# 1AC

# 2AC

## Food Security

#### Since they’re going to complain about it

FDI 12 – Future Directions International (“International Conflict Triggers and Potential Conflict Points Resulting from Food and Water Insecurity Global Food and Water Crises Research Programme”, May 25, <http://www.futuredirections.org.au/files/Workshop_Report_-_Intl_Conflict_Triggers_-_May_25.pdf>)

There is a growing appreciation that the conflicts in the next century will most likely be fought over a lack of resources. Yet, in a sense, this is not new. Researchers point to the French and Russian revolutions as conflicts induced by a lack of food. More recently, Germany’s World War Two efforts are said to have been inspired, at least in part, by its perceived need to gain access to more food. Yet the general sense among those that attended FDI’s recent workshops, was that the scale of the problem in the future could be significantly greater as a result of population pressures, changing weather, urbanisation, migration, loss of arable land and other farm inputs, and increased affluence in the developing world.¶ In his book, Small Farmers Secure Food, Lindsay Falvey, a participant in FDI’s March 2012 workshop on the issue of food and conflict, clearly expresses the problem and why countries across the globe are starting to take note. .¶ He writes (p.36), “…if people are hungry, especially in cities, the state is not stable – riots, violence, breakdown of law and order and migration result.” “Hunger feeds anarchy.” This view is also shared by Julian Cribb, who in his book, The Coming Famine, writes that if “large regions of the world run short of food, land or water in the decades that lie ahead, then wholesale, bloody wars are liable to follow.” He continues: “An increasingly credible scenario for World War 3 is not so much a confrontation of super powers and their allies, as a festering, self-perpetuating chain of resource conflicts.” He also says: “The wars of the 21st Century are less likely to be global conflicts with sharply defined sides and huge armies, than a scrappy mass of failed states, rebellions, civil strife, insurgencies, terrorism and genocides, sparked by bloody competition over dwindling resources.” As another workshop participant put it, people do not go to war to kill; they go to war over resources, either to protect or to gain the resources for themselves. Another observed that hunger results in passivity not conflict. Conflict is over resources, not because people are going hungry. A study by the International Peace Research Institute indicates that where food security is an issue, it is more likely to result in some form of conflict. Darfur, Rwanda, Eritrea and the Balkans experienced such wars. Governments, especially in developed countries, are increasingly aware of this phenomenon.¶ The UK Ministry of Defence, the CIA, the US Center for Strategic and International Studies and the Oslo Peace Research Institute, all identify famine as a potential trigger for conflicts and possibly even nuclear war.

#### Fiat solves—good faith implementation is key to AFF ground.

Crane 21—(Professor of Law, University of Michigan). Daniel A. Crane. 2021. “Antitrust Antitextualism”. 96 Notre Dame Law Rev. 1205. <https://scholarship.law.nd.edu/ndlr/vol96/iss3/7>. Accessed 9/12/21.

CONCLUSION

It turns out that the pervasive rhetoric that the antitrust laws are a delegation of common-law powers to the courts is a bit of a fig leaf covering the courts’ declination to enforce the antitrust statutes as written. But something more than judicial insubordination to the will of Congress is happening. The pattern of engagement between the courts and Congress over American antitrust law’s 130-year history suggests an implicit division of responsibility for the management of competing political impulses for industrial smallness and bigness. Congress expresses an idealistic preference for smallness, the courts balance that impulse against pragmatic recognition that larger scale can bring material benefits, and both institutions implicitly accept the other’s role.

That it has been this way since the beginning does not mean that it must continue to be this way forever. At this moment of growing political and social interest in antitrust and revival of antimonopoly sentiment, the balance could tip decisively in favor of Brandeisianism and against the “Curse of Bigness.” Judges could be trained (or retrained) to begin taking the antitrust statutes seriously as statutory texts and begin applying them faithfully using the (contested) methodologies they use as to other statutes. But if judges began taking the texts of antitrust statutes seriously, query whether Congress would continue to write such broad statutes, or whether hydraulic pressures would induce a more sparing approach to antitrust legislation.

#### Clarity solves—overcomes even stringent criticisms of judicial antitrust.

Morton 20—(Theodore Nierenberg Professor of Economics at the Yale University School of Management). Fiona Morton. 2/18/2020. Equitable Growth. "Reforming U.S. antitrust enforcement and competition policy”. <https://equitablegrowth.org/reforming-u-s-antitrust-enforcement-and-competition-policy/>. Accessed 9/13/21.

Reform antitrust statutes to deter and prevent anticompetitive conduct more effectively

Increasing resources and more aggressive enforcement alone will not solve the problem. Judicial decisions interpreting the antitrust laws have significantly ~~crippled~~ [limited] antitrust enforcement. These decisions reflect, at best, an archaic economic understanding of competition or, at worst, simply bad economic reasoning.

Under a series of U.S. Supreme Court decisions over the past decade, for example, it is doubtful that the government could have successfully broken up AT&T’s phone monopoly in the 1980s. That break up, arguably the government’s most successful monopolization prosecution, focused on AT&T’s refusal to allow MCI, a long-distance competitor, to connect its long-distance service to local phone monopolies. In Verizon Communications v. Trinko, the Supreme Court dramatically expanded a monopolists’ ability to avoid antitrust liability when it refuses to deal with competitor or potential competitor, and also implied that antitrust concerns are subordinate in an industry [subjected to the regulation](https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1160&context=mlr).[22](https://equitablegrowth.org/reforming-u-s-antitrust-enforcement-and-competition-policy/#footnote-22) More recently, the Supreme Court misapplied basic economic reasoning in a case that, under some interpretations, has the potential to almost exempt technology platforms from antitrust enforcement: [Ohio v. American Express](https://www.supremecourt.gov/opinions/17pdf/16-1454_5h26.pdf).[23](https://equitablegrowth.org/reforming-u-s-antitrust-enforcement-and-competition-policy/#footnote-23) Since technology platforms comprise an ever-increasing share of economic activity, this situation is of [grave concern](https://www.yalelawjournal.org/feature/multisided-platforms-and-antitrust-enforcement).[24](https://equitablegrowth.org/reforming-u-s-antitrust-enforcement-and-competition-policy/#footnote-24)

Even where the antitrust plaintiffs have been successful, the difficulty and cost of those successes suggest systematic underweighting of the benefits of competition and deference to the desire of the corporation for increased market power. The government’s long battles over stopping pay-for-delay deals and anticompetitive hospital mergers are notable examples of this misalignment, as is the approval by the government of the Sprint-T-mobile merger. In all of these cases, the corporations did not seek that market power on the merits, but through regulation (Trinko or state-supervised hospital mergers), exclusion (pay for delay and American Express), or merger (AT&T-TimeWarner or Sprint-T-mobile).

Despite the government’s success in some merger litigation, this success only occurs in transactions that [most clearly violate the law](https://www.ftc.gov/enforcement/cases-proceedings/171-0231/otto-bock-healthcarefreedom-innovations).[25](https://equitablegrowth.org/reforming-u-s-antitrust-enforcement-and-competition-policy/#footnote-25) The fact that the two antitrust agencies must litigate cases that are clearly anticompetitive—rather than the parties not even considering the deal in the first place or abandoning it after the government makes its concerns known—speaks to the limitations of current antitrust legal doctrine.

It would likely take decades to reverse this body of accumulated legal doctrine, even if every future case that was litigated were decided with perfect accuracy. Fortunately, Congress is the final arbiter on competition law and can change it to reflect the desire of society for competitive markets. Congress has not substantively amended those laws in more than 60 years. A broad foundation of economic research supports retooling our antitrust laws for the 21st century and restoring the vigor that was originally intended. Although legislation can take many forms, successful antitrust reform legislation should accomplish four goals:

Overturn Supreme Court precedent that has inoculated exclusionary conduct from antitrust scrutiny even when it harms competition by eliminating or harming competitors

Prohibit courts from assuming that some aspect of a market is competitive or will become competitive rather than assessing the evidence in the case

Create simple rules (known as presumptions) that will lower the resource cost of enforcement for conduct and acquisitions that economic research shows are likely to raise competitive problems

Clarify that the antitrust laws are designed to protect competition that may manifest itself across a broad range of outcomes such as higher prices, reduced quality, harm to innovation, lower input prices, and elimination of potential competition

#### Industrial innovation fails---defensive R&D, narrow technological scope, and barriers to entry

Pat Mooney et al. 17, founder of the ETC group, October 2017, TOO BIG TO FEED, http://www.ipes-food.org/\_img/upload/files/Concentration\_FullReport.pdf

IMPACT 3 Narrowing the scope of innovation: defensive and derivative R&D Consolidation across the agri-food industry has a major impact in shaping R&D pathways and the broader innovation climate in food systems. Over the past 30 years, global private sector investment in agricultural R&D has risen faster than public R&D spending in OECD countries (Pray & Fuglie, 2015). By 2013, private R&D accounted for almost half of agricultural research (Jaruzelski et al., 2017), with public research declining and increasingly focused on complementing and facilitating private R&D (e.g. through IPR protections).24 In its 2011 study on concentration in agricultural inputs, the USDA observed that the share of private R&D performed by the largest firms was even greater than their market shares (based on 2010 figures in Fuglie et al., 2011). For example: • The top eight seed/biotech companies accounted for 76% of all R&D spending in this sector • The top five companies accounted for over 74% of agrochemical R&D • The top four companies performed over 57% of farm machinery R&D • The top eight companies accounted for over 66% of R&D in animal health To put this in perspective, in 2013 the combined R&D budgets of the Big Six agrochemical and seed companies, valued at $6.59 billion, was six times larger than the total USDA Agricultural Research and Information budget ($1.1 billion) (USDA, 2013), and twenty times bigger than the CGIAR’s $332.2 million expenditures on crop-oriented research/breeding in the same year (CGIAR, 2013). The pooled resources and combined weight of increasingly consolidated agribusiness firms has long been touted by industry leaders as the key to a dynamic innovation climate. Such arguments date back to the 1980s, when Don Duvick, the research director of Pioneer Hybrid (then the world’s largest seed company, later merged with DuPont and now merged with Dow) made the case that the increased research capacity of merged companies would allow for greater and faster ‘diversity in time’: input companies would have a research pipe line providing farmers with an annual turnover of varieties in response to rapidly evolving diseases or pests, and other environmental stresses. From this perspective, consolidation is required to deliver the scale (research costs, infrastructure requirements) and scope (global applications) to rapidly invent and deploy new technologies around the world. This stands alongside the ‘diversity in space’ customarily practiced on the farm, whereby farmers protect their harvests with species and genetic diversity in the field (e.g. by intercropping, mixed crop-livestock farming). In addition, a different version of ‘diversity in time’, e.g. the use of crop rotations, has traditionally been adopted by farmers to boost resilience and mitigate risks. By contrast, farmers relying on the research pipelines of agribusiness firms may be left to shoulder the risks, e.g. of pest outbreaks, while seed companies supply their customers with new, resistant seeds in following years. More broadly, evidence from a range of sectors suggests that economies of scale fail to translate into dynamic innovation strategies, with highly concentrated markets often working against innovation. In an overview of innovation in the US automobile, computer and pharmaceutical industries, Adams and Brock (2004, p.49) noted that innovation in oligopolistic markets often comes “reluctantly” from leading companies when it occurs at all. A further study conducted by the US Federal Trade Commission suggests a strong negative correlation between high levels of market concentration and innovation (FTC, 2003). Buyouts are often pursued with innovation in mind, but primarily in terms of consolidating R&D costs - not increasing the quantity or quality of innovation. While private companies now make up a larger portion of total R&D spending in many sectors, the R&D budgets of large firms are frequently downsized as a result of consolidation (Lynch & Chazan, 2014). Moreover, mergers between R&D-oriented firms have been shown to reduce the types of innovation that are practiced (Moss, 2016; Haucap & Stiebale, 2016). The dominant trend is for large firms to buy out, enter licensing agreements, or partner with start-ups to fill in their innovation gaps. While the trend towards scaling innovation is not inherently problematic, analysts – including Chicago School economists - are increasingly concerned by the capacity of dominant firms to stifle bourgeoning competition through buyouts (The Economist, 2017c). Already, the leading companies in about two thirds of the 900 monitored industrial sectors have significantly increased their market share since the 1990s, while startup companies have diminished in number and in size (ibid). While the net R&D figures above suggest that today’s dominant agri-food companies are addressing the innovation challenge head-on, a closer look at research and innovation trends suggests that disincentives to innovation and increasingly defensive modes of R&D (i.e. R&D intended to defend existing products or technologies in the face of new competition or regulations, instead of investing in new ideas) are the reality in these highly concentrated markets. A series of significant and highly-anticipated advances have failed to materialize since the agri-food industry stepped up its consolidation in the 1970s. For example, commercial breeders initially argued that intellectual property protection would give them the incentive to domesticate new species of fruits and vegetables or, at least, to expand the market for a wider range of crops; however, there has been little to no increase or expansion (Dutfeld, 2000; Phillips McDougall, 2013). While the volume of R&D spending in the agrifood sector may be high, the scope remains strikingly narrow. The consolidation and privatization of R&D budgets has focused innovation on a narrow range of crops, technologies and approaches, creating path dependencies that detract from research on traditional crop varieties or social innovation strategies (Rahman, 2009). R&D spending has centered on crops and technologies with the highest commercial returns (Piesse & Thirtle, 2010), providing little space for commercial innovation for crops that are often most important for smallholder farmers in the South, and for delivering diverse, nutrient-rich diets. As much as 40% of private breeding research goes to one crop, maize (Fujisaka et al., 2011). In crop chemicals, the number of new active ingredients undergoing R&D decreased by 60% between 2000 and 2012 (Phillips McDougall, 2013). Recent trends suggest that the majority of patents being registered do not represent new breakthroughs - let alone innovations with relevance for the challenges food systems now face. According to USDA researchers, three firms (DuPont, Monsanto, Syngenta) accounted for nearly three quarters of all US patents issued for crop cultivars between 1982 and 2007 (ibid). As mentioned by industry analysts, “on a global basis, […] a greater share of R&D investment is being spent on defending products as they come of patent, including seed treatment and formulation technologies – rather than new active ingredient research” (ibid). For example, with only a handful of firms selling Bt cotton or GM soybeans (Naseem & Oehmke, 2008), the path dependencies are greater still for GM crops. Once a company has gone through the costs and regulatory maneuvers to bring a pesticide to market, it is more lucrative for companies to breed GM seeds that boost sales of proprietary chemicals than to develop alternative agronomic solutions to pests, diseases and changing climatic conditions (Glover, 2010). Between 1995 and 2005, pesticide development costs rose by 118%—but the greatest share of R&D expenditures went to preserving sales of old chemical products facing patent expiration. The dependence on a firm’s old proprietary technologies appears to actively constrain innovation (Gapper, 2015). For these companies, the practical cost of bringing a new pesticide to market averages around US$286 million, while the cost of bringing a new GM variety is closer to US$136 million (ETC, 2015). The approaches adopted by dominant firms also impact other companies’ capacity or willingness to innovate. An increasing market share for transnational corporations in transitional economies has been shown to reduce local innovation and knowledge diffusion outside a company’s own networks (Voinea, 2008). Consolidation is also affecting the innovation climate in food processing and retail, cementing a focus on product differentiation over other forms of innovation. Here, new product lines are proliferating faster than ever. The food and beverage industry typically introduces over 21,000 new food and drink products per year (USDA, 2014a). However, this should not be confused with meaningful steps to innovate in terms of how those products are produced, composed, sourced and delivered (and the resulting implications for sustainability). While consumers may believe they are choosing among diverse products made by competing companies, they are often selecting among only notionally – or promotionally – different products from the same firm (ibid). ConAgra, for example, sells six different brands of popcorn, all containing a nearly identical ingredient list. In the US, margarine sales display a similar trend, with two firms – Unilever and ConAgra – accounting for 51.2% and 16.9% of sales through their six and four different brands respectively (Howard, 2016b). Similarly, new products introduced onto the market under different brands, such as breakfast cereals, are often made up of variations of the same ingredients – with a majority of product investment going into marketing rather than innovative R&D (Lawrence, 2008). This illusion of product diversity reflects the extensive and growing consolidation of the sector. A 2013 study of supermarket consolidation in the US found that four leading grocery retailers controlled 63.3% of sales of 100 basic grocery items, and more than 75% of sales for 32 of these items (Food & Water Watch, 2013). This type of consolidation does not preclude genuine innovation between product lines. However, the same supply chains and same logics are likely to underpin many of those products, meaning that much of the choice and diversity at consumers’ fingertips - and the implicit innovation in food retail - may be illusory. Indeed, a number of studies in Europe and the US demonstrate that increased market power results in reduced innovation efforts by manufacturers and food processors (Dobson et al., 2001; Roeder et al, 2000; US Federal Trade Commission, 2003a). As in the input sectors, corporate concentration can lead to barriers to entry – to the detriment of smaller and potentially more innovative actors. For example, new entrants can be shut out when dominant actors pay retailers to exclude products similar to theirs (Howard, 2016b). A defensive R&D paradigm therefore runs across food systems and has been cemented by the rapid consolidation at the field and fork ends of the chain. These trends have major implications for sustainability, allowing resources to be diverted away from investment in product innovation (e.g. reformulation of ingredients) or in improving agricultural practices. The resulting innovation climate reinforces the focus on ‘high-tech’ lab-based micro-innovations that have macro (i.e. global) applications: a privately-owned pesticide, a drying process, or a nutritional supplement. Alternative paradigms based on decentralized ‘wide-tech’ approaches are kept of the table; the potential of a ‘wide tech’ innovation paradigm to underpin more sustainable food systems is discussed in Section 3.

#### Competition is best for innovation---concentration leads to fewer labs, pathways, and stackable traits

Brad Plumer 16, former senior editor “Why the fight over the Monsanto-Bayer deal matters for the future of farming,” Vox, 9-20-2016, https://www.vox.com/2016/9/20/12988616/bayer-monsanto-dupont-dow-agriculture-mergers-innovation

Now, not everyone’s convinced by this pro-innovation case. At the hearing, Diana Moss, president of the American Antitrust Institute, laid out five big counterpoints to consider:

1) For starters, there’s not a lot of great historical evidence that consolidation has led to greater innovation in agriculture. In fact, the opposite might even be the case.

In the late 1990s and early 2000s, she noted, R&D spending among biotech firms as a percentage of sales boomed, as new traits such as insect resistance were being widely introduced. In response, the industry went through a wave of consolidation, with bigger firms like Monsanto buying up smaller companies and patents.

By the late 2000s, however, R&D spending as a percentage of sales had actually slumped back down to mid-1990s levels. "This conclusion," Moss noted, "calls into question long-standing arguments that concentration is needed to generate economies of scale in R&D."

2) Moss also pointed out that while crop yields have been going up over time — a point of pride among biotech companies — seed prices have increased even faster. This, she noted, was "the very problem that biotechnology is purportedly designed to solve." The worry here, in other words, is that while these massive agribusinesses have had R&D successes, the lack of competition has limited the actual benefit to farmers (and hence consumers).

3) Moss quibbled with the claim that companies could get more research and scientific breakthroughs by combining their research divisions. That might be true, but a big worry is that you’d have fewer labs working on a set number of problems in agriculture — which would actually reduce the odds of a breakthrough. Key quote:

The time and cost associated with performing R&D and field-testing and obtaining regulatory approvals create a long pipeline to commercialization. And once through the pipeline, biotechnology firms must market new technology to farmers where crop planning and switching costs increase the time associated with adoption of new technology on a larger scale. In innovation markets, therefore, the importance of maintaining multiple parallel in R&D paths is paramount. As one farmer put it: "The more people you have researching, the better off you are at finding something."

4) Moss also pointed out that a great deal of innovation in seed and crop varieties comes from different competitors working together to "stack" traits. So if Dow has developed a trait that allows cotton to be resistant to worms, and Monsanto has developed a trait that allows cotton to be Roundup Ready, they can join forces, through cross-licensing agreements, to produce cotton with both traits.

But this system works best when there are lots of companies competing against each other. "Farmers benefit most when there are competing stacks to choose from," Moss argued. "Competition maximizes the potential for numerous collaborations and minimizes incentives to refuse to license or to impose discriminatory restrictions in technology licensing agreements. Moreover, competition limits incentives for just a few large players in a tight oligopoly to tacitly or even explicitly ‘agree’ not to compete."

5) All these mergers could make it much harder for smaller companies to break into agriculture with new innovations. Big, vertically integrated firms that sell both seeds and pesticides can create integrated products that require farmers to buy the full package — and lock out small competitors.

