# NEG Wiki Doc---Texas R3

# 1NC

### 1NC---T

#### The scope of antitrust law is exclusively bounded by exemptions and immunities

ABA 7 (American Bar Association, ABA Section of Antitrust Law, Monograph 24, “Chapter 1 Introduction,” *Federal Statutory Exemptions from Antitrust Law*, American Bar Association, 2007, ISBN: 978-1-59031-864-5, pp.4-7)

A. Background: The Broad Scope of Antitrust, and an Introduction to Statutory Exemptions

Because this monograph concerns statutory constraints on the reach of antitrust law, a word is in order about the broad scope of antitrust principles.

Sherman Act sections 1 and 2 apply to “trade or commerce among the several States, or with foreign nations,”11 but the act leaves that phrase undefined. The Clayton and Federal Trade Commission Acts both define the “commerce” to which they apply,12 but give it only a jurisdictional meaning similar to that under the Commerce Clause of the federal Constitution.13 The courts have thus been left to decide just how broadly antitrust applies. Despite some uncertainty in the first half of the twentieth century,14 and with one lingering exception,15

**[FOOTNOTE 15]**

15. Namely, neither the Court nor Congress has ever overruled the Court’s sui generis 1922 rule that professional baseball is not “commerce.” See Fed. Club. 259 U.S. at 209.

**[/FOOTNOTE 15]**

modem courts define this scope very broadly. The inclusive modem definition is perhaps the natural culmination of the Supreme Court’s long-held belief that “Congress intended to strike as broadly as it could in Section 1 of the Sherman Act,”16 a view it developed because “[l]anguage more comprehensive” than that in Section 1 “is difficult to conceive.”17

This view probably also reflects the broad definition given to the terms “trade” and “commerce” for various purposes at common law, as some courts have explicitly held that antitrust was meant to incorporate those ideas." Thus, the courts have held generally that any exchange of money for a good or service, between any persons, is in ‘trade or commerce,”19 and the Supreme Court itself has described “commerce” to include any “exchange of...a service for money.’00 Indeed only in very limited, and sometimes exotic, circumstances have modem courts found conduct to be outside the scope of antitrust.21

**[FOOTNOTE 21]**

21. See. e.g., Dedication & Everlasting Love to Animals v. Humane Soc’y of the U.S., 50 F.3d 710 (9th Cir. 1995) (holding that solicitation of gratuitous charitable donations is not trade or commerce).

**[/FOOTNOTE 21]**

Therefore, in the absence of an explicit statutory exemption or a judicially created immunity, and so long as it is in the interstate or foreign commerce of the United States, the giving of essentially anything in return for money or barter is subject to federal antitrust.

Understanding the scope of modem antitrust also requires recognition of contemporary developments that affect enforcement of antitrust and its substantive reach. The United States is one of the few of more than 100 nations with competition laws that permit private antitrust suits.22 U.S. antitrust has permitted those suits dating from the initial adoption of the Sherman Act in 1890,23 and they comprise by far the largest component of antitrust enforcement.24 However, recent caselaw developments may increase barriers to the private lawsuits on which U.S. enforcement heavily depends. During the past thirty years or so, the federal courts have gradually raised doctrinal barriers to private enforcement of federal antitrust law, particularly through the rule of antitrust injury and the developing doctrine of antitrust standing.25 Partly as a result of these developments, private enforcement has declined.26

#### ‘Expand’ must make more expansive---NOT merely clarify existing principles

Terry J. Hatter, Jr. 90, Judge, US District Court, California Central, “In re Eastport Assoc.,” 114 B.R. 686, Lexis

[\*\*10] Second, Eastport asserts that the presumption against retroactivity does not apply because the amendment was intended only as a clarification of existing law. HN7 Where an amendment to a statute is remedial in nature and merely serves to clarify existing law, no question of retroactivity is involved and the law will be applied to pending cases. City of Redlands v. Sorensen, 176 Cal. App. 3d 202, 211, 221 Cal. Rptr. 728, 732 (1985). The evidence in this case, however, does not support the conclusion that the amendment to section 66452.6(f) was simply a clarification of preexisting law. The Legislative Counsel's Digest specifically states that "the bill would expand the definition of development moratorium." Senate Bill 186, Stats. 1988, ch. 1330, at 3375 (emphasis added). Since the Legislative Counsel is a state official required by law to analyze pending legislation, it is reasonable to presume that the Legislature amended the statute with the intent and meaning expressed in the Counsel's digest. People v. Martinez, 194 Cal. App. 3d 15, 22, 239 Cal. Rptr. 272, 276 (1987). By its ordinary meaning, the term "expand" indicates a change in the law, rather than a restatement of existing [\*\*11] law. In light of the Counsel's comment, Eastport's argument is unpersuasive.

#### The AFF just clarifies the application of antitrust to already covered practices – it does NOT curtail an exemption or immunity

#### Vote NEG – eliminating exemptions and immunities provides a limited AND predictable basis for prep, and focuses debates on the balance between antitrust and regulation, ensuring conceptual unity

### 1NC---DA

**Wage growth is sustainable now --- increase from the plan cause interest rate spikes --- turns the aff**

**Smialek 21** --- Jeanna Smialek writes about the Federal Reserve and the economy for The New York Times. She previously covered economics at Bloomberg News, “Wages are rising, but can they keep up with inflation?”, Nov 5th 2021, https://www.nytimes.com/2021/11/05/business/economy/wages-inflation.html

It is **not yet clear** which side of that equation — higher pay or higher prices — **is going to win out**, but the answer could matter **enormously** for the Federal Reserve and the White House.

There are a few ways this moment could evolve. Wage growth could remain strong, **driven by a tight labor market**, and overall inflation could simmer down as supply chain snarls unravel and a surge in demand for goods eases. That would benefit workers.

But **troubling outcomes are also possible**, and high on the list of worries is what economists call a “**wage-price spiral.**” Employees could begin to demand higher pay because they need to keep up with a rising cost of living, and companies may pass those labor costs on to their customers, **kicking off a vicious cycle**. That could make **today’s quick inflation last longer than policymakers expect.**

**The stakes are high**. What happens with wages will matter to families, businesses and central bankers — and the path ahead is far from certain.

“**It’s the** several-**trillion-dollar question**,” said Nick Bunker, director of research for the hiring site Indeed.

For now, wage growth is rapid — just not fast enough to keep up with prices. One way to measure the dynamic is through the Employment Cost Index, which is reported by the Labor Department every quarter. In the year through September, the index’s measure of wages and salaries jumped by 4.2 percent. But an inflation gauge that tracks consumer prices rose by 5.4 percent over the same period.

A different measure of pay, an index that tracks hourly earnings, did rise faster than inflation in August and September after lagging it for much of the year.

And an update to that gauge on Friday showed that wages climbed 0.4 percent in October, which is roughly in line with recent monthly price increases. Over the past year, that measure is up by 4.9 percent. But the data on hourly earnings have been distorted by the pandemic, because low-wage workers who left the job market early in 2020 are now trickling back in, jerking the average around.

The upshot is that the tug of war between price increases and pay increases **has yet to decisively swing** in workers’ favor.

Whether wage gains eventually eclipse inflation — and why — **will be crucial** for economic policymakers. Central bankers celebrate rising wages when they come from productivity increases and strong labor markets, **but would worry if wages and inflation seemed to be egging each other upward.**

The Federal Reserve is “**watching carefully**,” for a troubling increase in wages, its chair, Jerome H. Powell, said on Wednesday, though he noted that the central bank did not see such a trend shaping up.

Recruiters do report some early signs that inflation is factoring into pay decisions. Bill Kasko, president of Frontline Source Group, a job placement and staffing firm in Dallas, said that as gas prices in particular rise, employees are demanding either higher pay or work-from-home options to offset their increased commuting costs.

“It becomes a topic of discussion in negotiations for salary,” Mr. Kasko said.

But for the most part, today’s wage gains are tied to a different economic trend: red-hot demand for workers. Job openings are high, but many would-be employees remain on the labor market’s sidelines, either because they have chosen to retire early or because child care issues, virus concerns or other considerations have dissuaded them from working.

Grocery store managers in Dallas are earning as much as $175,000 in base pay compared to $125,000 before the pandemic, Mr. Kasko and his colleagues said, and employees are being nabbed away from firms like his for six-figure-salary recruiting jobs at corporations.

Emily Longsworth Nixon, 27 and from Dallas, is one of Mr. Kasko’s employees. She herself is fielding five or six messages each day on LinkedIn trying to lure her away, she said, and the tight labor market has upended how she does her job.

She tried to recruit a woman to an executive assistant position at a technology company that would have given her a $30,000 raise — and saw the candidate walk away for a counter offer of no additional pay but three work-from-home days each week.

“After that, I had my tail between my legs for a couple of days; I had never thought to ask that,” she said, adding that employers need to know their candidates like never before as workers flex their power, taking home raises and other perks. “Before Covid, it was an employer-driven market.”

Those in-demand workers could end up being better off in the long run, should their pay continue to chug higher even as supply chains heal and prices for used cars and couches moderate, allowing them to afford more.

