Security Imperative,” Ch. 13]

A strong and inclusive economy is essential for American national security and global leadership. As the nation seeks to return from a historic economic crisis, the national security community should support an equitable recovery that helps every worker adapt to the seismic shifts underway in our economy.

Broadly shared economic prosperity is a bedrock of America’s economic and political strength—both domestically and in the international arena. A strong and equitable recovery from the economic crisis created by COVID-19 would be a powerful testament to the resilience of the American system and its ability to create prosperity at a time of seismic change and persistent global crisis. Such a recovery could attack the profound economic inequities that have developed over the past several decades. Without bold action to help all workers access good jobs as the economy returns, the United States risks undermining the legitimacy of its institutions and its international standing. The outcome will be a key determinant of America’s national security for years to come.

An equitable recovery requires a national commitment to help all workers obtain good jobs—particularly the two-thirds of adults without a bachelor’s degree and people of color who have been most affected by the crisis and were denied opportunity before it. As the nation engages in a historic debate about how to accelerate economic recovery, ambitious public investment is necessary to put Americans back to work with dignity and opportunity. We need an intentional effort to make sure that the jobs that come back are good jobs with decent wages, benefits, and mobility and to empower workers to access these opportunities in a profoundly changed labor market.

To achieve these goals, American policy makers need to establish job growth strategies that address urgent public needs through major programs in green energy, infrastructure, and health. Alongside these job growth strategies, we need to recognize and develop the talents of workers by creating an adult learning system that meets workers’ needs and develops skills for the digital economy. The national security community must lend its support to this cause. And as it does so, it can bring home the lessons from the advances made in these areas in other countries, particularly our European allies, and consider this a realm of international cooperation and international engagement.

Shared Economic Prosperity Is a National Security Asset

A strong economy is essential to America’s security and diplomatic strategy. Economic strength increases our influence on the global stage, expands markets, and funds a strong and agile military and national defense. Yet it is not enough for America’s economy to be strong for some—prosperity must be broadly shared. Widespread belief in the ability of the American economic system to create economic security and mobility for all—the American Dream— creates credibility and legitimacy for America’s values, governance, and alliances around the world.

After World War II, the United States grew the middle class to historic size and strength. This achievement made America the model of the free world—setting the stage for decades of American political and economic leadership. Domestically, broad participation in the economy is core to the legitimacy of our democracy and the strength of our political institutions. A belief that the economic system works for millions is an important part of creating trust in a democratic government’s ability to meet the needs of the people.

The COVID-19 Crisis Puts Millions of American Workers at Risk

For the last several decades, the American Dream has been on the wane. Opportunity has been increasingly concentrated in the hands of a small share of workers able to access the knowledge economy. Too many Americans, particularly those without four-year degrees, experienced stagnant wages, less stability, and fewer opportunities for advancement.

Since COVID-19 hit, millions have lost their jobs or income and are struggling to meet their basic needs—including food, housing, and medical care.1 The crisis has impacted sectors like hospitality, leisure, and retail, which employ a large share of America’s most economically vulnerable workers, resulting in alarming disparities in unemployment rates along education and racial lines. In August, the unemployment rate for those with a high school degree or less was more than double the rate for those with a bachelor’s degree.2 Black and Hispanic Americans are experiencing disproportionately high unemployment, with the gulf widening as the crisis continues.3

The experience of the Great Recession shows that without intentional effort to drive an inclusive recovery, inequality may get worse: while workers with a high school education or less experienced the majority of job losses, nearly all new jobs went to workers with postsecondary education. Inequalities across racial lines also increased as workers of color worked in the hardest-hit sectors and were slower to recover earnings and income than White workers.4

The Case for an Inclusive Recovery

A recovery that promotes broad economic participation, renewed opportunity, and equity will strengthen American moral and political authority around the world. It will send a strong message about the strength and resilience of democratic government and the American people’s ability to adapt to a changing global economic landscape. An inclusive recovery will reaffirm American leadership as core to the success of our most critical international alliances, which are rooted in the notion of shared destiny and interdependence. For example, NATO, which has been a cornerstone of U.S. foreign policy and a force of global stability for decades, has suffered from American disengagement in recent years. A strong American recovery—coupled with a renewed openness to international collaboration—is core to NATO’s ability to solve shared geopolitical and security challenges. A renewed partnership with our European allies from a position of economic strength will enable us to address global crises such as climate change, global pandemics, and refugees. Together, the United States and Europe can pursue a commitment to investing in workers for shared economic competitiveness, innovation, and long-term prosperity.

The U.S. has unique advantages that give it the tools to emerge from the crisis with tremendous economic strength— including an entrepreneurial spirit and the technological and scientific infrastructure to lead global efforts in developing industries like green energy and biosciences that will shape the international economy for decades to come.

## Relations

### No China Rise---1NC/2AC

#### No violent China rise---it isn’t a threat to the LIO.

Koh King Kee 20. President, Centre for New Inclusive Asia (CNIA). Associate Fellow, Institute of China Studies, University of Malaya. “China’s Rise Is No Threat to the Liberal International Order “ China Focus. 01-22-2020. http://www.cnfocus.com/china-s-rise-is-no-threat-to-the-liberal-international-order/

China has given the world a sterling report card for its economic reform over the last four decades. Its achievements have won admirations and applauses across the world, from men on the street to political elites. Its success stories are inspirations to leaders of the emerging economies who see in China an alternative development model, a growth path that is strikingly different from the conventional economic text. But its meteoric rise has also **stirred concerns and fears in the West**. To the advocates of Western democracy, China is a centralized authoritarian regime, the rise of which is a threat to the liberal international order. Particularly, America views China as a revisionist power that poses an imminent challenge to its global hegemony. In a radio interview last year, U.S. Secretary of State Mike Pompeo alleged that China is “buying an empire” with its Belt and Road Initiative, and America intends to “oppose them at every turn”. **Are such allegations justified** or misguided? What sets China’s political system apart from the rest of the world? China’s centralized system is rooted in its history “The Chinese tradition of order imposed by a centralized system” is “a pattern that goes back at least 3,500 years”, says Newt Gingrich, former US House Speaker in his newly published book “Trump Vs China: Facing America’s Greatest Threat”. Newt Gingrich, a harsh critic of the Communist Party of China (CPC) has no empathy for China. However, he is right in pointing out that China’s political system under CPC is rooted in thousands of years of its history, a system that is inextricably embedded in its millennial-old civilization. Centralization has been China’s mainstream political philosophy spanning from the ancient dynasties to modern days. China has remained a unified nation after Qinshihuang’s conquest of the Warring States more than 2,000 years ago despite the rise and fall of the dynasties, thanks to the centralized system. It glues the immense territory together and prevents China from falling into the fate of Europe – disintegration into small nation states. China’s centralized system of governance is run based on meritocracy – a key tenet of Confucianism, which is the **bedrock of Chinese civilization**. “When the Great Principle prevails, the world belongs to all, rulers are selected according to their wisdom and ability (⼤道之⾏也，天下为公，选贤与能),” said Confucius. In ancient China, talents were picked based on the principle of meritocracy through an open imperial examination system to serve the ruler of the day. Likewise, in present day China, leaders are selected after they have passed through tiers of ability and loyalty mill tests. Centralization and meritocracy are the foundation of Chinese polity. Despite regime change, they have remained China’s unchanged statecraft throughout its history. CCP’s consultative democracy is, in fact, a blend of centralization and meritocracy. Advantages of China’s political system Many factors have contributed to China’s startling economic rise. Free trade and globalization are unequivocally important drivers. However, many countries with a huge population or immense territory such as India, Russia and Indonesia have not been able to achieve the same economic growth as that of China, even though the same international environment and opportunities were availed to them. Many political pundits and economists have failed to recognize that what sets China apart from others in its development path is, in fact, its unique political system. China’s centralized CPC-led system has obvious advantages over electoral democracy as it allows the government to formulate long-term economic development plans for the country as opposed to focusing on short term populist policies for voters’ satisfaction. It is not uncommon for a new government to reverse development policies of the previous regime due to different ideologies in a parliamentary democracy. Meritocracy and political stability enhance government efficiency and accountability. China is well acknowledged for its high efficiency in delivering mega infrastructure projects. It builds highways, railways, bridges, dams, power plants, airports and other infrastructure projects in record time, now come to know as “China Speed”. Typically, a HSR project in China takes about 4 years to complete irrespective of its size, whilst in other countries, a similar project may take up to a decade to build. “China Speed” speeds up China’s economic growth as infrastructure is not only the prerequisite, but also the catalyst for economic development. BRI – a platform for international cooperation China’s Belt and Road Initiative (BRI) is the biggest infrastructure built out in the history of mankind. It is a mammoth transcontinental development project that aims to build connectivity across the Eurasian landmass based on the principles of mutual consultation, joint contribution and shared benefits. “China will actively promote international cooperation through the Belt and Road Initiative. In doing so, we hope to achieve policy, infrastructure, trade, financial, and people-to-people connectivity and thus build a new platform for international co-operation to create new drivers of shared development,” said President Xi Jinping at the 19th CPC National Congress. Sound infrastructures are the prerequisite for economic development. According to ADB’s estimate, Asia alone requires $26 trillion of infrastructure investment from 2016 to 2030 in order to maintain its growth momentum, eradicate poverty and respond to climate change. China is well positioned to contribute to the global infrastructure investment needs in view of its technology and expertise in building infrastructure projects, coupled with its huge pool of foreign reserves. To deepen its reform, China must move up the global value chain, migrate its low technology industries and alleviate its excess industrial capacities by opening-up new markets. BRI connects China’s landlocked northwest provinces to the world with overland highways and railways. It opens a safe passageway to the Indian Ocean through the China-Pakistan Economic Corridor. BRI is thus a **win-win transnational development project** benefiting China and the partner countries. However, in the eyes of Washington, BRI is China’s grand strategy to project its global influence and a challenge to America’s world supremacy. Washington accused China of coercive economic diplomacy by indiscriminate lending to developing countries with poor repayment ability, eventually seizing the strategic assets of the recipients when they failed to repay the loans – a scheme propagated by the West as “debt trap”. China is developing through interaction with the world China is a member of the global village. It is developing through interactions with the world. “China has been seeking development with its door open. China has **embraced the world**, learned from the world, and contributed to the world, **through positive interaction** and shared development.” China sums up its relationship with the world in “ China and the World in the New Era”, a White Paper commemorating the 70th Anniversary of the founding of the People’s Republic of China. China promotes interconnected development and **benefits from the existing international order.** It advocates **free trade and multilateralism.** When China started its reform and opening-up to the world, the West cast a mould, expecting China to grow accordingly. However, China took a path not traversed by others – a mixed economy under the centralized authoritarian system, or as CPC puts it, Socialism with Chinese Characteristics. It is a system rooted in thousands of years of its history and civilization, a development model that suits China and produces an economic miracle never seen in human history. The Belt and Road Initiative is China’s mega initiative for globalization **aiming at win-win outcome.** It is China’s offer of public goods to the world as an emerging economic superpower, a manifestation of its age-old philosophy, “When you are rich, share your wealth with the world (达则兼济天下）.” China is now the second largest economy and top trading nation in the world, contributing about 30 percent to global growth. Inevitably, the international order should reflect the new economic dynamics of the 21st century. While China’s economic achievements offer valuable lessons to the world, it has no messianic aspirations. As President Xi Jinping has categorically said, “We will not import other countries’ models, and will not export the China model.” China’s growth is being realized within the existing international order. China has **no reason to sabotage** it nor the intention to supplant America’s global preeminence. **China’s rise is no threat to the liberal international order!**

### No US-China War

#### No China war

Shifrinson 2/8/19 [Joshua Shifrinson is an assistant professor of international relations at Boston University. The ‘new Cold War’ with China is way overblown. Here’s why. February 8, 2019. https://www.washingtonpost.com/news/monkey-cage/wp/2019/02/08/there-isnt-a-new-cold-war-with-china-for-these-4-reasons/?noredirect=on&utm\_term=.f8ca8195c4e4]

Is a new Cold War looming — or already present — between the United States and China? Many analysts argue that a combination of geopolitics, ideology and competing visions of “global order” are driving the two countries toward emulating the Soviet-U.S. rivalry that dominated world politics from 1947 through 1990. But such concerns are overblown. Here are four big reasons why. 1. The historical backdrops of the two relationships are very different When the Cold War began, the U.S.-Soviet relationship was fragile and tenuous. Bilateral diplomatic relations were barely a decade old, U.S. intervention in the Russian Revolution was a recent memory, and the Soviet Union had called for the overthrow of capitalist governments into the 1940s. Despite their Grand Alliance against Nazi Germany, the two countries shared few meaningful diplomatic, economic or institutional links. In 2019, the situation between the United States and China is very different. Since the 1970s, diplomatic interactions, institutional ties and economic flows have all exploded. Although each side has criticized the other for domestic interference (such as U.S. demands for journalist access to Tibet and China’s espionage against U.S. corporations), these issues did not prevent cooperation on a host of other issues. Yes, there were tensions over the past decade, but these occurred against a generally cooperative backdrop. 2. Geography and powers’ nuclear postures suggest East Asia is more stable than Cold War-era Europe The Cold War was shaped by an intense arms race, nuclear posturing and crises, especially in continental Europe. Given Europe’s political geography, the United States feared a “bolt from the blue” attack would allow the Soviet Union to conquer the continent. Accordingly, the United States prepared to defend Europe with conventional forces, and to deter Soviet aggrandizement using nuclear weapons. Unsurprisingly, the Soviet Union also feared that the United States might attack and wanted to deter U.S. adventurism. Concerns that the other superpower might use force and that crises could quickly escalate colored Cold War politics. Today, the United States and China spend proportionally far less on their militaries than the United States and the Soviet Union did. Though an arms race may be emerging, U.S. and Chinese nuclear postures are not nearly as large or threatening: Arsenals remain far below the size and scope witnessed in the Cold War, and are kept at a lower state of alert. As for geography, East Asia is not primed for tensions akin to those in Cold War Europe. China can threaten to coerce its neighbors, but the water barriers separating China from most of Asia’s strategically important states make outright conquest significantly harder. Of course, as scholars such as Caitlin Talmadge and Avery Goldstein note, crises may still erupt, and each side may face pressures to escalate. Unlike the Cold War, however, U.S.-Chinese confrontations occur at sea with relatively limited forces and without clear territorial boundaries. This suggests there are countervailing factors that may give the two sides room to negotiate — and limit the speed with which a crisis unfolds.