The basic thread running through these five points is that competition is crucial for fostering innovation, as farmers have more choices and companies have more incentive to create the most appealing seeds and pesticides for them. Reducing this competitive dynamic is likely to swamp any benefits from increased synergies from mergers.

## T Private

#### Private sector’ is entities not owned or controlled by the government

Ian **Lienert 9**, Senior Economist in the IMF's Fiscal Affairs Department, “Where Does the Public Sector End and the Private Sector Begin?”, IMF Working Paper, June, <http://www.imf.org/external/pubs/ft/wp/2009/wp09122.pdf>

The boundary between the public and private sectors can be **defined on the basis of ownership** of institutional units. Nonmarket government-owned entities and corporations that are **owned or controlled by government units** belong to the public sector. “Economic ownership” is more important than majority ownership. Joint ventures, public-private partnerships, and social insurance funds (including for public employees) can be unambiguously allocated to the public or private sector on the basis of international public sector accounting standards. Boundary problems within the public sector are just as acute as those between the public and private sectors, mainly because of ambiguities in distinguishing “market” from “nonmarket” activities.

## States CP

#### The CP gets stuck down via the DCC

Chris Erchull 14, Staff Attorney for GLAD and former litigation associate at Bulkley, Richardson and Gelinas LLP, 2014, THE DORMANT COMMERCE CLAUSE—A CONSTITUTIONAL BARRIER TO SUSTAINABLE AGRICULTURE AND THE LOCAL FOOD MOVEMENT, Western New England Law Review, Vol. 36, Issue 3, p. 371-405

II. DORMANT COMMERCE CLAUSE

Courts recognize an implied negative aspect to the Commerce Clause of the Constitution,75 and under this doctrine, states are prohibited from enacting legislation that interferes with interstate commerce.76 Because the federal government has taken a prominent role in the regulation of the agriculture industry,77 state laws in this industry are especially vulnerable to challenge under the dormant Commerce Clause.78

Critics say that courts apply the dormant Commerce Clause with unpredictable results.79 The unpredictable application of the dormant Commerce Clause has a chilling effect on potentially revolutionary state legislation.80 The Constitution has long been interpreted to impose restrictions on what states can do to promote local agriculture.81 But the standards used by courts in deciding cases in the context of some industries not related to the production of food are arguably more relaxed from the doctrine as applied to agriculture.82

A. Application of Dormant Commerce Clause to Agriculture

1. Agriculture in the Supreme Court

Since Wickard v. Filburn, the Supreme Court has consistently held that the federal government has primary regulatory authority over the agriculture industry.83 A series of Supreme Court cases thwarted attempts by states to favor local agricultural production, processing, and distribution, relying on the dormant Commerce Clause.84 In particular, the Court’s decisions in Bacchus Imports, Ltd. v. Dias and West Lynn Creamery, Inc. v. Healy come the nearest to addressing the issue of whether it is constitutional for a state to favor local foods.85

At issue in Bacchus was a tax applied to all sales of alcohol in Hawai'i,86 with the exceptions of an alcoholic beverage made from a root native to Hawai'i, known as 'okolehao, in addition to pineapple wine and other non-grape fruit wine.87 The tax was primarily intended to benefit the burgeoning pineapple wine industry in Hawai'i.88 The Court flatly dismissed the state’s argument that the 'okolehao and pineapple wine industries were separate and distinct from the industry of other alcoholic beverages, and that there was no direct competition among the industries.89 While the tax exemption did not discriminate against out of-state interests on its face, the Court found discriminatory intent and effect.90 By determining that the markets were the same and the tax discriminatory, the Court made it clear that states attempting to favor local agricultural production through discriminatory taxes, at least in the production of alcoholic beverages, would be susceptible to constitutional challenges.91 This threat looms over the sustainable agriculture movement today.

The Court reached a similar holding in West Lynn Creamery, where a Massachusetts pricing order required the collection of an assessment on all milk sales.92 The proceeds were then distributed only to in-state dairy farmers.93 The assessment at issue did not facially discriminate against out-of-state interests because it applied equally to all dairy retailers.94 However, the fact that all of the proceeds were distributed to local dairy farmers95 resulted in a discriminatory impact.96 The Court reasoned that the assessment “not only assists local farmers, but burdens interstate commerce. The pricing order thus violates the cardinal principle that a State may not ‘benefit in-state economic interests by burdening out-of-state competitors.’”97 By invalidating legislation based on the benefits provided to local agricultural enterprises, the decision in West Lynn casts a foreboding shadow over prospective legislation that might seek to advance the Local Food movement.

2. Anti-Corporate Farming Initiatives

Laws that limit the corporate ownership of farmland have been enacted in at least fourteen states.98 Some of the explanations that are offered in support of anti-corporate farming initiatives include circumventing the limited liability of corporations, controlling the economic structure of food production and distribution, the lack of investment in local interests by out-of-state corporations, opening land for use by new farmers, and the negative socioeconomic impact of agribusiness on rural communities.99

A landmark 2003 case struck down an amendment to the South Dakota State Constitution outlawing corporate ownership of in-state farmland.100 The Eighth Circuit decision in South Dakota Farm Bureau, Inc. v. Hazeltine “is viewed as critical to the future viability of anticorporate farming restrictions in other states and, more generally, to the ability of state legislatures to shape the structure of agriculture within their borders.”101 The opinion signaled the death of a constitutional amendment that was supported by a majority of voters in South Dakota in 1998.102

#### Resources---Only the fed has the resources and political clout to enforce national monopoly actions.

Stephen Calkins 03, Professor of Law at Wayne State University, “Perspectives on State and Federal Antitrust Enforcement”, Duke Law Journal, 53 Duke L.J. 673, November 2003, Lexis

E. State Antitrust Enforcement in Perspective

The above review makes clear that state antitrust enforcement is based overwhelmingly on the states' comparative advantages. The vast majority of cases involve local or regional markets and competitive effects. State enforcers almost never bring national monopolization cases.

This conclusion is consistent with the expressed views of state enforcers. According to the chair of the Multistate Antitrust Task Force, a state antitrust enforcement issue can be identified by asking, among other things, whether the matter has "a local or regional impact upon the state's consumers or economy," whether "state or local governmental agencies [are] impacted," and whether consumers can "directly or indirectly benefit from state enforcement."

Of course, not every state antitrust case is consistent with states' comparative advantages. For instance, in 2001, Utah sought to enjoin GS Industries' acquisition of Nucor Corporation's Utah-based manufacturing assets because GS Industries planned to move the business to Chile. Utah's action might have had more to do with an interest in employment than in competition. Similarly, in 1999, Indiana sought to enjoin the merger of B.F. Goodrich and Coltec Industries out of concern about the global market for integrated aircraft landing systems and 1100 South Bend jobs. Likewise, in 1993, Pennsylvania sought to enjoin the merger of Russell Stover Candies and Whitman Chocolates, with the attorney general saying that, although the case would be argued solely on antitrust grounds, he "could not, "as a responsible official, ignore the fact that this merger will put 600 people in the Philadelphia area out of work.'"

[\*695] Even when a state is operating in an area of its comparative advantage, it may take action in tension with what many might consider sound competition policy. For instance, last year, the Puerto Rico district court was so outraged at what it saw as the Puerto Rico Secretary of Justice's attempt to use antitrust laws to promote unrelated social policies that it enjoined her from attempting to block a grocery store merger. Even state efforts to pursue antitrust policies may engender controversy. For instance, states have made something of a specialty of pursuing vertical restraints cases, an area of considerable antitrust disagreement. Most fundamentally, the states' increasing success in winning large monetary recoveries has triggered a debate about appropriate levels of deterrence. Discomfort is particularly acute with respect to indirect purchasers: If treble damages based on an entire overcharge can be recovered by a [\*696] direct purchaser, is it fair or proper for indirect purchasers to recover treble damages based on passed-on injuries?

Nonetheless, states overwhelmingly pursue cases within their comparative advantages and based on antitrust doctrines within the mainstream. Monetary remedies, even if substantial, do not change the structure of industry or mandate a change in business operations. Microsoft really is the exception.

II. Federal Antitrust Agencies

While state antitrust enforcers enjoy only three primary comparative advantages, federal enforcers enjoy boundless advantages. The two federal antitrust enforcement agencies, the FTC and the Antitrust Division, enjoy comparatively massive resources, sweeping criminal enforcement powers, an elaborate merger notification system, and traditional respect from Congress and the courts. In short, the FTC and the Antitrust Division enjoy too many advantages to make a comparison meaningful.

## Regs CP

#### Companies circumvent, it causes regulatory capture, rent seeking, AND links to the NB.

Lawrence J. Spiwak 21, President of the Phoenix Center for Advanced Legal and Economic Public Policy Studies. of the Phoenix Center for Advanced Legal and Economic Public Policy Studies, "A Poor Case for a ‘Digital Platform Agency’," Phoenix Center Perspectives, 21-02, 03/09/2021, pg. 8.

Conclusion

By nearly all accounts, the regulation of economic activity has warts. Firms are not passive recipients of regulation but adapt their practices to regulation to minimize impact. Regulators tend toward capture and their efforts often do more harm than good. As such, we may rightly demand compelling arguments for a new regulator, especially one with broad scope and unbridled power over the most important and dynamic segment of the modern economy. The Wheeler Proposal’s call for a Digital Platform Agency fails in that regard.

Antitrust, while imperfect, is grounded in precedent and is conducted in a dispassionate manner, thus avoids the pitfalls of regulatory capture and rent seeking accompanying regulation.58 Accordingly, if we are concerned that antitrust enforcement is lacking, then perhaps increasing the budgets of the DOJ and the FTC, coupled with more alert Congressional oversight, is the better policy choice at this time.59

#### Capture’s uniquely likely in agribusiness

OCM 20, Organization for Competitive Markets, 08/24/20, Captured: How Agribusiness Controls Regulatory Agencies and Harms Producers and Consumers, https://competitivemarkets.com/wp-content/uploads/2020/08/Regulatory-Capture-Paper\_Final.pdf

Introduction

When Georgia Governor Sonny Perdue was nominated to be U.S. secretary of agriculture, American family farmers who had believed in President Trump’s promises to “drain the swamp” and protect domestic agriculture felt a surge of disappointment. Secretary Perdue had spent his career in government advocating for and benefiting from the interests of Big Ag. With Perdue at the helm of the U.S. Department of Agriculture (USDA), what checks and balances would exist in the federal government to counteract the consolidation, collusion, and corruption that have become customary in the U.S. agriculture economy?

Thomas Jefferson had foreseen America as a democratic republic of small farmers. Sadly, “we the farmers” now have little or no say in a government that was constituted to represent us. The America that existed as an agrarian utopia of regulated fair-market capitalism in the mind of Jefferson has become a very different America: one where the federal government is neither limited nor limiting, but instead allows corporations to influence policy, aided and abetted by despotic regulators and enforcers motivated by self-interest.

How did the federal government come to support international conglomerates instead of hardworking American farmers? In Congress, the clearest way government supports the interests of the powerful is with the money spent by lobbyists and given to politicians through campaign contributions. In the executive branch, where policy makers are appointed rather than elected, the interests of Big Ag predominate when governmental appointees are “captured” by the industry. Executive branch regulatory capture is the topic of this report.

Secretary Perdue is just one example of regulatory capture, whereby government officials tasked with enforcing laws for all choose to support the private interests of a few. From top to bottom, USDA is rife with petty and personal corruption. An April 2019 investigation described a conversation with a USDA official about the Food Safety and Inspection Service (FSIS). The official noted rather straightforwardly that “large meat producers like Cargill, Tyson, Smithfield, Swift (JBS) and Sanderson Farms are often given a ‘pass’ thanks to their high-paid lobbyists.”1 The anonymous whistleblower further characterized USDA as an old boys club with a revolving door “between the USDA and FSIS, and the captains of the meat industry.” Through repeated gifts of pro-corporate policy making, nonenforcement, and deregulation, the refrain is indisputable: the USDA advocates for special interests and ignores ordinary people for financial reasons.

Free-market capitalism relies on government to create a level playing field that encourages entrepreneurship. However, free-market capitalism and what President Reagan called “the magic of the market” cannot function as intended when government enforcers are captured and special interests tilt the playing field away from working people.

The Organization for Competitive Markets (OCM) advocates for the rights of family farmers, and we support fighters like Connie and Jonathan Buttram who want to make a living free from government and industry coercion. Their stories and those of people like them compel action and inspire hope.

The people at the top of the federal government are not an anonymous mass of bureaucrats; they are individuals like Sonny Perdue, who make decisions that have pernicious consequences for people like Connie and Jonathan Buttram. When OCM, and thousands of other groups and individuals, reach out to our representatives so family farmers like the Buttrams can have a fighting chance, we are merely ignored, time and again.

This report describes how the executive branch of the federal government supports policies contrary to the interests of American family farmers by installing “captured” bureaucrats in positions of power.

Section I – Passing Through the Revolving Door

Brink Lindsey and Steven Teles define regulatory capture as “private industries co-opt[ing] governmental power for their own competitive benefit.”2 A quintessential example is “the revolving door,” wherein decision makers cycle from government positions to the industries they regulate and back again. Along the way, these individuals adopt attitudes and beliefs that benefit their position in that particular private business, which, of course, they will soon rejoin upon completion of their putatively “public” service. This cycle is all the more insidious for the omnipresent promise of higher pay in the private sector. Hence, there is continuing economic pressure through which personal self-interest morphs through a wink and a nod into the self-interest of the private company. In the wake of such lucrative paydays, family farmers cannot compete for the attention of public officials who favor personal wealth over public service.

The USDA is more prone to regulatory capture than many other agencies because “the USDA provides grading, certification and verification services intended to improve agricultural companies’ marketing of a variety of farm products.”3 This makes the agency, and especially certain oversight mechanisms within it, dependent on the industry they work with through user fees and a broader mission to promote the agricultural industry. 4 Similarly, there are a limited number of people with the requisite technical skills necessary to hold high-level regulatory jobs, and one way to get such experience is through private industry. The intertwining of USDA with private industry is to some degree inevitable; nevertheless, this does not excuse the brazen self-dealing we explore in the following sections.

#### Perm---do both. It shields the NB.

Dr. Pedro Caro de Sousa 21, Advisor at the EUI Florence School of Regulation, Competition Expert with the OECD, DPhil from the University of Oxford, “Competition Enforcement and Regulatory Alternatives”, OECD, 6/7/2021, https://www.oecd.org/daf/competition/competition-enforcement-and-regulatory-alternatives-2021.pdf

Another view is that competition law and regulation are complements. Well-functioning markets can often best be achieved by the combination of timely, targeted competition enforcement and ex ante regulation that draws on a breadth of market experience (Coscelli, 2018[31]).

Complementary roles for economic regulation and competition law arise mainly in two instances: where the sectoral law and competition law have the same goal, i.e. the promotion of competition; or where sectoral regulations have goals broader than the promotion of competition that are nevertheless consistent with competition law (ICN, 2004, pp. 4-8[32]).10 In these circumstances, competition and regulation are not mutually exclusive. They operate in the same sphere of economic activity, address the same problems, and the use of one mechanism does not preclude the application of the other (Dunne, 2015, p. 56[5]).

There are numerous examples of how competition enforcement can complement sector-regulation. In regulated sectors, the sector regulator has sometimes been considered the ex ante controller of market power, via price, revenue and investment oversight, while the competition authority is considered the ex post controller of market power, via abuse of dominance and cartel enforcement (OECD, 2019, p. 7[11]). Competition law can help ensure that the regulatory regime achieves its economic goals, particularly those related to economic welfare; make markets perform more competitively, given the regulatory regime that happens to control them; and scrutinise private conduct that is not effectively reviewed or controlled by the regulatory regime (Hovenkamp, 2020, p. 899[33]).

#### Perm---do the CP. ‘Prohibit’ includes regulation.

John G. Koeltl 07, United States District Judge, “United States Baseball v. City of New York”, United States District Court for the Southern District of New York, 509 F. Supp. 2d 285, 297, 2007 U.S. Dist. LEXIS 63234, 8/27/2007, Lexis

The City responds that its home rule and police powers are broader pursuant to Article IX, Section 2(c) of the New York State Constitution, New York Home Rule Law § 10(1)(a)(12), and New York General City Law § 20(13) than the plaintiffs suggest. These provisions give the City the power to enact laws for the "safety, health, well-being, and welfare" of its residents. The City asserts [\*\*29] that the Bat Ordinance does not constitute a "prohibition" because it does not condemn all use of non-wood bats. It bars their use in competitive high school baseball games, but not for example in high school practices, junior high school games, "pick up" games, or youth league games that are not school-sponsored. Moreover, the City persuasively argues that the suggested distinction between "prohibitions" and other "regulations" is artificial and untenable, because all regulations prohibit some conduct that is incompatible with the regulatory standards and all "prohibitions" leave some conduct untouched. For example, a New York court upheld as a valid exercise of the police power a New York City law banning the possession in a public place of a knife with a blade of at least four inches in length in People v. Ortiz, 125 Misc. 2d 318, 479 N.Y.S.2d 613, 620 (Crim. Ct. 1984). The plaintiffs suggest the law at issue in Ortiz was a not a "prohibition," but it appears to be at least as complete a prohibition as the Bat Ordinance, which prohibits only certain uses of bats with certain defined characteristics.

#### AND must compete via text and function---key to AFF ground, research, and predictability.

## CWS

#### Antitrust increases growth broadly.

OECD 14, Organization for Economic Cooperation and Development, “Factsheet on how competition policy affects macro-economic outcomes”, OECD, October 2014, https://www.oecd.org/daf/competition/2014-competition-factsheet-iv-en.pdf

Most importantly, it is clear that industries where there is greater competition experience faster productivity growth. This has been confirmed in a wide variety of empirical studies, on an industry-by-industry, or even firm-by-firm, basis. Some studies seek to explain differences in productivity growth between industries using measures of the intensity of competition they face. Others look at the effects of specific pro-competitive interventions, particularly trade liberalisation or the introduction of competition into a previously regulated, monopoly sector (such as electricity).

This finding is not confined to “Western” economies, but emerges from studies of the Japanese and South Korean experiences, as well as from developing countries.

The effects of stronger competition can be felt in sectors other than those in which the competition occurs. In particular, vigorous competition in upstream sectors can ‘cascade’ to improve productivity and employment in downstream sectors and so through the economy more widely.

The main reason seems to be that competition leads to an improvement in allocative efficiency by allowing more efficient firms to enter and gain market share, at the expense of less efficient firms (the so called between-firms effect). Regulations, or anti-competitive behaviour preventing entry and expansion, may therefore be particularly damaging for economic growth. Competition also improves the productive efficiency of firms (the so called within-firms effects), as firms facing competition seem to be better managed. This can even apply in sectors with important social as well as economic outcomes: for example, there is increasing evidence that competition in the provision of healthcare can improve quality outcomes.

There is also evidence that intervening to promote competition will increase innovation. Firms facing competitive rivals innovate more than monopolies (although after such competition a firm may of course end up with a monopoly through a patent). The relationship is not simple: it is possible that moderately competitive markets innovate the most, with both monopoly and highly competitive markets showing weaker innovation. However, as competition policy does not focus on making moderately competitive markets hyper-competitive, but rather on introducing or strengthening competition in markets where it does not work well, this would still imply that most competition policies serve to promote innovation.

Because more competitive markets result in higher productivity growth, policies that lead to markets operating more competitively, such as enforcement of competition law and removal of regulations that hinder competition, will result in faster economic growth.

Is there evidence that pro-competitive policies are effective?

In addition to this evidence that competition promotes growth, there have been studies directly of the effects of competition law itself, and of product market deregulation. Although it is difficult to distinguish the effects of individual policy changes, there are some studies showing that introducing competition law raises productivity. Conversely, the selective suspension of antitrust laws in the USA during the 1930s seems to have delayed recovery.

Many studies of the effect of competition law use international comparisons of different countries’ experiences, to assess whether countries with competition laws (or longer-standing, or more effective competition laws) achieve faster economic growth. The task is a difficult one because of many other factors that affect the overall economic growth rate, including other policies introduced at the same time (e.g. Eastern Europe’s transformation after 1989). Some studies find no effect, but the overwhelming majority of such studies do find a positive effect of competition law on economic growth. Most ascribe this effect to increased productivity, although there may also be an effect on investment, especially in developing countries, perhaps because competition laws boost business confidence and reduce corruption.

