# Neg vs. NYU AW- Texas rd. 2

# ROUND 2 1NC

## Section 5 CP

#### The FTC should issue clear enforcement guidance that the presently-existent phrase “unfair methods of competition in or affecting commerce” in Section 5 of the FTCA includes platforms engaging in commerce in the private sector. The FTC should release a policy statement and data sets that reflects this and enforce accordingly.

#### The counterplan PICs out of rulemaking and uses agency guidance.

* Explains “notice-and-comment” distinction;
* It does not expressly “bind” in a legalese manner that risks Court reversal – but it functionally binds;

Seidenfeld ‘11

Mark Seidenfeld – Patricia A. Dore Professor of Administrative Law, Florida State University College of Law. “Substituting Substantive for Procedural Review of Guidance Documents” - 90 TEX. L. REV. 331 (2011) -#E&F - https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1004&context=articles

A. Legal Effect and the Distinction Between Legislative Rules and Guidance Documents

The first school to emerge, led by Robert Anthony, was motivated by a concern for agency abuse of guidance documents.75 When agencies adopt rules with the force of law, they are supposed to use notice-and-comment rulemaking. Often, however, agencies will adopt policy statements or interpretive rules that in practice bind regulated entities without following notice-and-comment procedures.76 Professor Anthony devoted a good part of his scholarship to advocating that courts should police such abuse by determining which purported guidance documents actually do create new, practically binding law and reversing them on grounds that they are really "spurious rules"—legislative rules issued improperly without notice-and-comment procedures.77

Anthony advocated different tests to determine whether purported policy statements, as opposed to interpretive rules, were spurious rules.78 On the one hand, a policy statement is an indication of how an agency intends to exercise discretion that it is given to implement the statutes and regulations it administers. Policies do not follow from the language of these statutes and regulations, but to qualify as a policy statement, the document must not definitively identify the manner in which the agency will apply these sources of law.79 An interpretive rule, on the other hand, is meant to explain preexisting legal obligations and relations that are embodied in the agency’s authorizing statutes and regulations.80 Hence, a document is a valid interpretive rule and needs not go through notice and comment if it follows from the language it is interpreting.

1. Statements of Policy.—For a policy statement, the “ex ante legal effect” school looks at whether the document was issued with intent to bind or otherwise had binding effect.81 Indicia of such bindingness include, most importantly, definitive language indicating the course of action the agency would take when applying relevant statutes and regulations to particular situations.82 Other factors that might indicate sufficient bindingness are whether the agency indicated a clear intent to follow the document when addressing particular cases, whether the agency published the document in the Code of Federal Regulations, and whether the agency expressly indicated that the document was meant to be a nonlegislative rule.83

A major problem for this ex ante approach is that binding legal force comes in many flavors and intensities, and it is not self-evident from the face of a policy statement how the agency will apply it in subsequent particular situations. As already noted, virtually everyone accepts that only legislative rules can have independent legal force.84 This means that a person who is alleged to have violated an agency’s regulatory law must be shown to have violated the underlying statute or legislative rule that an agency is implementing; it is not sufficient for the agency to demonstrate that the person violated a policy statement.85 But Anthony advocates that documents that are practically binding should be deemed to be legislative rules as well.86 This raises the question of what makes a rule practically binding.

Courts have ruled that a policy statement specifying precisely what a regulated entity can do to comply with agency legislative rules is binding.87 Such a statement poses a dilemma for an entity about whether to comply with the announced policy or risk prosecution and potential penalties. To the extent it induces changes in the entity’s conduct, the statement may appear sufficiently forceful to be a legislative rule that cannot be promulgated without notice and comment.

#### The FTC can utilize current authority without creating new prohibitions.

Khan ‘21

et al; This is a recent joint statement released by the five Federal Trade Commissioners. The Chair of the Federal Trade Commission is Lina Khan - an Associate Professor of Law at Columbia Law School. Also on the Commission is Rohit Chopra – who was previously The Assistant Director of the Consumer Financial Protection Bureau, as well as Rebecca Slaughter - an American attorney who was previously the acting chair of the Federal Trade Commission. Two others also sit on the Commission. “STATEMENT OF THE COMMISSION On the Withdrawal of the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act” - July 9, 2021 - #E&F – modified for language that may offend - https://www.ftc.gov/system/files/documents/public\_statements/1591706/p210100commnstmtwithdrawalsec5enforcement.pdf

Section 5 of the Federal Trade Commission Act prohibits “unfair methods of competition in or affecting commerce.”1 In 2015, the Federal Trade Commission under Chairwoman Edith Ramirez published the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act (hereinafter “2015 Statement”), which established principles to guide the agency’s exercise of its “standalone” Section 5 authority.2 Although presented as a way to reaffirm the Commission’s preexisting approach to Section 5 and preserve doctrinal flexibility,3 the 2015 Statement contravenes the text, structure, and history of Section 5 and largely writes the FTC’s standalone authority out of existence. In our ~~view~~ (perspective), the 2015 Statement abrogates the Commission’s congressionally mandated duty to use its expertise to identify and combat unfair methods of competition even if they do not violate a separate antitrust statute. Accordingly, because the Commission intends to restore the agency to this critical mission, the agency withdraws the 2015 Statement.

I. Background

On August 13, 2015, the Federal Trade Commission issued the 2015 Statement, which announced that the Commission would apply Section 5 using “a framework similar to the rule of reason,” by only challenging actions that “cause, or [are] likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications[.]”4 The 2015 Statement advised that the Commission is “less likely” to raise a standalone Section 5 claim “if enforcement of the Sherman or Clayton Act is sufficient to address the competitive harm.”5

In a statement accompanying the issuance of these principles, the Commission explained that its enforcement of Section 5 would be “aligned with” the Sherman and Clayton Acts and thus subject to “the ‘rule of reason’ framework developed under the antitrust laws[.]”6 In a speech announcing the statement, Chairwoman Ramirez noted that she favored a “common-law approach” to Section 5 rather than “a prescriptive codification of precisely what conduct is prohibited.”7 She also acknowledged that the Commission’s policy statement was codifying an interpretation of Section 5 that is more restrictive than the Commission’s historic approach and more constraining than the prevailing case law.8 She added, “[W]e now exercise our standalone Section 5 authority in a far narrower class of cases than we did throughout most of the twentieth century.”9

With the exception of certain administrative complaints involving invitations to collude, the agency has pled a standalone Section 5 violation just once in the more than five years since it published the statement. 10

II. The Text, Structure, and History of Section 5 Reflect a Clear Legislative Mandate Broader than the Sherman and Clayton Acts

By tethering Section 5 to the Sherman and Clayton Acts, the 2015 Statement negates the Commission’s core legislative mandate, as reflected in the statutory text, the structure of the law, and the legislative history, and undermines the Commission’s institutional strengths.

In 1914, Congress enacted the Federal Trade Commission Act to reach beyond the Sherman Act and to provide an alternative institutional framework for enforcing the antitrust laws. 11 After the Supreme Court announced in Standard Oil that it would subject restraints of trade to an open-ended “standard of reason” under the Sherman Act, lawmakers were concerned that this approach to antitrust delayed resolution of cases, delivered inconsistent and unpredictable results, and yielded outsized and unchecked interpretive authority to the courts.12 For instance, Senator Newlands complained that Standard Oil left antitrust regulation “to the varying judgments of different courts upon the facts and the law”; he thus sought to create an “administrative tribunal … with powers of recommendation, with powers of condemnation, [and] with powers of correction.”13 Likewise, a 1913 Senate committee report lamented that the rule of reason had made it “impossible to predict” whether courts would condemn many “practices that seriously interfere with competition, and are plainly opposed to the public welfare,” and thus called for legislation “establishing a commission for the better administration of the law and to aid in its enforcement.”14 These concerns spurred the passage of the FTC Act, which created an administrative body that could police unlawful business practices with greater expertise and democratic accountability than courts provided.15

At the heart of the statute was Section 5, which declares “unfair methods of competition” unlawful.16 By proscribing conduct using this new term, rather than codifying either the text or judicial interpretations of the Sherman Act, the plain language of the statute makes clear that Congress intended for Section 5 to reach beyond existing antitrust law. The structure of Section 5 also supports a reading that is not limited to an extension of the Sherman Act. Notably, the FTC Act’s remedial scheme differs significantly from the remedial structure of the other antitrust statutes. The Commission cannot pursue criminal penalties for violations of “unfair methods of competition,” and Section 5 provides no private right of action, shielding violators from private lawsuits and treble damages. In this way, the institutional design laid out in the FTC Act reflects a basic tradeoff: Section 5 grants the Commission extensive authority to shape doctrine and reach conduct not otherwise prohibited by the Sherman Act, but provides a more limited set of remedies.17

The legislative debate around the FTC Act makes clear that the text and structure of the statute were intentional. Lawmakers chose to leave it to the Commission to determine which practices fell into the category of “unfair methods of competition” rather than attempt to define through statute the various unlawful practices, given that “there were too many unfair practices to define, and after writing 20 of them into the law it would be quite possible to invent others.”18 Lawmakers were clear that Section 5 was designed to extend beyond the reach of the antitrust laws. 19 For example, Senator Cummins, one of the main sponsors of the FTC Act, stated that the purpose of Section 5 was “to make some things punishable, to prevent some things, that cannot be punished or prevented under the antitrust law.”20

The Supreme Court has repeatedly affirmed this view of the agency’s Section 5 authority, holding that the statute, by its plain text, does not limit unfair methods of competition to practices that violate other antitrust laws. 21 The Court, recognizing the Commission’s expertise in competition matters, has given “deference”22 and “great weight”23 to the Commission’s determination that a practice is unfair and should be condemned.

#### Guidance avoids the link to politics---rulemaking links comparatively more because it’s required to alert political branches for notice-and-comment.

Raso ‘10

CONNOR N. RASO – J.D., Yale Law School expected 2oo; Ph.D., Stanford University Department of Political Science expected 2010 - “Strategic or Sincere? Analyzing Agency Use of Guidance Documents” – Yale Law Journal – v. 119:782 - #E&F - https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5196&context=ylj

Guidance documents generally attract less attention from Congress and the President, giving agency leaders greater latitude to impose their preferred policy choices. Guidance is not subject to the many procedural requirements devised to alert the political branches to agency rulemaking activity. 92 In addition, guidance documents arouse less attention and opposition. Agencies can generally issue a guidance document without attracting advance publicity. The agency therefore has the opportunity to set a new status quo before opponents mobilize. This status quo may generate self-reinforcing feedbacks that strengthen the agency's position. By contrast, agencies must solicit comments on legislative rules. This process generates political activity that may be noticed by Capitol Hill and the White House; some important legislative rulemakings gain political salience as interest group conflict escalates during the notice and comment process. 93 This comparison is not intended to suggest that interest groups are unaware of guidance documents. Rather, at the margin, legislative rules arouse more interest group attention and opposition, which results in greater congressional interest. Guidance documents, therefore, are relatively more attractive in cases where Congress and the President are likely to intervene against the agency.

## Politics DA

#### Bedoya’s confirmation is likely, BUT opposition to the antitrust agenda threatens to indefinitely deadlock enforcement

Moran 1-6-22 (Max Moran, Research Director of the Personnel Team at the Revolving Door Project, studied International Relations and Journalism at Brandeis University, “Merrick Garland Is Undermining the Biden Antitrust Strategy,” The American Prospect, 1-6-2022, https://prospect.org/justice/merrick-garland-is-undermining-biden-antitrust-strategy/)

Meanwhile, the Federal Trade Commission, the executive branch’s other main antitrust enforcer, remains in a 2-2 partisan deadlock, as Senate Republicans blockade Biden nominee Alvaro Bedoya from being confirmed as a commissioner. He has a path to 51 Senate votes, but arcane (and unnecessary) procedural hurdles have slowed the process to a crawl, hindering the other avenue to antitrust action.

Biden can only do so much to move Bedoya’s nomination. But in theory, nothing prevents him from hiring whomever Kanter personally trusts to help execute their shared agenda. The deputies at ATR are not Senate-confirmed positions. So what’s causing the chaos?

The problem isn’t procedural; it’s political. In addition to diversity concerns, Sisco reports that “ideological divisions” about anti-monopoly enforcement within the Biden administration are causing fights over any potential selection for the ATR deputies.

These divisions should be familiar to anyone who followed the initial fight over antitrust nominees during the Biden transition last year. While Biden himself seems sold on the benefits of a strong anti-monopoly agenda, Garland testified last year that he sees no problem with hiring big corporations’ preferred defense attorneys to oversee their former firms and clients. Garland and other anonymous voices floated a slew of names to run ATR throughout last year—anyone but Kanter, whom progressives favored.

While Garland lost that initial fight, he seems content to starve Kanter of resources as a work-around, even if it means sabotaging his own president’s agenda. Garland, after all, appears to consider it core to his job to throttle the better parts of the Biden administration for the sake of an imagined apolitical comity. He rushed to the Trump administration’s defense over the objections of the White House many times over the last year, and continues to undermine environmental action wherever he can. It’s perfectly in keeping with his priorities to undermine antitrust enforcement too.

The corporate revolvers and pro-monopoly hacks Garland boosted also haven’t gone anywhere. Again according to Sisco, Sonia Pfaffenroth is now in the mix for one of those coveted jobs in the ATR “front office.” Pfaffenroth revolved from Arnold & Porter into the Obama ATR and back over the last two decades. In private practice, she’s defended pharmaceutical firms, fossil fuel companies, and mining companies from class actions, price-fixing cases, and of course antitrust lawsuits.

One should look to Pfaffenroth’s record from her past stint at ATR to get a sense of what a second go-around might look like. Under the Obama administration, Pfaffenroth blessed tie-ups between Virgin America and Alaska Airlines, as well as US Airways and American Airlines. Today, just four mega-airlines control 80 percent of U.S. air traffic.

Pfaffenroth even approved the $107 billion merger between Anheuser-Busch InBev and SABMiller, allowing 30 percent of the world’s beer market volume and 60 percent of the world’s beer market profits at the time to be controlled by one firm. Today, AB InBev has essentially hacked the multitiered regulatory system that kept the alcohol market competitive for decades. In some cases, AB InBev’s distributors only allow craft brewers to distribute their drinks to retailers if they keep overall production low. This bottlenecking, alongside the pandemic, has been devastating for craft brewers.

Pfaffenroth’s record at ATR reveals someone whose poor judgment has harmed major American industries. But her judgment is reflective of the failed antitrust status quo, and in antitrust and everything else, Garland sees maintaining the status quo as inherently salutary. Where you or I might see bad calls, Garland likely sees jurisprudence executed according to a well-worn book. Whether the book is right or wrong is immaterial, in his eyes.

To state the obvious, Biden ought to reject Pfaffenroth and empower Kanter with deputies ready to throw that book aside, or else his antitrust agenda on meatpacking and everything else will get tossed on the growing pile of broken promises that are cratering his approval ratings. Doing so, however, will require standing up to Garland.

Thus far, Biden has appeared reluctant to do so, for fear of threatening the attorney general’s independence. There’s a kernel of truth here, after the Justice Department was turned into the president’s personal law firm under Trump. But there is a big difference between deploying the DOJ’s resources to help friends and target enemies and ensuring the DOJ has the staff and leadership necessary to execute its policy agenda. One is a blatant abuse of power, the other a clear presidential prerogative.

It’s an awkward situation for a president, but Biden must recognize that achieving his goals—especially the ones that improve working people’s economic fortunes—does far more for the health of the nation than sticking to a failed principle for its own sake. The president badly needs to remember that the buck stops not at Main Justice, but the Oval Office. Biden can demonstrate his commitment to fulfilling his promises and vision by empowering those of his appointees who are showing the necessary courage.

#### It’s NOT about Bedoya – it’s a referendum on the scope of the current agenda – deadlock is the point

Murphy 21 (Kathleen Murphy, Senior Reporter at FTC Watch, former Section Research Manager, Specialist at Congressional Research Service, former Managing Editor at CQ Roll Call and Bill Analysis Editor at Congressional Quarterly, “Bedoya’s confirmation hearing draws closer,” FTC Watch, Issue 1016, 11-1-2021, <https://www.mlexwatch.com/articles/13940/print?section=ftcwatch>)

When Alvaro Bedoya, President Joe Biden’s nominee to the Federal Trade Commission, faces US senators, he will be asked about his scholarly views on privacy. But the hearing also gives senators a chance to assess the agenda of the last FTC nominee they confirmed, Chair Lina Khan.

The Senate Commerce, Science and Transportation Committee is set to consider Bedoya’s nomination, although no hearing date has been set. It’s most likely to occur the week of Nov. 15 or early December, based on the 2021 Senate calendar.

Serving on the FTC means Bedoya, a Georgetown University professor and former congressional lawyer, would end a 2-2 split and give Democrats a majority to implement the chair’s policies. Bedoya, founding director of the Center on Privacy & Technology at Georgetown Law, would replace former Commissioner Rohit Chopra who left Oct. 8 to serve as director of the Consumer Financial Protection Bureau.

Biden nominated Bedoya in mid-September. Khan, meanwhile, started serving as FTC chair in mid-June after an 83-day confirmation process. (See FTCWatch, No. 1002, March 29, 2021.)

‘99% about FTC Chair Lina Khan’

Michael Keeley, co-chair of the antitrust practice at Axinn, Veltrop & Harkrider, tweeted: “Bedoya confirmation is going to be 99% about FTC Chair Lina Khan, and 1% to do with Alvaro Bedoya. (And hopefully 0% about the Vertical Merger Guidelines.)”

Keeley said he expects the focus of the hearing to be assessing the wisdom of the policies being pursued by Khan.

#### Plan expands opposition, derailing confirmation

Kovacic 20 (William E. Kovacic, former FTC Chair, Global Competition Professor of Law and Policy, George Washington University Law School, JD Columbia University, “Keeping Score: Improving the Positive Foundations for Antitrust Policy,” U. of Pennsylvania Journal of Business Law, 23(1), 2020, https://scholarship.law.upenn.edu/jbl/vol23/iss1/3/)

THE POLITICAL ASSAULT ON THE FTC

From the late 1960s through the 1970s, the FTC pursued an extraordinarily ambitious agenda of competition and consumer protection matters.107 Significant antitrust litigation included challenges to dominant firm misconduct and collective dominance, distribution practices, horizontal restraints, and facilitating practices. 108 Many matters involved powerful economic interests,109 and in a number of cases the Commission sought structural relief in the form of divestitures or the compulsory licensing of intellectual property. 110 In 1974, the agency also initiated a program that required certain large firms to provide “line-of-business” data concerning a range of performance indicators.111

In the same period, the Commission used a mix of litigation and rulemaking to transform its consumer protection agenda.112 Through policy guidance and litigation, the agency introduced its advertising substantiation program that required firms to have support for factual claims made in their advertisements.113 The Commission initiated over twenty-five rulemaking proceedings and promulgated final rules involving a broad collection of product and service sectors.114

As a group, the FTC’s competition and consumer protection initiatives aroused fierce opposition from the affected firms and industries, which contested the agency’s actions in court and before Congress. 115 The complaints of industry resonated with a large, powerful bipartisan coalition of legislators116 who criticized the Commission’s activism, proposed various measures to curb the agency’s authority, 117 and ultimately adopted a number of restrictions in The Federal Trade Commission Improvements Act of 1980 (FTC Improvements Act). 118 In 1980, bitter opposition to elements of the FTC’s competition and consumer protection programs led Congress to allow the FTC’s funding to lapse, forcing the agency to temporarily cease operations. 119 Perhaps emboldened by the weak political support the Commission enjoyed before 1981, when the Democrats controlled the White House and both chambers of Congress, the Reagan administration briefly resumed the assault on the agency’s funding. In January 1981, David Stockman, Ronald Reagan’s first Director of the Office of Management and Budget (OMB), launched a short-lived effort to eliminate funding for the FTC’s competition policy program.120

The congressional and executive branch officials who criticized the FTC in this period advanced two positive claims to justify recommendations for withdrawing authority or funding for the Commission. One claim was that the agency’s choice of competition and consumer protection programs had contradicted congressional guidance about how the FTC should use its authority and resources.121 Many legislators complained that the agency had disregarded the legislature’s preferences and used its powers in ways that Congress never contemplated to fall within the FTC’s remit.122 As Congress considered bills in 1979 to limit the Commission’s powers, Congressman William Frenzel captured the prevailing legislative mood:

It is bad enough to be counterproductive and therefore highly inflationary, but the FTC compounds its sins by generally ignoring the intent of our laws, and writing its own laws whenever the whimsey strikes it . . .