Pay gains might also become more sustainable for employers as virus concerns fade and employees trickle back from the labor market’s sidelines.

And even if rapid wage increases persist, it is not absolutely the case that employers will be forced to drastically raise prices. Businesses could stomach a hit to their profits instead, or they could invest in technology that improves worker productivity.

If fewer waitresses can sell the same number of dinners because customers are ordering from QR codes, for instance, employers will have leeway to pay more without taking a hit to their bottom line.

Investment in automation has already moved up sharply by one metric, with orders of robots in the second quarter of 2021 up 67 percent from a year earlier, with demand spanning pharmaceutical industries, cars and electronics, according to the Association for Advancing Automation.

“Companies can’t find people, I don’t care what the industry is,” said Jeff Burnstein, president of the association.

**But a happy outcome is not guaranteed**. If today’s high prices do drive tomorrow’s wage negotiations and set off an upward spiral, the result could be a **longer period of high inflation** that **prods the Fed to raise interest rates** to tamp down demand and cool off prices, slowing the economy and possibly even sending it back into a recession.

A scenario like that hasn’t taken place since the 1970s and 1980s. But a situation like the pandemic lockdowns and subsequent reopening has never happened at all.

“We haven’t seen a wage-price spiral for decades, but we haven’t seen inflation like this for decades, either,” said Jason Furman, a Harvard University economist and former economic adviser in the Obama administration, calling the possibility of a wage-driven spiral **“an open question.”**

**Collapses dollar heg**

**SMAGHI 20** --- LORENZO BINI SMAGHI, Former Member of the Executive Board, European Central Bank, “Is a Dollar Crash Coming?”, International Economy, Fall 2020, https://www.bruegel.org/wp-content/uploads/2021/02/TIE\_F20\_DollarCrisisSymp.pdf

The question is whether the scenario may change **abruptly**, in particular if interest rates rise over time, putting at risk the sustainability of the debt. The key factor to assess debt sustainability is the relationship between the rate of interest paid on the debt and the rate of growth of the economy. As long as the economy grows faster than the rate of interest, **sustainability is not at risk.** If the opposite holds, fiscal policy will have to tighten in order to generate primary surpluses to ensure debt sustainability.

Interest rates can rise for two main reasons. The first is higher long-term economic growth. In that case, both sides of the equation go up, and the debt can remain sustainable.

The second, more worrying case, **is when interest rates increase because of higher inflation**. This scenario is not very likely over the next few years, as the economy recovers from the crisis, but could materialize in the medium term, especially if demographic factors lead to a trend fall in global output compared to demand. In that case, a rise in inflation could lead to higher interest payments on the debt. The main risk is that interest rates rise more than inflation because of expectations of even higher inflation in the future. This may happen if inflation expectations are dis-anchored, rising above the 2 percent target set by the central bank.

In summary, the risk to debt sustainability emerges when the central bank loses control of inflation. This happens if the central bank does not act sufficiently rapidly to prevent inflation from rising above target, either because it underestimates inflationary pressures, or if it is not sufficiently independent to take the appropriate decisions.

Under these circumstances, the demand for government bonds **could fall,** triggering **further rises in interest rates** and jeopardizing **the credibility of the U.S. currency in the eyes of international investors.** This is similar to what happened in the second half of the 1970s, before Paul Volcker was appointed as Fed chairman

**Extinction**

**Zoffer 20** --- Joshua Zoffer, writing on U.S. economic leadership has appeared in the Financial Times, Foreign Affairs, and The National Interest., Law Student @ Yale, “To End Forever War, Keep the Dollar Globally Dominant”, Feb 3rd 2020, https://newrepublic.com/article/156417/end-forever-war-keep-dollar-globally-dominant

Yet in their recent article in The New Republic, David Adler and Daniel Bessner argue the U.S. should abandon these advantages. In their view, the dollar’s role has encouraged American militarism and should be relinquished to curb such behavior. Dollar hegemony is not without cost, but to renounce it would be a profound mistake. Adler and Bessner’s view neglects the sizable economic benefits the dollar’s role confers on the U.S., as well as its possible use as **an antidote** to military adventurism. It ignores the enormous good that can be done with deficit spending, much of which has gone to the American military but could instead fund progressive programs. And it elides the inability of the U.S. and its global trading partners to shift away from dollar dominance without creating worldwide financial distress. Adler and Bessner are right that the U.S. has misused its privilege, but Washington should not abandon it; rather, American leaders should seek to transform it.

Generations of American policymakers have been right to protect the dollar’s key currency role for economic reasons. Most notably, dollar hegemony affords the U.S. the ability to run large and prolonged budget and balance-of-payments deficits. The dollar represents 62 percent of allocated foreign exchange reserves, is used to invoice and settle roughly half of world trade, and accounts for 42 percent of global payments. Because governments, banks, and businesses worldwide need lots of dollars, the world market always stands ready to absorb new U.S.-dollar-denominated debt without charging higher interest rates.

Adler and Bessner correctly point out that the rest of the world considers the dollar’s role as the world’s reserve currency to be an “exorbitant privilege,” a term coined in the 1960s by then French Finance Minister Valéry Giscard D’Estaing. The ability to spend beyond its means has enabled the U.S. to fund its impressive military might, whether one views that power as the fountainhead of Pax Americana or the source of illegitimate military adventurism.

But these economic benefits go beyond just deficits. The demand for dollars also pushes up the dollar’s value against other currencies, enhancing American purchasing power and offering consumers access to imports on the cheap. The dollar’s role also means American firms rarely need to do business in foreign currencies, reducing transaction costs and exchange-rate risks.

More broadly, America’s central economic role gives it outsize influence at crucial moments. At the height of the financial crisis that began in 2008, the Federal Reserve was able to inject vital liquidity into the global financial system by selectively offering dollar swap lines to trusted foreign central banks. Dollar hegemony enabled the U.S. to act swiftly, effectively, and on its own terms.

In addition, the dollar’s role offers a potent **alternative** to kinetic military action as a means of pursuing foreign policy objectives. The dollar’s broad use means access to dollar liquidity—which in turn requires access to the U.S. financial system—is essential for foreign governments and businesses. For foreign banks, especially, being cut off from dollar access is essentially a death sentence. That makes sanctions that do so a powerful tool in the international arena.

In 2005, for example, the U.S. used the dollar to strike a devastating blow against North Korea **without firing a single shot** or even formally enacting sanctions. Using authority provided by Section 311 of the Patriot Act, the Department of the Treasury crippled Banco Delta Asia, a bank accused of facilitating illegal activity by the North Korean government, by merely threatening to cut off its access to the American financial system. Deposit outflows began within days; within weeks the bank was placed under government administration to avoid a full collapse. Pyongyang was hit hard, as other banks ceased their business with it to avoid meeting the same fate.

Similarly, though the Trump administration has worked hard to undo it, the Joint Comprehensive Plan of Action with Iran to **limit the development of nuclear weapons** was made possible, in part, by painful dollar sanctions that brought Iran to the table. Far from being a proximate cause of military conflict, the dollar’s central global role has often been used to **contain adversaries without military intervention.**

Still, skeptics are right to point out that the dollar’s role has indirectly funded American interventionism and that dollar sanctions have been overused, provoking the ire of American allies. But these facts suggest we should use our dollar power to forge a more progressive U.S. order, not abandon the advantage altogether. America’s exorbitant privilege need not fund warships and missiles: The same low-interest borrowing could be used to fund a new **universal health care** system, expand access to higher education, or pursue any number of large-scale social policy objectives, including financing global public goods that no other country or consortium of countries is prepared to fund, such as **climate change mitigation.**

### 1NC---CP

#### The United States federal government should:

[INNOVATION PLANK]

#### ---increase scrutiny of Chinese investments and tech firms collaborating with China,

#### ---increase negotiations with China over common standards for emerging technology usage,

#### ---establish a National Emerging Technology Council,

#### ---significantly increase investments in science and technology, education, infrastructure, and reduce restrictions on global talent and companies,

[INEQUALITY PLANK]

#### --- increase the top marginal tax rate on ordinary income to 50 percent, and increase transfer payments and public service to persons with low incomes.

#### Planks 1-4 solves China tech supremacy.

Gewirtz 19 (Julian Baird Gewirtz, Academy Scholar @ Harvard’s Weatherhead Center for International Affairs, author of Unlikely Partners: Chinese Reformers, Western Economists, and the Making of Global China; “China’s Long March to Technological Supremacy;” 08-27-19, Foreign Affairs, <https://www.foreignaffairs.com/articles/china/2019-08-27/chinas-long-march-technological-supremacy>, TM)

A RACE AGAINST TIME

The goal of surpassing other countries technologically does not mean that China’s rulers seek global military supremacy. But even in best-case scenarios, China’s transition from catching up to surpassing will be destabilizing, as other countries confront Chinese ambitions for greater prosperity and security and feel their relative power decrease. And for China, building 5G networks for other countries and making AI breakthroughs clearly advance CCP aims far beyond narrowly construed self-reliance. Even if firms such as Huawei and ZTE are not incontrovertibly compromised by the state, their work clearly serves CCP interests.