#### ‘‘Dark pattern’ enforcement increased last month

Kristin L. Bryan 10-29, Senior Associate at Squire Patton Boggs (US) LLP, “Breaking: FTC Announces It Will Ramp up Enforcement Against “Dark Patterns” Directed at Consumers”, National Law Review, 10/29/2021, https://www.natlawreview.com/article/breaking-ftc-announces-it-will-ramp-enforcement-against-dark-patterns-directed

This month, CPW’s Kyle Fath, Kristin Bryan, Christina Lamoureux & Elizabeth Helpling explained how data privacy and cybersecurity were Federal Trade Commission (“FTC”) priorities. As they wrote, there were “three key areas of interest to consumer privacy that are now in the FTC’s spotlight, as well as their relation to state privacy legislation and their anticipated impact to civil litigation.” One area of interest they identified was deceptive and manipulative conduct on the Internet (including so-called “dark patterns”). Today, the FTC announced that it was going to ramp up enforcement against illegal dark patterns that trick consumers into subscriptions. Read on to learn more and what it means going forward.

First, some background. The term “dark patterns” collectively applies manipulative techniques that can impair consumer autonomy and create traps for online shoppers (for instance, think of multi-click unsubscription options). As CPW previously explained, “[e]arlier this year, the FTC hosted a workshop called “Bringing Dark Patterns to Light,” and sought comments from experts and the public to evaluate how dark patterns impact customers.” The genesis for this workshop was the FTC’s concern with harms caused by dark patterns, and how dark patterns may take advantage of certain groups of vulnerable consumers.

Notably, the FTC is not alone in its attention to this issue as California’s Attorney General previously announced regulations that banned dark patterns and required disclosure to consumers of the right to opt-out of the sale of personal information collected through online cookies. Dark patterns has also been targeted in civil litigation. This year, the weight-loss app Noom faced a class action alleging deceptive acts through Noom’s cancellation policy, automatic renewal schemes, and marketing to consumers.

Building off these prior developments, today, the FTC announced a new enforcement policy statement “warning companies against deploying illegal dark patterns that trick or trap consumers into subscription services.” As the FTC cautioned, “[t]he agency is ramping up its enforcement in response to a rising number of complaints about the financial harms caused by deceptive sign up tactics, including unauthorized charges or ongoing billing that is impossible cancel.”

As summarized in the FTC’s press release announcing this development, businesses going forward must follow three key requirements in this area or run the risk of an enforcement action (including potential civil penalties):

(1) Disclose clearly and conspicuously all material terms of the product or service: This includes disclosing how much a product and/or service costs, “deadlines by which the consumer must act to stop further charges, the amount and frequency of such charges, how to cancel, and information about the product or service itself that is needed to stop consumers from being deceived about the characteristics of the product or service.”

(2) Obtain the consumer’s express informed consent before charging them for a product or services: This means “obtaining the consumer’s acceptance of the negative option feature separately from other portions of the entire transaction, not including information that interferes with, detracts from, contradicts, or otherwise undermines the consumer’s ability to provide their express informed consent.”

(3) Provide easy and simple cancellation to the consumer: Marketers are also to “provide cancellation mechanisms that are at least as easy to use as the method the consumer used to buy the product or service in the first place.”

This development is likely one of only many anticipated to be rolled out in light of the FTC’s continued focus on data privacy and cybersecurity.

#### COVID thumps econ BUT it’s resilient

R. David Ranson 20, Research Fellow at the Independent Institute and the President and Director of Research at HCWE Inc., “Resilient US Economy Has Overcome the COVID-19 Recession”, Independent Institute, 10/9/20, <https://www.independent.org/news/article.asp?id=13290>

Though the president and first lady weren’t able to dodge the COVID-19 bullet, the U.S. economy, we now know, has adapted remarkably well to the pandemic and social distancing. As a result, the worst of the COVID-19 recession is over.

Fear pushed public and even professional opinion to be bearish about the prospects of economic recovery. On both sides of the aisle, it became commonplace to assume that economic vitality depended largely on financial aid from Washington.

Therein lies a Catch-22 that’s keeping us from paying attention to the economy’s rebound. If markets and the economy recover or perform well, the conventional wisdom attributes this to government “stimulus.” If they stagnate or perform poorly, it’s attributed to Washington’s sloth and stinginess. In short, we’ve been too focused on vulnerability—and the perceived need for artificial stimulation—and not focused enough on resilience.

Real GDP dropped like a stone in the second quarter (April-June) of 2020, at a record annual rate of 31.7%. The great majority of forecasters did not anticipate that we could recover from such a blow anytime soon—even taking into account unprecedented government largesse. Their predictions of sustained weakness are being overtaken by events.

Weeks ago the largest component of gross domestic product, consumer spending, already had bounced back to pre-pandemic levels, recovering twice as fast as employment or industrial production. Within just two months, May and June, retail sales had completed a full round trip. In July and August they rose further.

How well does this good news reflect the economy as a whole? That requires an estimate of GDP itself. With forecasters in broad disagreement, it might seem that we’ll have to wait until third quarter results are in.

Happily, thanks to the Center for Quantitative Economic Research at the Federal Reserve Bank of Atlanta, there’s now a more timely source of information, unavailable in past downturns, and derived from real-time hard data: the bank’s GDPNow estimate. As of Sept. 24 the GDPNow team calculated third-quarter annualized growth of 32%.

This figure exceeds all but three of the 62 forecasts in The Wall Street Journal’s September survey of forecasters, and reflects a huge upward revision from GDPNow’s earliest estimate at the end of July.

Such quarter-to-quarter growth would be twice the record set by the Korean War buildup. And it implies that the economy already had recaptured three-fourths of its second-quarter collapse in a single quarter.

The speed and vigor of the U.S. rebound can be interpreted in two contrasting ways. One is that federal intervention has been much more effective than expected. There will be no shortage of politicians waiting to take credit for that. The other is that, collectively, virtually all of the so-called experts underestimated the economy’s intrinsic resilience.

Back in the days when federal “stimulus” was puny by today’s standards, GDP already showed an ability to bounce back from drastic financial shocks, natural disasters, widespread strikes and global crises. To paraphrase Independent Institute senior fellow Richard Vedder, professor emeritus of economics at Ohio University, perhaps the most impressive example is the economic transition following demobilization at the end of World War II. Millions of military personnel became jobless within months and military spending plummeted. But the economy’s resilience came to the rescue and the predicted sharp rise in overall unemployment never occurred.

It’s not clear whether government “stimulus” funds add to or subtract from the economy’s resilience. Relief to those among the newly unemployed who are too pressed to fend for themselves may actually help them become more resilient. On the flip side, moderate deprivation may be a greater spur to self-reliance, encouraging the unemployed to seek work rather than temporary income from government.

Either way, the resilience of the U.S. economy is overpowering the COVID-19 recession, which soon could be history.

#### AND collapse doesn’t cause war

Dr. Stephen M. Walt 20, Robert and Renée Belfer Professor of International Relations at Harvard University, PhD in International Relations (with Distinction) from Stanford University, MA in Political Science from the University of California, Berkeley, “Will a Global Depression Trigger Another World War?”, Foreign Policy, 5/13/2020, https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”

## Exports

#### Collapse now is key to create a shift to a democratic China and key to prevent long term economic collapse, raising nationalism and prevents a collapse of US-China relations.

Pei, Tom and Margot Pritzker ’72 Professor of Government at Claremont McKenna College and a non-resident senior fellow of the German Marshall Fund, 2015 Minxin, “The Twilight of Communist Party Rule in China” 11/12 http://www.the-american-interest.com/2015/11/12/the-twilight-of-communist-party-rule-in-china/

Such a record has understandably led many observers, including seasoned China-watchers, to believe that the CPC has become a resilient authoritarian regime with many inner-strengths that most autocracies lack. Among other things, the CPC is said to have developed an effective process of leadership succession based on established rules and norms, a meritocratic system of selecting capable officials, and a capacity to respond to popular demands. Instead of an ossified regime like the Communist Party of the Soviet Union under Leonid Brezhnev, the CPC has demonstrated a remarkable ability to learn and adapt.1 Unfortunately for proponents of the theory of “authoritarian resilience”, their assumptions, evidence, and conclusions have become harder to defend in light of recent developments in China. Signs of intense elite power struggle, endemic corruption, loss of economic dynamism, and an assertive, high-risk foreign policy are all in evidence. As a result, even some of the scholars whose research has been associated with the authoritarian resilience thesis of have been forced to reconsider.2 It has become increasingly clear that the recent developments that have changed perceptions of the CPC’s durability are not cyclical but structural. They are symptomatic of the exhaustion of the regime’s post-Tiananmen survival strategy. Several critical pillars of this strategy—such as elite unity, performance-based legitimacy, co-optation of social elites, and strategic restraint in foreign policy—have either collapsed or become hollow, forcing the CPC to resort increasingly to repression and appeals to nationalism to cling to power. Hence, China’s ruling elites now face the starkest choice since Tiananmen: The post-1989 autocratic crony capitalist development model is dead, and they can either emulate Taiwan and South Korea to democratize and gain an enduring source of legitimacy, or prepare to apply ever-rising repression to maintain one-party rule. How they choose will affect not just China and Asia, but the whole world. Despite popular images of “people power” or the “Arab Spring” revolutions, the single most important source of regime change in authoritarian regimes is the collapse of the unity of the ruling elites. This development is caused principally by the intensification of conflict among the ruling elites over the strategies of regime survival and distribution of power and patronage. Experience from democratic transitions since the mid-1970s shows that, as autocracies confront challenges from social forces demanding political change, the most divisive issue among ruling elites is whether to repress such forces through escalating violence or to accommodate them through liberalization. Should reformers prevail, initial steps toward regime transition, typified by relaxation of political and social control, will follow. If hardliners win the fight, greater repression—but also escalating social and political conflict—will result, at least until the regime faces another crisis that forces it to revisit the question of whether a repressive course is the best strategy.3 Another familiar source of elite disunity is the conflict over the distribution of power and hence the ambit of patronage networks. In more established autocracies, such as post-totalitarian Leninist party-states, this conflict tends to arise when competition for power leads to violations of long-established rules and norms that safeguard a delicate balance of power among ruling elites and their physical security. In many if not most cases—and China is no exception—such violations are committed on behalf of family groupings, and hence represent the repatrimonialization of politics.4 In the case of China, the collapse of elite unity turns not on a debate between hardliners and reformers, but on a fight for dominance among hardliners themselves. The initial sign of elite disunity at the top was the purge of Bo Xilai, the high-flying former party chief of Chongqing, on the eve of the 18th CPC Congress in 2012. Later events proved that Bo’s fall was only the prelude to the largest internal housecleaning the party has seen since the Cultural Revolution. After Xi Jinping, the winner of the battle, formally assumed his position as the CPC general secretary and the commander-in-chief of the PLA in November 2012, he launched the most ferocious anti-corruption campaign in recent memory to achieve political supremacy by destroying his rivals. Although Xi’s signature campaign appears to be popular, it has almost overnight dismantled the system the ruling elites painstakingly constructed in the post-Tiananmen era to maintain their unity. Three pillars supported this system. The first was a delicate balance of political power at the top, commonly known as collective leadership, designed to prevent the emergence of another Mao-like leader who could impose his will on the party. Under this system, key policy decisions were made through a process of consensus-building and compromise, ensuring the protection of the interests of the senior leaders and their factions. The second pillar was absolute personal security for top leaders. One of the key lessons from the debacles of the Maoist era was that elite unity is impossible without such security, because only untouchable rulers have the capacity and credibility to negotiate with each other, strike deals, and resolve intra-regime conflict. The third pillar was a system of sharing the spoils of economic growth among the elites, mainly through large and sophisticated patronage networks. To be sure, this system has caused pervasive corruption, but it also has provided incentives for its elites to toil for the regime. Today, less than three years after Xi ascended to the top, this system has been shredded. The equivalent of a “multipolar” world at the top of the CPC regime is now a “unipolar” system; the “collective leadership” has yielded to strongman rule and a decision-making process dominated by Xi. Absolute personal security for the top leaders, defined as sitting or retired members of the Politburo Standing Committee, has also been shattered with the fall of Zhou Yongkang, a former member of the committee and internal security chief who drew a life sentence in 2015 after his conviction on corruption charges. The anti-corruption drive and its accompanying austerity measures have also put an end, at least temporarily, to the practice of sharing spoils among elites, engendering their bitterness and reportedly prompting them to engage in work stoppages as protest. While it is doubtful that Xi’s war on corruption will actually root out corruption, it has succeeded in destroying the post-Tiananmen incentive structure inside the regime. On its own, the transformation of “collective leadership” into “strongman rule” may not necessarily unravel Chinese Leninism. However, the clear initial outcome of this transformation so far is the evaporation of elite unity, the glue that has held together the post-Tiananmen system. Even though there are no overt signs of challenge to Xi’s power within the CPC today, it is a safe bet that his rivals are biding their time, waiting for the right moment to strike back. If elite disunity deteriorates into a political showdown and results in the rejection of the system Xi is trying to construct, there are only two possible outcomes. One is to bring back the corrupt post-Tiananmen system. On the surface, this may seem the most tempting and promising solution, but it will not work: Several of the key underlying conditions that supported the post-Tiananmen system, in particular investment-driven growth and middle-class political acquiescence secured with prospects of ever-rising prosperity, have largely disappeared. If the status quo ante cannot be restored, the CPC will need another way out. While nobody knows what the party will choose, it is worth remembering that, by that time, the party will have tried and exhausted three models of autocratic governance: Maoism (radical communism), Dengism (crony capitalism), and the Xi model (strongman rule). Ironically, the CPC may find itself in the same dire strait as the Communist Party of the Soviet Union in the mid-1980s: Short of ideas and strategies for maintaining one-party rule in perpetuity, it may be desperate enough to gamble on anything, including democratic reform and political pluralism, as a long-term strategy for making the party a viable force in a China totally transformed by socioeconomic modernization. If elite unity is the glue of the post-Tiananmen system, economic performance, as is commonly acknowledged, is the most important source of popular legitimacy for the ruling party. A quarter century of high growth has bought the CPC a long period of relative social stability and provided it with enormous resources to strengthen its repressive capabilities and buy off new social elites and the urban growing middle-class. However, as the “Chinese economic miracle” is now ending, the second pillar of the post-Tiananmen system is about to collapse as well. Ostensibly, the present sharp Chinese economic slowdown may seem like a natural deceleration after decades of torrid growth. But a closer look at the causes of “the great fall of China” suggests that structural and institutional obstacles, not cyclical ones, are at work and that China is entering a phase of low to moderate economic growth that could imperil the legitimacy of the CPC. Press coverage of Beijing’s recent economic troubles has focused largely on the more visible and dramatic symptoms of the Chinese economic malaise, such as the collapse of a stock market bubble and surprise currency devaluation. However, China’s growth deceleration has much deeper roots. Structurally, China’s rapid growth in the post-Tiananmen era was driven principally by one-off favorable factors or events, and not by the purported superiority of an authoritarian state. Among these factors or events, the most important is the “demographic dividend”, which provided a seemingly endless supply of cheap and able-bodied young workers for China’s industrialization. Besides their low wages, young migrants from rural areas to urban centers can gain an instant and large increase in labor productivity simply by virtue of being paired with operating capital, without need for extensive educational preparation. Consequently, the mere redeployment of the country’s excess rural labor force to factories, shops, and construction sites in the cities can make the economy more productive. According to Chinese data, an urban worker’s productivity is four times higher than that of a rural peasant. In the past three decades, about 270 million rural laborers (excluding their families) have moved to cities and now account for 70 percent of the urban work force. Some economists estimate that about 20 percent of China’s GDP growth in the 1980s and 1990s came from the rural-urban labor relocation.5 But because China’s population is aging rapidly and the mass migration from rural to urban areas has peaked, this one-off favorable structural factor cannot be replicated. Another one-off positive shock that powered China’s growth since Tiananmen was its entry into the World Trade Organization (WTO) in 2001. In the 1990s China’s export growth averaged 15.4 percent per annum, thanks to its integration into the global economy. But after its entry into the WTO, China achieved annual growth in exports of 21.7 percent over the period 2002–08. Export-driven growth began to slow after 2011. Between 2012 and 2014, export growth averaged 7.1 percent, a third of the growth in the prior decade. In the first seven months of 2015, exports contracted around 1 percent, the development that probably prompted Beijing to devalue its currency. Perhaps the most troubling aspect of China’s long-term economic outlook is the diminishing return from its investment-driven growth strategy. As a developing country with relatively low stocks of capital, China initially benefited immensely from a sustained rise in its investment rate. In the 1980s, China ploughed an average of 35.8 percent of GDP into factories, infrastructure, and housing. The rate rose to 42.8 percent on average in the 2000s and has reached 47.3 percent since 2010. Such massive increase in investment, accounting for more half of China’s GDP growth, has been the primary engine of economic expansion in the past two and half decades. However, investment-driven growth in the Chinese context has had three negative consequences. One is the diminishing returns on investments, because each incremental increase in output requires more investment, as measured by capital output ratio (the amount of investment needed to produce an additional yuan of GDP). In the 1990s, Chinas capital output ratio was 3.79. In the 2000s, it rose to 4.38. This trend—growth requiring ever-rising investment—is simply not sustainable. China is already investing nearly half of its GDP, an extraordinary number made possible by state control of infrastructure development. The extent of overcapacity and misallocation of capital are equally extraordinary. Another harm inflicted on the economy is that investment squeezes out household consumption (36 percent of GDP in 2013, compared with 60 percent in India), causing a massive structural imbalance and making sustainable growth impossible. That sustainable growth must come from moving away from export-led modalities to domestic market growth, but it cannot set roots with household consumption so artificially low. The final cost of China’s investment-led growth is that much of it has been financed by credit and ploughed into industrial sectors already plagued with excess capacity. With debt-to-GDP ratio exceeding 280 percent of GDP today (compared with 121 percent in 2000), risks of a full-blown financial crisis have risen because the largest borrowers—local governments, state-owned enterprises, and real estate developers—have poor repayment capacity due to a narrow tax base (local governments), overcapacity and poor profitability (state-owned enterprises), and a deflating property bubble (real estate developers). If China’s long-term economic woes are purely structural, the country’s prospects are not necessarily dire. Effective reforms could reallocate resources more efficiently to make the economy more productive. But the success of these reforms critically hinges on the nature of the Chinese state and its political institutions. Sustained wealth generation can only take place in states where political power is constrained by the rule of law, private property rights are effectively protected, and there is wide access to opportunity. In states dominated by a small ruling elite, the opposite happens: Those in control of political power become predators, using the coercive instruments of the state to extract wealth from society, defend their privileges, and impoverish ordinary people.6 To be sure, the economic policies of the CPC have changed beyond recognition since the end of the Mao era. However, the Chinese party-state has yet to shed its predatory instincts and institutions. Despite rhetoric professing respect for the market and property rights, the actual conduct and policies of the Chinese ruling elites show that they neither respect private property rights nor wish to protect them. The most telling evidence of the absence of their willingness to constrain the predatory appetite and capacity of a one-party state is the top leadership’s undisguised hostility to the idea of constitutionalism, the essence of which is enforceable limits on the power of the state and its rulers. The CPC’s rejection of any meaningful limits on its power, in practical terms, implies that China cannot have truly independent judicial institutions or regulatory agencies capable of enforcing laws and rules. Since genuine market economies cannot function without such institutions or agencies, it is clear that, as long as the party places itself above the law, real pro-market economic reforms are impossible. Many observers argue that a one-party regime is nevertheless capable of implementing pro-market reforms, citing China’s post-Mao history as evidence. Such an argument misses the crucial fact that post-Mao economic reforms, however impressive on the surface, have largely exhausted their potential. Moreover, the Maoist system was so inefficient that even partial reforms could unleash enormous productivity gains, especially in a society where the entrepreneurial energy of the people had been suppressed with totalitarian terror for three decades. Even more importantly, these partial economic reforms have not yet gutted the economic foundations of the CPC rule: state ownership of most productive assets, such as land, natural resources, power-generation, telecom, banking, financial services, and heavy industries. What is holding the Chinese economy back is not its dynamic private sector, but its inefficient state-owned enterprises, which continue to receive subsidies and waste precious capital.7 Genuine and complete economic reforms, if actually adopted, will threaten to destroy such foundations. In all likelihood, giving up most of its control over the economy and China’s immense national wealth will result in the organizational collapse of the CPC. The CPC finances and supports its vast organizational infrastructure—party committees and cells through Chinese society—with public funds, the exact amount of which is huge but remains unknown. Much of the funding for the CPC’s organization and activities is provided through the opaque budget of the Chinese state. If the CPC gives up its control of the economy and government spending is made truly transparent, it will no longer have the financial resources to exist. It will become impossible to support the lavish party perks and privileges, such as high-quality health care, large entertainment budgets, free housing, and other allowances, that are provided to officials as rewards for their membership in the elite club. Another catastrophic consequence of complete pro-market reforms would be the destruction of the patronage system the CPC relies on to secure the loyalty of its supporters. The foundation of this system is state-owned enterprises (SOEs) and party-controlled economic bureaucracies and regulatory agencies. If market reforms lead to genuine privatization of these firms (which account for at least a third of the Chinese GDP), the CPC will no longer be able to reward its loyalists with good jobs and contracts, thus risking the loss of their support altogether. Instructively, in the CPC’s blueprint for economic reform released in the fall of 2013, its new leadership reiterated that the party would not abandon the SOEs. Thus, the continuation of China’s predatory and extractive institutions precludes successful, radical, and complete market reforms. The impossibility of the task of constructing a genuine market economy supported by the rule law can be summarized in a wise Chinese proverb, yuhumoupi, or bargaining with a tiger for its skin. The long-term prospects for China’s economic growth, key to the CPC’s survival, are not optimistic. As the era of rapid growth produced by partial reforms and one-off favorable factors or events ends, sustaining China’s growth requires a radical overhaul of its economic and political institutions in order to achieve greater efficiency. But since this fateful step will destroy the economic foundations of CPC rule, it is hard to imagine that the party will actually commit economic, and hence political, suicide. Those unconvinced by such reasoning should count the number of dictatorships in history that willingly gave up their privileges and control over the economy in order to ensure long-term national prosperity. Slouching Toward Repression and Nationalism If long-term economic stagnation were to set in, the Chinese middle class’s support for the status quo will erode. Co-optation of the fast-growing middle-class—another key pillar of the CPC’s post-Tiananmen survival strategy—has been enabled by the past quarter century’s economic boom. China’s secular economic slowdown will undoubtedly reduce opportunities, curtail expectations, and limit upward mobility for members of this critical social group, whose acquiescence to the CPC’s rule has been contingent upon its ability to deliver satisfactory and continuous economic performance. With the evaporation of elite unity, looming economic stagnation, and likely alienation of the middle-class, the post-Tiananmen model is left with only two pillars: repression and nationalism. Contemporary authoritarian regimes, lacking popular legitimacy endowed by a competitive political process, have essentially three means to hold on their power. One is bribing their populations with material benefits, a second one is to repress them with violence and fear, and the third is to appeal to their nationalist sentiments. In more sophisticated and successful autocracies, rulers rely more on performance-based legitimacy (bribing) than on fear or jingoism mainly because repression is costly while nationalism can be dangerous. In the post-Tiananmen era, to be sure, the CPC has employed all three instruments, but it has depended mainly on economic performance and has resorted to (selective) repression and nationalism only as a secondary means of rule. However, trends since Xi Jinping came to power in late 2012 suggest that repression and nationalism are assuming an increasingly prominent role in the CPC’s survival strategy. An obvious explanation is that China’s faltering economic growth is creating social tensions and eroding public support for the CPC, thus forcing the regime to deter potential societal challenge with force and divert public attention with nationalism. There is, however, an equally valid explanation that many observers have overlooked. A survival strategy that depends on delivering economic growth to maintain legitimacy is inherently unsustainable not only because economic growth cannot be guaranteed and ever-rising popular expectations will be impossible to meet, but also because sustained economic growth produces structural socioeconomic changes that, as demonstrated by social science research and histories of democratic transitions, fatally threaten the durability of autocratic rule. Autocracies forced to strike a Faustian bargain with performance-based legitimacy are destined to lose the wager because the socioeconomic changes resulting from economic growth strengthen the autonomous capabilities of urban-based social forces, such as private entrepreneurs, intellectuals, professionals, religious believers, and ordinary workers through higher levels of literacy, greater access to information, accumulation of private wealth, and improved capacity to organize collective action. Academic research has established a strong correlation between the level of economic development and the existence of democracy and also between rising income and probabilities of the fall of autocracies.8 In the contemporary world, the positive relationship between wealth (measured in per capita income) and democracy can be seen in the chart below, which shows that the percentage of democracies (classified as free by Freedom House) rises steadily as income level increases. Partly free countries decline as income rises as well. The distribution of non-democracies, or authoritarian regimes, resembles a U-shape. While more dictatorships can survive in poorer countries (the bottom two-fifths of the countries in terms of per capita income), their presence in the top two-fifths of the countries seems to reject the notion that wealth is positively correlated with democracy. A closer look at the data, however, shows that nearly all the wealthy countries ruled by dictatorships are oil-producing states, where the ruling elites have the financial capacity to bribe their people into accepting autocratic rule.9 Chinese rulers, if they take a look at the chart, should worry about their medium-to long-term prospects. There are 87 countries with a higher capita income, measured in PPP, than China. Fifty-eight of them are democracies, 11 are classified by Freedom House as “partly free”, and 18 are dictatorships (“not free”, according to Freedom House). But of the 18 “not free” countries with higher per capita income than China, 16 are petro-states (Belarus is included in this group because Russia provides it with significant subsidized energy). The two non-oil states are Thailand (a military dictatorship that overthrew a semi-democracy in 2014) and Cuba (also a Leninist one-party dictatorship). Of the 11 partly free countries, Mexico and Malaysia are significant energy producers while Kuwait and Venezuela are classical petro-states. What should give the CPC leaders even more cause to worry is that Chinese per capita income of $13,216 (PPP) in 2014 is comparable to that of Taiwan and South Korea in the late 1980s, when both began to democratize.10 If the experience of regime transitions in upper middle-income countries, including Taiwan and Korea, were applicable, the CPC should expect rising societal demand and mobilization for political change in the coming decade (some signs of such mobilization can already be detected). The only implication one can draw from this analysis is that, unless China wants to follow Cuba’s example and maintain a closed economy to ensure the survival of a one-party regime, it will face decreasing odds of holding on to power (provided that China does not miraculously become the equivalent of Saudi Arabia). But since China will never be a petro-state, the CPC may have a chance of long-term survival by introducing some form of competitive politics and becoming a “partly free” regime—a substantial step forward from its Leninist status quo. Alternatively, it can resist even moderate reforms and bet its survival on escalating repression and fueling nationalism. Judging by the policies and measures taken by the current CPC leadership, the party seems intent on betting against history. In the past three years, the party has greatly intensified repression. Among its most notable steps, the CPC has aggressively tightened censorship of the internet, social media, and the press, passed a national security law designed primarily to curtail non-governmental organizations and ensure regime security, destroyed hundreds of church crosses to restrict religious freedoms, strengthened ideological control on college campuses, and arrested dozens of human rights lawyers and civic activists on trumped-up charges. In many ways, the level of repression today is higher than any time since the Tiananmen crackdown. Equally worrisome but more dangerous is Beijing’s escalating appeal to Chinese nationalism. The CPC has all but abandoned Deng Xiaoping’s low-profile and non-confrontational foreign policy in favor of a more muscular external strategy that has brought China on a collision course with the United States. Evidence of Beijing’s renewed appeal to nationalism and its assertive foreign policy can be found in the staging of a first military parade celebrating Japan’s defeat in World War II (even though the CPC played at most a marginal role in the war), a propaganda campaign celebrating the “China Dream” (the essence of which is the revival of China as a great power), a near-explicit demand for parity with the United States (couched in Beijing’s call for a “new type of great power relationship”), relentless cyber-attacks against U.S. government and commercial establishments, and provocations and brinksmanship in the East and South China Seas (establishing a controversial Air Defense Identification Zone over disputed Senkaku/Diaoyu Islands and mass land reclamation and island-building in the disputed waters of the South China Sea). If the CPC believes that escalating repression and nationalism will enable it to maintain power during a period of elite disarray, deteriorating economic performance, and heightened social tensions, it must consider the enormous risks and costs of this new survival strategy. Besides taking China backwards, this strategy is unsustainable and dangerous. Repression may work for a while, but autocracies overly dependent on it must be prepared to escalate the use of violence continuously and apply ever-more draconian measures to deter opposition forces. Repression can also be bad for business, as rulers are forced to curtail information flows and economic freedom to ensure regime security. (Indeed, Western firms are already complaining about the inconveniences caused by the Great Firewall.) Raising the level of repression when the economy is sinking into stagnation will strain the CPC’s resources because repression requires the maintenance of an expensive network of informants, secret police, censors, and paramilitary forces. Repression also incurs huge moral costs and could ignite a divisive debate inside the regime. Let’s put the question starkly: Is China really ready to become another North Korea? Manipulating nationalism and muscle-flexing may deliver short-term political benefits, but only at the cost of the CPC’s long-term security. One of the wisest strategic choices made by Deng Xiaoping was to develop friendly ties with the U.S.-led West to accelerate China’s modernization program. In the post-Deng era, Xi’s two predecessors, Jiang Zemin and Hu Jintao, also learned a key lesson from the collapse of the Soviet Union: a strategic conflict with the United States would imperil the very survival of the CPC. The costs of a new arms race would be unbearable, and outright hostility in Sino-U.S. relations would destroy the bilateral economic relationship.