Ignoring Congress can be a virtue, but the FTC’s excessive nose-thumbing at the legislative branch has become legend. In short, the FTC has made itself into virulent political and economic pestilence, insulated from the people and their representatives, and accountable to no influence except its own caprice.123

The Commission, Frenzel concluded, was “a rogue agency gone insane.”124

The accusation of Commission disobedience figured prominently in Senate deliberations on the 1980 FTC Improvements Act. In less-flamboyant but still pointed terms, the chief Senate sponsors of the FTC Improvements Act said restrictions were necessary to curb the agency’s unauthorized adventurism. Senator Howard Cannon explained: “The real reason that we have proposed this legislation for the FTC is because the Commission appeared to be fully prepared to push its statutory authority to the very brink and beyond. Good judgment and wisdom had been replaced with an arrogance that seemed unparalleled among independent regulatory agencies.”125

The accusation of disregard for congressional will soon echoed in statements by high level officials in the newly arrived Reagan administration. OMB Director Stockman recited a variant of this theme in an appearance before a House of Representatives Committee early in 1981 to address his proposal to eliminate funding for the agency’s competition mission. Stockman said, “ . . . in recent years the FTC has served the public interest very poorly, in major part because it has sought to expand its power and influence beyond that envisioned by Congress.”126

Beyond generalized claims of institutional disobedience, the accusation of disregard for congressional will was invoked to justify proposals to impose restrictions on specific FTC initiatives. For example, in the fall of 1979, the Senate Commerce Committee held hearings on a proposal by Senator Howell Heflin to eliminate the FTC’s power to order divestiture or other forms ofstructural relief in non-merger cases.127 This was a shot across the bow of the FTC’s pending “shared monopoly”128 cases involving the breakfast cereal and petroleum refining sectors, where the FTC had requested structural relief (divestitures and, in the cereal case, compulsory trademark licensing) to restore competition.129 Congress did not adopt the Helfin proposal, but the idea of eliminating or restricting the FTC’s power to seek divestiture remained a serious threat to the agency. Roughly a year after the Commerce Committee hearings on the Heflin amendment, on the day before the balloting in the 1980 presidential elections, Vice-President Walter Mondale appeared at a campaign rally in Battle Creek, Michigan (the headquarters of the Kellogg Company). The Vice-President assured his audience that, if he and President Jimmy Carter were reelected, the Carter administration would seek legislation to ban the FTC from obtaining divestiture in the breakfast cereal shared monopolization case.130

A second, related claim was that the FTC had abandoned any adherence to sound administrative practice and descended into utterly irrational decision making. The agency was not merely disobedient (“rogue”) but crazy (“insane”), as well.131 Here, again, Congressman Frenzel pungently made the point. The FTC, Frenzel said, “is a king-sized cancer on our economy. It has undoubtedly added more unnecessary costs on American consumers who it is charged with protecting, than any other half dozen agencies combined.” 132 David Stockman’s initial broadside against the Commission in February 1981 echoed this sentiment. In a newspaper interview, Stockman said the FTC “is a passel of ideologues who are hostile to the business system, to the free enterprise system, and who sit down there and invent theories that justify more meddling and interference in the economy.”133

The accusation of disobedience and the diagnosis of insanity fit poorly, or at least awkwardly, with the positive record of the FTC’s activities in the 1970s. As discussed immediately below, the rogue agency story clashes with the many instances, especially between 1969 and 1976, in which congressional committees and key legislators directed the agency to carry out an aggressive, innovative enforcement program against major commercial interests. In 1969, numerous legislators endorsed the view of two external studies that the FTC had used its authority timidly and ineffectively.134 Leading members of Congress demanded that the agency transform its competition and consumer programs or face extinction.135

Congress described the content of the desired transformation in several ways. At a high level, oversight committees and individual legislators called for a dramatic boost in the agency’s appetite to undertake ambitious, risky projects—to replace a cautious, risk-avoiding decision calculus with a bold philosophy that erred in favor of intervention and used the agency’s elastic powers innovatively. Congress’s admonition to be aggressive and use power expansively emerged again and again in confirmation proceedings and routine oversight hearings.136 During hearings in 1970 to confirm Caspar Weinberger to be the Commission’s new chair, Senator Warren Magnuson, Chairman of the Senate Commerce Committee, told the nominee to “maintain the right kind of morale by recruiting strongly and expanding . . . Trade Commission programs in order to perform the job well.”137 In setting out this charge, Magnuson seemed to recognize that the FTC would have to be steadfast in resisting backlash—including from Congress—that would emerge as the FTC went about “expanding” its programs. The Commerce Committee Chairman said Congress was calling on the FTC to perform “tasks that require a great deal of attention and a great deal of fortitude not to respond to any pressures that come from any place.”138

Weinberger’s successor, Miles W. Kirkpatrick, received similar, and even more explicit congressional guidance, to apply the Commission’s powers broadly and aggressively. In 1969, Kirkpatrick had chaired a blueribbon American Bar Association panel whose report recommended the FTC implement an ambitious antitrust agenda that involved significant doctrinal, operational, and political risks.139 In his appearances as FTC chair before congressional committees, Kirkpatrick often heard legislators applaud the risk-preferring approach of the ABA study. In Kirkpatrick’s first appearance before the Commission’s Senate Appropriations subcommittee in 1971, the Subcommittee Chairman, Senator Gale McGee, provided the following guidance:

I think this is one of the Federal commissions that has a much larger responsibility and capability than sometimes it has been willing to live up to for reasons of congressional sniping at it in some respects or pressures put on it through the industry and the like.

Too often it has been either shy or bashful. . . . That is why we were having a rather closer look at your requests just in the hopes of encouraging you, if anything, to make mistakes, but I think the mistakes you are to make ought to be mistakes in doing and trying rather than playing safe in not doing. I believe that is the most serious mistake of all . . . you are not faulted for making mistakes. You may be for making it twice in a row, for not learning properly but, we would rather you make a mistake innovating, trying something new, rather than playing so cautiously that you never make a mistake. . . . 140

In his appearance before the same subcommittee a year later, Senator McGee observed with approval that Kirkpatrick had “responded to the criticism . . . by both Mr. [Ralph] Nader and the American Bar Association by moving aggressively against some of the major industries in the United States.” 141 Recognizing that the approach he described could elicit opposition from affected business interests, McGee promised that he and his colleagues would exercise best efforts to watch the agency’s back: “[I]f you step on toes you are going to catch flak for it, but I hope we will be able to push this even more aggressively by backing you more completely with the kind of help that I think you require.”142 McGee closed the proceedings with militant instructions:

“Stay with it and flex your muscles, clinch your fists, sharpen your claws, and go to it. We think this is desperately important in the interest of the Congress, whose creature you are, and the consumer whose faith and substantive capabilities in surviving hang very heavily upon what you succeed in doing.”143

Kirkpatrick served as the FTC’s chair for just over twenty-nine months. The Commission’s new chair, Lewis Engman, received the same policy guidance that Congress had provided Weinberger and Kirkpatrick. At Engman’s confirmation hearing before the Senate Commerce Committee early in 1973, Senator Frank Moss observed:

Under . . . Weinberger and Kirkpatrick, the Commission has taken on new life beginning with the search for strong and imaginative, rigorous developers and enforcers of the law and reaching out with innovative programs to restore competition and to make consumer sovereignty more than chamber of commerce rhetoric. 144

With evident approval, Moss recounted how the FTC had “stretched its powers to provide a credible countervailing public force to the enormous economic and political power of huge corporate conglomerates which today dominate American enterprise.” 145 The members of the Senate Commerce Committee, Moss concluded, “consider it one of our solemn duties to protect the Commission from economic and political forces which would deflect it from its regulatory zeal.” 146 Member after member of the Commerce Committee echoed Moss’s message to Engman. Senator Ted Stevens, an Alaska Republican, told the nominee, “I am really hopeful that . . . you will become a real zealot in terms of consumer affairs and some of these big business people will complain to us that you are going too far. That would be the day, as far as I am concerned.”147

The FTC got the message. The words and actions of Weinberger, Kirkpatrick, Engman, and other FTC leaders in this period reflected a preference for boldness, aggressiveness, innovation, and zeal. In a letter to Senator Edward Kennedy in July 1970, Weinberger reported that the FTC was trying “to make the most of that other resource given to us by Congress – our statutory powers.” 148 Weinberger said the Commission had “encouraged the staff to make recommendations to us which will probe the frontiers of our statutes,” had made progress in “[p]robling the outer limits” and “exploring the frontiers” of the agency’s authority, and had shown it “is receptive to novel and imaginative provisions in orders seeking to remedy unlawful practices.”149 In a speech to a professional association in 1971, Kirkpatrick reported that the Commission was “moving into ‘high gear’ in the task of preserving and promoting competition in the American economy.”150 He said he and his fellow board members “fully intend to be in the vanguard of exploration of the new frontiers of antitrust law.”151

By mid-1974, the FTC had launched several significant cases involving monopolization and collective dominance, including pathbreaking shared monopolization cases against the breakfast cereal152 and petroleum refining industries.153 With these matters underway, Engman in 1974 appeared at a congressional hearing of the Joint Economic Committee and received criticism that the FTC had been insufficiently active in challenging monopolies.154 The Joint Committee’s chairman, Senator William Proxmire, told Engman “the FTC, like a number of other regulatory agencies seems to concern itself with minor infractions of the law, and to spend much of its time on cases of small consequence.”155 Perhaps astonished to hear that cases to break up the nation’s leading breakfast cereal manufacturers and petroleum refiners involved minor infractions or matters of small consequence, Engman replied, “The Federal Trade Commission today is very aggressive. . . . We have seen a total turnaround in terms of the types of matters which are being addressed by the Bureau of Competition.”156

Beyond general policy exhortations to exercise power boldly and to err on the side of intervention, of doing too much rather than too little, Congress in the early to mid-1970s instructed the Commission to focus attention on specific commercial sectors and competitive problems within them. In the face of severe fuel shortages and price spikes for petroleum products in the early 1970s, numerous legislators demanded that the FTC conduct investigations and challenge the conduct of large, integrated petroleum companies. 157 Many insisted that the FTC use its competition mandate to force integrated refiners to deal on equitable terms with independent refiners and distributors.158 The Commission’s decision to file the Exxon shared monopoly case, which sought extensive horizontal and vertical divestiture remedies, can be explained as a response to these demands.159 In the same period, Congress applied strong pressure upon the FTC to examine and correct what it believed to be serious structural obstacles to effective competition in the food manufacturing industry.160 Here, also, the agency’s decision to prosecute the shared monopolization case against the country’s leading producers of ready-to-eat breakfast cereals can be seen as a response to this concern and faithful to the congressional prescription that the FTC use novel, innovative approaches to cure competitive problems.161 In these and other matters, the Commission explored the frontiers of its powers in the development of new cases.162

When one aligns the guidance of Congress in the early to mid-1970s about the appropriate content of FTC policy making with the FTC’s activity in the decade, it is apparent that the critique of the agency as disobedient to legislative will is a fiction, or at least badly misleading. A more accurate positive depiction of events in the 1970s is that the Commission faithfully followed legislative instructions given from 1970 up through the mid-1970s about the appropriate philosophy and means of enforcement, and that, as the decade came to a close, Congress changed its mind about what the FTC should do and how it should do it. As described below in Section IV.D., 163 that change in legislative temperament and the response by Congress to industry backlash against the FTC’s program have important implications for how the FTC plans programs and selects projects in the future. Accurate positive analysis reveals that the agency was not disobedient to Congress but was inattentive to the operation of a political feedback loop that exposes Congress to industry pressure once the FTC implements programs that involve significant economic stakes and endanger powerful commercial interests.164

Nor does a careful study of the positive record of the 1970s show that the FTC policy making was “insane.” Measured by its contributions to institution-building, the Commission did many things that epitomize good public administration. It carried out important organizational and personnel reforms that upgraded its operations and personnel.165 As explained more fully below, the agency also improved its mechanisms for setting priorities and selecting projects to achieve them and strengthened investments in policy research and development (including a program to evaluate the effects of completed cases).166 The FTC successfully carried out new regulatory duties entrusted by Congress in the 1970s; most notable was the implementation of the premerger notification mechanism that Congress created in the Hart-Scott-Rodino Antitrust Improvements Act of 1976.167 In all of these areas, the Commission of the 1970s made enduring enhancements to the institution and set important foundations for successful programs that followed in the next forty years. An insane agency could not have done so.

Another focal point for attention in assessing the FTC’s performance in the 1970s was the quality of its substantive agenda. Was the FTC’s substantive program in the 1970s “insane”? Many Commission competition and consumer protection initiatives in the 1970s encountered grave problems. FTC efforts to execute the bold, innovative, risk-preferring program that Congress had called for earlier in the decade generated a number of serious project failures.168 Insanity, on the part of individual leaders or the institution as a whole, does not explain the failures. These outcomes have more prosaic causes whose understanding is important to the future formulation of competition policy. Chief among the FTC’sflaws were a lack of historical awareness about the political hazards associated with undertaking an agenda of bold, innovative cases against powerful commercial interests; inadequate appreciation for the demands of bringing large numbers of difficult cases and promulgating ambitious trade regulation rules would impose on the agency’s improving but uneven human capital; and underestimation of the change in the center of gravity of economic learning that supports the operation of the U.S. antitrust system. As described below, many of these failings are rooted in weaknesses in the FTC’s knowledge in the 1970s of the positive record of its past enforcement experience.169

B. The Inadequate and Misdirected Enforcement Activity Narrative

Like the hyperactivity narrative described above, the inadequate activity narrative relies heavily on enforcement data to support the view that the federal antitrust agencies have brought too few cases overall and, when filing cases, have focused resources on the wrong types of matters.

Implicit or explicit assumptions about the level of enforcement activity have provided a central foundation in the modern era for broad normative claims of poor system performance. One collection of inadequacy critiques attacks federal enforcement program of the Reagan administration – a period characterized by what one journalist described as an “almost total abandonment of antitrust policy.” 170 In 1987, in discussing Reagan-era federal antitrust enforcement, Professor Robert Pitofsky said the DOJ and the FTC had produced “the most lenient antitrust enforcement program in fifty years.” 171 Professor Milton Handler remarked that in the Reagan era “a policy of nonenforcement has set in, much to the distress of those who believe that without antitrust the free market cannot remain free.” 172 Professors Lawrence Sullivan and Wolfgang Fikentscher observed, in addressing the treatment of civil nonmerger matters, “enforcement ceased.”173

A second body of commentary assails the work of the federal agencies in the George W. Bush administration. For example, in 2008, during his campaign to gain the Democratic Party’s nomination for the presidency, Barack Obama said the George W. Bush administration “has what may be the weakest record of antitrust enforcement of any administration in the last half-century.” 174 The Obama statement did not compare activity levels across all administrations over the 50-year-long comparison period, but the statement suggested that the general claim was based on variations in activity over time.

A third version of the inadequacy narrative marks the beginning of the decline of effective enforcement at the outset of the George W. Bush administration and extending through the present.175

A fourth variant writes off the entire period from roughly 1980 onward as an antitrust catastrophe.176 After noting that for most of the 20th century “antitrust enforcement waxed or waned depending on the administration in office,” Professor Robert Reich recently wrote that “after 1980 it all but disappeared.”177 He added that Presidents Bill Clinton and Barack Obama “allowed antitrust enforcement to ossify, enabling large corporations to grow far larger and major industries to become more concentrated.” 178

Presented below are categories of arguments that rely upon specific assertions about the positive record of modern antitrust enforcement. These arguments make positive claims regarding either the amount of activity, the reasons for observed behavior, or both.

GENERAL CRITICISMS OF ANTITRUST ENFORCEMENT: BORK, REAGAN, AND THE DESTRUCTION OF U.S. COMPETITION POLICY

Many commentators have offered explanations for why federal antitrust enforcement became inadequate after the late 1970s. One major positive explanation is that the modern Chicago School of antitrust analysis, grounded largely in the writings of Robert Bork, inspired a severe retrenchment of enforcement at the DOJ and the FTC and led the federal courts to narrow antitrust doctrine since the late 1970s.179 A major focus of this discussion of the causes for changes in enforcement involves rules governing the treatment of dominant firms.180

A second cause offered to explain a redirection of enforcement is the ascent to the presidency of Ronald Reagan and his appointment of permissive leadership to the DOJ and the FTC.181 The Reagan administration is said to have inherited a generally well-functioning antitrust enforcement system and run it into the ground.