Technology will remain at the heart of U.S.-Chinese tensions well beyond the end of the current trade war. Technology, to the CCP, is power in practice—it is historical change in material form. The roots of “catch up and surpass” demonstrates that the CCP’s approach to technology is far more deeply entrenched than many analysts realize. If China’s rulers feel their technological rise is under threat, they are likely to react more forcefully and uncompromisingly than policymakers may expect—as the Chinese response to Washington’s effort to block Huawei’s global 5G dominance has demonstrated.

An all-out rivalry between the world’s two technology leaders would be immensely costly, disruptive, and destructive. Instead, policymakers should focus on establishing and enforcing new rules for the race already underway, so that competition can occur fairly and be at least somewhat bounded. Within the United States, that will require scrutinizing Chinese investments and acquisitions of U.S. firms, well beyond the traditional purview of the Committee on Foreign Investment in the United States, as well as the footprint of both Chinese firms in the United States (such as Baidu’s AI lab in Silicon Valley) and U.S. firms in China (such as Google’s AI lab in Beijing). In addition, Washington should seek to begin negotiations with China as soon as possible to explore common rules for emerging technologies. Such agreements were possible with the Soviet Union during the Cold War. Today, they can be effective again if they are based on deep understanding of the technologies under discussion and the importance of tech to both countries’ conceptions of national power. For the U.S. government, that may require creating or improve policymaking institutions, such as upgrading the Office of Science and Technology Policy (which currently runs the National Science and Technology Council) into a new National Emerging Technology Council. The National Emerging Technology Council would serve as a consistent, high-level body, overlapping the National Security Council and the National Economic Council, to coordinate more effectively across the whole of government and bring empowered expertise to bear on both domestic policymaking and international negotiations.

The U.S. government’s response should not be premised on the notion, evidently in vogue in both Washington and Beijing, that all scientific and technological activity is a zero-sum competition between states. The history of ganchao suggests that so-called technological decoupling between China and the United States will continue in areas where it is most difficult to distinguish between commercial and military applications. But unwinding interdependence carries significant costs, and so U.S. policymakers should attempt to draw distinctions between sectors in China that feature strong private-sector leadership and those dominated by the state—not all “Chinese” technology is the same. Research institutions and private companies will also need much more help evaluating potential research cooperation with Chinese counterparts, to guard against problematic partnerships while preserving the great value of international exchange to the progress of scientific research.

Above all, Washington must not view countering China’s technological advancement as a substitute for investing in a major effort at home. The Trump administration’s repeated attempts to cut budgets for the National Science Foundation and other government S & T funding are profoundly self-defeating at a time of intensified U.S.-Chinese tech competition. China’s technological advancement will challenge not only U.S. power but also the United States’ sense of itself as a global leader and innovator. This demands significant U.S. domestic investment in S & T—in government research labs and private research institutions for certain, and perhaps in private companies directly. It will also require mobilizing the American people behind making significant improvements to the education, infrastructure, and immigration systems, which are sources of the country’s enduring strength. If there is one thing that U.S. policymakers can learn from the history of ganchao, it is that the world still wants what the United States has.

#### Last plank solves inequality

Aaron 15 (Henry J. Aaron, Bruce and Virginia MacLaury Senior Fellow, The Brookings Institution, “Can taxing the rich reduce inequality? You bet it can!” Economic Studies at Brookings, October 2015, https://www.brookings.edu/wp-content/uploads/2016/06/taxing-the-rich-you-bet-aaron.pdf)

Executive summary

Two recently posted papers by Brookings colleagues purport to show that “even a large increase in the top marginal rate would barely reduce inequality.”1 This conclusion, based on one commonly used measure of inequality, is an incomplete and misleading answer to the question posed: would a stand-alone increase in the top income tax bracket materially reduce inequality? More importantly, it is the wrong question to pose, as a stand-alone increase in the top bracket rate would be bad tax policy that would exacerbate tax avoidance incentives. Sensible tax policy would package that change with at least one other tax modification, and such a package would have an even more striking effect on income inequality. In brief:

• A stand-alone increase in the top tax bracket would be bad tax policy, but it would meaningfully increase the degree to which the tax system reduces economic inequality. It would have this effect even though it would fall on just ½ of 1 percent of all taxpayers and barely half of their income.

• Tax policy significantly reduces inequality. But transfer payments and other spending reduce it far more. In combination, taxes and public spending materially offset the inequality generated by market income.

• The revenue from a well-crafted increase in taxes on upper-income Americans, dedicated to a prudent expansions of public spending, would go far to counter the powerful forces that have made income inequality more extreme in the United States than in any other major developed economy.

### 1NC --- CP

#### Text: The FTC should interpret that the presently-existent phrase “unfair methods of competition” in Section 5 of the FTCA includes a protection of competition standard favoring structural remedies over conduct remedies. The FTC should release a policy statement and data sets that reflects this and enforce accordingly.

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

Khan ‘21

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

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

I. Background

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

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

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

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

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

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

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

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

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

### 1NC---DA

#### Bedoya’s confirmation is likely, BUT opposition to the antitrust agenda threatens to indefinitely deadlock meatpacking enforcement – and everything else

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

The Biden administration is threatening new anti-monopoly enforcement actions against the Big Four meatpacking companies, in part to counter inflation at the grocery store and in part to address decades of exploitation of small farmers. On Monday, the president dispatched Agriculture Secretary Tom Vilsack and Attorney General Merrick Garland to hear grievances from small ranchers, while the White House builds a new web portal to gather complaints. While the White House’s proposals for funding small meat processors to increase competition are rather unsatisfying, the enforcement piece could have a real impact.

This initiative has caused the usual grumbling from neoliberal economists, and the usual corrections to the usual grumbling. But no one has yet explained how Biden plans to actually follow through on his threat—a problem for which Garland is partly to blame.

As The Information’s Josh Sisco reported on Tuesday, there are currently just two deputies trying to manage the entire DOJ Antitrust Division (ATR) alongside Assistant Attorney General Jonathan Kanter, who was confirmed only two months ago. ATR typically has at least 12 deputies and top advisers in the “front office” who oversee about 700 career staffers. And that was under past administrations, which didn’t have nearly as ambitious an antitrust agenda as Biden’s. Reversing four decades of Borkian antitrust sloth requires a cohesive and energetic senior leadership team.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

‘99% about FTC Chair Lina Khan’

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

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

#### Plan expands opposition, derailing confirmation

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

THE POLITICAL ASSAULT ON THE FTC

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Inadequate and Misdirected Enforcement Activity Narrative

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Key to break the political power of Big Ag broadly – spills over to deconsolidate farming

Gustin 19 (Georgina Gustin, covers agriculture for Inside Climate News, won numerous awards, including the John B. Oakes Award for Distinguished Environmental Journalism and the Glenn Cunningham Agricultural Journalist of the Year, formerly reported for the St. Louis Post-Dispatch and CQ Roll Call, graduate of the Columbia University Graduate School of Journalism, “Industrial Agriculture, an Extraction Industry Like Fossil Fuels, a Growing Driver of Climate Change,” Inside Climate News, 1-25-2019, https://insideclimatenews.org/news/25012019/climate-change-agriculture-farming-consolidation-corn-soybeans-meat-crop-subsidies/)

Meat and Mergers

Critics say that lax enforcement of antitrust laws has enabled even more concentration in the hands of fewer companies.

That concentration has occurred not just at the farm level but throughout the food system, including in fertilizer and pesticide manufacturing, grain distribution, food processing and grocery retailing. Four companies or fewer control each of these sectors of the food industry.

Recent mega-mergers of agricultural chemical and seed companies—Monsanto and Bayer, ChinaChem and Syngenta, Dow Chemical and DuPont—have further concentrated seed technology in the hands of a few companies. Critics worry that could leave farmers with fewer choices over what to plant and how.

Nowhere has the consolidation been more pronounced than in the meat industry, a hugely profitable and influential force in American agriculture. Today, a handful of companies, led by Brazil-based JBS Holdings, dominate the global meat industry, wielding enormous economic and political might.

“It’s JBS and Smithfield,” said Joe Maxwell, a hog farmer from Missouri and executive director of the antitrust watchdog Organization for Competitive Markets. “They want the U.S. to be the cheapest place to raise meat. They drive the political power in D.C. The result is that farmers are locked into farming for government programs that are not sustainable, economically and environmentally.”

The consolidation in meat production is also what’s driving the consolidation of crop farming, Maxwell said.

Livestock is now commonly raised or fattened in confinement on a diet of soybeans and corn instead of grass or other forage.

“The decades-long removal of livestock from diversified farms and moving into industrial facilities has certainly increased corn and soybean acreage. Those two things go hand in hand,” Hoefner said. “I think it’s a very open question whether that kind of transition back to a more integrated crop and livestock system is even possible. We’ve made such major landscape changes.”