#### Chinese democracy solves multiple wars in East Asia

Friedberg, professor of politics and international affairs @ Princeton University, 11

(Aaron, “Hegemony with Chinese Characteristics,” <http://users.clas.ufl.edu/zselden/coursereading2011/friedberg.pdf>, ava)

Though not everyone is convinced, it is likely that a more democratic China would ultimately create a more peaceful, less war-prone environment in Asia. In the view of some realists, domestic reforms will only make Beijing richer, stronger and hence a more potent competitor without deflecting it from its desire to dominate East Asia and settle scores with some of its neighbors. It is undoubtedly true that even if, in the long run, China becomes a stable, peaceful democracy, its passage will prove rocky. The opening of the nation’s political system to dissent and debate is likely to introduce an element of instability into its foreign policy as new voices are heard and aspiring leaders vie for popular support. As one observer, economist David Hale, ruefully points out: “An authoritarian China has been highly predictable. A more open and democratic China could produce new uncertainties about both domestic policy and international relations.” Nationalism, perhaps in its most virulent and aggressive form, is one factor likely to play a prominent role in shaping the foreign policy of a liberalizing Middle Kingdom. Thanks to the spread of the Internet and the relaxation of restraints on at least some forms of “patriotic” political expression, the current regime already finds itself subject to criticism whenever it takes what some “netizens” regard as an overly accommodating stance toward Japan, Taiwan or the United States. Beijing has sought at times to stir up patriotic sentiment, but, fearful that anger at foreigners could all too easily be turned against the party, the regime has also gone to great lengths to keep popular passions in check. A democratically elected government might be far less inhibited. U.S.-based political scientist Fei-Ling Wang argues that a post-Communist regime would actually be more forceful in asserting its sovereignty over Taiwan, Tibet and the South China Sea. As he explains: A “democratic” regime in Beijing, free from the debilitating concerns for its own survival but likely driven by popular emotions, could make the rising Chinese power a much more assertive, impatient, belligerent, even aggressive force, at least during the unstable period of fast ascendance to the ranks of a world-class power. The last proviso is key. Even those who are most confident of the long-term pacifying effects of democratization recognize the possibility of a turbulent transition. In his book China’s Democratic Future, Bruce Gilley acknowledges that democratic revolutions in other countries have often led to bursts of external aggression and he notes that, since the start of the twentieth century, pro-democracy movements in China have also been highly nationalistic. Despite these precedents, Gilley predicts that, after an interval of perhaps a decade, a transformed nation will settle into more stable and cooperative relationships with the United States as well as with its democratic neighbors. Such an outcome is by no means certain, of course, and would be contingent upon events and interactions that are difficult to anticipate and even harder to control. If initial frictions between a fledgling democracy and its better established counterparts are mishandled, resulting in actual armed conflict, history could spin off in very different and far less promising directions than if they are successfully resolved. Assuming the transition can be navigated without disaster, however, there are good reasons to believe that relations will improve with the passage of time. One Chinese advocate of political reform, Liu Junning, summarizes the prospects well. Whereas a “nationalistic and authoritarian China will be an emerging threat,” a liberal, democratic China will ultimately prove “a constructive partner.” This expectation is rooted in more than mere wishful thinking. As the values and institutions of liberal democracy become more firmly entrenched, there will begin to be open and politically meaningful debate and real competition over national goals and the allocation of national resources. Aspiring leaders and opinion makers preoccupied with prestige, honor, power and score settling will have to compete with others who emphasize the virtues of international stability, cooperation, reconciliation and the promotion of social welfare. The demands of the military and its industrial allies will be counterbalanced, at least to some degree, by groups who favor spending more on education, health care and the elderly. The assertive, hypernationalist version of China’s history and its grievances will be challenged by accounts that acknowledge the culpability of the Communist regime in repressing minorities and refusing to seek compromise on questions of sovereignty. A leadership obsessed with its own survival and with countering perceived threats from foreign powers will be replaced by a government secure in its legitimacy and with no cause to fear that the world’s democracies are seeking to encircle and overthrow it. A democratic China would find it easier to get along with Japan, India and South Korea, among others. The trust and mutual respect that eventually grows up between democracies, and the diminished fear that one will use force against another, should increase the odds of attaining negotiated settlements of outstanding disputes over borders, offshore islands and resources. A democratic government in Beijing would also stand a better chance of achieving a mutually acceptable resolution to its sixtyyear standoff with Taiwan. In contrast to today’s ccp rulers, a popularly elected mainland regime would have less to gain from keeping this conflict alive, it would be more likely to show respect for the preferences of another democratic government, and it would be more attractive to the Taiwanese people as a partner in some kind of federated arrangement that would satisfy the desires and ease the fears of both sides. For as long as China continues to be governed as it is today, its growing strength will pose a deepening challenge to American interests. If they want to deter aggression, discourage coercion and preserve a plural, open order, Washington and its friends and allies are going to have to work harder, and to cooperate more closely, in order to maintain a favorable balance of regional power. In the long run, the United States can learn to live with a democratic China as the dominant power in East Asia, much as Great Britain came to accept America as the preponderant power in the Western Hemisphere. Until that day, Washington and Beijing are going to remain locked in an increasingly intense struggle for mastery in Asia.

#### Goes nuclear

White, professor of strategic studies at the Australian National University in Canberra, 14

(Hugh, “Asia's Nightmare Scenario: A War in the East China Sea Over the Senkakus,” <http://nationalinterest.org/feature/asias-nightmare-scenario-war-the-east-china-sea-over-the-10805?page=3>, ava)

It is clear that an armed clash between Japan and China over the Senkaku/Diaoyu islands is a real possibility. If that happens Washington would face a very serious choice. Failing to support Japan militarily would fatally weaken the US-Japan alliance, torpedo President Obama’s ‘Pivot’, and undermine America’s whole position in Asia. But supporting Japan would mean going to war with China. Whether that would be wise depends, as much as anything, on how a US-China war over the Senkakus would play out. Of course no one knows for sure. There has not been a serious maritime conflict for decades, nor war between two nuclear-armed states so we cannot be sure how the fighting would go. Nor do we have any real experience of war between nuclear-armed states, so that factor too adds to uncertainty. But there are some broad judgments that can be offered. If these judgments seem even moderately likely to be right, the implications for America’s choice about war over the Senkakus are rather sobering. They suggest that this would be a war that America would not win, could not control, and should not undertake. And that of course has huge implications for America’s position in Asia. Suppose that fighting starts between China and Japan with a small armed clash near the islands, in which losses are sustained by both sides. It is possible this kind of incident could be quickly contained without further fighting, but only if both Tokyo and Beijing acted with tact, forbearance and political courage. No one would bet on that, so it is at least equally likely that the clash would escalate, and if so Japan would quickly ask America to help. What happens next if America joins the fight depends first on the strategic aims of each side? China’s primary aim might be to land forces to take control of the islands, and at the minimum it would want to exclude Japanese and US forces from the air- and sea-space around them. America’s and Japan’s aims might well look the same. Tokyo might decide that the time had come to put its control of the islands beyond dispute by stationing forces on them, and at a minimum it would want to prevent further challenges of the kind we have seen recently by excluding Chinese forces from around the islands. What operational objectives would flow for each side from these strategic aims? Let us first suppose that each side decides to limit the geographic scope of the conflict to the areas around the disputed islands. To achieve their primary aims by deploying and sustaining occupation forces on the islands, either side would need to establish a high degree of sea and air control around them. That is likely to prove impossible for either of them: neither China nor the Allies have any serious chance of achieving the sea and air control required to securely deploy and sustain occupation forces on the disputed islands against the other side’s formidable sea and air denial capabilities. So as long as both sides limit their operations to the area around the islands, neither would be able to take control of the islands by establishing forces on them. The situation is much less clear when we look at the two side’s minimum aims. To prevent each other operating near the disputed islands they would only need to impose sea and air denial around them. Each side could probably deny the waters surrounding the islands to the other’s surface forces. Neither side could prevent the other sustaining a substantial submarine presence there. But a battle for air superiority over and around the islands might be more evenly balanced. Allied advantages in quality and perhaps in tactics could be offset by Chinese advantages in numbers and proximity, leading to a protracted and inconclusive air campaign in which losses on both sides would be quite high. This suggests that as long as operations were limited to the immediate area under contention, the most likely outcome would be an inconclusive stalemate: both sides could deny the waters around the islands to the other’s surface ships, but neither can exclude the other’s submarine and air forces from the disputed area. It is hard to see how either side would consider this a satisfactory basis to conclude hostilities. Neither would have to improve their position in relation to the islands enough to justify the costs of the fighting. Both would be trapped in an indefinite and costly campaign, especially in the air, with no way to end the conflict. Quite apart from any other considerations, this would prolong the extraordinary disruption of the conflict to each side’s economy, and convey a message of weakness to each side’s public. This means both sides would have strong incentives to seek a quicker and more decisive result by broadening the conflict beyond the disputed area itself. That could happen in several ways. Some people have suggested that America could prevail in this kind of situation by imposing a distant blockade of China which would bring its highly trade-dependent economy to its knees. Others have suggested that cyber-attacks or attacks on China’s satellites could compel China to back off. Certainly Washington has these options, but so does Beijing. America is just as vulnerable as China to attacks on its sea-borne trade, cyber systems and satellites, and China’s capacity to mount such attacks is quite formidable. Moreover China may have options to damage America’s economy through its immense holdings of US debt. This suggests that on balance neither side would see much to gain in opening these kinds of new fronts. They would therefore be more likely to look for advantage by extending conventional military operations beyond the disputed area itself. They could try to degrade one another’s air and naval strength around the islands by attacking forces and bases beyond that primary Area of Operations. This is what America’s Air-Sea Battle concept is all about, of course, but two can play at that game. China has plenty of options to attack US and Japanese forces and bases too. US and Japanese submarine and precision land-strike forces could certainly sink a lot of Chinese ships and destroy a lot of air bases, but Chinese short- and medium- range ballistic missiles could likewise do a lot of damage to US and Japanese bases, and China too could sink a lot of allied ships. So again it is hard to see how one side or the other could win a decisive advantage this way. That means further escalation might then seem the only way to achieve acceptable strategic outcomes for both sides. But neither side has escalation dominance: any step by one side can be matched by the other. Both sides might nonetheless be impelled to escalate further because the cost of relinquishing their strategic objectives will have increased as the scale and cost of the conflict has grown. The longer and more bitter the fight becomes, the harder it becomes to step back, and the more dangerous each step forward becomes. At the top of this ladder of escalation looms the possibility of an intercontinental nuclear exchange, which would, or at least should, weigh heavily on both side’s calculations right from the start. During the Cold War, the possibility of a large-scale nuclear exchange affected the calculations of the superpowers whenever there was a risk of even the smallest-scale skirmishes between their forces. That was because each superpower recognized how hard it would be to contain an escalating conflict before it reached the nuclear level, because they both saw the danger that neither of them would back down and accept defeat even to avoid a nuclear exchange. War was avoided because both sides understood that their opponents were as grimly resolved as they were. Can we say the same of America and China today? There has perhaps been a tendency among American strategists to overlook the importance of the nuclear dimension of any US-China conflict. They underestimate the significance of China’s nuclear forces because they are so much smaller than the Soviet’s were during the Cold War, or than America’s are today. But that does not make negligible. They can still destroy American cities, and kill millions of Americans, and it would be a desperate gamble to try to destroy them with a disarming first strike. That means we have to pay a lot of attention to the question of China’s resolve. China of course faces huge risks from America’s much greater forces, but its strategists may well calculate that on balance the nuclear factor favors China, because it plays to what they may see as China’s decisive advantage over the US in an East China Sea scenario: the balance of resolve. Let me explain. When two adversaries are relatively evenly balanced in their ability to hurt one another, the advantages lies with the one with greater resolve. More precisely, in the contest of wills that drives any escalating conflict, the advantage lies with the side that can persuade its opponent that it has the greater resolve, and will thus not step back and accept defeat before the escalating conflict has cost the other side more than it is willing to pay. If one side is confident that the other believes it has more resolve, that side will be confident that the other will back off first, and will thus be more willing to enter a conflict, and more willing to escalate it. If the operational balance is as I have suggested here, then this is the situation Washington would face in a conflict with China in support of Japan over the Senkakus. The outcome would depend on the balance of resolve. It would only be wise for America to enter a conflict with China if Washington was confident both that Beijing was less resolved to win than they were, and that Beijing understood this. Only then could Washington be confident that Beijing would accept defeat before the conflict had escalated right out of control, and cost America more than the objectives at stake were worth. So which side has the greater resolve? Is America more committed to preserving the primacy it has enjoyed in Asia for over a century than China is to restore the primacy it enjoyed for centuries before that? I think the answer is probably no. We cannot assume that China is any less determined to change the Asian order than America is to preserve it. Nor can we simply assume that China’s leaders would be too nervous about domestic stability in China to allow a conflict with the US to escalat**e**. On the contrary, public option might well stop Beijing from retreating just as much as US opinion would stop Washington – and probably more so. Ultimately it is a simple question of geography. What happens in Asia, and the waters around Asia, really matters to China, just the way what happens in the Caribbean really matters to America. If we assume that America cares more about the Caribbean than China, we should equally accept that China cares more about the Western Pacific that America. And most importantly, this is probably the way China sees the balance of resolve. That makes China a very dangerous adversary. If the US enters a conflict with China underestimating China’s power and resolve, it may find itself facing a choice between accepting defeat and conceding victory to China after a protracted conventional war, or risking escalation to a nuclear exchange. So unless Washington is very confident that it has greater resolve than China, it would be far better to avoid conflict in the first place. China’s willingness to risk a clash by its provocations towards Japan suggests that it sees the situation this way, and expects America will too. That is why Beijing is so confident that Washington will avoid a conflict by abandoning Japan. What does this mean for America’s position in Asia? It does not mean that America has no choice but to withdraw from Asia. But it does mean America needs to reconsider the assumptions on which US policy in Asia, including the Pivot, has so far been based. Washington assumes that America’s basic strategic aim in Asia must be to preserve US primacy and the system of alliances on which it is based. If the analysis presented here is right, America cannot do that in the light of China’s challenge to the US-led regional order, because it is not ultimately as willing to risk an escalating conflict to preserve it as China is to overturn it. The best way to define what role America could sustain in Asia in future is to ask what role America would be willing to risk a nuclear war with China to protect. For example, America might not be willing to risk nuclear war to preserve its own primacy in Asia, but it might be willing to do so to prevent China establishing primacy. But that is a discussion for another time.