The Chicago School, Bork-centric, and Reagan-centric explanations for policy change can be misleading due to mischaracterizations of what took place and their tendency to omit other forces that had helped narrow the scope of antitrust enforcement. Bork and the Chicago School unmistakably have exerted a significant impact upon modern antitrust policy, but the retrenchment of antitrust enforcement in some areas cannot accurately be attributed to them entirely or, for a number of important developments, even principally. 182 Many proponents of the inadequacy narrative make little or no mention of the role of modern Harvard School scholars, such as Philip Areeda and Donald Turner, in leading courts and enforcement agencies to move the antitrust system toward a less interventionist stance.183

Areeda and Turner encouraged courts to forego reliance on noneconomic goals in deciding antitrust cases. 184 The two Harvard scholars also advocated the adoption of stricter procedural and doctrinal screens to counteract what they perceived to be flaws in the U.S. system of private rights of action.185 The inadequacy narrative often overlooks the influence of the modern Harvard School and thus misses how much the permissiveness of modern antitrust policy reflects the Harvard School’s concern that private rights of action over-deter legitimate business conduct by dominant firms.186 This yields a faulty positive diagnosis of the forces that have reduced the reach of the U.S. antitrust regime. As noted below, understanding how the institution-grounded limitations proposed by the modern Harvard School have imposed greater demands on plaintiffs has important implications for government plaintiffs seeking to devise a strategy to reclaim doctrinal ground lost since the 1970s.187

Similar imprecision and omission characterize the portrayal of the Reagan administration as the force that swung antitrust policy away from a sensible interventionist equilibrium and gave it a durably noninterventionist orientation. Some elements of the Reagan-centric narrative turn events 180 degrees around from their positive roots.188 More significant, the narrative does not address how badly the Congress and the White House had damaged the FTC’s stature and operations before Ronald Reagan took office in late January 1981. By the end of 1980, the Commission had been shoved into the equivalent of political bankruptcy by a Congress and a White House under the control of the Democratic Party.189

By treating the 1980 presidential election as the cause of an abrupt change in federal antitrust enforcement policy, the Reagan-centric inadequacy narrative fails to grasp the significance of the political assault, led by Democrats, against the FTC in the late 1970s. Recognition of how the FTC’s relationship with Congress changed over the course of the 1970s forces one to confront the question of why an agency that enjoyed powerful congressional support through much of the decade came to grief so quickly. The episode has a sobering cautionary lesson for contemporary policy making: it demonstrates how quickly congressional attitudes can change once powerful business interests affected by FTC actions bring their resources to bear upon Congress, and how turnover in the legislature can erode vital political support. An accurate positive account of the 1970s suggests that an agency should strive to complete its cases and rulemaking initiatives as expeditiously as possible, lest long lags between the start and conclusion of matters expose the agency to debilitating political backlash. This policy making prescription becomes apparent only by forming an accurate picture of what happened to the FTC in the 1970s.

#### Key to regulate FRT

Jessica Rich 11/18, former director of the Federal Trade Commission’s (FTC) Bureau of Consumer Protection (BCP), Counsel at Kelley Drye LLP, “Some fireworks at Bedoya’s Senate confirmation hearing, but confirmation still seems likely,” Ad Law Access, 11-18-2021, https://www.adlawaccess.com/2021/11/articles/some-fireworks-at-bedoyas-senate-confirmation-hearing-but-confirmation-still-seems-likely/

On November 17, the Senate Commerce Committee held its eagerly-awaited hearing on the nomination of Alvaro Bedoya, a data privacy academic from Georgetown Law, to be FTC Commissioner. Bedoya is slated to replace Rohit Chopra, who departed the agency last month to become Director of the CFPB, and Bedoya’s appointment would once again give the Democrats a voting majority. In the run-up to his hearing, some have wondered – Can we expect Bedoya to provide Chair Khan with a reliable third vote for her agenda, or will he bring a more bipartisan approach to the agency? From his answers and demeanor at the hearing, the answer is probably…both.

First, a little table-setting: Bedoya’s nomination was considered along with three others – Jessica Rosenworcel for FCC Chair and two nominees for the Department of Commerce. The hearing was well-attended by Committee members, who directed the majority of their questions to Rosenworcel. (Yes, net neutrality, broadband access, and the “homework gap” all got more attention than privacy.) All four current FTC Commissioners attended the hearing in person, in a bipartisan show of support for Bedoya, though Bedoya attended remotely due to a recent exposure to COVID.

Here are some takeaways from Bedoya’s portion of the hearing.

He appears likely to be confirmed, even if largely along party lines. Although Senator Wicker made a reference to Bedoya’s “strident” views and Senators Lee, Cruz, and Sullivan slammed his “extremist” tweets (see below), most of the questions (from 18 Senators!) related to Bedoya’s area of expertise (privacy), where there is more alignment between the parties than in other areas. He handled the questions well, and repeatedly expressed support for collaboration and bipartisanship (e.g., specifically mentioning that he wants to work closely with Commissioner Wilson on privacy). Democrats have the votes (in the Committee and on the Senate floor), even if they ultimately have to call in V.P. Harris to break a tie.

He spoke about his nomination and the issues in personal and emotional terms. Bedoya highlighted that he and his family were welcomed into this country 34 years ago. He talked about his experience as a Senate staffer, learning about the terror and harm caused by stalking apps from a shelter for battered women. He realized then and believes now that “privacy is not just about data, it’s about people.” His goal as a Commissioner would be to make sure the FTC protects people, and to help both consumers and businesses manage the multiple crises facing the country – a COVID crisis, a privacy crisis, and a small business crisis.

He appears likely to vote with the majority on many (or most) issues. No big surprise here, but when asked his views about various issues, he consistently supported positions that Khan, Slaughter, and (his predecessor) Chopra have supported – federal privacy legislation, Magnuson-Moss privacy rulemaking if Congress doesn’t act, pushing back against the “unprecedented consolidation” that is forcing small businesses to close, streamlining the FTC’s rulemaking and subpoena processes, reducing the power of the platforms, and reining in tracking technologies like facial recognition. As to the latter, he said he would not support banning facial recognition technologies altogether, since some applications assist with benefits like public safety and healthcare. However, he would support banning facial recognition technologies that are hidden, that lack consent, or that collect, use, and share data without limits.

He’s a real-live privacy expert. He clearly has the credentials, starting with his work as a Senate staffer and continuing through his years at Georgetown Law as a professor and head of a privacy think tank. But he also quickly and confidently answered all questions related to privacy – from the need for privacy legislation generally, to his views on Senator Schatz’s “duty of loyalty” and Senator Markey’s proposal to amend COPPA, to the lines he would draw on facial recognition (see above).

He wrote some controversial tweets, and a number of Republicans seem poised to vote “no” on his confirmation. Senator Sullivan cited a tweet from Bedoya calling the 2016 Republican convention a “White Supremacist rally.” Cruz cited tweets about ICE as a “domestic surveillance agency” and a retweet involving critical race theory and white supremacy. He also called Bedoya a “left wing activist, bomb thrower, extremist, and provocateur.” Lee ran through a series of supposedly “yes or no” questions in rapid succession, and accused Bedoya of being evasive when he tried to qualify his responses. And Wicker referred to Bedoya’s “strident” views, as noted above. As to the tweets, Bedoya apologized, saying that it was “rhetoric” and that he would put aside any partisan views if he became Commissioner. However, these Senators (and perhaps other Republicans) seem poised to vote “no” on Bedoya’s confirmation, and some have said they plan to place a “hold” on the process, which could slow it down.

If confirmed, he could help reduce tensions at the Commission. With acrimony among the Commissioners currently at unprecedented levels (see our recent post here), adding Bedoya to the mix could help reduce the tensions (despite the tweets). He’s known to be collegial, he worked across the aisle as a Senate staffer, he repeatedly invoked bipartisanship at the hearing, and all of the sitting Commissioners (Democrats and Republicans) showed up at the hearing to support him. That augurs well for the dynamics at the Commission, even if the votes remain split along party lines.

We will continue to monitor progress on Bedoya’s nomination and post updates as they occur.

#### Bad FRT models cause democratic backsliding – proactive US regulation is key

Kendall-Taylor et al 20, Andrea Kendall-Taylor is senior fellow and director of the Transatlantic Security Program at the Center for a New American Security, co-author of Democracies and Authoritarian Regimes; Erica Frantz is Assistant Professor of Political Science at Michigan State University; Joseph Wright is Professor of Political Science at Pennsylvania State University, “The Digital Dictators,” Foreign Affairs, Mar/Apr 2020, <https://www.foreignaffairs.com/articles/china/2020-02-06/digital-dictators>

THE CHINA MODEL

The advancement of AI-powered surveillance is the most significant evolution in digital authoritarianism. High-resolution cameras, facial recognition, spying malware, automated text analysis, and big-data processing have opened up a wide range of new methods of citizen control. These technologies allow governments to monitor citizens and identify dissidents in a timely—and sometimes even preemptive—manner.

No regime has exploited the repressive potential of AI quite as thoroughly as the one in China. The Chinese Communist Party collects an incredible amount of data on individuals and businesses: tax returns, bank statements, purchasing histories, and criminal and medical records. The regime then uses ai to analyze this information and compile “social credit scores,” which it seeks to use to set the parameters of acceptable behavior and improve citizen control. Individuals or companies deemed “untrustworthy” can find themselves excluded from state-sponsored benefits, such as deposit-free apartment rentals, or banned from air and rail travel. Although the ccp is still honing this system, advances in big-data analysis and decision-making technologies will only improve the regime’s capacity for predictive control, what the government calls “social management.”

China also demonstrates the way digital repression aids the physical variety—on a mass scale. In Xinjiang, the Chinese government has detained more than a million Uighurs in “reeducation” camps. Those not in camps are stuck in cities where neighborhoods are surrounded by gates equipped with facial recognition software. That software determines who may pass, who may not, and who will be detained on sight. China has collected a vast amount of data on its Uighur population, including cell phone information, genetic data, and information about religious practices, which it aggregates in an attempt to stave off actions deemed harmful to public order or national security.

New technologies also afford Chinese officials greater control over members of the government. Authoritarian regimes are always vulnerable to threats from within, including coups and high-level elite defections. With the new digital tools, leaders can keep tabs on government officials, gauging the extent to which they advance regime objectives and rooting out underperforming officials who over time can tarnish public perception of the regime. For example, research has shown that Beijing avoids censoring citizens’ posts about local corruption on Weibo (the Chinese equivalent of Twitter) because those posts give the regime a window into the performance of local officials.

In addition, the Chinese government deploys technology to perfect its systems of censorship. AI, for example, can sift through massive amounts of images and text, filtering and blocking content that is unfavorable to the regime. As a protest movement heated up in Hong Kong last summer, for example, the Chinese regime simply strengthened its “Great Firewall,” removing subversive content from the Internet in mainland China almost instantaneously. And even if censorship fails and dissent escalates, digital autocracies have an added line of defense: they can block all citizens’ access to the Internet (or large parts of it) to prevent members of the opposition from communicating, organizing, or broadcasting their messages. In Iran, for example, the government successfully shut down the Internet across the country amid widespread protests last November.

Although China is the leading player in digital repression, autocracies of all stripes are looking to follow suit. The Russian government, for example, is taking steps to rein in its citizens’ relative freedom online by incorporating elements of China’s Great Firewall, allowing the Kremlin to cut off the country’s Internet from the rest of the world. Likewise, Freedom House reported in 2018 that several countries were seeking to emulate the Chinese model of extensive censorship and automated surveillance, and numerous officials from autocracies across Africa have gone to China to participate in “cyberspace management” training sessions, where they learn Chinese methods of control.

THE VELVET GLOVE

Today’s technologies not only make it easier for governments to repress critics; they also make it easy to co-opt them. Tech-powered integration between government agencies allows the Chinese regime to more precisely control access to government services, so that it can calibrate the distribution—or denial—of everything from bus passes and passports to jobs and access to education. The nascent social credit system in China has the effect of punishing individuals critical of the regime and rewarding loyalty. Citizens with good social credit scores benefit from a range of perks, including expedited overseas travel applications, discounted energy bills, and less frequent audits. In this way, new technologies help authoritarian regimes fine-tune their use of reward and refusal, blurring the line between co-option and coercive control.

Dictatorships can also use new technologies to shape public perception of the regime and its legitimacy. Automated accounts (or “bots”) on social media can amplify influence campaigns and produce a flurry of distracting or misleading posts that crowd out opponents’ messaging. This is an area in which Russia has played a leading role. The Kremlin floods the Internet with pro-regime stories, distracting online users from negative news, and creates confusion and uncertainty through the spread of alternative narratives.

Maturing technologies such as so-called microtargeting and deepfakes—digital forgeries impossible to distinguish from authentic audio, video, or images—are likely to further boost the capacity of authoritarian regimes to manipulate their citizens’ perceptions. Microtargeting will eventually allow autocracies to tailor content for specific individuals or segments of society, just as the commercial world uses demographic and behavioral characteristics to customize advertisements. Ai-powered algorithms will allow autocracies to microtarget individuals with information that either reinforces their support for the regime or seeks to counteract specific sources of discontent. Likewise, the production of deepfakes will make it easier to discredit opposition leaders and will make it increasingly difficult for the public to know what is real, sowing doubt, confusion, and apathy.

Digital tools might even help regimes make themselves appear less repressive and more responsive to their citizens. In some cases, authoritarian regimes have deployed new technologies to mimic components of democracy, such as participation and deliberation. Some local Chinese officials, for example, are using the Internet and social media to allow citizens to voice their opinions in online polls or through other digitally based participatory channels. A 2014 study by the political scientist Rory Truex suggested that such online participation enhanced public perception of the ccp among less educated citizens. Consultative sites, such as the regime’s “You Propose My Opinion” portal, make citizens feel that their voices matter without the regime having to actually pursue genuine reform. By emulating elements of democracy dictatorships can improve their attractiveness to citizens and deflate the bottom-up pressure for change.

DURABLE DIGITAL AUTOCRACIES

As autocracies have learned to co-opt new technologies, they have become a more formidable threat to democracy. In particular, today’s dictatorships have grown more durable. Between 1946 and 2000—the year digital tools began to proliferate—the typical dictatorship ruled for around ten years. Since 2000, this number has more than doubled, to nearly 25 years.

Not only has the rising tide of technology seemingly benefited all dictatorships, but our own empirical analysis shows that those authoritarian regimes that rely more heavily on digital repression are among the most durable. Between 2000 and 2017, 37 of the 91 dictatorships that had lasted more than a year collapsed; those regimes that avoided collapse had significantly higher levels of digital repression, on average, than those that fell. Rather than succumb to what appeared to be a devastating challenge to their power—the emergence and spread of new technologies—many dictatorships leverage those tools in ways that bolster their rule.

Although autocracies have long relied on various degrees of repression to support their objectives, the ease with which today’s authoritarian regimes can acquire this repressive capacity marks a significant departure from the police states of the past. Building the effectiveness and pervasiveness of the East German Stasi, for example, was not something that could be achieved overnight. The regime had to cultivate the loyalty of thousands of cadres, training them and preparing them to engage in on-the-ground surveillance. Most dictatorships simply do not have the ability to create such a vast operation. There was, according to some accounts, one East German spy for every 66 citizens. The proportion in most contemporary dictatorships (for which there are data) pales in comparison. It is true that in North Korea, which ranks as possibly the most intense police state in power today, the ratio of internal security personnel and informants to citizens is 1 to 40—but it was 1 to 5,090 in Iraq under Saddam Hussein and 1 to 10,000 in Chad under Hissene Habre. In the digital age, however, dictatorships don’t need to summon immense manpower to effectively surveil and monitor their citizens.

Instead, aspiring dictatorships can purchase new technologies, train a small group of officials in how to use them—often with the support of external actors, such as China—and they are ready to go. For example, Huawei, a Chinese state-backed telecommunications firm, has deployed its digital surveillance technology in over a dozen authoritarian regimes. In 2019, reports surfaced that the Ugandan government was using it to hack the social media accounts and electronic communications of its political opponents. The vendors of such technologies don’t always reside in authoritarian countries. Israeli and Italian firms have also sold digital surveillance software to the Ugandan regime. Israeli companies have sold espionage and intelligence-gathering software to a number of authoritarian regimes across the world, including Angola, Bahrain, Kazakhstan, Mozambique, and Nicaragua. And U.S. firms have exported facial recognition technology to governments in Saudi Arabia and the United Arab Emirates.

A SLIPPERY SLOPE

As autocracies last longer, the number of such regimes in place at any point in time is likely to increase, as some countries backslide on democratic rule. Although the number of autocracies globally has not risen substantially in recent years, and more people than ever before live in countries that hold free and fair elections, the tide may be turning. Data collected by Freedom House show, for example, that between 2013 and 2018, although there were three countries that transitioned from “partly free” to “free” status (the Solomon Islands, Timor-Leste, and Tunisia), there were seven that experienced the reverse, moving from a status of “free” to one of “partly free” (the Dominican Republic, Hungary, Indonesia, Lesotho, Montenegro, Serbia, and Sierra Leone).

The risk that technology will usher in a wave of authoritarianism is all the more concerning because our own empirical research has indicated that beyond buttressing autocracies, digital tools are associated with an increased risk of democratic backsliding in fragile democracies. New technologies are particularly dangerous for weak democracies because many of these digital tools are dual use: technology can enhance government efficiency and provide the capacity to address challenges such as crime and terrorism, but no matter the intentions with which governments initially acquire such technology, they can also use these tools to muzzle and restrict the activities of their opponents.

Pushing back against the spread of digital authoritarianism will require addressing the detrimental effects of new technologies on governance in autocracies and democracies alike. As a first step, the United States should modernize and expand legislation to help ensure that U.S. entities are not enabling human rights abuses. A December 2019 report by the Center for a New American Security (where one of us is a senior fellow) highlights the need for Congress to restrict the export of hardware that incorporates AI-enabled biometric identification technologies, such as facial, voice, and gait recognition; impose further sanctions on businesses and entities that provide surveillance technology, training, or equipment to authoritarian regimes implicated in human rights abuses; and consider legislation to prevent U.S. entities from investing in companies that are building ai tools for repression, such as the Chinese ai company SenseTime.

The U.S. government should also use the Global Magnitsky Act, which allows the U.S. Treasury Department to sanction foreign individuals involved in human rights abuses, to punish foreigners who engage in or facilitate Ai-powered human rights abuses. Ccp officials responsible for atrocities in Xinjiang are clear candidates for such sanctions.

U.S. government agencies and civil society groups should also pursue actions to mitigate the potentially negative effects of the spread of surveillance technology, especially in fragile democracies. The focus of such engagement should be on strengthening the political and legal frameworks that govern how surveillance technologies are used and building the capacity of civil society and watchdog organizations to check government abuse.

What is perhaps most critical, the United States must make sure it leads in AI and helps shape global norms for its use in ways that are consistent with democratic values and respect for human rights. This means first and foremost that Americans must get this right at home, creating a model that people worldwide will want to emulate. The United States should also work in conjunction with like-minded democracies to develop a standard for digital surveillance that strikes the right balance between security and respect for privacy and human rights. The United States will also need to work closely with like-minded allies and partners to set and enforce the rules of the road, including by restoring U.S. leadership in multilateral institutions such as the United Nations.

AI and other technological innovations hold great promise for improving everyday lives, but they have indisputably strengthened the grip of authoritarian regimes. The intensifying digital repression in countries such as China offers a bleak vision of ever-expanding state control and ever-shrinking individual liberty.

But that need not be the only vision. In the near term, rapid technological change will likely produce a cat-and-mouse dynamic as citizens and governments race to gain the upper hand. If history is any guide, the creativity and responsiveness of open societies will in the long term allow democracies to more effectively navigate this era of technological transformation. Just as today’s autocracies have evolved to embrace new tools, so, too, must democracies develop new ideas, new approaches, and the leadership to ensure that the promise of technology in the twenty-first century doesn’t become a curse.

#### Prevents nuke war

Dr. Larry Diamond 19, Professor of Political Science and Sociology at Stanford University, Senior Fellow at the Hoover Institution, Senior Fellow at the Freeman Spogli Institute for International Studies, PhD in Sociology from Stanford University, Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition, and American Complacency, p. 199-202

The most obvious response to the ill winds blowing from the world’s autocracies is to help the winds of freedom blowing in the other direction. The democracies of the West cannot save themselves if they do not stand with democrats around the world.