### Alt Causes to Rels

#### Zero solvency---tons of issues complicate relations

Dr. David M. Lampton 19, Oksenberg-Rohlen Fellow at Stanford University's Asia-Pacific Research Center and Hyman Professor Emeritus and Former Director of China Studies at the Johns Hopkins University School of Advanced International Studies, April 2019, “Reconsidering U.S.-China Relations: From Improbable Normalization to Precipitous Deterioration,” Asia Policy, Volume 14, Number 2, p. 43-60

There no longer is consensus in either country about carrying forward policies associated with the heyday of constructive engagement, much less to pursue the goal that Presidents Bill Clinton and Jiang Zemin articulated in November 1997—"building a constructive strategic partnership oriented towards the 21st century." The mounting friction at present reflects a multidimensional failure by top leadership in both Washington and Beijing. Managing the U.S.-China relationship productively should be a litmus test for leadership competence in both countries—and both are grievously failing. Could it conceivably be in Beijing's interest to be in confrontation with its single-largest national trading partner and the country of the most security importance to China? Could it conceivably be in Washington's interest to have [End Page 49] both China and Russia aligned against the United States, forcing U.S. allies and friends to choose between Washington and Beijing? As Michael Green points out in his book By More Than Providence, the core of U.S. strategy in Asia since the republic's earliest days has been to avoid a scenario where the Eurasian landmass and the Pacific are under the sway of a single hostile power or coalition.12 Recent large-scale joint Russian-Chinese military exercises signal a sharp move toward deterrence-thinking in Beijing, as does the United States' adoption of the Indo-Pacific strategy of like-minded countries and its multiplication of security, export, and investment control measures.

Looking at the 1970s, Richard Nixon, Mao Zedong, Henry Kissinger, Zhou Enlai, Jimmy Carter, Deng Xiaoping, Zbigniew Brzezinski, and (perhaps) Hua Guofeng understood that improved bilateral relations would help their countries address the most pressing domestic and international problems, challenges bearing on their personal success and regime legitimacy. For Mao, improved relations with the United States removed China from the disadvantageous position of simultaneously having two superpower enemies and exerted some deterrence on Moscow's military adventurism. As for Deng, he realized that improved relations with the United States would open the path to improved legitimacy and enhance economic performance in China.

For Nixon, the United States stood to gain by dividing Soviet capabilities across two widely separated military fronts, namely Europe and the Soviet Far East. Moreover, U.S. rapprochement with Beijing held out prospects for both a face-saving withdrawal from Vietnam and the opportunity to press Moscow on arms control. For Carter, in addition to the strategic gains of Sino-U.S. normalization allowing his administration to push back more forcefully against Soviet aggression in Afghanistan and the growing stockpile of Soviet missiles, economics became an important consideration, with Deng's China on the cusp of a monumental change of economic strategy—opening and reform. Deng's policy ignited approximately four decades of near 10% annual economic growth, changing both Chinese and global value-added supply chains and trading patterns.

The insights and policies that flowed from the normalization of Sino-U.S. relations endured for the next 40 years, lasting nearly as long as the Cold War itself. Over time, the relationship gradually moved from being an elite-to-elite (or capital-to-capital) relationship to a society-to-society relationship. Unfortunately, nothing lasts forever. [End Page 50]

The signs of declining cooperation between Washington and Beijing over the last decade are everywhere. Tensions are rising in the Taiwan Strait amid greater PRC pressure on Taipei, more assertive behavior by Taipei in cultivating U.S. support for its aspirations, and tighter alignment of Washington and Taipei. With respect to the latter, the most obvious example is the unanimous passage of the Taiwan Travel Act. Though key provisions were the "sense of Congress" (i.e., not mandatory), President Donald Trump signed the act into law in March 2018 without making any signing statement expressing the intention to implement it in a way consistent with the Three Communiqués and the Taiwan Relations Act, documents that have provided the framework for management of the Sino-U.S. relationship for decades.

Similarly, Beijing's rough handling of Hong Kong has weakened the already dubious credibility of its "one country, two systems" approach. It is hard to argue that Hong Kong has been granted the promised "high degree of autonomy," given that a Canadian citizen (Xiao Jianhua) was abducted from the Four Seasons Hotel there. Combined with Beijing's clampdown in Xinjiang following patterns not seen since the Cultural Revolution, this incident triggers every individualist, rights-oriented, and humanitarian reflex in the United States, not to mention that the government's recent mass incarceration actions in Xinjiang violate the PRC's own constitution regarding religious freedom and tolerance. Simply put, with respect to social control, China is acting in ways opposed to Chinese and global values and moving in directions divergent from the PRC's own reform-era thrust.

On the other hand, the United States for almost two decades has undermined its own greatest soft-power asset—orderly governance at home and generally responsible behavior abroad. A series of disastrous decisions has created a sad trail with signposts reading Iraq War, domestic economic mismanagement, global financial crisis, and withdrawal from agreements that Washington had encouraged and signed. All this has reduced U.S. credibility, not least in Beijing. "America first," as currently implemented, is a doctrine with no attraction to anyone but a fraction of the American public.

Other signs of a deteriorating U.S.-China relationship abound. The current trade frictions are inflicting pain on the global economy as well as on the citizens of both countries. Washington speaks increasingly of uniting with "like-minded countries," by which it does not mean China. The PRC sees "hegemony" and "containment" as the ultimate aims of U.S. policies. The alignment of Beijing and Moscow is growing closer as Washington seeks to construct a counter-alignment with its Indo-Pacific strategy, thereby moving the relationship from the realm of mutual strategic [End Page 51] suspicion toward strategic friction and mutual deterrence. Mounting export and foreign investment controls, as well as trade barriers in both directions, represent tangible efforts by each side to hobble the other's economy. Examples include the tit-for-tat imposition of tariffs, the recent tightening of U.S. Export Administration Regulations, and the National Defense Authorization Act for FY 2019, which includes the Foreign Investment Risk Review Modernization Act of 2018. Further, both societies are devoting increased attention to identifying and rooting out spies and subversives; this was a principal purpose of the establishment of the PRC's National Security Commission in 2014 and more recently the National Supervisory Commission.13 Empowered military and security players in both societies are rapidly leading the two countries down the path of an action-reaction arms race, including competition in space and cyberspace, not to mention in traditional military areas such as aircraft carriers. Recent public opinion surveys indicate that citizens in each country increasingly view the other as a "threat." The American public's "unfavorable" ratings of the PRC in 2019 exceed even the very high unfavorable ratings in 1989, the year of the Tiananmen Square violence.14 Last, there now is an unmistakable trend in both the United States and China toward assuming that the civil society and educational organizations working on one another's soil are instruments of subversion rather than of mutual understanding and shared benefit.

In sum, in both societies the wrecking ball is being taken to the three pillars supporting sound U.S.-China relations—security, economics, and culture.

## Competition

### China Competition

#### U.S. leadership is locked in---the material base of primacy is overwhelming

Carlo Catapano 21, PhD Candidate in International Studies at the University of Roma Tre, MSc in International Relations of the Americas at UCL, “Book Reviews: Unrivaled: Why America will Remain the World’s Sole Super-power, by Michael Beckley. Ithaca: Cornell University Press, 2021, pp. 231.”, Interdisciplinary Political Studies, Volume 7, Number 1, p. 249-252

Moving on to the emerging rivalry between China and the United States, Beckley acknowledges that the Asian giant is its most likely challenger. However, his detailed evaluation of Beijing’s economic and military resources leaves no room for doubts: China lags behind the US on almost every net indicator, and the gap between the two is unlikely to vanish any time soon. This conclusion is surprising if one considers the constant references – in academia and the media – to China’s rise and the Asian century. Beckley points out the weaknesses of the Chinese economy (Chapter 3), the hidden costs for a large, populous and developing country that are not included in gross estimates, and the various advantages that the US economic system still owns despite the limited growth of the post-2008 period.

Similarly, he compares (Chapter 4) the net military capabilities of the two powers by subtracting, for example, the costs to maintain security at home from their overall military assets. Also, he addresses the geopolitical factors that separate the US and Chinese ability to project their military power abroad. From this analysis, it emerges that China’s position is severely constrained by the high costs paid to assure its internal security and the defense of its national borders as well as by the welfare costs associated to the large number of troops composing the People’s Liberation Army. Beckley argues that China’s rising military capabilities are also constrained by the continued presence of US outposts in the region and the improvements made by China’s neighbors to their own military forces. Overall, this assessment leaves few chances for Beijing to obtain the regional hegemony that it would need to challenge the US on a global scale.

Beckley’s analysis also indicates the path forward (Chapter 5), starting from the rejection of the theories usually employed to predict the fate of US power (balance-of-power theory and “convergence” theory). All indicators suggest that the US will retain its role of leading global power in the coming years, notwithstanding China’s uninterrupted rise. Beckley is eager to point out, however, that this conclusion should not be confused with the praise of American superiority or invincibility. At no point, does his analysis suggest that Washington’s primacy is uncontestable or destined to last forever. Instability with weaker countries, unnecessary wars, internal polarization and disunity, can all produce unpredicted losses and undermine the position of the most powerful country in the world (Chapter 6). Beckley’s argument, therefore, consists in a re-evaluation of the sources of power that have guaranteed the US primacy since the end of the Cold War. Those same sources still place the United States in a category of its own, apart from the other great powers of the system. This book’s claim, in the end, is about the duration of the unipolar era, which it predicts will last more than usually expected, not about the infallibility or moral virtues of US power.

A few years later on the publication of this book, its central tenets are even more relevant. Events such as Trump’s nationalist policies, the trade war with China, the COVID-19 outbreak seem to have accelerated history and the shift away from the post-Cold War unipolar configuration. Beckley’s work, however, invites to reject simplistic predictions about the dismissal of US primacy. The decline in Washington’s global influence as well as the retrenchment from its international responsibilities do not necessarily mean that its net position in terms of material capabilities has collapsed or that a condition of power parity with China has finally emerged. Even if outcomes are not favorable to US interests, it does not mean that US power has vanished. This is a relevant reminder for policymakers in both Washington and Beijing.

### No 5G Race---1NC

#### ‘5G race’ is false

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### It can’t be ‘weaponized’

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

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

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

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

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

Well. Yes. Think.

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

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

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

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

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

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

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

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

### A2: Readiness

#### No readiness impact

John Mueller 16, Woody Hayes Senior Research Scientist, Mershon Center for International Security Studies; Adjunct Professor, Department of Political Science, Ohio State University, 6/5/16, “Embracing Threatlessness: US Military Spending, Newt Gingrich, and the Costa Rica Option,” <http://politicalscience.osu.edu/faculty/jmueller/CNArestraintCato16.pdf>

The United States seems to be substantially free from threats that require a great deal of military preparedness.

To begin with, it really seems time to consider the consequences of the fact that a conflict like World War II is extremely unlikely to recur. Spending a lot of money for an eventuality—or fantasy—of ever-receding likelihood is highly questionable. Some envision threat in China’s rapidly-increasing prosperity. But, although its oft-stated desire to incorporate (or re-incorporate) Taiwan into its territory should be watched, armed conflict would be extremely—even overwhelmingly—costly to the country. And Chinese leaders, already rattled by internal difficulties, seem to realize this. Russia’s recent assertiveness bears watching, but it does not suggest that the game has been crucially changed. It might make sense to maintain a containment and deterrent capacity against rogue states in formal or informal coalition with other concerned countries. However, the military requirements for the task are limited. Humanitarian intervention with military force is unlikely due to a low tolerance for casualties in such ventures, an increasing aversion to the costs of nation-building, and the lack of political gain from successful ventures. Concern about nuclear proliferation is overwrought: long experience suggests that when countries obtain the weapons, they “use” them only to stoke their national ego and to deter real or imagined threats. Europe seems to face no notable threats of a military nature, the Taiwan/China issue remains a fairly remote concern, and Israel’s primary problems derive from the actions of sub-state groups. The military relevance of the terrorism “threat” has been substantially exaggerated, and it mainly calls for policing and intelligence work and perhaps for occasional focused strikes by small units.

### Tech Leadership---1NC

#### No impact to loss of tech leadership.

Swaine '21 [Michael; 4/21/21; PhD in Government from Harvard University, director of the East Asia program at the Quincy Institute; "China Doesn’t Pose an Existential Threat for America," https://foreignpolicy.com/2021/04/21/china-existential-threat-america/]

Finally, the latter set of supposedly existential normative or ideological threats consists of many elements, including Beijing’s possible overturning of the so-called global liberal international order, Chinese influence operations aimed at U.S. society, the export of China’s political values and state-directed economic approach, and its sale of surveillance technologies and other items that facilitate the rise or strengthening of authoritarian states. These threats all seem hair-raising at first glance. But while significant, they are greatly exaggerated and do not rise to the level of constituting an existential threat.

Beijing has little interest in exporting its governance system, and where it does, it is almost entirely directed at developing countries, not industrial democracies such as the United States. In addition, there is no evidence to indicate that the Chinese are actually engaged in compelling or actively persuading countries to follow their experience. Rather, they want developing nations to study from and copy China’s approach because doing so would help to legitimize the Chinese system both internationally and more importantly to Beijing’s domestic audience.

In addition, the notion that Beijing is deliberately attempting to control other countries and make them more authoritarian by entrapping them in debt and selling them “Big Brother” hardware such as surveillance systems is unsupported by the facts. Chinese banks show little desire to extend loans that will fail, and the failures that do occur are mostly due to poor feasibility studies and the incompetence and excessive zeal of lenders and/or borrowers. Moreover, in both loan-giving and surveillance equipment sales, China has shown no specific preference for nondemocratic over democratic states.

Even if Beijing were to attempt to export its development approach to other states, the actual attractiveness of that approach would prove to be highly limited. The features undergirding China’s developmental success are not replicable for most (if any) countries. These include a high savings rate; a highly acquisitive and entrepreneurial cultural environment; a state-owned banking system and nonconvertible currency; many massive state-owned industries that exist to provide employment, facilitate party control over key sectors, and drive huge infrastructure construction; and strong controls over virtually all information flows. Moreover, such a model (if you can call it that) is almost certainly not sustainable in its present form, given China’s aging population, extensive corruption, very large levels of income inequality, inadequate social safety net, and the fact that free information flows are required to drive global innovation.

Although China’s combination of economic reform policies and authoritarian political system has been around since the early 1980s, not a single nation has adopted that system either willingly or under Chinese compulsion. There are certainly many authoritarian states and fragile democracies on China’s periphery, but none of them were made that way by China.

China’s challenge to the so-called global liberal international order is also exaggerated. In the first place, it is highly debatable whether in fact a single coherent global order even exists. What observers usually refer to as the “liberal international order” (a relatively recent term) actually consists of an amalgam of disparate regimes with different origins, including international human rights pacts, multilateral economic arrangements, and an international court.

The United States certainly plays an important or leading role in many of these regimes. But it did not create and does not drive all global regimes—and in fact does not support some of them, such as the International Court of Justice, and has not ratified some critical pacts such as the United National Convention on the Law of the Sea. And many very important global regimes (e.g., regarding the proliferation of weapons of mass destruction, trade and investment, climate change, and pandemics) have no deep connection to liberal democratic values per se and are supported by Beijing, albeit sometimes more in letter than in spirit.

The challenge for the United States is not how to fend off the imagined existential threats posed by China. Rather, it lies in developing a much clearer and factually based overall understanding of the limited challenges, threats, and indeed opportunities China poses to the United States and the policies needed to address them. Rejecting the specious notion that China is threatening to destroy an entire way of life will make this task much easier.

