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## Off

### 1 – DOJ

#### Antitrust enforcement resources determine commitment to ongoing GAFA litigation – plan’s broadened agenda fatally overstretches

Kantrowitz 20 (Alex Kantrowitz, journalist covering Big Tech, Founder at Big Technology, independent newsletter and podcast, former Senior Technology Reporter at BuzzFeed, BA Industrial and Labor Relations, Cornell University, Special Student, Political Science and International Relations, Boğaziçi University, Istanbul; **internally citing former DOJ and FTC employees**; “‘It’s Ridiculous.’ Underfunded FTC and DOJ Can’t Keep Fighting the Tech Giants Like This,” Big Technology, 9-17-2020, - #E&F - https://bigtechnology.substack.com/p/its-ridiculous-underfunded-us-regulators)

“The agencies are severely resource-constrained,” Michael Kades, an-ex FTC trial lawyer who spent 11 years at the agency, told Big Technology.

The Federal Trade Commission and Department of Justice’s antitrust division have a combined annual budget below what Facebook makes in three days. The FTC runs on less than $350 million per year, the DOJ’s antitrust division on less than $200 million. Facebook made $18 billion last quarter alone.

The funding disparity between the tech giants and their regulators leads to an unbalanced fight, current and ex-staffers said: The agencies can’t investigate the tech giants to the extent they’d like. They might shy away from complex cases fearing a resource-draining battle. And when they investigate the tech giants, they often see former colleagues with intricate knowledge of their strategy and ability to act (or lack thereof) representing these companies. Without significant budget increases, the tech giants may well continue to act unrestrained with little fear of repercussions.

“DOJ is under-resourced, FTC it’s ridiculous,” one ex DOJ-staffer told Big Technology.

This doesn’t mean these agencies are entirely hamstrung; they can typically marshall the resources to bring a clear-cut case. “They want to win,” one ex-FTC official said. “If it's really egregious, and they find that in discovery, the attorneys are going to put a case together and go after it.” But when you can only take up a limited number of cases due to resource constraints, things inevitably slip through.

“When I was there, the privacy wing had maybe 50 people, and that's probably generous. That's lawyers, support staff, everyone,” Justin Brookman, the former policy director at the FTC’s office of technology research and investigation, told Big Technology. “If they were to bring a case, that would tie up half the resources of the group. And they had two litigations ongoing and that took up most of everyone's time.” The agency’s budget has barely increased since Brookman left in 2017, while the tech giants have added trillions of dollars to their market caps.

Inside the FTC and DOJ, employees are aware of the tech giants’ ability to fight, and the corporations’ budgets tend to live inside their heads. “Facebook will have the ability to raise every single issue, if they want to,” Kades said. “It doesn't have to be a winner, doesn't have to be close to winner. If they wanted to take this position in litigation, they can make every procedural maneuver difficult, they can not cooperate on discovery, they can fight on scheduling, they don't have to win even half of those, but it would just suck up resources.” The ability to do this, not even the action itself, can impact regulators’ thinking.

Agency staffers are typically mission-driven and knowingly work for salaries below private-sector rates, but the resource-rich tech giants are now poaching directly from agencies at a rate remarkable even for Washington’s revolving door between the private and public sector.

Kate Patchen, a DOJ antitrust chief, went directly to Facebook in 2018. Bryson Bachman, a high-ranking attorney in the DOJ's antitrust division, became a senior counsel at Amazon in 2018. Scott Fitzgerald, who worked in the DOJ’s antitrust division for nearly 13 years, became a corporate counsel working on regulation for Amazon this May. At the FTC, senior attorney Laura Berger moved to Microsoft in 2018 to become a privacy director for LinkedIn. And Nithan Sannappa, a well-regarded attorney in the agency’s division of privacy and identity protection left for Twitter in 2017 and is now a lawyer for Google.

The FTC declined to comment. The DOJ did not respond to an inquiry.

Hiring this type of talent gives the tech giants a major advantage in their effort to fend off regulation. Ashkan Soltani, a former chief technologist at the FTC, recalled agency lawyers hugging a former colleague who was working for the tech giants as an outside counsel as they prepared to face off in court. “They would have a really personal relationship with staff, which is kind of awkward,” he said. “And they'd know, in detail, all of the cases that the agency has currently and would be able to advise their clients whether to push hard on an issue or not.”

#### Winning GAFA breakups is key to transatlantic tech alliance

Muscolo et al 21 (Gabriella Muscolo, Commissioner, Italian Competition Authority, Rome, Fellow of the Centre of European Law of King's College London, lecturer of Company Law at the School of Specialization for Legal Professionals at the University of Rome – La Sapienza; and Alessandro Massolo, Economic advisor of Commissioner Gabriella Muscolo, Italian Competition Authority, Rome, teaching assistant at Luiss University of Rome, PhD Law and Economics, Luiss University, MA European Law and Economic Analysis, College of Europe; “WILL THE BIDEN PRESIDENCY FORGE A DIGITAL TRANSATLANTIC ALLIANCE ON ANTITRUST?“ Concurrences, #1, February 2021, - #E&F - https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#muscolo)

1. After the Trump era and in the midst of the Covid-19 pandemic, the Biden presidency will inherit a country that—as the recent riot on the US Capitol building harshly demonstrated—is politically divided, weakening and, most importantly and consequently, in danger of losing its global leadership to China.

2. Indeed, the international community expects the Biden administration to re-establish the USA’s political and economic global leadership, especially in international fora such as the World Health Organization or the Paris Climate Agreement, as it did after the Second World War.

3. The pillars of Biden’s foreign policy can be summed up by three Ds: Domestic, Deterrence and Democracy. [246] As to the first, in order to revive the US economy and catch up on high technology, Biden’s policy cannot deviate much from that of Trump’s “America First.” Thus, massive investment is also expected in infrastructure, innovation, technology and education.

4. At the same time, US foreign policy will be guided by the principle of deterrence which characterized the Cold War period. This policy will have to be adapted to the new context and, especially, to the strategies adopted by the United States’ main counterparts such as China, Russia, North Korea and Iran, which no longer rely on missiles but on the information and communication technologies (ICTs).

5. Finally, the deterrence principle will catalyse the third pillar. Democracy will in fact be the main criterion for choosing US partners in order to consolidate the West against the expansion of the East.

6. Within this context, the digital economy represents an extremely important battlefield for the US to regain world leadership. The USA is well placed when it comes to digital competition—indeed, almost all the prominent Western online platforms are American.

7. However, over the last decade, Google, Amazon, Facebook, Apple and Microsoft (hereinafter “GAFAM”) have come under severe antitrust and regulatory scrutiny, starting in the European Union and ending in the United States. A “break-up” sentiment is spreading on both sides of the Atlantic and this will certainly represent one of the main issues on Biden’s agenda. Indeed, GAFAM’s huge market power is perceived as a threat to Western democracies and has been accused of hampering competition and innovation. Both the USA and the EU know that it is fundamental to shape global standards in order to face security and privacy concerns posed by the rise of Eastern tech giants. [247] Moreover, there is a growing feeling that the growth of big tech, combined with non-democratic governments, could lead to “techno-authoritarianism.” [248]

8. Therefore, will there be a transatlantic unity when clamping down on online giants in the name of protecting and strengthening Western “techno-democracies?” A digital transatlantic alliance shall not be taken for granted.

9. Indeed, over the last decade, the EU has markedly shaped its own way of building a European data market and of facilitating the emergence of European tech companies.

10. The White Paper on Artificial Intelligence and the Communication on data strategy have made it clear that the EU has put its own digital infrastructure and assets in place, catching up with international competition in order to become one of the leaders in the digital realm. This aim is the result of a long stream of actions which started in the second half of the 1990s with the need to tackle more specific and disparate needs, such as guaranteeing that consumer data is processed fairly, lawfully and with a specific purpose [249]; providing legal protection to databases, such as copyright protection and sui generis rights. [250]

11. Furthermore, at the beginning of the new century, the European Union issued the e-Commerce Directive [251] with the aim of removing obstacles to cross-border online services in the EU. Indeed, since 2010, there has been a significant change of pac e; due to the evolution of the digital paradigm, the European Union started to adopt a more strategic view. In that year, the European Commission launched its Digital Agenda, which, among other things, gave birth to the creation of a Digital Single Market that aimed primarily to promote e-commerce within the EU.

12. In 2015, the EU made it clear that the EU Digital Single Market was a priority and released a new strategy aiming at improving access to digital goods and services, building an environment where online networks and services could prosper, exploiting it as a driver for growth.

13. A well-functioning and dynamic data economy requires the flow of data in the internal market to be enabled and protected. This is why the European Union issued the 2016 General Data Protection Regulation and developed the “European data economy strategy.” Through the latter, the European Commission proposed a series of policies and legislative initiatives to unlock the potential for re-use of different types of data and create a common European data space. In particular, it adopted the measures put forward in the European Commission’s 2018 communication Towards a common European data space, in which it proposed: (i) a review of the Directive on the re-use of public sector information (PSI Directive); (ii) an update of the 2012 Recommendation on access to and preservation of scientific information; (iii) guidance on sharing private sector data in B2B and B2G contexts. A new EU Regulation on the free flow of non-personal data was also adopted.

14. Moreover, in 2019, in order to foster the growth of the EU Digital Single Market, the European Union published another regulation in order to promote fairness and transparency for business users of online intermediation services. [252]

15. The long European legislative excursus described above concluded with the latest new regulatory package published by the European Commission at the end of 2020. The package included the Data Governance Act (DGA), [253] the Digital Services Act (DSA) [254] and the Digital Markets Act (DMA). [255] Regarding the former, the European Commission aims to provide a legal framework in order to unlock unused data, increase data accessibility and share data. The DSA builds on the e-Commerce Directive and provides a set of rules for digital service providers in order to guarantee transparency and accountability and advocates for effective obligations to tackle illegal content online. As for the DMA, it is the result of a decade of EU antitrust public enforcement and EU studies on the digital economy.

16. Indeed, the European Commission has launched several cases against online giants. Suffice it now to mention the Google saga (i.e., Google Shopping, Android and AdSense cases) and the ongoing Amazon ones. These lawsuits were all abuses of dominant positions characterized mainly by self-preferencing conducts. Despite the high sanctions imposed, the Google cases were criticized because of the lengthy and complex investigations and ineffective remedies imposed. [256]

17. This contributed to fuelling scepticism that competition law alone would not be sufficient to restore competition within digital markets. [257] As a matter of fact, the European Commission issued the DMA in order to restore contestability and fair play in EU digital markets .

18. In a nutshell, the DMA identifies a list of “core platform services” which are characterized, among other things, by extreme economies of scale, strong network and lock-in effects, almost zero marginal costs and lack of multi-homing. For instance, online search engines and social networking services can be considered core platform services.

19. The DMA defines “gatekeepers” as large online platforms which provide these kinds of services and other specific criteria. Due to their strong economic and/or intermediation position, which is entrenched and durable, gatekeepers must comply with a list of “dos” and “don’ts.” For instance, gatekeepers shall “allow third parties to inter-operate with the gatekeeper’s own services in certain specific situations” and “their business users to access the data that they generate in their use of the gatekeeper’s platform.” If the gatekeepers do not comply with these obligations, they may incur fines (up to 10% of the worldwide turnover) or periodic fines (up to 5% of the average daily turnover). In case of systematic infringement, additional remedies may be imposed. If necessary and as a last resort, non-financial penalties can be imposed, which may include behavioural and structural measures, e.g., the divestiture of (parts of) a business.

20. Thus, following these new regulations, it seems that GAFAM—who are, indeed, the main providers of core platform services in the EU digital markets—will most likely be under the European spotlight in the coming years.

21. Besides antitrust and regulations, the EU has also demonstrated its strong desire for digital independency by taking the decisive step of setting its own agenda for transatlantic cooperation, even before Biden has been sworn in. [258] Indeed, the agenda proposes a tech alliance to shape technologies, their use and their regulatory environment. In particular, on data governance, the European Union advocates cooperation “to promote regulatory convergence and facilitate free data flow with trust on the basis of high standards and safeguards.” [259] Furthermore, as for online platforms, the European Union suggests strengthening cooperation between competent authorities for antitrust enforcement in digital markets, particularly, by setting common views in market distortions. Therefore, the European Union seems to be putting itself forward as a “worldwide factory of digital rules.” [260]

22. However, this may not necessarily mean a strengthening of the digital industry in Europe. For instance, Europe’s financial system appears to be biased towards bank lending rather than equity capital, which should be more suitable for risky tech start-ups. [261

23. Moreover, the “Brussels’ effect” should not be taken for granted either. Indeed, even if the European Union confirms its new regulatory proposal, especially the DMA, GAFAM still earn 51% of their revenues in America versus 25% in Europe. Therefore, they may most likely prefer to run their European branches under local rules instead of adopting EU rules globally. [262]

24. On the other side of the Atlantic, the strategy against online behemoths seems narrower and backwards-looking. [263] Indeed, as we have introduced, in the USA we are witnessing a “Sherman Act momentum” [264] strongly advocated by the new Brandeis movement. [265]

25. During the Trump administration, GAFAM were scrutinized by American antitrust authorities. Indeed, the Department of Justice (DoJ) filed a civil antitrust lawsuit in the US District Court for the District of Columbia to prevent Google from unlawfully maintaining monopolies through anticompetitive and exclusionary practices in the internet searches and search advertising markets and to remedy competitive harm. Furthermore, the Federal Trade Commission (FTC) has also filed a lawsuit against Facebook accusing it of engaging in a systematic strategy to eliminate threats to its monopoly. [266]

26. In both cases, reference is made to possible “break-ups.” In particular, in the DoJ’s case, the deputy attorney general made specific reference to historic antitrust cases such as Standard Oil (1911) and AT&T (1982), and in the FTC’s case, permanent injunctions are explicitly advanced which require, inter alia, the divestiture of Facebook’s assets, including Instagram and WhatsApp.

27. Most recently, the Texas attorney general filed a lawsuit, accusing Google of entering into an unlawful agreement that gave Facebook special privileges in exchange for promising not to support a competing ad system in the online advertising markets. [267]

#### Only way to avoid existential risks from hegemonic competition, democratic backsliding from BOTH techno-authoritarianism AND racial capitalism, failing multilateral coop, splinternet, and unregulated AI and quantum computing

Kop 21 (Mauritz Kop, Stanford Law School TTLF Fellow, Managing Partner at AIRecht, technology consultancy firm, studied intellectual property law, labor law, and contract law at Stanford Law School, Maastricht University and VU University Amsterdam, “Democratic Countries Should Form a Strategic Tech Alliance,” Stanford - Vienna Transatlantic Technology Law Forum, Transatlantic Antitrust and IPR Developments, Stanford University, Issue No.1, 2021, https://www-cdn.law.stanford.edu/wp-content/uploads/2021/04/Mauritz-Kop\_Democratic-Countries-Should-Form-a-Strategic-Tech-Alliance\_Stanford.pdf)

Just like we embed our own values in our hi-tech systems, the authoritarian regimes do the same. With authoritarianism I mean autocratic governments that have a culture with less political participation, less checks and balances and less civil liberties.15 Societies with social norms, democratic standards and ethical priorities that are incompatible with our own system.

Subsequently, the regimes export their undemocratic ideology to our society through the construction, dissemination and functionality of their technology. 16 Main contributors to this spread of culture and ideology through technology are the Belt & Road Initiative, Confucius Institutes and Chinese multinationals. 17 I am referring here to central 4IR technologies such as 5G infrastructures, AI, big data and quantum computing. 18 Excesses involve automated social profiling systems that monitor and hinder online dissidence. This process of exporting an incompatible political ideology through technology holds the danger of permanently weakening the health of our democracy, including the rights and freedoms we care so deeply about. We should prevent that from happening.

It is important to note that we do not intend to exclude the people who are living in authoritarian or even totalitarian regimes such as China, Russia, Iran and North Korea, nor the companies that are willing to abide to democratic technological standards. Instead, our strategy should be to avoid the ideas of the regimes that are incorporated in their technology, which is never neutral.

3. The Response

What needs to be done and who should do it?

Democratic Countries Should Form a Strategic Tech Alliance. That’s the first, foundational step. The US and its democratic allies should establish a strong, broadly scoped Strategic Tech Alliance with countries that share our digital DNA. An Alliance built on strategic autonomy, mutual economic interests and shared democratic & constitutional values. Main purpose of the Strategic Tech Alliance is to win the race / stay ahead of the competition.

Multilateral cooperation with any country that has matched concerns about the outcome of the race for AI & quantum dominance in view of democratic values, is paramount. A natural starting point for a geopolitical dialogue on disruptive technology that is also in the focus of President Biden, is Transatlantic cooperation.19 In addition to the US, EU, UK & Canada, countries such as India, Israel, Japan, South-Korea, Taiwan and Australia would be great candidates to join the cause. The Strategic Tech Alliance could also connect with existing structures such as NATO.

Moreover, it is crucial and urgent that democratic countries set worldwide technology standards together. This includes the development of globally accepted benchmarks and certification. Standards based on safety, security and interoperability, with respect for our common Humanist moral values.20 Values in which the rule of law and human dignity play a leading part.

Consequently, AI & quantum products and services made within the territory of the Strategic Tech Alliance or elsewhere in the world, should adhere to specific safety and security benchmarks, before they qualify for market authorization. These should follow the high technical, legal and ethical standards that reflect Responsible, Trustworthy AI & quantum technology core values. Ex ante certification comparable to the USA Compliance Marking or the European CE-marking should be mandatory before AI and quantum infused products and services are eligible to enter the Transatlantic markets.21

In this vision, the Strategic Tech Alliance should regulate transformative technology in a harmonized way across member countries. Using a risk-based approach that incentivises sustainable innovation. For example, the Strategic Tech Alliance would share core horizontal rules that govern the production and distribution of transformative tech systems. Think of universal, overarching guiding principles of Trustworthy and Responsible AI & quantum technology that are in line with the distinctive physical characteristics of quantum mechanics.22 Technology that gained the trust of the general public has significant marketing advantages.

To preserve pre-pandemic life as we knew it, we must bake our norms, standards, principles and values into the design of our advanced hi-tech-systems.23 From the first line of code. We can accomplish this by pursuing responsible, Trustworthy tech: by actually building socially & ethically aligned AI and quantum architectures and infrastructures. 24 We should incorporate our values en bloc and make our uniform design standards and (inter)operational requirements mandatory by law. A Strategic Tech Alliance could be the engine.

4. Political Feasibility

Let us discuss arguments against the formation of a democratic, value-based Strategic Tech Alliance that will set global technology standards. First, is establishing an Alliance that opposes the authoritarian tech agenda a realistic, politically feasible scenario or mere naive utopian thinking? Will the ambition of harmonized, global technology standards be limited by a cold shorter-term sum of costs and benefits? Will Realpolitik make it fade away in beauty?

Let’s start with the United States. After the Democrats recently recaptured Senate majority, progressive policies might regain momentum. But still, forming an Alliance and setting joint tech governance goals would require a bipartisan, bicameral effort. It would require large majorities to prevent legislative filibusters. Moreover, President Biden’s primary policy objectives are battling COVID-19 together with relief measures, Medicare for All, rebuilding the country’s infrastructure and fighting climate change. Regulating Big Tech and its impact on society might have less priority. However, winning the race for AI & quantum ascendancy should be high on any president’s agenda.25

Then the EU. In recent years, the European Commission has been very active and progressive in the field of legal-ethical frameworks for emerging tech, including the conception of responsible AI and data governance models. Since it has become clear that MAGA (Make America Great Again) will no longer be the leading ideology in America for the next 4 years, Ursula von der Leyen’s Team has not missed a single opportunity to strengthen transatlantic ties and inject political momentum into the relationship. With the main goal of implementing a mutual tech governance agenda, and jointly managing the geopolitics of exponential technology.

An exception to this rule was the recent EU-China deal, which raised quite a few eyebrows in Washington.26 This trade deal makes clear that economic interests of Western democratic countries in China, in this case prompted by commercial interests of the German car industry and the Silk Road Initiative, may stand in the way of the targeted team effort needed to achieve the envisaged Strategic Tech Alliance.27 As of 2020, the EU has surpassed the US as China's largest trading partner (numbers). The economic interests are gigantic and vary widely from one Member State to another.28 For example, the Netherlands, a country of 17 million people, has an annual trade deficit with China of no less than 70 billion euros. Therefore, one might think that the EU will be less likely to ‘turn away’ from China and choose sides.

It is to be hoped that Europe has not been lulled into blissful sleep by the Chinese Siren Song of smart partnerships, better working conditions, respect for intellectual property and fair trade & investment opportunities.29 The idea that the Chinese Party apparatus will allow more openness is a strategic misconception.30 The opposite of openness, reliability, honesty and a fair level playing field happens every day before our eyes in Hong Kong.31 And it doesn't get any better. Entirely in line with the autocratic paradigms of systematic repression, inequality, arbitrariness, state surveillance and control. 32 It is not expected that the political situation and civil liberties & human rights in China will change in the short or medium term. We are competing with a political ideology that is fundamentally at odds with our own system.33

In addition, internal divisions within the EU Member States may delay the rollout of progressive political initiatives.34 Facing the portrayed challenges, Europe should speak with one voice. Further, it is to be hoped that European ambitions towards strategic autonomy and data sovereignty will not stand in the way of transatlantic partnerships in the field of AI and quantum computing, quantum sensing and the quantum internet.

Second, is there sufficient political will, enough common ground between the various continents and countries to forge such an Alliance, comparable to the foundation of the United Nations in 1945 after World War II? There currently seem to be diverging opinions between the US and the EU on antitrust, digital tax and digital trade35, and consensus on IP policy, ethics, cybersecurity and the need for global value-based standards that respect democratic freedoms, human rights and the rule of law. On the other hand, it can be quite healthy to have mutual differences, and a varied pallet of perspectives within a partnership.

Moreover, who are we to pursue worldwide, culturally sensitive norms and standards? Could this be perceived by other countries as undesirable technologically expansionist behaviour? Will excessive standardization, certification and benchmarking have ramifications on rapid innovation, global competition and consumer welfare?

Brexit has made it painfully clear how difficult it is to agree on even the most trivial affairs. The question is whether the barriers to cooperation will be removed, just because a new wind is blowing from White House.36

In conclusion: political support to realize our ideal is a precondition for success. Preferably not in a weakened compromise form, but in a manner that reflects the power of the technology and the interests at stake. Instead of an isolationist MAGA approach, policy makers on both sides of the spectrum need to see the bigger picture and the urgency of the issues at hand. And reach out to nations that historically share our values and that demonstrably meet the democratic conditions set by the Alliance to qualify for membership.

With existential challenges ahead of us, normative choices must be made. We cannot get there with transactional politics and trade deals alone. We have to bring the best of both worlds together. A combination of normative choices - which are contextual, culturally sensitive and in constant flux - and Realpolitik is the key. Making the right choices today can result in the lasting partnerships we need to respond to the big questions we face. Partnerships based on mutual trust, strategic autonomy and shared sovereignty.37 Partnerships that acknowledge the need for regulatory cooperation and a values-based approach.

5. Are We Democratic Enough Ourselves?

Let's see if we can approach this matter from other, sociocritical perspectives.

First, are the Chinese the real threat, or is it us? Are we really democratic enough ourselves?38 Is making the distinction between the democratic and the authoritarian model the correct line of thinking, the proper approach for our proposed response to the identified challenges? Are technology and data capitalism coupled with the wrong kind of self-regulation causing filter bubbles, fake news and racial bias?39 In other words, could technology that originated from Western online platforms such as Facebook, Amazon, Google and Twitter be the real source of danger? Are the behemoth platforms, with market dominance and lobbying power greater than countries, menacing our democracy? In general, absent regulation, the tech platforms have corporate social responsibility and should adopt an Apollonian mindset towards responsible entrepreneurial ideology, world view and philosophy of life, instead of a Dionysian attitude. 40

One can argue whether the harmful societal influence of the social platforms was caused by naive idealism from Silicon Valley, or by unrealistic price and profit expectations of Wall Street.41 Or by a combination thereof. In this view, the algorithms42 have become less democratic not so much as a consequence of the wrong corporate ideology, but because of the increasing pressure that shareholders are putting on tech companies.43 Thus, the system is to blame.

But can you be a role model for the rest of the world this way? Are the dangers of our privatized technology governance model not as threatening, or even more dangerous to our society than the predictable authoritarian technology governance model could ever be? Is there an enemy within, that stands at the cradle of excesses like the Capitol Insurrection? 44 Is the privatized power over the digital world a similar existential challenge, for which solutions must be developed? The answer appears to be in the affirmative. Democratic countries themselves have serious internal problems.

Moreover, there is no empirical evidence that AI will endanger democracy and reinforce authoritarianism, totalitarianism or even fascism, since AI is ideologically neutral.45 That said, shouldn’t we better use machine values instead, since human values create biases in data and algorithms, fake news and conspiracy theories?46

Be that as it may, from a higher level, a strategic democratic alliance can provide a counterbalance to both the free-market capitalism based privatized digital governance model, and the authoritarian model. In the duel for AI dominance and the battle to be the first to build a functioning multi-purpose quantum computer, the West desperately needs the Tech Giants from the Silicon Valley and Massachusetts innovation clusters.

6. Two Dominant Tech Blocks

Currently, two dominant tech blocks exist: the US and China. The blocks have incompatible political systems. It is a battle between ideologies.47 Liberal democracy versus authoritarianism. Free market capitalism versus surveillance capitalism. Europe stands in the middle, championing a legal-ethical approach to tech governance. Its Member States often divided when it comes to Beijing: 12 of them participate in Xi Jinping’s Belt and Road program.

It is of crucial strategic importance to proactively consider potential alternative scenarios.48 Future scenarios in which our desired coalition of democratic countries did not materialize for whatever reason. We can use scenario planning for this. Scenario planning, or scenario analysis, is the development, comparison and anticipation of probable future scenarios, together with short- and longer-term transitions. 49 Impending scenarios meant to be used as thinking instruments.

Alternatives to the creation of a strong democratic Strategic Tech Alliance are no alliance or different alliances. Each scenario could bring both (trade) war and peace to the world. Please note that establishing a league of like-minded democratic countries does not guarantee winning the race for AI and quantum supremacy. Moreover, competition and rivalry between blocks could incentivize exponential innovation. The race for AI supremacy is not a zero-sum game.

Does one rule out the other? Could the US or the EU be both a partner and rival of China through smart partnerships? In theory, it is a position that both the US and the EU could take. In tandem with bolstering alliances with our allies, we should -to a certain extent- be open to dialogue and cooperation with the regimes. We also have to consider an unthinkable alliance of EU-China-Russia ‘against’ a pact between countries like US/Canada/UK/Israel/Australia/India/South-Korea/Japan.50

Another scenario is a protracted Cold War for AI Supremacy with no winner between the US and China.51 A no winner takes all scenario would eventually mark the Splinternet.52 On the one hand a China led internet, characterized by a top-down approach to tech. It would comprise of countries that adopt Chinese apps. Its rival would be a US influenced internet, including countries that adopt US built platforms and apps. From the server level, cloud computing and AI all the way down to the phone operating system level. Cyberbalkanization could result in two parallel worlds, each with distinct divisions regarding technology, trade and ideology. In practice, this implies two opposing ecosystems would exist, each using its own standards and architectures that are incompatible with one other.

In the event China wins the race for AI and quantum, it will have the power to overthrow the EU and the US.53 The world would see a new era of authoritarian surveillance capitalism. In the case that a strategic partnership of democratic countries led by the US and the EU will prevail, it may well coerce China to adopt Humanist values.

To prevent China Standards 2035, 54 we need a coalition of democratic countries that bakes its values into its technology and that sets worldwide interoperability standards for telecommunications, AI & quantum infrastructures.

7. Harms of Doing Nothing

The described advantages of the establishment of an alliance must be weighed against disadvantages, unintended consequences and the harms of doing nothing.

First, no alliance means fragmentation and division, without synergetic effects. A lack of action entails less chance of winning the race for tech dominance and securing the chance to set and control global standards. Standards that preserve democratic values. The danger of global autocratic values in technology and infrastructure increases in this analysis, because there is no en bloc counterbalance to emerging countries such as China, the country of the large numbers of consumers, hordes of AI talent, and huge amounts of machine learning training data, regurgitated by labelling farms. China has massive government budgets for the development of smart algorithms and quantum technology applications. Currently it’s everybody for himself; that won’t help us win the race. We need an alliance instead of division.

Second, quantum technology enhances AI. Together with blockchain it promises machine learning on steroids. Quantum and AI hybrids will give to the world a new perspective of science itself. In this context, it is crucial to raise awareness of their incredible potential for good, and their anthropogenic risks. The Fourth Industrial Revolution will bring about a world in which anything imaginable to improve, or worsen the human condition, can be built in reality.

Authoritarian countries obtaining this powerful technology and using it against us, poses serious national cybersecurity (cyberwarfare, hacking) threats.55 More importantly, the regimes would have the ability to impose their non-democratic values on us through technological expansionism. From our liberal-democratic viewpoint, this could lead to a dystopian scenario. AI driven facial recognition systems used for shadowing and social credit systems would become the standard. Surveillance machines are a dictator’s dream. Authoritarian a-moral machina sapiens will take over creation and invention. Privacy, mental security and freedom of thought will become a distant memory.

Our society will be better off when we forge Democratic Alliances. A united democratic tech block has a greater chance of winning the race for AI & quantum dominance.

Third, long term risks of underinvesting in 4IR technology are no less than existential. The US needs to invest heavily in safe & responsible AI and quantum. The market cannot pull this off on its own. The state should take the lead and launch a mission oriented, 2030 US Standards plan, backed by large-scale funding. 56 This plan should be sharply demarcated, and executed by golden triangle, public-private partnerships. These partnerships can be based on the triple helix innovation model, which guarantees synergistic effects between government, academia and business.

The portrayed advantages of bolstering an alliance, and actively shaping technology for good evidently outweigh the harms of remaining passive or indecisive. It is critical that the US does not hang back in a never-ending balancing of stakeholder concerns but that it is confident in formulating a vision and focussed in accomplishing its well defined national and global policy objectives. By doing nothing the US will fall behind economically. The US and the EU should set out the path along transatlantic lines and guide their democratic allies toward a Strategic Tech Alliance.57

### 2 – CP – FTC

Next OFF is Section 5:

#### 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 extraterritorial anticompetitive business conduct, including component part price-fixing abroad.

#### The FTC should release a policy statement and data sets that reflects this and enforce accordingly.

#### The Commission should write an opinion announcing a broad perspective of its Section 5 powers – but clarify that it has concluded that Intel’s conduct did not violate Section 5.

#### Federal and Appellate Courts will not grant cert to cases challenging the legitimacy of the FTC’s authority to make this determination.

#### The counterplan solves and competes---the FTC interprets current authority without creating new prohibitions.

Kahn ‘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.

#### Policy statements and data sets avoids politics and rollback.

* Assumes rollback efforts from either Political and Judicial actors.
* Empirical examples of FTC rollback go *Neg* – those episodes DID NOT include policy statements or data sets.

Kovacic ‘15

et al; William E. Kovacic - Global Competition Professor of Law and Policy, George Washington University Law School; Non-Executive Director, United Kingdom Competition and Markets Authority. From January 2006 to October 2011, he was a member of the Federal Trade Commission and chaired the agency from March 2008 to March 2009. - “The Federal Trade Commission as an Independent Agency: Autonomy, Legitimacy, and Effectiveness” - 100 Iowa L. Rev. 2085 (2015) - #E&F - https://ilr.law.uiowa.edu/print/volume-100-issue-5/the-federal-trade-commission-as-an-independent-agency-autonomy-legitimacy-and-effectiveness/

Longevity for its own sake is hardly a worthy aim. There is little evident value in preserving a competition agency that ensures its survival by committing itself to unobtrusive law enforcement and declining to confront important and potentially controversial market failures. If a competition agency is to retain an economically significant enforcement role, one must ask how the agency is to perform that role without: (a) succumbing to pressure that undermines its capacity to make merits-based decisions about how to exercise its power to bring and resolve cases or use other instruments in its policy-making portfolio; and (b) losing the accountability and effectiveness that requires some connection to and engagement with the political process. What measures might enable a competition agency to resist suggestions that it undertake fundamentally flawed initiatives? How can one protect meritorious enforcement programs from political attack and intervention by political branches of government as such programs come to fruition? Presented below are some possible solutions.