This is truer now than ever, for several reasons. We live in a globalized world, one in which models, trends, and ideas cascade across borders. Any wind of change may gather quickly and blow with gale force. People everywhere form ideas about how to govern—or simply about which forms of government and sources of power may be irresistible—based on what they see happening elsewhere. We are now immersed in a fierce global contest of ideas, information, and norms. In the digital age, that contest is moving at lightning speed, shaping how people think about their political systems and the way the world runs. As doubts about and threats to democracy are mounting in the West, this is not a contest that the democracies can afford to lose.

Globalization, with its flows of trade and information, raises the stakes for us in another way. Authoritarian and badly governed regimes increasingly pose a direct threat to popular sovereignty and the rule of law in our own democracies. Covert flows of money and influence are subverting and corrupting our democratic processes and institutions. They will not stop just because Americans and others pretend that we have no stake in the future of freedom in the world. If we want to defend the core principles of self-government, transparency, and accountability in our own democracies, we have no choice but to promote them globally.

It is not enough to say that dictatorship is bad and that democracy, however flawed, is still better. Popular enthusiasm for a lesser evil cannot be sustained indefinitely. People need the inspiration of a positive vision. Democracy must demonstrate that it is a just and fair political system that advances humane values and the common good.

To make our republics more perfect, established democracies must not only adopt reforms to more fully include and empower their own citizens. They must also support people, groups, and institutions struggling to achieve democratic values elsewhere. The best way to counter Russian rage and Chinese ambition is to show that Moscow and Beijing are on the wrong side of history; that people everywhere yearn to be free; and that they can make freedom work to achieve a more just, sustainable, and prosperous society.

In our networked age, both idealism and the harder imperatives of global power and security argue for more democracy, not less. For one thing, if we do not worry about the quality of governance in lower-income countries, we will face more and more troubled and failing states. Famine and genocide are the curse of authoritarian states, not democratic ones. Outright state collapse is the ultimate, bitter fruit of tyranny. When countries like Syria, Libya, and Afghanistan descend into civil war; when poor states in Africa cannot generate jobs and improve their citizens’ lives due to rule by corrupt and callous strongmen; when Central American societies are held hostage by brutal gangs and kleptocratic rulers, people flee—and wash up on the shores of the democracies. Europe and the United States cannot withstand the rising pressures of immigration unless they work to support better, more stable and accountable government in troubled countries. The world has simply grown too small, too flat, and too fast to wall off rotten states and pretend they are on some other planet.

Hard security interests are at stake. As even the Trump administration’s 2017 National Security Strategy makes clear, the main threats to U.S. national security all stem from authoritarianism, whether in the form of tyrannies from Russia and China to Iran and North Korea or in the guise of antidemocratic terrorist movements such as ISIS.1 By supporting the development of democracy around the world, we can deny these authoritarian adversaries the geopolitical running room they seek. Just as Russia, China, and Iran are trying to undermine democracies to bend other countries to their will, so too can we contain these autocrats’ ambitions by helping other countries build effective, resilient democracies that can withstand the dictators’ malevolence.

Of course, democratically elected governments with open societies will not support the American line on every issue. But no free society wants to mortgage its future to another country. The American national interest would best be secured by a pluralistic world of free countries—one in which autocrats can no longer use corruption and coercion to gobble up resources, alliances, and territory.

If you look back over our history to see who has posed a threat to the United States and our allies, it has always been authoritarian regimes and empires. As political scientists have long noted, no two democracies have ever gone to war with each other—ever. It is not the democracies of the world that are supporting international terrorism, proliferating weapons of mass destruction, or threatening the territory of their neighbors.

For all these reasons, we need a new global campaign for freedom. Everything I am proposing in this book plays a role in that campaign, but in this chapter, I am concerned more narrowly with the ways that we can directly advance democracy, human rights, and the rule of law in the twenty-first-century world.

As with any policy area, many of the challenges can be somewhat technical, requiring smart design and the careful management of programs and institutions. Those operational debates I leave for another venue. Here, I make a more basic case for four imperatives. First, we must support the democrats of the world—the people and organizations struggling to create and improve free and accountable government. Second, we must support struggling and developing democracies, helping them to grow their economies and strengthen their institutions. Third, we must pressure authoritarian regimes to stop abusing the rights and stealing the resources of their citizens, including by imposing sanctions on dictators to make them think hard about their choices and separate them from both their supporters and the people at large. Finally, we need to reboot our public diplomacy—our global networks of information and ideas—for today’s fast-paced age of information and disinformation. For the sake of both our interests and our values, we need a foreign policy that puts a high priority on democracy, human rights, and the rule of law.

## Case

### 2NC---AT: I/L

#### Alt causes swamp solvency:

#### 1. Small firm collaboration with China is inevitable, meaning IP theft is also inevitable.

#### 2. Plan only stops platforms so big companies like Apple and Microsoft, and smaller versions of broken-up companies like Google and Amazon can still collaborate with China’s military post-plan.

#### Chinese dependence inevitable---US companies want to sell to their market.

Thomas & Wu 21 (Christopher A. Thomas, Nonresident senior fellow in Foreign Policy at Brookings, a board director at Velodyne LIDAR, and a visiting professor at Tsinghua University, affiliated with the Brookings Artificial Intelligence and Emerging Technology Initiative; and Xue (Xander) Wu, startup advisor to open source software companies and an alumnus of Stanford Graduate School of Business; “How global tech executives view U.S.-China tech competition;” 02-25-21, Brookings, <https://www.brookings.edu/techstream/how-global-tech-executives-view-u-s-china-tech-competition/>, TM)

The future evolution of the global technology industry is often discussed as if it will be determined solely by government policy. Yet the entities that actually design next generation systems, deliver emerging technology solutions, code advanced software, run high-tech fabs, formulate electronic material recipes, and design state-of-the-art chips will collectively determine the outcome. As U.S. policymakers evaluate how to move forward regarding technology policy and China, they will have to accept certain hard realities. Lured by the sheer size of the Chinese market, U.S. companies will aim to compete there—as will competitors from Europe, Japan, Korea, Taiwan, and other advanced nations.

At the same time, Chinese policymakers will be limited in their options, as the likelihood of substantial and defensible technology independence is unattainable in the near-term and a longshot in the long-term. Chinese companies intending to sell solutions and services at scale and globally will still need to procure technology from global leaders, and many of those global leaders will likely be American companies. Major Chinese companies will face complex obstacles in building domestic supply chains for goods destined for the Chinese market—in parallel to a global supply chain for products for the rest of the world. Efforts by the government to limit the supply choices of Chinese companies lessen the competitiveness of these Chinese firms in global markets.

With this realization, the U.S. government could consider an approach that combines toughness and attraction. Such a policy would involve targeted technology transfer barriers for a limited number of leading technologies applied to firms with clear ties to PRC military or security interests, strengthened intellectual property protections for U.S. companies both at home and abroad, and nose-to-nose negotiations on Chinese home market access. At the same time, rather than motivating American and global tech companies not to do business with China at all, the new administration might consider shaping the inevitable business collaboration between Chinese and American firms to the advantage of the U.S. technology ecosystem. In other words: Promote American technology in global markets; don’t just protect it. And if openness to global talent, capital, and companies is to the advantage of the United States, then the Biden administration might consider doubling down on attracting those companies and countries that adhere to the transparent rules and norms of the American sphere. This could include those Chinese companies that aim to go global and can commit to doing so while using American-sourced technologies and protecting American-sourced innovation.

These policies must comprehend that these same Chinese companies generally will aim to enable and support a domestic, controllable supply chain as a backup plan. These efforts will receive strong support from the Chinese state. Chinese customers will be less incentivized to go local if American suppliers are innovating faster and delivering better technologies than local PRC alternatives. So while U.S. government policies that backstop American suppliers by pushing for a more level playing field and providing more tools to protect at-risk intellectual property can help, strengthening the innovation environment at home will also matter greatly. And universally in our survey, tech executives believe that openness to global talent and global companies strengthens that home-grown innovation engine.

Technology is an ecosystem game. Winning means aligning a set of companies and engineers around key technologies, maximizing investment to those technology themes and delivering an end-to-end value proposition that is better and has better economics than the alternatives. U.S. policies will be unlikely to convince the CCP not to pursue building a Chinese-dominated tech ecosystem and will be unlikely to convince multinational companies to avoid investing in such a Chinese ecosystem. Boundaries between the U.S. and Chinese ecosystems will be blurry, sharing certain supply chains, companies, standards, and technologies. This makes crafting bright-line policies that limit the success of the Chinese sphere difficult. Policies that mold the right environment for the U.S. technology ecosystem to thrive, while attracting as many global adherents as possible to that ecosystem, needs to be the core objective of U.S. policy. An American ecosystem that convinces the appropriate elements from China (such as globally-oriented technical talent or systems providers keen to win globally) to join the U.S. efforts will likely outperform one that completely excludes Chinese capital and talent. Defining and executing a policy to support such an open approach while protecting American IP, promoting a level playing field, and discouraging the misuse or theft of American technologies will be one of the defining challenges of the Biden administration.

#### 3. Plan’s reduction in China tech transfer is offset by reduced access to Chinese markets---that’s Jamison.

### 2nd advantage

#### Mergers thump

#### Alt causes to inequitable digital economies---no data sharing and lack of infrastructure---antitrust alone fails.

1AC Gurumurthy et al. ’20 [Anita “Unskewing the Data Value Chain: A Policy Research Agenda for Equitable Platform Economies”; (September 1, 2020); Available at SSRN: <https://ssrn.com/abstract=3872492>; AS]

Development is about how developing countries can move out of highly competitive activities with low margins to higher value activities with higher knowledge premiums, a process that has been recognized as structural transformation (Mann & Iazzolino, 2019). Fuelled by digital intelligence, all sectors of the economy are today undergoing a rapid makeover; a transition that requires developing countries to ensure that their productivity gains and digital capabilities are in a virtuous cycle. However, the “intelligence premium” harvested by dominant platform-lead firms in global data value chains constitutes a barrier to entry, impairing the global competitiveness of developing countries (Gurumurthy et al., 2019). The private enclosures of data and digital intelligence unfairly cement the competitive advantage of rich countries in global data value chains and thwart the potential for structural transformation of developing countries. Hence, while the data paradigm presents an urgency for systemic coordination towards national digital industrialization, it also represents a highly contested faultline in global resource redistribution.

The development question for the digital economy then is this: how can the data value chain be unskewed for redistributive equity and inclusion?

This conundrum has been the topic of significant, even if nascent, debates. Both traditional and new age policy proposals are being put forth from various quarters: institutional reform proposals from multilateral agencies and regional political blocs such as OECD, policy review assessments initiated at the national level, and unconventional and radical solutions from progressive civil society networks and scholars.

The emerging proposals can broadly be divided into three main areas: reining in Big Tech power, carving out a new resource governance regime for data resources, and building intelligence infrastructure capabilities in the Global South. Admittedly, many of the ideas involved are fledgling and demand in-depth exploration and robust debate before they can coalesce into clear and effective policies. But the juggernaut of Big Tech impunity and a yawning democratic deficit in global/regional policies in critical areas like trade, taxation and capital flows demand bold and agile action that eschews incremental, status quoist measures. They call for a conceptual overhaul that accounts for the realpolitik of geo-economic power.

The following sections take stock of noteworthy policy proposals that have emerged in each of the three areas, examining them critically and posing priority directions for a research agenda11 that can answer the following questions:  How are current policy directions and emerging institutional mechanisms able to address questions of market fairness and economic equity in the digital economy?  How do emerging global policy frameworks on data and AI impact national development priorities and pathways?

Area 1. Reining in Big Tech power through traditional policy instruments

In mainstream policy discourses in the digital arena, there is increasing recognition that competition and taxation policy reform are urgently needed to effectively curb Big Tech power in global data value chains.

With respect to competition policy, there is mounting consensus that industrial era competition law frameworks need to be overhauled so that they are able to effectively address the anti-competitive risks of network-data effects in data value chains. In 2020, the European Commission for Competition announced an in-depth study aimed at the updation of its merger assessment rubrics to address the realities of asset light, data heavy platform business models of the digital age (Modrall, 2020). The United States House Judiciary Committee has just concluded an investigation into the structural separations to be effected in data value chains to ensure that corporations controlling essential platform infrastructures are not also competing with the businesses that transact goods and services on them, the urgently needed “separation of platforms and commerce” that legal scholar, Lina Khan, has flagged in her study of Amazon’s antitrust behavior (Khan, 2017; 2019). Such interventions to overhaul traditional competition laws are urgently needed in the Global South as well.12

Currently, the European Union is exploring a limited form of structural separation by prohibiting specialized data sharing services from deploying the data that they transact for other uses, in an attempt to establish boundaries between data intermediation and intelligence services layers. But as the proposed regulation in its current form does not extend to cloud service providers, content intermediaries, and data exchange platforms developed in the context of IoT, it can be argued that this regulatory solution does not go far enough.13

**[[Dartmouth’s Card Ends]]**

Emerging scholarship from the Global South suggests that a replication or emulation of the approaches of the US or EU may be inadequate and new conceptualizations may be needed. For example, a recent paper by IT for Change (Singh, 2020) emphasizes a new doctrine of structural separation for the data value chain. This proposal posits that Big Tech firms must be forced to choose between operating in either the upstream layers of provisioning cloud intelligence services or building their business models around the downstream activities of data collection and processing. This, it is argued, will ensure the creation and maintenance of a “salutary distance” between the different layers of global data value chains, preventing the end-to-end capture of data and intelligence value that leads to extreme market concentration.14

There is also recognition that in global data value chains enmeshed in transnational capital flows, national approaches alone may not suffice to curb platform firms’ abuse of their market dominance. Drawing attention to the multilaterally agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the United Nations General Assembly in 1980, KozulWright (2020) has therefore called for a global competition authority.

As for international digital taxation, it is clear that breaking the global stalemate to arrive at a progressive tax regime is critical. The UN Economists Network (2020) has identified the development of a new global taxation framework on cross-border digital transactions to broaden the tax base of developing countries as an urgent policy priority. A pertinent research agenda for bringing competition and taxation laws up to speed in the digital era therefore includes:

 Models for legal-institutional frameworks that can guide the design of a global competition authority.

 Context-specific exploration of evidence from developing countries of transnational platforms’ anti-competitive practices in a range of economic sectors.

 Metrics for antitrust risk assessment of data value in mergers.

 An institutional model for digital competition regulation that accounts for structural separation of the multilayered data value chains in different sectors.

 Conceptual modelling to determine how ‘significant economic presence’ criteria for transnational digital firms can work in developing country contexts.

 Comparative case studies of digital taxation measures adopted by different countries from the Global South and implications for macroeconomic development.

Area 2. A new resource governance regime for data

Conventional policy measures to check Big Tech are partial solutions. While they can make a dent in the market power of digital giants, by themselves they are unlikely to ensure equitable ‘intelligence dividends’ across firms/economic actors in the platform economy. In the absence of an appropriate resource ownership regime around data that balances public and private interests, the intelligence premium garnered by Big Tech will only further private value capture, transferring out value from most of the developing world. Additionally, data building blocks essential for public digital infrastructures across all key sectors – health, education, finance, agriculture, finance, manufacturing etc. – will remain elusive for these countries, condemning them to a downward development trajectory. A new resource governance regime for data therefore becomes a cornerstone policy agenda for development in the twenty-first century.

Legal scholarship on resource governance underlines the role of appropriate private and public ownership frameworks (Epstein, 1987), with room for context-specific resource management tenets (such as access rights for forest-based communities). This is vital for the public interest, and a precondition for the realization of social good. Unfortunately, mainstream policy discussions on data governance (for instance, the World Bank’s concept note for its 2021 World Development Report – Data for Better Lives and ongoing conversations at the WIPO (2020) on exploring a sui generis patents regime for AI generated outputs) assume as a given, the de facto private ownership regime that operates in data resources.

As illustrated in Section 2b, in global and plurilateral negotiations on digital trade, the contestation between the dominant data economies and the rest of the world is primarily over the extent of liberalization of data flows and market access in e-commerce and digital services. The enclosure of data by first-mover digital firms leaves the majority of developing countries with no other option than to integrate into the e-commerce/digital services status quo.

In order to effectively address the resource governance vacuum that has created the data wild west, we need a “global constitutionalism for data” that lays down the first principles to inform data’s entry and movement through the value chain (Gurumurthy & Chami, forthcoming). As the Digital Justice Manifesto (2019) mooted by the progressive South-centric network, Just Net Coalition, recognizes, this would involve making normative decisions around a range of issues: determination of the boundaries of the data and the intelligence economy based on rights and inclusive development considerations, allocation of rights in data and intelligence resources, and the prevention of state/corporate abuse of data power. As more and more sectors of economic and social life get datafied, these questions occupy center-stage in many policy debates at the global and national level, and indeed, in each and every sector.

In order to effectively address the resource governance vacuum that has created the data wild west, we need a “global constitutionalism for data” that lays down the first principles to inform data’s entry and movement through the value chain.

A data economy based exclusively on safeguards through privacy rights cannot stall data extractivism. On the contrary, the privacy ‘shield’ becomes a minimalist, and even reductionist, means to allow data to flow ‘freely’ to the already powerful private hoarders dominating the global data value chains. Representing the embedded relationalities in which people, natural resources, things and phenomena share existence, data is a ‘system resource’ harnessed through intelligence infrastructures.

The commercial exploitation of advances in synthetic biology serves as a cautionary tale about the connection between value capture from digital intelligence and data theft from communities. Digital gene sequencing techniques enable Big Pharma and Big Agriculture to extract value from genetic resources (flora, fauna, microorganisms), without having to physically access genetic samples that attract various obligations – prior and informed consent of the ‘source communities’, benefits sharing mandates etc. – under the Convention on Biological Diversity. As the fourth industrial revolution transforms production chains in a range of sectors, the lack of ‘system resource’ frameworks for non-personal data sets will legitimize data theft, transferring control of the economic (and social) activity to digital (and digitally-emboldened)15 behemoths. Similarly, aggregate, anonymized personal data footprints of a community may be deployed to design commercial interventions that erode group privacy.16

Data discussions have a disproportionate focus on government open data frameworks for economic development, eclipsing the role of privately captured data for public and social value creation. Without appropriate data governance frameworks, Big Tech firms that exercise de facto ownership and control over valuable data and intelligence resources will have little incentive to share data voluntarily. IT for Change’s work, which has also informed national level policy processes on non-personal data governance in India, has underlined how a sui generis ‘community data’ regime grounded in the Ostromian idea of common property resource governance may be able to address these quandaries (Singh & Vipra, 2019; Singh & Gurumurthy, 2020). Drawing upon common property resource governance traditions in biodiversity, genetic, and traditional knowledge resources, we also propose five core principles of a community data regime: (1) the community’s right over data resources associated collectively with it, (2) prior informed consent of the community for use of such resources, (3) benefit sharing with the community, (4) transparency in the form of community data resource registers to prevent misuse and enable legitimate access, and (5) the community’s participation in governance of community data resources, including through non-profit trusts.17

Future research is required in a range of areas to build upon these directions:

 A model framework law for community data rights that outlines nested and overlapping sovereignties, including jurisdictional, indigenous, etc.

 Exploration of an equity-centered resource/benefit allocation regime for AI technologies based on community data rights and of a FRAND regime for essential AI building blocks for future innovation.