#### Key to regenerative farming

Tam 21—(writer at UCLA Undergraduate Law Journal, won the UCLA Prize for Undergraduate Research, supervised by William Boyd, Professor of Law at UCLA School of Law and Institute of the Environment and Sustainability). Kristen Tam & Olivia Bielskis. April 1, 2021. “Stimulating Antitrust Enforcement to Expand the Regenerative Agriculture Movement”. UCLA Library. <https://escholarship.org/uc/item/0m16g2r5#main>.

INTRODUCTION

The failures of the federal courts and agencies to adequately enact antitrust enforcement has resulted in extensive consolidation of the agricultural marketplace creating conditions in which few distributors, meatpacking firms, and farms hold disproportionate percentages of the market power. Such instances of consolidation in the market are intended to be regulated through federal policies such as the Clayton Antitrust Act. However, the influence of Robert Bork and the Chicago School, which both argue to prioritize efficiency through consolidation over small businesses and competition in the market, resulted in an era from the 1980s to the present where the federal courts and agencies have adopted a less precautionary philosophy in interpreting antitrust laws, allowing large firms to merge, and leaving the marketplace largely unregulated.

The first gatekeepers that regulate corporation consolidation are the Department of Justice’s (DOJ) Antitrust Division and the Federal Trade Commission (FTC), which are responsible for reviewing new and existing mergers. To supplement, the Courts evaluate cases that involve mergers that seek to persist despite the DOJ or FTC preventing the merge. The Courts can also hear cases in which other firms on the market claim they will be substantially threatened by a potential merger. Often, mergers are brought up to the Courts under the Clayton Act, which requires proof of antitrust injury to sue. Suffering “antitrust injury” can include acts that “may substantially lessen competition,” as stated in Section 7 of the Act.

The impacts of large mergers are especially staggering when examining the dominance of the agriculture industry’s distributors, largest meat packing firms, and largest farms, which can all be referred to as agriculture firms in this paper. In 2017, four beef packaging firms owned 83 percent of the market.1 With only four firms holding a substantial percentage of market power, smaller firms and farms were obligated to decrease their selling price in order to compete with larger firms maintaining high economies of scale. This hinders the profitability of small farms, ultimately resulting in market failure because these farms are eventually driven out by their untouchable competitors, allowing the largest agriculture firms to hold monopolistic power. In the 1980s, farmers profited 37 cents per dollar spent in production,2 while in 2018, farmers made less than 15 cents per dollar.3 Decreasing profit margins are being perpetuated by the few gargantuan distributors that control the marketplace, allowing them to pay farmers or ranchers the price they want to set, often below market rate.

Decreasing competition and profit margins threatens the existence of small farmers and poses a substantial threat to essential climate change mitigation by hindering the growth of regenerative farming. Large industrial agriculture firms mostly utilize destructive farming practices including applying toxic synthetic fertilizers, planting monoculture fields, and tilling their soil. Tilling, the practice of overturning soil for the purpose of reducing soil compaction4 and mixing nutrients, decreases water retention, destroys vital soil microbes, and results in the release of carbon dioxide, a harmful greenhouse gas contributing to climate change.5 Every year, 44.02 billion tons of chemical fertilizer are applied onto U.S. soil,6 while every minute thirty soccer fields worth of soil are lost due to tilling practices.7 This is threatening food security, ecosystems, and the climate.8 The Intergovernmental Panel on Climate Change (IPCC) prescribes that the world needs to limit global temperature rise to 1.5 degrees Celsius by 2050. Agriculture contributes to 10.5 percent of the United States’ emissions, therefore we have a significant capacity to instead decrease emissions by implementing more sustainable farming practices.9

Conversely, a majority of smaller farms avoid these harmful practices and work to combat climate change by implementing regenerative techniques such as practicing no till, applying compost as fertilizer, and planting cover crops. In addition to building soil health, increasing soil water retention, and sequestering carbon dioxide from the atmosphere, small farms are able to implement farming practices that fit the local environment and adapt quickly with flexibility to maintain production during changing environmental conditions.10 Although small farms are more likely and willing to implement regenerative practices, their ability to switch to regenerative practices is dampened because they have limited money, time, or resources to do so with low profit margins. Failure to regulate the market is hindering a transition that would benefit the industry and planet in the long run. Although there are no laws in place that limit soil degrading practices, antitrust laws were created to prevent monopolies and undue concentration of market power in the hands of a few corporations, such as the beef packing conglomerates, from forming on the marketplace. If implemented properly, these laws have the potential to protect competition in the agriculture industry, keep small farms alive, and decrease the amount of soil being destructively farmed.

The federal government’s lackluster antitrust enforcement is born from a history of jurisprudential doctrines that favor large corporations and efficiency and subsequently discourage federal agencies from striking down harmful mergers. This paper first discusses the impact of lackluster enforcement of antitrust laws on the agriculture industry, focusing specifically on the hindrance of regenerative farming practices. Antitrust laws were created to prevent and correct such consolidation, thus, I enlist a two-pronged approach that identifies the main avenues through which consolidation has increased, and recommend remedies. The first prong addresses how the merge permitted between two meat packing corporations in Cargill v. Monfort contradicts the purpose of the Clayton Act and has set substantial precedent for the court's non precautionary interpretation of antitrust laws and what constitutes as “antitrust harm” under the Clayton Act. I argue that the Courts should set a new judicial standard that allows the “threat of loss of profits due to possible price competition” to constitute “antitrust injury,” and that they must default to precautionary measures and strike down mergers that have the capacity to acquire an undue percentage of the market share. The second prong addresses how the negligence of the DOJ and FTC has yielded a significant increase in consolidation of agriculture firms in the United States. To do so, I argue that these agencies must increase the number of agriculture and meatpacking merger acquisitions they block by holistically analyzing the scope of the mergers market power. Additionally, the reinvestigation of current corporations in the market holding unruly market power is essential in remedying the adverse impacts of market consolidation in agriculture.

I. The Current Market: As Farms Consolidate, the Growth of Regenerative Farming is Hindered

A. Increased Consolidation in the Agriculture Industry as Deregulation Heightens on Farms, Meat Packing, and Other Food Corporations

As defined by the United States Department of Agriculture (USDA), a “farm” is any place from which $1,000 or more of agricultural products were produced or sold during the year.11 This section discusses the historical and current consolidation trends in the agriculture marketplace for farms, meatpacking firms, and many other food corporations. I find that the overall number of farms has decreased while the size of each farm or firm has increased, and the number of farms in higher sales classes have increased along with their subsequent share of farmland.12

Farm numbers have decreased since the onset of the 20th century, however, due to Robert Bork and the Chicago School’s influence that prioritized economic efficiency and consumer prices over small businesses,13 the number of farms in the United States started decreasing at faster rates. In 1975, there were 2.5 million farms across the country,14 which declined by an average of 2.41 percent per year.1516 Comparatively, from 1980 to 1985, the number of farms decreased by an average of 6.15 percent per year,17 alluding to increased rates of consolidation.

While farm numbers continue to decrease, output production size and the Gross Cash Farm Income (GCFI) of large farms has increased. From 2012 to 2018, the number of farms decreased from 2.11 to 2.03 million farms, while the average farm size increased from 429 to 443 acres.18 Specifically, the growth in land holdings has increased the greatest in the largest farms. In 1987, 57 percent of the United States cropland was operated by midsize farms with 100 to 999 acres of cropland while only 15 percent was operated by large farms over 2,000 acres.19 In 2012, cropland operated by midsize farms drastically decreased to 36 percent while cropland operated by large farms increased to 36 percent, more than doubling the figure from 1987.20 In addition to holding control of more land and market power, and decreasing competition in the marketplace, these larger farms hold a disproportionate majority of agricultural commodity profits. In 1991, small farms, defined as farms whose income is less than $350,000, took in 46 percent of agricultural profit, while in 2015, small farms took in only 25 percent of agricultural profit.21 Large farms, who make more than $1,000,000 held 31 percent of the GFCI in 1991, while in 2015, their share increased to 51 percent.22

The trend towards consolidation is also prevalent in the livestock, poultry and meat packing industries, seeing as the number of farms and packaging plants decrease while the number of animals raised per farm increases. From 1987 to 2017, there was a 28.50 percent decrease in the number of cow, pig and chicken farms.23 While the number of farms decreased, the midpoint numbers for the number of livestock per farm increased; where half of the livestock are above, and half are below it. In 1987, the midpoint number of cows for each livestock feeding industry was 80, while in 2012, this increased to 900, an increase of 1,025 percent.24 The number of meatpacking plants, where farmers sell their animals to be slaughtered, packaged, and distributed, also decreased which allows meatpackers to run roughshod over farmers by giving them power to pay their desired lower prices, disadvantaging farmers.

Consolidation in other food industries is increasing as well, seeing as in 2012 four firms owned 89 percent of the peanut butter industry, a staggering figure which increased to 92 percent in 2017.25 In 2015 the two largest corn seed firms owned 78 percent of the market share,26 in 2017 the four largest jelly firms owned 85 percent of the industry,27 and in 2018, two firms owned 87 percent of the mayonnaise market share, a $1.6 billion dollar industry.28 These figures showing monopolization exemplify the formidable proportions to which the agriculture and food industry is consolidated. These trends underscore how the regulation mechanisms in place to promote competition and prevent monopolization are not working.