### **Turn---1NC**

#### **Antitrust expansion cedes leadership,** especially in the 5G race.

Abbott et al. '21 [Alden; 3/10/21; Senior Research Fellow, formerly served on the Federal Trade Commission’s General Counsel, J.D. from Harvard Law School, M.A. in Economics from Georgetown University; "Aligning Intellectual Property, Antitrust, and National Security Policy," https://regproject.org/wp-content/uploads/Paper-Aligning-Intellectual-Property-Antitrust-and-National-Security-Policy.pdf/]

The U.S. government has recognized that “5G is a critical strategic technology [such that] nations that master advanced communications technologies and ubiquitous connectivity will have a long-term economic and military advantage.”8 The U.S. has had a substantial technological edge over our military and intelligence rivals in foundational R&D for 5G and other next-generation technologies. U.S. companies have long been leaders in the development of previous generations of core mobile standards (2G, 3G, 4G, and LTE). This technological leadership has made it possible for U.S. companies to ensure the security and integrity of the hardware and software products that make up the backbone of the U.S. telecommunication systems. This leadership must continue for the U.S. government to more effectively anticipate potential security risks and take the necessary steps to protect national security.9

Despite this history of clear technological leadership, there are causes for concern. First, a very small number of U.S. companies have made the investments in the overwhelming majority of the R&D necessary to develop 5G.10 Historically, U.S. companies have heavily invested in R&D, which has propelled the U.S. into leadership positions in critical standard development organizations working on foundational next-generation technologies like 5G.11 U.S. companies like Qualcomm play a significant and important role in this process through innovation, patenting, and standard setting, but they are not alone in the global community of high-tech companies.12 Backed by their nations’ leadership, Chinese and Korean companies have also invested heavily in developing the core technologies for 5G.13

The willingness of U.S. companies to invest in R&D is threatened, however. The development of 5G is a bit like a race, with the companies who develop the best technology coming out ahead. While U.S. companies are savvy and talented competitors in this race, aggressive and unwarranted use of antitrust law by U.S. regulators, as well as by foreign antitrust authorities, threatens to put obstacles in these companies’ paths and hinder their ability to lead.

III. Overly Aggressive Antitrust Enforcement Hinders American Technological Leadership and Threatens National Security

As companies from around the world develop the technology and standards for 5G mobile devices and networks, American companies are under threat by aggressive antitrust enforcement that ultimately redounds to the benefit of these foreign companies, which are economic competitors in countries that are also military competitors of the U.S. Over the past five years, foreign governments, particularly in Asia, have subjected U.S. companies to antitrust investigations that failed to follow basic norms of the rule of law, such as providing basic due process protections.14 These antitrust investigations were a thinly-disguised effort by these countries to force the transfer of U.S. patented technology to their own domestic companies, or to insulate their domestic companies from American competition. In recent years, Chinese, Korean, and Taiwanese antitrust authorities have brought nearly 30 investigations against 60 foreign companies across a range of industries, including manufacturing, life sciences, and technology.15

Antitrust challenges undermine intellectual property rights by forcing companies to license their products on non-market-based terms. One prominent example in U.S. history is when the Department of Justice wrung a concession from AT&T to license royalty-free the entire portfolio of 8,600 patents held by Bell Labs in a 1956 antitrust consent decree with the company.16 Today, the White House Office of Trade and Manufacturing Policy has observed that “China uses the Antimonopoly Law of the People’s Republic of China not just to foster competition but also to force foreign companies to make concessions such as reduced prices and below-market royalty rates for licensed technology.”17 Companies have also complained about poor policy guidance and procedural protections under China’s competition laws.18 Others have complained about China’s use of its competition laws to promote policy objectives rather than protect competition and advance consumer welfare.19 In one example, companies raised concerns with Article 7 of China’s State Administration of Industry Commerce (SAIC) 2015 Rules on the Prohibition of Conduct Eliminating or Restricting Competition by Abusing Intellectual Property Rights.20 Under this provision, intellectual property constitutes an “essential facility,” which could allow parties to raise abuse of intellectual property rights claims against patent owners for a unilateral refusal to license their patents.21

Predatory antitrust enforcement actions threaten the ability of U.S. companies to continue to be leaders in 5G technological development. China and other nations with similarly restrictive regulatory frameworks can weaken the ability of the United States to compete in global markets by exacting high monetary penalties from U.S. intellectual property owners or forcing the transfer of their intellectual property to domestic commercial rivals. As a penalty for violations of its competition laws, China can impose exorbitant fines that range up to 10% of a foreign company’s entire revenue in the prior year.22 This is not a legal rule observed in the breach; it has already resulted in fines just shy of $1 billion.23

Another way in which courts in China and other foreign countries are harming U.S. companies is through the use of anti-suit injunctions. One example of this is in the recent patent infringement lawsuit brought by InterDigital, an American high-tech company that has developed key technologies in wireless telecommunication, against Chinese company Xiaomi. In June 2020, Xiaomi filed a lawsuit in the Wuhan Intermediate Court in China requesting that the court set global licensing rates for InterDigital’s patents on standardized technologies. In July 2020, InterDigital sued Xiaomi in India for infringement of InterDigital’s Indian patents. The Wuhan Intermediate Court then ordered InterDigital to stop its lawsuit with its request for an injunction in India. The Chinese court further prohibited InterDigital from suing Xiaomi and requesting an injunction or damages in the form of reasonable licensing rates, or even to enforce a previously-issued injunction, in any other country. If InterDigital does not comply with this worldwide injunction against pursuing legal relief for the violation of its patents in any other country, the company faces a significant fine in China. The type of judicial order issued by the Wuhan court is known as an anti-suit injunction and its purpose is to force an intellectual property dispute to play out solely in a Chinese court at the behest of the Chinese government. These court orders demonstrate China’s desire to become the source of 5G innovation and to dictate the licensing terms of the technology, and the anti-suit injunctions hamstring U.S. companies like InterDigital from enforcing their intellectual property rights anywhere in the world.

The unfair use of antitrust enforcement and related legal actions like anti-suit injunctions to weaken U.S. intellectual property rights around the world risks diminishing U.S. global competitiveness in critical technologies like 5G, and further empowers China and others to expand their influence over the evolving 5G technological ecosystem. To the extent the U.S. cedes its dominance in 5G standards development, China will continue its focused efforts to fill that void. Huawei, a China-based company, has increased its R&D spending while growing its share of patents on the standardized technologies comprising 5G.24 The President’s Council on Science and Technology issued a report concluding that Chinese actions in the semiconductor industry, which include a range of policies backed by over $100 billion in government funds, threaten U.S. leadership in the industry and present risks to U.S. national security.25 China’s “Made in China 2025” plan called for China to become a leader in 5G technology, including in the development of the standards for the technology, by 2020.26 The plan expressly favors Chinese domestic producers, calling for raising the domestic content of core components in high-tech industries like 5G to 70% by 2025.27

This issue, however, extends far beyond simply the ability and willingness of U.S. companies to engage in the requisite R&D to participate in the 5G race. Reduced U.S. influence on 5G standard-setting would force the U.S. government to rely on untrusted foreign companies for its 5G product supply. The Department of the Treasury has expressed concern about the “well-known” U.S. national security risks posed by Huawei and other Chinese telecommunications companies.28

## Comity

### No I/L

#### Skipped their internal link card – no risk for their laundry list of impacts

#### AND their link cards are about how the courts have contrained things like the aff but their internal link card is about how congress needs to have foreign policy oversight over wartimes initiatives

### A2: SOP

#### Thumpers---vaccine mandates---we post-date a lot

Michael Schaus 9-19 [Director of communications for the Nevada Policy Research Institute, "Constitutional limits don’t go away simply because they’re inconvenient," accessed 10-16-2021, https://thenevadaindependent.com/article/constitutional-limits-dont-go-away-simply-because-theyre-inconvenient, hec]

So, it should not have surprised anyone when the Biden Administration announced plans to unilaterally impose a de facto vaccination mandate through the Occupational Safety and Health Administration. Putting aside debates about the wisdom of coercing people into getting the vaccine, the administration’s plan to resort to executive action—rather than the far more cumbersome approach of legislative action on the state or federal level—represents a continued trend away from our basic constitutional order. It’s a trend that has been taking place for generations with the expansion of the administrative state and executive authority on both the federal and state levels. Both major political parties have long embraced the growth of such executive power on the federal level as a strategy to advance policy priorities unlikely to be passed in Congress or among the states. And while it’s tempting to debate the merits of the policies themselves, the process by which they are advanced is often more consequential in the long run. As the late Justice Antonin Scalia once argued, the separation of powers—the notion that the legislative branch writes laws while the executive branch merely enforces them—is the most quintessentially important aspect of our constitutional order. The decentralization of power within government was, after all, designed to incentivize persuasion and even compromise, rather than coercion or tyranny over those who found themselves in the minority of public opinion. Of course, the inconvenience of navigating controversial policies through a bifurcated and deeply partisan Legislature hardly feels like a well-functioning government. Legislative gridlock is universally bemoaned (despite the fact that, at times, both parties do their best to ensure it) and pundits routinely lament the way it so often stands in the way of substantive progress. It’s therefore no surprise to see presidents (from both parties) expand the scope of their power in response to legislative inaction—as if the precedents set by incrementally growing executive authority won’t inevitably haunt their own party in future years. The willingness to abandon the cumbersome three-branch system of governance, however, has rarely been as widespread—or as noticeable—as it has been in the age of COVID.

### A2: Laundry List

#### Most of their impacts are premised off escalation with China OR military readiness – answered on previous advantages

#### No explanation or internal link for why the aff specifically would resolve things like warming AND no terminal impact, if they go for it in the 2AC we get new answers

## Solvency

### 1NC---Courts Circumvent

#### Court circumvention---they ignore intent and plain meaning, reject literature bias towards optimism.

Crane ‘21 [Daniel A Crane. Frederick Paul Furth, Sr. Professor of Law, University of Michigan. I am very grateful for many helpful comments from Tom Arthur, Jonathan Baker, Steve Calkins, Dale Collins, Eleanor Fox, Rebecca Haw, Hiba Hafiz, Jack Kirkwood, Bob Lande, Christopher Leslie, Alan Meese, Steve Ross, Danny Sokol, and other participants at the University of Florida Summer Antitrust Workshop. "ANTITRUST ANTITEXTUALISM." https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr]

This view is so widely entrenched in the legal profession’s understanding of the antitrust laws—including, it must be admitted, this author’s—that it seems presumptuous to claim that the conventional wisdom is wrong, or at least significantly overstated. But it is. While the antitrust statutes may be lacking in some important particulars, they present a readily discernable meaning on many others. As Daniel Farber and Brett McDonnell have argued, “For the conscientious textualist, the statutory texts [of the antitrust laws] have considerably more specific meaning than the conventional wisdom would suggest.”5 And it is not simply the case that the meaning of the statutory texts could be rendered through ordinary methods of statutory interpretation but the courts have failed to see it. Rather, the courts frequently acknowledge that the statutory texts have a plain meaning, and then refuse to follow it.

But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in one consistent direction—toward reading down the antitrust statutes in favor of big business. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and continues to this day. In brief: within their first decade of antitrust jurisprudence, the courts read an atextual rule of reason into section 1 of the Sherman Act to transform an absolute prohibition on agreements restraining trade into a flexible standard often invoked to bless large business combinations; after Congress passed two reform statutes in 1914, the courts incrementally read much of the textual distinctiveness out of the statutes to lessen their anticorporate bite; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that not one of the principal substantive antitrust statutes has been consistently interpreted by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has bent always in favor of capital.

## Block

### T Subsets

#### ‘Antitrust’ applies to the entire economy---targeting single industries isn’t topical

Dr. Babette Boliek 11, Associate Professor of Law at Pepperdine University School of Law, J.D. from the Columbia University School of Law, and Ph.D. in Economics from the University of California, Davis, “FCC Regulation Versus Antitrust: How Net Neutrality is Defining the Boundaries”, Boston College Law Review, 52 B.C. L. Rev. 1627, November 2011, Lexis

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 [\*1629] 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." 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?

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. 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. In the vast majority [\*1630] 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.

#### ‘Private sector’ means all businesses

Aminu Muhammad Fagge 14, and Mustapha Adamu Zubairu, “Private Sector and Youth Employment Generation in Nigeria: A Review”, SEAHI Publications, https://www.voced.edu.au/content/ngv%3A65719#:~:text=youth%20employment...-,The%20private%20sector%20refers%20to%20all%20economic%20institutions%2C%20business%20firms,not%20owned%20by%20the%20government.

The private sector refers to all economic institutions, business firms, foundations, and cooperatives etc., that are not owned by the government. Generally speaking, the contributions of the private sector to the development of the Nigerian economy cannot be over emphasized in terms of employment generation, capital savings and mobilization, efficiency, strong linkages with other sectors, and utilization of local technology training ground for entrepreneurs and self-reliance. The objective of this study is to examine the role and contribution of private sector on youth employment generation in Nigeria. The data for this paper were derived from a secondary source which includes previous research and analyses of scholars, government documents, newspaper/magazines as well as journal articles. Inequality of income is one of the effects of unemployment in Nigeria. In addition, unemployment resulted in increased activities of Boko Haram and many other crimes going on in the affected areas especially the north-west and north-east of Nigeria which resulted in closure of schools. In a place like Jos, people were divided along ethnic lines due to unemployment and poverty which adversely affected the role of the private sector. The findings of this work recommends an enabling environment for a vibrant private sector to create jobs in labour-intensive industries; exploration of employment opportunities not only available domestically but also outside Nigeria; and the federal government should hasten the power sector reforms and destabilize the power sector to end the looming energy crisis in Nigeria.

### Multilat CP

#### 2 Each action must be interlinked and conditional---otherwise, it’ll collapse

Dr. Daniel Francis 21, Climenko Fellow and Lecturer on Law at Harvard Law School, Doctorate from the NYU School of Law, Master of Laws Degree from Harvard University, JD from Trinity College at Cambridge University, “Choices and Consequences: Internationalizing Competition Policy after TPP”, in Megaregulation Contested: The Global Economic Order After TPP, Ed. Kingsbury, Revised 8/26/2021, p. 40-48

A “framework” in the sense that I am using that term is a facilitative arrangement that does not constitute a treaty under international law,167 and which does not carry the charge of international legal obligation, but which involves an exchange of specific and reciprocally contingent commitments by participant jurisdictions to engage in mutually beneficial conduct. Specifically, each party states that it will extend certain benefits to each other party so long as each other does likewise; the parties may also create supplementary mechanisms to monitor and/or adjudicate compliance with these commitments.168

[FOOTNOTE] 168 It is almost universally appreciated that reciprocal behavior plays a crucial rule in compliance with international law more generally. See, e.g., Andrew T. Guzman, HOW INTERNATIONAL LAW WORKS: A RATIONAL CHOICE THEORY (Oxford 2008) 42 (“Reciprocity can serve as a powerful compliance-enhancing tool in the right circumstances.”). [END FOOTNOTE]

A framework of this kind is not a treaty: it is what Kal Raustiala calls a “pledge,”169 and what Charles Lipson calls an “informal” agreement,170 involving no legal obligation, and it involves no commitment of the parties’ reputation for law-abiding behavior.171 On the other hand, it differs from an open, information-sharing network because it precisely specifies behavioral commitments, and because each of the parties shares an understanding that concrete consequences will promptly follow—exclusion from the benefits provided by others—if its behavior materially deviates from the terms of the commitment.172 A framework is therefore essentially a specific declaration of intention to engage in conduct that benefits others, contingent upon parallel behavior by other participating states, without obligatory status under international law.