 Implications of digital trade agreements on resource governance regimes for data.

 Data market regulation to recognize social relationality and collective autonomy implicated in data transactions.

 Parameters of ‘relevant data communities’ and resolution of context-specific ambiguities of the notion.

 Application of community data claims in different categories of data resources.

 Issues of trusteeship for effective data stewardship models.

 Prior informed consent at the individual and collective level in aggregate, anonymized nonpersonal data resources.

Area 3. Data infrastructure capabilities for the Global South

Without endogenous capacities to process data and generate digital intelligence and thereby move into the high value segments of data value chains, most developing countries can only realize the “first-order benefits” of accessing global digital trade markets (UNCTAD, 2019). Investments in domestic digital and data infrastructure are hence vital to bridge the “digital capability gap” between domestic firms (in digital and other sectors) and transnational corporations, and to leverage the “second-order benefits” of productivity, wealth and well-being that the data revolution brings (UNIDO, 2020; UNCTAD, 2019). Official Development Assistance (ODA) has an important role to play in bridging this gap. But as current studies of the nexus between ODA, digital economies and sustainable development suggest, not enough attention has been paid to the potential downsides of ODA projects in the digital sector: harmful concentration and monopoly, rising inequality, or state and corporate use of digital technologies to control rather than empower citizens (Bennett, 2019). As a response to this deficit in global development cooperation, the UNCTAD has been advocating for stronger South-South cooperation in digital industrialization: development of public broadband and connectivity programs, investment in cloud infrastructure, and creation of regional level single digital markets that can contribute to the strategic integration of non-personal data flows for development of regional AI capacity (Banga & Kozul-Wright, 2018).

South-South cooperation is no simple mantra for the realization of inclusive and equitable growth. Policy choices must catalyze alternative platform business models, nudging data value chains towards a fairer and equitable distribution of data value across the economy (Gurumurthy et al., 2019). National data and AI strategies could support plural imaginaries of platform ecosystems that socialize data value

It is increasingly evident that the development of data public goods – including open digital/data ecosystems – is critical, especially to promote domestic innovation. At the same time, there is a very real risk that without clear access and use guidelines and licensing conditionalities for innovators, powerful transnational digital corporations may appropriate the value of such public goods (Walker, 2019; IT for Change, 2020). Also, a superficial extension of open access regimes for information and knowledge resources and software public goods to the data domain is not appropriate, with the latter needing institutional governance frameworks to ensure both safeguards and enabling conditions.

Learning labs that promote collaborative South-South research can bring significant, evidence based perspectives to understand national digital infrastructure policy pathways. Research is needed to explore the following issues:

 Global overview of standards development (including platform and data interoperability) and access-and-use regimes for public/national open/shared data infrastructures.

 Risk assessment and impact studies of ODA in national digital infrastructures.

 Development implications of regional single digital markets.

 Predisposing factors enabling virtuous cycles between intelligence infrastructures and economic development.

 Case studies of digital/data public goods initiatives (in health, agriculture, mobility, and transportation) to evolve progressive visions for national intelligence infrastructure development.

Table 1. A policy research agenda for unskewing data value chains: Indicative thematics

Table

Description automatically generated

#### China fills-in.

Gurumurthy 21 (Anita Gurumurthy, Executive Director @ IT for Change, Bengaluru, India, advisor and expert on various bodies including the United Nations Secretary-General’s 10-Member Group in support of the Technology Facilitation Mechanism, the Paris Peace Forum’s working group on algorithmic governance, Save the Children’s ICT4D Brain Trust, and Minderoo Tech & Policy Lab‘s Board; Nandini Chami, Deputy Director at IT for Change; “Towards a Global Digital Constitutionalism: A Radical New Agenda for UN75,” 05-03-21, *Development (2021)*, Springer Link, <https://doi.org/10.1057/s41301-021-00287-z>, TM)

With Big Tech corporations extending their monopoly control through integration of multi-sector vertical markets (e.g., Amazon has branched out from e-commerce into health and pharma, digital streaming, and robotics) and data-based horizontal markets (that is, Amazon is not only a data collector, but also cloud and analytics provider), norm- and rule-making in the digital arena is in the throes of a major shift. This is represented in the hollowing out of public infrastructures, not simply through privatization, but a systemic socialization of privately controlled platforms. The platformization epoch in the digital society hence represents a de-democratization and de-publicization of governance. The private platform and its constituent functionalities are the public protocols, and the data-based intelligence that powers it is the law.

This shifting terrain of power has ushered in what has been referred to as a new bipolar world, with China’s rise as a new AI superpower. China has historically pursued a different route to digital capability—digital and data sovereignty to expand domestic digital industry, and export of surplus industrial output through e-commerce (UNECA 2019). In the post-COVID-19 context, through its ‘Digital Silk Road’ initiative, the country has sought to export advanced technologies such as 5G and facial recognition (Triolo and Greene 2020). Chinese Big Tech companies are also establishing supply chains in agriculture, dairy, and retail commerce, extending their markets, in the South East Asian region.Footnote16 The fourth industrial revolution thus presents a Hobson’s choice in which countries may be forced to choose between US and Chinese corporations for access to advanced digital prowess.

# 2NC

## Section 5 cp

### 2NC---O/V

#### The counterplan solves the entire AFF---the FTC already has authority under Section 5 to separate platforms from commerce, the counterplan only fiats enforcement without expanding the scope of antitrust law---that’s Khan.

#### Sufficiency framing---weigh the counterplan vs the status quo, NOT the plan---deficits must have impacts and be based in evidence.

#### Judge kick is good---it’s a logical extension of conditionality.

#### Antitrust alone fails---developing countries lack infrastructure to make investments, can’t access data already collected by Big Tech, meaning there’s no value AND local monopolies fill-in, cementing inequality and repression---

#### Internal link is inevitable:

### 2NC---Solvency---Platforms

#### The FTC can use current Section 5 authority to issue new rules---their evidence.

1AC Khan 19 (Lina Khan, Academic Fellow @ Columbia Law School, J.D. from Yale Law School, now Chair of the FTC; “THE SEPARATION OF PLATFORMS AND COMMERCE,” Columbia Law Review, Vol. 119, No. 4, <https://columbialawreview.org/content/the-separation-of-platforms-and-commerce/>, TM)

3. Institutional Mechanism and Timing. — A separations regime separating platforms and commerce could be implemented through statute or rulemaking or as antitrust remedies (under existing or new antitrust law). A statute from Congress could also establish the principle of separating platforms from commerce—as was the case with banking—with the specific authority to design and implement separations dele­gated to an agency. This approach would benefit from having an expert agency design and revisit the separation. Absent new legislation, the FTC could use its Section 5 authority to implement a separations principle through rulemaking.646

[[BEGIN FOOTNOTE 646]]

646 In National Petroleum Refiners Ass’n v. Federal Trade Commission, the D.C. Circuit held that the FTC has substantive rulemaking power under Section 5 for both “unfair methods of competition” and “unfair or deceptive acts and practices.” 482 F.2d 672, 674–78 (D.C. Cir. 1973). Shortly after the decision, Congress passed the Magnuson-Moss Warranty Act, raising the procedural hurdles the FTC must jump when engaging in “unfair or deceptive acts and practices” rulemaking. Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. No. 93-637, sec. 202(a), § 18, 88 Stat. 2183, 2193–98 (1975) (codified as amended at 15 U.S.C. § 57a (2012)). While these hurdles cause significant delay, they do not affect the FTC’s rulemaking under “unfair methods of competition,” which is what the Commission could use to implement a separations regime. For more on the FTC’s rulemaking authority, see Jeffrey S. Lubbers, It’s Time to Remove the “Mossified” Procedures for FTC Rulemaking, 83 Geo. Wash. L. Rev 1979, 1985–87 (2015) (describing past FTC rulemakings under various statutory regimes); Sandeep Vaheesan, Resurrecting “A Comprehensive Charter of Economic Liberty”: The Latent Power of the Federal Trade Commission, 19 U. Pa. J. Bus. L. 645, 651–57 (2017) (giving the statutory and jurisprudential bases for the FTC’s authority to interpret Section 5).

[[END FOOTNOTE 646]]

...Designing separations only through rulemaking would require the agency to create rules of general applicability and—absent a specific congressional mandate—could limit the agency’s ability to structure highly tailored separations. Antitrust remedies would be costlier and take significantly longer, requiring the government or a private party to successfully show anticompetitive conduct and effects stemming from a digital platform’s involvement in multiple markets. Given the enfeebling of antitrust doctrines that police single-firm anticom­petitive conduct—and the judicial requirement that remedies be carefully tailored to competitive harm—this path is likely to be significantly more challenging.

#### It solves conglomerates

Rozga ‘21

et al; Kaj Rozga is a former Federal Trade Commission attorney with a breadth of antitrust experience representing clients in litigation, cartel, and transactional matters. While with the FTC's Bureau of Competition, Kaj was a member of trial teams that brought a pair of successful hospital merger challenges and was involved in the review of various healthcare, consumer products, and technology deals. He is now an attorney in the private sector. “Major Leadership and Policy Changes at the FTC—What They Mean for Antitrust and Consumer Protection Enforcement in Technology Markets” – Davis, Wright, Tremaine, LLP - 07.14.21 - #E&F - https://www.dwt.com/insights/2021/07/biden-ftc-antitrust-initiatives

The recent developments at the FTC reflect an antitrust and consumer protection regulatory landscape that is very much in flux, with technology markets, in particular, in the cross hairs. Companies should expect to encounter a more aggressive FTC that opens a larger volume of investigations, brings more borderline cases, and wields its rulemaking authority more broadly.

For large technology incumbents, these developments suggest meaningfully more regulatory and legal risk, in particular as these companies expand into new markets either through internal product development or by acquisition.

What constitutes "unfair methods of competition" under Section 5, for example, could be open to quite broad interpretation. At a minimum, it should be expected that the FTC will push for more aggressive enforcement to protect of rivals, trading partners, buyers, and employees, even where customers or consumers are not being harmed.

More aggressive merger enforcement in technology markets will likely single out acquisitions of nascent or potential rivals. It seems plausible that the agency will also more frequently rely on novel theories of competitive harm, such as those involving purported vertical or conglomerate effects that an acquisition may have on the wider ecosystem in which a technology company operates.

#### Separating platforms wrecks innovation---post-plan neither small firms nor big firms have access to crucial data.

Mayer-Schönberger 18 (Viktor Mayer-Schönberger, Professor of Internet Governance and Regulation at the University of Oxford; and Thomas Ramge, Technology Correspondent for *brand eins* and writes for The Economist; “A Big Choice for Big Tech;” September/October 2018, Foreign Affairs, TM)

That is changing. Innovation is shifting to data-driven machine learning. Insights are no longer the product solely of human ingenuity. They are now the result of the automated analysis of huge amounts of data. More and more, the success of a firm rests on its ability to use the information it possesses. Because only the largest firms have access to enough data to compete, innovation is losing its power to make markets fairer.

To solve this problem, some experts have suggested breaking up digital superstars, so that they no longer control the marketplace, the information that flows among market participants, and the decision assistants. The model would be the robust antitrust enforcement that led to the breakup of Standard Oil, in 1911, and AT&T, in 1984. A less drastic alternative might draw inspiration from the steps taken by regulators in the 1990s to force Microsoft to stop bundling a Web browser with its operating system and, more recently, to prevent Google from favoring its own services in its search results.

But by reducing firms’ ability to use large amounts of data, such measures would reduce market efficiency and leave consumers worse off. If, for instance, Amazon were broken up into a marketplace and a separate tool to provide recommendations, the latter would no longer have access to the huge streams of data generated by the former. Nor would a breakup improve competition. Alternative recommendation engines would not see the market data either, so their suggestions would be no better. It would not really matter how regulators broke a firm up—whether they created many little Googles, for instance, or split YouTube from Google Search—because after the breakup, all the new entities would have less information to learn from, leading to inferior products and services overall.

Similarly, although restricting the ways digital superstars can collect or use data—through tougher privacy laws, for instance—might fragment markets and thus improve their resilience, the quality of recommendations would deteriorate absent sufficient data, leading to inefficient transactions and reduced consumer welfare.

### Solv Advocate - Section 5 can expand/gives discretion

#### Section 5 affords great latitude for FTC discretion.

Dagen ‘10

Richard – Formerly, Adjunct Professor Boston University School of Law (Aug 2005 - Dec 2006) specializing in Antitrust; former Kramer Fellow - Harvard Law School. At the time of this writing, the author served as Antitrust, High Tech and Antitrust Special Counsel to the Director, Bureau of Competition, Federal Trade Commission “RAMBUS, INNOVATION EFFICIENCY, AND SECTION 5 OF THE FTC ACT” – BOSTON UNIVERSITY LAW REVIEW - Vol. 90 - #E&F - http://www.bu.edu/law/journals-archive/bulr/documents/dagen.pdf

The Sherman Act was enacted over one hundred years ago to prevent conduct likely to harm consumers.14 Section 1 of the Sherman Act proscribes unreasonable agreements between competitors, such as naked price fixing.15 Section 2 addresses exclusionary conduct by single firms, making it unlawful to “monopolize or attempt to monopolize” a market for goods or services in the United States.16 The Sherman Act is enforced by federal and state authorities, as well as through private rights of action. Successful plaintiffs are entitled to treble damages under the Sherman Act. The FTC, created in 1914, enforces the antitrust laws through Section 5 of the FTC Act, which prohibits “unfair methods of competition.”17 As discussed at length below, Section 5 also “empower[s] the Commission to define and proscribe an unfair competitive practice, *even though* the practice does not infringe either the letter or the spirit of the antitrust laws.”18

#### CPlan solves Big Tech Affs

Rozga ‘21

et al; Kaj Rozga is a former Federal Trade Commission attorney with a breadth of antitrust experience representing clients in litigation, cartel, and transactional matters. While with the FTC's Bureau of Competition, Kaj was a member of trial teams that brought a pair of successful hospital merger challenges and was involved in the review of various healthcare, consumer products, and technology deals. He is now an attorney in the private sector. “Major Leadership and Policy Changes at the FTC—What They Mean for Antitrust and Consumer Protection Enforcement in Technology Markets” – Davis, Wright, Tremaine, LLP - 07.14.21 - #E&F - https://www.dwt.com/insights/2021/07/biden-ftc-antitrust-initiatives

The recent developments at the FTC reflect an antitrust and consumer protection regulatory landscape that is very much in flux, with technology markets, in particular, in the cross hairs. Companies should expect to encounter a more aggressive FTC that opens a larger volume of investigations, brings more borderline cases, and wields its rulemaking authority more broadly.

For large technology incumbents, these developments suggest meaningfully more regulatory and legal risk, in particular as these companies expand into new markets either through internal product development or by acquisition.

What constitutes "unfair methods of competition" under Section 5, for example, could be open to quite broad interpretation. At a minimum, it should be expected that the FTC will push for more aggressive enforcement to protect of rivals, trading partners, buyers, and employees, even where customers or consumers are not being harmed.

More aggressive merger enforcement in technology markets will likely single out acquisitions of nascent or potential rivals. It seems plausible that the agency will also more frequently rely on novel theories of competitive harm, such as those involving purported vertical or conglomerate effects that an acquisition may have on the wider ecosystem in which a technology company operates.

#### Section 5 solves for Merger Affs.

Salop ‘21

et al; Steven C. Salop, Professor of Economics and Law, Georgetown University Law Center “A New Section 5 Policy Statement Can Help the FTC Defend Competition” – Public Knowledge – July 19th - #E&F - https://publicknowledge.medium.com/a-new-section-5-policy-statement-can-help-the-ftc-defend-competition-a76451eacb39

We now turn to some specific suggestions for several legal and economic competition issues that might be contained in a revised Section 5 Policy Statement that follows from these principles.

We favor Section 5’s rule of reason methodology placing a substantial burden on defendants to show that their benefits outweigh consumer harms, not simply that some benefits can be “identified.” The defendant should not be permitted to rebut evidence of probable harm simply by reciting some magic words like “free rider” or “complementarity.” In the case of exclusionary conduct, Andrew Gavil and Professor Salop have further suggested that the plaintiff’s evidentiary burden should be probable anticompetitive e­ffects, not actual anticompetitive effects; that the plaintiff’s evidentiary burden should not require quantification; that direct proof of market power or anticompetitive effects should obviate the need for circumstantial proof; that the plaintiff’s burden should be lower when the defendant has substantial market power; that the plaintiff’s initial evidentiary burden should be reduced to reflect the possible absence of a valid efficiency justification; that the defendant should not be able to meet its burden of production to show cognizable efficiency benefits based on purely categorical justifications; and that the defendant’s justifications should be subjected to a less restrictive alternative standard.

In the case of mergers, we suggest the adoption of anticompetitive presumptions with a high rebuttal burden for acquisitions of potential or nascent competitors by dominant firms, as have others. Professor Salop and several co-authors have also suggested anticompetitive presumptions for certain vertical mergers, with a higher rebuttal burden placed on the defendant. In addition, it should not be necessary for the agencies to establish competitive harm with quantitative evidence.

We hope that the Commission will consider these proposals to create a distinct role for Section 5 that goes beyond the Sherman and Clayton Acts while still remaining focused on competitive effects. Changes like the ones listed here have the ability to considerably tip the scales in the direction of greater enforcement and competitive benefits. We look forward to seeing a revised statement and working with the Commission as appropriate in their effort to reclaim Section 5 unfair methods of competition authority.

#### Section 5 can solve for Acquisition and Merger Affs.

Keyte ‘21

et al; James Keyte is the Director of the Fordham Competition Law Institute, an Adjunct Professor of Comparative Antitrust Law at Fordham Law School and The Director of Global Development at The Brattle Group – “Buckle Up: The Global Future of Antitrust Enforcement and Regulation” - Antitrust, Vol. 35, No. 2, Spring 2021 - #E&F - https://www.antitrustinstitute.org/wp-content/uploads/2021/03/Jenny.pdf

As a starting point, anticompetitive acquisitions typically are the subject of challenge under Section 7 of the Clayton Act. Section 7 is an incipiency statute; it prohibits mergers whose effect "may be substantially to lessen competition."21 The original notion was to prohibit anticompetitive mergers before their effects materialize, and to prohibit potentially anticompetitive horizontal, vertical, and conglomerate mergers. Beginning in the late 1970s, however, and continuing more dramatically in the 1980s and forward, the aggressive use of Section 7 was tempered by the agencies and the courts, which feared that the law was handicapping efficient mergers. Today, Section 7 is most commonly invoked to challenge horizontal acquisitions of substantial competitors and, at times, vertical acquisitions that may foreclose competition from either upstream or downstream rivals to the harm of consumers. Under current U.S. case law, conglomerate mergers are tough to stop as are (most relevant here) acquisitions of potential competitors—where the target firm is not yet in the market of the acquirer, but may enter, and the market loses the benefit of the entry effect.