A. Greater Specification of Authority

One approach is to avoid extremely open-ended grants of authority which application invites objections that the agency has overreached its mandate or inspires political demands that it use seemingly elastic powers to address all perceived economic problems. A fuller specification of powers and elaboration of factors to be considered in applying the agency’s mandate can supply a more confident basis for the authority’s exercise of power and a stronger means to resist arguments that it enjoys unbounded power.

B. More Transparency, Including Reliance on Policy Statements and Guidelines

Greater transparency in operations can increase the agency’s perceived legitimacy and supply a useful barrier to destructive political intervention. The foundations of a strong transparency regime include the compilation and presentation of complete data sets that document agency activity and matter-specific transparency devices, such as the preparation of statements that explain why the agency closed a specific investigation.

Competition agencies can usefully rely extensively upon policy statements and guidelines to communicate their enforcement intentions and delimit the intended application of their powers. One purpose of such statements is to suggest how the agency defines the bounds of the more open-ended and inevitably ambiguous grants of authority its enabling statutes. For example, the FTC’s policy statements in the early 1980s concerning consumer unfairness and deception were important steps towards defining how the agency intended to apply its generic consumer protection powers. By articulating the bases upon which it would challenge unfair or deceptive conduct, the Commission strengthened external perceptions (within the business community and within Congress) that it would exercise its powers within structured, principled boundaries, and it increased, as well, its credibility before courts. The FTC has never issued a policy statement concerning its authority to ban unfair methods of competition, and the failure to do so has impeded the effective application of this power.

A second important use of policy statements is to introduce plans for innovative enforcement programs. Before embarking upon a new series of initiatives, the competition agency would issue a policy statement that identifies conduct it intends to examine and, in stated circumstances, proscribe. Here, again, the FTC’s experience provides a useful illustration. Policy statements would be useful when the agency seeks to use section 5 of the FTC Act to reach beyond existing interpretations of the Sherman and Clayton Acts, or to apply conventional antitrust principles to classes of activity previously undisturbed by antitrust intervention. By issuing a policy statement before commencing lawsuits, the FTC would give affected parties an opportunity to comment upon the wisdom of the agency’s proposed course of action and to adjust their conduct. Such an approach would likely increase confidence within industry and within Congress that the Commission is acting fairly and responsibly, and it could well make courts more receptive to the FTC’s application of section 5 as well.

**3 – DA – FTC Independence**

***Next off is FTC independence:***

**FTC independence in the US key to *global norms* that support agency independence. Vital for *free trade* and *GLO*.**

* United States’ FTC practices are modeled *by several nations* – including South Korea – and *will continue to be modeled* by nations that are still amid transitions towards industrialization;
* Global attentiveness to the United States’ FTC practices *remains ongoing* and - “*to this day*” - are a *central obstacle* to aspired free trade norms;
* The root of the loss of the global public’s confidence in free trade stems from the success of zero-sum strategies. *The root of that* is an interpretation of the FTCA that permits politicized intervention;
* Ambiguity in the United States’ FTCA permit the Act to be exercised *EITHER with a great deal of agency discretion* – *OR* alternatively, *with the perceived influence of external political branches*;
* Current US FTC practices lean away agency independence – and that’s *a central obstacle* to international agencies countering the growth of protectionist mercantilist norms
* More broadly, this hampers *general support for internationalism/GLO*

**Nam ‘18**

Steven S. Nam - Distinguished Practitioner, Center for East Asian Studies, Stanford University. Steven is also a Commission member of the Model International Mobility Treaty Commission under Columbia University's Global Policy Initiative. He is a member of the Antitrust Section of the American Bar Association and earned his B.A. at Yale and his J.D. and M.A. degrees at Columbia – “OUR COUNTRY, RIGHT OR WRONG: THE FTC ACT’S INFLUENCE ON NATIONAL SILOS IN ANTITRUST ENFORCEMENT” – University of Pennsylvania Journal of Business Law, Vol. 20, No. 1, 2018 - #E&F – No text omitted – but the Table of Contents – which comes after the Abstract - was not included – modified for language that may offend - https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1555&context=jbl

ABSTRACT:

The Federal Trade Commission Act of 1914 (“**FTC A**ct”), **a model** for **many other countries** that set up their **own** competition agencies, combines the **control** afforded by presidential appointment and removal powers over FTC commissioners with an **exceedingly discretionary** mandate. This Article contends that the FTC Act’s outmoded openness to **strong presidential direction**, **where adapted abroad**, has helped detract from **antitrust regulator independence.** Even advanced players in the liberal international economic order **such as South Korea** have made use of the United States’ original blueprint for unitary **executive-stamped** **antitrust** enforcement without sharing a long historical evolution of counterbalancing regulatory norms, e.g. the judicial check that was Humphrey’s Executor v. United States, 295 U.S. 602 (1935).

Strong executive direction **in antitrust enforcement** is particularly suited to capitalist economies helmed by administrations with mercantilist policies, **given their belief that the state and big business must coop**erate in the face of zero-sum international competition. South Korean President Lee MyungBak’s term (2008-2013) serves as an apt recent case study, featuring dirigiste calibration of antitrust enforcement against a backdrop of global recession. This Article examines the parallels between the FTC Act and the South Korean Monopoly Regulation and Fair Trade Act (“MRFTA”) before scrutinizing the enabled silo-like enforcement patterns of the Korean Fair Trade Commission under the Lee administration. Increasingly widespread erosion of public confidence in free and competitive trade demands a better understanding of the forces **preventing global convergence** in antitrust enforcement, and of their **roots.**

We have created, in the Federal Trade Commission, a means of inquiry and of accommodation in the field of commerce which ought both to coordinate the enterprises of our traders and manufacturers and to remove the barriers of misunderstanding and of a too technical interpretation of the law. —President Woodrow Wilson, September 1916

[Our companies] are fighting with unfavorable conditions amid competition in the global economy. To do so, they must be allowed to escape various regulations. Let’s take just a half step forward to move beyond the pace of change in the global economy. —South Korean President Lee Myung-bak, March 2008

It is clear that, at the beginning of the 21st century, we cannot afford to operate, to enforce our competition laws, in national or regional silos. We must not remain isolated from what happens in other jurisdictions. Even if markets often remain regional or national in terms of competitive assessment, fostering global convergence in our legal and economic analysis is essential to ensuring effectiveness of our enforcement and creating a level playing field for businesses across our jurisdictions. —Joaquín Almunia, Vice-President of the European Commission for Competition Policy, April 2010

The [U.S.] Agencies do not discriminate in the enforcement of the antitrust laws on the basis of the nationality of the parties. Nor do the Agencies employ their statutory authority to further nonantitrust goals. —The U.S. Department of Justice and the Federal Trade Commission, April 1995

INTRODUCTION

The International Competition Network’s founding in October 2001, with the aim of “formulat[ing] proposals for procedural and substantive convergence” among its stated goals,5 sought to usher in a future with more cosmopolitan and coherent global antitrust enforcement. Although U.S. regulatory leadership maintained that “consistently sound antitrust enforcement policy cannot be defined and decreed for others by the U.S., the EU, or anyone else,” many countries (turned) ~~looked~~ to the U.S. **as a role model** while developing their **competition** regimes.6 It is ironic, **then,** that **to this day** a **central obstacle** to the aspired international “culture of competition” **can be found in none other than the influence of the U.S.’s own FTC A**ct.7

American **antitrust** priorities around the time of the legislation’s passage oscillated between tempering trusts and shepherding business to further national economic strength, all towards the domestic interest. They shaped a regulatory environment that **would reemerge abroad** in **many** later-developing countries.

The deepening global retreat from **internationalism** ***and*** free market principles in the present day, with the specter of **trade wars looming**, is exacerbated by nationalist competition regimes that **are derivative of a U.S. model** predating the modern world economy. Domestic critics of open markets often overlook the U.S.’s own past vis-à-vis protectionist governments today. Illiberal or nominally liberal, they walk the kind of dirigiste path once treaded by the American School through the early twentieth century.8

**Globally, independence of antitrust agencies will prove key – checks spiraling economic nationalisms that’ll crush liberal peace.**

**Nam ‘18**

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National antitrust silos are not a novel phenomenon. Former European Commissioner for Competition Joaquín Almunia warned of them years ago,152 and scholarship touching upon the furtherance of nationalist goals by various antitrust agencies dates back decades.153 However, a **creeping** loss of public confidence in open markets—**coupled with** the obstacles to coherent global antitrust enforcement that bear the FTC Act’s influence, **as illustrated in this Article**—risks amplifying the problem. As anti-free trade agendas continue to garner more mainstream popularity for formerly counter-establishment parties, a proliferation of **protectionist** silos could tempt even governments that, for the most part, had moved past them. Why, American officials may ask, should the U.S. continue championing the liberal international economic order when an illiberal China or an ostensibly liberal South Korea bends regulatory rules to disadvantage American companies, workers, and consumers? Skepticism towards a liberal democratic “end of history”154 in general, and failures of economic liberalism in particular, are threatening to motivate political circles accordingly. Even **perennial norms** and conventions of **the U.S. competition regime** which evolved to safeguard regulator independence at home are no longer above disruption; the ambiguous statutory articulations that **carried over abroad** to empower strong executives are likewise playing a paper tiger role domestically of late.155

Protectionist policies designed to compromise market competition—for all its documented excesses and inadequacies—would sap its creative vitality and the concurrent **liberal peace**156 **often taken for granted**. Economic liberalism ails not so much from the intrinsic failings of core tenets, but from their more egregious nation-state and corporate violators. Proposals for greater accountability and harmonization have ranged from presumption of an underlying coordination scheme in antitrust investigations of a culpable country’s companies,157 to an international competition regime binding on member states in at least some areas of antitrust.158 Each has associated costs, but their very debate harnesses polycentric dialogue lacking in nationalist regulatory agendas and calls for “our country, right or wrong” protectionist silos. It should be emphasized to policymakers and politicians collectively that lasting convergence in antitrust enforcement is unachievable without global coherence in regulator autonomy, and the FTC Act’s **formative influence** is not above scrutiny or reproach. **Still-elusive** realization of the liberal economic international order’s intended form will **require** an expanded constellation of **independent competition regulators** empowered to enforce antitrust laws consistently.

**Global free trade reversals will cause *multiple existential impacts*.**

* Arctic conflict
* Space conflict;
* Global nuclear prolif;
* Structural wars;
* Climate;
* Geo-engineering;

**Langan-Riekhof ‘21**

et al; Maria Langan-Riekhof is the Lead Author and is the new Director of the Strategic Futures Group at the National Intelligence Council, leading the Intelligence Community’s assessment of global dynamics and charged with producing the quadrennial Global Trends product for the incoming or returning administration. She has spent more than 27 years in the intelligence community as both a senior analyst and manager, serving at the CIA and on the NIC. She brings a background in Middle East studies and has spent more than half her career analyzing regional dynamics. Her leadership roles include: Chief of the CIA’s Red Cell, founder and director of the CIA’s Strategic Insight Department, and research director for the Middle East. She was one of the DNI’s Exceptional Analysts in 2008-09 and the Agency’s fellow at the Brookings Institution in 2016-17. She is a member of the Senior Analytic Service and the Senior Intelligence Service and hold degrees from the University of Chicago and the University of Denver - National Intelligence Council - Global Trends 2040 – Form the section: “Scenario Four – Separate Silos” - MARCH 2021 - #E&F - https://www.dni.gov/files/ODNI/documents/assessments/GlobalTrends\_2040.pdf

With the trade **and financial** connections that defined the prior era of globalization disrupted, economic and security blocs formed around the United States, China, the EU, Russia, and India. Smaller powers and other states joined these blocs for protection, to pool resources, and to maintain at least some economic efficiencies. Advances in AI, energy technologies, and additive manufacturing helped some states adapt and make the blocs economically viable, but prices for consumer goods rose dramatically. States unable to join a bloc were left behind and cut off.

Security links did not disappear completely. States threatened by powerful neighbors sought out security links with other powers for their own protection or accelerated their own programs to **develop nuclear weapons**, as the ultimate guarantor of their security. Small conflicts occurred at the edges of these new blocs, particularly over scarce resources or emerging opportunities, like **the Arctic** and **space**. Poorer countries became increasingly unstable, and with no interest by major powers or the United Nations in intervening to help restore order, **conflicts became endemic**, exacerbating other problems. Lacking coordinated, multilateral efforts to mitigate emissions and address **climate changes**, little was done to slow greenhouse gas emissions, and some states experimented with **geoengineering with disastrous consequences**.

### 4 – DA – PTX

Debt Ceiling DA

#### Biden’s PC is key to swing 10 Reps to pass debt ceiling in the CR

Everett et al 9-16-21 (John Burgess Everett, co-congressional bureau chief for POLITICO, specializing in the Senate, BA journalism, University of Maryland College Park; and Laura Barrón-López, White House Correspondent for POLITICO, formerly covered Democrats for the Washington Examiner, Congress for HuffPost, and energy and environment policy for The Hill, BA political science, California State University, Fullerton; “Dems call in big gun as they face huge Hill tests,” POLITICO, 9-16-2021, https://www.politico.com/news/2021/09/16/biden-influence-capitol-democrats-511952)

The next few months will push President Joe Biden to wield every drop of his influence over Congress.

Democrats are plunging into messy internal debates over social programs from child care to drug pricing as they try to beat back GOP resistance on voting rights while steering the United States away from economic catastrophe. And in order to avert a government shutdown, avoid a debt default and fight ballot access restrictions passed in some GOP states, Democratic lawmakers are urging Biden to get more directly involved.

Senate Majority Whip Dick Durbin said that Biden, “more than anyone,” maintains sway over his caucus’s 50 members: “There is no comparable political force to a president, and specifically Joe Biden at this moment.”

Biden appears to be answering the call. The president is getting increasingly involved in Congress’ chaotic fall session as he battles sagging approval ratings, heightened concerns around the pandemic and some internal criticism over his withdrawal from Afghanistan.

Rebounding as the midterms draw nearer will depend on whether his big social spending ambitions are realized and if his party can dodge a government shutdown and credit default. But even if he has success on those fronts, he still needs to maintain momentum on Democrats’ elections legislation, which Republicans look certain to torpedo.

“I have full faith and confidence in Joe Biden in all of this,” said House Majority Whip Jim Clyburn, who's pressed Biden to endorse a filibuster carve out for voting rights legislation. “He is working this … and that’s how it should be.”

Biden met with two key Democratic holdouts on his domestic spending agenda on Wednesday, part of a sustained push to keep Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) on board with his legislative program. Biden’s met with Sinema four times this year, in addition to telephone calls made between the two, and has spoken to Manchin a similar number of times.

“Now is the time” for Biden to jump full-force into the reconciliation conversation, said Sen. Tim Kaine (D-Va.). And the White House made clear that Biden is diving into the series of tricky issues.

Andrew Bates, a spokesperson for Biden, said that Biden and his administration "are in frequent touch with Congress about each key priority: protecting the sacred right to vote, ensuring our economy delivers for the middle class and not just those at the top, and preventing needless damage to the recovery from the second-worst economic downturn in American history.”

To help corral all 50 Senate Democrats for the social spending bill, the president and his party need to create an “echo chamber” around its substance, said Celinda Lake, a pollster on Biden’s campaign. But that won't be easy. Manchin has told colleagues he’s worried about whether the bill’s safety net, climate action and tax reforms will be popular in his state, according to one Senate Democrat. He's also said he won't support a measure at the current spending level: $3.5 trillion.

If Biden can hammer home the popular aspects of the spending plan, it may help assuage Manchin and improve his whip count in Congress. Underscoring the degree to which he's become the face of the multi-trillion dollar reconciliation bill, a Democratic aide said the party is increasingly seeking to frame it as Biden’s agenda, not that of Sen. Bernie Sanders (I-Vt.) or any single Democrat.

“People think they like the reconciliation package, but they really don't know what's in it,” said Lake, who added that her polling shows popularity for the measure, particularly among women and seniors.

The coming months will also challenge Biden’s relationship with Republicans, who are threatening to block a debt limit hike after many of them supported a suspension or increase three times under former President Donald Trump. Biden campaigned as a Democrat who could work with Republicans, and he succeeded this summer by rounding up 19 Senate GOP votes for a $550 billion infrastructure bill.

Yet he’s running into a brick wall in convincing Senate Minority Leader Mitch McConnell to provide at least 10 GOP votes to lift the nation's borrowing limit. Republicans say Biden’s dip in the polls isn’t driving their strategy on the debt ceiling. But it’s not helping either.

“I don’t think anything in the last month has increased the likelihood that he can now create an atmosphere of: Let’s work together,” said Sen. Roy Blunt (R-Mo.), who voted for the infrastructure bill and debt ceiling increases under Trump.

The White House is, so far, sticking by its plan to try and call McConnell’s bluff. Aides in the West Wing consider attaching a debt ceiling suspension or increase to a government funding measure the best way to pressure Republicans on the routine step required by law. Should that approach fail, they may be forced to separate the two fiscal measures to avert a shutdown.

On the debt limit, congressional Democrats are in lockstep with the administration's strategy. But they're looking for Biden to exhibit more of his arm-twisting and back-slapping skills on their social spending plan and their bid to shore up voting rights protections.

Biden “knows better than anyone the power of the United States [presidency] in persuading and sometimes cajoling the key members of Congress, when push comes to shove,” said Sen. Richard Blumenthal (D-Conn.).

#### Plan necessarily drains PC – trading off with unrelated agenda items.

Carstensen ‘21

Peter C. Carstensen - Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, M.A., Yale University; LL.B., Yale Law School; former attorney at the Antitrust Division of the United States Department of Justice, where one of his primary areas of work was on questions of relating competition policy and law to regulated industries. He is a Senior Fellow of the American Antitrust Institute – “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST” – Concurrences – #1 - Feb 15, 2021 - #E&F - https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#carstensen

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

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

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

#### Collapses global finance

Hanlon 9-13-21 (Seth Hanlon, senior fellow for Economic Policy at the Center for American Progress, former special assistant to the president for economic policy at the White House National Economic Council, where he coordinated the Obama administration’s tax policy, JD Yale Law School, BA Harvard University, “Congressional Republicans Must Not Play Political Games With the Debt Limit,” Center for American Progress, 9-13-2021, https://www.americanprogress.org/issues/economy/news/2021/09/13/503720/congressional-republicans-must-not-play-political-games-debt-limit/)

Ten years ago, the Republican leaders of the U.S. House of Representatives risked an unthinkable economic catastrophe in a reckless attempt to gain leverage in budget negotiations. They threatened to block an increase in the U.S. debt limit—a routine and necessary step that enables the government to make ongoing payments required by law without defaulting. The crisis was averted, but the episode caused significant harm to the economy.

The debt limit needs to be raised again this fall, most likely in October. But in recent weeks, 106 Republican House members and 46 Republican senators, including Senate Minority Leader Mitch McConnell (R-KY), have said they will not vote for a debt limit increase. They claim that President Joe Biden and the congressional majority bear sole responsibility for taking the necessary action to avoid default. These members of Congress’ position is deeply hypocritical: As this column explains and Figure 1 helps illustrate, many of their own actions and policies have made the debt limit increase necessary. Their position is also terribly irresponsible because failing to raise the debt limit would cause catastrophic harm to the entire country.

Figure 1

[FIGURE 1 OMITTED]

Raising the debt limit is needed to preserve the full faith and credit of the United States

One of the bedrocks of the U.S. and world economy is the full faith and credit of the United States: the secure expectation that the U.S. government will pay its obligations in full and on time. The United States’ rock-solid credit allows financial markets to function and the country to pay low interest, or even negative real interest, to bondholders based on the certainty that they will be paid interest and principal on time. It also gives Americans, such as Social Security beneficiaries, veterans, military and federal civilian employees, beneficiaries of federal programs, and countless others, the security of knowing that they will receive the payments they rely on and are entitled to.

The United States has never defaulted on its obligations. The closest thing was a minor technical snafu in 1979 that was quickly fixed.

From time to time, Congress must raise the debt limit to prevent the country from defaulting. The debt limit is a 104-year-old provision that places a dollar cap on the total amount of outstanding debt that the Treasury Department can have to finance the government’s ongoing legal obligations. The debt limit is an unnecessary historical relic; almost no other comparable countries have one. The actual public debt is determined not by the debt limit but by the substantive spending and revenue laws that Congress passes.

In practice, the debt limit serves little function other than to potentially enable factions in Congress to force the United States to default on obligations it has already incurred—if they are reckless enough to do so.

The debt limit debacle of 2011 must not be repeated

Before 2011, parties in Congress never seriously threatened to force the United States into default to extract concessions. But then, the House Republicans’ reckless gambit brought the country to the brink of disaster. Even though the United States narrowly avoided default, the episode raised costs of borrowing for the government, private businesses, and homebuyers, and it slowed the already struggling economic recovery by undermining consumer and business confidence.

No good came out of the 2011 crisis. The resulting agreement produced an ill-conceived budget “sequester” that further slowed the economic recovery and resulted in chronic underfunding of key priorities.

Since 2011, every time the debt limit has needed to be raised, Congress has raised or suspended it without incident and on a bipartisan basis. Congress did so on a bipartisan basis seven times since that year: in 2013 (twice), 2014, 2015, 2017, 2018, and 2019.\* Then-President Barack Obama took the position after 2011 that he would never again negotiate over the debt limit. Similarly, the Trump administration repeatedly urged Congress to pass “clean” debt limit increases—that is, debt limit increases without conditions.

A majority of Senate Republicans, including then-Majority Leader McConnell, supported suspending the debt limit all three times it was needed under Trump.\* The most recent time, in 2019, McConnell explained:

[The debt limit suspension] ensures our federal government will not approach any kind of short-term debt crisis in the coming weeks or months. It secures our nation’s full-faith and credit and ensures that Congress will not throw this kind of unnecessary wrench into the gears of our job growth and thriving economy.

Raising the debt limit is just as imperative now as it was in 2019. The only difference in 2021 is that a Democrat sits in the White House.

A U.S. default would be catastrophic

When the United States reaches the debt limit, the Treasury Department cannot issue additional debt and therefore risks running out of cash. With the debt at the limit, the Treasury is now buying time through previously used accounting moves known as “extraordinary measures.” Unfortunately, those measures will probably only last into October, according to Treasury Secretary Janet Yellen. At that point, the government will not be able to meet its ongoing legal obligations. It would default. And while no one knows precisely what that could mean, the consequences could entail:

* Social Security checks stopping, putting the livelihoods of millions at risk
* The military and federal workers not receiving their paychecks
* Providers such as hospitals and doctors not being paid for services provided under Medicare and Medicaid
* People filing taxes on extension this fall not getting the refunds they are owed, and monthly child tax credit payments ceasing
* Countless families and businesses being thrown into turmoil as they are stiffed on many other kinds of payments
* Critical government services shutting down

In addition, a U.S. default would cause chaos in global financial markets. Treasury bonds set the benchmark for the risk-free interest rate—and if the government suddenly defaults on the payments on those bonds, the financial system would be fundamentally uprooted. The financial system could melt down even worse than it did in 2008, drying up credit and grinding commerce to a halt.

As Treasury Secretary Yellen told Congress in June:

Failing to increase the debt limit would have absolutely catastrophic economic consequences. It would be utterly unprecedented in American history for the United States government to default on its legal obligations. I believe it would precipitate a financial crisis. It would threaten the jobs and savings of Americans, and at a time when we are still recovering from the COVID pandemic.

Mark Zandi, chief economist at Moody’s Analytics, said: “It would be financial Armageddon. It’s complete craziness to even contemplate the idea of not paying our debt on time.” And JPMorgan Chase CEO Jamie Dimon said that a U.S. default “could cause an immediate, literally cascading catastrophe of unbelievable proportions and damage America for 100 years.” The American Enterprise Institute’s Michael Strain emphasized, “Even edging close to defaulting is dangerous,” and with as much as a temporary default, the “unthinkable might happen.”

#### Cascades to multiple intersecting existential risks – including nuclear wars, environmental destruction, and critical infrastructure – AND turns case – including implementation and enforcement capacity, alliances and authoritarianism

--VUCA = volatility, uncertainty, complexity, and ambiguity

--JIT = just in time

Maavak 21 (Mathew Maavak, consultant at Risk Foresight, specializing in Strategic Foresight, Contingency Planning, Perception/Crisis Management, Energy and Resource Geopolitics, Defense and Security Analysis, PhD policy studies, Universiti Teknologi Malaysia, MA International Communication, University of Leeds, “Horizon 2030: Will Emerging Risks Unravel Our Global Systems?” Salus Journal, 9(1), 2021, https://salusjournal.com/wp-content/uploads/2021/04/Maavak\_Salus\_Journal\_Volume\_9\_Number\_1\_2021\_pp\_2\_17.pdf)

According to Professor Stanislaw Drozdz (2018) of the Polish Academy of Sciences, “a global financial crash of a previously unprecedented scale is highly probable” by the mid-2020s. This will lead to a trickle-down meltdown, impacting all areas of human activity

[FIGURE 1 OMITTED]

Figure 1: Systemic Emergence of Global Risks

The economist John Mauldin (2018) similarly warns that the “2020s might be the worst decade in US history” and may lead to a Second Great Depression. Other forecasts are equally alarming. According to the International Institute of Finance, global debt may have surpassed $255 trillion by 2020 (IIF, 2019). Yet another study revealed that global debts and liabilities amounted to a staggering $2.5 quadrillion (Ausman, 2018). The reader should note that these figures were tabulated before the COVID-19 outbreak.

The IMF singles out widening income inequality as the trigger for the next Great Depression (Georgieva, 2020). The wealthiest 1% now own more than twice as much wealth as 6.9 billion people (Coffey et al, 2020) and this chasm is widening with each passing month. COVID-19 had, in fact, boosted global billionaire wealth to an unprecedented $10.2 trillion by July 2020 (UBS-PWC, 2020). Global GDP, worth $88 trillion in 2019, may have contracted by 5.2% in 2020 (World Bank, 2020).

As the Greek historian Plutarch warned in the 1st century AD: “An imbalance between rich and poor is the oldest and most fatal ailment of all republics” (Mauldin, 2014). The stability of a society, as Aristotle argued even earlier, depends on a robust middle element or middle class. At the rate the global middle class is facing catastrophic debt and unemployment levels, widespread social disaffection may morph into outright anarchy (Maavak, 2012; DCDC, 2007).

Economic stressors, in transcendent VUCA fashion, may also induce radical geopolitical realignments. Bullions now carry more weight than NATO’s security guarantees in Eastern Europe. After Poland repatriated 100 tons of gold from the Bank of England in 2019, Slovakia, Serbia and Hungary quickly followed suit.

According to former Slovak Premier Robert Fico, this erosion in regional trust was based on historical precedents – in particular the 1938 Munich Agreement which ceded Czechoslovakia’s Sudetenland to Nazi Germany. As Fico reiterated (Dudik & Tomek, 2019):

“You can hardly trust even the closest allies after the Munich Agreement… I guarantee that if something happens, we won’t see a single gram of this (offshore-held) gold. Let’s do it (repatriation) as quickly as possible.” (Parenthesis added by author).

President Aleksandar Vucic of Serbia (a non-NATO nation) justified his central bank’s gold-repatriation program by hinting at economic headwinds ahead: “We see in which direction the crisis in the world is moving” (Dudik & Tomek, 2019). Indeed, with two global Titanics – the United States and China – set on a collision course with a quadrillions-denominated iceberg in the middle, and a viral outbreak on its tip, the seismic ripples will be felt far, wide and for a considerable period.

A reality check is nonetheless needed here: Can additional bullions realistically circumvallate the economies of 80 million plus peoples in these Eastern European nations, worth a collective $1.8 trillion by purchasing power parity? Gold however is a potent psychological symbol as it represents national sovereignty and economic reassurance in a potentially hyperinflationary world. The portents are clear: The current global economic system will be weakened by rising nationalism and autarkic demands. Much uncertainty remains ahead. Mauldin (2018) proposes the introduction of Old Testament-style debt jubilees to facilitate gradual national recoveries. The World Economic Forum, on the other hand, has long proposed a “Great Reset” by 2030; a socialist utopia where “you’ll own nothing and you’ll be happy” (WEF, 2016).

In the final analysis, COVID-19 is not the root cause of the current global economic turmoil; it is merely an accelerant to a burning house of cards that was left smouldering since the 2008 Great Recession (Maavak, 2020a). We also see how the four main pillars of systems thinking (diversity, interconnectivity, interactivity and “adaptivity”) form the mise en scene in a VUCA decade.

ENVIRONMENTAL

What happens to the environment when our economies implode? Think of a debt-laden workforce at sensitive nuclear and chemical plants, along with a concomitant surge in industrial accidents? Economic stressors, workforce demoralization and rampant profiteering – rather than manmade climate change – arguably pose the biggest threats to the environment. In a WEF report, Buehler et al (2017) made the following pre-COVID-19 observation:

The ILO estimates that the annual cost to the global economy from accidents and work-related diseases alone is a staggering $3 trillion. Moreover, a recent report suggests the world’s 3.2 billion workers are increasingly unwell, with the vast majority facing significant economic insecurity: 77% work in part-time, temporary, “vulnerable” or unpaid jobs.

Shouldn’t this phenomenon be better categorized as a societal or economic risk rather than an environmental one? In line with the systems thinking approach, however, global risks can no longer be boxed into a taxonomical silo. Frazzled workforces may precipitate another Bhopal (1984), Chernobyl (1986), Deepwater Horizon (2010) or Flint water crisis (2014). These disasters were notably not the result of manmade climate change. Neither was the Fukushima nuclear disaster (2011) nor the Indian Ocean tsunami (2004). Indeed, the combustion of a long-overlooked cargo of 2,750 tonnes of ammonium nitrate had nearly levelled the city of Beirut, Lebanon, on Aug 4 2020. The explosion left 204 dead; 7,500 injured; US$15 billion in property damages; and an estimated 300,000 people homeless (Urbina, 2020). The environmental costs have yet to be adequately tabulated.

Environmental disasters are more attributable to Black Swan events, systems breakdowns and corporate greed rather than to mundane human activity.

Our JIT world aggravates the cascading potential of risks (Korowicz, 2012). Production and delivery delays, caused by the COVID-19 outbreak, will eventually require industrial overcompensation. This will further stress senior executives, workers, machines and a variety of computerized systems. The trickle-down effects will likely include substandard products, contaminated food and a general lowering in health and safety standards (Maavak, 2019a). Unpaid or demoralized sanitation workers may also resort to indiscriminate waste dumping. Many cities across the United States (and elsewhere in the world) are no longer recycling wastes due to prohibitive costs in the global corona-economy (Liacko, 2021).

Even in good times, strict protocols on waste disposals were routinely ignored. While Sweden championed the global climate change narrative, its clothing flagship H&M was busy covering up toxic effluences disgorged by vendors along the Citarum River in Java, Indonesia. As a result, countless children among 14 million Indonesians straddling the “world’s most polluted river” began to suffer from dermatitis, intestinal problems, developmental disorders, renal failure, chronic bronchitis and cancer (DW, 2020). It is also in cauldrons like the Citarum River where pathogens may mutate with emergent ramifications.

On an equally alarming note, depressed economic conditions have traditionally provided a waste disposal boon for organized crime elements. Throughout 1980s, the Calabria-based ‘Ndrangheta mafia – in collusion with governments in Europe and North America – began to dump radioactive wastes along the coast of Somalia. Reeling from pollution and revenue loss, Somali fisherman eventually resorted to mass piracy (Knaup, 2008).

The coast of Somalia is now a maritime hotspot, and exemplifies an entwined form of economic-environmental-geopolitical-societal emergence. In a VUCA world, indiscriminate waste dumping can unexpectedly morph into a Black Hawk Down incident. The laws of unintended consequences are governed by actors, interconnections, interactions and adaptations in a system under study – as outlined in the methodology section.