#### Democratization is key to resolve environmental catastrophe.

Larson-Robin, 2016 Leah, Dissertation for acquiring a Doctor of Philosophy (Political Science), “Risking Poison to Quench a Thirst: Political Engagement Choices for Citizens and the State in China’s Environmental Crisis” University of Wisconsin - Madison, ProQuest Dissertations Publishing, 2016.

Preference falsification, principal-agent problems, and non-institutionalized regulatory systems are inextricably linked to authoritarian governance. Yet these features magnify the uncertainty problems inherent in environmental policy. While some policy mechanisms depend less these actors and institutions, there is no evidence suggesting a comprehensive and coherent environmental governance strategy can be implemented under these conditions. For example, Gilley (2012) identifies authoritarian environmentalism as a potential alternative that is more suited for political conditions. Authoritarian environmentalism is a “policy model that concentrates authority in a few executive agencies manned by capable and uncorrupt elites seeking to improve environmental outcomes, where public participation is limited to a narrow cadre of scientific and technocratic elites, while others are expected to participate only in stateled mobilization for the purposes of implementation, [often resulting in] a rapid and comprehensive response to the issue, usually with limits on individual freedoms” (Gilley 2012: 288). While this approach is applicable in some cases, the state lacks the capacity to implement such policies on a wide scale. In light of the severity and scale of China’s environmental crisis, such a strategy becomes even less probable. What does this mean for environmental policy in China? One potential course would be to improve the quality and quantity of public participation. In democracies, non-state actors such as individual citizens and NGOs can raise the alarm.33 But raising the alarm can look a lot like expressing political dissent. Authoritarian states can perceive public participation as threatening, particularly in the form of protests, and China is no different. The sweeping economic reforms of the 1980s seemed to signal that the CCP leadership was similarly inclined to consider political reform. In the spring of 1989, there was global momentum for democratization. All over China, there were calls for political liberalization, and an increasing number of people, mostly students, gathered in Tiananmen Square—directly in front of the buildings that housed the CCP’s central political organs—to protest continued political restrictions. Conflict among the leadership fragmented the party’s initial response, which served to further motivate protesters, but Deng and his allies re-established party order and brought in the army to crush the protest and political dissent. Two lessons the party derived from these events and from the successful economic development of the following years have environmental consequences: first, public participation is inherently destabilizing, and second, the promise of economic opportunity created by rapid development can be used to legitimize the denial of political rights. Over time, other channels for public participation have emerged. Legal development has created spaces for engagement, with varying success, and the CCP remains conflicted about the political costs and benefits of stronger legal institutionalization. On one hand, bringing a suit might diffuse public tensions over pollution, tensions that might otherwise spark destabilizing protests. On the other hand, stronger laws and courts could undermine the party system by restricting political discretion. The petitioning system, while not new, has been reformed and continues to serve as a channel for complaints, which the center then uses to assess public opinion (Dimitrov, 2014). At the same time, problems with the petitioning process have been rampant, and potentially made citizens more frustrated as a result (Li 2008). China clearly has an information problem. When combined with the inherent uncertainties of environmental policy and the scale and complexity of the environmental crisis, the uncertainties will continue to cripple any environmental governance strategy, regardless of the CCP leadership’s commitment to address the damage. Yet that commitment can determine the extent to which the state is willing to make trade-offs, such as strengthening the legal system or increasing opportunities for public participation. Unfortunately, those magnified uncertainties that hamper environmental policy efficacy impede the leadership from determining the extent and nature of the environmental problems, what it can do about it, and what potential consequences there might be. It is also difficult to gauge the potential cost to stability of the crisis because of preference falsification. Consequently, the state is making cost-benefit analyses with limited and distorted information, which may in turn affect the state’s will to make trade-offs. As I explore in later chapters, there have been some indications that the center has sought to reduce these distortions through public participation mechanisms, but the results appear mixed. What is known for certain, though, is that villagers in rural China, often bearing a disproportionate pollution burden, have fewer opportunities to participate than those in urban areas, and are at greater political risk.

#### Resolving the environment in China is key – spills over to effect Climate change, air quality, and the ecological balance in the Pacific and SCS.

Larson-Robin, 2016 Leah, Dissertation for acquiring a Doctor of Philosophy (Political Science), “Risking Poison to Quench a Thirst: Political Engagement Choices for Citizens and the State in China’s Environmental Crisis” University of Wisconsin - Madison, ProQuest Dissertations Publishing, 2016.

China’s environmental and political future are significant for the world: simply as a matter of scale, the state’s ability to control, halt or reduce pollution will affect climate change, air quality, and ecological balance in the Pacific and South China Sea. Therefore, understanding the motivations, policies and functional effectiveness of those efforts must be better understood. This project seeks to make contributions to our knowledge of these dynamics. First, this project demonstrates the need to look more closely at the role of individual decision-making and its impact on politics and governance present even in the authoritarian context. Second, it raises questions about the relationship between the expansion and reform of regulatory institutions, specifically the legal system, and the impact those changes can have on politically and economically vulnerable groups. Third, it highlights how environmental policy theory can be informed by the failures and successes of environmental governance in China. The uncertainties of environmental policy are extensive as a result of unknown dynamics within and among whole ecosystems. Then there are the structural uncertainties intrinsic to both the complexity of the science-policy theory hybridization, and to coordinating among institutions and actors involved in implementing even the most effectively designed policy. The risk of failure is high, and risk from failure and success is unpredictable. Nevertheless, the state of the environment globally, and within China is bad and growing worse. These chapters explore the political and environmental dimensions of public participation through the perspective of villagers, the role of legal institutions in supporting and shaping environmental governance, and implications of political trust and institutional confidence for environmental policy efficacy. On the whole, China’s environment is in dire straits. It is not clear if it is irrecoverable, but at this time, there exist no magic pills, no advanced technological fixes that can pull the environment back from the brink. In theory, preventing further pollution might allow the ecological systems to recover themselves, but not enough is understood about environmental science, even among the experts, to determine this probability. In the meantime, China continues to pollute, even as the government pours billions of dollars into remedies. As examined here, China’s environmental challenges are largely a story of politics, but also one of environmental policy and the role of legal development as an institutional tool. As such, the questions posed require an interdisciplinary analysis and the contributions are similarly interdisciplinary. The human and institutional behaviors we study as political scientists are not governed by the limits we place on academic disciplines; this project is therefore designed as an argument for greater flexibility across disciplines so as better to tell the stories meant to contribute to knowledge.

#### Extinction

Dias 12—Braulio, Executive Secretary of the Convention on Biological Diversity “THE FUTURE WE WANT BIODIVERSITY AND ECOSYSTEMS– DRIVING SUSTAINABLE DEVELOPMENT BIODIVERSITY AND ECOSYSTEMS GLOBAL FRAMEWORK 2012-2020,” https://www.cbd.int/financial/mainstream/undp-globalframework2012-2020.pdf

Human survival and wellbeing depend upon biodiversity and healthy ecosystems, and the goods and services they provide. Yet, in recent decades, the world has experienced unprecedented biodiversity loss and ecosystem degradation, undermining the very foundations of life on Earth. Rapid demographic changes, overconsumption, and the use of technologies that damage the environment, now combined with climate change, are pushing our planet to its limits. Severe shortages of food, water and energy are predicted as human pressures on the planet’s climatic, geophysical, atmospheric and ecological processes approach a level at which abrupt global environmental change is likely to occur. Scientists believe we are beginning to transgress the planetary boundaries within which societies have been sustained for the past 10,000 years.

## Infra

#### Won’t pass---the bills are tied, far off, unfinished, and Biden can’t assuage progressives

Jonathan Weisman 10/28, Congressional correspondent and Domestic Policy Editor for The New York Times, B.S. in Journalism and History from Northwestern University; Jim Tankersley, Tax and economics reporter for The New York Times, B.A. in Political Science from Stanford University; Emily Cochrane, Congressional reporter at The New York Times, B.S. in Journalism from the University of Florida, “Crucial Elements of Spending Plan Remain in Flux After Biden’s Appeal to Democrats,” The New York Times, 10/28/21, https://www.nytimes.com/live/2021/10/28/us/biden-bill-plan

President Biden pleaded with House Democrats on Thursday to embrace his “framework” for a $1.85 trillion economic and environmental bill, saying its fate would help determine that of his presidency and his party’s hold on Congress, and its success would restore the nation’s standing on the world stage.

But the president’s appeal appeared to have failed to break the logjam among Democrats. Crucial details of the legislation remained in flux, and progressives declared they would not bow to pressure to quickly throw their support behind a separate $1 trillion bipartisan infrastructure package that has already passed the Senate.

By Thursday night, House leaders had scrapped plans for a vote on the public works measure, and the chamber approved a short-term extension of transportation programs through early December, a sign that passage of both the infrastructure bill and the domestic policy plan may be far off.

It was a setback after an audacious gamble by Mr. Biden, who had delayed his departure for a trip to Europe to try to nail down an accord on his domestic agenda. He used a morning meeting at the Capitol to attempt to rally House Democrats around the emerging deal.

“We have a framework that will get 50 votes in the United States Senate,” Mr. Biden told the group, according to a person familiar with his private remarks. “I don’t think it’s hyperbole to say that the House and Senate majorities and my presidency will be determined by what happens in the next week.”

Later, in public remarks at the White House, Mr. Biden hailed the plan as “historic.”

“No one got everything they wanted, including me,” he said in the East Room before departing on a trip to Rome. “But that’s what compromise is. That’s consensus. And that’s what I ran on.”

House leaders hoped the framework would be enough to persuade the chamber’s most liberal members that Congress was on the verge of passing a truly progressive package — and that those liberals, in turn, would join more moderate and conservative Democrats to send the infrastructure bill to the president for his signature.

“We badly need a vote on both of these measures,” Mr. Biden privately told lawmakers on Thursday morning, according to the person familiar with his remarks.

But liberals were still unsatisfied with a plan that was clearly unfinished — and that omitted many of their cherished priorities.

“What I would say is you have the outline of a very significant piece of legislation — I want us to make it better,” said Senator Bernie Sanders, the Vermont independent and Budget Committee chairman.

The change of course on holding an infrastructure vote on Thursday was a sign that the last-minute visit by Mr. Biden had not been enough to assuage progressives worried about the fate of the economic and environmental bill.

“Members of our caucus will not vote for the infrastructure bill without the Build Back Better Act,” Representative Pramila Jayapal, Democrat of Washington and the chairwoman of the Congressional Progressive Caucus, said in a statement that endorsed the president’s outline. “We will work immediately to finalize and pass both pieces of legislation through the House

together.”

Two crucial holdouts, Senators Joe Manchin III of West Virginia and Kyrsten Sinema of Arizona, had yet to publicly commit to voting for the social policy legislation.

#### Winners win

Paul Waldman 20, Columnist covering politics, “You’re darn right Biden has a mandate. Now he has to act like it.,” 11/9/20, https://www.washingtonpost.com/opinions/2020/11/09/youre-darn-right-biden-has-mandate-now-he-has-act-like-it/

Now that Joe Biden is the president-elect, the skeptical questions have already begun. How is he going to reach out to Republicans? Doesn’t the fact that Democrats lost some seats in the House show how closely divided the country is? Does he really have a mandate?

The answer is this: You bet he does. And he needs to act like it.

In recent years, whenever Senate Majority Leader Mitch McConnell (R-Ky.) was questioned about some extraordinary move he and Republicans were taking, such as rushing Amy Coney Barrett’s confirmation through the process fast enough to create a sonic boom, his usual reply was to smirk and say, “Elections have consequences.” We won, in other words, so we can exercise our power in any way we see fit.

This is what we have come to expect not just from McConnell but also from all Republicans, regardless of the circumstances of their victory. But when it’s Democrats’ turn, we expect them to be tentative and apologetic about using their power, always worried about whether a sternly worded editorial will chastise them for not incorporating enough Republican ideas into their plans.

So let’s take stock of just where Biden and the Democrats stand.

As of this writing, Biden has tallied 4.4 million more votes than President Trump, a number that will keep growing as more results come in. By the time the counting is over, he will likely have bested Trump by 6 million votes or more.

Given the current state of party polarization, that is a positively overwhelming victory; the days when Ronald Reagan could win reelection by 18 points or Lyndon Johnson could win by 23 points are long behind us.

Let’s also not forget that Biden won this emphatic victory despite the extraordinary voter suppression effort that Republicans have assembled in recent years and that accelerated in the past few months as they tried madly to keep as many Democrats from voting as possible. Voter purges, closing of polling places, restrictions on early voting, ID laws, the attack on the Postal Service — they even went after drop boxes, as though allowing people to safely and conveniently drop off ballots was some kind of anti-Trump conspiracy.

Yet despite all the hurdles Republicans put in front of people who were more likely to vote Democratic, Biden still beat Trump soundly.

Furthermore, Democrats control the House and, if they win both seats in the Georgia runoffs, will control the Senate as well. Even though the upper chamber would be divided 50-50, the Democrats there would represent 41 million more Americans than the Republicans do, as Ian Millhiser noted.

It’s not just that Democrats have won more elections (including the popular vote in seven of the last eight presidential contests) and represent more people. Their policy agenda — the substance of any mandate — is overwhelmingly popular as well.

In fact, it’s hard to find a controversial issue on which the Democratic position doesn’t enjoy the support of a majority of the public, sometimes an overwhelming majority. A $15-an-hour minimum wage, universal background checks for gun purchases, strong action on climate change, protecting reproductive rights, a path to citizenship for undocumented immigrants and legal status for “dreamers,” higher taxes for the wealthy and corporations, a public health insurance option — all are hugely popular.

You know who understands that perfectly well? Republicans.

Which is why the campaigns they run are so often about things like who loves America more or which candidate is “weak” and which one is “strong.” But more importantly, they know that if you act like you have a mandate, then you do.

You might recall that when Trump took office in 2017 despite losing the popular vote by 3 million votes, neither he nor any other Republican took it as a reason to trim his sails in any way. They did not say, “We shouldn’t go too far in cutting taxes for the wealthy or gutting environmental regulations or restricting reproductive rights — this is a closely divided country, and we should try to govern in a cooperative way.”

Quite the contrary, in fact; it’s hard to recall a modern president more contemptuous not just of the opposition party but also of the majority of Americans who didn’t support him.

Nor was this anything new. Like Trump, George W. Bush took office after losing the popular vote, and he didn’t moderate his agenda either (even if he was better-mannered). What they understood is that mandates are, in the end, a kind of collective fiction. They exist only to the extent we decide they do.

On Friday, before news organizations declared him the victor, Biden said that the voters had “given us a mandate for action on covid, the economy, climate change, systemic racism. They made it clear they want the country to come together, not continue to pull apart.” Those two ideas are in tension, because acting on the mandate he received will not bring the country together.

It will make Republicans angry. They will say that they are the victims of oppression and tyranny, that when a duly elected Democrat enacts his agenda it is unfair and illegitimate. They will do everything in their power not only to make Biden fail but also to exacerbate the resentment, anger and division that they see as their path back to power.

There is not a single thing Biden can do to change that. What he can do, however, is act as though his mandate is well-earned and of the highest urgency. He can do what he promised, undeterred by Republican whining. If he does that, the public will get what it voted for. And isn’t that the point of having an election?

#### No capital---blame doesn’t stick

Liz Goodwin 20, staff writer at the Boston Globe, “‘Sleepy Joe?' Trump struggles to stick a label to ‘Teflon Biden’,” BostonGlobe, 7-11-2020, https://www.bostonglobe.com/2020/07/11/nation/sleepy-joe-trump-struggles-stick-label-teflon-biden/

But the 77-year-old Biden has been surprisingly hard to caricature, in part because he has largely stayed in his Delaware home due to the coronavirus outbreak while Trump has struggled to respond to the twin crises of the pandemic and racial justice protests.

Biden similarly survived blistering attacks on his record from his rivals during the Democratic primaries. Senator Kamala Harris memorably lambasted Biden for his decades-old stance against busing to integrate public schools, while liberals derided his stated willingness to compromise with Republican senators — even ones who defended segregation — and his assurances to donors that nothing would fundamentally change if he were elected.

Now, Trump has half-heartedly begun painting Biden as a secret radical, one who wants to “defund the police” and dramatically raise taxes, or at least who will be manipulated into doing so. The move fits into Trump’s larger strategy of warning his mostly white base that civil rights protesters seek to “erase” their history and transform the country, and that Biden will facilitate that.

“Joe is just — look, let’s face it, he’s been taken over by the radical left,” Trump said on Fox News on Thursday night. “I think they brainwashed him.”

In one of Trump’s campaign’s recent digital ads, Representatives Alexandria Ocasio Cortez, Ilhan Omar, and Senator Bernie Sanders silently leap out of the wooden cavity of a Trojan horse topped with the head of Biden, as ominous music plays in the background.

But Biden faced months of criticism from liberals for being too moderate in the Democratic race. Trump’s attacks face a credibility problem.

“They try to say he’s extreme. But of course Joe Biden has been ‘canceled’ every week for the last two years by people who think he’s too centrist,” said Sean McElwee, the founder of the liberal polling firm Data for Progress. “All the stuff that people really hated about Joe Biden in the primary, it’s ended up making it hard for Trump to attack him in the general.”

“It’s hard to say this man is this woke statue destroyer,” McElwee added, referring to Trump’s messaging around statues of Confederates and other historical figures that have been defaced or toppled in recent weeks.

Biden’s own relative blandness as a political figure hurts Trump’s attempts to define him negatively, as he does not inspire strong feelings in a significant portion of the electorate. Just 22 percent of Americans say they dislike Biden “a lot” compared to 40 percent who dislike Trump “a lot,” according to a July Economist/YouGov poll.