For acquisitions involving potential (or future) competition, the Supreme Court in United States v. Marine Ban-corporation, Inc. established a tough evidentiary standard: (1) that absent the merger, the potential competitor could enter the market (as a de novo entrant), and (2) that such entry would structurally deconcentrate the market or produce other demonstrable procompetitive effects.22

A present market effect is also required when considering competitors waiting in the wings—the perceived potential competition doctrine. The standard may be a challenge for cases brought under Section 7, and the question now is whether a new line of Section 7 jurisprudence can emerge. For example, could Section 7 apply if a dominant firm forms a policy to acquire all start-ups that it identifies as significant future challengers, and thus builds a moat of protection around its alleged monopoly power? Or could the acquiring firm's own assessment, prediction, and demonstrable intent provide the requisite inference and proof that each of the acquired start-ups could and would have entered (or expanded) on its own and offered consumer-enhancing rivalry in the market? Could the FTC also make a successful challenge under the more expansive language of Section 5 of the Federal Trade Commission Act? For all of these provocative questions, it will fall to the courts, and maybe eventually to the Supreme Court, to determine the outer boundaries of Section 7.

### 2NC---AT: Perm Do Both

THEY DIDN’T RUN A PERM MEANING THAT THERE IS NO COMPETITVE REASON TO VOTE AGAINST THE COUNTERPLAN- COUNTERPLAN SOLVES BETTER AND THERE IS NO SOLVENCY DEFICIT AND WE SOLVE THE CASE- CP SOLVES BEST THAT GOES NEG

#### Links to politics by including agency rule-making, which alerts political branches---that’s Raso.

#### [ ] Shielding arguments are non-sensical because the warrant the counterplan links less is it goes under the radar.

#### [ ] No shielding argument means there’s only a risk the counterplan alone links less.

## Case

#### 1. No warrant why small firms wouldn’t collaborate with China

#### 2. Plan only stops platforms---means companies like Apple, Microsoft, etc. still collaborate with China post-plan.

#### Consensus agrees Sitaraman's wrong---concentration doesn't determine innovation, but the plan does decrease activity in global markets which decks influence.

Jamison '20 [Mark; 8/19/20; nonresident senior fellow at the American Enterprise Institute, director and Gunter Professor of the Public Utility Research Center at the University of Florida’s Warrington College of Business, Ph.D. in economics from the Warrington College of Business at the University of Florida; "Breaking up Big Tech will not help the US innovate or compete with China," <https://www.aei.org/technology-and-innovation/breaking-up-big-tech-will-not-help-the-us-innovate-or-compete-with-china/>]

Sitaraman assumes that less concentrated markets are more innovative. Decades of scholarly research have shown that this isn’t the case.

In the mid-20th century, some economists believed that monopoly markets would produce more innovations than competitive markets. The argument was that a monopoly could capture more profits from innovation than a firm in a competitive market could, so monopoly markets gave more innovation.

But in the 1960s, economists began testing the hypothesis. Studies examined whether an individual firm’s size or the relative sizes of firms in an industry affected research and development or innovation. The Organisation for Economic Co-operation and Development recently released a paper summarizing the research. The summary finds that the relationships vary over time and across industries, so the best conclusion is that firm size and market structure cannot be used to affect innovation.

Ideas and data

Wheeler believes that innovation comes from companies analyzing data and selling products. Actually, in the tech space, more and more innovations are coming from decentralized, small-scale innovators. This pattern was discovered in academic research about 20 years ago and still holds.

What is happening is that innovators develop ideas for products and demonstrate their potential value. In a few instances, such as in the case of Facebook, the innovator forms a business and succeeds. But more often than not, the innovators sell their company or at least their product to an enterprise that has a proven business model. This was probably the situation with Instagram, which had a great idea and a weak business model at best before selling to Facebook, which then turned the idea into a profitable business.

Wheeler also appears to believe that if a company is unable to uniquely profit from the data it captures, the company will capture extensive data anyway. I have heard many times the argument that profits don’t matter, such as in the net neutrality debates. But the arguments are always made by people who care very much about the profitability of their retirement savings. So I think they know they are wrong.

Market structure and geopolitical competitiveness

Sitaraman also believes that smaller firms would be less likely to want to enter the Chinese market and would thus avoid being compromised by China’s influence. This might be true, but if it is, then it is also true that the US firms would be less active in all global markets, which would decrease US influence. Since part of the rivalry between the US and China is likely to include global influence, retracting US companies from the global economy would certainly decrease US competitiveness.

#### No AUTHORITARIAN war---other forms of national power deter China---but interdependence and MAD mean there’s no incentive to be escalatory---that’s Heath.

#### No risk of US – AUTHORITARIAN war – diplomatic ties, economic interdependence, geography, nuclear postures, balancing powers, no ideological conflict – any crisis won’t escalate

Shifrinson, 19 – Joshua Shifrinson (Assistant professor of international relations at Boston University, “The ‘new Cold War’ with China is way overblown. Here’s why,” <https://www.washingtonpost.com/news/monkey-cage/wp/2019/02/08/there-isnt-a-new-cold-war-with-china-for-these-4-reasons/?noredirect=on&utm_term=.2f92e43bb9f3>)

Is a new Cold War looming — or already present — between the United States and China? Many analysts argue that a combination of geopolitics, ideology and competing visions of “global order” are driving the two countries toward emulating the Soviet-U.S. rivalry that dominated world politics from 1947 through 1990. But such concerns are overblown. Here are four big reasons why. 1. The historical backdrops of the two relationships are very different When the Cold War began, the U.S.-Soviet relationship was fragile and tenuous. Bilateral diplomatic relations were barely a decade old, U.S. intervention in the Russian Revolution was a recent memory, and the Soviet Union had called for the overthrow of capitalist governments into the 1940s. Despite their Grand Alliance against Nazi Germany, the two countries shared few meaningful diplomatic, economic or institutional links. In 2019, the situation between the United States and China is very different. Since the 1970s, diplomatic interactions, institutional ties and economic flows have all exploded. Although each side has criticized the other for domestic interference (such as U.S. demands for journalist access to Tibet and China’s espionage against U.S. corporations), these issues did not prevent cooperation on a host of other issues. Yes, there were tensions over the past decade, but these occurred against a generally cooperative backdrop. 2. Geography and powers’ nuclear postures suggest East Asia is more stable than Cold War-era Europe The Cold War was shaped by an intense arms race, nuclear posturing and crises, especially in continental Europe. Given Europe’s political geography, the United States feared a “bolt from the blue” attack would allow the Soviet Union to conquer the continent. Accordingly, the United States prepared to defend Europe with conventional forces, and to deter Soviet aggrandizement using nuclear weapons. Unsurprisingly, the Soviet Union also feared that the United States might attack and wanted to deter U.S. adventurism. Concerns that the other superpower might use force and that crises could quickly escalate colored Cold War politics. Today, the United States and China spend proportionally far less on their militaries than the United States and the Soviet Union did. Though an arms race may be emerging, U.S. and Chinese nuclear postures are not nearly as large or threatening: Arsenals remain far below the size and scope witnessed in the Cold War, and are kept at a lower state of alert. As for geography, East Asia is not primed for tensions akin to those in Cold War Europe. China can threaten to coerce its neighbors, but the water barriers separating China from most of Asia’s strategically important states make outright conquest significantly harder. Of course, as scholars such as Caitlin Talmadge and Avery Goldstein note, crises may still erupt, and each side may face pressures to escalate. Unlike the Cold War, however, U.S.-Chinese confrontations occur at sea with relatively limited forces and without clear territorial boundaries. This suggests there are countervailing factors that may give the two sides room to negotiate — and limit the speed with which a crisis unfolds. 3. The Cold War had just two major powers The Cold War took place in a bipolar system, with the United States and Soviet Union uniquely powerful, compared with other nations. This dynamic often pushed the United States and the U.S.S.R. toward confrontation and contributed to more or less fixed alliances; moreover, it encouraged efforts to suppress prospective great powers, such as Germany. In 2019, it’s not at all clear we are back to bipolarity. Analysts remain divided over whether the U.S. unipolar era is waning (or is already over) — and, if so, whether we are heading for a new period of bipolarity, modern-day multipolarity or something else. Regardless, most analysts accept that other countries will play a central role in East Asian security affairs. Russia, for example, still benefits from legacy military investments, India is developing economically and militarily, and Japan is beginning to build highly capable military forces to complement its still-significant economic might. Even if these nations aren’t as powerful as the United States or China, their presence makes for more fluid diplomatic arrangements and more diffuse security concerns than during the U.S.-Soviet competition. The resulting security dynamics are therefore likely to look very different. 4. Ideology plays less of a role in U.S.-Chinese relations Many people see the Cold War as an ideological contest between U.S.-backed liberalism and Soviet-backed communism. But that’s not the whole story. The early 20th century saw liberalism, communism and fascism vie for ideological preeminence. With fascism defeated alongside Nazi Germany, the postwar stage was set for a struggle between communism and liberalism to reinforce the U.S.-Soviet contest. That each ideology claimed universal scope ensured that the ideologies served as rallying cries for Third World conflicts, which were subsequently associated with the U.S.-Soviet struggle. The respective “ideologies” of the United States and China do not favor this type of contest today. Indeed, analysts calling for a hard-line stance against China have faced difficulties even identifying a coherent Chinese ideological alternative. And while some researchers claim that a nascent ideological contest pitting an “autocratic” China against the “liberal” United States is emerging, this narrative ignores the political contests that shape Chinese politics (and have parallels in U.S. politics). Autocracies and democracies often cooperate. And on one important ideological issue — how they organize their economic lives — China and the United States have both embraced economic growth via trade, the private sector and semi-free markets. Likewise, while a clearer Chinese ideological “brand” may eventually emerge, it is unclear whether the ideology would claim universal applicability. This is not to deny that there are tensions between the United States and China. What we are seeing, however, is not a new cold war but a reversion to a pre-1945 form of great power politics. What changed? Put simply, the United States no longer enjoys preeminence as the only superpower, as it did in the immediate post-Cold War era. The ideological, historical and geopolitical differences between today and the Cold War years far outweigh the similarities. As David Edelstein notes, at times it’s hard to understand what the United States and China are competing over. If that’s true, then there’s reason to believe there are more nuanced ways of understanding the tensions — and options for managing great power politics — than a Cold War reboot.=

#### Plan’s regulations on platforms cause massive business uncertainty over what legally constitutes a platform---causes economic decline.

Akman 19 (Pinar Akman, Professor of Law, Director, Centre for Business Law and Practice, and Jean Monnet Centre of Excellence in Digital Governance, School of Law, University of Leeds; “ONLINE PLATFORMS, AGENCY, AND COMPETITION LAW: MIND THE GAP,” Fordham International Law Journal, Vol. 43, Issue 2, December 2019, Accessed through HeinOnline, TM)

The findings of this Article are important for the correct legal treatment of platforms in different areas of law and in different jurisdictions, not least because of the growing importance of e-commerce in the economy and the widespread adoption of the platform model. As demonstrated throughout the paper, different jurisdictions and different areas of law within the same jurisdiction (e.g. commercial, employment, tax, competition laws) are already approaching the same legal question of how to legally characterize what a platform is in significantly different ways. This is unfortunate because it can lead to legal and business uncertainty to the detriment of economic growth and technological development. It can also lead to undesirable fragmentation in the legal treatment of different businesses that despite operating in different business sectors adopt essentially the same model of operation, as demonstrated by the similarity of the contracts of the platforms studied in this Article. The similarity of the standard contracts also demonstrates that agency is the business model of platforms across the board and is not a type of arrangement adopted by some platforms to conceal their real operation method. Acknowledging this would go a long way in ensuring that the law does not penalize legitimately adopted business models in treating them as if they were fundamentally different arrangements. It would also ensure that the law's treatment of potentially anticompetitive outcomes does not depend on the form of the business model adopted by a given undertaking because it is only after accepting the arrangement for what it is, the law can respond effectively to the effects of the undesirable aspects of that arrangement. 403 Where technology and the use of technology develop at speeds with which the legal system cannot keep up, there is a danger that the law will either become irrelevant or an impediment to the commercial use of technology that can benefit society. This Article has demonstrated in the context of some of the most popular platforms that that danger is real when it comes to the legal characterization of platforms and the implications thereof for competition law. This requires speedy adaptation of some of the existing concepts and rules of competition law, such as the single economic entity doctrine and the agency rule thereunder, regarding which this Article has set forth a means for (re)interpretation.

#### Separation fails---there is no solution that preserves the incentive to innovate.

Gilbert ’21 [Richard J; March; Economics Professor at UC Berkeley; Information Economics and Policy, “Separation: A Cure for Abuse of Platform Dominance?” vol. 54]

There is no single formula to address concerns about the alleged abuse of market power by these platforms. Separation is an alternative to behavioral remedies of the type imposed by the European Commission in the Google Shopping case. These behavioral remedies have accomplished little to restore competition that the EC alleged was harmed by Google’s search algorithms. Separation has the potential to be a more effective remedy to restore competition allegedly harmed by the conduct of a platform owner, but separation raises many questions, including the platforms that require separation, the services that must be separated, the terms and governance of separation requirements, and procedures to evaluate appeals from line-of-business restrictions.

Structural separation is administratively feasible for some platform activities, such as the sale of merchant and proprietary products on Amazon’s online retail platform or the separation of Google’s Ad Manager from its other products and services. Some past acquisitions could be unwound. Functional separation is another alternative for some services. Amazon could establish an ethical wall between its proprietary sales and sales by independent merchants. However, structural or functional separation does not necessarily eliminate incentives for discrimination and Amazon’s use of non-confidential information obtained from sales of products on its platform can benefit consumers. For many other platform services, it is unlikely that structural or functional separation would prove to be more consumer-friendly than the line-of-business restrictions imposed on AT&T by FCC regulation and the 1984 Modified Final Judgment, which ultimately collapsed under the weight of numerous waiver requests and were replaced by the 1996 Telecommunications Act.

Courts have avoided structural remedies in part because they are difficult to implement and potentially harm corporate, shareholder, and labor interests (Waller, 2009). Yet the threat to dissolve a corporate structure can deter some future anticompetitive conduct precisely because it has disruptive consequences. For separation to serve this deterrence function, it should punish conduct that has clear and substantial anticompetitive effects and is likely to be repeated in the future absent the threat of dissolution. However, the deterrence benefit from structural or functional separation is limited for digital platforms. There is disagreement about the conduct by digital platforms that warrants harsh punishment and about effective remedies for allegedly harmful conduct. Although antitrust liability and remedy are separate concepts, it is questionable whether conduct should be liable for antitrust enforcement if enforcers cannot fashion a workable remedy for the challenged conduct (Melamed, 2009). Furthermore, many of the alleged concerns related to conduct by the major digital platforms are specific to particular business models and therefore punishments would not necessarily deter other types of conduct by the platforms.

Antitrust is a critical enforcement tool despite the difficulties of crafting effective remedies to restore or deter anticompetitive conduct. Merger enforcement can and should prevent platforms from increasing their market power or using acquisitions to eliminate nascent competitors. Monopolization law can address abuses of monopoly power, which can occur at many different levels in the chain of activities engaged by digital platforms. Along with antitrust oversight from properly designed consent decrees, the threat of monetary penalties can be an effective deterrent for anticompetitive conduct, but they must be large enough to make the conduct unprofitable, which is not the case today.

Antitrust enforcement cannot solve all of the problems raised by the concentration of market power in the digital economy. Public policy for the digital economy requires a mix of institutional approaches, including regulations, to promote competition in ways other than structural or functional separation, such as by requiring platforms to share data that create a barrier to new competition, along with stronger antitrust enforcement to address abuses of market power.

The most important lesson for structural separation of the major digital platforms gained from the history of telecommunications deregulation and other reforms is the trade-off between encouraging competition and innovation. The breakup of AT&T into separate functional and geographic units imposed by the 1984 MFJ promoted competition in some sectors of the industry that had been highly regulated. The decree arguably also stifled some innovations by erecting a wall between local telecommunications services, long distance, and enhanced information services when technology was eroding the distinctions between these services. There are no simple structural solutions that both preserve the incentive and ability of platforms to innovate and protect rivals from the consequences of that innovation.

#### Splitting platforms into two markets screws innovation.

Yun ’20 [John M; Winter; Law Professor at George Mason University; the South Carolina Law Review, “Does Antitrust Have Digital Blind Spots?” vol. 72]

Splitting a platform into two separate markets for the purpose of antitrust analysis, however, runs afoul of a simple reality: no platform maximizes profit over just one side. 302Rather, profit maximization is determined through a joint [\*353] consideration of both sides. A platform, by its very nature, balances the interests of multiple sides and structures its price and non-price terms to achieve this balance. Further, as the Court emphasized, credit card networks are "transaction platforms," 303which are platforms where both sides share a common level of output. This also illustrates that artificially bifurcating the two sides into separate competitive effects analyses does not align with how firms actually make decisions. Antitrust law must start from these economic realities and fit the administration of the rule of reason analysis around them.

Conceptually, perhaps one of the strongest criticisms of the Court's approach is that it effectively eliminates step two of the rule of reason analysis--where the defendant bears the burden of justifying its conduct as procompetitive. 304Instead, that burden is shifted to the plaintiff in step one during which, in order to meet its prima facie burden, the plaintiff must show that the net effect is negative. 305This is an important criticism. Ultimately, the Court had to weigh two possible regimes. The first regime involves a framework where the prima facie burden is met simply with a price increase on one side. 306The second regime, which was adopted by the Court, involves a framework where the plaintiff's burden must not only include a one-sided price increase but also include "evidence of anticompetitive effects . . . such as reduced output, increased prices, or decreased quality." 307In other words, is a one-sided price increase actually and reliably evidence of anticompetitive harm? The integrated nature of the two sides does not support this proposition; consequently, the second regime better aligns with the economic realities of platforms. Importantly, Professors David Evans and Richard Schmalensee assert the following:

This is not a matter of burden-shifting. There is simply no way to know, especially in the case of a platform that provides a service that customers on each side consume jointly, whether a practice is anticompetitive without at least considering both types of customers and the overall competition among platforms. That analysis must, [\*354] therefore, happen at the first stage of the rule of reason to assess whether the conduct is anticompetitive or not. 308

Additionally, under a framework where the prima facie burden is met simply with a price increase on one side, this "distorts the assignment of burdens in the form of placing a thumb on the scale for plaintiffs in platform cases by redefining 'competitive harm' to mean any harm to any group of consumers." 309The reality is that such an alternate framework would result in no real ability of the defendant to offer procompetitive justifications in step two. Evans and Schmalensee, for example, observe:

First, it isn't clear that the court could consider the other side-specific market in the second stage of the rule of reason inquiry. The trial court judge noted that pro-competitive benefits on the consumer side, in "a separate, though intertwined antitrust market," could not be used to offset anti-competitive effects on the merchant side. Second, after finding that a practice is anti-competitive in the first stage, courts seldom give much weight to pro-competitive benefits in the second stage. 310

Further, it is not entirely clear that the burden is actually higher for plaintiffs in step one--particularly for transaction platforms. For instance, output, which is shared by both sides of a transaction platform, could serve as a reliable guide to welfare effects. This focus on output is something that conforms with both the law and economics of assessing markets and market power. 311

[\*355] In sum, the interrelationship between the various sides of a platform is critical. 312Specifically, for a platform like American Express, changes in cardholders' terms have a material impact on the number of transactions that merchants will enjoy. These feedback effects between the two sides are central to assessing conduct on the platform. The rule of reason framework established by the Court in Amex properly assessed and incorporated the economic literature on platforms into an administrable, coherent approach by shifting the burden of production. Rather than increasing the burden on plaintiffs, it requires plaintiffs to do a complete analysis of the effects of a given conduct on the platform instead of on an unnatural and narrowly focused segment of an integrated market. 313

V. CONCLUSION

Presently, antitrust law is among its most unprecedented times where there is a chorus--albeit lacking complete consonance--from various stakeholders seeking significant antitrust reforms. This chorus is comprised of myriad groups of academics, politicians from across the political divide, and various digital reports. 314

Ultimately, these calls for reform too often lack completeness and are too broad and general to form a reliable guide for agencies, courts, and legislatures. This is not to say questions regarding large platforms are completely and categorically settled. Network effects are certainly a key consideration in assessing certain digital markets, but it is important to understand precisely how and to what extent they are affecting these markets. Rather than being a presumptive source of market failure, network effects are more properly assessed as a market feature that must be accounted for in order to understand firm conduct. Similarly, there is a paucity of evidence [\*356] demonstrating that the conduct of digital platforms is actually reducing welfare and harming consumers. Finally, a close reading of the Court's Amex decision reveals an opinion that carefully treads the economic literature on platforms and implements that learning into a coherent rule of reason framework.