Environmentally-devastating industrial sabotages – whether by disgruntled workers, industrial competitors, ideological maniacs or terrorist groups – cannot be discounted in a VUCA world. Immiserated societies, in stark defiance of climate change diktats, may resort to dirty coal plants and wood stoves for survival. Interlinked ecosystems, particularly water resources, may be hijacked by nationalist sentiments. The environmental fallouts of critical infrastructure (CI) breakdowns loom like a Sword of Damocles over this decade.

GEOPOLITICAL

The primary catalyst behind WWII was the Great Depression. Since history often repeats itself, expect familiar bogeymen to reappear in societies roiling with impoverishment and ideological clefts. Anti-Semitism – a societal risk on its own – may reach alarming proportions in the West (Reuters, 2019), possibly forcing Israel to undertake reprisal operations inside allied nations. If that happens, how will affected nations react? Will security resources be reallocated to protect certain minorities (or the Top 1%) while larger segments of society are exposed to restive forces? Balloon effects like these present a classic VUCA problematic.

Contemporary geopolitical risks include a possible Iran-Israel war; US-China military confrontation over Taiwan or the South China Sea; North Korean proliferation of nuclear and missile technologies; an India-Pakistan nuclear war; an Iranian closure of the Straits of Hormuz; fundamentalist-driven implosion in the Islamic world; or a nuclear confrontation between NATO and Russia. Fears that the Jan 3 2020 assassination of Iranian Maj. Gen. Qasem Soleimani might lead to WWIII were grossly overblown. From a systems perspective, the killing of Soleimani did not fundamentally change the actor-interconnection-interaction-adaptivity equation in the Middle East. Soleimani was simply a cog who got replaced.

Geopolitics will still be dictated by major powers. However, how will the vast majority of nations fare during this VUCA decade? Many “emerging nations” have produced neither the intelligentsia nor industries required to be future-resilient. Raw materials and cheap labour cannot sustain anaemic societies in a volatile world. Advances in material sciences and robotic automation as well as technological “ephemeralization” (Fuller, 1938; Heylighen, 2002) may shift manufacturing back to the Developed World.

In an attempt to mask the looming redundancy of these nations, untold billions have been wasted on vanity studies, conferences and technological initiatives drawn up by an army of neoliberal experts and native proxies. Risks were rarely part of the planning calculus. National and regional blueprints ranging from Malaysia’s Vision 2020, Saudi Vision 2030, ASEAN 2025 to Africa 2030, amongst others, will fail just as their innumerable precursors did.

The author defines a redundant nation as one which persistently lacks a comprehensive brain bank and an adaptive governance structure in order to be future-resilient. Redundant nations are preludes to failed states. They will lack native ideations and coherent policies that are critically needed in a VUCA decade. While policies intended to “promote growth in developing countries” had traditionally acted “as agents for conflict prevention” (Humphreys, 2003), the trade-off was often bureaucratic overgrowth, corruption, ethnoreligious discrimination and resource wastages.

Attempts to re-use these nations as geopolitical proxies a la the Cold War may prove too costly for potential sponsors. The Fat Leonard scandal (Whitlock, 2016) in Southeast Asia – which entrapped senior US naval officers in a web of sleaze – may be a harbinger of similar breaches on friendly territory, particularly as China’s Belt and Road Initiative (BRI) challenges US geopolitical hegemony worldwide. The BRI however snakes through many potentially redundant nations and may expose China to a “death by a thousand cuts” via geo-economic extortion. Beijing’s recent attempts to portray itself as a humanitarian superpower has somewhat backfired after numerous defects were discovered in its “medical aid” exports (Kern, 2020).

Ultimately, one should not underestimate the possibility, however remote, of national boundaries being redrawn before the Great Reset period is over. The global map was different only 100 years back. The once-mighty Soviet Union no longer exists while its former nemesis, the United States, faces social clefts of ominous proportions. Alarming parallels are now being drawn between the inauguration of President Abraham Lincoln on March 4, 1861 – which led to the US civil war – and the swearing in of Joe Biden as 46th President of United States on Jan 20 2021 (Waxman, 2021). How will a weakened United States affect NATO and the larger Western-led global alliance?

SOCIETAL

The WEF (2017) had pencilled “global social instability” as the biggest threat facing our collective future. A similar outcome was gamed out in a 2007 study by the Development, Concepts and Doctrine Centre at the United Kingdom Ministry of Defence (DCDC, 2007).

According to Peter Turchin (2016), a professor of Evolutionary Biology at the University of Connecticut, the United States may experience “a period of heightened social and political instability during the 2020s” – marked by governmental dysfunction, societal gridlock and rampant political polarization. To blame this phenomenon on the presidency of Donald J. Trump is to wilfully ignore the gradual build-up of various fissiparous forces over decades.

The social media plays a force multiplier role here. While risks metastasize at the bedrock levels of society, policymakers are constantly distracted from the task of governance by a daily barrage of recriminations, fake news and social media agitprops. As a result, longterm policy imperatives are routinely sacrificed for immediate political gains. The importunate presidential impeachment sagas and electoral fraud accusations in the United States are reflective of wider social fissures, state fragilities and policy paralyses worldwide.

There is nothing new in this panem et circenses (bread and circuses) phenomenon. Juvenal had noted a similar trend during Rome’s imperial decline circa 100 A.D. Recently, despite clear signals that the world was facing an economic catastrophe, the United Nations seemed more focused on the discovery of gender bias in virtual assistant software like Siri and Alexa (UNESCO, 2019). How will this revelation benefit the bottom 99% of humanity in dire economic conditions; one where the victims will be preponderantly women and children?

Just like in Imperial Rome, bread and circuses are symptomatic of an economic system that relentlessly benefits the elite. The mountain is ignored and the molehill is prioritized through controlled public narratives. The issue of “stolen childhoods”, for example, is now couched in terms of climate change rather than on sexual exploitation. Few take note that nearly “100,000 children – girls and boys – are bought and sold for sex in the U.S. every year, with as many as 300,000 children in danger of being trafficked each year.” Child rape, as John Whitehead (2020) further notes, has become “Big Business in America.” Not surprisingly, human trafficking has emerged as a $150 billion global industry (Niethammer, 2020).

Such shocking human rights failures do not figure prominently in the calculus of various “social justice” movements. The Top 1% needs their “useful idiots” – a phrase misattributed to Lenin – to generate a constant supply of distractions. Activist-billionaire George Soros, for example, is pumping $1 billion into a global university network to “fight climate change” and “dictators” which curiously include elected leaders such as former US President Donald J. Trump and India’s Prime Minister Narendra Modi. These “academically excellent but politically endangered scholars” (Open Society, 2020), as Soros calls them, may turn out to be the very disruptors who will “undermine scientific progress” in the West – just as Turchin (2016) predicted in his seminal study. Soros’ pledge was coincidentally made when COVID19 began to decimate the global economy and healthcare systems. Elite philanthropy is now an avenue for global subversion. An assortment of scholars, government officials and NGOs are already channelling the agendas of their well-pocketed patrons, backed by Big Tech’s control of the mainstream and social media (Maavak, 2020c). Their narratives are reminiscent of giddy sophistries which fuelled a variety of communist and anarchist movements during the build-up to WWII.

Under these circumstances, some nations may eventually seal their borders and initiate authoritarian measures in order to maintain internal stability. This is no longer an unthinkable proposition as dissatisfaction with democracy has peaked worldwide (Foa et al, 2020). Measures perfected by COVID-19 lockdowns may have inadvertently served as a test run in this regard.

### 5 – CP – Con Con

**Text: Pursuant to Article V of the Constitution, at least two-thirds of the States should call a limited constitutional convention and at least three-fourths of the States should ratify a constitutional amendment that**

**The CP builds support through consensus – key to social change and avoids the rollback DA to the aff**

**Vermeule 4** [Adrian, Professor of Law – Harvard Law School, “Constitutional Amendments and the Constitutional Common Law,” Public Law and Legal Theory Working Paper No. 73, University of Chicago Law School, September, <http://www.law.uchicago.edu/files/files/73-av-amendments.pdf>]

Decision costs and benefits

We must account for the costs of decision making as well as the quality of decisions. A simple view would be that the formal amendment process is too costly to serve as the principal means, or even as an important means, of constitutional updating, just as periodic constitutional conventions are too costly to be practical.

Dennis Mueller denies this view. He suggests instead that the decision costs of the formal amendment process are decision benefits:

The U.S. Constitution contains broad definitions of rights, and the task of amending their definitions to reflect changes in the country’s economic, social and political characteristics has been largely carried out by the Supreme Court. While this method of updating the Constitution’s definition of rights has helped to prevent them from becoming hopelessly out of date, it has failed to build the kind of support for the new definitions of rights that would exist if they had arisen from a wider consensual agreement in the society. The bitter debates and clashes among citizens over civil rights, criminal rights and abortion illustrate this point. . . . Although [alternative procedures for constitutional amendment] may appear to involve greater decision-making costs, they have the potential for building consensus over the newly formulated definitions of rights.82

On this view, it is an illusion that constitutional common law incurs lower decision costs in the long run, even if a given change may be more easily implemented through adjudication in the short run. Although at any given time it is less costly to persuade five Justices to adopt a proposed constitutional change than to obtain a formal amendment to the same effect, the former mode of change incurs higher decision costs over time, because common-law constitutionalism allows **greater conflict** **in subsequent periods**.

A benefit of formal amendments, then, is to more effectively discourage subsequent efforts by constitutional losers to overturn adverse constitutional change. Precisely because the formal amendment process is more costly to invoke, formal amendments are **more enduring** than are judicial decisions that update constitutional rules;83 so losers in the amendment process will less frequently attempt to overturn or destabilize the new rules, in subsequent periods, than will losers in the process of common-law constitutionalism. This point does not necessarily suppose that dissenters from a given amendment come to agree with the enacting supermajority’s judgment, only that they accept the new equilibrium faute de mieux.

Obviously more work might be done to specify these intuitions, but it is at least plausible to think that the simplest view, on which formal amendments incur decisionmaking costs that exceed their other benefits, is untenably crude. The overall picture, rather, is a tradeoff along the following lines. Relative to common-law constitutionalism, the Article V process requires a higher initial investment to secure constitutional change. If Mueller is right, however, constitutional settlements produced by the Article V process will tend to be more enduring over time than is judicial updating, which can be unsettled and refought at lower cost in subsequent periods.

## Advantage 1

### Offense

#### Expanding extraterritorial applications causes foreign nations to create *blocking statutes* – multiple turns case warrants

Kava 19 (Samuel Kava, University of Maryland Francis King Carey School of Law and Johns Hopkins University Carey School of Business, 2019, “The Extraterritorial Application of the Sherman Anti-Trust Act in the Age of Globalization: The Need to Amend the Foreign Trade Antitrust Improvements Act (FTAIA) & Vigorously Apply International Comity” University of Maryland Carey School of Law, Journal of Business and Technology Law, Volume 15, Issue 1, Article 5, pages 157-159 <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1311&context=jbtl>) MULCH

Before the FTAIA was enacted, in 1982, many of the United States’ closest allies were disgruntled by the U.S. courts’ expansive extraterritorial application of the Sherman Anti-Trust Act.152 These nations confided in the territorial principle, and believed it “axiomatic that in anti-trust matters the policy of one state may be to defend what it is the policy of another state to attack.”153 The United Kingdom, one of the most outspoken allies against the United States’ “attempt[] to impose [its] domestic laws on persons and corporations who are not U.S. nationals and who are acting outside the territory of the United States,” viewed the extraterritorial application of the Sherman Anti-Trust Act as ironic given the fact “the United States was founded by those who took exception to little matters of taxation being imposed extraterritorially.”154 Thus, in an attempt to “protect their nationals from criminal [and civil] proceedings in foreign courts where the claims to jurisdiction [were] excessive and constitute[d] an invasion of sovereignty,” foreign nations enacted blocking statutes to resist the extraterritorial application of the Sherman Act.155

The blocking statutes of each nation varied, but all served to “block the discovery of documents located in their countries and bar the enforcement of foreign judgements.”156 The United Kingdom achieved these goals with the Protection of Trading Interests Act, France with the French Blocking Law, Canada with the Foreign Extraterritorial Measures Act, and Australia with the Foreign Proceedings Act.157 The conflicting laws between the United States and its foreign counterparts created tremendous uncertainty regarding what nation’s laws would be applied in the event of a cross-border dispute. According to Nuno Limáo and Giovanni Maggi, economists from the University of Maryland and Yale University, “as the world becomes more integrated, the gains from decreasing trade-policy uncertainty should tend to become more important relative to the gains from reducing the levels of trade barriers.”158

Essentially, for trade to prosper, it is more important to provide producers and consumers with predictability and certainty (regarding the rule of law) rather than enacting laws that focus on free trade economics. Accordingly, it is in the best interest of governments to focus on unifying its laws before negotiating for the elimination of tariffs or quotas. This is not to say that eliminating trade barriers is not vital to the health of the economy—in fact, tariffs, quotas, and other trade barriers are proven to adversely affect all parties involved in the chain of distribution—however, it is more important to unify laws before focusing on the elimination of any trade barriers.159

As mentioned in Part I.C., the complaints of U.S. exporters and foreign governments were heard, and the United States Congress enacted the FTAIA “to address the concerns of foreign governments that the effects test established in the Alcoa case had not made clear the magnitude of the U.S. effects required to support a claim under the Sherman Act.”160 Thus, the FTAIA was implemented to bring certainty to consumers and producers by requiring that “conduct must have a ‘direct, substantial, and reasonably foreseeable effect’” for the Sherman Anti-Trust Act to apply extraterritorially.161 This language provided the foreign community with temporary relief, and gave producers and consumers the certainty and predictability needed to establish confidence in the markets and continue trading.

However, since the passage of the FTAIA in 1982, the world has witnessed a remarkable increase in globalization, such that most conduct that takes place today has a “direct, substantial, and reasonably foreseeable effect” 162 on the U.S. economy. Epitomizing the obscureness of the FTAIA, is the fact that U.S. enforcement agencies—i.e. the U.S. Department of Justice and the Federal Trade Commission—have taken an aggressive approach to pursuing international antitrust claims. In 2017, the U.S. Department of Justice (“DOJ”) and Federal Trade Commission (“FTC”) published the International Guidelines—a publication “explaining how the agencies intend to enforce U.S. antitrust laws against conduct occurring outside the United States.”163 The International Guidelines have taken the broadest approach in determining if conduct is “direct”—finding if there is a “reasonably proximate causal nexus between the conduct and the effect” conduct is “direct”—and the narrowest view that international comity bars enforcement of U.S. antitrust laws only when it is impossible for the actor to comply with both U.S. law and its foreign nation’s law.164 Thus, because the FTAIA has become ineffective and there is a risk of further expansion of the extraterritorial application of the Sherman Anti-Trust Act with Apple v. Pepper, foreign nations will almost certainly strive to adopt modern and effective blocking statutes. These blocking statutes will revitalize uncertainty in the markets, and the global economy will be adversely affected.

In addition, because our world is more integrated, compared to the time when the FTAIA was implemented, the adverse economic effects may be worse if foreign nations pursue modern blocking statutes. To hedge against judicial uncertainty, corporations will likely react by hiring more robust legal teams. By re-allocating money to legal costs, with the hopes of avoiding potential litigation and ensuring compliance with all nations’ laws, corporations would have foregone the opportunity to spend time and money on: (1) scaling its current line of products (which would decrease the price of goods for consumers), (2) enhancing the capabilities of its current line of products (which improve consumer capabilities and increase corporate profits), or (3) creating new and innovative products (which would benefit both consumers and producers). Thus, because corporations would be forced to spend more resources on avoiding litigation rather than research and development with the new blocking statutes, consumers, producers, distributors, and the economy as a whole will be adversely affected.

Overall, there is a significant risk that foreign nations will look towards blocking statutes to limit the extraterritorial application of the Act. The conflicting laws of the United States and international community will lead to judicial uncertainty, which will have an adverse impact on the global economy. Businesses will spend more time and money to avoid disputes; thus, undermining corporate profits, a customer’s ability to purchase low cost goods, and the overall health of the global economy. The only certainty is that trade will slow down as a result of trade policy uncertainty. To avoid these adverse economic effects, it would be advantageous for the United States Congress to amend the FTAIA in a way that limits the effects of the extraterritorial application of the Sherman Anti-Trust Act. Specifically, Congress should limit the effects of the extraterritorial application of the Sherman Anti-Trust Act by expressly providing courts with a robust international comity analysis.

### A2: Econ Impact

#### Decline of US economic strength is structurally inevitable---delays to the multipolar transition risk great power conflict AND prevent regulations that solve their impacts.

1AC Burrows 16 (Matthew Burrows, Director of the Atlantic Council’s Strategic Foresight Initiative, Ph.D. in European History, “Global Risks 2035: The Search for a New Normal,” September 2016, Atlantic Council, <https://espas.secure.europarl.europa.eu/orbis/sites/default/files/generated/document/en/Global_Risks_2035_web_0922.pdf>, recut GBN-TM)

The multilateralist global system that the United States and the West built after the end of the Second World War was premised on an economically strong United States and West. In 1945, the United States was the only victor that was not completely devastated. World War II had brought the country out of the Great Depression, and the US GDP constituted more than 50 percent of the world’s total. Into the twenty-first century, the members of the Group of Seven (G7) were the world’s political and economic heavyweights. It has only been in the past several years that the collective GDP of the developing world—led by China—has surpassed the developed world’s. Even as non-Western powers grow, it is psychologically hard for the West to think about relinquishing its reins. Demographically, the West has, for a long time, been in the minority. What’s more recent is the aging of the Western population (analyzed in chapter 2), which is already occurring in Japan and Europe, beginning to squeeze the availability of resources for anything but health, social security, and interest payments on debt. Unless healthcare becomes far more efficient, the US economy will be overburdened with healthcare and pension costs as the “baby boomer” generation ages. Healthcare constitutes a whopping 18 percent of the US GDP—significantly more than is the case for other industrialized countries—without necessarily providing better results. With more going to health and pensions, there will be less capacity for defense and military spending. The United States is the biggest military spender, but China is increasing its portion of worldwide military spending, while the worldwide share of European NATO members is diminishing. China’s military probably will not rival the United States’ power-projection capabilities even by 2035, but it will have greater anti-access and denial powers. In a military contest, China may never be able to deliver a knockout blow, but it could tarnish the US image of military invincibility in a conventional state-on-state contest held in its region. Equally, a confrontation that results in a Chinese humiliation could set back China’s aspirations for regional leadership, if not trigger a domestic legitimacy crisis for the Communist Party leadership. Biggest Problem Is Domestic The biggest psychological blow to ordinary Western citizens has been their sagging standard of living (more analysis in chapter 1). Despite a much better record of overall growth in the United States since the 2008 financial crisis, those with median incomes have taken a hit. Worrisome for future US growth potential has been the drop in the labor-participation rate, from the 67 percent range before the 2008 financial crisis to 62-63 percent in the years since. The labor-participation rate was destined to drop due to a growing numbers of retirees, but much of the current sharp decrease comes from unskilled males in their prime working years—forties and early fifties—dropping out. Additionally, many younger women are not entering or staying in the job market. Global Trends 2030 looked at two scenarios for future US growth—one in which the United States maintained or slightly increased its average 2.5 percent pre-2008 growth rate, or one in which growth would slow to an average of 1.5 percent a year. In the first, there would still be the global economic shift to China. On the other hand, the 2.5 percent average growth would help boost average living standards, engendering a “feel-good” factor, which would make more Americans interested in reengaging with world issues.91 Given the record of slower growth and labor-force decline since the 2008 financial crisis, the likelihood of the second scenario is increasing. That scenario anticipated lower growth rates—which accelerated declines in average living standards—making it harder to continue trade-liberalization efforts. Indeed, the IMF warned in June 2016 that the United States faces potentially significant longer-term challenges to strong and sustained growth, saying, “concerted policy actions are warranted, sooner rather than later… focusing on the causes and consequences of falling labor force participation, an increasingly polarized income distribution, high levels of poverty, and weak productivity.”92 Moreover, it is not as if traditional US partners—Europe and Japan—are doing much better. Japan and many European countries are aging faster than the United States, eliminating labor-force growth as a driver of future economic growth. Europe’s and Japan’s economic performances have been declining since the 1990s. In Europe, the public discontent with high unemployment and declining incomes has helped to spur the rise of antiestablishment far-right and populist parties that want to weaken the EU and transatlantic ties. Even in richer European countries, such as Germany, a backlash has been growing against the Transatlantic Trade and Investment Partnership (TTIP), out of fear that Europe’s rewards would be meager and European standards would be diluted. McKinsey Global Institute, for example, believes a “return to sustained growth of 2-to-3 percent” is possible for Europe, but would require many politically difficult reforms.93 These include: reducing dependence on imports (much coming from Russia) for crude oil and natural gas; fostering a more vibrant digital economy; increasing workforce participation by the elderly, women, and migrants; and promoting flexibility in labor markets. China now spends a greater share of its GDP on research and development than does Europe. The latest OECD figures show that Europe now spends even less than the rest of the OECD.94 In both the United States and Europe, there is increasing anti-immigrant sentiment despite documented economic benefits from immigration. According to EU Commission Employment Analyst Dr. Jorg Peschner, productivity, by itself, will not be enough to reverse the negative employment trend absent more immigration: “EU’s productivity growth would have to double in order to keep the EU’s economy growing at the same pace as it did before the crisis started.” For employment growth to remain positive as long as possible, improving the labor participation of women, low-educated people, and migrants will also have to be a priority. In the United States, many of the new businesses started every year are started by first- or second-generation immigrants.95 Politically, there has been a large rise in support for right-wing and populist parties in the United States and Europe, undermining traditional parties. The gaps, for example, between the leadership and supporters in the US Republican and UK Tory and Labor Parties have been particularly evident in the selection of Donald Trump as presidential candidate and the June 2016 victory of the “Leave” vote in Britain. Unfortunately, there is no end of economic disruption. The job churn will continue as more and more skills and professions are automated, also increasing the potential for more “losers” from globalization, greater political polarization, and inequality. The increased competitiveness of the developing world with the West is a particular morale buster for Western middle classes who got used to ever-increasing prosperity for themselves and succeeding generations. Adapting to a new norm of economic turbulence—more prevalent in other eras—may be one of the biggest mental hurdles for Westerners. The West is used to thinking of the “Third World,” not home, as the place where economic turmoil happens. And a Multipolar Financial Architecture, Too Historically, US and Western power has rested on having a monopoly on reserve currencies and a Westerndominated financial system. In 2035, the dollar will be the biggest reserve currency, but its share of global financial transactions is expected to drop from 60 percent today to 45 percent. The euro will probably remain the second reserve currency, while the Chinese yuan or RMB—which became a part of the IMF benchmark-currency basket in 2015—will become a third reserve currency, accounting for 10 to 15 percent of global finance in two decades’ time.96 The financial architecture will also become more regionalized. The central role played by the financial centers of New York and London will also diminish, and a multitiered financial architecture will develop. Following the UK Brexit, those centers’ share in financial intermediation will decrease, as a second pole of global finance forms in the Eurozone. A third pole will develop in East Asia and Southeast Asia. Gradually, a growing share of global financial resources will be concentrated in those regional clusters. As with the growth of regional trade, the regional clusters will be more self-encapsulated, spurred by rising domestic demand in China and other developing countries with growing middle classes. With the role of electronic money likely to grow, the traditional banking system will probably also undergo major revision, with potential impacts on governmental powers. A more multipolar reserve system and regionalized financial architecture should lessen risks and contribute to greater stability. But the large-scale technological innovations—some of which contributed to the 2008 breakdown—will continue, making global finance still volatile. Emerging-market countries with fragmentary regulatory regimes will be particularly prone to suffering financial crises. The aging population factor also increases risks to public finances. This report anticipates modestly increased volatility, lower than what occurred in the global economy during the 1890s through the 1940s, but higher than in the 1950s and 1960s—more of a continuation of what has been the trend line since the mid-1980s. Are There Alternative Visions to Western Order? Four years ago, when Global Trends 2030 was published, the answer was largely no.97 Increasingly, the facts on the ground would suggest otherwise. They do not add up to a cohesive plan to substitute wholesale all Western institutions and practices. However, they clearly indicate that there are some no-go areas, particularly those connected to regime change, democracy promotion, state control over NGOs, and maintaining sovereignty. Russia and China, in particular, see themselves as great powers and, as such, believe they have special rights to dominance in their regions. However, as other powers like India develop, it is likely that they will see themselves as regional powers with inherent prerogatives. It is worth recalling the United States’ expansive Manifest Destiny and nineteenth-century Monroe Doctrine, claiming special rights to determine the future of the Western Hemisphere. The Mercator Institute for China Studies (MERICS) has been closely following Beijing’s efforts to build a network of parallel structures to existing international organizations. It has concluded that China “is not seeking to demolish or exit from current international organizations…It is constructing supplementary— in part complementary, in part competitive—channels for shaping the international order beyond Western claims to leadership.”98 As the accompanying chart indicates, China’s shadow network of alternative international structures encompasses everything from financial and economic partnerships (the Silk Road Economic Belt and the Asian Infrastructure Investment Bank) to full-blown political groupings like the Shanghai Cooperation Organization, Conference on Interaction and Confidence Building Measures in Asia (CICA), and the BRICS association of Brazil, Russia, India, China, and South Africa.99 Moreover, there is increasing cooperation among many of the emerging powers—beyond just authoritarians—to not just limit what they see as Western meddling in domestic affairs, but to go on the attack globally. According to a recent academic study, the “Big Five” authoritarian states of China, Russia, Iran, Saudi Arabia, and Venezuela “have taken more coordinated and decisive action to contain democracy on the global level.” They have sought to “alter the democracy and human-rights mechanisms of key rulesbased institutions, including the Organization of American States, the Council of Europe, the Organization for Security and Cooperation in Europe, and international bodies concerned with the governance of the Internet.”100 How durable are these preferences for nondemocracy and state control? By 2035, if not sooner (in the case of Venezuela), some of the now-authoritarian states could be liberalized, and the perceived threat posed by Western civil-society NGOs may ease. However, China and Russia are more likely than not to want to dominate their regions. Nationalism and democracy have been shown to be highly compatible. It is not clear that an even more powerful China or India would defer to Western leadership of the global order, even if both sides’ values in other areas begin to converge. What Kind of Post-Western World? Clearly, there is a need to plan for a world that will not have the West as its big economic powerhouse—a prospect hard for Western elites and publics to conceive of, despite a decade or more of publicity about the “rise of the rest.” According to a recent survey, Europeans and Americans are more comfortable with each other than they are with anybody else. Although a majority of Europeans said, in the most recent German Marshall Fund transatlantic-trends polling, that they would like to see their country take an approach more independent from the United States, both Americans and Europeans still prefer each other over more Russian or Chinese leadership in the world. The Obama administration—considered among the most multilateralist of recent administrations— campaigned hard in 2015 to convince Europeans not to join China’s proposed Asian Infrastructure and Investment Bank (AIIB). It was as if the United States was against any governance structure not “made in the USA,” even when those running the AIIB have made clear their intentions of operating with the World Bank and the Asian Development Bank. More and more, the talk among Western elites is about locking in as much as possible the status quo, which favors the West, so that it will be harder for the newcomers to overcome. The TPP was sold as a way to set the rules before China gains much more power. A former Obama administration official advised that now might be the best time to undertake UN Security Council reform, before China and other uncooperative powers become more powerful. “A new US administration may be able to advance a proposal to address the Security Council’s anachronistic makeup while perpetuating a council that Washington can work with.”101 For Westerners, the challenge will be to plan for a future that will not be solely run by them, but which they can live with. Handovers have been historically difficult and fraught—more often than not, decided by bloody contests. One could envisage different scenarios, some already described in the earlier chapter on conflict, of military contests between the United States and China, or the United States and China with Russia, or the United States with NATO against Russia. Without delivering a knockout blow by one side or the other, these contests would most likely pit West against East, creating something akin to a new Cold War. Even if there were a knockout blow by the United States against China, it is hard to imagine a defeated China deferring permanently to the West. Its population has been imbued with such a narrative about the injustices by the West against China that any defeat or setback would be confirmation that the United States and West are dead set against a rising China. Perhaps the most harmful effect of such a contest would be to convince both sides that neither is trustworthy. For the non-West, it would confirm the suspicion that the West does not want to relinquish its leadership position. For the West, it would make it harder to ever reach out and help establish a truly global system. Need for a Second-Generation US and Western Leadership Model War is not, and should not be, inevitable as the West struggles with the growing clout of China and other developing states on the world stage. Unlike during other transitions, the tools exist for ensuring more peaceful outcomes. They will require Western acquiescence to greater roles for the developing world to set and implement new rules of the road for the international order. A key feature of the post-1945 US design for the world order is its multilateralist structures. Many of these operate below most people’s radar. This plumbing of the international system has enabled the daily functioning of globalization. To keep it viable, China, as well as other developing countries, must be accorded more representation. There are too many long-term risks involved, for example, in China having only the equivalent of France’s voting rights in the IMF, when it is the first or second economic power in the world. This is how resentments are nurtured—all the more dangerous in China’s case because of its underlying “century of humiliation” mental complex. As emerging technologies come online, the lack of a truly global institutional framework could be particularly dangerous. Assuring the future security of the Internet is particularly important in this regard, because all the new emerging technologies—bio, 3D printing, robotics, big data—take for granted a secure, global Internet. Everyone loses if cyber crime and cyber terrorism undermine the Internet. In the worstcase scenarios, in which cyber crime proliferates or strong national borders fragment the Internet, an Atlantic Council study, as mentioned, found that the economic costs could be as much as $90 trillion out to 2030, in addition to the risk of open conflict.102 Besides bringing the emerging powers into leadership roles in the panoply of multilateral institutions, the United States will need to temper its often “exemptionalist” stance to ensure the survival of the multilateralist order. According to the Council on Foreign Relations’ Patrick Stewart, a prominent scholar of global governance, one of the persistent paradoxes of the post-1945 decades has been that the “United States is at once the world’s most vocal champion of a rules-based international order and the power most insistent on opting out of the constraints that it hopes to see binding on others.”103 No country has the networks and connections that the United States does, but the system is now polycentric, rather than unipolar, and others resent the “exceptional” privileges that the United States claims. The Global Trends works have talked about the need for a new model of US global leadership. The United States needs to be guiding the international system as a “first among equals,” and willing to play by its own rules. Paradoxically, there is likely to be no vibrant global-governance system without US and Western leadership, but too much domineering behavior could doom it. Even if the United States adapted its global role, this is not to say that the tensions and differences with many emerging powers would all disappear, or that the governance system would function seamlessly. In addition to the growing number of new state actors, the increasing importance of nonstate actors adds a new complexity to the functioning of global institutions. Moreover, there are clear-cut differences between the West and emerging powers on values-based issues, such as democracy promotion and the responsibility to protect. Many developing-country publics still resent Western colonialism and equate any intrusion with past historical wrong. They point to the 2011 humanitarian intervention in Libya, for example, as cover for the Western goal of regime change. Hence, the UN Security Council failure to stop the fighting in Syria, with more than two hundred thousand killed and 7.6 million displaced. Russia and China want to make a stand against the United States and the West getting their way and ousting the Assad regime. On the other hand, the lack of a solution smacks more of anarchy than global governance. Certainly, it shows one of the gaps that remains, and likely will remain, limiting global governance because of differences in values. The speed with which new technologies are coming online and becoming an important political, military, and economic tool—for both good and bad—carries big risks for global governance. Stewart Patrick lists four potential new technologies that “cry out for regulation”: geoengineering, drones, synthetic biology, and nanotechnology. Without some setting of rules for their operation, there is the risk of major disruptions, if not catastrophes, stemming from their abuse. The recent advances in synthetic biology lower the bar to abuse by amateurs and terrorists alike, forever affecting human DNA. Geoengineering involves planetaryscale interventions that could interfere with complex climatic systems. However cumbersome, politically unpopular, and ineffective at times, there is little alternative to increased global cooperation if one does not want to see higher risks of conflict and economic degradation. Without some sort of bolstered global governance, the West would end up with less sovereignty in a “dog-eatdog” world, in which it was increasingly in the minority. But can the United States and the West rise to the challenge of investing in a global-governance system that will not always favor their interests on every issue? Historically, the United States could be especially generous because it was on top of the world in about everything after the Second World War. Europeans came to truly believe in pooling sovereignty and joint governance after centuries of internecine conflict. The tough economic times at home have seen US and European publics become distrustful of overarching multilateral institutions, believing the will of the United States or individual European countries will not be served. It is oftentimes easier for political leaders to fall in with the public mood rather than display leadership that might appear to work against it. Over time, economic power will also be consolidated in Asia, replicating the situation three centuries ago, when China and India were the biggest economic powers in the world, and the center of the global economy was in the East. Over a longer term, one could also see a concentration in just three countries: CHAPTER 9 The Big Picture The breakdown of the post-Cold War political and security order is irrevocable. Not only are there new powers—particularly China—that do not share the West’s vision of a liberal order, but Western publics themselves have turned against globalization, which has been the overall megatrend of the past three decades. The geopolitical landscape ahead will be much different. The best case is looking at multipolarity with limited multilateralism. In the worst case, that multipolarity evolves into bipolarity with China, Russia, and their partners pitted against the United States, Europe, Japan, and other allies. In that scenario, conflict would be almost inevitable. Besides the tectonic shifts at the geopolitical level, the technology revolutions have changed, and will continued to upend, everyday life for most everyone. Three decades after its popularization, the Internet is a fact of life that no one can live without. The doubling of computing power every eighteen months, combined with the ubiquity of the Internet, has opened up wide possibilities for other technologies—to the point of a third or fourth industrial revolution, depending on how one counts the historical precedents. This communications revolution—based on the Internet and its spread—has spurred globalization, making the world into a village in which everyone across five continents can see how others live in real time. Ironically, one of the impacts of the accelerating technology revolution has been to increase inequality and, as with past technology revolutions, helped spur a backlash against it and globalization. More than previous technological revolutions, the speed, wide scope, and rapidity of the disruptions to jobs and livelihoods means that there are now many who believe they have lost despite all the improvements in everyday consumer products, medicine, and other services and products. The emerging technologies are only at the cusp of their development; the new discoveries and knowledge cannot be reversed. But the political and social responses to the new technological developments are not as linear as once thought. In the early days of globalization and technological breakthroughs, the thinking was that each would reinforce each other. Two decades later, it is becoming evident that that is not true anymore. The earlier World Wide Web could be broken up. China’s firewall is maybe the first indication of that segmentation. The Atlantic Council’s Cyber Statecraft Initiative has examined four possible futures for the Internet, several of which radically differ from the vision the founders had for an open and bottom-up vehicle for enlightenment and individual enrichment.104

### A2: US-China-Russia War

#### No risk of US – China 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.=

#### And no Russia war – disagreements remain limited

Weitz, 11 (Richard, senior fellow at the Hudson Institute and a World Politics Review senior editor 9/27/2011, “Global Insights: Putin not a Game-Changer for U.S.-Russia Ties,” [http://www.scribd.com/doc/66579517 /Global-Insights-Putin-not-a-Game-Changer-for-U-S-Russia-Ties](http://www.scribd.com/doc/66579517%20/Global-Insights-Putin-not-a-Game-Changer-for-U-S-Russia-Ties))

Fifth, there will inevitably be areas of conflict between Russia and the United States regardless of who is in the Kremlin. Putin and his entourage can never be happy with having NATO be Europe's most powerful security institution, since Moscow is not a member and cannot become one. Similarly, the Russians will always object to NATO's missile defense efforts since they can neither match them nor join them in any meaningful way. In the case of Iran, Russian officials genuinely perceive less of a threat from Tehran than do most Americans, and Russia has more to lose from a cessation of economic ties with Iran -- as well as from an Iranian-Western reconciliation. On the other hand, these conflicts can be managed, since they will likely **remain limited and compartmentalized. Russia and the West do not have fundamentally conflicting vital interests of the kind countries would go to war over.** And as the Cold War demonstrated, nuclear weapons are a great pacifier under such conditions. Another novel development is that Russia is much more integrated into the international economy and global society than the Soviet Union was, and Putin's popularity depends heavily on his economic track record. Beyond that, there are objective criteria, such as the smaller size of the Russian population and economy as well as the difficulty of controlling modern means of social communication, that will constrain whoever is in charge of Russia.