This is, in some sense, the direct opposite of the approach typically taken in competition policy chapters in trade agreements. The provisions of competition policy chapters partake of the substance of treaty law, but are generally framed in broad terms rather than specifics, and generally do not reflect a shared understanding that specific consequences will attend breach. By contrast, frameworks do not bind in international law, are framed in specific terms than aspirational generalities, and reflect an understanding that the benefits of cooperation will be withdrawn in the event of violation.

Contingent cooperation thus depends for its effectiveness primarily upon three important dynamics. The first and most important of these is the rationality of strategic cooperation. A familiar mainstream view holds that to a significant extent states behave in international society in ways that rationally serve their interests.173 And when cooperation over a series of interactions is overall in the interests of each member of a group, but when each member faces a rational incentive to defect from the terms of cooperation in individual cases, familiar economic theory teaches that a strategic cooperative equilibrium can be maintained among the parties.174 In contingent cooperation, each party understands that if it defects materially from the terms of the framework, the other participants will withdraw the excludable benefits of cooperation, and this provides the incentive to comply.175

#### 3 Including the plan shreds U.S. leverage

Dr. Rachel Brewster 6, Bigelow Fellow & Lecturer in Law at the University of Chicago Law School, BA and JD from the University of Virginia, PhD in Political Science from the University of North Carolina – Chapel Hill, Received the John Patrick Hagan Award for Excellence in Undergraduate Teaching, Former Assistant Professor of Law and Affiliate Faculty Member of The Weatherhead Center for International Affairs at Harvard University, “Rule-Based Dispute Resolution in International Trade Law”, Virginia Law Review, Volume 92, 92 Va. L. Rev. 251, April 2006, p. 281-282

Congress can always eliminate the President's agenda-setting power by engaging in unilateral trade policies. The Constitution allocates to Congress the power to set international commercial policy. The President only has significant trade-policy power (beyond his veto power) because the United States has chosen to engage in multilateral trade negotiations. 84 If Congress wished to undertake unilateral free trade policies, then the President's bargaining leverage would be reduced to threatening a veto, the same as in the realm of domestic legislation. Congress is unlikely to take such steps, however, because reciprocal agreements are valuable political commodities. 85 International agreements offer domestic exporters greater access to foreign markets, which could be lost if Congress were to pursue the unilateral route.

#### It’s an alternative to the plan

Anu Bradford 3, Published under the Maiden Name of Anu Piilola, Henry L. Moses Professor of Law and International Organization at Columbia Law School, LLM from Harvard Law School, Master of Laws from University of Helsinki, JD from Harvard Law School, Licentiate in Laws from the University of Helsinki, Fulbright Scholar, “Assessing Theories of Global Governance: A Case Study of International Antitrust Regulation”, Stanford Journal of International Law, Volume 39, Issue 2, 39 Stan. J Int'l L. 207, Summer 2003, Lexis

Antitrust law is illustrative of the legal realms in which conflicting ideas of international and national regulatory frameworks have yet to find a satisfactory equilibrium. While competition among multinational enterprises has increasingly disregarded national borders, antitrust laws have remained predominantly national. The traditional, though perhaps most controversial, way to deal with international antitrust issues is to rely on a unilateral application of national antitrust laws. This type of extraterritoriality, however, has caused significant tension and resistance. 1 A more radical, equally controversial approach would be to harmonize national antitrust laws or establish unified supranational antitrust rules. This is a far-reaching solution that lacks adequate support in today's political climate. 2 Other alternative [\*208] routes to solving existing frictions would be, for example, to expand bilateral and regional cooperative arrangements or to establish a choice of law system.

Consequently, there is an ongoing debate over whether there is a need to create an international antitrust regime that could better respond to the new economic environment, increased cross-border business activity, and the integration of markets. Proponents of such a regime view international antitrust rules as necessary tools to reduce transaction costs, increase efficiency, and cultivate legal certainty. However, there is little agreement concerning the form, substance, or timeframe of the proposed regulatory reform. Those who oppose the creation of an international antitrust regime emphasize the divergent policy goals of different nations and the conflicting understandings of the role and extent of antitrust enforcement in different jurisdictions. They argue that discrete policy and enforcement concerns clearly hinder attempts at internationalization and highlight the necessity of maintaining regulatory diversity. In this view, countries should retain regulatory powers on the national level, as part of the exclusive right of sovereign states to design their market structures and economic policies.

#### The framework is opt-in---the only outcome is a voluntary commitment that’s not binding, even if later implementation is

Michael Ristaniemi 20, PhD Candidate in Commercial Law at the University of Turku, Vice President for Sustainability at the Metsä Group, Participant in the Visiting Scholar Programme at the University of California, Berkeley, “International Antitrust: Toward Upgrading Coordination and Enforcement”, Doctoral Dissertation, October 2020, https://core.ac.uk/download/pdf/347180879.pdf

Structured cooperation, such as opt-in frameworks could be feasible, although binding commitments are likely to be difficult to agree on multilaterally. Such an approach could be particularly effective if combined with reporting obligations as is with the Global Compact – firms who have signed up must report annually on their efforts to comply in order to remain a member of the framework. Such comply-and-explain mechanisms are arguably effective, even if on a voluntary basis.280 Structured cooperation should focus on where sufficient common ground can be found, such as in procedural matters and concerning hard-core cartels. Other, more suitable fora exist for discussing points of divergence, such as how to treat firms in strong market positions, or how to address state aid and other industrial policy questions.

It is important for international antitrust to remain responsive. In the pluralist and polycentric environment that it is, norm collision will continue to occur. As such, fixed and binding constitutionalism is neither possible nor desirable, but rather ways should be found which preemptively coordinate the conduct of actors – competition agencies, policymakers, and firms alike – to avoid unnecessary conflict and to develop tools in which to reconcile and manage the remaining inevitable norm collision.281

#### They must be immediately effective, not a result

Dr. Howard Newby 4, BA and PhD from the University of Essex, Chair of the Higher Education Funding Council for England, Former Vice-Chancellor of the University of Liverpool, “Joint Committee on the Draft Charities Bill - Written Evidence”, Memorandum from the Higher Education Funding Council for England, 9/30/2004, http://www.publications.parliament.uk/pa/jt200304/jtselect/jtchar/167/167we98.htm

9.1 The Draft Bill creates an obligation on the principal regulator to do all that it "reasonably can to meet the compliance objective in relation to the charity".[ 45] The Draft Bill defines the compliance objective as "to increase compliance by the charity trustees with their legal obligations in exercising control and management of the administration of the charity".[ 46]

9.2 Although the word "increase" is used in relation to the functions of a number of statutory bodies,[47] such examples demonstrate that "increase" is used in relation to considerations to be taken into account in the exercise of a function, rather than an objective in itself.

9.3 HEFCE is concerned that an obligation on principal regulators to "increase" compliance per se is unworkable, in so far as it does not adequately define the limits or nature of the statutory duty. Indeed, the obligation could be considered to be ever-increasing.

#### International agreements trickle down---they’ll be codified in domestic policy

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The most distinctive advantage of a commitment pathway strategy may lie in its capacity to maintain commitment. A bicycle analogy captures this basic point. As long as the bicycle and its rider are moving forward, physical dynamics keep it upright and provide momentum, and the more energy supports its forward momentum, the more likely it is to stay on the desired course.

Such a project can effectively utilize the interplay between national and international dynamics. Improved cooperation on the international level can support national developments, and developments on the domestic level can support transnational cooperation and attract commitment from others. Where, for example, officials and/or the public in one country learn that project-based cooperation has led to the demise of a cartel in another country, this creates incentives for them to fulfill their obligations in order to gain similar benefits. In general, knowledge that other participants are benefiting from the project can provide support for it. A pathway strategy allows participants to perceive benefits from competition and from competition law before participation imposes significant costs.

The time element in the strategy also allows networks to develop among the participants and on the basis of shared commitments. Each additional participant provides momentum for the project, but more importantly each perceived benefit from the project—useful information supplied, cartel discovered, dominant firm conduct changed—can increase this network value.¹⁰ As on the domestic level, time allows potential benefits of the project to be perceived before extensive participation costs are imposed.

The development of network relationships over time can also generate trust among the participants. As scholars such as Elinor Ostrom and Richard McAdams have demonstrated, this type of trust is often the basis for effective cooperation.¹¹ The deep suspicions that abound in the area of international economic policy, especially between developed countries and much of the developing world, are not likely to be overcome by the signing of an agreement or by technical assistance alone. A gradualist program of increasing cooperation and participation-based movement toward a shared goal can, however, change attitudes. The successes of the European integration process over the last fifty years may be the most poignant demonstration of this potential.

#### Overall effectiveness is impossible without harmonization

-- conflicts, simultaneous enforcement, and unilateral extraterritorial application are inevitable without harmonization

-- causes unpredictability and high cost of compliance

-- system ‘efficiency’ is low: antitrust is but over- and under-enforced due to duplication and gaps

Michael Ristaniemi 20, PhD Candidate in Commercial Law at the University of Turku, Vice President for Sustainability at the Metsä Group, Participant in the Visiting Scholar Programme at the University of California, Berkeley, “International Antitrust: Toward Upgrading Coordination and Enforcement”, Doctoral Dissertation, October 2020, https://core.ac.uk/download/pdf/347180879.pdf

Despite the success of voluntary cooperation, the *status quo* is, however, not without problems. On the contrary, due to increasing international trade, there is more business taking place that simultaneously affects several jurisdictions. This trend is underscored by the significant global influence of digital platforms and the underlying digital economy that transcends national frontiers.74 Further, the prevalence of competition laws and authorities means that there are also ever more jurisdictions whose competition laws may simultaneously apply and whose laws may be enforced simultaneously, including extraterritorially.

The increase in jurisdictions with competition law and enforcers is – in itself – a positive development, but not unconditionally. International antitrust has traditionally been dominated by American and European voices. This traditional dichotomy is already becoming broader, with regimes such as Brazil and Canada making interesting and relevant contributions.75 However, along with this increase in regimes with active views on antitrust increases in the complexity and difficulty for the primary market actor, the firm, to operate. The *status quo* is thus one of both substantial and procedural inconsistency, which leads to unpredictability for businesses as well as economic inefficiency in general.

Examples of problematic gaps and overlaps are numerous and diverse. One could highlight definition issues, such as those concerning joint ventures. Some jurisdictions differentiate joint ventures with a more independent nature (also known as “full-function”)76 from other cooperation relationships, while other jurisdictions do not.77 Also, expected firm conduct varies, as is clear from the diverging views on how to enforce conduct in a very strong market position. Some jurisdictions impose significant obligations to avoid exploiting its stakeholders,78 while others do not.79 Further, most jurisdictions allow export cartels as well as grant state aid either without restriction or even with the express purpose of improving their firms’ foreign business.80 These last two points where competition law is effectively excluded represent major gaps. All of this – both collectively and individually – creates true harm to business, which in turn hinders the efficiency of the international trading system.

Extraterritorial application of national competition law is a crude way of unilaterally trying to patch the gap created by allowing export cartels. Such an approach creates collateral damage by creating problems of its own, exacerbated by the drastic increase in competition regimes, which oftentimes adopt similar approaches. The *status quo* represents a significant coordination problem and calls for an update on the systemic and international level.

The growing influence of China, in particular, is noteworthy. Quite the newcomer to competition law – and to market economy more generally – China has the potential to alter the traditional power balance of international antitrust cooperation. Particularly China’s insistence of retaining strong reservations for considering its industry policy is a point of divergence, compared to the other major economic powers: the EU and the US.81 Ng argues that an underlying reason for this lies in its markedly more state-centered approach in comparison with most competition regimes that are consumer-centered.82 Should it so desire, China could leverage its influence to improve the legitimacy for such reservations. This would likely see support in a number of developing countries, which could create a significant counterweight.83

Despite the shortcomings in the current state of affairs, there does not, however, seem to be much appetite for change. Convergence is taking place through information sharing and national competition authorities are gaining experience and capacity, but the developments and plans of major powers and the main international organizations going forward appear largely incremental and technical in nature.84 Nothing transformational is in sight.

#### It creates a coalition of the willing that bypasses general obstacles

Dr. Daniel Francis 21, Climenko Fellow and Lecturer on Law at Harvard Law School, Doctorate of Laws Degree from the NYU School of Law, Master of Laws Degree from Harvard University, JD from Trinity College at Cambridge University, Former Deputy Director of the Federal Trade Commission, “Choices and Consequences: Internationalizing Competition Policy after TPP”, in Megaregulation Contested: The Global Economic Order After TPP, Ed. Kingsbury, Revised 8/26/2021, p. 52-53

Conclusion

I have argued that strong, universalistic prescriptions regarding the internationalization of competition policy are unlikely to be very convincing or very interesting. Polities and societies have sharply differing accounts of what “free” and “fair” competition might mean, and when and how the state should shape it, interfere with it, or exclude it altogether. Liberalization and competition offer tremendous benefits to jurisdictions that embrace them; but no jurisdiction does so entirely, and each polity must find its own optimal balance between competition and the values that—so to speak—compete with it. This makes international action a very complex affair in which internationalization is likely to happen slowly when it happens at all. Sometimes it will be simply unavailable: “state preferences may be configured in such a way as to make cooperation unprofitable for all, in which case it will not occur, no matter what international mechanisms are in place.”204

As “[d]isagreement on matters of principle is . . . not the exception but the rule in politics,”205 I have suggested that there is considerable value in the provision of a wide range of tools and forms to facilitate international action. The bigger and more diverse the toolkit, the greater the likelihood of finding a solution that will serve the turn. To that end, I have emphasized the value of three forms of flexibility in this area: regionalism as a complement to bilateralism and multilateralism; frameworks as a complement to treaties and networks; and a willingness to explore cooperation on competition policy both alongside and separately from the liberalization of trade.

All the hard questions remain. But, as policymakers and scholars survey the wreckage of megaregionalism, I think there are plenty of reasons for optimism. I have emphasized that when grand megaregional bargains wrought in binding international law fail, other paths may remain open. Other combinations, other configurations, can offer the prospect of “progress”—in the right sense—to coalitions of the willing. At the time of writing, there is some evidence that many of the TPP’s parties continue to see value in deep cooperation in matters of trade and competition policy, even without the participation of the United States.206 With some creativity and imagination, and in partnership with like-minded jurisdictions, there is every reason to expect that they will achieve it.