That lack of venom can be seen at recent Trump events, where relatively few fans sport anti-Biden gear, unlike in 2016, when Hillary Clinton was skewered on pins and T-shirts and other paraphernalia, often in sexist terms.

“While I don’t want to say anyone is Teflon, Biden in some ways is unique because of his generic nature,” said Ian Russell, a Democratic strategist who used to run the House Democrats’ campaign arm. “The truth is they don’t have a ‘lock him up’ chant, they don’t have a ‘Crooked Hillary’ equivalent.”

#### The bill dooms climate initiatives

Michael E. Mann 21, Distinguished Professor of Atmospheric Science and Director of the Earth System Science Center at Penn State University, “The Bipartisan Infrastructure Deal Is a Return to the Old Way of Politics. That’s A Problem for the Climate”, 8/6/21, https://time.com/6087933/biden-infrastructure-bill-climate-change/

The looming bipartisan infrastructure deal, if it passes, will be celebrated as a return to pre-Trump politics where politicians reach across the partisan divide, compromise where necessary, and work toward the wrong shared goals.

But it’s business as usual when it comes to the defining challenge of our time: the climate crisis. The bill provides nothing tangible to expedite the country’s urgent need to transition towards renewable energy.

This deal is a far cry from meeting the moment we find ourselves in. It does not address our dependence on fossil fuels, and instead further enables it. Instead, it is focusing money and resources on technologies that don’t work while ignoring the clear winners—solar, wind, etc.—we have in front of us.

In the bill’s current incarnation, I am left wondering what happened to President Joe Biden’s pledge to transform our heavily fossil-fuel-dependent economy into a clean-energy economy. In his campaign he promised to end climate-damaging carbon emissions from U.S. power plants by 2035. But this bill wastes billions of dollars on dubious carbon capture and the fossil fuel industry’s attempt to use hydrogen as a cover to build new gas plants—both of which will do nothing more than strengthen the industry’s hold.

This bipartisan deal disguises handouts to polluters as ostensible “climate solutions,” when they in fact fuel additional carbon emissions and, with them, ever-more searing heat waves, drenching floods, parching droughts, infernal wildfires, and devastating superstorms.

Further, while Biden pledged to address issues of environmental justice by directing 40% of the administration’s climate and clean-energy investments toward low-income and frontline communities that have most suffered the environmental and health risks from fossil-fuel dependence, this bill weakens critical environmental review processes, placing many of these communities at even greater risk. For example, one section of the bill exempts oil and gas pipelines on federal land from being subject to environmental assessments.

Donald Trump was rightly ridiculed for suggesting the solution to California’s climate-change-fueled wildfires was to cut down the trees (and adopt better raking technique). But the bipartisan infrastructure bill includes the same sort of policy Trump supported, calling the logging of 30 million acres of federal forests and $1.6 billion in new taxpayer-funded subsidies to the logging industry “wildfire risk reduction,” waiving environmental protections for logging projects in the name of “fuel breaks,” and giving hundreds of millions of dollars to the timber industry to log new areas and build new processing and power plants under the guise of “ecosystem restoration.”

What passed for wacky theatrics when Trump suggested it, now gets labeled shrewd political calculus in 2021. But it’s not wise; it’s dangerous. We need healthy forests to capture carbon in the only safe way: the natural way. Giving the timber industry the keys to our national forests is like giving fossil-fuel giant ExxonMobil the keys to our climate. And speaking of ExxonMobil, senators who belong to the infamous Exxon 11 made up a third of the bill’s co-authors.

#### U.S. action alone fails

I&I 21, Issues & Insights Editorial Board, “There’s Nothing The U.S. Can Do To Affect Global Temperature”, Issues & Insights, 9/7/21, https://issuesinsights.com/2021/09/07/theres-nothing-the-u-s-can-do-to-affect-global-temperature/

“We simulated the environmental impact of eliminating greenhouse gas emissions from the United States completely,” Dayaratna said in testimony.

“Simulation results indicate that if all carbon dioxide, methane, and nitrous oxide emissions were to be eliminated from the United States completely, the result in terms of temperature reductions would be less than 0.2 degrees Celsius, 0.03 degrees Celsius, and 0.02 degrees Celsius, respectively. These temperature reductions would also be accompanied by minuscule changes in sea level rise (less than 2-centimeter reduction).”

This isn’t hard to understand when it’s put next to the fact that more than half of the world’s human greenhouse gas emissions are produced by 25 cities, all but two of them in China, none of them in the U.S.

It’s truly asinine to believe that Washington and our state lawmakers can do anything about greenhouse gas emissions when China and India have been busy building hundreds of coal plants and that, as of last year, 350 coal-fired power plants were under construction worldwide. China – which, we must point out, produces most of the solar panels installed in the West in factories powered by that country’s “mountain” of coal – is not going to yield to John Kerry’s embarrassing begging that it cut emissions. Beijing will do only what it wishes.

#### Warming won’t be catastrophic

Dr. Benjamin Zycher 21, Senior Fellow at the American Enterprise Institute, Doctorate in Economics from UCLA, Master in Public Policy from the University of California, Berkeley, and Bachelor of Arts in Political Science from UCLA, Former Senior Economist at the RAND Corporation, Former Adjunct Professor of Economics at the University of California, Los Angeles (UCLA) and at the California State University Channel Islands, and Former Senior Economist at the Jet Propulsion Laboratory, California Institute of Technology, “The Case for Climate Change Realism”, 6/21/2021, https://www.aei.org/articles/the-case-for-climate-change-realism/

Unable to demonstrate that observed climate trends are due to anthropogenic climate change — or even that these events are particularly unusual or concerning — climate catastrophists will often turn to dire predictions about prospective climate phenomena. The problem with such predictions is that they are almost always generated by climate models driven by highly complex sets of assumptions about which there is significant dispute. Worse, these models are notorious for failing to accurately predict already documented changes in climate. As climatologist Patrick Michaels of the Competitive Enterprise Institute notes:

During all periods from 10 years (2006-2015) to 65 (1951-2015) years in length, the observed temperature trend lies in the lower half of the collection of climate model simulations, and for several periods it lies very close (or even below) the 2.5th percentile of all the model runs. Over shorter periods, such as the last two decades, a plethora of mechanisms have been put forth to explain the observed/modeled divergence, but none do so completely and many of the explanations are inconsistent with each other.

Similarly, climatologist John Christy of the University of Alabama in Huntsville observes that almost all of the 102 climate models incorporated into the Coupled Model Intercomparison Project (CMIP) — a tracking effort conducted by the Lawrence Livermore National Laboratory — overstate past and current temperature trends by a factor of two to three, and at times even more. It seems axiomatic to say we should not rely on climate models that are unable to predict the past or the present to make predictions about the distant future.

The overall temperature trend is not the only parameter the models predict poorly. As an example, every CMIP climate model predicts that increases in atmospheric concentrations of greenhouse gas should create an enhanced heating effect in the mid-troposphere over the tropics — that is, at an altitude over the tropics of about 30,000-40,000 feet. The underlying climatology is simple: Most of the tropics is ocean, and as increases in greenhouse-gas concentrations warm the Earth slightly, there should be an increase in the evaporation of ocean water in this region. When the water vapor rises into the mid-troposphere, it condenses, releasing heat. And yet the satellites cannot find this heating effect — a reality suggesting that our understanding of climate and atmospheric phenomena is not as robust as many seem to assume.

The poor predictive record of mainstream climate models is exacerbated by the tendency of the IPCC and U.S. government agencies to assume highly unrealistic future increases in greenhouse-gas concentrations. The IPCC’s 2014 Fifth Assessment Report, for example, uses four alternative “representative concentration pathways” to outline scenarios of increased greenhouse-gas concentrations yielding anthropogenic warming. These scenarios are known as RCP2.6, RCP4.5, RCP6, and RCP8.5. Since 1950, the average annual increase in greenhouse-gas concentrations has been about 1.6 parts per million. The average annual increase from 1985 to 2019 was about 1.9 parts per million, and from 2000 to 2019, it was about 2.2 parts per million. The largest increase that occurred was about 3.4 parts per million in 2016. But the assumed average annual increases in greenhouse-gas concentrations through 2100 under the four RCPs are 1.1, 3.0, 5.5, and an astounding 11.9 parts per million, respectively.

The studies generating the most alarmist predictions are the IPCC’s Special Report on Global Warming of 1.5°C and the U.S. government’s Fourth National Climate Assessment, both of which were published in 2018. Both assume RCP8.5 as the scenario most relevant for policy planning. The average annual greenhouse-gas increase under RCP8.5 is over five times the annual average for 2000-2019 and almost four times the single biggest increase on record. Climatologist Judith Curry, formerly of the Georgia Institute of Technology, describes such a scenario as “borderline impossible.”

RCP6 is certainly more realistic. It predicts a temperature increase of 3 degrees Celsius by 2100 in the average of the CMIP models. But on average, those CMIP models overstate the documented temperature record by a factor of at least two. Ultimately, models with a poor record of successfully accounting for past data and highly unrealistic future greenhouse-gas concentrations should not be considered a reasonable basis for future policy formulation.

## Midterms

#### Antitrust is unpopular BUT irrelevant

Claude Marx 21, MA in American Politics from Georgetown University, BA in Political Science and History from Washington University in Saint Louis, Reporter at MLex/FTC:Watch, “Biden’s Bid to Boost Competition Could Reap Political Benefits”, mLex Market Insight, 7/26/2021, https://mlexmarketinsight.com/news-hub/editors-picks/area-of-expertise/antitrust/bidens-bid-to-boost-competition-could-reap-political-benefits

But the public is less certain about remedies.

A June Morning Consult poll for Chamber of Progress, a Democratic-leaning pro technology organization, found that 53 percent of 2,000 registered voters supported more regulation of large tech firms. But the number dropped to 39 percent when people were informed that some of the changes might result in fewer offerings to consumers.

When people were told that a series of antitrust bills approved by the House Judiciary Committee last month would ban free shipping by Amazon Prime, 59 percent were more likely to oppose the bills, which are awaiting action by the full House.

University of Virginia political scientist Larry Sabato told FTCWatch that most policy issues don’t by themselves influence election outcomes but are part of an overall image that voters have.

“They contribute to how people feel about parties and individuals. And that’s important in these very partisan times. So it reinforces the Democrats’ image as skeptical of Big Tech. It won’t have a great effect on the 2022 election, but the impact isn’t non-existent either,” he said.

Paul Swanson, an antitrust partner at Holland & Hart, thinks the effectiveness of the initiatives by the administration will depend on messaging.

“The issues of competition and antitrust are abstract, and the administration is wise to issue a list of how people are affected,” he said. “But it will be really hard to make it resonate with people. Even though people think tech is too big, they love their iPhone, they love Facebook. However, there are many areas where the average American feels the pinch, and if the administration can say ‘if companies get too big, it locks you in and limits choices and raises prices,’ that could work with some voters.”

#### It’s way too soon to predict the midterm---intervening black swans are inevitable

Charlie Cook 21, Editor and Publisher of the Cook Political Report and Political Analyst for NBC News and National Journal, “What We Don’t Yet Know About the 2022 Midterms”, Cook Political Report, 2/23/2021, https://cookpolitical.com/analysis/national/national-politics/what-we-dont-yet-know-about-2022-midterms

My friend then conceded that he was being a bit too “Panglossian,” sending me to the dictionary (my guess that it meant overly optimistic was right but not too hard to figure out). I can’t or wouldn’t argue that my friend was wrong, only that it is too soon to argue either side of this particular equation.

It is now debatable whether the 2024 equivalent of any of the previous six Republican presidents (Eisenhower, Nixon, Ford, Reagan and the two Bush presidents) could win a GOP nomination these days, not to mention the last three Republican nominees that didn’t make it to the Oval Office (Bob Dole, John McCain, and Mitt Romney). It’s possible that even Barry Goldwater would fail today’s ideological litmus tests.

Those close to McConnell argue that the Republicans’ losses in Georgia’s two January Senate runoffs could foreshadow coming tribulations. Trump will not be on the ballot on Nov. 8 of next year, which would be the only motivator for his most ardent supporters to show up to the polls. Meanwhile, the former president’s feud with McConnell’s wing of the party could also depress the Republican vote among non-Trumpian Republicans, while Trump’s public activity drives up the Democratic vote.

One might recall that Barack Obama brought out turnout of unbelievable levels among elements of the Democratic base that normally don’t vote in big numbers, powering his election in 2008 and reelection in 2012. But those low-propensity voters didn’t show up in 2010, 2014, or even 2016, with disastrous consequences for Democrats. As one Democratic pollster said at the time, “They don’t call them Obama voters for nothing.”

The truth, however, is that a healthy slice of Trump voters did actually vote in the 2018 midterms. Since voters on both sides of the aisle came out of the woodwork, 2018 had the highest midterm turnout in 104 years. But while Trump’s name was not literally on the ballot, it was, figuratively speaking, as he rallied voters and leveraged the bully pulpit. Trump was the best vehicle for both sides to turn out their voters.

So, having outlined what we don’t know yet about next year’s midterms, what do we know? Incumbency is of less value than ever before, and candidates’ personal brands matter less than they used to. As longtime National Journal writer Ron Brownstein says, it’s not the name on the back of the jersey that matters so much anymore, it’s the color of the jersey. Ours is a parliamentary voting system now.

The last four or five months of next year will be key, especially evaluating Biden’s performance, Democratic enthusiasm (which will help determine turnout), and the degree of lingering Republican disillusionment (which will determine their participation rate). While history puts a finger on the scale for Republicans in the Senate, exposure—that is, how many seats the GOP has to defend, particularly open seats—could remove their natural advantage. With no incumbents defending seats in competitive states like North Carolina (Richard Burr), Ohio (Rob Portman), and Pennsylvania (Pat Toomey), that is a challenge. In Iowa, Chuck Grassley has not announced whether he’ll retire (my bet is he will run again). We’ll also have to see if Democrats put up a credible challenge to incumbents in Wisconsin (Ron Johnson) and Florida (Marco Rubio).

The unknowns go on: Do Democrats have to defend any open seats in competitive states? Does New Hampshire Gov. Chris Sununu take on Democratic Sen. Maggie Hassan? What kind of challenge do Catherine Cortez Masto (Nevada) and Michael Bennet (Colorado) receive? And do Republican primary voters nominate “electable” candidates, as McConnell hopes?

In the House, only seven Democrats represent districts Trump carried, while nine Republicans hold seats that Biden carried. With the House pretty sorted out along partisan lines, it won’t take a tsunami or even a more conventional tidal wave to move a dozen or two seats. Even a ripple might do it.

In short, it’s better to relax than either build up hope or despair. There are way too many things that could determine the outcome of the midterms that we cannot possibly know.

Take a chill pill.

#### Tons of thumpers.

Freddy Gray 11/6, Deputy Editor of The Spectator, “Superbad: Joe Biden’s plummeting presidency,” The Spectator, 11/6/21, https://www.spectator.co.uk/article/superbad-joe-bidens-plummeting-presidency

Poor Joe. He has a lot on his addled mind. He’s been in office for less than a year and his presidency is already a catalogue of crises. On Tuesday, as the President stood on the COP stage in Glasgow, impotently lecturing China and Russia about their absence, another disaster was happening back home. His Democratic party lost the governorship of Virginia, an election widely seen as the first big test of the political temperature in the Biden era. Virginia is increasingly thought of as Democratic territory. This time last year, Biden beat Donald Trump by ten points in the state — so the result looks damning.

Last month, as the polls tightened, Biden decided to invest his own political capital in the race. He joined the Democratic candidate Terry McAuliffe on the campaign trail and tried to brand the Republican challenger, Glenn Youngkin, as a Trumpkin wolf in sheep’s clothing — ‘extremism… can come in a smile and a fleece vest,’ he said.

Biden’s intervention only made a bad situation for the Democrats worse. The fleece-wearing Youngkin was clearly not an extremist. He successfully disassociated himself from red-raw Trumpism. He also picked a culture-war fight and won. He turned education, and the Democrats’ apparent eagerness to brainwash children with critical race theory in schools, into a rallying cause. His opponent moronically said that teachers, not parents, should decide what children learn. Showing even less nous, the National School Boards Association then demanded that protesting parents should be investigated for ‘domestic terrorism’. The Virginia election thus became a ‘nationalised’ battle between American families and Biden’s hyper-progressivist elite. The families won.

It’s silly to read too much into the Virginia result, even if the Democrats also underperformed in other races. Looking ahead to the 2022 midterm elections and beyond, however, the picture for Biden and the Democrats is extremely grim.

America is a lot bigger than Virginia. Yet Biden’s polling has been tanking nationwide. His job approval rating has fallen fairly steadily since he took office, from 55 per cent in January to 43 per cent today. He isn’t quite as unpopular as his predecessor at the same stage in his presidency, but Trump’s popularity bounced off a low base throughout. Biden’s seems so far only to go down. And no postwar president has fallen faster.

The number of Americans who think their country is on the ‘wrong track’ is 71 per cent. The young are giving up on Biden: 43 per cent of 18- to 24-year-olds approve of his job performance, a drop of 20 points since June. Perhaps most alarmingly of all for Democrats, the latest NBC poll found that Republicans now hold an 18-point advantage over their rivals when it comes to ‘dealing with the economy’. That is the highest recorded gap since 1991, when the survey started asking the question.

Americans think a lot about money and are understandably worried about what Biden is doing to the financial universe. He came into power promising to ‘restore the soul’ of their nation through preposterous amounts of government spending. What could go wrong?

Various trillion dollar bills barrelled into Congress. Americans didn’t mind at first. People like receiving large stimulus cheques. Media sycophants hailed Biden’s Build Back Better agenda as the 21st-century answer to Franklin Delano Roosevelt’s New Deal. But Biden was conspicuously vague about how the government would pay for it all — aside from his insistence that the two million Americans who earn more than $400,000 a year might have to cough up. Now Build Back Better is Collapsing Very Quickly as political and fiscal realities catch up with the executive branch. A supply-chain crisis is causing bottlenecks across America and the world. Inflation is biting harder in America than in Britain, and institutions are panicking. The Federal Reserve is this week expected to ‘taper’ its enormous stimulatory bond-buying programme. The Biden administration hopes that once its $1.75 trillion infrastructure bill gets through Congress, the public mood will shift in their favour again. But spend, spend, spend is not always the most sensible political strategy. The Democrats have been squabbling over the bill and the Republicans have done a good job of presenting themselves as the voice of economic sanity.

#### They won’t end the filibuster

Jordain **Carney 21**, Senate Reporter at The Hill, “Senate Democrats Leery Of Nixing Filibuster”, The Hill, 1/16/2021, <https://thehill.com/homenews/senate/534527-senate-democrats-leery-of-nixing-filibuster>

Senate **Dem**ocrat**s** appear unlikely to nuke the legislative filibuster, **despite intense pressure** from the left in the wake of this month's two victories in Georgia.

Starting Wednesday, Democrats will control a unified government for the first time since 2010. But the slim 50-50 margin in the Senate is threatening to box in progressive hopes of going big with sweeping policies unless they can convince senators to nix the 60-vote hurdle that would require GOP support for most legislation.

Supporters of going “nuclear” would need the support of **every member** of the Senate Democratic caucus to get rid of the filibuster, but **several aren’t on board**.

“I just think that it's an opportunity to bring people together and you can talk to anybody in this place, bipartisan legislation tends to stand the test of time, and so hopefully we continue to work together and have it be encouraged by the filibuster,” said Sen. Jon **Tester** (D-Mont.), adding that a 50-50 Senate will “require people working together to get things done."

Sen. Chris **Coons** (D-Del.), while not completely closing the door, said the Senate should go through other options — including passing legislation through reconciliation, a budget gimmick that allows bills to bypass the 60-vote procedural requirement — before putting filibuster reform on the table.

“I don’t think the first, second or third thing we do is have some debate about rules changes because the president-elect was clear throughout his campaign he will try to work across the aisle and to bring the country together. And I expect that we will do that first and then see,” said Coons, a close ally of Biden.

Supporters of nixing the filibuster see **the**ir biggest hurdle as Sen. Joe **Manchin** (D-W.Va.), who has vowed that he will not vote to do so. Because Democrats will only hold 50 seats, opposition from Manchin **alone** can **squash efforts** to get rid of the Senate rule.

And he indicated during a recent interview with Fox News that he remains **opposed** to gutting the filibuster.