### A2: Batteries/NoKo First Strike

**Private key – their ev says tesla k2 batteries – no chance they spillover**

Msu = yellow

Daniels ‘17 [Jeff Daniels is a reporter for CNBC.com. Previously, he was a coordinating producer for CNBC, based at the network's Los Angeles Bureau. He joined the network in 1999. "Laser weapons developers ‘riding the wave’ created by Tesla, other battery innovators." https://www.cnbc.com/2017/11/17/laser-weapons-riding-the-wave-created-by-tesla-battery-innovators.html]

Advances made in automotive battery technology by Tesla and others are now being borrowed to help the Pentagon get high-power laser weapons that can kill everything from enemy drones to missiles.

The work on laser weapons underway includes an Air Force Research Laboratory contract awarded to Lockheed Martin last week to develop high-power fiber lasers that will be tested on a tactical fighter jet by 2021. The fighter jet demonstration project is part of the Air Force lab’s so-called SHiELD or Self-protect High Energy Laser Demonstrator program.

“You can power the laser like you can power the car off a battery system,” said Rob Afzal, senior fellow of laser weapon systems at Lockheed, the nation’s largest defense company. “We would use the same type of battery technology ... and the reason is you need to be able to deliver a lot of energy in a short period of time.”

Indeed, efficient lithium-ion battery technology commonly found in electric cars is now getting leveraged to drive power generation and storage solutions for military laser applications. It allows lasers to achieve significant bursts of energy very quickly for incinerating enemy targets, just as a Tesla Model S driver could accelerate from 0 to 60 miles per hour in a matter of a few seconds.

“As the batteries get smaller, cheaper, have more power density, more reliable, we’re just going to just have better power systems for the laser,” said Afzal. “The battery technology is ahead of the laser weapon technology.”

Some experts credit Tesla for helping bring a revolution in electric cars and lithium-ion battery technology, while also driving down battery costs and expanding the power storage market beyond cars. Even so, the Tesla brand competes with other lithium-ion battery suppliers, and research firm Technavio last year predicted the Chinese would surpass the U.S. in research and development spending on laser systems by 2022.

“It’s funny how a lot of things that happened in the auto industry can filter over into new capabilities on most other technologies, and lasers is one of them,” said Air Force lab’s SHiELD’s program manager Richard Bagnell.

Dan Goure, a former Pentagon official and now senior vice president of Virginia think-tank Lexington Institute, said the Lockheed contract to develop a laser for a fighter jet shows how far the research has come in terms of making laser weapons smaller.

In a release, Lockheed said this month its team will be “focused on developing a compact, high efficiency laser within challenging size, weight and power constraints.” It also said the laser system would be “pod mounted on the tactical fighter jet.”

‘Elon Musk in camouflage’

Yet the challenge comes from the fact that directed-energy weapons — lasers — tend to draw significantly more power than an automotive battery would require. The airborne laser weapons are designed to store power to fire off dozens of shots but can also include a power recharge system much like a hybrid electric car.

“You may literally not have to be generating power per se on the airplane [for laser weapons],” said Goure. “You can have battery storage, kind of like Elon Musk in camouflage. ”

It’s unclear if Musk’s Tesla or its suppliers are providing battery storage systems to the defense contractors for laser weapons. Tesla declined comment for this story.

For its part, Lockheed says it doesn’t use its own specialized battery technology for the lasers but one that’s being developed for automobiles, aircraft and other applications.

‘Riding the wave’

“We’re riding the wave,” said Afzal. “The battery advances are remarkable. We’re going to utilize that.”

Regardless, the military has been researching lethal lasers since the 1960s but in the past decade development has intensified with the focus on technologies that have more power, accuracy and reliability.

“One of the things we find in a lot of our systems — land, sea and air — is that we run out of shots particularly on the defense,” said Goure. “You just run out of bullets or missiles. And if you have laser, it avoids having to reload.”

For the Navy, a drone-killing laser weapon system was deployed a few years ago aboard the amphibious transport ship USS Ponce in the Persian Gulf, although the laser was removed from the ship last summer. In 2018, the Navy is expected to test a 150-kilowatt electric laser weapon. The high-energy laser weapon is being developed by Northrop Grumman to protect ships from drones, boats and enemy missiles.

The Army recently took delivery of a 60-kilowatt laser system from Lockheed that will be put on combat vehicles. Also, in August Lockheed did tests for the Army on a 30-kilowatt Advanced Test High Energy Asset (ATHENA) laser weapon system that shot down five drones. ATHENA is so powerful it can burn a hole in truck from a mile away.

Experts point out that a decade ago, the solid-state laser technology was bigger than many of the combat vehicles. “What’s happened is a new type of electrically-driven laser technology has evolved in the last 10 years where we can build very high power lasers that are very electrically efficient,” said Afzal. “The more efficient the laser you have, the less power you need to drive it.”

Killing missiles

At the same time, automotive industry innovation means laser weapons today are lighter and more portable than legacy chemical iodine lasers that were once tested aboard Boeing’s 747-400 jets for the Air Force.

Chemical lasers can pack a big punch in terms of firepower and shoot down ballistic missiles but are considered impractical and rely on large chemical tanks that can be hazardous in accidents.

Back in 2002, Boeing began testing chemical laser weapons on 747s in a program known as the YAL-1 Airborne Laser Testbed. The flying laser system was designed to shoot down enemy missiles but had mixed success, and the Pentagon pulled the plug on the $5 billion program in 2011. “One of the problems with the chemical laser is that first of all they’re too big and too heavy — and you have to carry the chemicals with you,” said Afzal. “With an electric laser, your platform which is driving, sailing, flying around, usually has a power system that can recharge your battery back. But in a chemical laser, once the chemicals are gone you have to go back to the depot.”

More recently, the U.S. Missile Defense Agency has indicated it wants to take another look at airborne laser weapons to kill enemy missiles but rather than use chemical lasers it plans to focus on electric solid-state laser technology.

In June, the agency put out a request for information with defense contractors for a drone equipped with a high-energy laser weapon system would be compact and designed to intercept missiles in the boost phase. That means the technology could one day possibly be used to bring down ballistic missiles fired by North Korea that are a threat to the U.S. or its allies.

**Squo solves - US innovation high but reigning in antitrust law is key**

**Springboard 21** --- Springboard provides data, insights, and perspectives on the benefits that competition among leading tech services delivers for consumers, businesses, and communities -- advancing ideas that keep tech empowering people, “Setting The Record Straight: The Consumer Welfare Standard Powers U.S. Tech Leadership” Jan 28th 2021, https://springboardccia.com/2021/01/28/setting-the-record-straight-the-consumer-welfare-standard-powers-u-s-tech-leadership/

Yesterday’s Public Knowledge event calling to undercut the consumer welfare standard and to shift standards governing mergers and acquisitions (M&A) does not acknowledge the **damage** such an approach would have on **U.S. leadership in global tech**. In fact, the U.S. tech sector **sets an example for the rest of the world in competition and innovation** thanks to the **long-standing, pro-consumer antitrust and competition laws.** For the U.S. to continue as a global tech leader, and for consumers and small businesses to continue as the major beneficiaries of tech innovation, **policymakers should keep in mind:**

— The U.S. is home to **the most innovative companies,** and provides the **best regulatory and cultural environment for t**he **next gen**eration of **innovators**.

— **The consumer welfare standard should continue to be upheld as the beacon of antitrust laws** in the U.S. because it is objective, pro-innovation, and pro-consumer.

— Shifting the burden of proof in antitrust and M&A cases **distorts the innovation economy.**

The U.S. is home to **the most innovative companies**, and provides the best regulatory and cultural environment for the next generation of innovators.

BCG’s Most Innovative Companies 2020 rankings shows that American companies comprise 14 of the top 20 companies and half of the top 50. “Overall, U.S. companies represent 25 of the top 50 companies (50%). Only 14 of the top 50 companies (28%) are European-based, and they enter the ranks at 21. None of these [European] companies fall within what generally is considered the tech sector, but rather represent industries such as automobile manufacturing, retail, pharmaceuticals, and consumer goods.”

**No NoKo war or first strike**

**Kang & Cha, 18** – David C. Kang and Victor Cha (Kang is Maria Crutcher Professor of International Relations at the University of Southern California; Cha is Director for Asian Affairs in the White House's National Security Council, with responsibility for Japan, North and South Korea, Australia, and New Zealand. 2018. “THREATENING, BUT DETERRENCE WORKS.” Nuclear North Korea, Columbia University Press, pp. 41–69. JSTOR, http://www.jstor.org/stable/10.7312/cha-18922.8.)

This raises another question: does North Korea have legitimate security fears? In a nutshell, the problem is this: the United States **refuses** to give **security guarantees** to North Korea until it proves it has **dismantled** its weapons program. The North **refuses** to **disarm** until it has **security guarantees** from the United States. **Hence, stalemate.** The key issue is whether North Korea has legitimate security concerns. If it does—and I will argue that **this is the case**—we can explain the pattern of North Korean behavior and also point to a **solution**. North Korea’s nuclear weapons, missile programs, and massive conventional military deployments are aimed at deterrence and defense. If **No**rth **Ko**rea really wanted to develop nuclear weapons for **offensive** purposes, it **would have done so long ago**. Even if the North develops **nuc**lear weapon**s**, it **will not use them because of a devastating U.S. response**. The North wants a guarantee of security from the U.S., and a policy of pressure will only make North Korea feel even more insecure. Even **isolation** is at best a **holding measure**, while economic sanctions—or even economic engagement alone—will be unlikely to get North Korea to abandon its **weapons program**. Without movement toward resolving the **security fears** of the North, progress in resolving the **nuclear weapons issue** will be **limited**. The United States and North Korea are still technically at war—the 1953 armistice was never replaced with a peace treaty. The U.S. has been unwilling to discuss even a nonaggression pact, much less a peace treaty or normalization of ties. With the U.S. calling North Korea a terrorist nation and Donald Rumsfeld discussing the possibility of war, it is no surprise that North Korea feels threatened. Upon closer examination, **No**rth **Ko**rea never had the material capabilities to be a serious contender to the U.S.- ROK alliance, and it **quickly fell further behind**. So the real question has not been whether North Korea would prevent or preempt as South Korea caught up, but instead why North Korea might **fight as it fell farther and farther behind**. To paraphrase William Wohlforth, “theorists tended to concentrate on dynamic challengers and moribund defenders. But in Korea the North was the moribund challenger, and the South was the rising defender.”7 **If North Korea was so weak, why did so many people conclude that North Korea was the likely instigator of war?** Since North Korea was not powerful, scholars and policymakers hypothesized extreme **psychological tendencies** to North Korean leaders. That is, if the **material conditions** such as military or economic power did not lead logically to a conclusion of North Korean threat, then the leadership’s **psychology** was what must matter. These ancillary and ad hoc psychological assumptions range from an irrational North Korean leadership to an extremely strong preference for invasion. Most theories of war focus on material conditions such as relative power, but in the case of North Korea, the real analytic lifting has been done by psychological assumptions about intent. As I will show, **none of these assumptions are tenable**.8 **The explanation for a half-century of stability and peace on the Korean peninsula is actually quite simple: deterrence works**. Since 1953 North Korea has faced both a determined South Korean military, and more importantly, U.S. military **deploy**ments that at their height comprised **100,000 troops** and more than **100 nuclear-tipped Lance missiles** aimed at North Korea. Even today the United States maintains bases in South Korea that include 38,000 troops, nuclear-capable airbases, and naval facilities that guarantee U.S. involvement in any conflict on the peninsula. While in 1950 there might have been reason for confidence in the North, the war was **disastrous for the Communists**, and without massive **Chinese involvement** **North Korea would have ceased to exist**. Even during the cold war, North Korea’s leadership **never challenged this deterrence** on the peninsula. As I will show, the attempted assassinations of South Korea’s authoritarian leaders during the 1970s and 1980s have stopped because they would be clearly **counterproductive** in a democratic South Korea, and **will not begin again**. Given the tension on the peninsula, small skirmishes have had the potential to spiral out of control, yet these incidents on the peninsula have been **managed with care** on both sides. The peninsula has been **stable for fifty years because deterrence has been clear and unambiguous.** The end of the cold war marked a major change in North Korea’s security position. The past fifteen years have seen the balance of power turn sharply against the North. What was stable deterrence during the cold war by both sides has swung quickly in favor of the West and South Korea.19 In the 1990s North Korea lost its two **cold war patrons**, experienced economic and environmental crises, and fell far behind the South. Although during the cold war the North was the aggressor, **this shift in power put it on the defensive**. It was only when the balance began to turn against the North that it began to pursue a nuclear weapons program. Both the weapons program and the bellicose nature of its rhetoric are an attempt to continue to **deter the U.S. from taking any preemptive moves against it.** North Korea has the worst public relations in the world. The North’s anachronistic cold war rhetoric and seeming inability to present itself reasonably make it difficult for even impartial people in the West to make sense of its actions. This chapter is aimed at providing an explanation. As history has shown, pressure only exacerbates North Korean security fears. Since North Korea does not pose the threat many analysts think it does, the United States may be **wasting resources** aimed at the North, and may also be unnecessarily raising tensions throughout the region. I want to emphasize that I am neither defending nor justifying North Korean behavior. Much of the regime’s actions are abhorrent and morally indefensible. However, sound foreign policy is built upon clear and objective analysis of the conditions at hand. Emotion and ideology have often interfered with the reasoned study of North Korea, and this has led scholars and policymakers to consistently overestimate the North Korean threat and to misunderstand the motivations behind North Korea’s actions. This chapter is focused on explaining the pattern of North Korea’s military and security policies. A complete picture of North Korea must also include the dramatic steps taken in the past decade to reform and open up its economy. In chapter 4 I will discuss North Korea’s economy and what it tells us about their foreign policy. In this chapter I perform four tasks. First, I show why North Korea is not a threat. Second, I explain why deterrence has worked for fifty years, and show that the changing balance of power has increased North Korea’s security fears. Third, I show why, even if North Korea develops a nuclear weapons capability, it will not use them, and also why North Korea is unlikely to engage in terrorism. Finally, I examine the “madman hypothesis” to show how questionable assumptions can be smuggled into the analysis of North Korea, and show why assuming irrationality is unproductive. WHY NORTH KOREA IS NOT A MILITARY THREAT In explaining North Korea’s foreign policy, a useful place to begin is by exploring why North Korea has become weaker and what has deterred it from starting a war. North Korea chose not to attack the South during the cold war, even though it was at the height of its power and was supported by the PRC and the Soviet Union. The past fifteen years have led to severe economic and military decline in North Korea, and it is now much weaker than South Korea. Intuitively, it follows that this nation is fearful of the United States. The majority of international relations theories conclude that the source of threats is clear: power is threatening. Kenneth Waltz writes that “balance of power theory leads one to expect that states, if they are free to do so, will flock to the weaker side. The stronger, not the weaker side, threatens them. . . . Even if the powerful state’s intentions are wholly benign, less powerful states will . . . interpret events differently.”10 Because states are concerned primarily with their own survival, and since states are concerned about relative power, there always exists the possibility that a strong nation may decide to begin hostilities with a weaker nation. Viewed differently, “parity preserves peace.”11 Thus a potential aggressor will not initiate a conflict if it cannot win. Threats arise by the mere presence of capabilities. Even if a nation was peaceful when it was weak, changes in power can bring changes in goals. Robert Gilpin writes that “rising power leads to increasing ambition. Rising powers seek to enhance their security by increasing their capabilities and their control over the external environment.”12 In this sense intentions are not fixed, but instead flow from and respond to changes in capabilities. The obverse of Gilpin’s argument is that as a nation’s capabilities fall behind, as it grows relatively weaker, its fears about the external environment will increase. Its ambitions will lessen, and its perception of external threat will rise. A preventive war might occur if the challenger’s economic and military capabilities begin to catch those of the defender. In that case, there exists the possibility that the defender will decide to fight a preventive war to keep the challenger from catching up, or that the challenger will fight after it catches up.13 However, there are two generic problems in applying the theories to the Korean peninsula. First, the theories predict peace if a small challenger falls farther behind the defender.14 If a nation was deterred from attacking when it was 60 percent the size of the defender, why would it attack after it has fallen to 30 percent, or even less, of the defender’s size? There are only two logical ways in which one can end up with the weaker power attacking the stronger. The first argument is well elucidated by Victor Cha in chapter 1, which I will discuss that at length in chapter 4. The [[GRAPH 2.1 OMITTED]] second way is to assume that the leader is irrational.15 I will show below why the **madman theory** does **not make** much **sense**. Before that, however, I will show how absolutely weak the North actually is. The first calculation compares only North and South Korea, while the second calculation includes likely U.S. actions in these assessments. The typical approach has been to take both North and South Korea and compare them along a range of economic and military measures, and I will show that North Korea’s capabilities were never preeminent over the South. More important, however, is an assessment of relative power that includes the U.S. forces that would be involved on the peninsula in event of a conflict. Scholars rarely consider this balance of forces, but this is a mistake, because **any war would certainly involve the United States**. Both of these measures show **clearly** that **preventive war and power transition theories are not applicable to the Korean case**. [[GRAPH 2.2 OMITTED]] South Korea has always had twice the population of the North. In economic terms, North Korea was never as large as the South, and even at its closest was no more than three-quarters the size of the South. Graph 2.1 shows estimates for the gross national product (GNP) of North and South Korea from 1953 to 2000. It is clear that North Korea was never close to the South in absolute size, and indeed after 1960 rapidly began falling farther and farther behind. North Korea’s GNP in 1960 was $1.52 billion, while South Korea’s GNP was $1.95 billion. By 1970 North Korea had grown to $3.98 billion, while in the South GNP was $7.99 billion. On a per capita income basis the North was never much farther ahead of the South, either. The North and South were roughly equivalent until the mid-1970s, when the South began to rapidly leave the North behind (graph 2.2). In 1960 North Korea’s per capita GNP was $137 as compared to $94 in the South, and in 1970 the North’s per capita income was $286 to $248 in the South. [[GRAPH 2.3 OMITTED]] However, by 1980 the North’s income was $758 per capita, while the South’s was $1,589, and by 1990 $1,065 to $5,569. Furthermore, in terms of preventive war, per capita income is not as important as absolute size, because small nations may be rich on a per capita basis (Singapore, Switzerland) but be militarily insignificant. In terms of defense spending, North Korea quickly fell behind the South, spending less on defense by the mid-1970s (graph 2.3). As far back as 1977 the South was spending more than the North on defense in absolute dollar terms, $1.8 billion in the South opposed to $1 billion by the North.16 The only measure by which the North outspent the South was on a per-capita GNP basis, which is an indicator of weakness, not strength.17 Additionally these numbers do not include military transfers from their respective patrons. Between 1965 and 1982 North Korea received $1.5 billion in military transfers, mostly from the Soviet Union. Over the same time period South Korea received $5.1 billion from the United States.18 [[GRAPH 2.4 OMITTED]] Thus the most common measures of power in international relations—economic size and defense spending—show quite clearly that North Korea was **never larger than South Korea**, has been smaller on an absolute and per-capita basis than the South for at least thirty years, and **continues to fall farther behind**. Those who see North Korea as **threatening** need to explain **why North Korea— having waited fifty years—would finally attack now that it is one-twentieth the size of the South**. In military capabilities the North and South Korea were in rough **parity** for the first two decades following the Korean War (1950–1953), and then the North began to fall behind. Graph 2.4 shows the number of men in the armed forces from 1963 to 1998. Most interesting is that North Korea did not begin its massive expansion of its armed forces until well into the 1970s. This is most **probably** a **response to its falling** further **behind** the South. But for the past thirty years, North Korea’s training, equipment, and overall military quality has steadily **deteriorated** relative to the South. The South Korean military is better-equipped, better-trained, and more versatile with better logistics and support than the North Korean military, and some assessments suggest that this may double combat effectiveness.19 Although the military has continued to hold pride of place in the North Korean economy, there have been increasing reports of reduced **training** due to the **economic problems**. Joong-Ang Ilbo, one of South Korea’s major daily newspapers, quoted an unidentified Defense Ministry official as saying that North Korea’s air force had made one hundred training sorties per day in 1996, down from three hundred to four hundred before the end of 1995, and that the training maneuvers of ground troops had also been reduced to a “minimum level.”20 American military officials have noted that individual North Korean pilots take one training flight per month, compared with the ten flights per month that U.S. pilots take.21 This drastically degrades combat readiness. Table 2.1 shows a comparison of weaponry in North and South Korea in 1997. The bulk of North Korea’s main battle tanks are of 1950s vintage, and most of its combat aircraft were introduced before 1956. Evaluations after the Gulf War concluded that Western weaponry is at least twice, or even four-times, better than older Soviet-vintage systems.22 By the 1990s North Korea’s military was large in absolute numbers but the quality of their forces was severely degraded relative to South Korea’s and the U.S. military. Michael O’Hanlon notes that: “Given the obsolescence of most North Korean equipment, however, actual capabilities of most forces would be notably less than raw numbers suggest. About half of North Korea’s major weapons are of roughly 1960s design; the other half are even older.”23 To view the North as superior in military terms is a mistake. But even more surprising about many of these accounts is that they measure the strength of the North Korean military **only against that of the ROK**, without including the **U.S.** forces, either **present** in Korea or those potential **reinforcements**. North Korea knows that it would fight the United States as well as the South, and it is **wishful thinking** to hope that the North Korean military [[TABLE 2.1 OMITTED]] planners are **so naïve** as to ignore the U.S. military presence in South Korea, **expect**ing the U.S. to **pack up and go home** if the North invaded. Comparisons between the South and the North that ignore the role of the United States are seriously misleading as to the real balance of power on the peninsula.24 In event of a full-scale conflict, the United States could reinforce the peninsula with **overwhelming power**. Currently 36,000 U.S. troops are stationed in Korea, including the U.S. Second Infantry Division and 90 combat aircraft including 72 F-16s. In addition, 36,000 troops are stationed in Japan, including the headquarters of the Seventh fleet at Yokosuka naval base, 14,000 Marines, and 90 combat aircraft. This is only the beginning, as more would soon arrive from within the United States.25 This economic and military comparison of North and South Korea shows that North Korea never had a lead over the South, and after the 1960s quickly began falling behind. The end of the cold war marked the beginning of a major change in North Korea’s fortunes, as North Korea continued to have economic difficulties, while its allies deserted it. This situation has only become more grave in the new millennium. **North Korea is not a threat to start an unprovoked war**. North Korea was never in a preeminent position relative to the South, and the real question for the pessimists is why they continue to believe that a nation that is far behind and falling farther behind might still attack. The weak may attack the strong—but the conditions under which we expect that to happen **do not exist** on the peninsula. Yet many people still see the situation as tense and threatening. This is true, but it is true because **deterrence at its heart** requires both sides to know that the other side can **severely damage** it. DETERRENCE AND THE CHANGING BALANCE OF POWER North Korea has not attacked for fifty years because **deterrence works**. Despite the **tension** that has existed on the peninsula, the **balance of power has held.** For more than fifty years neither side has attempted to mount a major military operation, nor has either side attempted to challenge deterrence on the peninsula.26 Any war on the peninsula would have disastrous consequences for both sides. The tightly constricted geographic situation **intensifies** an **already acute security dilemma** between the two sides.27 The capitals of Seoul and Pyongyang are less than 150 miles apart—**closer than New York and Baltimore**. Seoul is **30 miles from the** de-militarized zone that separates the North and the South (**DMZ**), and easily within reach of North Korea’s **artillery** tubes. One estimate calculates that a war on the Korean peninsula would cost the **U**nited **S**tates more than **$60 billion** and result in **3 million casualties**, including 52,000 U.S. military casualties. The North, although it has **numerically** larger armed forces, faces a much more highly **trained** and **capable** U.S.-ROK armed forces. This led to stalemate: there was little room for barter or bargaining. The result has not been surprising: although tension is high, the **balance of power has been stable**. **Far** from being a **tinderbox**, both sides have moved **cautiously** and **avoided major military mobilizations** that could spiral out of control.

## Advantage 2

### Advantage 2

#### All of their impact ev is in the context of Trump – disproves the impact and Biden solves

#### Inequality impact is about literally all racism and inequality – obvi cant solve

#### No impact – liberalism resilient and collapse doesn’t cause conflict

Busby 13 [Joshua Busby is an Associate Professor in the LBJ School of Public Affairs at the University of Texas-Austin 3-8-2013 <http://duckofminerva.com/2013/03/is-weakness-overblown.html>]

Both that article and their earlier one are part of a liberal order pessimism that captures the current zeitgeist but may look dated in a few years. I’d put in that category Charlie Kupchan’s book No One’s World, Ian Bremmer’s G-Zero world in Every Nation for Itself, and perhaps Kishore Mahbubani’s new book The Great Convergence, if his past writings are any indication [though the first chapter is surprisingly supportive of making the current global order better].

While there is a lot about this piece I like, especially the focus on problem-solving through “coalitions of the relevant,” I wonder if Barma, Ratner, and Weber are underestimating the resilience of the liberal order and created a straw man version of it as well.

The Liberal Order Straw Man

Here is how they described what the liberal order should look like:

Consider an objective-based definition: a world in which most countries most of the time follow rules that contribute to progressively more collective security, shared economic gains and individual human rights. States would gradually downplay the virtues of relative advantage and self-reliance. Most states would recognize that foreign-policy choices are constrained (to their aggregate benefit) by multilateral institutions, global norms and nonstate actors. They would cede meaningful bits of sovereign authority in exchange for proactive collaboration on universal challenges. And they would accept that economic growth is best pursued through integration, not mercantilism, and is in turn the most reliable source of national capacity, advancement and influence. With those ingredients in place, we would expect to see the gradual, steady evolution of something resembling an “international community” bound by rights and responsibilities to protect core liberal values of individual rights and freedoms.

This strikes me as a utopian version of the liberal order that could never live up to such grandiose expectations. The liberal order is not only supposed to have generated some sort of collective buy-in by states but create support for multilateralism, a preference for absolute gains, and normative convergence.

images (1)I think a more limited understanding of the liberal order as it is rather than its ideal is the place to start. Here, the liberal order’s stability is based more on behavioral outcomes than motivations. The order works because it has structural properties that bind leaders, including those more interested in national self-interest than mutual gain. The nature of the rules and interlocking interdependencies create checks on self-serving behavior, such that even mercantilist or unilateralist politicians from powerful states will be disciplined for, say, putting in protective tariffs on steel or starting a war without sufficient buy-in from one’s allies.

As Dan Drezner wrote in his review of their piece:

As Barma, Ratner and Weber point out, this was at best a partial order even prior to 2008. This matters: a misplaced nostalgia for prior eras of global governance is one reason that so many commentators think that the system is f\*\*ked right now. Once you realize that the post-1945 liberal order was partial, riddled with exceptions, and also prone to crisis, suddenly the present day doesn’t look so bad in comparison.

Late 20th and early 21st century globalization may have created sufficient interdependence that actions hostile to the current global order or even those parallel to it like “routing” around may be self-defeating, that agency to depart from the current structure comes with a high price. Perhaps states with deep pockets like China or mineral/oil wealth like Russia will be able to bear those costs for a while and in turn re-shape the global order, but it seems premature to argue that they have or even want to.

As Drezner quipped in his response:

Yes, this explains why the publics in the developing world have rejected economic globalization as an economic strategy — oh, wait, I’m sorry, they haven’t done that, nor have their governments. If anything, the commitment to a liberal economic order has held up remarkable well since 2008.