The most radical claim being made today is perhaps the most controversial one: that current antitrust law and enforcement actually are sufficient to properly assess and adjudicate conduct involving digital platforms. Antitrust law has always had an evolutionary character that recognizes the need to adjust to new learnings. 315This does not mean that the law is necessarily efficient or always moving in the right direction. Still, as long as antitrust law is tied to measures of economic efficiency and welfare and so long as it continues to carefully examine actual evidence rather than fall victim to unfounded presumptions, it provides a more reliable body of law for fostering innovation and economic progress than do the alternatives being proposed by its critics.

#### No large-scale cyber attacks or retaliation

Dr. Joseph S. Nye 19, Jr., University Distinguished Service Professor and Former Dean of the Kennedy School of Government at Harvard University, “Global Cyber Conflicts Will Be Hard To Control”, The Statesman (Pakistan), 10/14/2019, Lexis

The problem of perceptions and controlling escalation is not new. In August 1914, the major European powers expected a short and sharp “Third Balkan War.” The troops were expected to be home by Christmas. After the assassination of the Austrian archduke in June, Austria-Hungary wanted to give Serbia a bloody nose, and Germany gave its Austrian ally a blank check rather than see it humiliated. But when the Kaiser returned from vacation at the end of July and discovered how Austria had filled in the check, his efforts to de-escalate were too late. Nonetheless, he expected to prevail and almost did.

Had the Kaiser, the Czar, and the Emperor known in August 1914 that a little over four years later, all would lose their thrones and see their realms dismembered, they would not have gone to war. Since 1945, nuclear weapons have served as a crystal ball in which leaders can glimpse the catastrophe implied by a major war. After the Cuban Missile Crisis in 1962, leaders learned the importance of de-escalation, arms-control communication, and rules of the road to manage conflict.

Cyber technology, of course, lacks the clear devastating effects of nuclear weapons, and that poses a different set of problems, because there is no crystal ball. During the Cold War, the great powers avoided direct engagement, but that is not true of cyber conflict. And yet the threat of cyber Pearl Harbors has been exaggerated. Most cyber conflicts occur below the threshold established by the rules of armed conflict. They are economic and political, rather than lethal. It is not credible to threaten a nuclear response to cyber theft of intellectual property by China or cyber meddling in elections by Russia.

According to American doctrine, deterrence is not limited to a cyber response (though that is possible). The US will respond to cyberattacks across domains or sectors, with any weapons of its choice, proportional to the damage that has been done. That can range from naming and shaming to economic sanctions to kinetic weapons. Earlier this year, a new doctrine of “persistent engagement” was described as not only disrupting attacks, but also helping to reinforce deterrence. But the technical overlap between intrusion into networks to gather intelligence or disrupt attacks and to carry out offensive operations often makes it difficult to distinguish between escalation and de-escalation. Rather than relying on tacit bargaining, as proponents of “persistent engagement” sometimes emphasize, explicit communication may be necessary to limit escalation.

THE FTC FRAMEWORK ALREADY EXISTS AND DOES BETTER WE SAID THAT IN CROSS THE FRAMEWORK WAS ALREADY HAPPENING SO CROSS EX IS BINDING

CROSS APPLY OUR CP OVERVIEW HERE BECAUSE IT ANSWERS THEIR SOLVENCY ARG

# 1NR

### DA

### AT: Confirmation Inevitable

#### Confirmation is NOT inevitable – their ev merely snapshots the currently expected vote count – BUT only our ev’s about how doing the plan changes its popularity, by mobilizing a new group of prospective losers – that’s Kovacic – low threshold since opposition’s already on the brink of victory means we only need to win a shift at the margins to access a high risk of a link

#### Doesn’t assume our links – adding a newly divisive enforcement agenda item can flip Manchin

Lord 12-1-21 (Joseph Lord, congressional reporter at Epoch Times, former scholar in the Lyceum Program, BA Philosophy, Clemson University, “Senate Commerce Committee Deadlocks on FTC Pick Bedoya,” The Epoch Times, 12-1-2021, <https://www.theepochtimes.com/senate-commerce-committee-deadlocks-on-ftc-pick-bedoya_4133298.html>

The Senate Commerce Committee deadlocked on a vote to confirm Alvaro Bedoya’s nomination to become one of the Federal Trade Commission’s (FTC) five commissioners.

On Dec. 1, the committee voted 14–14 on the nomination, but under Senate rules, it can proceed to the full Senate for a vote.

President Joe Biden nominated Bedoya in September to join the board of the FTC, which deals primarily with antitrust and consumer protection law.

Bedoya, a Georgetown University law professor, has focused much of his work on the connection between facial recognition technology and civil rights. More specifically, Bedoya has argued that facial recognition technology has often been used in a way that is biased against immigrants and other minorities.

If confirmed, Bedoya would join the FTC under newly installed Chair Lina Khan, and give Democrats a 3–2 majority.

Khan has been outspoken in supporting the use of antitrust law against tech giants. In his role, Bedoya would focus on the FTC’s goal of consumer protection.

Citing Bedoya’s “divisive views,” the committee’s ranking Republican member, Sen. Roger Wicker (R-Miss.), was one of the 14 Republicans to vote against the confirmation. Bedoya’s Twitter page showcases some of these “divisive views.”

On Twitter, Bedoya has given his endorsement to the Immigrant Defense Project, which markets itself as “promot[ing] fundamental fairness for immigrants accused or convicted of crimes.” More specifically, the organization has a focus on illegal and non-naturalized immigrants, describing one of its aims as “working to transform unjust deportation laws and policies.”

Bedoya has also opined on a litany of other issues, including abortion issues and Democrats’ multitrillion-dollar social spending bill.

“I will not vote to report the nomination of Mr. Bedoya to be the commissioner of the FTC,” Wicker said in his opening remarks. “I remain concerned about the frequency with which he has expressed divisive views on policy matters, rather than a more unified and measured tone.

“There has been a troubling trend of politicization at the FTC, which is different from how it has been in previous years. I fear Mr. Bedoya would not bring the cooperative spirit to the commission that we need at this time.”

Later in the session, Sen. Amy Klobuchar (D-Minn.) called for a vote on Bedoya’s nomination.

The committee, composed of 14 Democrats and 14 Republicans, voted along party lines. Even Sen. Kyrsten Sinema (D-Ariz.), who has struck a moderate tone against fellow Democrats on several occasions, joined with the party to vote for the nomination.

Given the current composition of the Senate, evenly split between 50 Democrats and 50 Republicans, Senate Majority Leader Chuck Schumer (D-N.Y.) and Minority Leader Mitch McConnell (R-Ky.) put in place a new procedural maneuver to allow deadlocked committees to be bypassed altogether.

Under the new rules, either leader can put forward a motion to bring matters straight to the Senate floor in the event of a tie in committee.

If Bedoya’s nomination is sent to the Senate floor under this procedure, Vice President Kamala Harris’s tie-breaking vote would push Bedoya’s nomination over the finish line—assuming that all 50 Senate Democrats unanimously support the nominee.

The evenly split Senate has already used the procedure to confirm Biden nominees.

In March, Xavier Becerra’s nomination to head the Department of Health and Human Services was evenly split in the Senate Finance Committee in another 14–14 vote.

But even if the procedure is invoked to bring Bedoya to a floor vote, his confirmation is far from guaranteed.

Moderate Sen. Joe Manchin (D-W.Va.), a self-described “conservative Democrat,” has been willing to break with his party on issues—including Biden nominees.

Early in Biden’s tenure in office, Manchin joined with Senate Republicans to strike down Biden’s nominee for White House budget director, Neera Tanden. Without Manchin’s support, Harris can’t cast a tie-breaking vote.

Manchin, who has emphasized the importance of unifying the divided nation, may also take issue with Bedoya’s views on divisive issues and could derail the nomination.

If Bedoya is confirmed, it will be another loss for Biden, who has in the past failed to have nominees confirmed. Aside from Tanden, Biden also was forced to withdraw gun control advocate David Chipman’s nomination to the Bureau of Alcohol, Tobacco, and Firearms for views that several Democrats, including Manchin, found unpalatable.

#### AND Sinema

Evans 1-12-22 (Ailan Evans, tech reporter at the Daily Caller News Foundation, “Biden’s Tech Agenda In Jeopardy Over Opposition To ‘Partisan’ Nominees,” 1-12-2022, https://dailycaller.com/2022/01/12/joe-biden-gigi-sohn-ftc-fcc-alvaro-bedoya/)

President Joe Biden’s nominees for key regulatory agencies are facing stiff Republican opposition and delays in their confirmation process, holding up the president’s tech agenda.

The Biden administration has made it a priority to promote competition in technology markets and strengthen consumer protections, stressing the need to boost antitrust enforcement power and signaling an intent to revive Obama-era net neutrality rules.

In a July executive order, Biden laid out key elements of his tech agenda, instructing the Federal Communications Commission (FCC) to adopt through rulemaking net neutrality regulations under Title II of the Communications Act of 1934. The order also instructs the Federal Trade Commission (FTC) to begin rulemaking on increasing competition in technology markets, surveillance and data collection, and acquisitions by major tech companies.

However, two of Biden’s picks to helm regulatory agencies, FCC nominee Gigi Sohn and FTC nominee Alvaro Bedoya, are facing stiff opposition from Republicans, and so far have yet to earn a confirmation vote from Democrats. As a result, both the FTC and the FCC are evenly divided with two commissioners belonging to each party, stalling the Biden administration’s policy goals.

Republicans have pointed to tweets and comments from both members as evidence of their partisanship, warning that the nominees, particularly Sohn, will abuse their positions to advance a left-wing agenda.

Bedoya’s past work and comments critical of immigration authorities, in which he called the Immigration and Customs Enforcement (ICE) “out-of-control domestic surveillance,” attracted criticism from Republicans including Sen. Ted Cruz, who castigated the nominee as an “extremist.” The Senate Commerce Committee deadlocked 14-14 on Bedoya’s nomination but advanced it out of committee due to Senate rules.

Republicans lambasted Sohn for previous tweets in which she said that “Fox News has had the most negative impact on our democracy,” calling the network “state-sponsored propaganda,” and demanding a government “hearing” into its broadcasts. The Wall Street Journal editorial board described her as “partisan” and argued her nomination “provides fresh evidence of the Democratic Party’s leftward lurch.”

Sohn also drew criticism from broadcasters over her involvement with Locast, a streaming service that re-transmitted local television broadcasts and was later deemed to be illegal. The National Association of Broadcasters (NAB) issued a statement in November requesting Sohn submit an amended ethics agreement to Congress and expressed “serious concerns” about Sohn’s involvement with Locast.

The issue vexed several Senate Commerce Democrats, including Sens. Kyrsten Sinema, Jackie Rosen, and Jon Tester, as well as several members requested additional meetings with Sohn to resolve their concerns; Sohn’s committee vote was delayed to allow lawmakers additional time to meet with the nominee.

The nominations of both Bedoya and Sohn expired at the end of the previous legislative session, and were resubmitted to the Senate by Biden on Jan. 4.

The Senate Commerce Committee is considering holding a markup to potentially vote on Sohn and Bedoya during the week of Jan. 24, Politico reported, but the delay in confirming the nominees has prompted rebukes from several left-wing advocacy groups active on tech policy issues, who called on Senate Democrats to speed up the process, chastising them for their inaction.

“Both the Federal Communications Commission (FCC) and Federal Trade Commission (FTC)––essential agencies for fulfilling Democrats’ promises––remain essentially kneecapped,” left-wing advocacy group Fight for the Future, which is heavily involved in net neutrality activism, said in a statement Monday. “This is largely because Senate Democrats, and particularly the Senate Commerce Committee, has allowed disingenuous complaints from telecom industry groups, and Republican lawmakers sympathetic to their interests, to result in disastrous delays in advancing essential tech policy goals.”

“There’s no time to waste and so much to get done at the FCC: ensuring the billions being invested in broadband actually reach those who need it most, restoring Net Neutrality and Title II, reckoning with media regulators’ history on race and repairing the damage of the Trump years,” Craig Aaron, co-CEO of left-wing activist organization Free Press Action, said Friday. “And the FTC is poised to take long-overdue action against the deceptive and harmful practices of giant platform companies like Meta and Google.”

However, it’s not certain that lawmakers’ concerns, particularly regarding Sohn, will be resolved.

“As we stated previously and communicated to Senate Commerce Committee members last month, NAB continues to harbor serious concerns with Ms. Sohn’s involvement as one of three directors of the illegal streaming service Locast,” Ann Marie Cumming, senior vice president of Communications at NAB, told the Daily Caller News Foundation. “However, we remain confident that these concerns can be resolved with an appropriate recusal.”

Sohn will almost certainly fail to earn any GOP votes, according to two Republican Senate aides, meaning she will need every Democrat to support her nomination if she hopes to be confirmed. So far, Democratic Sen. Kyrsten Sinema has yet to publicly back the nominee; Sinema’s office did not respond to the Daily Caller News Foundation’s request for comment.

Given public comments and previous decisions from Republican FCC and FTC officials, the Biden administration will likely need Democratic majorities in both regulatory agencies to implement its tech policies.

Republican FCC commissioners Brendan Carr and Nathan Simington have repeatedly expressed their opposition to implementing Title II net neutrality regulations, with Carr calling the framework “socialism in sheep’s clothing.”

Meanwhile, Republican FTC commissioners have pushed back on the agenda of the agency’s Democrats, particularly Chairwoman Lina Khan. Republican Commissioner Noah Phillips wrote an op-ed arguing that the FTC should not craft data privacy rules and instead let Congress pass privacy legislation, while fellow Republican Commissioner Christine Wilson joined Phillips in dissenting when the FTC voted to refile its antitrust lawsuit against Facebook for its acquisitions of WhatsApp and Instagram.

### AT: Thumper – Legislation

#### Absolutely no chance any legislation passes

--hearings and scandals generated their evidence BUT did NOT translate into actual movement in votes

--“bipartisan support” just means a co-sponsor from each party, BUT there’s ALSO bipartisan opposition to every bill

--things that made it out of committee can’t pass the floor and vice versa

--House: most Reps vote no and Dems fragmented

--Senate: Klobuchar bill couldn’t pass, so she dialed it back and it still couldn’t pass – also Lee votes no and he’ll bring the rest of the GOP with him

--midterm politicking already started and neither party leadership is willing to give the other anything they could claim as a win

Matthews 12-21-21 (Chris Matthews, reporter at MarketWatch, MA journalism, business and economic reporting, New York University, “Look for Washington regulators — not Congress — to try to block more mergers in 2022, analysts say,” MarketWatch, last updated 12-27-2021, first published 12-21-2021, https://marketwatch.com/story/look-for-washington-regulators-not-congress-to-try-to-block-more-mergers-in-2022-analysts-say-11640110564)

Divide and conquer strategy has left legislative effort to reign in Big Tech ‘effectively dead,’ experts say

Antitrust reform was supposed to be one of the best chances for bipartisan compromise during the current Congress. But critics of monopoly power will likely have to rely on independent agencies for any federal government action against Big Tech next year, experts tell MarketWatch.

“There is still pervasive angst toward Big Tech, but we are no closer to a coordinated bipartisan response,” even after a year of hearings and scandals that has created the perception of a united political front against powerful tech platforms, Robert Kaminski, policy analyst at Capital Alpha Partners, said in an interview.

The chances for a bipartisan push to strengthen antitrust enforcement was likely highest in June, when Democratic Rep. David Cicilline of Rhode Island and Republican Rep. Ken Buck of Colorado led the passage of seven new antitrust bills through the House Judiciary Committee.

If the bills were to become law, they would make it more difficult for large tech platforms to acquire smaller companies, ban large tech firms from using their platforms to promote their own products at the expense of rivals, and force social media companies to make it easier for users to switch to a rival service.

The most sweeping bill of the six is the Ending Platform Monopolies Act, which would end “the ability for dominant platforms to leverage their control over multiple business lines to self-preference and disadvantage competitors,” and could potentially deal a serious blow to the business models of companies like Amazon.com Inc. AMZN, -1.65% and Google parent Alphabet GOOG, -0.47%.

That these were able to pass the House Judiciary Committee in a bipartisan fashion was seen at the time as evidence of broad support for these strict measures, but the unique composition of the panel means that those results cannot be extrapolated to Congress at large, according to a recent analysis of antitrust dynamics published by Beacon Policy Advisors.

“While this package of bills was voted out of committee in a relatively contentious markup, they have completely stalled on the House floor,” Beacon analysts wrote. “This is not too surprising given the resistance that they face from much of the House Republican caucus and lack of unified Democratic support.”

Sen. Amy Klobuchar, a Minnesota Democrat, has taken up the cause of these bills, putting forth bipartisan legislation in the Senate that scales back the Cicilline-Buck legislation in an effort to get broader support. While she has gotten support from high-profile Republicans like Sen. Chuck Grassley of Iowa, the lack of public support for these measures from Republican Sen. Mike Lee of Utah illustrates the difficulty any tough antitrust legislation will have getting 60 votes in the Senate and a majority in the House.

Lee, as the ranking Republican on the Senate antitrust subcommittee, is “one of the more influential members of the Republican caucus on antitrust policy,” the Beacon analysts argue, and GOP senators, most of whom are skeptical of government oversight of the private sector, will take his lead on the issue.

The Beacon analysis also points to the importance of the 42 Democrats representing California in the House after the state’s moderates — including Reps. Zoe Lofgren, Lou Correa, Ted Lieu and Eric Swalwell — voted against the measures in the judiciary committee, arguing that they went too far. “It should also be said that without the support from House Speaker Nancy Pelosi [also a California Democrat], these bills would be effectively dead on arrival,” they wrote.

Ed Mills, a Washington policy analyst at Raymond James, said in an interview that Democrats have political reasons as well as geographical ones to be wary of entering into a grand bargain with their rivals across the aisle on this issue.