#### No civil war

Daniel **Block 21**, Executive Editor of the Washington Monthly, Former Luce Scholar at the Luce Foundation, Former Editor in Chief at The Phoenix, BA from Swarthmore College, “America’s Next Insurgency”, Washington Monthly, April / May / June 2021, <https://washingtonmonthly.com/magazine/april-may-june-2021/americas-next-insurgency/>

These officials—and their peers in the DOJ and DHS—should be able to scale up fast. Because the **fed**eral government has such strong **surveillance** measures, it is very effective at penetrating and **eliminating terrorist cells**. It has powerful **law enforcement** agencies and the world’s most well-funded **military**, meaning that it retains an **overwhelming force advantage**. As a result, full-scale **civil war**fare is **highly unlikely**.

# 1AR

## PIC

#### ‘Prohibitions’ means hinder and can contain exceptions---it doesn’t have to be per se

Sandra L. **Lynch 2**, Judge on the United States Court of Appeals, First Circuit, “Second Generation Props., L.P. v. Town of Pelham”, 313 F.3d 620, 634, 2002 U.S. App. LEXIS 25904, 12/17/2002, Lexis

§ 332(c)(7)(B). We start with the fact that Congress used "services" and not "service." A straightforward reading is that "services" refers to more than one carrier. Congress contemplated that there be multiple carriers competing to provide services to consumers. That one carrier provides some service in a geographic gap should not lead to abandonment of examination of the effect on wireless services for other carriers and their customers. Next, the phrase "have the effect of prohibiting" may well refer to actions that **mostly** prohibit. For example, B.A. Garner, A Dictionary of Modern Legal Usage 256 (2d ed., 1995), gives as the first definition of effective "having a high degree of effect." (emphasis added). Accord B.A. Garner, A Dictionary of Modern American Usage 237-38 (1998). Moreover, a **common reading** of the word "prohibition" standing alone would apply to a situation of denial of services to the **vast majority** of users. See, e.g., **O**xford **E**nglish **D**ictionary (2d ed. 1989) (defining [\*\*33]  "prohibit" as "to prevent, preclude, **hinder**") (emphasis added). Thus Congress may well have **mean**t the effective prohibition clause to reach certain situations in which there is some **coverage** in a **gap**.

## Regs CP

#### Agribusiness controls the message

Jennifer Clapp 18, Professor and Canada Research Chair in Global Food Security and Sustainability at the University of Waterloo, 05/01/18, Mega-Mergers on the Menu: Corporate Concentration and the Politics of Sustainability in the Global Food System, Global Environmental Politics, Vol. 18, Issue 2, p. 12–33, https://doi.org/10.1162/glep\_a\_00454

Weak and Fragmented Regulatory and Institutional Frameworks

The nongovernance of the environmental effects of agribusiness mergers is also the product of weak and fragmented regulatory oversight of mergers and acquisitions across a range of disjointed institutions that might weigh in on the issue as it relates to agricultural sustainability. There is no global institution or set of rules governing competition policy that oversees mergers and acquisitions (M&As) on a global scale (Dimitrov et al. 2007). The Organisation for Economic Cooperation and Development (OECD) offers guidance to its member states regarding competition issues, and the UN Conference on Trade and Development (UNCTAD) has developed a model law on competition. But these are not formal governance arrangements, and decisions on mergers are left up to individual states. Regulatory authorities in the countries where the large agribusiness firms do business are looking at the mergers and can decide, based on their own analyses of the effects of the mergers in the domestic market, whether to allow them to proceed within their jurisdictions. Monsanto, for example, has had to file its merger intention with regulatory authorities in close to thirty different countries (Bartz and Roumeliotis 2016). Among the major countries reviewing the mergers are rich industrial countries or regions, such as the US, Europe, and Canada, and a number of developing countries, including India, China, South Africa, and Brazil, which are increasingly major markets for these firms.

Government regulators typically focus their analyses of M&A activity narrowly on the potential impact on market competitiveness, efficiency, and innovation in their domestic market. They use econometric models to evaluate the extent to which the merged firms will change the dynamics of the marketplace for the products they sell. If their models predict more efficient markets due to economies of scale, even if there are fewer suppliers in the market, then the deals might be viewed more positively (King 2001). The focus on competition effects is important, as it helps to uncover the ways in which mergers might result in higher prices or create barriers to entry for new firms and whether innovation will be stifled (Organisation for Economic Co-operation and Development 2007; Shapiro 2002). Indeed, independent economic analyses of the agribusiness mergers reveal that they will put several of the products that the firms sell within the anticompetitive range, according to the measures used by the competition authorities (Bryant et al. 2016; Maisashvili et al. 2016). Not surprisingly, some of the regulatory authorities have asked the resulting firms to spin off certain product lines to reduce potential negative market impacts.

At the same time, however, broader issues of “public interest,” including environmental considerations, get short shrift in the merger evaluation processes in most countries. As a recent OECD (2017, 3) report on public interest considerations in merger decisions notes, “the majority of OECD Member country competition authorities are not responsible for applying public interest considerations in reviewing mergers; the task is left to sector regulators or government departments.” The report goes on to note that evaluating mergers based on competition criteria versus public interest criteria could lead to different results and warns that those countries that consider public interest issues should be wary of the “risks to the certainty and predictability of their merger control system” (OECD 2017, 4). In other words, the OECD stresses the importance of predictability over public interest considerations, and this advice is widely followed. For example, there is nothing in the merger enforcement guidelines of the US, Canada, or the EU indicating that the potential environmental impact of corporate concentration is even considered in the vetting process (Canada Competition Bureau 2011; European Union 2004; US Department of Justice 2010).

Most governments work on the principle that other governance frameworks outside of the competition assessment process can address the public interest issues associated with mergers (Organisation for Economic Co-operation and Development 2017). There are indeed international environmental governance arrangements that broadly address questions of genetic diversity and chemical pesticides, namely, the Convention on Biodiversity, the International Treaty on Plant Genetic Resources, and the Rotterdam Convention. But these agreements have no authority over, and make no mention of, competition issues as drivers of the problems they seek to address. There has been more recognition of the problems associated with corporate concentration in the arena of global food governance. Civil society actors have raised the issue at the Committee on World Food Security (CFS), the main coordinating body for international food governance. But that body also has no capacity to coordinate or govern states on competition issues. At the annual CFS meeting in October 2016, the Civil Society Mechanism (CSM) proposed discussing the most recent agribusiness mergers as a matter of urgency in the plenary session. A number of governments, however, objected to having such a debate in the formal plenary setting. Instead, the body permitted an informal information discussion that was strictly billed as a CSM-sponsored event and not included in the formal meeting report (International Institute for Sustainable Development 2016). Again in 2017, the mergers were discussed in a side event organized by the CSM but not in the formal meeting.

Power Dynamics Favor Giant Agribusiness Firms

Power dynamics also play a role in explaining why it is so challenging to govern the environmental effects of agribusiness mergers at the international level. Given their privileged position in the food system, the firms engaged in the mergers are able to wield different kinds of power in ways that push against policies that may increase oversight over competition issues. One is their discursive, or ideational, power to shape the debate over the future sustainability of agriculture (see also Williams 2009). The large agricultural input firms have used their media and public outreach infrastructure to make the case that the mergers are necessary for advancing sustainable agriculture through digital farming solutions, as noted previously. Firms also have a second form of power that may have some influence in shaping the regulatory context: their market, or structural material power (Fuchs and Glaab 2011). The scale of these firms means that their business decisions have an enormous impact on national economies. In this context, policy makers cannot help but pay attention to their preferences.

Critics have also highlighted a third type of influence exerted by these firms: their lobbying power. In 2016, Monsanto spent US$ 4.3 million in lobbying the US government, while Syngenta spent US$ 1.4 million (Center for Responsive Politics 2015). In recent years, Monsanto has successfully lobbied against GM labeling and for the approval of Roundup Ready alfalfa and sugar beets. It also made the case for a congressional caucus on “modern agriculture,” which was formed in 2011 (Union of Concerned Scientists 2013). Similar lobby efforts have been launched by the Big Six firms in the EU. In 2015, the amounts these firms spent on lobbying efforts in Brussels were significant: nearly US$ 4.5 million by Dow, US$ 2.6 million by BASF, US$ 2.2 million by Bayer, and US$ 1.7 million by Syngenta (Pesticide Action Network Europe 2016). Critics are concerned that this kind of concentrated lobbying results in a favoring of the large-scale industrial agricultural model and that it will only become more pronounced once the mergers are completed. Critics also worry that the promotion of industrial agriculture reduces the responsiveness of these firms to farmer and consumer demand for more sustainable agriculture and food systems (Pesticide Action Network North America 2017).

More specifically, industry also lobbies governments directly. There are already signals that the competition review process in the US may be short-circuited due to agribusiness lobbying on the mergers. Although one of US president Donald Trump’s advisors expressed his disapproval of the proposed mergers, there are signs that other powerful voices may win out (Eller 2017). The CEOs of Bayer and Monsanto met privately with then president-elect Trump just before his inauguration in January 2017 and promised that the merged firm would create 3,000 new jobs in the US (Philpott 2017). The CEO of Dow also took part in a business leaders’ meeting with Trump several weeks later as part of an initiative to keep manufacturing jobs in the US.

#### Institutional factors guarantee capture

Cindy R. Alexander 4, Office of Economic Analysis, U.S. Securities and Exchange Commission, and Yoon-Ho Alex Lee, PhD Candidate in Economics and JD Candidate at Yale University, “The Economics of Regulatory Reform: Termination of Airline Computer Reservation System Rules”, Yale Journal on Regulation, 21 Yale J. on Reg. 369, Summer 2004, Lexis

Even if the chance of a violation were high, however, antitrust enforcement has several properties that make it more suitable than regulation in this instance. First, there is little evidence that federal antitrust officials are captured, in contrast with the evidence on the interest-group capture of regulators. This may be due to the tendency of antitrust officials to operate in a variety of different industries, so that the value of their human capital is less dependent on their relations with any specific industry, or to other differences between the incentives of antitrust enforcement officials and regulators. Richard Posner has written:

Efforts to explain antitrust enforcement as just another example of interest-group politics … have not been successful, and the reasons may be that the agencies are dominated by lawyers, most of whom go on to jobs in the private sector, and that antitrust law itself is dominated by federal judges exercising a broad discretion because of the open-endedness of the major federal antitrust statutes. To land good berths in the private practice of law the antitrust enforcers must demonstrate their professionalism, which means keeping within the boundaries fixed by the courts. Federal judges with their secure tenure are largely insulated from [\*427] the interest-group pressures that play on the other branches of government. 174

The legal rules that govern antitrust enforcement also make it less prone to capture than regulation. Antitrust disputes are resolved under an extensive civil case law that has evolved over more than a century to facilitate the application of general antitrust principles to a variety of market settings. Meanwhile, with administrative cases, the Chevron deference given to regulatory agencies makes it difficult for the court to intervene unless the regulation is clearly arbitrary and capricious. This increases the discretion of the regulator relative to that of the antitrust enforcement authority. While the government's enforcement authorities may exercise discretion in choosing what cases to bring, the effect of this discretion on enforcement outcomes is limited by the abilities of private parties to bring their own separate enforcement actions under the federal antitrust statutes.

#### Studies prove

Ernesto Dal Bó 6, Professor of Business and Public Policy at UC Berkeley, “Regulatory Capture: A Review”, 2006, Oxford Review of Economic Policy, Vol. 22, No. 2, pg. 216

(i) Capture and Regulatory Outcomes

Relating the amount of capture to regulatory outcomes is difficult, mainly because measuring capture is tricky. One way of doing this is using nationwide measures of corruption, which may be correlated to regulatory capture. Dal Bó and Rossi (2004) test a simple model for why countries where regulators are more easily capturable should have more inefficient utilities. When regulators are more likely to be vulnerable to influence and approve price hikes, firm managers do not have incentives to try their best when coordinating and supervising the use of production factors. This will induce more managerial shirking and lobbying instead of effort exertion, and the way to meet service obligation targets is to use more inputs per unit of output. Dal Bó and Rossi (2004) study a panel of 80 electricity distribution firms in 13 Latin American countries for the period 1994—2001. They find that firms are more inefficient in countries and times displaying higher corruption.

Another way of analysing the connection between capture and outcomes is looking at whether influence in the form of campaign contributions to politicians matters. Because the focus of this article is on regulation, I do not cover the large literature studying whether campaign contributions affect dimensions of legislative behaviour such as roll-call voting. Rather, I comment on the (unfortunately scarce) evidence regarding the link between political influence and regulatory outcomes. We may see legislators as regulators themselves, or, given, for example, the Congressional oversight on regulatory agencies, one may conjecture that campaign contributions to legislators may affect the inclination of the latter to exert pressure over agencies.

De Figueiredo and Edwards (2005) analyse whole sale price determination by state regulatory commissions in telecommunications. They focus on the price that incumbents are allowed to charge entrants to local networks in densely populated areas. The authors have a panel of price decisions made at the state level in the United States, corresponding to three electoral cycles (1997-8, 1999-2000, and 2001-2). The main explanatory variable they consider is the campaign contributions to candidates to the state legislature made by incumbent firms relative to entrant ones. Although limited by the number of regulatory decisions, the authors find evidence consistent with the idea that campaign contributions affect price regulatory decisions. When campaign contributions by incumbent firms are relatively higher, so are the prices that incumbents are allowed to charge entrants.

#### The CP is ignored

John Ikerd 20, Professor Emeritus at the University of Missouri, 02/27/20, Reclaiming the Future of Farming, http://web.missouri.edu/~ikerdj/papers/WIMOSESFutureFoodFarming.pdf

What happened to stop, or at least delay, the great agricultural transformation that seemed so promising at the turn of the century? I think the futurists, myself included, failed to appreciate the growing economic and political power of the multinational agribusiness corporations and their determination to dominate the agricultural economy. When the federal government essentially quit enforcing corporate antitrust policy in the 1980s, it essentially freed the large corporations to take control of government. Economic colonization3 is a term that seems appropriate to describe the corporate domination of rural areas around the world, including rural America. The term is typically used in reference to the so-called developed nations using their economic power to continue dominating less-developed nations that were previously colonized politically. Instead of colonization by national governments, the colonization today is being carried out by large, multinational corporations. Much like colonial empires of the past, the economically valuable ecological and societal resources of rural areas, including rural people and cultures, are being exploited not to benefit rural people but instead to increase the wealth of corporate investors. These large, publicly traded corporations are purely economic entities with no capacity for concern or commitment to the future of rural communities. Their only interest is in extracting economic wealth from rural areas.

Whether intentional or coincidental, industrial agriculture has been the primary means of colonizing rural America. Agribusiness corporations gain political legitimacy and elicit economic concessions from local government officials through false promises of rural economic development. The largely unregulated industrial agriculture erodes the fertility of the soil and poisons the air and water with chemical and biological wastes. Comprehensive corporate contracts replace thinking, caring farmers with tractor drivers and corporate hired-hands. Once the productivity of an area has been depleted, the corporations will simply move their operations to other areas of the nation or world where land is still productive and labor costs are cheaper— as we have seen in with pineapple and sugar cane production moving out of Hawaii. Rural communities are left with depleted soils and aquifers, streams and groundwater polluted with agricultural chemical and biological wastes, and farmers who no longer know how to farm.

Obviously, farming communities did not become places where the knowledge workers of the 21st Century have chosen to work and live. Wendell Berry—farmer, philosopher, and author—in a 2017 letter to the New York Times described it this way: “The business of America has been largely and without apology the plundering of rural America, from which everything of value—minerals, timber, farm animals, farm crops, and “labor”—has been taken at the lowest possible price. As apparently none of the enlightened ones has seen in flying over or bypassing on the interstate highways, its too-large fields are toxic and eroding, its streams and rivers poisoned, its forests mangled, its towns dying or dead along with their locally owned small businesses, its children leaving after high school and not coming back. Too many of the children are not working at anything, too many are transfixed by the various screens, too many are on drugs, too many are dying.”4

The promise of a social and economic renaissance became social and economic desecration. A 2017 Wall Street Journal article labeled rural America as the “New Inner City.” In terms of poverty, education, teenage births, divorce, premature death, disability, and unemployment, rural counties now rank below inner cities.” 5 Drug abuse and crime, once urban problems, now plague rural communities. The rural communities that thrived socially and economically during the 1940s and 1950s, when I was a member of Future Farmers of America, are but a distant memory.

What did we gain from all of this economic desecration of rural America? Very little! Admittedly, American consumers on average spent less of their disposable income on food in the late 1990s than in the 1970s. Over the past 20 years, however, food prices have risen faster than the overall rate of inflation.6 Furthermore, industrial agriculture didn’t feed the hungry. In fact, more people are now classified as “food insecure” than back in the 1960s.7 In 2018, one-in-nine Americans were classified as food insecure and one-in-seven American children lived in foodinsecure homes.8 Whatever has been gained by lower food costs has been more than offset by rising costs of health care. An epidemic of diet related illnesses; obesity, diabetes, hypertension, heart disease, and cancers, now threatens the physical and financial future of the nation. Costs of health care are projected to account for one-fifth of the GDP by 2016.9

Why did we Americans let this happen? Or was it inevitable? The industrialization of American agriculture was made possible by post-World War II agrochemical and mechanical technologies, however, it was “made inevitable” by supportive government policies. The specialized, mechanized, large-scale nature of industrial farming that makes it economically efficient also makes it inherently economically risky. Farmers are forced to make large investments in land, buildings, and equipment in operations that are inherently vulnerable to unpredictable weather that can devastate crops, diseases that can wipe out livestock and poultry operations, and to unprofitable prices in markets characterized by periodic overproduction. So, American taxpayers were asked to absorb much of these risks through U.S. farm policies— including various kinds of price supports, deficiency payments, subsidized crop insurance, disaster payments, subsidized interest rates, loan guarantees, and investment tax credits. All of these programs, in one way or another, incentivize or subsidize industrial agriculture.

The industrialization of agriculture was a bold experiment, and it was well-intended—at least by many of its earlier advocates. I was one of those advocates during the first half of my 30 year academic career. I thought by improving the economic efficiency of farming, we would bring down the cost of food and make good food affordable for everybody. I thought the focus on economic efficiency would create profit opportunity for progressive farmers and support economically viable rural communities. However, during the farm financial crisis of the 1980s, I was forced to face the hard, cold reality that it had done none of these things. The industrialization of agriculture was well intended, but it simply didn’t work.

Regardless, many farmers continue to support it because they feel trapped by large investments in land, buildings, and equipment. They are trapped by government policies that encourage and enable them to keep doing what they are doing. They are also trapped by a “commercial farming culture” that has been skillfully crafted and protected by corporate agribusiness. So, what will it take to reclaim the future of farming? One of my professors at the University of Missouri, and later a mentor, was Harold Breimyer—a distinguished agricultural economist. Harold frequently reminded his students and others that “Americans can have any kind of agriculture we want.” He said we simply need to implement the right farm policies to get it. He was right. If we are to fundamentally change American agriculture, we must fundamentally change U.S. farm policy.

So what will it take to bring about another transformation in American farm policy? I personally believe it will take nothing less than a major consumer/taxpayer revolt. The corporate agri-food establishment has used its economic power to gain political power and now has firm control of the farm and food policy making in Washington DC and in statehouses across the country. No substantive change in farm policy can survive the political process without the endorsement or acquiescence of the corporate agricultural establishment.

Each new Farm Bill promises to conserve and protect natural resources and support independent family farms and rural communities. With each new Farm Bill the negative environmental and societal impacts of agriculture continue to grow and there are fewer independent family farms and fewer economically viable farming communities. Conservation programs such as Sod Buster, Swamp Buster, and the Conservation Reserve Program that limit crop production are more about temporary surplus reduction than permanent environmental protection. If we keep accepting the same kinds of farm policies we have accepted in the past, under both Democratic and Republican administrations, we are going to keep getting the same kind of agriculture we have been getting.

We need to start with a common understanding that the only politically defensible justification for government farm policies is to ensure domestic food security. That’s why government food assistance programs have always been administered through the U.S. Dept. of Agriculture (USDA). Logically, programs promoting farm exports should be administered by the Dept. of Commerce and biofuels programs by the Department of Energy. Domestic food security was the political justification for the initiation of U.S. farm policies of the 1930s, which included the Food Stamp program. The nation was in an economic depression. Farm families were going broke in numbers that put the nation’s food security was at risk. Depression era farm programs attempted to provide domestic food security by providing economic security for family farmers.

Domestic food security was also the political rationale for the later shift in farm policies in the early 1970s to programs that incentivize and subsidize industrial agriculture. Hunger in America had again become a major public concern during the 1960s. During the early 1970s, the Nixon/Butz administration used the promise of domestic food security to convince Congress of a need to change U.S. farm policy—and it worked. U.S. farm policies since the 1970s have succeeded in creating the kind of agriculture envisioned by the Nixon/Butz era policy experts. They simply failed to anticipate the negative environmental, social, and economic consequences.