Too Soon to Suggest “Routing Around” Has Generated Structural Properties

The authors’ biggest problem is trying to read lasting structural changes in the global order off of fragmented, nascent trends. What if these currency swaps, the proposed BRICs bank, and other endeavors don’t amount to much in the end? Barma and company explicitly reject that “routing around” is some “high-concept description of an alternative world order” (62), but they do suggest that like “balancing” behavior, “routing around” reflects an analytically important category of action that states will increasingly adopt as a strategic choice. Or will they?

Overly Pessimistic Take on the Liberal Order?

I also wonder if the sense of pessimism about the current order is premature. Yes, there are many problems in how global governance is functioning in different policy arenas, including trade, the environment, security, you name it. And, some of these like climate change may prove to too big, too complex for us to deal with very successfully. But, for other issues like trade, we’ve been down this road before of extreme pessimism before a later breakthrough. Here is Allan Meltzer writing in 1993 on the apparent failure of the then Uruguay Round:

What ever happened to the Uruguay Round to expand the scope of the General Agreement on Tariffs and Trade? What started as the major trade initiative of the past decade is now almost dormant. Although negotiations must be completed in less than two months, there has been almost no public discussion of the round for months.

Doha may yet fail and not be superseded by anything better. That said, I would take issue with reading the bad news of the day, on trade, on the U.S. budget impasse, the EU’s financial problems, or failure to deal with crises around the world and use these instances as evidence of permanent dysfunction in either domestic systems or the liberal order.

Security and the Liberal Order

Finally, when it comes to security, Barma, Ratner, and Weber seem to conflate problems of the liberal order with problems of global governance. They find fault with the Security Council’s inability to deal with humanitarian problems in the Congo and the ongoing crisis in Syria. But, those are problems that go beyond the liberal order and to the international system more broadly, which involve a host of states that have yet to embrace democratic governance.

US-Japan21Here, the liberal order is perhaps even more partial than in the economic arena where democracies and non-democracies alike are jockeying for position. I think their point is that with democratization stalled in the Middle East and problems in the U.S. and Europe, democracy itself does not appear to be a potent magnet of attraction.

Again, it is too soon to draw some closure on what recent events like the Arab Spring yet mean for the future of democratization. The aspiration for individuals to have more control over their political life still seems a potent one.Finally, we should remember that the liberal order, partial as it is, goes beyond regime type. Where democracies have consolidated, there are security relationships, like NATO and the U.S.-Japan bilateral alliance, that remain important, though stressed. And, within Europe, even as troubling as the current situation is, war within the West is off the table entirely.

Moreover, as Ratner has written about elsewhere, the Asia pivot by the United States is an effort to undergird the liberal order by what is still the world’s dominant military power. Barma, Ratner, and Weber suggest that multipolarity has come along faster than expected, but in the security sphere, it is too soon to make such a judgment.So, even in the security space, where the liberal order encompasses a narrower slice of states, the democratic and commercial peace among like-minded states remains an important tie that binds.

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## CP – Section 5

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#### First, Aff severs *“Law”*

#### We aren’t prohibiting or expanding anything (below);

#### But *if we were*, it’s NOT an expansion of the LAW:

P.O.G.O. ‘15

Project On Government Oversight *- Internally quoting Chief Justice Roberts’ Majority Opinion in US Supreme Court’s 7-2 decision in Department of Homeland Security v. MacLean* (2015) - which dealt largely with statutory interpretation. The Project On Government Oversight (POGO). POGO’s investigators are experts in working with whistleblowers and other sources inside the government who come forward with information that we then verify using the Freedom of Information Act, interviews, and other fact-finding strategies. We publish these findings and release them to the media, Members of Congress and their constituents, executive branch agencies and offices, public interest groups, and our supporters. In addition to quoting the Majority Opinion from the Chief Justice, this article was authored by POGO’s Phillip Shaverdian – who is currently a Judicial Law Clerk within the U.S. District Court System and, at the time of the writing, was an intern within and correspondent on behalf of the Project On Government Oversight - “Agency Rules and Regulations Are Not Laws” - FEBRUARY 10, 2015 - #E&F – modified for language that may offend - https://www.pogo.org/analysis/2015/02/agency-rules-and-regulations-are-not-laws/

Agency Rules and Regulations Are Not Laws

In January, in one of the most riveting cases of the current session, the Supreme Court ruled 7-2 in favor of Transportation Security Administration (TSA) whistleblower Robert MacLean, holding that agency rules and regulations do not equate to laws. Chief Justice John Roberts wrote the majority opinion for the Court. And now that we’ve had time to celebrate the victory for MacLean, it’s time to turn our focus to what Department of Homeland Security v. MacLean may mean for whistleblowers in general.

Current federal whistleblower protection law—the Whistleblower Protection Act (WPA)—protects individuals against backlash from employers for disclosing information about “any violation of any law, rule or regulation” or “a substantial and specific danger to public health or safety” by a federal agency. However, in the same statute there exists an exception for disclosures that are “specifically prohibited by *law*.”

The question the Court sought to answer was whether MacLean’s disclosures were “specifically prohibited by *law*.”

The Homeland Security Act of 2002 states that the TSA’s “Under Secretary shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security” if they decide that the disclosure of that information would “be detrimental to the security of transportation.” The resultant regulations thus prohibit the disclosure of “sensitive security information” (SSI) without the proper authorization. Among the various types of information that could be designated SSI is “information concerning specific numbers of Federal Air Marshals, deployments or missions, and the methods involved in such operations.”

The government argued that MacLean’s disclosures were “specifically prohibited by law” and that the WPA did not offer protection for two reasons: 1) the disclosure was prohibited by specific TSA regulations on SSI; and 2) the Homeland Security Act authorizes the TSA to promulgate the regulations.

The Court addressed and subsequently rejected both arguments, affirming the judgment in favor of MacLean by the U.S. Court of Appeals for the Federal Circuit.

The Court rejected the government’s argument that a disclosure that is prohibited by regulation is also “specifically prohibited by law,” as prescribed by federal whistleblower statute.

The Court elaborates that in the WPA Congress repeatedly used the phrase “law, rule, or regulation,” but did not use the same phrase in the statutory language at question in this case. Instead, Congress used the word “law” alone, suggesting that it meant to exclude rules and regulations from the specific stipulation. Congress’s omission of “rule, or regulation” must be ~~viewed~~ (considered) as deliberate because of the use of “law” and “law, rule, or regulation” in the same sentence, as well as the frequent use of the latter phrase throughout the statute. These “two aspects of the whistleblower statute make Congress’s choice to use the narrower word “law” seem quite deliberate,” opined the Court.

After creating an exception for disclosures “specifically prohibited by law,” the WPA also creates a second exception for information “specifically required by Executive order to be kept secret.” The second exception is limited to actions taken by the President, and thus suggests that the first exception and the use of “law” is limited to actions by Congress.

The Court also reasons that “If ‘law’ included agency rules and regulations, then an agency could insulate itself from the scope of Section 2302(b)(8)(A) merely by promulgating a regulation that ‘specifically prohibited’ whistleblowing.” Instead, “Congress passed the whistleblower statute precisely because it did not trust agencies to regulate whistleblowers within their ranks.” The Court concluded that “it is unlikely that Congress meant to include rules and regulations within the word ‘law’” and that the specificity of the phrase “specifically prohibited by law” was meant to deliberately exclude rules and regulations.

#### Second, Increase prohibition and expand scope---the conduct is already prohibited---that’s 1NC Khan that we’ll include for clarity.

**NOTE**: All highlighted portions (green and blue) of this card were read in the 1NC. The 1NC card made solvency and competition claims – and, to offer context, we’ve used blue highlighting to outline the parts of the ev that augment our perm/competition claims.

Kahn ‘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.

#### Theoretically, Section 5 could already challenge the practice outlined by the Aff.

Federal Register: Rules and Regulations - ‘9

Federal Trade Commission - *16 Code of Federal Regulations*- 255 Guides Concerning the Use of Endorsements and Testimonials in Advertising Federal Acquisition Regulation; *Final Rule* - “Rules and Regulations” - Federal Register - Vol. 74, No. 198 - Thursday, October 15, 2009 - #E&F - https://www.ftc.gov/sites/default/files/documents/federal\_register\_notices/guides-concerning-use-endorsements-and-testimonials-advertising-16-cfr-part-255/091015guidesconcerningtestimonials.pdf

b. Examples 7-9 – New Media Several commenters raised questions about, or suggested revisions to, proposed new Examples 7-9 in Section 255.5, in which the obligation to disclose material connections is applied to endorsements made through certain new media.91 Two commenters argued that application of the principles of the Guides to new media would be inconsistent with the Commission’s prior commitment to address word of mouth marketing issues on a case-by-case basis.92 Others urged that they be deleted in their entirety from the final Guides, either because it is premature for the Commission to add them, or because of the potential adverse effect on the growth of these (and other) new media.93 Two commenters said that industry self-regulation is sufficient.94

The Commission’s inclusion of examples using these new media is not inconsistent with the staff’s 2006 statement that it would determine on a case-by-case basis whether law enforcement investigations of ‘‘buzz marketing’’ were appropriate.95 All Commission law enforcement decisions are, and will continue to be, made on a case-by-case basis, evaluating the specific facts at hand. Moreover, as noted above, the Guides do not expand the scope of liability under Section 5; they simply provide guidance as to how the Commission intends to apply governing law to various facts. In other words, the Commission *could* challenge the dissemination of deceptive representations made via these media regardless of whether the Guides contain these examples; thus, not including the new examples would simply deprive advertisers of guidance they otherwise could use in planning their marketing activities.96

#### The CP has an agency alter its enforcement discretion related to an existing statutory prohibition. That’s not an increase in prohibitions.

Kusserow ‘91

R.P. Kusserow, Inspector General, Department of Health and Human Services - 42 Code of Federal Regulations - Part 1001, RIN 0991-AA49 – “Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions” - Monday, July 29, 1991 (56 FR 35952) - AGENCY: Office of Inspector General (OIG), HHS. ACTION: Final rule - #E&F - https://oig.hhs.gov/fraud/docs/safeharborregulations/072991.htm

I. Background

A. The Medicare Anti-Kickback Statute

Section 1128B(b) of the Social Security Act (42 U.S.C. 1320a-7b(b)), previously codified at sections 1877 and 1909 of the Act, provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce business reimbursed under the Medicare or State health care programs. The offense is classified as a felony, and is punishable by fines of up to $25,000 and imprisonment for up to 5 years.

This provision is extremely broad. The types of remuneration covered specifically include kickbacks, bribes, and rebates made directly or indirectly, overtly or covertly, or in cash or in kind. In addition, prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration also intended to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid for by Medicare or State health care programs.

Since the statute on its face is so broad, concern has arisen among a number of health care providers that many relatively innocuous, or even beneficial, commercial arrangements are technically covered by the statute and are, therefore, subject to criminal prosecution.

B. Public Law 100-93

Public Law 100-93, the Medicare and Medicaid Patient and Program Protection Act of 1987, added two new provisions addressing the anti-kickback statute. Section 2 specifically provided new authority to the Office of Inspector General (OIG) to exclude an individual or entity from participation in the Medicare and State health care programs if it is determined that the party has engaged in a prohibited remuneration scheme. (Section 1128(b)(7) of the Act, 42 U.S.C. 1320a-7(b)(7)) This new sanction authority is intended to provide an alternative civil remedy, short of criminal prosecution, that will be a more effective way of regulating abusive business practices than is the case under criminal law.

In addition, section 14 of Public Law 100-93 requires the promulgation of regulations specifying those payment practices that will not be subject to criminal prosecution under section 1128B of the Act and that will not provide a basis for exclusion from the Medicare program or from the State health care programs under section 1128(b)(7) of the Act.

C. Notice of Intent

The legislative history of section 14 of Public Law 100-93 indicates that Congress expected the Department of Health and Human Services to consult with affected provider, practitioner, supplier and beneficiary representatives before promulgating regulations. In order to most effectively address issues related to this provision, we published a notice of intent to develop regulations (52 FR 38794, October 19, 1987) soliciting comments from interested parties prior to developing a proposed regulation. As a result of that notice, the OIG received a number of public comments, recommendations and suggestions on generic criteria that can be applied to particular types of business arrangements in order to determine if such arrangements are inappropriate for civil or criminal sanctions.

D. Notice of Proposed Rulemaking

The proposed regulation designed to implement section 14 of Public Law 100-93 was developed by the OIG and published in the Federal Register on January 23, 1989 (54 FR 3088). The regulation sets forth various proposed business and payment practices, or "safe harbors," that would not be treated as criminal offenses under section 1128B(b) of the Act and would not serve as a basis for a program exclusion under section 1128(b)(7) of the Act. As a result of that proposed rulemaking, we received a total of 754 public comments for consideration.

II. Summary of the Proposed Rule

A. Business Arrangements Not Exempt

The proposed regulation indicated that in order for a business arrangement to comply with one of the ten safe harbors, each standard of that safe harbor provision would have to be met. The proposed rule stated that if the business arrangement involves payments for different purposes (for example a single payment for personal services and for equipment rental) then each payment purpose would be analyzed to determine if all the standards of each applicable safe harbor provision have been fulfilled. The proposed rule *further* specified that where individuals and entities have entered into arrangements that are covered by the statute and where they have chosen not to fully comply with one of the exemptions proposed in these regulations, they would risk scrutiny by the OIG and may be subject to civil or criminal enforcement action.

B. Need for Continuing Guidance

Since there may be a need for the Department to respond to changes in health care delivery or business arrangements more quickly and informally than through the regulatory process to keep the industry abreast of our enforcement policy, the proposed rule invited public comment on how we can best achieve the dual goals of keeping the industry aware of our views of particular business practices, and assuring that our regulations remain current with new developments.

C. Notice to Beneficiaries

While we considered including in several of the proposed safe harbor provisions a requirement that a person notify each Medicare or Medicaid patient he or she refers to a related entity of the financial relationship that exists, we indicated that such notice requirements may be unduly burdensome compared with the potential benefits and, therefore, did not include the requirement in the safe harbors in the proposed regulation. Instead, we invited public comments on this issue.

D. Preferred Provider Organizations

We cited the increasing variety of arrangements among entities grouped under the generic headings "preferred provider organizations" (PPOs) or "managed care," and that unlike HMOs, there is often no single entity that is recognized as the "health care provider." The proposed regulations did not specifically delineate a safe harbor provision for these arrangements since we believed that one or more of the other proposed safe harbors would often cover relationships in preferred provider and managed care networks. We invited comments from the public, however, on the idea of adding additional safe harbors that would provide further protection to HMOs, PPOs, and other managed care plans.

E. Waiver of Coinsurance and Deductible Amounts for Inpatient Hospital Care

We noted that with the advent in 1983 of the prospective payment system for paying hospitals for inpatient care, some hospitals have advertised the routine waiver of Medicare coinsurance and deductible amounts as a means of attracting patients to their facilities. We solicited comments on defining a safe harbor for waiving coinsurance and deductible amounts that would be limited to inpatient hospital care, be available to all Medicare beneficiaries without regard to diagnosis or length of stay, and assure that any costs to the hospital of waiving the coinsurance and deductible amounts would not be passed on to any Federal program as a bad debt or in any other way.

F. Proposed Safe Harbors

The regulation published on January 23, 1989, proposing to amend 42 CFR part 1001 by adding a new § 1001.952, set forth "safe harbors" in ten broad areas:

1. Investment Interests

To reflect the view that Congress did not intend to bar all investments by physicians in other health care entities to which they refer patients, a safe harbor provision was proposed for investment interests in large public corporations where such investments are available to the general public. This safe harbor described a minimum number of shareholders and a minimum number of assets the company must have in order to qualify under this provision

Safe harbors for limited and managing partnerships were considered under the proposed regulation, but were not included. These areas were discussed in the preamble of the proposed rule, and we specifically requested public comments on adopting these practices as safe harbors.

2. Space Rental

While many rental arrangements are legitimate, many situations exist where rental payments are simply a device used to mask illegal payments intended to induce referrals. Accordingly, a safe harbor provision was proposed for rental arrangements if: (a) Access to the space is for periodic intervals and such intervals are set in advance in the lease, rather than based on the number of referred patients; (b) the lease is for at least one year so it cannot be readjusted on too frequent a basis to reflect prior referrals; and (c) the charges reflect fair market value.

3. Equipment Rental

With the understanding that the payment for the use of diagnostic and other medical equipment may simply be a vehicle to provide reimbursement for referrals, a safe harbor was proposed for certain situations involving equipment rentals similar to those applied to real estate rentals cited above.

4. Personal Services and Management Contracts

While health care providers often have arrangements to perform services for each other on a mutually beneficial basis, some of these arrangements may vary the payment with the volume of referrals. The proposed regulation set forth a safe harbor provision for joint ventures and other arrangements involving payments for personal services or management contracts, but only if certain standards are met that limit the opportunity to provide financial incentives in exchange for referrals. This proposed provision required the services to be paid at fair market value, and was predicated on requirements similar to those set forth in the provisions for space and equipment rental.

5. Sale of Practice

Unlike the traditional sale of a practice by a retiring physician, a physician may sell, or appear to sell, a practice to a hospital while continuing to practice on its staff. A safe harbor provision was proposed for the sale of physician practices when occurring as the result of retirement or some other event that removes the physician from the practice of medicine or from the service area in which he or she was practicing, but not when the sale is for the purpose of obtaining an ongoing source of patient referrals.

6. Referral Services

Professional societies and other consumer-oriented groups often operate referral services for a fee. Because such a service fee could be construed as a payment in order to obtain a referral, we concluded that it was appropriate to establish a specific safe harbor for this type of practice. In order to safeguard against abuse, however, the provision is only available when several standards are met.

7. Warranties

It is in the public interest to have companies offer warranties as an inducement to the consumer to purchase a product. A safe harbor was proposed for such purposes.

8. Discounts

Safe harbors relating to discounts, employees and group purchasing organizations are specifically required by statute. The discount exception was intended to encourage price competition that benefits the Medicare and Medicaid programs. The proposed discount provision was limited in application to reductions in the amount a seller charges for a good or service to the buyer. The discount could take the form of a specified price break, or the inclusion of an extra quantity of the item purchased "at no extra charge." We did not propose to protect many kinds of marketing incentive programs such as cash rebates, free goods or services, redeemable coupons, or credits.

9. Employees

The proposed exception for employees permitted an employer to pay an employee in whatever manner he or she chose for having that employee assist in the solicitation of program business and applied only to bona fide employee- employer relationships.

10. Group Purchasing Organizations

The proposed group purchasing organization (GPO) exception was designed to apply to payments from vendors to entities authorized to act as a GPO for individuals or entities who are furnishing Medicare or Medicaid services. The proposed exception required a written agreement between the GPO and the individual or entity that specifies the amounts vendors will pay the GPO.

III. Response to Comments and Summary of Revisions

As indicated above, in response to the proposed rulemaking we received 754 public comments from various provider groups, medical facilities, professional and business organizations and associations, medical societies, State and local government entities, private (35954) practitioners and concerned citizens. The comments included both general and broadreaching concerns regarding the impact of this regulation, and specific comments on those areas and safe harbor provisions about which we requested public input. A summary of the comments received and our responses to those comments follows.

A. General Comments

Comment: A large number of commenters expressed concern about the implication of engaging in a business arrangement that does not comply fully with a provision of this regulation. Some of these commenters expressed the view that the safe harbor provisions are narrowly drawn and leave many lawful business arrangements unprotected. Moreover, the preamble to the proposed rule warns: "[W]here individuals and entities have entered into arrangements that are covered by the statute, where they have chosen not to comply fully with one of the exemptions in these regulations, they would risk scrutiny by the OIG \* \* \*." These commenters urged the OIG to make clear that the failure to comply fully with a safe harbor provision is not per se illegal, and does not mean that prosecution will automatically follow. In addition, they requested safe harbor protection for business arrangements where there has only been a "technical violation" of the statute, where there has been "substantial compliance" with this regulation, or where the remuneration in question is "de minimis."

Response: This regulation covers many categories of business arrangements, providing standards to be met within each safe harbor provision. If a person participates in an arrangement that fully complies with a given provision, he or she will be assured of not being prosecuted criminally or civilly for the arrangement that is the subject of that provision.

This regulation does not expand the scope of activities that the statute prohibits. The statute itself describes the scope of illegal activities. The legality of a particular business arrangement must be determined by comparing the particular facts to the proscriptions of the statute.

The failure to comply with a safe harbor can mean one of three things. First, as we stated in the preamble to the proposed rule, it may mean that the arrangement does not fall within the ambit of the statute. In other words, the arrangement is not intended to induce the referral of business reimbursable under Medicare or Medicaid; so there is no reason to comply with the safe harbor standards, and no risk of prosecution.

Second, at the other end of the spectrum, the arrangement could be a clear statutory violation and also not qualify for safe harbor protection. In that case, assuming the arrangement is obviously abusive, prosecution would be very likely.

Third, the arrangement may violate the statute in a less serious manner, although not be in compliance with a safe harbor provision. Here there is no way to predict the degree of risk. Rather, the degree of the risk depends on an evaluation of the many factors which are part of the decision-making process regarding case selection for investigation and prosecution. Certainly, in many (but not necessarily all) instances, prosecutorial discretion would be exercised not to pursue cases where the participants appear to have acted in a genuine good-faith attempt to comply with the terms of a safe harbor, but for reasons beyond their control are not in compliance with the terms of that safe harbor. In other instances, there may not even be an applicable safe harbor, but the arrangement may appear innocuous. But in other instances, we will want to take appropriate action.

We do not believe the Medicare and Medicaid programs would be properly served if we assured protection in all instances of "substantial compliance," "technical violations," or "de minimis" payments. Unfortunately, these are vague concepts, subject to differing interpretations. In this regulation, we have attempted to provide bright lines, to the extent possible, for safe harbors in order to provide clarity and predictability as to what conduct is immune from government action. Our endorsement of the concepts mentioned above would only serve to blur these lines and produce litigation as to what "substantial," "technical" and "de minimis" really mean. The OIG therefore declines to adopt these concepts.

### 2NC---AT: Text Flaw

### 2NC---Condo

### 2NC---AT: Expansion Key

#### FTC has authority under Section 5 to enforce antitrust law extraterritorially – AND doing results in the same interpretation of comity as the plan

Ruhl 89 (Jesse R. Ruhl, JD candidate, Dickinson School of Law, BA Franklin & Marshall College, “The International Law Limits to the FTC's International Activity: Does the Law of Nations Keep the FTC at Home?” Penn State International Law Review, 7(3), 1989, https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1100&context=psilr)

IV. Domestic Limitations to the Extraterritorial Jurisdiction of the FTC

Although the Constitution gives Congress plenary power to regulate commerce with foreign nations, congressional power to regulate international antitrust is limited by international law and comity.' The Supreme Court indicated this principle early in the history of the United States by recognizing that no state may exercise sovereign powers within the borders of another state without the latter's consent . 4 Nevertheless, the United States Supreme Court has ratified a series of actions by the Department of Justice where the United States has asserted jurisdiction over agreements made outside the territorial limits of the United States governing trade and commerce. The jurisdictional nexus, according to the courts, has been found when some "effect" of the agreement has been felt within the United States itself.47

A. Delegation of the Extraterritorial Authority to the FTC

As indicated earlier,4 8 Congress has delegated some of its authority to regulate commerce to the FTC.4 The FTC's authority to regulate international commerce originates in the FTC Act and the FTC's authority to enforce the FTC Act.3 0 Section 5(a) of the Act includes, as a jurisdictional feature of the statute, the authority to regulate "trade or commerce with foreign nations."51 Congress had authority to enact and the FTC has authority to enforce the Act only because the FTC Act is within the Constitutional delegation of authority to Congress "to regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes.""2

B. FTC's Ability to Regulate Conduct of Citizens Abroad

After the Wheeler-Lea Act," the FTC's authority to regulate United States citizen's conduct occurring outside the territorial boundaries of the United States has never been seriously questioned." The scope and power of that authority was demonstrated in Branch v. FTC.58

In Branch, the FTC issued a cease and desist order 56 ordering Branch to discontinue soliciting a phony "diploma mill" in Latin America."' Branch contested the order, complaining that the FTC had no jurisdiction over his "institute" because the advertising occurred outside the territorial boundaries of the United States.58 The United States Court of Appeals for the Seventh Circuit rejected Branch's appeal. The court reasoned that since the FTC was motivated to protect Branch's competitors engaged in foreign commerce, as opposed to protecting those residents of central America who may be injured by Branch's phony activities, 9 the FTC had jurisdiction to order Branch to discontinue his practices. In so holding, the court remarked:

The Federal Trade Commission does not assume to protect the petitioner's customers in Latin America. It seeks to protect the petitioner's competitors from his unfair practices, begun in the United States and consummated in Latin America. It seeks to protect foreign commerce . . . . The right of the United States to control the conduct of its citizens in foreign countries in respect to matters which a sovereign ordinarily governs within its territorial jurisdiction has been recognized repeatedly .... Congress has the power to prevent unfair trade practices in foreign commerce by citizens of the United States, although some of the acts are done outside the territorial limits of the United States.6 "

The question then left for the court to decide was whether Congress had delegated to the FTC the power to regulate Branch's activity.6'

The court found that Congress had granted the authority to the FTC in § 5(a) of the Federal Trade Commission Act.62

C. FTC's Ability to Regulate Foreign Nationals

The Federal Trade Commission Act also allows the FTC to exercise jurisdiction over foreign nations located outside the territorial boundaries of the United States. The United States has consistently applied its own rules of conduct concerning anticompetitive acts of foreigners outside the territorial United States which produced deleterious economic effects within the territorial United States. 3 The conflict with international law arises when the United States, through the FTC or the Department of Justice, attempts to punish a foreign national for acts which occurred outside the territorial United States but violated the United States' antitrust laws.6 It is not doubted that foreign nationals are liable for their acts which occur within the territorial United States. The question is whether an exemption exists to the principles of territorial sovereignty so that the United States may prosecute foreign nations for conduct committed outside the United States, and thus in another sovereign's territory.65

The leading case supporting this exception to territorial sovereignty principles is The S.S. Lotus,66 in which the Permanent court of International Justice held that a state may punish a foreigner for his acts abroad if those acts "form a constituent element of a crime consummated within the territory of the State. '6 7 In this case, a collision between a French and a Turkish ship had resulted in the sinking of the Turkish ship and the deaths of Turkish seamen. When the French ship later docked in Constantinople, the French officer in charge when the collision occurred was put on trial in Turkey and convicted of involuntary manslaughter. France protested the sentence, and both countries resorted to the Permanent Court of Inter national Justice to resolve the question of whether Turkey had violated France's territorial sovereignty by prosecuting the French officer. The court determined that, because the crime had effected Turkish territory (the Turkish vessel), 8 Turkey could exercise jurisdiction over the Frenchman notwithstanding the fact that the French officer had at all times remained on board the French vessel:

[I]t is certain that the courts of many countries, ... which have given their criminal legislation a strictly territorial character, interpret criminal law in the sense that offenses, the authors of which at the moment of commission are in the territory of another State, are nevertheless to be regarded as having been committed in the national territory, if one of the constituent elements of the offense, and more especially its effects, have taken place there . ... "

The S.S. Lotus now stands for the principle of international law that a state may exercise jurisdiction over a party if the party has in fact perpetrated conduct in a foreign country which effects the country asserting the jurisdiction. This measure of jurisdiction has now developed into the "effects doctrine" upon which the United States can reach out, through the FTC and its other regulatory agencies, to regulate conduct by actors who are not located within United States territory.7"

### 2NC---AT: Courts Rollback

#### A lower court would need to be bold enough to BOTH tell SCOTUS their standard’s wrong AND still know SCOTUS has final say. Even if the lower court truly believes the FTC decision is bad, overturn will never happen:

* Compliance cascade;
* Perception > reality – want to be seen as aligned w. stated precedent;
* Promotion fears;
* Belief is stare decisis for SCOTUS decisions;
* citations to SCOTUS precedent in the FTC decision

Segal ‘11

Jeffrey Segal is a SUNY Distinguished Professor and the former Chair of the Political Science Department at Stony Brook University. Additionally, he was also a former Visiting Professor of American Politics at Harvard University and Visiting Senior Research Scholar to the Center for the Study of Democratic Politics at Princeton University - “Judicial Behavior” – written for The Oxford Handbook of Political Science, Edited by Robert E. Goodin - Online Publication Date: Sep 2013 - #E&F - https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199604456.001.0001/oxfordhb-9780199604456-e-014?mediaType=Article

Despite early research showing substantial noncompliance with Supreme Court decisions (see Baum 1978), recent evidence indicates that judges on lower courts follow the preferences of judges on higher courts (Benesh and Martinek 2002). Overtly noncompliant decisions by Court of Appeals judges are exceedingly rare.

Why judges so frequently comply is a matter of dispute. According to legalistic accounts, the overwhelming number of lower court decisions that the Supreme Court must oversee, and the very few cases it chooses to hear, means that lower court judges have little fear of reversal. And to the extent that judicial decisions are binary, overturned outcomes are likely to be no worse than if the lower court had done the higher court’s bidding in the first place. Thus judges presumably comply with the Supreme Court out of a belief that such behavior is legally appropriate (Cross 2005; Klein and Hume 2003). Strategic accounts, alternatively, argue that if judicial policy-making actually occurs over a continuous spectrum, the policy costs of reversal are real. Moreover, frequent reversal can limit the prospects for promotion. Since the likelihood of being reversed is a function of the lower court’s level of compliance, fear of getting overturned can lead to a “compliance cascade” (Cross 2005) whereby lower courts compete to avoid being overturned by pushing their decisions closer and closer (p. 278) to the preferences of the higher court (Songer et al. 1994; McNollgast 1995). Certainly, the Supreme Court strategically uses both its certiorari jurisdiction (Cameron et al. 2000) and citations to its own precedents (Hansford and Spriggs 2006) as a means of obtaining compliance from lower courts.

#### And – post-dating distinction

#### Aff Rollback args don’t assume the FTC’s recent recission of 2015 guidance *OR* our Cplan plank that sets a clear interpretation.

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 generally agree with the Federal Trade Commission’s decision to rescind its 2015 Section 5 Policy Statement. Just as the Department of Justice and Federal Trade Commission Merger Guidelines are regularly updated on the basis of agency experience, legal and economic developments, so should this type of policy statement. Rescinding the old statement is particularly relevant in light of the growing recognition of the hurdles preventing effective antitrust enforcement.

Calls for reform have not come solely from Neo-Brandeisian commentators (including both FTC Chair, Lina Khan, and Tim Wu, now a member of the National Economic Council). The need for reform and a varied set of proposals has also been expressed by economics-oriented commentators, including this group of former Justice Department enforcers, Jonathan Baker and Herbert Hovenkamp, among others. Chair Khan in her statement suggested that the Commission would next consider replacing the Policy Statement with a new statement explaining how they plan to use Section 5 to increase competition. We think this would be a valuable way to show parties and courts what is coming. This article provides several suggestions that would be useful to consider and possibly include in the revised Section 5 Policy Statement. It should not be taken as an exhaustive list; there certainly may be other approaches to a revised statement that could also be effective.

A revised Policy Statement should make it clear that Section 5 is not identical to the Sherman and Clayton Act and that conduct can be challenged as an unfair method of competition under Section 5 even if it would not violate these other antitrust laws.

In fact, even the original 2015 Policy Statement explicitly made this point. But the distinction between Section 5 and these other statutes is often ignored or suppressed by commentators who object to more vigorous antitrust enforcement by the FTC. Eventually, the FTC’s cases and rules under Section 5 will likely face the scrutiny of the courts. At that time, it may be particularly helpful to have a clear Policy Statement of how the FTC is interpreting Section 5. This can help maximize the impact the FTC can have, while assuaging concerns of detractors who say there is no limiting principle.

#### Our *Guidance distinction* means no rollback

* Agencies can issue *“Guidance”* (and enforce) – or they can create *“Rulemaking”* – both have legal force, but the latter tends to encounter more judicial review/resistance.

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

5. Judicial Challenge

Agencies concerned that the courts will invalidate their policy decisions will be motivated to use guidance documents more frequently relative to legislative rules. Guidance documents are advantageous because they are less likely to be challenged. Even if challenged, agencies have a reasonable probability of winning on ripeness or finality grounds.