B. Consolidation Threatens Democratic Systems

The consolidation and existence of merged corporations harms farmers and consumers and contradicts the democratic spirit of objective policy creation for the good of the people, not the corporation. Limited choices in the marketplace increases reliance on those select businesses, allowing them to have a significant influence on the government to make decisions in their favor. If any of those firms becomes economically endangered, the government is more inclined to to bail them out because they rely on their product or service. For instance, Tyson is one of America’s largest meat processing companies.29 Because they control a sizable majority of the market, when problems hindering production arise, including when multiple plants shut down during the onset of the coronavirus pandemic in 2020, a large decrease in the nation’s slaughtering capacity comes about, resulting in food shortages. Because of their essential position in the food supply, these meatpacking businesses can use their large market power to put pressure on the government to provide subsidies and bail them out of lawsuits and business failures. This dynamic harms farmers who have few or no other choices to sell their livestock to for slaughter in order to go to the market. These firms can extract these advantages even when problems such as COVID-19 outbreaks in the plants resulted from deliberate neglect to implement adequate safeguards by company heads.30 In addition to providing an unwavering safety net regardless of firm malpractice, the government often bends to the firm’s demands if they seek subsidies or exemptions from prosecution.31 In effect, when firms become so large that they cannot be allowed to fail, they begin to have disproportionate power over the political process.32

C. Consolidation Threatens the Growth of Regenerative Farming

I. Regenerative Farming is Reducing Emissions, Bolstering Biodiversity, and Increasing Food Security, a Critical Practice to create a Climate Resilient Future

The United Nations IPCC report calls for a rapid greenhouse gas reduction to limit temperature rise to 1.5 degrees celsius by 2050.33 Given that agriculture and forestry accounted for 10.5 percent of greenhouse gas emissions in 2018,34 farming practices can play a crucial role in meeting these goals. Farming the land in ways that build healthy soil, maintain biodiversity, and sequester carbon dioxide are critical measures that will help America cultivate a sustainable food system, protect the land for generations to come, and meet greenhouse gas emission reduction goals.

Currently, the practices that dominate the American agricultural landscape often till the soil, plant only one to two crops at a time, and input large sums of fertilizer, herbicides, pesticides, and other chemicals to streamline production. Industrialized agriculture values efficiency, maximizing yield, and decreasing labor input. In contrast, regenerative agriculture practices maintain soil health for long term benefit by applying compost as fertilizer, planting cover crops, implementing diverse crop rotation, rotating livestock grazing, limiting fertilizer and pesticide use, and eliminating tillage practices.35 Although opponents highlight that regenerative practices yield less products per acre and require more labor input, they neglect the significance of their energy input being 30-60 percent less than traditional methods because they do not use machines, fertilizer, and herbicides.36 This practice ultimately increases the long term productivity and stability of food production because it doesn’t rely on the continuous purchasing and application of chemicals into the soil. Instead, it builds soil health by increasing nutrient and water retention, both of which increases land productivity.37

II. Small Farms are More Likely to Implement Regenerative Fertilization Practices

One of the defining regenerative agriculture practices is applying compost and manure as fertilizer. There are three different types of fertilization methods that the USDA measures every few years, manure, organic, and commercial that help replenish soil nutrients. Manure is the application of animal bio excretions,38 organic fertilizer is the use of organic matter, compost, animal manures or green manures and does not include any chemical fertilizers,39 and commercial fertilizer is the application of chemically derived fertilizers such as nitrogen, phosphate and potash.40 For these figures, manure and organic fertilizers are categorized as “regenerative fertilizers” because they represent methods that replenish soils with naturally derived as opposed to chemically manufactured nutrients.

Small farms, 10.0 to 49.9 acres, are more likely to implement regenerative fertilizer methods than medium sized, 260 to 499 acres, and large sized, 1,000 to 1,999 acre farms. In 2017, 32.74 percent of small farms used regenerative fertilizer, compared to 27.27 percent of medium and 21.63 percent of large farms.41 Small farms are also transitioning away from commercial fertilizer to regenerative fertilizer methods at a faster rate than medium and large farms. From 2012 to 2017, small farms had the greatest percent decrease in number of farms using commercial fertilizers, 6.50 percent, and the largest percent increase for regenerative practices, 6.47 percent. Medium farms experienced a 2.28 percent decrease in the number of farms implementing commercial fertilizers, while a 2.57 percent increase in regenerative fertilizers. Large farms experienced a 2.31 percent decrease in the number of farming implementing commercial fertilizers, while a 2.32 percent increase in regenerative fertilizers.42 This demonstrates that smaller farms are more willing and better suited to implement regenerative practices.

Industrial agriculture firms, on the other hand, highly prioritize efficiencies and maximizing profit, thus, are less likely to invest the time and money into learning about and switching to regenerative fertilization practices. While small farms are making the most rapid transition to regenerative fertilization practices that would benefit the market and planet in the long run, the increased market and resource dominance of the largest farms, which have the slowest rates of transition to regenerative fertilization practices, is ultimately hindering the growth of regenerative agriculture in the United States.

#### Extinction

Friedemann 17 – Alice Friedemann, Unrelated to Nina, Systems Architect and Engineer For Over 25 Years, Science, Energy, and Agriculture Writer, Investigative Journalist and Energy Expert, Founder of Energy Skeptic, Author of When Trucks Stop Running: Energy and the Future of Transportation, “Chemical Industrial Agriculture is Unsustainable. Here’s Why”, Resilience, 5-27, http://www.resilience.org/stories/2017-03-27/chemical-industrial-farming-unsustainable-heres/

We hear a lot about how we’re running out of antibiotics. But we are also doomed to run out of pesticides, because insects inevitably develop resistance, whether toxic chemicals are sprayed directly or genetically engineered into the plants.

Worse yet, weeds, insects, and fungus develop resistance in just 5 years on average, which has caused the chemicals to grow increasingly lethal over the past 60 years. And it takes on average eight to ten years to identify, test, and develop a new pesticide, though that isn’t long enough to discover the long-term toxicity to humans and other organisms.

And this devil’s bargain hasn’t even provided most of the gains in crop yields, which is due to natural-gas and phosphate fertilizers plus soil-crushing tractors and harvesters that can do the work of millions of men and horses quickly on farms that grow only one crop on thousands of acres.

Yet before pesticides, farmers lost a third of their crops to pests, after pesticides, farmers still lose a third of their crops.

Even without pesticides, industrial agriculture is doomed to fail from extremely high rates of soil erosion and soil compaction at rates that far exceed losses in the past, since soil couldn’t wash or blow away as easily on small farms that grew many crops.

But pest killing chemicals are surely accelerating the day of reckoning sooner rather than later. Enormous amounts of toxic chemicals are dumped on land every year — over 1 billion pounds are used in the United State (US) every year and 5.6 billion pounds globally (Alavanja 2009).

This destroys the very ecosystems that used to help plants fight off pests, and is a major factor biodiversity loss and extinction.

Evidence also points to pesticides playing a key role in the loss of bees and their pollination services. Although paleo-diet fanatics won’t mind eating mostly meat when fruit, vegetable, and nut crops are gone, they will not be so happy about having to eat more carbohydrates. Wheat and other grains will still be around, since they are wind-pollinated.

Agricultural chemicals render land lifeless and toxic to beneficial creatures, also killing the food chain above — fish, amphibians, birds, and humans (from cancer, chronic disease, and suicide).

Surely a day is coming when pesticides stop working, resulting in massive famines. But who is there to speak for the grandchildren? And those that do speak for them are mowed down by the logic of libertarian capitalism, which only cares about profits today. Given that a political party is now in power in the U.S. that wants to get rid of the protections the Environmental Protection Agency (EPA) and other agencies provide, may make matters worse if agricultural chemicals are allowed to be more toxic, long-lasting, and released earlier, before being fully tested for health effects.

Meanwhile chemical and genetic engineering companies are making a fortune, because the farmers have to pay full price, since the pests develop resistance long before a product is old enough to be made generically. Except for glyphosate, but weeds have developed resistance. Predictably.

In fact, the inevitability of resistance has been known for nearly seven decades. In 1951, as the world began using synthetic chemicals, Dr. Reginald Painter at Kansas State University published “Insect Resistance in Crop Plants”. He made a case that it would be better to understand how a crop plant fought off insects, since it was inevitable that insects would develop genetic or behavioral resistance. At best, chemicals might be used as an emergency control measure.

Farmers will say that we simply must carry on like this, there’s no other choice. But that’s simply not true.

Consider the corn rootworm, that costs farmers about $2 billion a year in lost crops despite spending hundreds of millions on chemicals and the hundreds of millions of dollars chemical companies spend developing new chemicals.