However, for the first time since the 1970s, I see the possibility for a revolutionary, transformational change in U.S. farm policies. We have presidential candidates who are vowing to take on the corporate agricultural establishment and restore economic competitiveness to agricultural markets. Several candidates have also vowed support for a 2019 Congressional Resolution calling for a Green New Deal10 that would fundamentally change U.S. environmental, social, and economic policies—including farm policies. Perhaps most important, it reaffirms the responsibility of government to ensure domestic food security—enough good, healthful food for all. The resolution focuses on the challenges of climate change but calls for fundamental changes that would reach far beyond reducing emissions of greenhouse gasses. The ecological, social, economic inequities in farming, rural communities, and society in general are but different dimensions of same basic problem and will require a common solution.

#### Fails---It’s magnified by interest group bias.

Herbert Hovenkamp 21, James G. Dinan University Professor, University of Pennsylvania Carey Law School and The Wharton School, "Antitrust and Platform Monopoly," Yale Law Journal, Vol. 130, No. 1952, June 2021, Lexis.

Nevertheless, antitrust can be subject to interest-group biases. Consumer welfare is a public good. Consumers are numerous, heterogenous, and for the most part, poorly organized. By contrast, firms who profit from underenforcement are much fewer and more unitary in their goals. Individually, the stakes firms have in the preservation of monopoly are far higher than the individual gains that accrue from competition, even though consumers' aggregate gains are much larger, particularly when those of labor are included. 435

Antitrust today suffers from an anti-enforcement bias that is scientifically obsolete and produces too many false negatives. This will hopefully pass as courts become more familiar with the economics of digital platforms and networks. Decisions such as Amex in the Supreme Court and Qualcomm in the Ninth Circuit indicate that development still has far to go. The rule of reason in particular has become much too burdensome for plaintiffs. Antitrust policy would perform better if plaintiffs had a lighter burden in establishing a prima facie case, with a heavier answering burden on defendants, who typically have better control of the relevant facts. 436

#### Regs fail---can’t deter, police, or enforce violations.

Stacey L. Dogan 08, Assistant Professor of Law at Northeastern University; and Mark A. Lemley, William H. Neukom Professor of Law at Stanford Law School, “Antitrust Law and Regulatory Gaming”, Stanford Law School, 2008, No. 367 John M. Olin Program in Law and Economics, Working Paper No. 367, https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1873&context=faculty\_scholarship

To begin, we note that all of the problems we detailed above make it unlikely that very many administrative agencies will in fact serve as effective guardians of the competition function.74 Agencies that do not see promoting competition as a core part of their mission, or agencies that have been captured, are unlikely to get competition policy right. 75 Further, even agencies that are willing to take competition into account rarely provide effective mechanisms to enforce competition policy or deter antitrust violations. An agency that stops certain conduct after it begins does not sufficiently deter antitrust violations; an agency that imposes modest fines but lacks the power to stop the conduct at all will be even less effective. And even if there is an effective remedy on the books, agencies are unlikely to have the interest and expertise in antitrust necessary to detect and enforce violations.

## Exports

#### No US-China war.

Charles C. Krulak & Alex Friedman 21, former President of Birmingham-Southern College, former Commandant of the US Marine Corps, M.S. from George Washington University; former Chief Financial Officer of the Bill & Melinda Gates Foundation, J.D. from Columbia University, “The US and China Are Not Destined for War,” Project Syndicate, 08-17-2021, https://www.project-syndicate.org/commentary/us-china-not-destined-for-war-by-charles-c-krulak-and-alex-friedman-1-2021-08

True, throughout history, when a rising power has challenged a ruling one, war has often been the result. But there are notable exceptions. A war between the US and China today is no more inevitable than was war between the rising US and the declining United Kingdom a century ago. And in today’s context, there are four compelling reasons to believe that war between the US and China can be avoided.

First and foremost, any military conflict between the two would quickly turn nuclear. The US thus finds itself in the same situation that it was in vis-à-vis the Soviet Union. Taiwan could easily become this century’s tripwire, just as the “Fulda Gap” in Germany was during the Cold War. But the same dynamic of “mutual assured destruction” that limited US-Soviet conflict applies to the US and China. And the international community would do everything in its power to ensure that a potential nuclear conflict did not materialize, given that the consequences would be fundamentally transnational and – unlike climate change – immediate.

A US-China conflict would almost certainly take the form of a proxy war, rather than a major-power confrontation. Each superpower might take a different side in a domestic conflict in a country such as Pakistan, Venezuela, Iran, or North Korea, and deploy some combination of economic, cyber, and diplomatic instruments. We have seen this type of conflict many times before: from Vietnam to Bosnia, the US faced surrogates rather than its principal foe.

Second, it is important to remember that, historically, China plays a long game. Although Chinese military power has grown dramatically, it still lags behind the US on almost every measure that matters. And while China is investing heavily in asymmetric equalizers (long-range anti-ship and hypersonic missiles, military applications of cyber, and more), it will not match the US in conventional means such as aircraft and large ships for decades, if ever.

A head-to-head conflict with the US would thus be too dangerous for China to countenance at its current stage of development. If such a conflict did occur, China would have few options but to let the nuclear genie out of the bottle. In thinking about baseline scenarios, therefore, we should give less weight to any scenario in which the Chinese consciously precipitate a military confrontation with America. The US military, however, tends to plan for worst-case scenarios and is currently focused on a potential direct conflict with China – a fixation with overtones of the US-Soviet dynamic.

This raises the risk of being blindsided by other threats. Time and again since the Korean War, asymmetric threats have proven the most problematic to national security. Building a force that can handle the worst-case scenario does not guarantee success across the spectrum of warfare.

The third reason to think that a Sino-American conflict can be avoided is that China is already chalking up victories in the global soft-power war. Notwithstanding accusations that COVID-19 escaped from a virology lab in Wuhan, China has emerged from the pandemic looking much better than the US. And with its Belt and Road Initiative to finance infrastructure development around the world, it has aggressively stepped into the void left by US retrenchment during Donald Trump’s four-year presidency. China’s leaders may very well look at the current status quo and conclude that they are on the right strategic path.

Finally, China and the US are deeply intertwined economically. Despite Trump’s trade war, Sino-American bilateral trade in 2020 was around $650 billion, and China was America’s largest trade partner. The two countries’ supply-chain linkages are vast, and China holds more than $1 trillion in US Treasuries, most of which it cannot easily unload, lest it reduce their value and incur massive losses.

To be sure, logic can be undermined by a single act and its unintended consequences. Something as simple as a miscommunication can escalate a proxy war into an interstate conflagration. And as the situations in Afghanistan and Iraq show, America’s track record in war-torn countries is not encouraging. China, meanwhile, has dramatically stepped up its foreign interventions. Between its expansionist mentality, its growing foreign-aid program, and rising nationalism at home, China could all too easily launch a foreign intervention that might threaten US interests.

Cyber mischief, in particular, could undercut conventional military command-and-control systems, forcing leaders into bad decisions if more traditional options are no longer on the table. And Sino-American economic ties may come to matter less than they used to, especially as China moves from an export-led growth model to one based on domestic consumption, and as two-way investment flows decline amid escalating bilateral tensions.

A “mistake” on the part of either country is always possible. That is why diplomacy is essential. Each country needs to determine its vital national interests vis-à-vis the other, and both need to consider the same question from the other’s perspective. For example, it may be hard to accept (and unpopular to say), but civil rights within China might not be a vital US national interest. By the same token, China should understand that the US does indeed have vital interests in Taiwan.

The US and China are destined to clash in many ways. But a direct, interstate war need not be one of them.

#### No diversionary conflict – the regime won’t risk escalating conflicts

**Babones, 2015**, American comparative sociologist at the University of Sydney in Sydney, Australia (Salvatore, “Is China a Threat? The Devil’s in the Details”, http://fpif.org/is-china-a-threat-the-devils-in-the-details/)

Staying Open for Business The devil is in the details. Take, for example, China’s possible future capacity to dominate its adjacent waters: the East China Sea, Taiwan Strait, and South China Sea. An often-cited figure is that 40 percent of world trade (reportedly worth $5.3 trillion) passes through the South China Sea. Throw in the East China Sea and the Taiwan Strait and the total must be more than 50 percent. Could a more capable Chinese army choke off that trade? Of course it could. Any country can shut down sea lanes with patrols and anti-ship mines. But nearly all of the civilian navigation in question represents trade to and from China. It’s hard to imagine any circumstance under which the Chinese government would want to shut it down. Ditto the airspace over China’s near seas. Nearly all of the civilian aviation through it consists of flights to and from China. Space and cyberspace are more difficult commons to control. But the effective militarization of space has long been a Star Wars fantasy, and China’s cyberspace is essentially a walled garden. Anarchist hackers pose as much of a threat to the Internet as the Chinese military does. While all forms of Internet security need improvement, they don’t particularly need improvement on account of a specific threat from China. Trouble in the Neighborhood? What about regional conflict? China’s growing military certainly sounds like a regional menace. But a menace to whom? Here again the details get in the way of the China threat story. To the east, Japan’s government is responding to Chinese expansion by boosting its own defense spending to record levels, proposing to change its pacifist constitution to allow greater military flexibility, and making a renewed push to resolve the long-standing Kuril Islands dispute with Russia. If Prime Minister Shinzo Abe finally succeeds in making peace with Russia, that would leave China and its ally North Korea as the sole focus for Japan’s entire military capacity. Japan is a rich, technologically advanced country of 127 million people. It can look after itself. For very different reasons, China poses little threat to South Korea. China increasingly views North Korea more as a burden than as an advance column for an attack on the South. And China has recently been courting South Korean technology investment in order to reduce its dependence on Japan. Political relations across the Taiwan Strait are inevitably dominated by questions over the status of Taiwan. Every election in Taiwan sparks talk about and fears of Chinese invasion. But no country in the world has staged a large-scale amphibious assault since the U.S. landings at Incheon, South Korea in 1950. For more than half a century, even American adventures abroad have been small-scale (Grenada) or launched from land bases (Iraq). The Chinese military will never have the capacity to invade Taiwan against armed resistance — not now, not later, not ever. It just can’t be done in the contemporary military context in which a single cruise missile can sink a transport ship carrying thousands of troops. It makes no sense to worry about something that is not technically possible. The Philippines? Why would China want to invade the Philippines? Vietnam, Laos, Myanmar? Ditto, ditto, ditto. China is involved in a plethora of minor border disputes with its neighbors, but none of these involve core territorial interests or serious legal claims that China (or most of its neighbors, for that matter) have historically been interested in pushing. They’re all frozen conflicts that are unlikely ever to thaw. Some pundits worry about the increasing Chinese presence in the Indian Ocean. India may not rival China as a great power, but even India should be able to contain China’s ability to project power as far away as the Indian Ocean — and India has every reason to do so. In short, it’s difficult to imagine concrete scenarios for major regional conflict sparked by China. Resource Conflicts It’s true that there are many flashpoints for minor conflict: the Senkaku Islands, various shoals and reefs in the South China Sea, China’s expanded air defence identification zone, and most notoriously China’s building of a whole new island in the middle of the ocean, presumably intended to form the basis for reinforcing its maritime claims. The outcome of these disputes may determine who gets to drill for deep offshore oil decades in the future. But they don’t involve major national interests for any of the countries concerned, least of all the United States. So while it’s possible that China will become involved in a minor air or sea incident with one or more of its maritime neighbors, it’s entirely unlikely that China will become involved in a major regional conflict with any of them. No one is going to go to war because two warplanes collide in mid-air. Historically countries have not even gone to war over the intentional shooting down of civilian airliners, never mind military accidents. One China war scenario is credible, but it doesn’t threaten U.S. interests: the possibility of war between China and Russia. Contemporary Russia is a deceptively unstable country that could suddenly descend into anarchy at any moment — in an unsuccessful military coup, on the unexpected death of Vladimir Putin, in a future “color” revolution, etc. As Russian academic Artyom Lukin explains, the Russian far east has massive natural resources needed by China and a population of just 6 million. In a chaotic situation it could be a tempting target, but China’s current leadership seems rational enough not to run the risk of thermonuclear war. A Phantom Menace So why play up the challenge from China? Let China modernize its military. China’s neighbors will bulk up in response to any perceived threat, many of them by purchasing expensive U.S. weapons. China’s leadership (much closer to the action than America’s leadership) presumably understands this. If China’s military budget is growing, it is likely because China is growing, not because China has any specific invasion plans. There are as yet no signs that China’s military expansion threatens the United States. Quite the contrary: It might support greater Chinese involvement in international peace-keeping, and it could spark more appropriate burden-sharing among America’s Asian allies. When the China challenge is broken down into its constituent parts, the China threat tends to evaporate. Far from identifying any real rationale for action, Carafano’s article seems designed to drum up interest in the Heritage Foundation’s 2015 defense review, which makes a 313-page case for higher military spending. Carafano himself freely admits that “there is no evidence that Beijing has any interest in engaging in armed conflict with Washington.” If that’s the case, why arm to forestall that threat? Peaceful coexistence is a much cheaper and much less provocative strategy.

## CWS

#### Best studies prove.

Niels Peterson 11, Research Affiliate focusing on Antitrust Law at the Max Planck Institute for Research on Collective Goods, “Antitrust Law and the Promotion of Democracy and Economic Growth”, Mac Planck Institute on Collective Goods, March 2011, https://homepage.coll.mpg.de/pdf\_dat/2011\_03online.pdf

VI. Conclusion

In the debate on the normative goals of antitrust law, there is not only disagreement about the appropriate goals that antitrust law is supposed to pursue, but also about the extent to which these different purposes are compatible with each other.17 The results of this study suggest that antitrust law, as it is currently designed, promotes economic development, but does little for democratization and the stability of democracy. The introduction of an antitrust institution has a positive effect on the level of GDP per capita and economic growth, while its effect on the democracy score of a country is statistically insignificant. However, this result is probably not due to the fact that preventing economic concentration is irrelevant for the quality of the political system. Rather, it may be a result of how antitrust regimes are preponderantly designed. If they focused more on economic concentration as such instead of dealing with particular markets, they might do a better job of promoting the case of democratic development in the world.

#### Safeguards rule thumps AND more’s coming

Lindsey O’Donnell-Welch 10-28, Executive Editor at Decipher, “FTC Beefs Up Security Mandates for Financial Sector”, Decipher, 10/28/2021, https://duo.com/decipher/ftc-beefs-up-security-requirements-for-financial-sector

The Federal Trade Commission (FTC) has announced sweeping updates to a set of existing requirements, called the Safeguards Rule, which aim to ensure that financial institutions secure consumer data.

The Safeguards Rule, established 19 years ago, mandates that financial institutions develop information security programs to better protect the collection, storage and transmission of sensitive data - including customers' bank account and social security information. Under the FTC’s modifications, announced on Wednesday, the criteria for these programs is fleshed out in more detail, and the rule now extends to non-banking financial institutions, such as mortgage brokers. An FTC spokesperson said that these changes are part of the FTC’s periodic review of its rules, in order to ensure they “keep up to date with technological and other changes in the marketplace.”

“Financial institutions and other entities that collect sensitive consumer data have a responsibility to protect it,” said Samuel Levine, director of the FTC’s Bureau of Consumer Protection, in a statement. “The updates adopted by the Commission to the Safeguards Rule detail common-sense steps that these institutions must implement to protect consumer data from cyberattacks and other threats.”

As part of the recent changes, the FTC has detailed how financial institutions can develop and implement the required information security programs, by pointing to the specific criteria that needs to be in place. As part of this criteria, for instance, organizations need to make sure they limit who can access consumer data and utilize encryption to secure the data. Another change will hold financial institutions more accountable in securing consumer data, with the FTC now requiring each organization to designate a “qualified” individual to oversee the program and give periodic reports on the program to a board of directors. Financial companies are now also required to explain their information-sharing practices - including the technical and physical safeguards used to collect, store and distribute data.

In another significant change, the Safeguards Rule will be extended to include non-banking financial institutions that are “engaged in activities that the Federal Reserve Board determines to be incidental to financial activities.” These institutions, such as mortgage brokers, motor vehicle dealers and payday lenders, are now required to create their own security programs under the new rule. At the same time, FTC has also exempted financial institutions that collect less customer data - specifically those that collect data from less than 5,000 consumers - from certain requirements, such as written risk assessments, incident response plans or the annual reporting to a board of directors.

"Financial services organizations hold valuable, monetizeable data for millions of consumers."

The FTC voted 3-2 to adopt the Safeguards Rule updates, with some commissioners expressing concerns about a lack of data demonstrating that the changes would actually translate into better protections for consumer data.

“The new prescriptive requirements could weaken data security by diverting finite resources towards a check-the-box compliance exercise and away from risk management tailored to address the unique security needs of individual financial institutions,” according to a joint statement by commissioners Noah Joshua Phillips and Christine Wilson, who opposed the updates.

Moving forward, the FTC is looking for further comments on making additional changes to the rule that would require financial institutions to report certain data breaches, and other security incidents, to the commission.

#### Prior approval rules cracked down last month

Brent Kendall 10-29, “New Policy Gives FTC Greater Control Over How Companies Do M&A”, Wall Street Journal, 10/29/2021, https://www.wsj.com/articles/new-policy-gives-ftc-greater-control-over-how-companies-do-m-a-11635499802

The Federal Trade Commission, led by new Democratic Chairwoman Lina Khan, has adopted a series of policy changes aimed at cracking down on corporate mergers, sparking deep partisan disagreement at the agency.

The latest initiative came this week when Democrats who control the five-member FTC announced a policy that would give the commission veto power over a company’s future transactions once it attempts an allegedly anticompetitive merger or acquisition.

The new prior-approval policy will be incorporated into legal settlements in which merging companies make concessions to resolve FTC concerns that their tie-up would be anticompetitive. The commission in those agreements plans to prohibit companies from making future acquisitions in the same market—and possibly other markets—without its say-so. The FTC might also seek prior-approval rights when companies drop a proposed merger after an antitrust investigation, or if the FTC wins a merger challenge in court.

Holly Vedova, tapped by Ms. Khan to lead the FTC’s bureau of competition, said in a statement the new policy restores a practice the FTC followed until the mid-1990s and “forces acquisitive firms to think twice before going on a buying binge because the FTC can simply say no.”

The policy adds a layer of enforcement beyond standard U.S. antitrust rules, which say companies doing sizable mergers must submit them for government review and can close their transaction after a waiting period, unless the FTC or Justice Department files a lawsuit and convinces a court to block the deal. The department hasn’t adopted a policy similar to the FTC’s new measure, raising questions about diverging approaches.

#### It's huge AND changes the law

Cadwalader 10-29 – Cadwalader, Wickersham & Taft LLP, “FTC Restores Prior Approval Policy For Merger Restrictions”, Mondaq, 10/29/2021, https://www.mondaq.com/unitedstates/financial-services/1125944/ftc-restores-prior-approval-policy-for-merger-restrictions

The FTC restored its past practice of requiring merging parties to obtain prior approval from the FTC "before closing any future transaction affecting each relevant market for which a violation was alleged" (emphasis in original).

In the Prior Approval Policy Statement, the FTC stated that it will include prior approval provisions in merger divestiture orders for a minimum of 10 years for each market in which alleged harm occurred. Further, in a case in which the parties abandon the transaction during litigation, the FTC stated that it will determine whether to pursue a prior approval order based on the following, non-exhaustive, list of factors:

* whether the transaction is "substantially similar" to a prior challenged transaction;
* the level of market concentration;
* the extent to which the transaction further concentrates the market;
* whether one of the parties has pre-merger market power and the second party is a "nascent or fringe competitor";
* the history of acquisitiveness of each party in the relevant market; and
* whether the transaction will enable anticompetitive market dynamics.

In addition, the FTC stated that all divestiture buyers must agree to prior approval for a minimum of 10 years for any future sale of relevant assets.

Commentary

The FTC has taken another large step in its unilateral efforts to increase the cost and burden of mergers. At least for now, the DOJ has not followed suit. The new "prior approval" requirement for future acquisitions stands the Hart-Scott-Rodino Act on its head because the policy shifts the burden of merger approval onto the merging parties instead of the government. Moreover, the policy will hit especially hard at private equity firms that plan for disposal of acquired assets within a few years' time because the new policy also disfavors divestiture buyers who dispose of acquired stock or assets in less than 10 years.