#### Europe and China will say ‘yes’

Michael Ristaniemi 20, PhD Candidate in Commercial Law at the University of Turku, Vice President for Sustainability at the Metsä Group, Participant in the Visiting Scholar Programme at the University of California, Berkeley, “International Antitrust: Toward Upgrading Coordination and Enforcement”, Doctoral Dissertation, October 2020, https://core.ac.uk/download/pdf/347180879.pdf

Despite the above, the major powers do have an interest in cooperating internationally in competition issues. The EU and the US appear to desire further convergence of practices and substantive thinking. Officially, China does not appear to have a strong stance on convergence, but recent practice shows that it too has engaged in an increasing amount of dialogue on competition matters. Indeed, there is an increasing amount of cooperation in relation to investigating international cartels, referring to cartels that operate in several nations concurrently and which seek to cartelize them.208

Further, the competition authorities of major powers have an incentive to ensure that merger control procedures affecting mergers benefiting their respective regions are as internationally streamlined and coordinated as possible given the number of multinationals that originate from each of their respective territories. Nonetheless, there are a few hurdles for streamlining international merger control. First is the dichotomous leadership of the US and the EU systems, with no single leading standard to become the global standard. Second, there are clear differences in nations’ scope of merger review that may arise from partially differing sets of goals should they attempt to address public interest or other non-competition related concerns concurrently with competition concerns.209 In any case, the aggregate cost of a fragmented system of international merger control is arguably higher than it would need to be. Improved, more structured coordination could help, as discussed further in Chapters 5 and 6 below.

#### That’s sufficient

Michael Ristaniemi 18, PhD Candidate in Commercial Law at the University of Turku, Vice President for Sustainability at the Metsä Group, Participant in the Visiting Scholar Programme at the University of California, Berkeley, “Convergence, Divergence or Disturbance – How Major Economic Powers Approach International Antitrust”, Concurrences, Number 3, September 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3266018

2. This will be done by analysing the recent stances that major world economic powers have taken as well as longer trends in their actions and inactions in terms of international cooperation on competition issues. The guiding assumption is that whatever actions such major powers decide to employ, they will significantly affect the kind of cooperation undertaken by other nations in the world in trade policy generally as well as in competition policy as a part of it. Bradford & Posner argue that “international law is best understood as the result of overlapping consensus” of the otherwise conflicting views of major powers, at the core of which nations consider themselves bound, that such consensus is a fluid concept and is subject to change at the whim of each major power, and that it would be wrong to consider otherwise.3 This is a relevant backdrop also in relation to assessing potential for international cooperation in the realm of competition policy. 1

3. The paper’s focus is on three major economic powers: The United States (US), the European Union (EU), and China.4 Collectively they account for over 60% of the global economy and are consequentially all major economic powers.5 Each of them has a differing historical background to competition and competitive markets, and each has a unique presence and unique intentions in policy questions affecting competition globally. The three major powers are all exceptional states.6 This refers to a state which believes its values should form part of the global framework and has the power to influence this. This is particularly true now that the US’s influence is decreasing and there is room for a more diverse world order, in which China will likely be an increasingly important actor.7

### Protectionism DA

#### Trade turns and solves the case---foreign competition is better than antitrust

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2.1. Trade and Antitrust Law as Substitutes

Many scholars suggest that trade liberalization may make adopting an anti trust regime unnecessary (Bhagwati 1968; Helpman and Krugman 1989; Blackhurst 1991; Neven and Seabright 1997; Melitz and Ottaviano 2008). According to this view, free trade is an effective way to ensure that markets remain competitive because facilitating entry checks market power (Baumol, Panzar, and Willig 1982). For example, when an economy is open to trade, monopolists refrain from abusing their market power because low external barriers ensure that competitors can enter the market and contest any such abusive practices. In this way, trade liberalization renders an anti trust intervention into monopolistic practices superfluous. Exports fueled by trade liberalization should also enhance market competition. New opportunities in export markets ensure that more firms can reach an efficient scale of production, which further spurs competition and reduces the need for an anti trust regime (Bartók and Miroudot 2008).

Relying on trade liberalization to safeguard market competition could have several advantages. First, foreign producers must incur certain fixed costs and variable trade costs to enter a new market that domestic producers do not incur. If foreign firms are able to enter and effectively compete even after incurring those costs, they are presumably more efficient and hence may act as an even more effective discipline on the market than domestic firms (Bartók and Miroudot 2008). Second, choosing free trade over anti trust regulation eliminates the need to rely on government bureaucracies. Many who remain skeptical of governmental intervention favor free trade and thus prefer to have imports discipline [\*33] anticompetitive behavior. This argument may gain all the more force today considering the complexities associated with antitrust regulators from over 130 countries all applying different rules in an effort to regulate the global marketplace. Finally, although trade openness may "act as an effective antitrust policy" (Pomfret 1992, p. 11), an effective antitrust policy does not act as an effective trade policy. For example, if the United States were to impose a 30 percent tariff on foreign producers today, foreign firms would likely not enter no matter how competitive the markets are behind the border. Domestic antitrust laws thus may do little to facilitate

#### MNCs will be specially targeted

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Globalization has brought new challenges to antitrust policy (see, for example, Connor (2004), Connor and Helmers (2007), Barnett (2007)). National competition authorities have reacted to the rise of globalization by devoting special attention to collusive practices involving multinational companies. The challenges associated with international antitrust enforcement have also led to proposals for increasing international cooperation among competition authorities (see, for example, Barnett (2007)). Nevertheless, most of the formal literature that studies anticompetitive behavior focuses on closed economies and disregards interactions among national competition authorities.1 The aim of this article is to provide a formal analysis of the incentives of antitrust authorities to prosecute domestic and foreign rms involved in anticompetitive behavior when prosecution in one country generates informational spillovers to other countries.

#### The best empirical evidence agrees

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The methodological practices generally employed by the pre-existing empirical literature potentially contribute to these mixed empirical findings, as such practices can yield biased results. Specifically, the empirical literature exhibits a proclivity to engage in cross-country empirical studies (e.g., Bris et al., 2007; Clarke, 2003) that do not comprehensively account for potentially confounding factors. Yet, establishing sound causal inferences regarding the relationship between competition policy and inward FDI is fraught with identification challenges in empirical contexts, where omitted country-level factors likely correlate with both the implementation of competition policy and the openness of a country toward FDI. For instance, the pro-market tendencies characteristic of the U.S. – observed by Peng, Wang and Jiang (2008) and others – represents a potential omitted construct that will tend to enhance both competition policy and inward FDI activity, thereby adding observations to a naı¨ve cross-country OLS estimation that would bias the coefficient estimates toward a positive relationship (Bascle, 2008; Wooldridge, 2013).

With the above methodological deficiencies in the pre-existing literature in mind, we attempt to bring some definitive empirical evidence to bear in order to establish whether competition policy might negatively affect inward FDI activity levels. We first narrow the focus of study by considering the impact of U.S. merger policy enforcement on the proclivity of foreign acquirers to participate in the U.S. markets for corporate control. While competition policy involves three elements (merger review, price collusion, and abuse of dominance), merger policy represents the most important element of a national commitment to antitrust principles (Viscusi, Vernon, & Harrington, 1995), and the most salient element of competition policy concerning foreign investors.1 Second, we move beyond a cross-country methodological approach by employing sector-level data on U.S. merger policy investigations and sector-level data on the acquisition activities undertaken by foreign and domestic firms. The sector-level empirical approach mitigates the concern with respect to omitted country-level factors being responsible for a spurious causal relationship between competition policy and inward FDI.

In addition to the empirical features of our analysis, we ground our conceptual development within the IB literature, focusing on the relevance of political risk and uncertainty in foreign investment decisions (e.g., Delios & Henisz, 2000, 2003a, b; Kobrin, 1979; Kobrin, Basek, Blank, & La Palombara, 1980). Thus, in focusing on the application of U.S. merger policy and how that policy might negatively impact foreign acquirers as compared to domestic acquirers, we consider the ability of merger control to manifest both policy risk and policy uncertainty. By policy risk, we refer to situations where the possibilities and probabilities of policy outcomes are known to market participants in the sense that they can be forecast (Knight, 1921; Kobrin, 1979); and by policy uncertainty, we refer to situations where the possibilities and probabilities of policy outcomes are not well known to market participants, in the sense that it is difficult to forecast the likelihood of future policy states (Bloom, 2014; Knight, 1921; Kobrin, 1979). Moreover, our theoretical priors consider how merger policy enforcement involves both policy risk and policy uncertainty elements, where increases in these factors would lead to foreign acquirers being disproportionately deterred from engaging in acquisitions as compared to domestic acquirers.

After setting our theoretical priors, we empirically test our two hypotheses on sector-level data covering 53 U.S. industries over the 2002–2017 period. Our panel-data empirical results indicate that merger policy investigative activities disproportionately deter foreign acquirers in local M&A markets. Specifically, increases in merger policy risk and merger policy uncertainty lead to reduced foreign acquirer presence in the U.S. markets for corporate control. The empirical evidence then suggests that merger policy enforcement is protectionist in effect, as foreign investment activities are more adversely affected by the application of merger policy as compared to domestic investment activities. These results yield salient implications for the international business literature on host country characteristics and foreign investment activities.

#### Unilateral antitrust will be manipulated AND perceived as protectionist---that shatters co-op and is the nail in trade’s coffin---only prior harmonization avoids the link

Allison Murray 19, JD from the Loyola Law School, Los Angeles Law School, BS in Business Administration from the University of Redlands, Judicial Law Clerk at the U.S. Bankruptcy Courts, Former Corporate Paralegal at Boeing, Degree in Economics and Management from the University of Oxford, “Given Today's New Wave of Protectionism, is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade's Coffin?”, Loyola of Los Angeles International and Comparative Law Review, Volume 42, Number 1, 42 Loy. L.A. Int'l & Comp. L. Rev. 117, Winter 2019, Lexis

VI. CONCLUSION

There is a clear "conflict between the evolving economic and technical interdependence of the globe and the continuing compartmentalization of the world political system composed of sovereign states . . . ." 196 This conflict can breed protectionist political views. Unless and until there is a complete paradigm shift away from protectionism, which is impossible, the global economy will not meet the "rational" assumptions necessary to preserve free market efficiency.

Some amount of protectionism is inevitable. Although "inefficient" in economic and academic circles, protectionism preserves the sovereign powers enjoyed by certain countries. In this way, it is a necessity of free [\*146] trade. This paper is not intended to be a commentary on whether protectionism is right or wrong, but rather a demonstration and prediction that antitrust law, a tool of political and economic power, can and will be wielded by individual countries to promote protectionist policies that will affect the international trade landscape in the near term.

While attempting to act on this protectionism is difficult because of the web of international trade agreements currently in existence, individual countries may still use domestic antitrust law to meet protectionist aims, especially given that an international authoritative body governing the use of antitrust does not exist. Countries serious about preserving free trade may cooperate with one another to adopt realistic economic policies that serve to dull the blade of antitrust law through regional agreements, but ought not to attempt to eliminate it altogether.

Antitrust law, like medicine, must be used appropriately to be effective. While antitrust laws generally should encourage free trade, as promoting competition is the aim of their enforcement, they are also at risk of being used to thwart free trade. That risk is further exacerbated by perceptions of unfair enforcement and the divisive rhetoric of world leaders. In this way, antitrust law has the potential to weaken the already delicate international cooperative framework that exists to foster free trade. Absent a change in perceptions and the protectionist rhetoric fueling the current political landscape, antitrust law is likely to be manipulated to serve protectionist viewpoints, making it increasingly likely to become a nail in free trade's coffin, instead of the key to its preservation. It may be a nail that nations are able to ignore for the sake of its benefit, or it may be the one that finally puts an end to the pursuit of truly international free trade. Only time will tell, but one thing is clear: anti-trust law is a field that will impact the international economic community significantly for years to come.

#### Adverse enforcement is inevitable---it’ll be perceived as protectionist

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IV. COSTS OF NONCOOPERATION

As the above theoretical explanation shows, attempts to regulate international trade creates costs and benefits that are not fully accounted for in the domestic policy decisions of states. Transaction costs and bias stand out as two prominent costs of the de facto regime.

Since regulatory bodies exist in many different countries, and since some of those bodies apply their laws extraterritorially, firms that conduct business on a global scale must contend with increased and duplicative costs. In order to operate in accord with regulatory policies in many different countries, firms must retain legal counsel in multiple states in order to satisfy jurisdictional differences in reporting and disclosure requirements. This is slow, burdensome, and expensive for the fi rms, while it also increases costs carried by the various regulatory agencies. Because regulatory bodies in different states all act independently, from the perspective of global efficiency, the regulatory bodies are expending duplicative energy in reviewing the same activities.

In the context of international trade under the de facto international competition policy regime, firms operating in multiple states are subject to multiple regulatory reviews. As already noted, this overregulation is costly in terms of duplicative work on the part of both fi rms and regulatory states, but it also introduces yet another cost of noncooperation in the form of bias. A regulatory agency has the temptation to be more lenient when reviewing activities by local firms and potentially more restrictive when reviewing activities by foreign firms.

From the point of view of the firms, even if regulatory activities by states are unbiased, it might appear that unfavorable rulings stem from bias. Perception, in this case, is important because the way firms perceive regulatory actions or regulatory policies by states has implications for the way firms conduct their business activities. Furthermore, states might perceive the regulatory activities of other states on their firms as biased or even as punitive regulatory activity, which potentially drives a wedge between any possibility of interstate regulatory cooperation. Bias is more apparent in the choice of which cases to pursue, rather than in statutory language, but nevertheless, the presence of export cartel exemptions is the most ready example of substantial evidence that points to state bias in regulatory activity. Again, as mentioned above, the United States reveals its bias in exemptions for firms operating in the international markets in aviation, energy, ocean shipping, and communications.

#### Recent, robust studies

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Why does protectionism lead to conflict and why does free trade help prevent it? Learn about the connection between peace and free trade.

Frédéric Bastiat famously claimed that “if goods don’t cross borders, soldiers will.”

Bastiat argued that free trade between countries could reduce international conflict because trade forges connections between nations and gives each country an incentive to avoid war with its trading partners. If every nation were an economic island, the lack of positive interaction created by trade could leave more room for conflict. Two hundred years after Bastiat, libertarians take this idea as gospel. Unfortunately, not everyone does. But as recent research shows, the historical evidence confirms Bastiat’s famous claim.

To trade or to raid

In “Peace through Trade or Free Trade?” professor Patrick J. McDonald, from the University of Texas at Austin, empirically tested whether greater levels of protectionism in a country (tariffs, quotas, etc.) would increase the probability of international conflict in that nation. He used a tool called dyads to analyze every country’s international relations from 1960 until 2000. A dyad is the interaction between one country and another country: German and French relations would be one dyad, German and Russian relations would be a second, French and Australian relations would be a third. He further broke this down into dyad-years; the relations between Germany and France in 1965 would be one dyad-year, the relations between France and Australia in 1973 would be a second, and so on.

Using these dyad-years, McDonald analyzed the behavior of every country in the world for the past 40 years. His analysis showed a negative correlation between free trade and conflict: The more freely a country trades, the fewer wars it engages in. Countries that engage in free trade are less likely to invade and less likely to be invaded.

Trading partners

The causal arrow

Of course, this finding might be a matter of confusing correlation for causation. Maybe countries engaging in free trade fight less often for some other reason, like the fact that they tend also to be more democratic. Democratic countries make war less often than empires do. But McDonald controls for these variables. Controlling for a state’s political structure is important, because democracies and republics tend to fight less than authoritarian regimes.