To lower the chances of corn pests developing resistance, corn crops were rotated with soybeans. Predictably, a few mutated to eat soybeans plus changed their behavior. They used to only lay eggs on nearby corn plants, now they disperse to lay eggs on soybean crops as well. Worse yet, corn is more profitable than soy and many farmers began growing continuous corn. Already the corn rootworm is developing resistance to the latest and greatest chemicals.

But the corn rootworm is not causing devastation in Europe, because farms are smaller and most farmers rotate not just soy, but wheat, alfalfa, sorghum and oats with corn (Nordhaus 2017).

Before planting, farmers try to get rid of pests that survived the winter and apply fumigants to kill fungi and nematodes, and pre-emergent chemicals to reduce weed seeds from emerging. Even farmers practicing no-till farming douse the land with herbicides by using GMO herbicide-resistant crops. Then over the course of crop growth, farmers may apply several rounds of additional pesticides to control different pests. For example, cotton growers apply chemicals from 12 to 30 times before harvest.

Currently, the potential harm is only assessed for 2 to 3 years before a permit is issued, even though the damage might occur up to 20 years later.

Although these chemicals appear to be just like antibiotics, that isn’t entirely true. We develop some immunity to a disease after antibiotics help us recover, but a plant is still vulnerable to the pests and weeds with the genetics or behavior to survive and chemical assault.

Although there are thousands of chemical toxins, what matters is how they kill, their method of action (MOA). For herbicides there are only 29 MOAs, for insecticides, just 28. So if a pest develops resistance to one chemical within an MOA, it will be resistant to all of the thousands of chemicals within that MOA.

The demand for chemicals has also grown due the high level of bioinvasive species. It takes a while to find native pests and make sure they won’t do more harm than good. In the 1950s there were just three main corn pests. By 1978 there were 40, and they vary regionally. For example, California has 30 arthropods and over 14 fungal diseases to cope with.

When I was learning how to grow food organically back in the 90s, I remember how outraged organic farmers were that Monsanto was going to genetically engineer plants to have the Bt bacteria in them. This is because the only insecticide organic farmers can use is Bt bacteria, because it is found in the soil. It’s natural. Organic farmers have been careful to spray only in emergencies so that insects didn’t develop resistance to their only remedy. Since 1996, GMO plants have been engineered to have Bt in them, and predictably, insects have developed resistance. For example, in 2015, 81% of all corn was planted with genetically engineered Bt. But corn earworms have developed resistance, especially in North Carolina and Georgia, setting the stage for damage across the nation. Five other insects have developed resistance to Bt as well.

GMO plants were also going to reduce pesticide use. They did for a while, but not for long. Chemical use has increased 7% to 202,000 tons a year in the past 10 years.

Resistance can come in other ways than mutations. Behavior can change. Cockroach bait is laced with glucose, so cockroaches that developed glucose-aversion now no longer take the bait.

It is worth repeating that chemicals and other practices are ruining the long-term viability of agriculture. Here is how author Dyer explains it:

“Ultimately the practice of modern farming is not sustainable” because “the damage to the soil and natural ecosystems is so great that farming becomes dependent not on the land but on the artificial inputs into the process, such as fertilizers and pesticides. In many ways, our battle against the diverse array of pest species is a battle against the health of the system itself. As we kill pest species, we also kill related species that may be beneficial. We kill predators that could assist our efforts. We reduce the ecosystem’s ability to recover due to reduced diversity, and we interfere with the organisms that affect the biogeochemical processes that maintain the soils in which the plants grow.

Soil is a complex, multifaceted living thing that is far more than the sum of the sand, silt, clay, fungi, microbes, nematodes, and other invertebrates. All biotic components interact as an ecosystem within the soil and at the surface, and in relation to the larger components such as herbivores that move across the land. Organisms grow and dig through the soil, aerate it, reorganize it, and add and subtract organic material. Mature soil is structured and layered and, very importantly, it remains in place. Plowing of the soil turns everything upside down. What was hidden from light is exposed. What was kept at a constant temperature is now varying with the day and night and seasons. What cannot tolerate drying conditions at the surface is likely killed. And very sensitive and delicate structures within the soil are disrupted and destroyed.

Conventional tillage disrupts the entire soil ecosystem. Tractors and farm equipment are large and heavy; they compact the soil, which removes air space and water-holding capacity. Wind and water erosion remove the smallest soil particles, which typically hold most of the micronutrients needed by plants. Synthetic fertilizers are added to supplement the loss of oil nutrients but often are relatively toxic to many soil organisms. And chemicals such as pre-emergents, fumigants, herbicides, insecticides, acaricides, fungicides, and defoliants eventually kill all but the most tolerant or resistant soil organisms. It does not take long to reduce a native, living, dynamic soil to a relatively lifeless collection of inorganic particles with little of the natural structure and function of undisturbed soil”.

**1NC---DA**

**Climate provisions pass but it’s close – solves warming**

**Steinbauer 1-20** [James Steinbauer is a contributing writer covering national environmental policy. He was an editorial fellow at Sierra, 1-20-2022 https://www.sierraclub.org/sierra/it-s-do-or-die-time-for-build-back-better]

In the year since Joe Biden was inaugurated president, environmentalists have said again and again that the combination of this administration and this Democratic-controlled Congress is the **last best chance** to pass a climate bill. The warning is a year old, but the urgency remains as real as ever. **This is a do-or-die moment** to pass federal laws to tackle the climate crisis.

Democrats are running **against** two **clocks**. One is political: With President Joe Biden’s approval rating flatlining and COVID-19 cases and inflation increasing, most political pundits say Democrats will very likely lose their thin majorities in one or both chambers of Congress this fall. The other is geologic: With global **g**reen**h**ouse **g**as emission**s** and temperatures continuing to rise, scientists say we are likely to lose the opportunity to salvage a **livable climate** without sweeping action.

The extent to which human activity has already destabilized the climate is clear. Historic December tornadoes in the Midwest. Record heat in Alaska the day after Christmas. Wildfires in Colorado months after the end of the traditional wildfire season. According to NOAA, 2021 was Earth’s sixth warmest year on record. The planet’s seven warmest years have been the past seven. And it is only going to get hotter. Without major action to reduce greenhouse gas emissions, global temperatures are on track to rise 4.5 to 8 degrees Fahrenheit (2.5 to 4.5 degrees Celsius) by 2100. If the **U**nited **S**tates doesn’t meet its commitment to reduce its emissions, the world will fail to avoid **catastrophic climate change**.

“These higher temperatures continue to be a blaring siren that Congress needs to take action as soon as possible,” said David Shadburn, a government affairs advocate for the League of Conservation Voters.

The bulk of Democrats’ climate policy has been woven into the $2.2 billion **B**uild **B**ack **B**etter Act. But that proposed bill is stalled in the Senate. Senator Joe Manchin, the Democrat of West Virginia who has made a personal fortune from his fossil fuel investments, gave his party a big fat lump of coal for Christmas when, after months of negotiating, he said he could not vote for the legislative package as-is. “I can’t get there,” Manchin told Fox News. “This is a ‘no’ on this legislation.”

But **that** Christmas Eve bombshell **wasn’t the end** of the Build Back Better saga. At least one cause for optimism is that **Manchin** seems to **support the climate provisions in the bill**. “The climate thing is one that we probably can come to an agreement much easier than anything else,” Manchin told reporters in early January. Democrats' strategy for passing climate policy has been likened to giving medicine to a dog—you have to hide it in a spoonful of infrastructure peanut butter to get it down the legislative gullet. It’s a strategy that explains how the United Mine Workers of America, which describes its mission in life as lobbying for the interests of coal miners, has pleaded with Manchin to reconsider his opposition to the Build Back Better Act.

**The plan trades-off**

**Cartensen 21** [Peter C. Carstensen, Fred W. & Vi Miller Chair in Law Emeritus at the University of Wisconsin Law School, LL.B. from Yale Law School, MA in Economics from Yale University, “The “Ought” and “Is Likely” of Biden Antitrust”, Concurrences – Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en]

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

15. **A**nother 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.

## Innovation

### 1NC

**Tech innovation high --- expanding the scope of antitrust laws stifles it --- turns case**

**Packard 6-22** --- Clark Packard, Trade Policy Counsel, Finance Insurance & Trade, R-Street, “Hamstringing America’s most innovative firms is no way to compete with China”, JUN 22, 2021, https://www.rstreet.org/2021/06/22/hamstringing-americas-most-innovative-firms-is-no-way-to-compete-with-china/

The United States is locked into a **geopolitical competition with China** over the commanding heights of the 21st century economy. Much of the competition revolves around the nexus of international trade and investment and technology. **Washington has very legitimate concerns about China’s pursuit of indigenous innovation through high tech industrial policy**, but the situation warrants a smart response. At a time when policymakers are signaling their desire to outcompete China economically, **why are they also rushing to** ~~hobble~~ **[stifle] private sector American tech**nology **and innovation?**

Over the last several weeks, lawmakers have introduced five separate bills in United States House of Representatives aimed at cracking down on “Big Tech.” I’m not an antitrust scholar, but as my colleague Dr. Wayne Brough has written, the bills would, if enacted, “impose the most significant overhaul of the nation’s antitrust laws in our country’s history.” Rather than broad and durable antitrust principles that apply to all sectors of the economy, which have guided our competition policy for more than a century, the legislation under consideration is aimed squarely at large tech companies in the United States.