#### Prefer SCOTUS *precedent* AND *empirics dipped from when the Court’s ideology was most aligned with the Chicago School*.

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 FTC enforces Section 5, which makes unlawful “unfair methods of competition.”118 In FTC v. Sperry & Hutchinson Co., the Supreme Court held that Section 5 “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.”119 Many believe that the interpretation of Section 5 as broader than the Sherman Act is a remnant of a bygone era. But even during the Chicago School era, the Supreme Court reaffirmed its understanding that Section 2 and Section 5 differed. For example, in Copperweld Corp. v. Independence Tube Corp., while attempting to limit the reach of the Sherman Act, the Reagan antitrust team, led by Assistant Attorney General William Baxter, and FTC Chairman James Miller, submitted an amicus brief highlighting that “[t]he courts have held that some forms of less dangerous, but nonetheless anticompetitive, unilateral conduct may be subject to Section 5 of the Federal Trade Commission Act.”120 The Court thereafter explained that single firm conduct was governed not only by Section 2 but also by Section 5.121 In 1986, the Court more specifically and directly referenced the “spirit” of Section 5, stating that Section 5 “encompass[es] not only practices that violate the Sherman Act and other antitrust laws, . . . but also practices that the Commission determines are against public policy for other reasons.”122

## Cartels

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

#### Emerging tech regulation fails---other countries don’t follow.

1AC Burrows 16 [Mathew Burrows, Director of the Atlantic Council’s Strategic Foresight Initiative, PhD in European History from the University of Cambridge, Appointed Director of the Analysis and Production Staff (APS) in 2010, September 2016, “Global Risks 2035: Mathew J. Burrows Foreword by Brent Scowcroft The Search for a New Normal” Atlantic Council Strategy Papers, http://espas.eu/orbis/sites/default/files/generated/document/en/Global\_Risks\_2035\_web\_0922.pdf]

The multilateralist global system that the United States and the West built after the end of the Second World War was premised on an economically strong United States and West. In 1945, the United States was the only victor that was not completely devastated. World War II had brought the country out of the Great Depression, and the US GDP constituted more than 50 percent of the world’s total. Into the twenty-first century, the members of the Group of Seven (G7) were the world’s political and economic heavyweights. It has only been in the past several years that the collective GDP of the developing world—led by China—has surpassed the developed world’s. Even as non-Western powers grow, it is psychologically hard for the West to think about relinquishing its reins. Demographically, the West has, for a long time, been in the minority. What’s more recent is the aging of the Western population (analyzed in chapter 2), which is already occurring in Japan and Europe, beginning to squeeze the availability of resources for anything but health, social security, and interest payments on debt. Unless healthcare becomes far more efficient, the US economy will be overburdened with healthcare and pension costs as the “baby boomer” generation ages. Healthcare constitutes a whopping 18 percent of the US GDP—significantly more than is the case for other industrialized countries—without necessarily providing better results. With more going to health and pensions, there will be less capacity for defense and military spending. The United States is the biggest military spender, but China is increasing its portion of worldwide military spending, while the worldwide share of European NATO members is diminishing. China’s military probably will not rival the United States’ power-projection capabilities even by 2035, but it will have greater anti-access and denial powers. In a military contest, China may never be able to deliver a knockout blow, but it could tarnish the US image of military invincibility in a conventional state-on-state contest held in its region. Equally, a confrontation that results in a Chinese humiliation could set back China’s aspirations for regional leadership, if not trigger a domestic legitimacy crisis for the Communist Party leadership. Biggest Problem Is Domestic The biggest psychological blow to ordinary Western citizens has been their sagging standard of living (more analysis in chapter 1). Despite a much better record of overall growth in the United States since the 2008 financial crisis, those with median incomes have taken a hit. Worrisome for future US growth potential has been the drop in the labor-participation rate, from the 67 percent range before the 2008 financial crisis to 62-63 percent in the years since. The labor-participation rate was destined to drop due to a growing numbers of retirees, but much of the current sharp decrease comes from unskilled males in their prime working years—forties and early fifties—dropping out. Additionally, many younger women are not entering or staying in the job market. Global Trends 2030 looked at two scenarios for future US growth—one in which the United States maintained or slightly increased its average 2.5 percent pre-2008 growth rate, or one in which growth would slow to an average of 1.5 percent a year. In the first, there would still be the global economic shift to China. On the other hand, the 2.5 percent average growth would help boost average living standards, engendering a “feel-good” factor, which would make more Americans interested in reengaging with world issues.91 Given the record of slower growth and labor-force decline since the 2008 financial crisis, the likelihood of the second scenario is increasing. That scenario anticipated lower growth rates—which accelerated declines in average living standards—making it harder to continue trade-liberalization efforts. Indeed, the IMF warned in June 2016 that the United States faces potentially significant longer-term challenges to strong and sustained growth, saying, “concerted policy actions are warranted, sooner rather than later… focusing on the causes and consequences of falling labor force participation, an increasingly polarized income distribution, high levels of poverty, and weak productivity.”92 Moreover, it is not as if traditional US partners—Europe and Japan—are doing much better. Japan and many European countries are aging faster than the United States, eliminating labor-force growth as a driver of future economic growth. Europe’s and Japan’s economic performances have been declining since the 1990s. In Europe, the public discontent with high unemployment and declining incomes has helped to spur the rise of antiestablishment far-right and populist parties that want to weaken the EU and transatlantic ties. Even in richer European countries, such as Germany, a backlash has been growing against the Transatlantic Trade and Investment Partnership (TTIP), out of fear that Europe’s rewards would be meager and European standards would be diluted. McKinsey Global Institute, for example, believes a “return to sustained growth of 2-to-3 percent” is possible for Europe, but would require many politically difficult reforms.93 These include: reducing dependence on imports (much coming from Russia) for crude oil and natural gas; fostering a more vibrant digital economy; increasing workforce participation by the elderly, women, and migrants; and promoting flexibility in labor markets. China now spends a greater share of its GDP on research and development than does Europe. The latest OECD figures show that Europe now spends even less than the rest of the OECD.94 In both the United States and Europe, there is increasing anti-immigrant sentiment despite documented economic benefits from immigration. According to EU Commission Employment Analyst Dr. Jorg Peschner, productivity, by itself, will not be enough to reverse the negative employment trend absent more immigration: “EU’s productivity growth would have to double in order to keep the EU’s economy growing at the same pace as it did before the crisis started.” For employment growth to remain positive as long as possible, improving the labor participation of women, low-educated people, and migrants will also have to be a priority. In the United States, many of the new businesses started every year are started by first- or second-generation immigrants.95 Politically, there has been a large rise in support for right-wing and populist parties in the United States and Europe, undermining traditional parties. The gaps, for example, between the leadership and supporters in the US Republican and UK Tory and Labor Parties have been particularly evident in the selection of Donald Trump as presidential candidate and the June 2016 victory of the “Leave” vote in Britain. Unfortunately, there is no end of economic disruption. The job churn will continue as more and more skills and professions are automated, also increasing the potential for more “losers” from globalization, greater political polarization, and inequality. The increased competitiveness of the developing world with the West is a particular morale buster for Western middle classes who got used to ever-increasing prosperity for themselves and succeeding generations. Adapting to a new norm of economic turbulence—more prevalent in other eras—may be one of the biggest mental hurdles for Westerners. The West is used to thinking of the “Third World,” not home, as the place where economic turmoil happens. And a Multipolar Financial Architecture, Too Historically, US and Western power has rested on having a monopoly on reserve currencies and a Westerndominated financial system. In 2035, the dollar will be the biggest reserve currency, but its share of global financial transactions is expected to drop from 60 percent today to 45 percent. The euro will probably remain the second reserve currency, while the Chinese yuan or RMB—which became a part of the IMF benchmark-currency basket in 2015—will become a third reserve currency, accounting for 10 to 15 percent of global finance in two decades’ time.96 The financial architecture will also become more regionalized. The central role played by the financial centers of New York and London will also diminish, and a multitiered financial architecture will develop. Following the UK Brexit, those centers’ share in financial intermediation will decrease, as a second pole of global finance forms in the Eurozone. A third pole will develop in East Asia and Southeast Asia. Gradually, a growing share of global financial resources will be concentrated in those regional clusters. As with the growth of regional trade, the regional clusters will be more self-encapsulated, spurred by rising domestic demand in China and other developing countries with growing middle classes. With the role of electronic money likely to grow, the traditional banking system will probably also undergo major revision, with potential impacts on governmental powers. A more multipolar reserve system and regionalized financial architecture should lessen risks and contribute to greater stability. But the large-scale technological innovations—some of which contributed to the 2008 breakdown—will continue, making global finance still volatile. Emerging-market countries with fragmentary regulatory regimes will be particularly prone to suffering financial crises. The agingpopulation factor also increases risks to public finances. This report anticipates modestly increased volatility, lower than what occurred in the global economy during the 1890s through the 1940s, but higher than in the 1950s and 1960s—more of a continuation of what has been the trend line since the mid-1980s. Are There Alternative Visions to Western Order? Four years ago, when Global Trends 2030 was published, the answer was largely no.97 Increasingly, the facts on the ground would suggest otherwise. They do not add up to a cohesive plan to substitute wholesale all Western institutions and practices. However, they clearly indicate that there are some no-go areas, particularly those connected to regime change, democracy promotion, state control over NGOs, and maintaining sovereignty. Russia and China, in particular, see themselves as great powers and, as such, believe they have special rights to dominance in their regions. However, as other powers like India develop, it is likely that they will see themselves as regional powers with inherent prerogatives. It is worth recalling the United States’ expansive Manifest Destiny and nineteenth-century Monroe Doctrine, claiming special rights to determine the future of the Western Hemisphere. The Mercator Institute for China Studies (MERICS) has been closely following Beijing’s efforts to build a network of parallel structures to existing international organizations. It has concluded that China “is not seeking to demolish or exit from current international organizations…It is constructing supplementary— in part complementary, in part competitive—channels for shaping the international order beyond Western claims to leadership.”98 As the accompanying chart indicates, China’s shadow network of alternative international structures encompasses everything from financial and economic partnerships (the Silk Road Economic Belt and the Asian Infrastructure Investment Bank) to full-blown political groupings like the Shanghai Cooperation Organization, Conference on Interaction and Confidence Building Measures in Asia (CICA), and the BRICS association of Brazil, Russia, India, China, and South Africa.99 Moreover, there is increasing cooperation among many of the emerging powers—beyond just authoritarians—to not just limit what they see as Western meddling in domestic affairs, but to go on the attack globally. According to a recent academic study, the “Big Five” authoritarian states of China, Russia, Iran, Saudi Arabia, and Venezuela “have taken more coordinated and decisive action to contain democracy on the global level.” They have sought to “alter the democracy and human-rights mechanisms of key rulesbased institutions, including the Organization of American States, the Council of Europe, the Organization for Security and Cooperation in Europe, and international bodies concerned with the governance of the Internet.”100 How durable are these preferences for nondemocracy and state control? By 2035, if not sooner (in the case of Venezuela), some of the now-authoritarian states could be liberalized, and the perceived threat posed by Western civil-society NGOs may ease. However, China and Russia are more likely than not to want to dominate their regions. Nationalism and democracy have been shown to be highly compatible. It is not clear that an even more powerful China or India would defer to Western leadership of the global order, even if both sides’ values in other areas begin to converge. What Kind of Post-Western World? Clearly, there is a need to plan for a world that will not have the West as its big economic powerhouse—a prospect hard for Western elites and publics to conceive of, despite a decade or more of publicity about the “rise of the rest.” According to a recent survey, Europeans and Americans are more comfortable with each other than they are with anybody else. Although a majority of Europeans said, in the most recent German Marshall Fund transatlantic-trends polling, that they would like to see their country take an approach more independent from the United States, both Americans and Europeans still prefer each other over more Russian or Chinese leadership in the world. The Obama administration—considered among the most multilateralist of recent administrations— campaigned hard in 2015 to convince Europeans not to join China’s proposed Asian Infrastructure and Investment Bank (AIIB). It was as if the United States was against any governance structure not “made in the USA,” even when those running the AIIB have made clear their intentions of operating with the World Bank and the Asian Development Bank. More and more, the talk among Western elites is about locking in as much as possible the status quo, which favors the West, so that it will be harder for the newcomers to overcome. The TPP was sold as a way to set the rules before China gains much more power. A former Obama administration official advised that now might be the best time to undertake UN Security Council reform, before China and other uncooperative powers become more powerful. “A new US administration may be able to advance a proposal to address the Security Council’s anachronistic makeup while perpetuating a council that Washington can work with.”101 For Westerners, the challenge will be to plan for a future that will not be solely run by them, but which they can live with. Handovers have been historically difficult and fraught—more often than not, decided by bloody contests. One could envisage different scenarios, some already described in the earlier chapter on conflict, of military contests between the United States and China, or the United States and China with Russia, or the United States with NATO against Russia. Without delivering a knockout blow by one side or the other, these contests would most likely pit West against East, creating something akin to a new Cold War. Even if there were a knockout blow by the United States against China, it is hard to imagine a defeated China deferring permanently to the West. Its population has been imbued with such a narrative about the injustices by the West against China that any defeat or setback would be confirmation that the United States and West are dead set against a rising China. Perhaps the most harmful effect of such a contest would be to convince both sides that neither is trustworthy. For the non-West, it would confirm the suspicion that the West does not want to relinquish its leadership position. For the West, it would make it harder to ever reach out and help establish a truly global system. Need for a Second-Generation US and Western Leadership Model War is not, and should not be, inevitable as the West struggles with the growing clout of China and other developing states on the world stage. Unlike during other transitions, the tools exist for ensuring more peaceful outcomes. They will require Western acquiescence to greater roles for the developing world to set and implement new rules of the road for the international order. A key feature of the post-1945 US design for the world order is its multilateralist structures. Many of these operate below most people’s radar. This plumbing of the international system has enabled the daily functioning of globalization. To keep it viable, China, as well as other developing countries, must be accorded more representation. There are too many long-term risks involved, for example, in China having only the equivalent of France’s voting rights in the IMF, when it is the first or second economic power in the world. This is how resentments are nurtured—all the more dangerous in China’s case because of its underlying “century of humiliation” mental complex. As emerging technologies come online, the lack of a truly global institutional framework could be particularly dangerous. Assuring the future security of the Internet is particularly important in this regard, because all the new emerging technologies—bio, 3D printing, robotics, big data—take for granted a secure, global Internet. Everyone loses if cyber crime and cyber terrorism undermine the Internet. In the worstcase scenarios, in which cyber crime proliferates or strong national borders fragment the Internet, an Atlantic Council study, as mentioned, found that the economic costs could be as much as $90 trillion out to 2030, in addition to the risk of open conflict.102 Besides bringing the emerging powers into leadership roles in the panoply of multilateral institutions, the United States will need to temper its often “exemptionalist” stance to ensure the survival of the multilateralist order. According to the Council on Foreign Relations’ Patrick Stewart, a prominent scholar of global governance, one of the persistent paradoxes of the post-1945 decades has been that the “United States is at once the world’s most vocal champion of a rules-based international order and the power most insistent on opting out of the constraints that it hopes to see binding on others.”103 No country has the networks and connections that the United States does, but the system is now polycentric, rather than unipolar, and others resent the “exceptional” privileges that the United States claims. The Global Trends works have talked about the need for a new model of US global leadership. The United States needs to be guiding the international system as a “first among equals,” and willing to play by its own rules. Paradoxically, there is likely to be no vibrant global-governance system without US and Western leadership, but too much domineering behavior could doom it. Even if the United States adapted its global role, this is not to say that the tensions and differences with many emerging powers would all disappear, or that the governance system would function seamlessly. In addition to the growing number of new state actors, the increasing importance of nonstate actors adds a new complexity to the functioning of global institutions. Moreover, there are clear-cut differences between the West and emerging powers on values-based issues, such as democracy promotion and the responsibility to protect. Many developing-country publics still resent Western colonialism and equate any intrusion with past historical wrong. They point to the 2011 humanitarian intervention in Libya, for example, as cover for the Western goal of regime change. Hence, the UN Security Council failure to stop the fighting in Syria, with more than two hundred thousand killed and 7.6 million displaced. Russia and China want to make a stand against the United States and the West getting their way and ousting the Assad regime. On the other hand, the lack of a solution smacks more of anarchy than global governance. Certainly, it shows one of the gaps that remains, and likely will remain, limiting global governance because of differences in values. The speed with which new technologies are coming online and becoming an important political, military, and economic tool—for both good and bad—carries big risks for global governance. Stewart Patrick lists four potential new technologies that “cry out for regulation”: geoengineering, drones, synthetic biology, and nanotechnology. Without some setting of rules for their operation, there is the risk of major disruptions, if not catastrophes, stemming from their abuse. The recent advances in synthetic biology lower the bar to abuse by amateurs and terrorists alike, forever affecting human DNA. Geoengineering involves planetaryscale interventions that could interfere with complex climatic systems. However cumbersome, politically unpopular, and ineffective at times, there is little alternative to increased global cooperation if one does not want to see higher risks of conflict and economic degradation. Without some sort of bolstered global governance, the West would end up with less sovereignty in a “dog-eat-dog” world, in which it was increasingly in the minority. But can the United States and the West rise to the challenge of investing in a global-governance system that will not always favor their interests on every issue? Historically, the United States could be especially generous because it was on top of the world in about everything after the Second World War. Europeans came to truly believe in pooling sovereignty and joint governance after centuries of internecine conflict. The tough economic times at home have seen US and European publics become distrustful of overarching multilateral institutions, believing the will of the United States or individual European countries will not be served. It is oftentimes easier for political leaders to fall in with the public mood rather than display leadership that might appear to work against it. Over time, economic power will also be consolidated in Asia, replicating the situation three centuries ago, when China and India were the biggest economic powers in the world, and the center of the global economy was in the East. Over a longer term, one could also see a concentration in just three countries: The breakdown of the post-Cold War political and security order is irrevocable. Not only are there new powers—particularly China—that do not share the West’s vision of a liberal order, but Western publics themselves have turned against globalization, which has been the overall megatrend of the past three decades. The geopolitical landscape ahead will be much different. The best case is looking at multipolarity with limited multilateralism. In the worst case, that multipolarity evolves into bipolarity with China, Russia, and their partners pitted against the United States, Europe, Japan, and other allies. In that scenario, conflict would be almost inevitable.

### 2NC---AT: Innovation !

**Innovation is high and antitrust laws currently strike the appropriate balance --- uniqueness controls the direction of the link --- expanding the scope of AT law can ONLY RISK undermining innovation**

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We are living in a time of **rapid** and **exciting** technological innovation. That innovation has **driven economic growth, job creation, productivity,** and human progress around the world. Significant levels of investment and entrepreneurship have **fueled innovation** across a growing and vibrant digital economy, and increasingly that innovation is encroaching on traditional economies as well. Entrepreneurs within well-established firms and fledgling startups compete intensely to introduce new business models and to develop better products and services that bring important benefits to consumers, workers, and businesses. Many of these innovations have become part of everyday life, and at times can easily be taken for granted, but their impact on our lives is no less clear and the ecosystem that enables their creation no less critical to preserve.

E-commerce marketplaces have created new opportunities for buyers and sellers to transact and have given local businesses broader reach. Social media platforms have allowed individuals to interact and distribute information more easily. The sharing economy has disrupted stagnant old industries to bring better and more affordable services to consumers while creating new means for individuals to generate income. Telecommunications equipment manufacturers have developed new products that make home- and work-life more productive and enjoyable in ways unimaginable two decades ago. Online advertising technology has allowed businesses to better target their ad dollars while funding a suite of free services such as email, online mapping tools, messaging apps, online search engines, and video sharing. Video streaming services have added new avenues for developing and distributing content to consumers. And this innovation continues as areas such as artificial intelligence and machine learning—once thought distant futures—become mainstream parts of innovation programs and likely core features of the next wave of products and services.[1]

But the innovation that has created and grown the digital economy has **not taken place equally across all parts of the globe**. The **unequivocal global leader in innovation is the United States.** The United States is **where most of the world’s leading innovators have taken root and grown to prominence**. It also is where the next wave of innovators are **laying the foundations to be future disrupters and industry leaders**. By contrast, Europe has struggled to develop a successful innovation culture and to promote the types of technological changes that ultimately have a widespread and positive impact on society. Put plainly, **Europe is at an innovation deficit**.[2] The reasons for this disparity no doubt are complex. Creating a climate for innovation requires the right combination of several factors, including an effective business environment that promotes entrepreneurship and risk-taking, a balanced regulatory environment that promotes competition and trade, and a strong public sector influence that fosters public-private partnerships and targeted innovation objectives.[3] Across a variety of measurements, the United States appears to have been more successful to date in developing these characteristics to create an ecosystem that more effectively promotes innovation than have its counterparts across the Atlantic Ocean.

But America’s innovation successes and, in particular, the meteoric growth of the most successful U.S. tech companies, have not come without detractors. The success of U.S. tech companies both at home and abroad has brought increased criticism and scrutiny by lawmakers and regulators.[4] Concerns about perceived increases in industry concentration, alleged systematic strategies to acquire nascent rivals to forestall future competition, and supposed rampant exclusionary and predatory conduct by dominant firms have all forced a reexamination of the U.S. antitrust laws and raised questions about whether the ineffectiveness of those laws has allowed companies to stifle competition and innovation and harmed society overall.[5] As a result, policymakers are grappling with difficult questions about how to promote competition and innovation in the modern economy.

It is of course appropriate to take stock of laws to ensure they are achieving their intended goals and to implement reforms where they are not. But how best to structure these rules to prohibit anticompetitive conduct while permitting procompetitive conduct **has inherent tradeoffs**.[6] As the evidence of widespread competitive harm is debated and proposals to reform the U.S. antitrust laws are considered, policymakers should not lose sight of the positive developments that have arisen under the current innovation culture and **inadvertently undermine a system that is the envy of the world.**

## Harmonization

#### No impact to populism – its impossible

Siles 14 – Gabriel Siles-Brügge, Lecturer in Politics at the University of Manchester, “Explaining the Resilience of Free Trade: The Smoot–Hawley Myth and the Crisis”, Review of International Political Economy, 21(3), Taylor & Francis

Despite the onset of the current economic crisis there has been **no significant move towards protectionism** amongst **most** of the world's economies. Although rational institutionalist explanations point to the role played by the constraining rules of the **W**orld **T**rade **O**rganisation, countries have largely remained open in areas where they have **not legally bound** their liberalisation. While accounts emphasising the increasing interdependence of global supply chains have some merit, I show that such explanations do not tell the full story, as integration into the global economy is not always associated with support for free trade during the crisis. In response, I develop a constructivist argument which highlights how particular ideas about the global trading system have become **rooted** in policy-making discourse, **mediating** the response of policy elites to protectionist pressures and temptations. Trade policy-makers and a group of leading economists have constructed an ideational imperative for continued openness (and for concluding the Doha Round, albeit less successfully) by drawing on a questionable reading of economic history (the Smoot–Hawley myth); by continually stressing protectionism's role as one of the causes of the Great Depression non-liberal responses to the current crisis have been all but ruled out by all except those willing to question the received wisdom.

#### No impact – liberalism resilient and collapse doesn’t cause conflict

Busby 13 [Joshua Busby is an Associate Professor in the LBJ School of Public Affairs at the University of Texas-Austin 3-8-2013 <http://duckofminerva.com/2013/03/is-weakness-overblown.html>]

Both that article and their earlier one are part of a liberal order pessimism that captures the current zeitgeist but may look dated in a few years. I’d put in that category Charlie Kupchan’s book No One’s World, Ian Bremmer’s G-Zero world in Every Nation for Itself, and perhaps Kishore Mahbubani’s new book The Great Convergence, if his past writings are any indication [though the first chapter is surprisingly supportive of making the current global order better].

While there is a lot about this piece I like, especially the focus on problem-solving through “coalitions of the relevant,” I wonder if Barma, Ratner, and Weber are underestimating the resilience of the liberal order and created a straw man version of it as well.

The Liberal Order Straw Man

Here is how they described what the liberal order should look like:

Consider an objective-based definition: a world in which most countries most of the time follow rules that contribute to progressively more collective security, shared economic gains and individual human rights. States would gradually downplay the virtues of relative advantage and self-reliance. Most states would recognize that foreign-policy choices are constrained (to their aggregate benefit) by multilateral institutions, global norms and nonstate actors. They would cede meaningful bits of sovereign authority in exchange for proactive collaboration on universal challenges. And they would accept that economic growth is best pursued through integration, not mercantilism, and is in turn the most reliable source of national capacity, advancement and influence. With those ingredients in place, we would expect to see the gradual, steady evolution of something resembling an “international community” bound by rights and responsibilities to protect core liberal values of individual rights and freedoms.

This strikes me as a utopian version of the liberal order that could never live up to such grandiose expectations. The liberal order is not only supposed to have generated some sort of collective buy-in by states but create support for multilateralism, a preference for absolute gains, and normative convergence.

images (1)I think a more limited understanding of the liberal order as it is rather than its ideal is the place to start. Here, the liberal order’s stability is based more on behavioral outcomes than motivations. The order works because it has structural properties that bind leaders, including those more interested in national self-interest than mutual gain. The nature of the rules and interlocking interdependencies create checks on self-serving behavior, such that even mercantilist or unilateralist politicians from powerful states will be disciplined for, say, putting in protective tariffs on steel or starting a war without sufficient buy-in from one’s allies.

As Dan Drezner wrote in his review of their piece:

As Barma, Ratner and Weber point out, this was at best a partial order even prior to 2008. This matters: a misplaced nostalgia for prior eras of global governance is one reason that so many commentators think that the system is f\*\*ked right now. Once you realize that the post-1945 liberal order was partial,

riddled with exceptions, and also prone to crisis, suddenly the present day doesn’t look so bad in comparison.

Late 20th and early 21st century globalization may have created sufficient interdependence that actions hostile to the current global order or even those parallel to it like “routing” around may be self-defeating, that agency to depart from the current structure comes with a high price. Perhaps states with deep pockets like China or mineral/oil wealth like Russia will be able to bear those costs for a while and in turn re-shape the global order, but it seems premature to argue that they have or even want to.

As Drezner quipped in his response:

Yes, this explains why the publics in the developing world have rejected economic globalization as an economic strategy — oh, wait, I’m sorry, they haven’t done that, nor have their governments. If anything, the commitment to a liberal economic order has held up remarkable well since 2008.

Too Soon to Suggest “Routing Around” Has Generated Structural Properties

The authors’ biggest problem is trying to read lasting structural changes in the global order off of fragmented, nascent trends. What if these currency swaps, the proposed BRICs bank, and other endeavors don’t amount to much in the end? Barma and company explicitly reject that “routing around” is some “high-concept description of an alternative world order” (62), but they do suggest that like “balancing” behavior, “routing around” reflects an analytically important category of action that states will increasingly adopt as a strategic choice. Or will they?

Overly Pessimistic Take on the Liberal Order?

I also wonder if the sense of pessimism about the current order is premature. Yes, there are many problems in how global governance is functioning in different policy arenas, including trade, the environment, security, you name it. And, some of these like climate change may prove to too big, too complex for us to deal with very successfully. But, for other issues like trade, we’ve been down this road before of extreme pessimism before a later breakthrough. Here is Allan Meltzer writing in 1993 on the apparent failure of the then Uruguay Round:

What ever happened to the Uruguay Round to expand the scope of the General Agreement on Tariffs and Trade? What started as the major trade initiative of the past decade is now almost dormant. Although negotiations must be completed in less than two months, there has been almost no public discussion of the round for months.

Doha may yet fail and not be superseded by anything better. That said, I would take issue with reading the bad news of the day, on trade, on the U.S. budget impasse, the EU’s financial problems, or failure to deal with crises around the world and use these instances as evidence of permanent dysfunction in either domestic systems or the liberal order.

Security and the Liberal Order

Finally, when it comes to security, Barma, Ratner, and Weber seem to conflate problems of the liberal order with problems of global governance. They find fault with the Security Council’s inability to deal with humanitarian problems in the Congo and the ongoing crisis in Syria. But, those are problems that go beyond the liberal order and to the international system more broadly, which involve a host of states that have yet to embrace democratic governance.

US-Japan21Here, the liberal order is perhaps even more partial than in the economic arena where democracies and non-democracies alike are jockeying for position. I think their point is that with democratization stalled in the Middle East and problems in the U.S. and Europe, democracy itself does not appear to be a potent magnet of attraction.

Again, it is too soon to draw some closure on what recent events like the Arab Spring yet mean for the future of democratization. The aspiration for individuals to have more control over their political life still seems a potent one.Finally, we should remember that the liberal order, partial as it is, goes beyond regime type. Where democracies have consolidated, there are security relationships, like NATO and the U.S.-Japan bilateral alliance, that remain important, though stressed. And, within Europe, even as troubling as the current situation is, war within the West is off the table entirely.

Moreover, as Ratner has written about elsewhere, the Asia pivot by the United States is an effort to undergird the liberal order by what is still the world’s dominant military power. Barma, Ratner, and Weber suggest that multipolarity has come along faster than expected, but in the security sphere, it is too soon to make such a judgment.So, even in the security space, where the liberal order encompasses a narrower slice of states, the democratic and commercial peace among like-minded states remains an important tie that binds.

### Ptx

Concede political context explains passage – means none of their offense matters

### FTC independence

Concede defense all of their offense is directly solved by the counterplan that was the 2NC

## DOJ

### O/V – T/L – DOJ/Google

#### 1 – Link alone turns case – plan necessarily expands enforcement responsibility without a commensurate expansion in resources – agencies are NOT ONLY likely to reprioritize away from GAFA, BUT ALSO undercut plan’s implementation in an effort to mitigate the fallout

Kovacic and Hyman 13 (William E. Kovacic, Global Competition Professor of Law and Policy, Professor of Law, and Director of the Competition Law Center, at George Washington University Law School, former General Counsel, Commissioner, and Chairman of the Federal Trade Commission; and David A. Hyman, Chair in Law and Professor of Medicine, University of Illinois, former Special Counsel at the Federal Trade Commission; “Competition Agencies with Complex Policy Portfolios: Divide or Conquer?” GW Law Faculty Publications & Other Works, 631, 2013, https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1779&context=faculty\_publications)

3. Capacity and Capability

As described earlier, capacity refers to the pool of knowledge and resources that the agency can bring to bear, and capability refers to the range of policy levers and quality of the resulting decisions.

Throughout its history, the FTC has struggled to see that the commitments entailed by its multifaceted mandate do not outrun its capacity to deliver good policy results. Through most of its history, the Commission has suffered from a tendency to initiate ambitious programs without adequate attention to the basic prerequisites of effective implementation. These flaws played a major part in placing the agency in peril in the late 1970s and early 1980s.111 The agency’s extraordinary combination of competition and consumer protection measures elicited harsh political backlash and enmeshed the Commission in destructive turmoil with Congress. Although some FTC initiatives from this period (such as the Eyeglasses I rule and the beginnings of the antitrust health care program) succeeded splendidly, many litigation and rulemaking proceedings foundered in the courts.

The FTC’s performance on this score has improved greatly over the past 30 years. The agency has learned the hard way to ask basic questions about each new undertaking: How much will it cost? Who will do it? How long will it take? What do we expect to accomplish? What are the doctrinal, political, and management risks? How will we know if it’s working? The bruising experiences of the late 1970s and early 1980s inspired stronger attention to planning and program management. The matching of the FTC’s commitments to capabilities remains a massive challenge for the institution.

a. Chronic Underfunding of Mandates

Agencies seldom will receive the resources needed to fulfill all the regulatory commands assigned to them. This is the case of the modern FTC. In many instances, such as the automobile credit sales provision of Dodd Frank, Congress assigns major new responsibilities without providing resources to carry them out. The legislative process that generates new substantive legislation is detached from the process that appropriates funds. Thus, Congress rarely considers the resource implications of requirements that the agency enforce new laws, issue new rules, or prepare reports.