“There’s always an election around the corner, and the question quickly becomes, ‘Would Democrats want to give Republicans a victory?’ and vice versa,” he said. “Some of the Republicans, especially on the Senate side, who are most vocal are all eyeing the White House.” Missouri Republican Sen. Josh Hawley and Arkansas Sen. Tom Cotton are both members of the Senate antitrust subcommittee who are thought of as potential candidates for the Republican nomination for president in 2024.

Investors should remain focused on the Federal Trade Commission and the Department of Justice’s antitrust division as the main drivers of competition policy in 2022, according to Capital Alpha’s Kaminski.

#### Prefer insiders – no version of any bill

Scott 1-13-22 (Mark Scott, Chief Technology Correspondent at Politico, former European Technology Correspondent for the New York Times, MSc Environmental Technology, Imperial College London, “Digital Bridge: US lawmaking stalled — Europe’s (other) digital rules — France’s Cédric O,” Digital Bridge, Politico’s weekly transatlantic tech newsletter, 1-13-2022, <https://www.politico.eu/newsletter/digital-bridge/us-lawmaking-stalled-europes-other-digital-rules-frances-cedric-o/>)

Will new antitrust legislation get through Congress before November’s election? “I wouldn’t bet my house on it,” said one Democratic staff, who spoke on the condition of anonymity to discuss Congress’ inner-workings. If Biden can’t get his wider social spending plans approved, it’s hard to see how digital policymaking — not exactly at the top of the White House’s agenda — suddenly becomes a must-have amid ongoing congressional bickering about what to do with Silicon Valley.

Still, there are some small flickers of hope. Where once efforts to corral social media quickly descended into partisan accusations of limiting free speech or allowing misinformation to run rampant, a spate of new bills aimed at boosting transparency and data access for outside researchers are quickly gaining momentum. In part, that’s down to the testimony of Frances Haugen, the Facebook whistleblower whose release of the company’s internal documents revealed how much the tech giant knew, and didn’t act.

Yet even those proposals — arguably a watered-down version of what the European Union is about to pass — won’t see much action between now and November when misinformation, politically driven hate speech and other nastiness will all again likely rear their ugly heads to an increasingly divided electorate. (Sorry for the January downer.) What’s also missing: any type of federal privacy legislation beyond partisan efforts that won’t see the light of day.

#### Even if they’re right, anything that could pass would be uncontroversial and would not trigger the link – unlike the plan

Phillips 1-10-22 (Alec Phillips, chief political economist for Goldman Sachs Research, “10 Questions on the Political and Policy Outlook for 2022 (Phillips),” Goldman Sachs, 1-10-2022, https://www.gspublishing.com/content/research/en/reports/2022/01/10/68df7c0a-463c-4811-b8c8-82fb8d4995dc.html)

However, it looks likely that only the bills that would make modest changes might pass. Specifically, increasing merger filing fees and thus enforcement resources appears the most likely, as it was in the Senate’s version of the economic competitiveness legislation and, in any case, has fairly broad support. Legislation that provides procedural protections in federal court for antitrust actions brought by state attorneys general also has substantial support and could pass.

It looks less likely that any of the other bills from the House Judiciary Committee will become law this year, in our view. These would aim to prevent self-preferencing (e.g., platforms favoring their services or products over competitors or requiring services for access), requiring structural separation of businesses, ensuring data portability to enable service-switching, and raising the competitiveness bar for approving M&A transactions. While each of these has some bipartisan support, they also face opposition among members of both parties and look unlikely to overcome that opposition this year.

### AT: !/D – Democracy

#### Democratic governance prevents multiple scenarios for extinction---apprehension creates openings for Russia and China to embed and authoritarian order, causing nuclear war

Dr. Edward A. Kolodziej 17, Emeritus Research Professor of Political Science at the University of Illinois, Urbana-Champaign, “Challenges to the Democratic Project for Governing Globalization”, EUC Paper Series, Volume 1, https://www.ideals.illinois.edu/bitstream/handle/2142/96620/Kolodziej%20Introduction%205.19.17.pdf?sequence=2&isAllowed=y

The Rise of a Global Society

Let me first sketch the global democratic project for global governance as a point of reference. We must first recognize that globalization has given rise to a global society for the first time in the evolution of the human species. We are now stuck with each other; seven and half billion people today — nine to ten by 2050: all super connected and interdependent. In greater or lesser measure, humans are mutually dependent on each other in the pursuit of their most salient values, interests, needs, and preferences — concerns about personal, community, and national security, sustainable economic growth, protection of the environment, the equitable distribution of the globe’s material wealth, human rights, and even the validation of their personal and social identities by others. Global warming is a metaphor of this morphological social change in the human condition. All humans are implicated in this looming Anthropogenic-induced disaster — the exhausts of billions of automobiles, the methane released in fracking for natural gas, outdated U.S. coal-fired power plants and newly constructed ones in China. Even the poor farmer burning charcoal to warm his dinner is complicit.

Since interdependence surrounds, ensnares, and binds us as a human society, the dilemma confronting the world’s diverse and divided populations is evident: the expanding scope as well as the deepening, accumulating, and thickening interdependencies of globalization urge global government. But the Kantian ideal of universal governance is beyond the reach of the world’s disparate peoples. They are profoundly divided by religion, culture, language, tribal, ethnic and national loyalties as well as by class, social status, race, gender, and sexual orientation. How have the democracies responded to this dilemma? How have they attempted to reconcile the growing interdependence of the world’s disputing peoples and need for global governance?

What do we mean by the governance of a human society?

A working, legitimate government of a human society requires simultaneous responses to three competing imperatives: Order, Welfare, and Legitimacy. While the forms of these OWL imperatives have differed radically over the course of human societal evolution, these constraints remain predicable of all human societies if they are to replicate themselves and flourish over time. The OWL imperatives are no less applicable to a global society.

1. Order refers to a society’s investment of awesome material power in an individual or body to arbitrate and resolve value, interest, and preference conflicts, which cannot be otherwise resolved by non-violent means — the Hobbesian problematic.

2. The Welfare imperative refers to the necessity of humans to eat, drink, clothe, and shelter themselves and to pursue the full-range of their seemingly limitless acquisitive appetites. Responses to the Welfare imperative, like that of Order, constitute a distinct form of governing power and authority with its own decisional processes and actors principally associated either with the Welfare or the Order imperative. Hence we have the Marxian-Adam Smith problematic.

3. Legitimacy is no less a form of governing power and authority, independent of the Order and Welfare imperatives. Either by choice, socialization, or coerced acquiescence, populations acknowledge a regime’s governing authority and their obligation to submit to its rule. Here arises the Rousseaunian problematic.

The government of a human society emerges then as an evolving, precarious balance and compromise of the ceaseless struggle of these competing OWL power domains for ascendancy of one of these imperatives over the others. It is against the backdrop of these OWL imperatives — Order, Welfare, and Legitimacy — that we are brought to the democratic project for global governance.

The Democratic Project

For Order, open societies constructed the global democratic state and, in alliance, the democratic global-state system. Collectively these initiatives led to the creation of the United Nations, the World Bank, the International Monetary Fund, the World Trade Organization, and the European Union to implement the democratic project’s system of global governance.

The democratic global state assumed all of the functions of the Hobbesian Westphalian security state — but a lot more. The global state became a Trading, Banking, Market, and Entrepreneurial state. To these functions were added those of the Science, Technology and the Economic Growth state. How else would we be able to enjoy the Internet, cell phones and iPhones, or miracle cures? These are the products of the iron triangle of the global democratic state, academic and non-profit research centers, and corporations. It is a myth that the Market System did all this alone. Fueled by increasing material wealth, the democratic global state was afforded the means to become the Safety Net state, providing education, health, social security, leisure and recreation for its population. And as the global state’s power expanded across this broad and enlarging spectrum of functions and roles, the global state was also constrained by the social compacts of the democracies to be bound by popular rule. The ironic result of the expansion of the global state’s power and social functions and its obligation to accede to popular will was a Security state and global state-system that vastly outperformed its principal authoritarian rivals in the Cold War. So much briefly is the democratic project’s response to the Order imperative.

Now let’s look at the democratic project’s response to the Welfare imperative. The democracies institutionalized Adam Smith’s vision of a global Market System. The Market System trucks and barters, Smith’s understanding of what it means to be human. But it does a lot more. The Market System facilitates and fosters the free movement of people, goods and services, capital, ideas, values, scientific discoveries, and best technological practices. Created is a vibrant global civil society oblivious to state boundaries. What we now experience is De Tocqueville’s Democracy in America on global steroids.

As for the imperative of Legitimacy, the social compacts of the democracies affirmed Rousseau’s conjecture that all humans are free and therefore equal. Applied to elections each citizen has one vote. Democratic regimes are also obliged to submit to the rule of law, to conduct free and fair elections, to honor majority rule while protecting minority rights, and to promote human rights at home and abroad.

The Authoritarian Threat to the Democratic Project

The democratic project for global governance is now at risk. Let’s start with the challenges posed by authoritarian regimes, with Russia and China in the lead. Both Russia and China would rest global governance on Big Power spheres of influence. Both would assume hegemonic status in their respective regions, asserting their versions of the Monroe Doctrine. Their regional hegemony would then leverage their claim to be global Big Powers. Moscow and Beijing would then have an equal say with the United States and the West in sharing and shaping global governance. The Russo-Chinese global system of Order would ascribe to Russia and China governing privileges not accorded to the states both aspire to dominate. Moscow and Beijing would enjoy unconditional recognition of their state sovereignty, territorial integrity, and non-interference in their domestic affairs, but they would reserve to themselves the right to intervene in the domestic and foreign affairs of the states and peoples under their tutelage in pursuit of their hegemonic interests. President Putin has announced that Russia’s imperialism encompasses the millions of Russians living in the former republics of the Soviet Union. Russia contends that Ukraine and Belarus also fall under Moscow’s purported claim to historical sovereignty over these states. Forceful re-absorption of Crimea and control over eastern Ukraine are viewed by President Putin as Russia’s historical inheritances. Self-determination is not extended to these states or to other states and peoples of the former Soviet Union. Moscow rejects their right to freely align, say, with the European Union or, god forbid, with NATO.

In contrast to the democratic project, universal in its reach, the Russo-Chinese conception of a stable global order rests on more tenuous and conflict-prone ethno-national foundations. Russia’s proclaimed enemies are the United States and the European Union. Any means that undermines the unity of these entities is viewed by Moscow as a gain. The endgame is a poly-anarchical interstate system, potentially as war-prone as the Eurocentric system before and after World War I, but now populated by states with nuclear weapons.

#### Democratic decline amplifies every impact and risks extinction---U.S. leadership’s critical

Garry Kasparov 17, Chairman of the Human Rights Foundation, former World Chess Champion, “Democracy and Human Rights: The Case for U.S. Leadership,” Testimony Before The Subcommittee on Western Hemisphere, Transnational Crime, Civilian Security, Democracy, Human Rights, and Global Women's Issues of the U.S. Senate Committee on Foreign Relations, February 16th, https://www.foreign.senate.gov/imo/media/doc/021617\_Kasparov\_%20Testimony.pdf

As one of the countless millions of people who were freed or protected from totalitarianism by the United States of America, it is easy for me to talk about the past. To talk about the belief of the American people and their leaders that this country was exceptional, and had special responsibilities to match its tremendous power. That a nation founded on freedom was bound to defend freedom everywhere. I could talk about the bipartisan legacy of this most American principle, from the Founding Fathers, to Democrats like Harry Truman, to Republicans like Ronald Reagan. I could talk about how the American people used to care deeply about human rights and dissidents in far-off places, and how this is what made America a beacon of hope, a shining city on a hill. America led by example and set a high standard, a standard that exposed the hypocrisy and cruelty of dictatorships around the world. But there is no time for nostalgia. Since the fall of the Berlin Wall, the collapse of the Soviet Union, and the end of the Cold War, Americans, and America, have retreated from those principles, and the world has become much worse off as a result. American skepticism about America’s role in the world deepened in the long, painful wars in Afghanistan and Iraq, and their aftermaths. Instead of applying the lessons learned about how to do better, lessons about faulty intelligence and working with native populations, the main outcome was to stop trying. This result has been a tragedy for the billions of people still living under authoritarian regimes around the world, and it is based on faulty analysis. You can never guarantee a positive outcome— not in chess, not in war, and certainly not in politics. The best you can do is to do what you know is right and to try your best. I speak from experience when I say that the citizens of unfree states do not expect guarantees. They want a reason to hope and a fighting chance. People living under dictatorships want the opportunity for freedom, the opportunity to live in peace and to follow their dreams. From the Iraq War to the Arab Spring to the current battles for liberty from Venezuela to Eastern Ukraine, people are fighting for that opportunity, giving up their lives for freedom. The United States must not abandon them. The United States and the rest of the free world has an unprecedented advantage in economic and military strength today. What is lacking is the will. The will to make the case to the American people, the will to take risks and invest in the long-term security of the country, and the world. This will require investments in aid, in education, in security that allow countries to attain the stability their people so badly need. Such investment is far more moral and far cheaper than the cycle of terror, war, refugees, and military intervention that results when America leaves a vacuum of power. The best way to help refugees is to prevent them from becoming refugees in the first place. The Soviet Union was an existential threat, and this focused the attention of the world, and the American people. There existential threat today is not found on a map, but it is very real. The forces of the past are making steady progress against the modern world order. Terrorist movements in the Middle East, extremist parties across Europe, a paranoid tyrant in North Korea threatening nuclear blackmail, and, at the center of the web, an aggressive KGB dictator in Russia. They all want to turn the world back to a dark past because their survival is threatened by the values of the free world, epitomized by the United States. And they are thriving as the U.S. has retreated. The global freedom index has declined for ten consecutive years. No one like to talk about the United States as a global policeman, but this is what happens when there is no cop on the beat. American leadership begins at home, right here. America cannot lead the world on democracy and human rights if there is no unity on the meaning and importance of these things. Leadership is required to make that case clearly and powerfully. Right now, Americans are engaged in politics at a level not seen in decades. It is an opportunity for them to rediscover that making America great begins with believing America can be great. The Cold War was won on American values that were shared by both parties and nearly every American. Institutions that were created by a Democrat, Truman, were triumphant forty years later thanks to the courage of a Republican, Reagan. This bipartisan consistency created the decades of strategic stability that is the great strength of democracies. Strong institutions that outlast politicians allow for long-range planning. In contrast, dictators can operate only tactically, not strategically, because they are not constrained by the balance of powers, but cannot afford to think beyond their own survival. This is why a dictator like Putin has an advantage in chaos, the ability to move quickly. This can only be met by strategy, by long-term goals that are based on shared values, not on polls and cable news. The fear of making things worse has paralyzed the United States from trying to make things better. There will always be setbacks, but the United States cannot quit. The spread of democracy is the only proven remedy for nearly every crisis that plagues the world today. War, famine, poverty, terrorism–all are generated and exacerbated by authoritarian regimes. A policy of America First inevitably puts American security last. American leadership is required because there is no one else, and because it is good for America. There is no weapon or wall that is more powerful for security than America being envied, imitated, and admired around the world. Admired not for being perfect, but for having the exceptional courage to always try to be better. Thank you.

#### Shoring up democracy solves every impact

Dr. Joseph S. Nye 17, University Distinguished Service Professor at the Harvard Kennedy School of Government, January/February 2017, “Will the Liberal Order Survive?,” Foreign Affairs, https://www.foreignaffairs.com/system/files/pdf/anthologies/2017/b0033\_0.pdf

The order will inevitably look somewhat different as the twenty-first century progresses. China, India, and other economies will continue to grow, and the U.S. share of the world economy will drop. But no other country, including China, is poised to displace the United States from its dominant position. Even so, the order may still be threatened by a general diffusion of power away from governments toward nonstate actors. The information revolution is putting a number of transnational issues, such as financial stability, climate change, terrorism, pandemics, and cybersecurity, on the global agenda at the same time as it is weakening the ability of all governments to respond.¶ Complexity is growing, and world politics will soon not be the sole province of governments. Individuals and private organizations—from corporations and nongovernmental organizations to terrorists and social movements—are being empowered, and informal networks will undercut the monopoly on power of traditional bureaucracies. Governments will continue to possess power and resources, but the stage on which they play will become ever more crowded, and they will have less ability to direct the action.¶ Even if the United States remains the largest power, accordingly, it will not be able to achieve many of its international goals acting alone. For example, international financial stability is vital to the prosperity of Americans, but the United States needs the cooperation of others to ensure it. Global climate change and rising sea levels will affect the quality of life, but Americans cannot manage these problems by themselves. And in a world where borders are becoming more porous, letting in everything from drugs to infectious diseases to terrorism, nations must use soft power to develop networks and build institutions to address shared threats and challenges.¶ China is unlikely to surpass the United States in power anytime soon.¶ Washington can provide some important global public goods largely by itself. The U.S. Navy is crucial when it comes to policing the law of the seas and defending freedom of navigation, and the U.S. Federal Reserve undergirds international financial stability by serving as a lender of last resort. On the new transnational issues, however, success will require the cooperation of others—and thus empowering others can help the United States accomplish its own goals. In this sense, power becomes a positive-sum game: one needs to think of not just the United States’ power over others but also the power to solve problems that the United States can acquire by working with others. In such a world, the ability to connect with others becomes a major source of power, and here, too, the United States leads the pack. The United States comes first in the Lowy Institute’s ranking of nations by number of embassies, consulates, and missions. It has some 60 treaty allies, and The Economist estimates that nearly 100 of the 150 largest countries lean toward it, while only 21 lean against it.¶ Increasingly, however, the openness that enables the United States to build networks, maintain institutions, and sustain alliances is itself under siege. This is why the most important challenge to the provision of world order in the twenty-first century comes not from without but from within.

### Case

#### They said “politics don’t matter” but it does? See our evidence on Confirmation hearings. The Aff plan will not work as a RESULT of politics. And because of the AFF Plan expands opposition will increase, derailing Bedoya (Kovacic 20) confirmation. This is Key to regulate FRT (Rich 11/18). If not, democratic backsliding and nuke war. It is key to preventing it

Kovacic 20

No answer to any of our political arguments with EVIDENCE. Merely saying politics matter doesn’t change reality. They didn’t respond to it.

Cross Ex binding – actor of Aff plan is congress, meaning they MUST answer our args because the aff plan will NOT go through

#### Alt causes swamp solvency:

#### 1. Small firm collaboration with China is inevitable, meaning IP theft is also inevitable.

#### 2. Plan only stops platforms so big companies like Apple and Microsoft, and smaller versions of broken-up companies like Google and Amazon can still collaborate with China’s military post-plan.

#### Chinese dependence inevitable---US companies want to sell to their market.

Thomas & Wu 21

#### 3. Plan’s reduction in China tech transfer is offset by reduced access to Chinese markets---that’s Jamison.

#### 2nd advantage

#### Mergers thump

#### Alt causes to inequitable digital economies---no data sharing and lack of infrastructure---antitrust alone fails.

1AC Gurumurthy et al. ’20 – meaning the AFF will fail and China will fill in Gurumurthy 21. US CHINA struggle – AFF had no argument to our case arguments in the 2AC.

“countries may be forced to choose between US and Chinese corporations for access to advanced digital prowess.”