It is worth considering the **geopolitical and international economic ramifications of such a radical departure from existing law.**

In 2018, the United States released a report documenting China’s predatory commercial practices, which served as an indictment of sorts. The overarching theme of the report is that Beijing uses a number of unfair and pernicious methods to acquire American technology with the ultimate goal of supplanting the United States as the global leader in high tech innovation. Specifically, the report alleges that China pressures American firms into transferring technology to Chinese joint-venture partners as the cost of doing business—reaching the 1.4 billion potential consumers—in the country; China abuses intellectual property; engages in targeted foreign investment to acquire strategic American firms and assets; and with pervasive state support, hacks into commercial networks to steal trade secrets. On top of that, China provides massive subsidies to its leading technology firms to pursue research and development in critical areas. **These are very serious problems**, and demand a thoughtful and targeted response.

Instead, the United States has flailed at China. The Trump administration imposed tariffs, which triggered predictable retaliation against American exporters, imposed significant costs onto American consumers—both families and firms—and will almost certainly fail to change Beijing’s predatory commercial practices. It is estimated that the tariffs cost about 300,000 American jobs and lowered market capitalization by about $1.7 trillion through diminished investment, according to the New York Federal Reserve. In other words, the tariffs made the United States weaker and less competitive. Now, some in Congress want to pursue misguided antitrust policies that will unintentionally undermine the United States’ global competitiveness.

The firms targeted by the proposed legislation are among America’s **most globally competitive and innovative.** They drive **significant investment in cutting-edge tech**nologies like robotics and artificial intelligence, the types of research China is pursuing through its Made in China 2025 indigenous innovation industrial policy. A recent report from the Progressive Policy Institute (PPI) highlights how many of the largest American tech firms—Amazon, Alphabet (Google’s parent company), Intel, Facebook, Microsoft and Apple—were among the top 15 nonfinancial firms driving U.S. capital expenditures in 2020. Together, PPI estimates that these six firms made nearly $90 billion worth of private investment in 2020—up 6 percent from 2019, which is remarkable considering that the U.S. economy was lagging in 2020 due to the outbreak of COVID-19. Cracking down on these firms will mean less investment in research and development.

These American firms already must compete with heavily subsidized foreign competitors and face discriminatory foreign practices, particularly in China. Despite these hurdles, the American tech industry pushes the envelope on exactly the type of research and development that policymakers in the United States should welcome. These firms lead the world in current and next-generation technologies. Instead of embracing this type of American global commercial and technological leadership, or at least staying neutral toward it, the legislation under consideration would **favor foreign competitors** by [stifling] ~~kneecapping~~ our domestic technology firms with **heavy-handed regulation**, which will almost certainly benefit their foreign competitors.

The American tech industry is the envy of the world. That’s why China, the European Union and others are trying to mimic it through subsidies and discriminatory practices against foreign competition. Yet those policies are no match for a relatively free and dynamic economy fostered by existing competition policies. It simply **belies common sense** that the way to outcompete Beijing is by making the United States **weaker, less efficient and less dynamic through misguided efforts to single out** our most **globally competitive and successful firms**.

#### China is not catching the US on AI – their ev is hype

Cooper & Kompella 2-3 James Cooper is professor of law and director of International Legal Studies at California Western School of Law in San Diego and a research fellow at Singapore University of Social Sciences. Kashyap Kompella, a technology industry analyst, is CEO of RPA2AI, a global artificial intelligence advisory firm. “No, China is not winning the AI race.” 02/03/22 <https://thehill.com/opinion/technology/592270-no-china-is-not-winning-the-ai-race> {DK}

The global competition between the United States and China continues apace. Technology is rightly seen as providing unique leverage to win this geopolitical race. The U.S. long has been the global technology powerhouse, but not surprisingly, we have heard much about the Chinese government’s ambition to dominate high-tech industries such as 5G telecommunications, autonomous vehicles, blockchain, and semiconductor chips.

In this light, as a horizontal technology that can be applied across all sectors, artificial intelligence (AI) has become a strategic priority and the Chinese focus on superiority in this field is touted as something about which the U.S. should be concerned. Some have gone so far as to conclude that the West has already lost the AI race.

Don’t believe the hype. To be sure, the availability of large amounts of data is at the heart of AI success. It is tempting to think that less-democratic regimes that amass huge amounts of data about their citizens and have scant regard for privacy can develop better AI systems using that data. However, all other things being equal, better and higher quality AI systems emerge from countries with strong data privacy and data protection regulations because AI systems must undergo greater scrutiny during their development and deployment. An example of this can be seen in the United States regarding fair lending practices and consumer protection from credit bureaus. Further, the market for AI is global, and such high-quality AI systems find buyers in other countries as well.

Around the globe, Big Tech’s rising power has resulted in calls for more oversight. In a drastic move that stunned the industry and analysts alike, the Chinese government recently rewrote the rulebook for the country’s technology industry. In effect, China is vacating entire swaths of digital and creative industries, arenas that serve as training grounds and talent factories for other industries. This more restrictive approach may not bode well for China’s AI industry in the long term. China may find itself constrained on the extent of automation and AI in its manufacturing sector — labor-intensive manufacturing remains China’s main strength, and a high degree of automation can result in job losses, labor unrest, and instability.

Meanwhile, there is bipartisan support for AI in the United States. Former President Trump proposed increasing funding for AI development through the National Science Foundation. The National AI Initiative Act of 2020 signaled a sense of urgency and suggested that several federal agencies create a national strategy on artificial intelligence. The Biden administration has formed the Artificial Intelligence Research Resource Task Force to develop a roadmap to foment AI research and spark innovation nationwide. There is draft legislation, at both the state and federal level, to promote responsible use of AI and prevent its misuse.

Strong objections to the use of facial recognition and other AI systems by law enforcement in the U.S., raised by civil liberties advocates, have led some local authorities, such as the City of San Francisco, to ban such systems. To use a Silicon Valley phrase, these debates are “not a bug, but a feature.” They shine a light on the limitations of AI systems and help to set the “rules of the road” for proper use of AI. This will establish the U.S. as a global leader in AI regulation, once lawmakers and regulators do their work. China, meanwhile, has faced strong global criticism for using facial recognition software to monitor and surveil Uyghurs in its Xinjiang region. China has outlined a set of AI ethics principles, but the jury is still out on enforcement and how they function in practice.

The increasing number of AI research papers and patents by Chinese researchers is often cited as proof that China has caught up with the United States in this field. The increased focus is good for the Chinese AI ecosystem, and it will help them solve China-specific problems. But dominance in this emerging strategic industry is not guaranteed. The U.S. has several strategic advantages, including: the strengths of its higher education and research institutes, which attract the best STEM talent from across the world; the largest venture capital ecosystem; and the largest number of technology unicorns (start-ups with private valuations greater than $1 billion).

China is not overtaking the U.S. in artificial intelligence. The current evidence and trajectory paint a clear picture: The conditions for AI to flourish, such as incentives to experiment, freedom to pursue opportunities without restrictions, and the coming guardrails to prevent misuse, favor U.S. leadership. This is still the United States’s game to lose — though maybe both countries could win through collaboration. To solve planet-scale problems such as climate change, we are going to need AI solutions from both competitors.

**Identifying and prosecuting acquisitions is resource intensive and risk of blowback high**

**Madl 20** --- Amy C. Madl Stanford University, J.D. 2019 and Ph.D. candidatein Chemical Engineering, expected 2020, “Killing Innovation?: Antitrust Implications of Killer Acquisitions”, Yale Journal on Regulation Bulletin Vol. 38:28 2020, https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1002&context=jregonline

But identifying a killer acquisition ex ante or ex post **is not a trivial pursuit**. Firms routinely choose to discontinue product lines and development projects; therefore, determining the primary business rationale when a firm acquires and subsequently abandons a technology **is an error-prone endeavor**. Nevertheless, “pure” killer acquisitions, in which a firm never intended to develop an acquired technology, **can be a rational business decision**.19 Specifically, when there is any degree of acquirer-target product overlap, acquirers have stronger incentives to discontinue development than target firms because some of their existing profits will be cannibalized by the substitute product.20 Accordingly, the profit-protection benefits accruing to a monopolist from acquiring property rights to prevent entry will sometimes substantially exceed the benefits to the monopolist of introducing the new innovation, as well as the value of the new innovation to the prospective new entrant.21

However, the rational conditions for acquiring to kill depend on the probability of project success, the expected profits for the acquirer with and without acquisition, the development gains for both the new entrant and the acquirer, the new project’s development costs, and the project’s liquidation value.22 Firms considering acquisitions may only know some of these values, or make decisions based on uncertain or incorrect valuations. For example, in the pharmaceutical industry, determining the probability of project success, even in late-stage clinical trials, is at best an imperfect science.23 Moreover, information asymmetries and psychological errors may cause the new entrant and incumbent to estimate critical parameters differently, distorting the circumstances in which a killer acquisition appears rational to both parties. Therefore, attempts by courts and antitrust agencies to determine if specific acquirers could rationally acquire new technologies just to kill them may not shed much light on the party-perceived economics of the transaction, let alone their true motivations.