Agencies respond to these imperatives in one of two ways, both of which undermine agency effectiveness. The first is to undertake programs that exceed the agency’s ability to execute them effectively. The agency will be tempted to cut corners by weakening internal quality control measures, understaffing ambitious projects, or assigning difficult litigation or rulemaking tasks to relatively inexperienced personnel. Even though senior personnel may recognize how much resource constraints limit agency capacity, they may still acquiesce in Congressional demands for the initiation of new projects. A short term political appointee may regard the initiation of a new measure as a credit-claiming event and may see the risk that an improvidently conceived project may fail as a cost that will be borne by future agency leaders and will not be attributed fully, or at all, to the appointee who originated it. Without an effective feedback mechanism that forces the incumbent appointee to internalize such costs, it is easy to begin such projects, even when they outrun the agency’s capacity.

A second mechanism is to fund new projects adequately by a relatively silent form of triage. This consists of draining resources away from other programs ostensibly designed to implement congressionally imposed duties. To support new programs in areas such as privacy, data protection, and mortgage lending fraud, the FTC over time has quietly abandoned other programs that used to be mainstays of enforcement. To some extent this is done with at least the implicit approval of Congress. Through official budget requests and oversight hearings, Congress is at least generally aware of how the Commission is spending its money. It can detect that some areas of policy responsibility seem to be inactive. Congress can observe, for example, that the FTC has brought two Robinson-Patman Act price discrimination cases in the past 23 years.112 This reliably indicates diminished attention to a statute whose enforcement in the 1960s yielded hundreds of cases. For the most part, the FTC has constructed or retooled major programs involving privacy, financial services, mergers, horizontal restraints, and single firm conduct by severely reducing outlays for the enforcement of the Robinson-Patman Act and consumer protection statutes dealing with fur and textile labeling.

### O/V – ! T/L

#### Splinternet risks extinction from climate change and pandemics

Gardels 20 (Nathan Gardels, co-founder and a senior adviser to the Berggruen Institute, Media Fellow of the World Economic Forum, member of the Council of Foreign Relations, editor-in-chief of Noēma Magazine, “From Globalization To A Planetary Mindset,” Noēma, 8-7-2020, <https://www.noemamag.com/from-globalization-to-a-planetary-mindset/>)

Globalization as we have known it is over. Kaput. As John Gray summarily puts it in his contribution to Noema, “forget it.” For the British philosopher, we are returning to the pluralism that existed before the post-Cold War neoliberal expansion and even the recent centuries of Western hegemony. This is the fragmentation that Chinese thinker Yuk Hui also talks about in Noema. For him, that means any new order will arise at multiple starting points, or bifurcations, that depart from the course we were on.

There will be many possible permutations, from Cold War and economic decoupling between the two great powers, protectionist trade policies and immigration curbs. We will see a patchwork of industrial policies aimed at strengthening national resilience instead of global integration. So-called “robust” supply chains that are partly global and partly domestic to build in redundancy as a hedge against political or natural disruptions are already appearing. While the populist revolt dealt the death blow to globalization, alternative political dispositions waiting in the wings have also so far shown little interest in resuscitating it.

What remains, and is irreducible, is the planetary. Obviously, the global ecosystem, including climate and pandemics that cross borders, qualify as planetary. The challenges here are recognized as common and convergent for all.

Thus, reconciling the centrifugal pull of ingathering with the centripetal imperative of planetary cooperation is the so-called “primary contradiction” going forward.

This contradiction will play out across a global communications web that has spun a synchronized planetary consciousness in which all are aware of what everyone else is doing, or not doing, in more or less real time. Inexorably, a kind of global mind, or “noosphere” as Teilhard de Chardin envisioned it, is emerging. But it is today as much a terrain of contestation rooted in divergent political and cultural tempers, including an ever more differentiating splinternet, as a space of common ground.

The “noopolitik” of the coming era could not be more different than the realpolitik of the last century. Rather than solid nation-states in which elites calculate balances of power, noopolitik is a transparent endeavor open to all manner of connected players in a now gaseous global realm in which nations are attempting to reclaim sovereignty even as the solidity they once assumed diminishes with every passing day.

The ultimate project of a planetary approach, therefore, is to forge a shared narrative for the noosphere. This doesn’t imply some one-size-fits-all Leviathan-like order that sets solutions to whatever ails the world, but a prevalent normative awareness that a cooperative approach is the only way to make irreducible interdependence work for each of us instead of against all of us.

That shared consciousness, or “noorative,” will only take hold in the first instance if its foundation rests not on wooly abstractions but on the existential imperative of cooperation in such clear and present realities as climate and pandemics. In effect, this noorative would combine the Chinese strategist Zheng Bijian’s idea of “building on a convergence of interests to establish a community of interests” with the German philosopher Peter Sloterdijk’s notion of “planetary co-immunism,” as he explains in an interview with Noema.

#### Ethical regulation of AI determines whether it causes or solves extinction

Newton, 17—MoviePilot Associate Editor, citing an open letter signed by Nick Bostrom, Elon Musk, Stephen Hawking, and others, and also quotes many of these extensively (Mark, “Top Scientists, Experts and Philosophers Warn of Dangers of Artificial Intelligence,” <https://moviepilot.com/posts/2589811>, dml)

Bostrom also claims the biggest issue isn't necessarily a Skynet scenario in which robots attempt to kill off humanity or launch nuclear bombs into the atmosphere, but one where a small elite group has control of a super-intelligence. In this way, a super-intelligence could be pre-programmed with human prejudices towards others. Similarly, an error in programming could result in unforeseen consequences. He posits that a super-intelligence dedicated to the mundane task of manufacturing paper clips (and nothing else), could break beyond expected limits in order to maximize the output of paper clips. In this sense, capitalistic sensibilities of increasing production, output and profit, need to be controlled within an ethical framework. This is something humans innately do (not always perfectly), but it would also have to be something carefully programmed into an AI. As The Atlantic states, if the robots kill us, its because it's their job and we've programmed them that way. But could robots really wipe out humanity? Well, Stuart Armstrong, a philosopher and Research Fellow at the institute, thinks it's possible. In fact, AI might be the only technology capable of wiping us out. One of the things that makes AI risk scary is that it’s one of the few that is genuinely an extinction risk if it were to go bad. With a lot of other risks, it’s actually surprisingly hard to get to an extinction risk... First of all forget about the Terminator. The robots are basically just armoured bears and we might have fears from our evolutionary history but the really scary thing would be an intelligence that would be actually smarter than us – more socially adept... When they can become better at politics, at economics, potentially at technological research. Furthermore, the resources required to develop an AI means the feat will only be available to states and major corporations - entities with expressed agendas and attitudes towards certain people. Would the US allow its super-intelligence to mutually benefit all the world's population on an objective basis? What if that means the AI diverts more resources away from the US? Perhaps even to unfriendly states? What if that benevolence falls foul of US foreign policy? The same is also true for corporations like Google. What if their AI suggests decreasing its profits in exchange for increasing social support? Would Google really allow that? In that sense, can we actually create a truly non-prejudiced AI? But there is one more, terrifying, conclusion. An artificial intelligence could rob us of our most important possession: humanity. More subtly, it could result in a superintelligence realizing a state of affairs that we might now judge as desirable but which in fact turns out to be a false utopia, in which things essential to human flourishing have been irreversibly lost. We need to be careful about what we wish for from a superintelligence, because we might get it. What are the potential benefits? But it is not all doom and gloom. AI can also potentially rid the world of many of our current problems. It has been suggested that a fully-fledged super-intelligence could aid the development of space travel, unlock the secrets of creation, answer our fundamental questions, eliminate age and disease, calculate the best possible solution to issues, and if coupled with nano-technology, end environmental destruction and "unnecessary suffering of all kinds". These are all lofty and worthwhile goals, but they still rest one on major issue - that a benevolent AI is developed. Bostrom claims the only solution is to build a super-intelligence which is fundamentally and irreversibly imbued with a sense of respect towards ALL humans (regardless of race, creed or political leanings) and perhaps even all sentient life.

### T/C – Solvency

#### Link turns solvency – resource constraints prevent implementation

Nylen 20 (Leah Nylen, covers antitrust and investigations for POLITICO Pro, formerly covered antitrust at MLex, Bloomberg and Congressional Quarterly, former Abe Journalist Fellow, former Managing Editor for Main Justice; **internally citing David Robbins, FTC Executive Director**; “FTC suffering a cash crunch as it prepares to battle Facebook” - Politico – Dec 10th - #E&F - https://www.politico.com/news/2020/12/10/ftc-cash-facebook-lawsuit-444468)

The FTC declined to comment Thursday on Robbins’ emails or its budget situation. But Edith Ramirez, who chaired the agency under President Barack Obama, said Robbins’ emails about the budget picture were “concerning.”

“It does not serve the public interest for the agency not to be able to bring the cases it believes should be brought because of budget limitations,” said Ramirez, now a partner at the law firm Hogan Lovells.

### T/C – Innovation / Econ

#### Turns and solves innovation / econ – global tech fragmentation is a much larger internal link than the plan

Nye 16 (Joseph S. Nye, University Distinguished Service Professor, Emeritus and former Dean of the Harvard's Kennedy School of Government, former Assistant Secretary of Defense for International Security Affairs, Chair of the National Intelligence Council, and Deputy Under Secretary of State for Security Assistance, Science and Technology, PhD political science, Harvard University, “Internet or Splinternet?” 8-10-2016, project-syndicate.org/bigpicture/should-internet-monopolies-be-tamed)

The importance of the Internet – to individuals, societies, companies, and economies – cannot be overstated. But, as a recent report by the Global Commission on Internet Governance shows, it is at risk of costly fragmentation, as national governments establish control over the parts of it within their borders.

CAMBRIDGE – Who owns the Internet? The answer is no one and everyone. The Internet is a network of networks. Each of the separate networks belongs to different companies and organizations, and they rely on physical servers in different countries with varying laws and regulations. But without some common rules and norms, these networks cannot be linked effectively. Fragmentation – meaning the end of the Internet – is a real threat.

Some estimates put the Internet’s economic contribution to global GDP as high as $4.2 trillion in 2016. A fragmented “splinternet” would be very costly to the world, but that is one of the possible futures outlined last month in the report of the Global Commission on Internet Governance, chaired by former Swedish Prime Minister Carl Bildt. The Internet now connects nearly half the world’s population, and another billion people – as well as some 20 billion devices – are forecast to be connected in the next five years.

But further expansion is not guaranteed. In the Commission’s worst-case scenario, the costs imposed by the malicious actions of criminals and the political controls imposed by governments would cause people to lose trust in the Internet and reduce their use of it.

The cost of cybercrime in 2016 has been estimated to be as high as $445 billion, and it could grow rapidly. As more devices, ranging from automobiles to pacemakers, are placed online, malicious hackers could turn the “Internet of Things” (IOT) into “the weaponization of everything.” Massive privacy violations by companies and governments, and cyber attacks on civilian infrastructure such as power grids (as recently happened in Ukraine), could create insecurity that undercuts the Internet’s potential.

A second scenario is what the Commission calls “stunted growth.” Some users capture disproportionate gains, while others fail to benefit. Three or four billion people are still offline, and the Internet’s economic value for many who are connected is compromised by trade barriers, censorship, laws requiring local storage of data, and other rules that limit the free flow of goods, services, and ideas.

The movement toward sovereign control of the Internet is growing, and a degree of fragmentation already exists. China has the largest number of Internet users, but its “Great Fire Wall” has created barriers with parts of the outside world.

Many governments censor services that they think threaten their political control. If this trend continues, it could cost more than 1% of GDP per year, and also impinge on peoples’ privacy, free speech, and access to knowledge. While the world could muddle along this path, a great deal will be lost and many will be left behind.

In the Commission’s third scenario, a healthy Internet provides unprecedented opportunities for innovation and economic growth. The Internet revolution of the past two decades has contributed something like 8% of global GDP and brought three billion users online, narrowing digital, physical, economic, and educational divides. The Commission’s report states that the IOT may result in up to $11 trillion in additional GDP by 2025.

The Commission concluded that sustaining unhindered innovation will require that the Internet’s standards are openly developed and available; that all users develop better digital “hygiene” to discourage hackers; that security and resilience be at the core of system design (rather than an afterthought, as they currently are); that governments not require third parties to compromise encryption; that countries agree not to attack the Internet’s core infrastructure; and that governments mandate liability and compel transparent reporting of technological problems to provide a market-based insurance industry to enhance the IOT’s security.

Until recently, the debate about the most appropriate approach to Internet governance revolved around three main camps. The first, multi-stakeholder approach, originated organically from the community that developed the Internet, which ensured technical proficiency but not international legitimacy, because it was heavily dominated by American technocrats. A second camp favored greater control by the International Telecommunications Union, a United Nations specialized agency, which ensured legitimacy but at the cost of efficiency. And authoritarian countries like Russia and China championed international treaties guaranteeing no interference with states’ strong sovereign control over their portion of the Internet.

More recently, the Commission argues, a fourth model is developing in which a broadened multi-stakeholder community involves more conscious planning for the participation of each stakeholder (the technical community, private organizations, companies, governments) in international conferences.

An important step in this direction was the US Commerce Department’s decision last month to hand oversight of the so-called IANA functions – the “address book” of the Internet – to the Internet Corporation for Assigned Names and Numbers. ICANN, with a Government Advisory Committee of 162 members and 35 observers, is not a typical inter-governmental organization: the governments do not control the organization. At the same time, ICANN is consistent with the multi-stakeholder approach formulated and legitimated by the Internet Governance Forum, established by the UN General Assembly.

Some American senators complained that when President Barack Obama’s Commerce Department handed its oversight of the IANA functions to ICANN, it was “giving away the Internet.” But the US could not “give away” the Internet, because the United States does not own it. While the original Internet linked computers entirely in the US, today’s Internet connects billions of people worldwide. Moreover, the IANA address book (of which there are many copies) is not the Internet.

The US action last month was a step toward a more stable and open multi-stakeholder Internet of the type that the Global Commission applauded. Let’s hope that further steps in this direction follow.

#### AND, externally solves innovation – not only by making this market more competitive – but by spurring broader federal investment in R&D across the board

Sitaraman 20 (Ganesh Sitaraman, Chancellor Faculty Fellow and Professor of Law at Vanderbilt Law School and Director of its Program in Law and Government, “The National Security Case for Breaking Up Big Tech,” Knight First Amendment Institute at Columbia University, 1-30-2020, https://knightcolumbia.org/content/the-national-security-case-for-breaking-up-big-tech)

Big Tech, Competitiveness, and Innovation

One of the central arguments against breaking up and regulating big tech on national security grounds is that big tech companies are essential for innovation in the tech sector and thus for American competitiveness and ultimately for national security. Historically, however, innovation has come from a mix of competition and public funding of research and development. Breaking up and regulating tech companies thus doesn’t mean ceding ground to the Chinese on technological innovation—it means creating a competitive marketplace with great innovative capacity.

Whether or not they say it explicitly, those who want to protect big tech from antitrust and regulation support a national champions model. The national champions approach suggests that innovation takes place within big companies that are protected from competition and therefore have resources to spend on research and development. Some associate this approach with Joseph Schumpeter, who suggested that firms in competitive markets might be less innovative than monopolists. 58. In this vein, commentators celebrate how Bell Labs was able to innovate for generations and see Google X, Facebook, and other tech companies as similarly investing in frontier research that will ultimately lead to innovative breakthroughs.59.

While innovation can take place under a national champions model, innovation does not require national champions—and there are strong arguments that the national champions approach is limited and even counterproductive. First, as Tim Wu has noted, “[B]oth history and basic economics suggest we do much better trusting that fierce competition at home yields stronger industries overall.” 60. This response, of course, has been commonplace in basic economics for decades and in debates on competition is linked to the views of Kenneth Arrow. 61. Market competition is good for innovation because competitors have to find ways to differentiate themselves in order to survive and expand. In contrast, large protected firms get lethargic, are slow to innovate, and rest on their laurels.

Wu points out that we also have evidence—not just theory—to show that protecting national champions is inferior to encouraging competition. In the 1980s, Wu argues, Japan took the approach of protecting its national champions in the electronics industry. Powerhouses like NEC, Panasonic, and Toshiba had direct government support. In contrast, the United States took the opposite tack with IBM. The computer firm was brought under antitrust scrutiny, and the legal battle went on for more than a decade, along the way chilling Big Blue from engaging in any conduct that could even potentially run afoul of the antitrust laws. The result, Wu notes, was to create the space for a variety of hardware and software companies, Microsoft, Lotus, and Apple among them. Competition led to innovation and the creation of some of the most forward-looking companies of the era.62.

Second, national champions can actually limit innovation because they have an incentive to avoid research and innovations that might jeopardize their business model or undermine their dominant position. Bell Labs, for example, has long been celebrated for its role as an “ideas factory.” 63. But Bell and AT&T also suppressed innovations when they threatened its business model. Bell inventors, for example, developed recording devices in the 1930s that could have been used for answering machines. But AT&T’s management blocked their emergence for fear that they would jeopardize use of the telephone.64.

An alternative approach to innovation is one that relies less on protectionism for national champions and more on market competition and on public investment in research and innovation. Competition, as noted already, can be a powerful motivator for innovation. When big tech incumbents face little competition, society forgoes the innovation benefits that come from competition. Who knows if Instagram or WhatsApp could have dethroned Facebook’s primacy and developed even more new and innovative products? Facebook’s moves to acquire those firms prevented us from ever finding out. What small businesses might emerge if they didn’t have to compete with Amazon Basics on Amazon’s Marketplace? Unwinding mergers and separating platforms from companies that do business on the platform would help spur competition and lead to innovation.

Some might argue that robotics, AI, and quantum computing are so resource-intensive that an ecosystem of smaller companies engaged in fierce competition would mean that no company would have the resources available to invest in those next-generation technologies. There are a few responses to this argument. First, it is not clear that breaking up and regulating big tech would prevent those firms from having the considerable resources to develop the technologies of the future. Facebook would still have billions of users, even without Instagram and WhatsApp, for example. Amazon’s platform would still have enormous market power.

Second, and more importantly, part of the answer is that the decision to break up and regulate tech companies should be accompanied by public investment in R&D. One of the primary arguments for the national champions view is that monopolists have the resources to be able to invest in innovation because they do not face competitive pressures. 65. But any system of innovation operates against a backdrop of laws and public policy. 66. But it is not clear that industry-by-industry assessments on antitrust enforcement alone can resolve this debate. Industries operate under different policy background conditions — including, for example, intellectual property rules, industrial policy, and R&D funding—and it may be that the optimal path is for policymakers to revisit policy choices in multiple areas. The ability to capture the gains of innovation depends on intellectual property law. The possibility of winning government contracts for frontier projects that require innovation is determined by procurement policies. And, of course, an alternative to monopolist investment in R&D is public investment in R&D. These policy choices all shape the innovation ecosystem, and it is not at all obvious why society has to accept national champions instead of thinking about revising these laws and policies more broadly. Given the emphasis that proponents of national champions place on research and development, it is worth noting that historically, as Mariana Mazzucato has argued, government has been a significant driver of innovation through its research and development efforts. 67. Today, one could easily imagine the government spending considerable sums of money on R&D in artificial intelligence, robotics, quantum computing, augmented and virtual reality, and other technological research.

Public investment in research has a variety of benefits. First, because it is not tied to the profit motive and business model of a single company, it covers a wider range of subjects, leading potentially to innovations that would otherwise go undiscovered. Public investment extends to basic research that does not have immediate or foreseeable commercial applications. It could also include research into areas that might challenge the incumbency and business models of existing companies.

Second, and relatedly, public investment into research is less likely to be geared toward improving surveillance capacity. As long as the biggest companies have surveillance, personalized targeting, and behavioral response at the heart of their business models, research and innovation within those companies will likely be geared, in no trivial part, toward improving those activities. A digital authoritarian country might see that as a valuable public goal, but it is not at all clear why a free and democratic society should. Public-sponsored research might instead be directed toward a variety of socially beneficial uses other than continual improvement of individual monitoring and behavioral reactions. Notably, as there are more opportunities in research outside of the big tech companies, many talented people might choose to work on a wider range of problems.

Third, public investment in R&D has the potential to spread the benefits of technology, innovation, and industry throughout the country. At present, much of the country’s technological and intellectual prowess is concentrated in a few regions, the most prominent being northern California, Seattle, and Boston. Geographic inequality has a variety of negative consequences—economic, social, and political. 68. But, as economists Jonathan Gruber and Simon Johnson show in their book Jump-Starting America, there is no reason that public investment couldn’t spur successful economies in dozens of mid-sized cities all over the country, with spillover benefits for their regions. 69. Jonathan Gruber & Simon Johnson, Jump-Starting America: How Breakthrough Science Can Revive Economic Growth and the American Dream (2019). Unlike government action, technology companies have no reason to develop the capacities of all regions of the country. Amazon’s so-called competition for its second headquarters is a good example. After much public attention, the company settled on New York City and a suburb of Washington, D.C., two superstar cities.

Artificial intelligence, of course, requires considerable data in order to improve precision and accuracy. One of the arguments for big tech is that such companies alone are able to collect this data and use it. But there is no reason why this has to be the case either. Consider two alternate possibilities. First, the United States could create a public data commons that would be highly regulated to protect privacy. The public data commons would include publicly available data from a variety of government sources, and qualifying businesses, local governments, or nonprofits could train their machines using this data. Any new data they collect from users could then be fed back into the data commons (de-identified), so that the data commons improves in quality and quantity of data over time. 70. Second, we could imagine requiring big tech companies to make their data available in interoperable formats. If these companies effectively have a monopoly power over data, then they could be regulated as monopolies—and one condition of their continued protection as monopolies could be enabling access to the datasets. Again, there is no legal or regulatory reason why these kinds of policy options are impossible. And in either case, they would enable a larger number of players to innovate than does the status-quo, stand-pat approach to protecting big tech from competition.

### AT: N/U – No Resources

#### Resources have been carefully allocated to win existing cases – only plan’s fiat disrupts selectivity – that’s Kantrowitz – AND…

Kantor et al 21 (Ryan M. Kantor, Antitrust Partner, Morgan, Lewis & Bockius, Former Assistant Chief, Healthcare and Consumer Products Section, Department of Justice (DOJ) Antitrust Division; Richard S. Taffet, Antitrust Partner, Morgan, Lewis & Bockius, New York; and Willard K. Tom, Antitrust Partner, Morgan, Lewis & Bockius, Former General Counsel, Federal Trade Commission (FTC); “ANTITRUST ENFORCEMENT IN A BIDEN ADMINISTRATION,” Concurrences, #1, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#kantor)

II. HOW WILL PENDING MATTERS PROCEED?

6. With respect to both the Antitrust Division and the FTC, pending matters—whether in the investigation stage or already in litigation—will continue apace. Some turnover of staff will naturally occur, but many of those now working on pending matters, including senior Section leaders (at the DOJ) or Division leaders (at the FTC), will remain in place and move matters along.

7. That said, reports have already pointed out that both agencies may face staffing and budgetary constraints. For both agencies the costs of litigation, and especially experts, are reportedly straining their budgets. And the agencies’ existing litigation efforts are straining internal resources. We do not, however, envision that these practical factors will have a meaningful impact on the agencies’ enforcement agendas.

8. It is likely, therefore, that the Antitrust Division will continue to press recent lawsuits and investigations, including those pursued along with various state attorneys general, into “Big Tech” conduct. Given their subject matter and at times aggressive doctrinal theories of these matters, they will likely be welcomed by new Division leadership. The Division’s criminal cases will also likely be unaffected by the political winds.

9. The FTC also has a busy docket that is likely to be unaffected by the change in administration. It continues to bring new cases, both in the courts and as administrative proceedings, challenging both mergers and alleged anticompetitive conduct. This includes, with respect to mergers, recent lawsuits to block hospital mergers and Procter & Gamble’s acquisition that would allegedly reduce competition for women’s razors, and the lawsuit to unwind Altria’s investment in Juul. On the behavior side, the FTC is coordinating with state attorneys general to advance its own aggressive doctrinal theories in well-publicized “Big Tech” cases. Notably, the FTC’s recent litigations have proceeded with bipartisan (if not unanimous) support from current commissioners.

#### Recent funding boosts are sufficient

Koenig 21 (Bryan Koenig, Senior Competition Reporter, Law360, MS journalism, Columbia University Graduate School of Journalism, BA print journalism, political science, American University; **internally citing Ian Conner, former Chief of FTC's Bureau of Competition**, partner at Latham & Watkins LLP; “2 Years In, Tech Division Makes FTC 'Far More Efficient',” Law360 Legal News - Corporate, 4-9-2021, Nexis Uni)

Conner said the agency will be able to keep up so long as it has the resources - funding constraints have been a major topic for years among FTC leadership and lawmakers.

The FTC and DOJ Antitrust Division have already gotten a modest boost, and among the raft of antitrust overhaul proposals currently on the table for lawmakers, a funding increase likely has one of the best chances of passing Congress.

Without sufficient funding, the agencies will have trouble maintaining current enforcement efforts, he said. "Obviously every case you bring has to be backed by team members that are able to go to trial. And you can't bring a case with three people hoping that another 10 or 12 may materialize," Conner said.

### Alt causes

#### Not inevitable and no alt causes– resource constraints key

Levine 20 (Alexandra S. Levine, reporter covering the intersection of technology, government and public policy, author of Morning Tech, former Metro reporter at The New York Times, MA Columbia University Graduate School of Journalism, BA English, University of Pennsylvania; **internally citing The Justice Department’s former No. 2 antitrust official, Barry Nigro**; “Will Zuckerberg and Dorsey’s next congressional cameo be different?” POLITICO, 10/29/2020, https://www.politico.com/newsletters/morning-tech/2020/10/29/will-zuckerberg-and-dorseys-next-congressional-cameo-be-different-791267)

DOJ’S BIGGEST ANTITRUST CHALLENGE? TECH — The Justice Department’s No. 2 antitrust official, Barry Nigro, has left the agency to return to the law firm Fried Frank, and he spoke with Leah about his DOJ tenure. His biggest takeaway: Antitrust prosecutors’ largest task will be keeping up with tech platforms. “The agencies really need to get out of their comfort zone and be willing to accept more uncertainty and more litigation risk,” said Nigro, who also spent three years at the FTC during the George W. Bush presidency. “Not all platforms are problems, but where they are problems, the agencies need to step up and do more.”

— Less money, more problems: Resource constraints are a real problem, according to Nigro. The agencies are reviewing more mergers than ever before with tight turnaround timelines for investigations, but DOJ and FTC budgets aren’t keeping up, he said, so the agencies are doing more work with fewer people. “The agencies are stretched thin,” Nigro said. For the Google case (from which Nigro was recused), DOJ hired “tech fellows” for two-year contracts with the agency. Nigro said such temporary measures aren’t enough.

— Antitrust reforms?: While Nigro hasn’t yet read all the way through House Judiciary’s report on antitrust and tech, he suggested that antitrust law “hasn’t really been tested against the platforms,” he said. On Google, “we’ll see if they win. Then we can say antitrust did its job. If they don’t prevail and there’s definite evidence of harm as a result, maybe some thought could be given to whether adjustments need to be made.”

### L – DOJ T/Off

#### Initiating a new, concurrent enforcement agenda risks litigation failure – private litigation doesn’t solve

Jones and Kovacic 20 (Alison Jones, Professor of Law, King’s College London; and William E. Kovacic, Global Competition Professor of Law and Policy, Professor of Law, and Director of the Competition Law Center, at George Washington University Law School, former General Counsel, Commissioner, and Chairman of the Federal Trade Commission; “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, 65(2), 3-20-2020, DOI: 10.1177/0003603X20912884)

In the United States, as in many other parts of the world, the pressure is on the competition agencies to make 2020, and the new decade, a period of sustained and effective antitrust action, targeting especially the business models of digital platforms. Pending any longer-term more fundamental reforms, many commentators are calling for immediate, rapid, and heightened competition scrutiny of a wide range of practices (including mergers (future and past), business practices of digital firms, restricted distribution and price setting practices) and the use of intrusive remedies to fix antitrust problems going forward.

These demands are imposing formidable expectations on the shoulders of competition agencies. Meeting them will not happen by chance or through a reactive and ad hoc approach. Indeed, without careful planning, an ambitious enforcement program involving a large number of complex litigations being pursued concurrently would risk agency managers and case handlers becoming overrun and the failure of the program. This paper consequently proposes a more tempered, gradual, and joined-up approach to reform, involving carefully constructed and coordinated strategies to overcome anticipated obstacles, painstaking planning and case allocation, and the selection of some initial complementary (but not overlapping) high-profile case prototypes for each agency to pursue before the program is expanded in steps.

#### New enforcement responsibility empirically spurs drawdown in existing litigation

Engstrom 13 (David Freeman Engstrom, Professor of Law @ Stanford University, Ph.D. in Political Science, J.D., MSc and AB, “PUBLIC REGULATION OF PRIVATE ENFORCEMENT: EMPIRICAL ANALYSIS OF DOJ OVERSIGHT OF QUI TAM LITIGATION UNDER THE FALSE CLAIMS ACT,” 2013, Northwestern University Law Review, <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1043&context=nulr>, GBN-TM)

DOJ decisionmaking.111 I first constructed a measure, DOJRESOURCECONSTRAINT, equal to the number of active, intervened qui tam cases divided by the number of attorneys at DOJ’s Civil Fraud section during the year of each intervention decision in each sample case.112

**[BEGIN FOOTNOTE 112]**

112 Attorney counts were constructed using congressional testimony characterizing the number of Civil Fraud attorneys in a given year as well as historical office phone lists provided by former Civil Fraud attorneys, with missing years then filled in via linear interpolation. Note further that, while my case-level data allow me to precisely track the total number of intervened cases at any point in time, I can only imperfectly observe the extent to which DOJ lawyers are actively litigating open cases. In complex litigation, cases often lay fallow for long stretches of time, flaring up around bouts of discovery (e.g., document review, depositions) and motion practice, with only the latter reflected on docket sheets. Regardless, my construction of the variable assumes that DOJ officials understand and take account of litigation’s cadence when deciding whether to intervene in the marginal case. All else equal, a DOJ that is litigating more intervened cases is more resource constrained than one litigating fewer.

**[END FOOTNOTE 112]**

My expectation is that DOJ will be less likely to intervene in cases as resource constraints rise and vice versa. In addition, and as noted previously, some have suggested that the 9/11 terrorist attacks redirected substantial civil investigatory resources previously available to DOJ to counterterrorism efforts.113 To test for a resource-based effect on DOJ decisionmaking in 9/11’s aftermath, I constructed a measure, 911RESOURCECONSTRAINT, equal to 730 minus the number of days after September 11, 2001, that DOJ rendered an election decision for two years following the attacks.114 The result is a measure running from zero to 730, with cases elected immediately following September 11, 2001, taking the highest value and reflecting relatively greater 9/11-related resource constraints, cases elected two years later, on September 11, 2003, taking the lowest value and reflecting relatively lower post-9/11 resource constraints, and cases before or after the two-year window taking a value of zero. The expectation is that this variable will negatively predict intervention, as resource scarcity compelled DOJ to concentrate its investigatory and litigation efforts on a smaller set of cases following the attacks.

### AT: Thumper – T/L

#### NO thumpers – DOJ is shelving other issues to focus resources on Google

Carstensen 21 (Peter C. Carstensen, Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, MA Yale University, LLB Yale Law School, former attorney at the Antitrust Division of the United States Department of Justice, where one of his primary areas of work was on questions of relating competition policy and law to regulated industries, Senior Fellow of the American Antitrust Institute, “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST” Concurrences, #1, February 2021, - #E&F - https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#carstensen)

1. Antitrust has returned to the center ring of the multi-ringed political circus. Much concern has emerged with the economic and social power of the leading firms in the new technology—Apple, Google, Amazon, and Facebook. The recently filed Facebook litigation returns structural remedies (divestiture or dissolution) to the agenda of options for restoring workable competition. More prosaic concerns have reemerged with respect to many more traditional industries including meatpacking and pharmaceuticals. The bipartisan support for doing something about a range of competitive issues provides the basis for hope that the antitrust agenda of the Biden administration will be more robust than any in the last 40 years. Having been disappointed repeatedly by the failure of post-Reagan administrations to deliver effective antitrust enforcement, I find myself identifying the robust agenda that the new administration ought to pursue but worried that what we get is a warmed-over Obama agenda of good talk followed by very modest actions. Unfortunately, the changed judicial atmosphere makes a weak enforcement agenda even more likely. What follows is a brief description of the agenda that ought to be pursued and the contrasting agenda that is likely to emerge.