McDonald also controlled for a country’s economic growth, because countries in a recession are more likely to go to war than those in a boom, often in order to distract their people from their economic woes. McDonald even controlled for factors like geographic proximity: It’s easier for Germany and France to fight each other than it is for the United States and China, because troops in the former group only have to cross a shared border.

The takeaway from McDonald’s analysis is that protectionism can actually lead to conflict. McDonald found that a country in the bottom 10 percent for protectionism (meaning it is less protectionist than 90 percent of other countries) is 70 percent less likely to engage in a new conflict (either as invader or as target) than one in the top 10 percent for protectionism.



b) Empirics

Cary Huang 18, Senior Writer and Veteran Columnist at the South China Morning Post, Former China Editor for The Standard, “Trade Wars Cause World Wars, History Shows. Will This Time Be Different?”, South China Morning Post, 7/17/2018, https://www.scmp.com/comment/insight-opinion/united-states/article/2155565/trade-wars-cause-world-wars-history-shows-will

History provides ample evidence that trade problems have heightened tensions among nations. Such fights lead to economic crises, and trigger political and social crises and, finally, trigger wars.

A full-blown trade war often features the combination of a tariff war and currency war. In practice, exporting countries will, in response to imposed tariffs, resort to currency manipulation, moving to cheapen their money to offset the impact of the tariffs.

But a competitive devaluation among trade partners makes a currency war meaningless. Once countries realise that currency wars do not work, they resort to all the tools available to set up barriers to block trade. This seems evident amid the escalating US-China trade feud. The slump in the renminbi in past few months is stoking fears in markets that China’s policymakers are deliberately pushing the currency’s depreciation in an effort to offset the US tariff hikes.

Trump staring down barrel of yuan devaluation in trade war

Before the first world war, most countries accepted the classical gold standard of pegging their currencies to gold as an effort to anchor smooth trade. However, from 1913, countries began to suspend or abandon the system as they devalued their currencies to compete for export markets in the ongoing tariff war.

The end of the first world war sparked the first worldwide currency war, starting in Weimar Germany in 1921, followed by France in 1925. In the end, all the major economies scrambled to devalue their currencies – sterling, the franc and the US dollar – throughout the 1930s.

In 1930, US president Herbert Hoover signed into law the Smoot-Hawley Tariff Act, which intensified the currency war and deepened the Great Depression. The protectionist law raised tariffs on more than 20,000 imported products and triggered retaliation from many US trade partners.

Trade wars stoke nationalism and hatred among people and finally trigger wars, as evidenced by the breakout of the second world war: the Japanese invaded Manchuria in 1931, and the whole of China in 1937; the Germans invaded Poland in 1939, then the rest of Europe; and the Japanese attacked Pearl Harbour in 1941.

Could Trump’s trade war turn into a third world war?

A quote often attributed to the 19th-century French economist, Frédéric Bastiat, goes: “When goods do not cross frontiers, armies will.” It is obvious that the current US-China trade war is stoking geopolitical tensions between the world’s two largest economies and chief political adversaries, as they become more confrontational over their discord on maritime issues in the South and East China seas and over Taiwan.

History often repeats itself if we do not learn from it. The two full-blown trade wars some 80 and 100 years ago helped to ignite the two world wars. Could such a catastrophe happen again?

### Adv 1 --- Rels

#### Doesn’t go nuclear

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I read with interest Caitlin Talmadge’s article “Beijing’s Nuclear Option” (November/December 2018), in which she quotes me estimating in 2015 that the odds of a U.S.-Chinese nuclear exchange were “somewhere between nil and zero.” She then goes on to make a case against remaining complacent in the face of the risk of escalation, with no discussion of what is in fact a very high nuclear threshold in a U.S.-Chinese confrontation or conflict. I continue to believe that the chances of nuclear use are very small. Talmadge’s basic argument is that in any conflict with China, the United States will immediately launch a full-scale air and missile assault against military targets in mainland China and against Chinese attack submarines at sea. In so doing, she argues, the United States will inadvertently hit either China’s ballistic missile submarines or its mobile nuclear missiles. That, in turn, will present Chinese leaders with a “use it or lose it” dilemma concerning their nuclear arsenal, and they may well decide to launch a nuclear attack against the United States. Such a scenario is extremely unlikely; indeed, I would say the odds are somewhere between nil and zero. A U.S.-Chinese conflict would be a maritime campaign in which the two sides tried to conquer or defend islands. Attacks on land targets beyond the contested islands and the waters around them, whether carried out by the United States against Chinese territory or by China against U.S. overseas bases, would be aimed at military installations and systems that supported the maritime campaign—ports, air bases, and command-and-control centers. The intercontinental nuclear deterrent forces of both countries are physically separate from these facilities. In addition, U.S. planners are very mindful of the danger of attacking any state’s nuclear arsenal and take extraordinary precautions to avoid doing so. Although there is always a chance for an isolated mistake, it is in fact possible to distinguish nuclear-armed submarines from conventional ones. Likewise, it is possible to distinguish the shorter-range, dual-use missiles that threaten Taiwan, China’s neighbors, and U.S. bases in the Pacific from the intercontinental missiles that threaten the United States. If by mistake a U.S. strike destroyed a land-based medium-range nuclear missile or sank a ballistic missile submarine, China would be greatly concerned, but it is highly unlikely that Beijing would respond by reflexively launching a nuclear attack against the United States. Rather, before even considering violating their long-held “no first use” doctrine, Chinese leaders would wait to see if a concerted, sustained U.S. campaign against their nuclear arsenal was under way. The United States has no incentive to attempt such a campaign and in fact would take every precaution to avoid it. The real danger of escalation in these conflicts would be when a Chinese attempt to capture a disputed island—Taiwan, one of the Diaoyu/Senkaku Islands, or an island in the South China Sea—was failing. A failed attempt to regain territory that the Chinese government has claimed as its own would undermine the legitimacy of the Chinese Communist Party and could make Beijing desperate enough to threaten the use of nuclear weapons. Again, U.S. planners are aware of that danger and would seek to manage the end of a maritime conflict with China in a way that minimized the incentives for escalation.

#### No accidents or escalation

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

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

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

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

### Adv 2 ---

#### It can’t be ‘weaponized’

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

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

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

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

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

Well. Yes. Think.

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

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

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

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

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

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

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

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

### PTX DA

#### Nuclear winter theory false---we’d survive it

McDonald ‘19 [Samuel Miller McDonald is a writer and geography PhD student at University of Oxford studying the intersection of grassroots movements and energy transition; 1/4/19; “Deathly Salvation”; The Trouble; https://www.the-trouble.com/content/2019/1/4/deathly-salvation]

A devastating fact of climate collapse is that there may be a silver lining to the mushroom cloud. First, it should be noted that a nuclear exchange does not inevitably result in apocalyptic loss of life. Nuclear winter—the idea that firestorms would make the earth uninhabitable—is based on shaky science. There’s no reliable model that can determine how many megatons would decimate agriculture or make humans extinct. Nations have already detonated 2,476 nuclear devices. An exchange that shuts down the global economy but stops short of human extinction may be the only blade realistically likely to cut the carbon knot we’re trapped within. It would decimate existing infrastructures, providing an opportunity to build new energy infrastructure and intervene in the current investments and subsidies keeping fossil fuels alive. In the near term, emissions would almost certainly rise as militaries are some of the world’s largest emitters. Given what we know of human history, though, conflict may be the only way to build the mass social cohesion necessary for undertaking the kind of huge, collective action needed for global sequestration and energy transition. Like the 20th century’s world wars, a nuclear exchange could serve as an economic leveler. It could provide justification for nationalizing energy industries with the interest of shuttering fossil fuel plants and transitioning to renewables and, uh, nuclear energy. It could shock us into reimagining a less ~~suicidal~~ civilization, one that dethrones the death-cult zealots who are currently in power. And it may toss particulates into the atmosphere sufficient to block out some of the solar heat helping to drive global warming. Or it may have the opposite effects. Who knows? What we do know is that humans can survive and recover from war, probably even a nuclear one. Humans cannot recover from runaway climate change. Nuclear war is not an inevitable extinction event; six degrees of warming is.

#### \*\*Warming causes extinction and turns all their impacts---it’s the most existential risk---this card answers everything

Dan Brook &, Richard H. Schwartz September 30, 2020 [Dan Brook, sociology PhD, Richard H. Schwart, PhD, September 30, 2020, "Climate change: An existential threat to humanity and how we can survive," 9-30-2020, https://www.jpost.com/jerusalem-report/climate-change-an-existential-threat-to-humanity-and-how-we-can-survive-643267, hec]

Climate change goes way beyond “an inconvenient truth.” We are overheating our planet to alarming levels with catastrophic consequences. According to NASA, “Nineteen of the 20 warmest years all have occurred since 2001, with the exception of 1998” and 2020 is on a sizzling pace to be one of the hottest years. Every decade since the 1970s has been hotter than the previous decade. Picture an overheated car (and what we drive), an overcooked dinner (and what we eat), and someone sick with a fever (and how we act). Now imagine that on a planetary scale. Our climate crisis is the biggest social, political economic and environmental problem facing our planet and its inhabitants, affecting every country and every species, mostly in negative ways. Climate change refers to the increasing average surface temperature of the Earth’s air and water, and its various environmental effects. People are becoming increasingly aware of, and concerned about, the climate crisis and its consequences, despite corporate misinformation and some media obfuscation, due to frequent reports regarding record heat, droughts, wildfires, an increase in the number and severity of storms and other extreme weather events, the melting of glaciers – about 80% of the world’s glaciers are rapidly shrinking – permafrost, and polar ice caps, as well as decreasing snow on Mt. Kilimanjaro and other tropical mountains, shrinking lakes, rising sea levels, flooding, submerged islands, changes in wind directions, acidification of the oceans, endangered species and extinctions, spreading diseases, environmental refugees, and other ominous signs of disaster. Greenhouse gas levels in the atmosphere continue to rise and there are fears of “tipping points” from which we could not come back. Climatologists have asserted that concentrations of 350 parts per million (ppm) of atmospheric CO2 is a threshold level of atmospheric carbon dioxide, which had hovered below 285 ppm for thousands of years prior to the Industrial Revolution, yet surpassed 418 ppm on June 1, 2020, the highest value in human history, indeed the highest level in about three million years. As Jerry Brown, the former governor of California, a state subjected to many severe climate events, commented, “Humanity is on a collision course with nature,”calling this era “the new abnormal,” and warning that various environmental disasters will only “intensify” over the coming years. “Right now, we are facing a \*person\*~~man~~-made disaster of global scale,” says David Attenborough. “Our greatest threat in thousands of years. Climate change. If we don’t take action, the collapse of our civilizations and the extinction of much of the natural world is on the horizon.” Global climate change is also endangering polar bears, penguins, seals, walruses, salmon, elephants, giraffes, frogs, butterflies, birds, bees and many other animals, threatening up to one-third of all fauna species. In contrast, increases in carbon dioxide and heat levels will lead to an increase in the number and range of mosquitoes, further spreading discomfort and disease. Additionally, there is an increase in food insecurity, terrorism, ethnic violence and war, according to various militaries and intelligence agencies, especially in Central America, South Asia, Africa, and the Middle East, including Syria. In December 2019, World Meteorological Organization secretary-general Petteri Taalas lamented that we will witness “ever more harmful impacts on human well being” if we do not substantially reverse course. In August 2010, an “ice island” four times the size of Manhattan calved from the Petermann Glacier in Greenland into the sea (in addition, the Ayles Ice Shelf calved entirely in August 2005 and the Markham Ice Shelf broke up in 2008, to mention just a couple of other such alarming events). Recent years have marked the “historic minimum” of Arctic Sea ice. “Such a path is not merely unsustainable,” according to Harvard Prof. John P. Holdren, former president of the American Association for the Advancement of Science, “it is a prescription for disaster.” Yet, a 2019 UN report wrote that, despite many nations’ pledges to reduce them, greenhouse gases are still rising perilously, growing an average of 1.5% per year in the past 10 years. On June 20, 2020, the temperature in the Arctic Circle soared to 100.4º Fahrenheit (38ºC) for the first time in recorded history, hotter than any June day ever recorded in Miami, Florida, while it was snowing in other parts of Siberia. Houston, Texas, has been ravaged by five “500-year storms” in the last five years. Something projected to happen only once in half a millennium happened five times in a row. None of this is normal. These and various other extreme weather events and other eco-spasms have become more frequent, more intense, and are projected to multiply with dire consequences for the world. Tragically, new records are being set each year. Humanity is threatened as never before and major changes need to occur to put our imperiled planet onto a sustainable path – and as soon as possible. Even though a small number of individuals still deny the reality of climate change, there is strong scientific and environmental consensus across a wide range of disciplines that climate change is real, serious, worsening, and caused by human activity (anthropogenic) among all major scientific and environmental organizations, journals, magazines, and museums, and nearly all peer-reviewed scholarly articles, in addition to all reputable colleges and universities and most governments and large corporations. The evidence is overwhelming and continuing to pile up. A further indication of how serious climate threats are is that in the two weeks prior to the final submission of this article, the following occurred: Israel experienced a major, long-lasting heat wave, with temperature records broken in many cities; California and several other US western states experienced massive wildfires along with some record temperatures; the Koreas were struck by two severe typhoons; the US state of Louisiana was hit by a category four hurricane; there were reports that melting of ice in Greenland had passed a point of no return and that rapid melting of Arctic permafrost is releasing ’shocking amounts of dangerous gases.” This is truly an Earth emergency and earthlings are standing at a global precipice. The 2019 Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Report on global warming was written by about 100 climate scientists from 40 countries, based on 6,981 scientific studies and over 42,000 expert and governmental comments. The IPCC has 195 member states. The report carefully delineates clear trends and potentially catastrophic consequences associated with climate change, warning of irreversible change, unless we very soon make radical and unprecedented efforts to counter global warming. According to the United Nations Foundation, “Overall, it is expected that every degree of warming will likely reduce crop yields, productivity and livestock production globally, while food demand continues to rise. And even worse, hunger and water crises – either caused or exacerbated by climate change – may generate ripple effects across society, leading to poverty, conflict, and migration.” “One action that the IPCC recommends,” it continues, “is to change what’s on our plates: swap out meat for more plant-based foods. While we need collective policy changes, individual actions do add up and send an important message to leaders.” Acting conservatively, the IPCC makes it plain that the current and projected climate change is not simply “natural variation” or “solar activity,” and certainly not a “Chinese hoax,” but “extremely likely” (meaning 95%-100% confidence) the result of human activity. The case is closed on the problem of anthropogenic climate change, with only the extent, mitigations, and solutions to still debate. It therefore should not be surprising that the US Pentagon states that global warming is a larger threat than even terrorism. “Picture Japan, suffering from flooding along its coastal cities and contamination of its fresh water supply, eyeing Russia’s Sakhalin Island oil and gas reserves as an energy source,” suggests a Pentagon memo on global warming. “Envision Pakistan, India and China – all armed with nuclear weapons – skirmishing at their borders over refugees, access to shared river and arable land.” The former secretary-general of the UN, Ban Ki-moon, has said that climate change needs to be taken as seriously as war and, further, that “changes in our environment and the resulting upheavals from droughts to inundated coastal areas to loss of arable land are likely to become a major driver of war and conflict.” Fighting global climate change may be one way to prevent future wars and genocides, simultaneously increasing energy security and physical security. There are additional causes for concern. The people disproportionately affected by climate chaos are the poor and socially disadvantaged, since they are in the weakest position to guard against environmental damages and will likely suffer the most harm. In the underdeveloped world, and perhaps especially in China, India and Southeast Asia, as well as much of Africa, the Middle East and Latin America, climate change is negatively affecting urban drinking water systems, agricultural output, and commercial and other transport on rivers. Further, increased suffering and increasing numbers of environmental refugees, along with greater anxiety over access to food, water, land, and housing – the material essentials of life – often lead to unstable conditions that give rise to anger, ethnic violence, gangs, terrorism, fascism, and war. “It’s the poorest of the poor in the world, and this includes poor people even in prosperous societies, who are going to be the worst hit,” states former IPCC Chair Rajendra Pachauri. Those who needlessly degrade and destroy the environment to satisfy their own selfish pleasures are like the pre-revolutionary Queen Marie Antoinette, declaring, “Let them eat carbon dioxide!” Israel is especially threatened by climate change. The coastal plain, where much of Israel’s population and infrastructure are located, could be inundated by a rising Mediterranean Sea. Climate experts project that the Middle East as a whole will become significantly hotter and drier, and military experts believe that this makes instability, terrorism, ethnic violence, and war more likely. The gravity of the climate threats to Israel was captured in the December 4, 2019 headline in The Jerusalem Post: “Hot and dry: Climate report spells disaster.” Don’t we want our children, grandchildren, and future generations to not only survive, but to thrive? To have a world that is at least as good, and hopefully better, than the one we do? Yes, we need our governments, corporations, schools, religious institutions, and other organizations to get actively involved in fighting climate change. Yes, we need to stop deforestation and increase reforestation. Yes, we need more resource conservation and more energy-efficient vehicles, appliances, electronics, batteries, and light bulbs. And, yes, our society needs to switch away from dirty and dangerous fossil fuels and toward renewable energy, such as solar, wind, tidal, wave, biomass, hydrogen, geothermal, algae and others. But while we are struggling for these important and positive large-scale social changes, we also need to say “yes!” to personal changes.