I. WHAT OUGHT TO HAPPEN?

2. There ought to be a dramatic increase in enforcement of the law focused on restoring coherent and rational rules that protect both producers and consumers from the ravages of undue market concentration resulting in exploitive and exclusionary conduct. The resulting agenda should include a return to stricter merger enforcement. It is an increasingly well-documented fact that few, in any, major mergers have yielded significant efficiencies. At the same time, many of these mergers have resulted in price increases, inefficiency, and loss in innovation. Restoring stricter merger policy requires moving away from an excessive concern for identification of some specific likely adverse competitive effect. What the growing body of empirical work tells us is that mergers among major competitors in even moderately concentrated markets are likely, one way or another, to result in competitive harms. The types of harm are myriad. Requiring enforcers to make specific predictions hamstrings the enforcement process. A simple presumption based on Philadelphia National Bank [76] that mergers between major competitors are likely to cause adverse effects should suffice. The phrasing of the Clayton Act and the empirical evidence support a stricter standard even if it were to result in rejecting some mergers that might not harm competition significantly.

3. But too much concentration has already occurred to limit the Biden agenda to challenging only new combinations. Existing combinations have now disproven the optimistic assessments of earlier enforcers that they would have no adverse effect on competition. The more general point here is that antitrust enforcement should address existing abuses of market power and challenge the unjustifiably permissive stance of contemporary doctrine governing such areas as exclusive dealing as well as vertical territorial and customer restraints.

4. Moreover, the definition of what constitutes collusion in naked restraint cases ought to be revised. No “consumer welfare” gains come from “tacit” collusion among firms to raise prices and exclude competitors. Despite this obvious fact that ought to inform both public and private enforcement, the trend from Baby Food [77] to Titanium Dioxide [78] has been to allow exploitation of both customers and suppliers. The Biden administration should take the lead in educating the courts that any remediable tacit collusion should be condemned. [79]

5. A group of private cases involving poultry, turkeys, and pork have highlighted the use of information exchange to achieve anticompetitive exploitation of markets—both upstream and downstream. [80] These cases demonstrate the need for clearer and stricter standards to govern information exchange among competitors whether done directly as Philip Morris [81] did or indirectly through a common agent as is the case in poultry, pork, and turkeys. The challenge is to identify the types of information necessary for informed market transactions and those which are likely to facilitate market exploitation. Certainly, the agencies should not be sitting on their hands with respect to these issues.

6. Demonstrating that various kinds of conduct are harmful to competition is not sufficient. There needs to be an effective remedy. One type of remedy is to impose constraints on how those firms conduct themselves. The frequent problem with this response is that it requires continued oversight by the agencies and courts. But these entities are not well designed to carry out these tasks, and the enterprises subject to such requirements have every incentive to evade the rules that control their exploitation and exclusion.

7. An alternative is to impose a structural remedy of the sort sought in the current Facebook complaints. But the application of such remedies can and should go beyond overt monopolies. The DuPont-GM [82] case held that when a merger or acquisition results or is likely to result in adverse competitive effects, it can be challenged even if the acquisition occurred decades earlier and divestiture is an appropriate remedy. Hence, where a firm or group of firms have grown by merger into an oligopoly engaged in tacit collusion, this rule could be invoked to restructure the industry. Indeed, even if all growth where internal, there is no legal obstacle to requiring divestiture as a remedy where the industry structure has made collusion, both actual and tacit, easy. [83] This is an ambitious agenda and would require a real commitment by the Biden administration to restoring workable competition to concentrated markets.

8. Then there are the monopolies in the new internet-based technology. Although the states and federal agencies have initiated litigation, the challenge is to find remedies that will actually affect market conduct and performance in useful ways. The history of settlements with Microsoft, Intel and Google does not suggest that this is an easy task especially if the enforcers restrict their demands to conduct-oriented controls. So, here again, a robust policy would seek to restructure these industries, as the Facebook complaint seeks. Remedy should focus on separating any inherently monopolistic elements from those that should be competitive. Eliminating the adverse effects from the monopolistic parts requires creative thinking about remedy. Among the options would be interoperability or some collective ownership by users and customers of the monopoly elements.

9. There are also important legislative proposals pending that ought to be adopted with strong White House support. Given the hostility of the current judiciary to many antitrust claims, the most promising path to a more effective and robust enforcement policy is through new legislation that compels the courts to reject anticompetitive mergers, prohibits unjustified exploitative and exclusionary conduct, and deals effectively with the emerging monopolies in the high-tech domains. Notably, Senator Klobuchar has proposed legislation that would strengthen merger law by creating stricter standards for large mergers as well as revising and strengthening standards governing exclusionary conduct. [84] Such legislation requires careful and thoughtful drafting to limit the wiggle room for judges hostile to its goals, but at the same time such legislation has to avoid imposing undue burdens on the competitive process. This is not an easy balance to achieve. Too often legislation, necessarily the product of compromise among contending view, has left too much for courts to fill in by interpretation of ambiguous clauses. For this reason, many committed to robust enforcement have shied away from legislative responses. There is, however, a significant need to reset antitrust law given the state of contemporary interpretations of the existing statutes. The Biden agenda should focus a great deal of attention on finding legislative responses that reinvigorate enforcement without creating avoidable loopholes and ambiguities that will undo the very objectives of the legislation.

10. Agencies beyond the FTC and Antitrust Division have a role to play in creating and maintaining fair, efficient, workably competitive markets. In the case of agriculture, there is clear need to revisit the regulations under the Packers and Stockyards Act (PSA) as livestock and poultry production has increasingly moved to the use of contracts which are often very one-sided and exploit producers. [85] In energy, there is real need to revise regulations to facilitate better competition among electricity producers, which should include revisiting the current vertical integration of generation, transmission, and distribution. This would be a major undertaking but if there is to be reliance on market mechanisms to replace direct regulation, then the energy industry needs to be reframed to maximize the potential for desirable competition. Beyond energy and agriculture, there are many other domains where an informed emphasis on ensuring workable competition ought to be central to an administration that desires to have market processes serve the public interest.

II. WHAT IS LIKELY TO HAPPEN?

11. First, the courts are a major stumbling block to enhanced enforcement even if the agencies were willing to be more aggressive. The ill-conceived American Express [86] decision highlights the willingness of the Supreme Court to twist economic analysis into an intellectual pretzel that serves only to defeat legitimate challenges. The failure of the courts to appreciate the relevance of potential competition to preserving and enhancing long-run viable market behavior is another recent example. [87] The failure to recognize the competitive problems created by the vertical consolidation of AT&T with Time Warner which created significant risks of both exploitation of consumers and exclusion of competitors provides yet another example of the obstacles to achieving a more robust enforcement policy. [88] Thus, the contemporary judicial temper is one of great reverence for large enterprise and deep concern not to inhibit its freedom of action. Until there is a significant change in judicial personnel, or the current judiciary goes through a major re-education, a robust enforcement agenda is likely to die in the courthouse.

12. But given a hostile judiciary, the agencies are likely to limit their challenges to the most obvious cases. Important cases will die on the courthouse steps without ever getting into court. To be sure, the agencies are less likely to waste time investigating minor marijuana mergers and to focus resources on more important matters. The emergent judicial demands for detailed proof of actual adverse competitive effects will limit the scope of what can be done. The resources to develop a major case in light of these expectations will be significant and so constrain the agencies further. Thus, while merger enforcement may see an uptick especially where the merger involves two major direct competitors in more than moderately concentrated markets, the incentives to pursue vertical or potential competition cases will be very limited. Similarly, despite the growing recognition of how dominant firms, especially in the high-tech arena, buy up nascent competitors, the current standards for merger analysis will make such challenges very unlikely.

#### It’s the top priority

Graham 9-14-21 (Jed Graham, writes about economic policy for Investor’s Business Daily; **internally citing William E. Kovacic, former Chairman of the Federal Trade Commission**; “FTC, Biden Antitrust Enforcement Push Takes On Amazon, Google — And The Supreme Court,” Investor’ Business Daily, 9-14-2021, <https://www.investors.com/news/antitrust-enforcement-push-by-ftc-biden-takes-on-amazon-google-supreme-court/>)

Antitrust Enforcement A Top Biden Priority

President Biden isn't just embracing progressives' battle to rein in Big Tech. He's made rolling back corporate power a central plank of his economic policy. But it will hinge on an expansive regulatory agenda that may be headed for an epic clash with a conservative Supreme Court.

"We're now 40 years into the experiment of letting giant corporations accumulate more and more power," Biden said July 9, as he signed an order targeting agriculture, airlines, banks, telecom, shipping, rail, hospitals, pharma, real estate and more. "Bringing fair competition back" will lower prices, raise wages and help ensure the economy "works for everybody."

Yet others see potential for a far-less-uplifting outcome if Khan's view of antitrust takes hold. The "attack on low prices as a central antitrust goal is going to hurt consumers, but it is going to hurt vulnerable consumers the most," antitrust scholar Herbert Hovenkamp argued in a 2020 paper.

Khan's views on antitrust enforcement are well-known. She's been a progressive star since publishing Amazon's Antitrust Paradox in 2017 as a law student. The Yale Law Review article accused the e-commerce giant of predatory pricing to cement its first-mover advantage. The surprise is that Biden is singing the same folk song.

So how well does Khan's and Biden's economic diagnosis stand up to scrutiny? And what are the prospects for their "fair competition" pitch if conservative-tilted courts are ultimately calling balls and strikes?

Facebook, Amazon Stock Defy Wrath Of Khan

The Amazon-MGM deal is under scrutiny not least because Amazon.com (AMZN) is under scrutiny. Amazon, Apple (AAPL), Facebook (FB) and Google "have abused their role as intermediaries to further entrench and expand their dominance," concluded the House antitrust panel's digital markets report that bears Khan's imprint.

In February, the FTC launched an investigation into Facebook's $1 billion deal to buy chat-based customer-service software maker Kustomer. That's going on as the Khan FTC pushes ahead with the agency's bid to break up Facebook that was initiated at the end of the Trump administration.

Investors don't seem to see a major threat. Google parent Alphabet (GOOGL), Apple and Facebook stock have hit all-time highs this month. After Khan's ascension as FTC chair, Amazon stock ran to a record, before its second-quarter revenue miss briefly halted its momentum.

Recent antitrust rulings help explain the apparent lack of concern.

The Supreme Court's June opinion rejecting NCAA limits on educational benefits for student-athletes reads like a celebration of noninterventionist antitrust law, William Kovacic, who chaired the FTC under President George W. Bush, told IBD.

"Markets are often more effective than the heavy hand of judicial power when it comes to enhancing consumer welfare," Justice Neil Gorsuch wrote. Courts examining business dealings should take care not to "set sail on a sea of doubt," he added, elevating William Howard Taft's warning of the danger of a "shifting, vague and indeterminate" antitrust standard.

The words seemed to carry a not-too-subtle message for the Biden team, Kovacic says. "Until the Congress changes the law, we will continue to endorse the approach we have taken for the last 40 years," he said.

Can Parties Unite On Antitrust Law?

The House Judiciary Committee narrowly passed a package of antitrust measures in June called the Ending Platform Monopolies Act. Amazon has warned of massive disruption from restrictions preventing the biggest online platforms from favoring their own goods and services. "These bills would jeopardize Amazon's ability to operate a marketplace for sellers, potentially resulting in hundreds of thousands of small and medium-sized businesses losing access to Amazon's customer and services."

Another measure would shift the burden of proof for Big Tech acquisitions under antitrust law. Companies with a market cap of $600 billion or more — including Apple, Amazon, Facebook and Google — would have to prove that a proposed merger wasn't anticompetitive.

GOP Sen. Josh Hawley's antitrust bill goes much further, essentially banning acquisitions by companies with a market cap over $100 billion.

Skepticism about Big Tech and excessive corporate power is clearly bipartisan. That helps explain why Khan's nomination as commissioner sailed through the Senate with 21 Republican votes. Yet Biden didn't reveal until after the vote that he intended to name Khan FTC chair, which might have given some senators pause.

Fundamental changes to antitrust law are unlikely to pass the closely divided Congress this year, Goldman Sachs analysts say. Some Democratic lawmakers have voiced opposition to the House antitrust package. Meanwhile, Hawley's Trust-Busting for the 21st Century Act has zero co-sponsors.

Antitrust Enforcement Losing Streak

As the Biden administration aims to ramp up antitrust enforcement, it inherits something of a losing streak. Even cases that seemed winnable have been lost, Skadden antitrust attorneys Steve Sunshine and Julia York wrote.

The Justice Department failed to block the AT&T (T) takeover of Time Warner in 2018. New York lost its bid to stop T-Mobile (TMUS), the No. 3 wireless carrier, from buying No. 4 Sprint. The upshot: "Merely establishing a presumption of likely anticompetitive effects does not guarantee a government plaintiff a litigation victory."

Khan wrote after a 2018 Supreme Court ruling for American Express (AXP) that it had "dealt a huge blow" to antitrust enforcement. The ruling would make it "easier for dominant firms — especially those in the tech sector — to abuse their market power with impunity."

AmEx's contracts prohibited merchants from steering customers to a payment type with a lower transaction fee. To compensate, merchants charged higher prices. Yet a 5-4 majority found that wasn't sufficient to prove consumer harm. AmEx's rewards to cardholders and indirect benefits to merchants complicated the analysis.

Kahn Rejects Antitrust Enforcement 'Rule Of Reason'

Khan's strategy to achieve a better win-loss record — despite the courts — is taking shape.

Prior antitrust regulators, when they emerged from the dugout, strictly played defense. Khan has served notice that she'll be a hurler.

At her first meeting as chair on July 1, the commission voted 3-2 to rescind a 2015 Obama-era policy statement on Section 5 of the FTC Act. Kahn said that policy "doubled down on the Commission's long-standing failure to investigate and pursue 'unfair methods of competition.' "

Section 5 of the FTC Act, passed in 1914, empowers the agency to police corporate conduct that hadn't yet violated the Sherman and Clayton Acts, but could if left unchecked, according to Khan. Yet the Obama-era FTC essentially decided to put its Section 5 power in a drawer and lock it away.

That ill-defined, rarely used authority made Obama-era antitrust enforcers uneasy. Why? Because, as Kovacic has written, it comes with an "absence of limiting principles."

Courts have an entrenched, if murky, "rule of reason" standard for judging alleged antitrust violations. They assess all pro-competitive and anti-competitive factors to gauge whether the behavior is contrary to consumer welfare.

With antitrust cases proving hard to win, Khan and her Democratic colleagues are rejecting a "rule of reason" framework. In other words, they're trying to expand the strike zone for antitrust enforcement.

Because cases brought under Section 5 shield defendants from liability for treble damages in private litigation, courts might be more open to finding fault.

But what should be the limiting standard in antitrust law? As it is, the consumer welfare standard is hard to interpret. But courts might view Khan and Biden's "fair competition" standard as too fuzzy, like "setting sail on a sea of doubt."

EU Google Antitrust Fines

Section 5 cases could look like the European Union's more proactive enforcement regime for "dominant" firms.

The European Union fined Google $2.8 billion in 2017, charging that its search results favored its own comparison-shopping site. The FTC ended its probe covering similar ground in 2013 without taking action.

Berin Szoka, president of think tank TechFreedom, criticized the fine, saying it showed that European rules were "about protecting some companies against more successful ones, not about protecting consumers," who liked Google's service. While Google is still appealing, it complied with an order to halt the practice. Rivals argue its modified behavior isn't much better.

In all, the EU has hit Google with $10 billion in antitrust fines. That includes a $5 billion penalty for using its Android mobile operating system to preserve its search dominance. Google is appealing that one too, but gave up its default search position in Europe in the meantime.

In 2020, the Justice Department filed a Google antitrust suit for maintaining search and internet advertising monopolies through anticompetitive means. The U.S. v. Google antitrust case won't go to trial until late 2023. Extended appeals could follow.

FTC Competition Rules

U.S. antitrust law is a slowly evolving patchwork made up of case-by-case decisions. But Khan argues that drawn-out cases and ambiguous rule-of-reason opinions invite dominant firms to abuse their market power.

So to keep companies on the straight and narrow, she plans to erect a series of U.S. competition rules. The Biden executive order calls for FTC rules covering a broad spectrum of practices said to contribute to lower wages or higher prices.

The FTC might restrict employers from requiring workers to sign noncompete agreements. Right-to-repair rules could break the lock companies place on repairing their goods, from Apple iPhones to John Deere tractors. Biden wants rules covering internet marketplaces and online data collection and surveillance. Agreements between drugmakers to delay market entry of a competing product are another focus. FTC competition rules also could limit occupational licensing restrictions and exclusionary real estate practices.

There's bipartisan concern about a number of these areas. Yet writing competition rules would be a huge departure from the agency's usual quasi-judicial process focused on specific facts in individual cases.

Courts Reining In Regulators

FTC commissioner Noah Phillips, a Trump appointee, sees a historical parallel in the New Deal-era National Industrial Recovery Act, which the Supreme Court struck down in 1935. The ruling held that Congress couldn't delegate broad legislative authority allowing regulators to draw up "codes of fair competition."

Khan's rule-making agenda "may present the most stark and real nondelegation controversy of our time," Phillips told a recent forum.

In an April case involving payday lender AMG Capital, all nine justices agreed that the FTC had wrongly assumed authority to impose financial penalties that wasn't explicitly provided by Congress. That could be a precursor to a harsh judicial reception for Kahn's FTC rule-making, Kovacic wrote.

In striking down the Centers For Disease Control's eviction moratorium on Aug. 26, the conservative majority issued a loud call for regulators to narrowly interpret their mandates. "We expect Congress to speak clearly when authorizing an agency to exercise powers of 'vast economic and political significance.' "

Industry Consolidation Impact Mixed

Apart from the legal underpinnings of Biden's antitrust push, how strong is the economic case for combating corporate consolidation?

Consolidation has increased in 70% of industries since the late 1990s, Goldman Sachs economists find. Nearly 20% of industries now qualify as "highly concentrated," based on DOJ and FTC criteria.

"Highly concentrated" industries include interactive media and services, led by Facebook and Google. Telecom services, airfreight and the beverage industry also qualify. Tech hardware, pharma and airlines fall a bit short of that threshold.

Lax antitrust enforcement only partly explains consolidation trends, Goldman says. High-productivity firms also have won market share from less-productive rivals.

Further, as big players like Walmart (WMT) entered more markets from 1990 to 2014, local industry concentration actually fell, Richmond Fed economists have shown.

Because "the local market is most relevant for most consumer purchases," Goldman's Joseph Briggs and Alec Phillips reach a much different conclusion than Biden and Khan. "The increase in national concentration likely increased consumer choice and welfare," the Goldman economists write.

Even so, they add, the growing scale and clout of national players "might have been harmful to small sellers and input producers."

Where consolidation has significantly reduced local competition, consumers appear to have suffered. The small-government-oriented American Action Forum finds a strong case that hospital mergers raise costs without raising quality. The group highlighted studies showing that prices tend to rise 20%-40% when hospitals within the same market merge.

Merger Activity Ramps Up

Wall Street's early reaction to the Biden administration's attempt to stiff-arm M&A activity has been to step on the gas. The FTC said in August that it's struggling to stay abreast of a "tidal wave" of mergers. The 2,436 deal filings through August have already blown past the elevated annual totals from 2017-2019.

Despite a skeptical, if not hostile, attitude among antitrust enforcers, the vast majority of these deals are likely to go through.

While Congress may increase funding for merger enforcement, the FTC and DOJ are already devoting significant resources to the Facebook and Google antitrust cases. "They can only fight so many battles," Kovacic said.

Khan Uses Bully Pulpit, Bulls Like Big Tech

That's not to say the Biden team won't create major headaches for merging parties. More mergers will face reviews and the probes will last several months longer. And where concerns arise, the agencies will be less likely to negotiate a fix.

To make deals approvable, regulators have long consented to divestitures. Sometimes regulators settle for behavioral remedies. To seal the T-Mobile-Sprint merger, the Justice Department relied on Dish Network's commitment to build out a national wireless network. But Khan says the track record of both types of fixes isn't great.

"The antitrust agencies should more frequently consider opposing problematic deals outright," Khan wrote Aug. 6. She was responding to a letter from Sen. Elizabeth Warren, who had raised concerns about defense mergers. The news added to doubts that the FTC will clear the pending Lockheed Martin (LMT) acquisition of rocket engine manufacturer Aerojet Rocketdyne (AJRD).

When regulators do decide to negotiate, "expansive divestiture demands could result in a remedy that frustrates the purpose of the deal," warned antitrust attorneys at tech-focused law firm Wilson Sosini.

Khan is clearly using her bully pulpit to the utmost, trying to dissuade merger talks from reaching fruition.

But right now it's all talk. She has turned a few heads, but the S&P 500 and Big Tech leaders have kept cruising. Facebook stock is up 12% since Khan took the FTC's helm on June 15, while Apple has climbed 15% and Google stock 17%. That's despite reports that the Justice Department is preparing to file a second Google antitrust suit over its ad dominance.

The new antitrust enforcement regime may not change all that much "until they show that they can sue and win," Kovacic said.

#### Current agenda’s priced-in – only plan’s fiat changes Garland’s prioritization

Bebchick & Blais 21 (Lisa Bebchick; Brian Blais; Attorneys @ Ropes & Gray’s litigation & enforcement practice group; “Podcast: 2021 DOJ Enforcement Priorities Under U.S. Attorney General Merrick Garland;” 03-26-21, Ropes & Gray, <https://www.ropesgray.com/en/newsroom/podcasts/2021/March/Podcast-2021-DOJ-Enforcement-Priorities-Under-US-Attorney-General-Merrick-Garland>, TM)

Lisa Bebchick: That makes a lot of sense and it seems like there’s quite a bit that the DOJ is going to be focused on. We are just about out of time—any final observations to share with our listeners about likely DOJ priorities?

Brian Blais: Well, as I referenced earlier, I think one real challenge for the Garland DOJ will be the many competing demands on the resources available to DOJ leadership. In addition to the many corporate-related priorities I just discussed, there are a large number of Biden administration priorities that implicate the DOJ, many of which represent a sharp break from the priorities of the Trump Department of Justice—so those include things like environmental justice and the prosecution of environmental cases; civil rights and voting act cases; the ongoing fight against domestic terrorism, including as we talked about earlier, the January 6th Capitol attack; immigration reform and potential shifts in immigration prosecution priorities; potentially heightened antitrust enforcement; and criminal justice reform writ large, just to name a few. And putting aside even all these priorities, there’s a huge backlog of cases in the Department more broadly due to pandemic-related shutdowns, including a substantial trial backlog. So there will be a significant amount of prosecutorial time and effort in the near-term devoted to resolving these already charged matters, as well as moving along already opened investigations, so that leaves reduced prosecutorial bandwidth to advance any new enforcement priorities. So all of that’s to say, one big question for the Garland DOJ is: Can it do it all, or will these various competing demands lead to a natural prioritization of certain enforcement priorities over others? We’ll certainly have a better sense in the coming weeks and months as the remaining DOJ leadership is confirmed, as priorities get communicated, and as the first round of investigations under the new leadership start to launch.

### AT: Thumper – Amicus / Advocacy

#### Amicus briefs, advocacy and advice do NOT thump – resource costs are perceived to be negligible

Cooper et al 5 (James C Cooper, Attorney Advisor, Office of Policy Planning, Federal Trade Commission; Paul A. Pautler, Deputy Director for Consumer Protection in the Bureau of Economics, Federal Trade Commission; and Todd J. Zywicki, Visiting Professor of Law, Georgetown Law Center and Professor of Law, George Mason University School of Law; “Theory and Practice of Competition Advocacy at the FTC,” Antitrust Law Journal, 72(3), 2005, pp.1091-1112, JSTOR)

2. Lack of Internal/External Political Support

The advocacy program was controversial from its inception because it could not avoid offending someone on each issue it pursued. Some of the animosity toward the program was likely based on disputes over specific policy suggestions, while more general objections may have arisen regarding the proper role (if any) of a federal agency in providing suggestions regarding competition or regulatory policies to a state legislature or regulatory body. Additionally, certain Congressional critics also argued that the advocacy program's use of resources kept the Commission from aggressively pursuing prédation and other nonmerger antitrust activities.29 As discussed above, in an effort to reduce tensions between the FTC and other state and federal regulators, Chairman Janet Steiger began to de- emphasize the advocacy program in 1989, as Figure 1 clearly shows.30

**[FOOTNOTE 29]**

29 But, as Celnicker notes, FTC leadership purposely had chosen to avoid enforcement in these areas because they were likely to be welfare-reducing; the resources that the advocacy program consumed were never sufficient to significantly constrain the Commission from pursuing other activities. Celnicker, supra note 3, at 399. Advocacy consumed about 3-4% of FTC staff resources (30-40 workyears) at the 1987 zenith. See Memorandum from James M. Giffin, Associate Executive Director, to Andrew J. Strenio, FTC Commis- sioner (July 28, 1987), cited by Celnicker, supra note 3, at 399. Advocacy resources were about 2% of FTC resources in 1989 and by 1994 had fallen to less than 0.5% of FTC resources (4-5 agency workyears). By 2000 the percentage was so small that the program was virtually invisible - a maximum estimate regarding agency-wide advocacy resources would have been two workyears. (The data for that year, such as they are, indicate that less than one workyear was devoted to advocacy across the agency.) As of 2002, the total agency workyears devoted to advocacy might have been closer to five.

**[FOOTNOTE 29]**

3. Internal Resource Constraints

One additional factor that might explain the lack of more advocacy activity in the late-1990s is the merger wave of that era. Although the advocacy program itself required a relatively small resource commitment, the FTC efforts in dealing with the merger wave may have had an indirect effect on the advocacy program. The need to examine the large number of mergers may have drawn off Bureau of Economics resources from the primary research necessary to generate effective advocacies, as well as taxed the small staffs of the individual Commissioners. Thus, there are various chokepoints in the advocacy production pipeline that can be affected by resource constraints that are not captured simply by noting the relatively small size of the program.

### AT: U O/W – Breakup Inevitable

#### The rest of the government may be on board GAFA prosecution now, BUT broadening the scope of injured constituents spurs lobbying that flips support, derailing success

Jones and Kovacic 20 (Alison Jones, Professor of Law, King’s College London; and William E. Kovacic, Global Competition Professor of Law and Policy, Professor of Law, and Director of the Competition Law Center, at George Washington University Law School, former General Counsel, Commissioner, and Chairman of the Federal Trade Commission; “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, 65(2), 3-20-2020, DOI: 10.1177/0003603X20912884)

D. Political Backlash

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125

The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

Imagine, for a moment, that the DOJ and the FTC launch monopolization cases against each of the GAFA giants. Among other grounds, these cases might be premised on the theory that the firms used mergers to accumulate and protect positions of dominance. The GAFA firms have received unfavorable scrutiny from legislators from both political parties over the past few years, but the current wave of political opprobrium is unlikely to discourage the firms from bringing their formidable lobbying resources to bear upon the Congress. It would be hazardous for the enforcement agencies to assume that a sustained, well-financed lobbying campaign will be ineffective. At a minimum, the agencies would need to consider how many battles they can fight at one time, and how to foster a countervailing coalition of business interests to oppose the defendants.

#### Won’t pass

Byers 21 (Dylan Byers, senior media reporter for NBC News; **internally citing George Washington University professor and former FTC chair William Kovacic**; “Is Facebook untouchable? It's complicated,” NBC News, 7-1-2021, https://www.nbcnews.com/tech/tech-news/facebook-untouchable-complicated-rcna1323)

The FTC now has 30 days to come back to court with a more focused definition of what qualifies as market share in social media. They may also try to focus more specifically on Facebook's past acquisitions of Instagram and WhatsApp, an area that provided what the judge described as "firmer ground" for its efforts. In a statement, the agency said it was “closely reviewing the opinion and assessing the best option forward."

But the FTC, now led by Big Tech critic Lina Khan, is also likely to use this moment as an opportunity to throw its weight behind the fight for new legislation in Congress.

The House Judiciary Committee recently advanced six bills that would bolster the government's ability to regulate Big Tech. They range from simple budgeting measures — one would give more funding to the FTC and the Department of Justice for their antitrust enforcement efforts — to profound reforms — one that would stop platform companies from preferencing their products over those of their competitors and another that would make it illegal for companies to eliminate competitors through acquisitions.

This legislative package faces an arduous road ahead. House Majority Leader Steny Hoyer, who sets the House floor schedule, has said none of the six bills are ready for a vote, which suggests they don't have broad bipartisan support. If and when they do make it through the House, they face an even harder battle in the Senate.

"It's hard to imagine that the larger legislative package is accomplished this year," Kovacic said, though he predicted a few of the less-threatening bills — budgeting, for example — are likely to pass on their own.

#### Get struck down – AND wouldn’t solve anyway

Rosenberg 21 (Scott Rosenberg, managing editor of technology at Axios, “Ruling on FTC's Facebook suits slams brakes on tech's legal foes,” Axios, 6-29-2021, https://www.axios.com/facebook-ftc-ruling-brakes-tech-antitrust-c5079818-97a6-446a-ba0f-aa9e5d92d631.html)

Advocates of stronger tech regulation argue that these proposals will give regulators tough new tools to restrain the industry's power.

But even if they became law — a challenging prospect in the face of a sclerotic Senate — they would face inevitable judicial challenges on constitutional and other grounds.

Between the lines: Antitrust prosecutions remain dauntingly complex and forbiddingly difficult to clinch.

Under current law, you have to define a market, show that a company has a monopoly in that market, and then prove that the company has abused its monopoly.

You can change the rules of the game, as the House Judiciary proposals aim to, but any law still needs to devise coherent tests for corporate misbehavior that courts can apply.

Supporters of the new House bills say they will do just that. But the new laws are narrowly tailored to target a handful of companies and practices. They could be out of date before the appeals process has run its course.

### AT: Thumper – Biden

#### Biden’s wishlist does NOT thump – only applied to the FTC, NOT DOJ – BUT selectivity shields absent plan’s fiat regardless

Klar 21 (Rebecca Klar, tech policy reporter at The Hill, former city reporter at The York Dispatch, former reporter BA English, Rhetoric, Binghamton University; **internally citing William E. Kovacic, former Chairman of the Federal Trade Commission**; “FTC expected to reveal new strategy in Facebook antitrust fight,” The Hill, 8-18-2021, https://thehill.com/policy/technology/568302-ftc-expected-to-reveal-new-strategy-in-facebook-antitrust-fight)

Biden released a sweeping list in July, outlining a series of recommendations for the FTC. And the agency is urging Congress to revive its ability to seek monetary relief for constituents harmed by companies found to engage in deceptive practices after a unanimous Supreme Court decision earlier this year dealt a harsh blow to the FTC’s authority.

As chair, Khan has to look at “all of these demands” as well as her own preferred agenda and decide what can be reasonably done with time and resource constraints, Kovacic said.

“And that's a really tough call, because notice how many external audiences are expecting her to do everything,” he added.

“I'm not sure that the external audience — your fan base, legislators — are going to be very sympathetic when you say, ‘Hey, wait a minute I don't have enough resources,’ or ‘Wait a minute, you gotta give me some time. Wait a minute, this is really hard.’ That's what old management says, that is what the new team claims was a weakness of antitrust policy for the last 40 years,” Kovacic said.

The FTC under Khan has been working to put in place stricter enforcement practices, including votes to repeal former policy statements that Khan and other Democratic commissioners said were constraints on the agency’s ability to take action.

Her choices within her first two months have already earned praise from anti-monopoly groups that backed her for the FTC post.