#### CCEP is the enforcement mechanism and it offers an incentives program---none of their ev assumes it

Yvonne Mcintyre & Derek Murrow 9-14 [September 14, 2021 Yvonne Mcintyre Derek Murrow, "House Proposes Strong Clean Electricity Performance Program," NRDC, 9-14-2021, https://www.nrdc.org/experts/yvonne-mcintyre/house-proposes-strong-clean-electricity-performance-program, hec]

The House Energy & Commerce Committee is marking up legislation today that will make significant progress toward achieving President Biden’s 100% clean electricity by 2035 goal, by investing federal money to help utilities accelerate clean electricity development. The ambitious Clean Electricity Performance Program (CEPP) will drive investment that reduces emissions, creates jobs and grows the economy. The Congress and the President now need to ensure it remains strong through final passage to deliver a transformed power sector. The science is clear: we’ve got to cut the carbon pollution from burning fossil fuels in half by 2030, and stop adding it to the atmosphere altogether by 2050, to keep the climate crisis from blowing into a full-on catastrophe. That starts with cleaning up the dirty power plants that account for a third of our carbon footprint. The Clean Electricity Performance Program is designed to help support and accelerate this broad shift, by making a $150 billion public investment over the coming decade in power companies that meet annual targets for expanding clean electricity. To ensure proper incentives and a level playing field, the CEPP also collects a payment from power companies that fail to meet those targets. The CEPP is a critical part of the broader federal investments in the Build Back Better Act to transform the electric sector, with portions of the act moving through the Energy & Commerce, Ways and Means and other committees. A Clean Electricity Performance Program Is Popular and Delivers Massive Benefits A broad majority of the country, 62 percent (only 30 percent oppose), supports President Biden’s goal of moving the country to 100-percent clean electricity by 2035, to confront the climate crisis and cut pollution. And the appeal extends to every region of the nation—a majority in all 50 states and 429 of the 435 Congressional districts support federal action to achieve 100 percent clean electricity by 2035. The CEPP, a key part of Biden’s Build Back Better agenda, will make investments that set us on course to achieve that goal, getting us to 80 percent clean power by 2030. The House bill provides an incentive and fee structure to ensure that each power company—no matter where they are today— will increase their proportion of clean energy at a steady, four percent per year rate. This means that companies that are just getting started and those that are already well on their way will all have an incentive to keep going. Accelerating the deployment of clean electricity and getting on the pathway to 80% clean by 2030 delivers massive benefits. A CEPP program that results in at least 80% zero-emission electricity by 2030 will reduce overall power sector CO2 emission by more than 80% from their high point in 2005. It will also reduce the power sector’s SO2 emissions by 88-98% and its NOx emissions by 71-91% compared to levels expected under business as usual.

#### Progressives and moderates are working together to get it done

Jacob Rosen 10-15 [CBS News, "Pramila Jayapal says of reconciliation and infrastructure bills that Democrats "will get it done"," accessed 10-15-2021, https://www.cbsnews.com/news/pramila-jayapal-reconciliation-infrastructure-bills-the-takeout/, hec]

Progressive Caucus Chair Congresswoman Pramila Jayapal maintains that child care, Medicare expansion, prescription drug price limits, climate change, immigration, and affordable housing will remain in the slimmed-down social spending bill being negotiated between the White House and congressional Democrats. But she concedes some programs may have to be altered. "Those five priorities still need to be in any final bill," Jayapal told CBS News chief Washington correspondent Major Garrett in this week's episode of "The Takeout" podcast. She added, "You can significantly cut down on the price tag by funding some of these programs for a shorter period of time." Listen to this episode on ART19 Previously, the measure was projected to cost $3.5 trillion, but that number has been cut at the insistence of moderate Senators Joe Manchin and Kyrsten Sinema. The support of the two moderates is needed to pass the the social spending bill in the Senate, while progressives are holding up the passage of the bipartisan infrastructure bill in the House until there's a deal on the social spending bill. Recently both Manchin and Sinema have been confronted by progressive protesters in public. Jayapal, however, downplayed any intraparty squabbling. "It is, as you know, a bit of a messy process. I don't think we're in disarray. I don't think we're in drift. I think we're about delivering, and that will happen. We will get it done," Jayapal said of the negotiations. "We all play on the same team." Jayapal said she's open to means testing social spending bill programs and sees it as an area of agreement unity between moderates and progressives, if they can agree on an approach. "A lot of the ways in which we've done means testing in this country have been really ineffective. There are ...simple ways to ensure that the richest people do not get the benefits," Jayapal said, adding that she hopes both Manchin and Sinema will support these proposals, given how policies in the American Rescue Plan, passed earlier this year, were also means-tested.

#### But timing is everything---infra won’t be the focus for long---final push now is key

Brigid Kennedy 10-14 [Staff Writer @ the Week, "The White House is reportedly 'nearing the end of its patience' on reconciliation negotiations," accessed 10-15-2021, https://theweek.com/white-house/1006040/the-white-house-is-reportedly-nearing-the-end-of-its-patience-on-reconciliation, hec]

The White House appears to have a message for the lawmakers on Capitol Hill — the time for negotiations surrounding Democrats' massive social spending package is coming to an end. According to Punchbowl News, the White House is "nearing the end of its patience on reconciliation talks," with a source having told Jake Sherman that "the president is ready to get this done." "The White House feels that serious progress has been made and that members representing each viewpoint are operating in good faith, but that the time for negotiations is nearing an end," the source told Sherman. "The White House wants to make clear [that] soon it will be time for negotiations to conclude so we can move forward with both plans," presumably referring to President Biden's infrastructure bill and Build Back Better agenda.

#### Insider sources vote neg

Pettypiece 10-14 (staff writer). Shannon Pettypiece. Oct. 14, 2021. NBC News. “White House pushing Congress to reach deal on spending bill soon”. <https://www.nbcnews.com/politics/white-house/white-house-pushing-congress-reach-spending-bill-deal-soon-n1281567>. Accessed 10/14/21.

White House officials are signaling to Congress that the time is running short for negotiations over President Joe Biden's infrastructure and social spending packages and that they want a deal to get done quickly.

A person familiar with the White House's thinking said that while Biden believes good progress has been made in negotiations, he thinks it is crucial to pass the bills soon, and officials are pushing members to do so.

#### PC is working---Biden is confident he can unite the party but it will require continued effort

Jim Tankersley et al, Katie Rogers and Zolan Kanno-Youngs 10-1 [NYT “Biden tries to broker a deal among Democrats, with prodding and patience,” 10-1-21, <https://www.nytimes.com/live/2021/10/01/us/infrastructure-bill-house>, hec]

President Biden is acting as a cheerleader, a sounding board and, increasingly, a prod for holdout for Democrats in the most consequential negotiation of his presidency: his effort to unite warring factions of his party behind a pair of bills that carry the bulk of his economic platform and other domestic agendas. Mr. Biden, who was headed to Capitol Hill to talk with congressional Democrats on Friday afternoon, spent much of the week welcoming key lawmakers to the White House for discussions. He has telephoned others from the Oval Office, or sometimes from its adjoining private dining room. Those close to the president say Mr. Biden still sees himself as uniquely positioned to broker an agreement, citing his success in uniting the party around a $1.9 trillion economic aid bill this spring. But the president has found these negotiations more difficult and slower going than the relief bill as donors and activists are urging each wing of its party to hold a tough line in negotiations. He has practiced patience with progressives and moderates alike, even as Democrats in the House and Senate traded shots over their positions on the size of a spending-and-tax cuts package and as the House barreled past deadlines for a vote on a bipartisan infrastructure bill. Aides say Mr. Biden’s strategy has been to keep the negotiations going, in order to keep them — and his agenda — alive. As the week wore on, administration officials and their outside allies began to brace for the legislative push to stretch deep into the autumn, and possibly run into the December holidays.

#### He’s driving efforts to compromise within the party

Zanona 10/1 [Melanie Zanona, Lauren Fox, Ryan Nobles, Clare Foran and Daniella Diaz, CNN, "Biden vows 'we're going to get this done' as Democrats attempt to overcome divisions to enact agenda", 10/1/21, 6:35 PM EDT, https://www.cnn.com/2021/10/01/politics/house-vote-infrastructure-democrats/index.html]

President Joe Biden vowed on Friday that Democrats will deliver on their agenda as congressional leaders attempt to resolve divisions between moderates and progressives that have put passage of a sweeping economic package and a separate bipartisan infrastructure bill in jeopardy.

"We're going to get this done," Biden told reporters. Pressed on a timeline, the President said, "It doesn't matter when. It doesn't whether it's in six minutes, six days, or six weeks -- we're going to get it done."

Biden was on Capitol Hill Friday afternoon meeting with members of the House Democratic Caucus as Democratic leaders and White House officials labor to strike a deal on the economic framework that they hope can unlock enough votes for infrastructure.

The comments from the President may relieve some of the deadline pressure on Democrats to swiftly strike a deal and resolve the impasse, but are just as likely an acknowledgment of the reality that a deal is not expected to be reached immediately given the number of sticking points that remain.

Two sources familiar with ongoing talks told CNN that a deal on the so-called framework of the economic package isn't finished or imminent at this current moment.

The price tag

One of the major outstanding issues that Democrats must come to an agreement on is the overarching price tag of their economic package that would expand the social safety net. Progressives have wanted $3.5 trillion, but key moderates have balked at the number and said it will have to be lower.

After days of stalemate between moderates and progressives, however, there now appears to be more of an effort underway to find common ground and compromise over the cost of the economic package.

WHERE THINGS STAND

House Speaker Nancy Pelosi delayed a vote on a trillion-dollar infrastructure bill after progressives rebelled, potentially delaying consideration until Democrats strike an agreement on separate, much larger social safety net and climate legislation.

Sen. Joe Manchin made clear $1.5 trillion was the price tag he was willing to settle on for his party's plan to expand the social safety net. Meanwhile, Sen. Kyrsten Sinema's critics in Arizona are speaking out.

Here's what's in the bipartisan infrastructure bill.

As they left the meeting with Biden, several lawmakers said that the President had informed them that the top-line number where they are likely to find agreement is somewhere between $1.9 trillion and around $2 trillion.

Rep. Henry Cuellar of Texas said that was the range Biden told the group and asked them to find common ground within that number.

Cuellar said he viewed Biden's pitch as a way to show progressives that they are on the same page, but they were going to have to find ways to compromise.

Congressional Progressive Caucus Chairwoman Pramila Jayapal suggested Friday that progressive Democrats may have to have to reduce the number they are asking for.

"We need to get this reconciliation bill," said Jayapal, a Democrat from Washington state. "And you know, it's going be tough. We're going to have to come down in our number, and we're going to have to do that work. So we're going to get to work and see what we can get to."

But Jayapal also said that Biden was "very clear" that the package and the bipartisan infrastructure bill are "tied together."

"We need to get both bills done, and that's what we're going to do," she said.

Rep. Jamie Raskin of Maryland left a meeting with House progressives and said the group is optimistic about the path forward, but he did acknowledge that he and his fellow progressives will have to find ways to trim their $3.5 trillion package in a way that meets most of their goals.

"We understand that there are different proposals for the amounts of money to be spent, and we're just going to have to come up with the right number and maybe not everything can be funded for 10 years," Raskin said.

"Maybe it's going to be a lesser period of time, but at least we'll be able to develop these programs and make a commitment to the American people, then we'll be able to make a judgment after four years or five years of the programs. Are they working? Do they deserve more investment or do they not?"

Biden's visit to Capitol Hill

After the roughly half hour meeting with the President, Democrats described a leader who was in his element and not working to change minds as much as remind members of their shared and unified goals as a caucus.

Biden tried to break down the stalemate and the tensions that have hung over the party for weeks, reminding them that he's not on one side or the other. At one point, he made a reference to his own political ideology, saying, "Who knows what label I get."

To which House Speaker Nancy Pelosi replied: "President," prompting loud laughter from the room.

Biden also talked about how he had redone his office to have paintings hung of Lincoln and FDR -- "a deeply divided country and the biggest economic transformation," said Rep. David Cicilline of Rhode Island, "which is kind of the moment we're in."

However, some members left the meeting with Biden happy to have seen him but still perplexed by next steps.

One Democrat who spoke on the condition of background said they still weren't sure what was happening Friday night but quipped that everyone wanted to know including their family and "my dogs."

"It's unclear what's happening the rest of the day, let alone the rest of the week or month," said Rep. Abigail Spanberger of Virginia.

The high-stakes visit to the Hill by the President comes as some Democrats have been calling for Biden to play a more active role in the process.

Democratic Rep. Steve Cohen of Tennessee said on Friday ahead of the visit, "I think the President should be involved," and said "very few of us have seen the President in nine months he's been President. And I think he should come to a caucus."

#### His PC is also uniquely finite

Domenico Montanaro 8-24 [NPR Senior Correspondent, "Here's How Democrats Get Their Domestic Agenda Through — And It's Not Easy," NPR.org, 8-24-2021, https://www.npr.org/2021/08/24/1027592836/heres-how-democrats-get-their-domestic-agenda-through-and-its-not-easy, hec]

For Democrats, getting their historic domestic agenda done was already going to be a tough needle to thread, with a narrowly divided Congress and tensions within the party itself. But now, because of the resurgent coronavirus due to the delta variant and the chaotic U.S. withdrawal in Afghanistan, President Biden's approval rating has dropped. His reduced influence and political capital don't leave much room for error on items that might be difficult to get through Congress. And it doesn't get much more challenging than the path Democratic leaders are going down, pushing dual-track, multitrillion-dollar pieces of legislation — a $1 trillion infrastructure bill and a budget plan that could be $3.5 trillion.

#### Thumpers are priced in---sudden changes to the agenda involving big-ticket items cause political havoc

Jacob Pramuk 9-15 [Jacob Pramuk, “Biden meets with Sens. Manchin, Sinema as Democrats try to build support for $3.5 trillion bill,” CNBC, 6-10-2021, https://www.cnbc.com/2021/09/15/joe-biden-to-meet-with-joe-manchin-kyrsten-sinema-about-3point5-trillion-bill.html, hec]

President Joe Biden was set to meet Wednesday with Sens. Joe Manchin and Kyrsten Sinema as he tries to nudge the skeptical Democrats to back his sprawling $3.5 trillion economic plan. The president spoke with Sinema, who represents Arizona, at the White House in the morning. He was expected to meet with Manchin, a West Virginia lawmaker, later in the day. Both centrists have criticized the proposed $3.5 trillion price tag, and Manchin has called on party leaders to delay votes on the legislation. The meetings come at a pivotal point for an agenda that Democrats hope will offer a lifeline to households and stymie Republican efforts to win control of Congress next year. Party leaders gave congressional committees a Wednesday deadline to write their portions of the bill, and they hope to send it to Biden’s desk in the coming weeks. Democrats have to navigate a political maze before they can pass what they call the biggest investment in the social safety net in decades. While the party does not need a GOP vote to approve the bill through budget reconciliation, a single Democratic defection can sink it in the Senate, giving Manchin and Sinema massive leverage to shape the plan. House Speaker Nancy Pelosi, D-Calif., can lose only three votes in her caucus and pass the legislation. She has to balance the often competing interests of centrists wary of $3.5 trillion in spending and progressives who see the sum as a minimum investment. The plan’s success has huge stakes for Biden, who has seen his approval ratings dip amid a chaotic U.S. withdrawal from Afghanistan and a coronavirus resurgence fueled by the delta variant. The president has cast his economic plan as a jolt to the working class and an overdue effort to mitigate climate change.

#### Dems not focusing on anti-trust now---no thumper AND it requires significant PC---we control link UQ

Sagers 21[Christopher, “AMERICAN ANTITRUST AND THE NEAR TERM: CONSISTENCY, ONE IMAGINES, AND SOME REASONS WHY,” accessed 5-21-21, <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en>]

15. And so I reach the same conclusion being reached by many other Americans who care about antitrust and think it has been wrecked, and hoping for action that even five years ago I would have said was crazy. The only hope left is legislative reform of statutory antitrust. I think Congress should amend the law to reaffirm its own intention that the law be enforced proactively, aggressively, prophylactically, and for real, without giving every defendant the benefit of every conceivable doubt. Congress should do that in a way that keeps the courts from thwarting its intent through nullifying interpretations, as they have done many times before. Obviously, Senate control is again quite relevant. Under those Senate norms that still remain—in which we retain a filibuster rule for ordinary legislation—a party with fewer than 60 seats can typically do little. The two parties do not apparently work together in hardly any fashion. The party that holds the majority, even if only by one vote, controls the institution and its actions outright, but the minority can typically keep it from taking meaningful substantive action. Where the opposing party holds the White House, Senate minorities have filibustered essentially all legislation, apparently just to deny the opposing President any opportunity for campaign-trail self-congratulation. When the majority party can take effective action, it will only be in extraordinary circumstances or by using a filibuster exception, like the budget reconciliation procedure that was used in connection with the Obamacare legislation in 2010, and in subsequent Republican efforts to repeal it. [304] But antitrust, however important and however much it has returned to popular consciousness, seems unlikely to be so high on the Democratic agenda that it is chosen as one of the extraordinary matters Democrats prioritize in this way, even if they win Senate control. 16. And on top of all of that, it does not help that in this world, in which we dwell on ideas and not institutions—perhaps because institutions seem boring, and do not invite intellectual abstraction or Manichean dreams of good and evil—we see sharp divisions even within our factions. Only liberals and progressives in America favor more antitrust enforcement, but among us we have several hotly disputed disagreements, and some difficulties getting along. It reflects in microcosm the struggle of left and center of the election of 2016. So in 2021 and thereafter, it seems like it will be a fair bit of work to build any effective reform coalition. [305]

#### Empirically---it causes intra-party fights

Scher 7-19 (Bill Scher, the host of the history podcast "When America Worked" and the co-host of bipartisan online show and podcast, A Short History of Democrats and Antitrust

Biden’s war against corporate gigantism is good policy and better politics. <https://washingtonmonthly.com/2021/07/19/a-short-history-of-democrats-and-antitrust/>, y2k)

Biden’s revival of antitrust isn’t just good policy; it’s also good politics. That’s because it can bridge ideological tensions between the party’s younger left flank and its older centrists. Antitrust has appeal to both factions. Talk of restoring competition may upset a handful of giant corporations, but not the wider swath of smaller businesses and entrepreneurs. Socialists may not love capitalism but it’s hard to see them getting too mad at moderate Democrats who draw real corporate blood in the name of repairing capitalism. Yet intra-party tensions remain. During a recent Congressional Progressive Caucus conference call, a heated dispute broke out as Congresswoman Zoe Lofgren criticized the authors of aggressive antitrust legislation for hasty work, and Congressman David Cicilline accused Lofgren of shilling for Silicon Valley. If Biden is to succeed where his predecessors fell short, he will need to be mindful of his party’s history.

#### Link turns case---It causes the plan to be ignored AND external war

Jennifer Sensiba 20, Author at Clean Technica, Long Time Efficient Vehicle Enthusiast, Writer, and Photographer, “It’s All About Political Capital”, Clean Technica, 11/6/2020, https://cleantechnica.com/2020/11/06/dont-encourage-biden-to-waste-political-capital/

In short, political capital is a way to think about political power in democratic countries. Yes, winning elections does give some political power, but you can’t effectively use it unless you have coalitions, alliances, trust, goodwill, and influence. Your earned trust and connections are like money (capital). You can work hard to earn it and build it up, but it’s easy to spend it and even waste it, just like money.

If you get power from an election and then quickly spend all of the political capital impressing loyalists, you’ll get to the point where you can’t win future elections (Trump is a great example of this), can’t get votes together for legislation, and can’t get people to help you in a variety of other ways. At worst, a political leader who has run completely out of political capital might not even be able to get normal citizens to follow laws. As the consent of the governed is withdrawn, you see protests, riots, violence, terrorism, and even war.

#### Popular policies don’t generate further support---*Biden can only go down---not up*

Perry Bacon Jr. 21, a senior writer for FiveThirtyEight, “Why Republicans Don’t Fear An Electoral Backlash For Opposing Really Popular Parts Of Biden’s Agenda,” <https://fivethirtyeight.com/features/why-republicans-dont-fear-an-electoral-backlash-for-opposing-really-popular-parts-of-bidens-agenda/>

Republicans in the U.S. House last week unanimously opposed President Biden’s economic stimulus bill, even though polls show that the legislation is popular with the public. The U.S. Senate will consider the bill soon — and it looks like the overwhelming majority of Republicans in that chamber will oppose it as well. And it’s not just the stimulus. House Republicans also last week overwhelmingly opposed a bill to ban discrimination on the basis of sexual orientation and gender identity. And the GOP seems poised to oppose upcoming Democratic bills to make it easier to vote and spend hundreds of billions to improve the nation’s infrastructure. All of those ideas are popular with the public, too. “Duh,” you might say. Of course, the party out of power opposes the agenda of the party in power. Democrats did that during former President Donald Trump’s four years. Republicans did it during former President Barack Obama’s two terms. The parties just disagree on a lot of major issues. You’ve seen this movie before, right? This sequel is a little different, actually. Obama’s health care bill was only hovering around majority support as it moved through Congress. Trump’s proposals to repeal Obamacare and cut corporate taxes were downright unpopular. In contrast, Biden and the major elements of his agenda are popular. And the Republican Party isn’t, which helps explain why it was swept out of power in the 2018 and 2020 elections. So if an unpopular party uniformly opposes popular policies in the run-up to 2022 and 2024, is it buying itself a ticket further into the political wilderness? Not necessarily. There are several reasons to think that opposing popular policies won’t hurt Republicans electorally, and conversely, that implementing a popular agenda won’t necessarily boost Biden that much. The first reason that congressional Republicans can afford to oppose popular ideas is one that you have probably read a lot about over the last several years: The GOP has several big structural advantages in America’s electoral system. Because of the Electoral College, Trump would have won the presidency with around 257,000 more votes in Michigan, Pennsylvania and Wisconsin, even though he lost nationally by more than 7 million votes. The Senate gives equal weight to sparsely populated states like Wyoming and huge ones like California, so the chamber’s 50 Democratic senators effectively represent about 185 million Americans, while its 50 Republican senators represent about 143 million, as Vox’s Ian Millhiser recently calculated. Gerrymandering by Republicans, as well as the weakness of Democrats in rural areas, makes it harder for Democrats to win and keep control of the House even when most voters back Democratic House candidates. That’s what happened in 2020. Put all that together, and congressional Republicans are somewhat insulated from the public will. In turn, the advantage for Biden and congressional Democrats of being closer to the public’s opinions is blunted. Second, electoral politics and policy are increasingly disconnected. More and more Americans vote along party lines and are unlikely to break from their side no matter what it does. Some scholars argue that voters’ attachments to the parties are not that closely linked to the parties’ policy platforms but rather more akin to loyalty to a team or brand. And partisanship and voting are increasingly linked to racial attitudes, as opposed to policy. So GOP-leaning voters may support some Democratic policies but still vote for Republican politicians who oppose those policies. Third, the last several midterm elections have all been defined by backlashes against the incumbent president. You could argue that there’s nothing inevitable about this, and that former President George W. Bush (Social Security reform, Iraq War), Obama (Obamacare in 2010 and its flawed rollout in 2014) and Trump (Obamacare repeal) all did or proposed controversial things that irritated voters. Maybe if Biden sticks to popular stuff he’ll buck the trend. But it could instead be the case that voters from the president’s party tend to be kind of fat and happy in midterms, while the opposition is inspired to turn out. So even if Biden does popular things, GOP voters could be more motivated to vote in November 2022. Fourth, voters may like a president’s policies in the abstract but still think he isn’t doing a good job or that his policies aren’t that effective if those policies aren’t bipartisan. Think of this as the Mitch McConnell theory. Early in Obama’s first term, the last time Democrats had control of the House, Senate and the presidency, the Kentucky senator and others in the GOP leadership came up with a strategy of trying to get as few congressional Republicans as possible to back then-President Obama’s ideas. As McConnell said publicly back then, he viewed voters as not especially attuned to the day-to-day happenings in Washington. Instead, he said, they evaluate a president in part based on whether his agenda seems divisive, particularly a president who campaigns on unifying the country (as both Obama and Biden did). That allows the opposition party to create the perception of division simply by voting against the president’s agenda. Put another way: The opposition party can guarantee a lack of bipartisan support — and then criticize the president for lacking bipartisan support.

#### New SCOTUS action links—anti-court sentiment drives

Quinn 21 [MELISSA QUINN, "Democrats vow to protect abortion rights after Supreme Court decision on Texas law", 9/3/21, https://www.cbsnews.com/news/texas-abortion-law-rights-democrats-supreme-court/]

President Biden and congressional Democrats are vowing to take action to protect a woman's right to an abortion after a divided Supreme Court allowed a Texas law outlawing the procedures after six weeks of pregnancy to remain in effect in a late-night decision Wednesday. House Speaker Nancy Pelosi pledged Thursday that once the House returns to Washington, D.C., later this month from its recess, it will take up legislation that enshrines the right to an abortion into federal law and prohibits "medically unnecessary restrictions" on abortion services or facilities. "This ban necessitates codifying Roe v. Wade," Pelosi said in a statement condemning the Supreme Court's decision. The high court established the woman's right to an abortion in its 1973 decision in Roe.

#### Court action links --- congressional debate and legislative introductions

**Pearlstein 20**, Steven, is a former business and economics columnist for The Washington Post and the Robinson professor of public affairs at George Mason University, “Facebook and Google cases are our last chance to save the economy from monopolization,” 12/18/20, accessed 8/23/21, https://www.washingtonpost.com/business/2020/12/18/google-facebook-antitrust-lawsuit

**To achieve that more ambitious outcome**, says Gene Kimmelman, a former chief counsel to the Justice Department’s antitrust division**, the government does not have to go so far as to convince the courts that their past decisions were wrong**. But **it would have to convince judges that those earlier precedents have to be adapted to the competitive realities of today’s winner-take-all markets** — markets **where customers all want to use the same network or supplier**, the price of a product can be zero, and the competitive threat comes from small start-ups offering a different product or technology. **Beating up on Big Tech is fun and easy. Restraining it will require rewriting the law. Even as these cases proceed through the courts, the issues** they raise **will also be actively debated in Congress**, where there is considerable bipartisan interest in restraining the power of Big Tech. And what happens in one forum is likely to inform and affect the other. **The filing of the court cases**, for example, **is likely to give further impetus to legislative proposals to strengthen the antitrust laws and create a new agency to directly regulate digital platforms**, **much in the way the F**ederal **C**ommunications **C**ommission **regulates telephone and cable companies and the F**ederal **E**nergy **Re**gulatory **C**ommission **regulates electric utilities**. In addition to **regulating business practices and approving mergers, such an agency could also address issues of privacy, data ownership and regulation of disinformation and hate speech**. Just this week, both the British government and the European Union unveiled a proposal for such an agency.

#### Issues will spillover---fights won’t stay contained

**Sheesgreen 13** – Deindre, “Energy bill debate shows Congress' dysfunction”, USA Today, <http://www.usatoday.com/story/news/politics/2013/09/18/energy-bill-sidetracked/2834289/>, 09-18-2013

When it comes to **political dysfunction** of this Congress, Exhibit A is unfolding in the Senate over a modest, **bipartisan** energy-efficiency **bill**. Sponsored by Sen. Rob Portman, R-Ohio, **the legislation has become entangled in a nasty debate over completely unrelated issues** -- including "Obamacare" and prostitution allegations. The spat has even sparked an ethics complaint raising allegations of bribery and intimidation. All that has **put in limbo** a relatively **non-controversial bill** that Portman and his co-sponsor, Sen. Jeanne Shaheen, D-N.H., had hoped would sail through the Senate. Instead, **debate over the measure has essentially ground to a halt**. "We do need a way forward here," Portman said on the Senate floor Tuesday as he pleaded for a resolution to the stalemate. At the center of the logjam are two bills that have **collide**d on the Senate floor