This Article argues that difficulties identifying killer acquisitions **caution against increased scrutiny** of overlapping acquisitions. Part I briefly discusses an influential recent working paper on potential killer acquisitions in the pharmaceutical industry. Part II considers incumbent motivations for pharmaceutical acquisitions, focusing on cases of overlap in innovation markets where neither the acquirer nor the target markets a product. Without condoning killer acquisitions, Part III argues that neutral or pro-competitive motivations predominate for enough overlapping acquisitions that heightened review is **unlikely to increase social welfare**. Additionally, because courts lack experience with killer acquisitions, as well as obvious means of identifying them, Part III advocates for rule of reason review of overlapping acquisitions. Finally, Part IV considers the probable prevalence of killer acquisitions outside the pharmaceutical industry and notes structural factors that promote these acquisitions.

**Killer acquisition is rare and doesn’t hurt innovation**

**Madl 20** --- Amy C. Madl Stanford University, J.D. 2019 and Ph.D. candidatein Chemical Engineering, expected 2020, “Killing Innovation?: Antitrust Implications of Killer Acquisitions”, Yale Journal on Regulation Bulletin Vol. 38:28 2020, https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1002&context=jregonline

Intentionally killing competing innovations to protect existing product markets runs counter to the goals of both federal intellectual property law and antitrust law. **But many overlapping acquisitions are not killer acquisitions**, and these acquisitions may **promote dynamic efficiency**, or at least cause **no net harm to consumers**. Accordingly, heightened antitrust scrutiny of overlapping transactions—in the form of per se condemnation, quick look review, or reduced administrative review thresholds— **would increase transaction costs without producing significant welfare gains** for consumers relative to rule-of-reason review. Some anticompetitive mischief may sneak through under the rule of reason, **but current evidence does not suggest that many firms are committing murder—**at least where social welfare is concerned.

**Market share self-corrects**

**Crews & Young 19** --- Clyde Wayne Crews, vice president for policy and a senior fellow at the Competitive Enterprise Institute, He holds a Master of Business Administration from William and Mary, Ryan Young, Senior Fellow at the Competitive Enterprise Institute, M.A. in economics from George Mason University, “The Case against Antitrust Law”, Competitive Enterprise Institute, 04/16/2019, <https://cei.org/studies/the-case-against-antitrust-law/>

Government usually **stifles competition**. If antitrust regulation is to be retained, it should **not be a first-resort policy**. If a company has an overwhelming competitive advantage, it is important to first ask what is causing it. If the advantage is due to superior performance, then consumers are not being harmed.

**In most cases,** dominance does not last long, as evidenced by how quickly any list of America’s largest companies changes from year to year. If a company does remain dominant for a long period of time, one of two possibilities must be true. The first option is that **it continues to be consumers’ preferred option**. The second is that it is engaging in rent- seeking behavior. In the first case, there is no need for an antitrust intervention. In the second case, **the solution is not antitrust regulation,** but to take away the government’s power to tilt the scales in rent-seekers’ favor.

**Deterrence not key to prevent Taiwan war**

**Lungu 21** --- Andrei Lungu is president of The Romanian Institute for the Study of the Asia-Pacific (RISAP), “Taiwan invasion doesn’t hang in the military balance”, East Asia Forum, Aug 19th 2021, https://www.eastasiaforum.org/2021/08/19/taiwan-invasion-doesnt-hang-in-the-military-balance/

There is growing speculation and alarm about a possible Chinese invasion of Taiwan after Beijing sharpened its rhetoric towards the Taiwanese government and increased its military manoeuvres around the territory. The Biden administration is worried that if Chinese leaders are overconfident in China’s growing power and assume Washington’s decline, they might decide to invade Taiwan.

The US government has taken numerous actions to clearly signal its capacity and commitment to defend Taiwan. Growing diplomatic engagement with Taiwan, increased military manoeuvres, joint statements alongside Japan, South Korea and the G7, as well as developing a common response to a war over Taiwan with Japan and Australia are all part of this new framework.

Although these actions intend to decrease the risk of military conflict by strengthening military deterrence, they **are unlikely** to achieve it. This is because Beijing’s Taiwan calculus — which **has always been more complex** than simply focussing on the conventional military balance — involves three **distinct factors** that have dissuaded a Chinese invasion.

The first is military power. Chinese leaders still doubt whether China could defeat and then conquer Taiwan, let alone successfully fight the United States.

Secondly, there is an understanding that war over Taiwan would portend disastrous consequences for China’s economy, foreign relations and global image. Worse still, a conflict could pose an existential risk to the **C**hinese **C**ommunist **P**arty: a war would mean fighting and killing ‘brothers and sisters’, while defeat would bring echos of 1895. A war would also undermine economic development — a pressing goal that is closely linked to the ‘great rejuvenation of the Chinese nation’.

The third factor is **time**. Chinese leaders wait based on the hope that ‘peaceful reunification’ is still possible and that **time is on their side**, as China’s power is growing. Their historical goal has been to **prevent independence** or a change of the status quo. Waiting still **makes sense**, as China is pursuing its decades-long military modernisation process.

By ignoring these last two factors, Washington risks focussing too much on the assumption that Chinese leaders have become overconfident about the **erosion of military deterrence.** Fear of the United States was **never the sole factor** preventing a Chinese invasion in the first place.

Hong Kong illustrates this thinking well. Without having to contend with the possibility of an opposing military, Beijing remained acutely aware of the economic and diplomatic consequences of sending military or paramilitary troops to directly suppress protests. It instead adopted a slower strategy of tightening control to reduce the political costs of its actions.

Beijing only imposed national security legislation on Hong Kong when the problem had gotten ‘out of hand’ — not as a proactive measure. The Chinese leadership tried to gradually build control over the territory for years, believing time was on its side. It only implemented radical measures when it believed the status quo was changing to its detriment.

Chinese leaders haven’t yet decided that an invasion of Taiwan is unavoidable because they still hope that ‘peaceful reunification’ is achievable, but they worry about Taiwan’s steady drift towards the United States. Beijing sees Washington’s growing ties with Taiwan as undermining the status quo and diminishing the prospects for ‘peaceful reunification’.

**Plan can’t solve --- Strong democracies will overcome digital authoritarianism --- weak democracies won’t**

**Weiss 19** --- Jessica Chen Weiss is an associate professor of Government at Cornell University, Testimony at U.S. House of Representatives Permanent Select Committee on Intelligence, May 16, 2019, https://docs.house.gov/meetings/IG/IG00/20190516/109462/HHRG-116-IG00-Wstate-ChenWeissJ-20190516.pdf

China also rightly gets heat from Western observers for exporting surveillance and censorship technologies. China’s heavy investments in these technologies have made it cheaper for other authoritarian and would-be authoritarian regimes to monitor their citizens. Yet as with Chinese lending, the story of Chinese technology is more complicated than it first appears. The diffusion of digital authoritarianism is not the same thing as an intentional effort to remake other governments in China’s image.

Although these systems can help governments monitor and control their people, how exactly they are used **depends on local politics**. Cameras can replace more brute-force methods of surveillance, as in Ecuador, which installed a surveillance system with China’s help. But as the New York Times reported, many Ecuadorans have complained that the system isn’t effective against crime, as there aren’t enough local personnel to monitor the footage or respond to crimes caught on camera. And the Ecuadoran administration that came to power in 2017, which has pledged **to reverse** some of its predecessor’s autocratic policies, has begun an investigation into the system’s abuses, including inviting the Times to review its records.

Ultimately, the **political effects** of technology can cut both ways. Just as the internet was not a universal harbinger of democratic freedom, technology does not **magically** enable governments to control society and repress opposition. Technology can empower the state, but strong democratic institutions – including legislation to restrict surveillance and protect citizens’ privacy – can also constrain the power of technology.

**Democracy resilient but doesn’t solve**

**Doorenspleet 18** --- Renske Doorenspleet, associate professor at the Department of Politics and International Studies, Warwick University, in the United Kingdom, Chapter 7: CONCLUSION: RETHINKING THE VALUE OF DEMOCRACY”, First Online: 22 July 2018, Page 239-243, https://link.springer.com/chapter/10.1007/978-3-319-91656-9\_7

The value of democracy has been taken for granted until recently, but this assumption seems to be under threat now more than ever before. As was explained in Chapter 1, democracy’s claim to be valuable does not rest on just one particular merit, and scholars tend to distinguish three different types of values (Sen 1999). This book focused on the instrumental value of democracy (and hence not on the intrinsic and constructive value), and investigated the value of democracy for peace (Chapters 3 and 4), control of corruption (Chapter 5) and economic development (Chapter 6). This study was based on a search of an **enormous academic database**5 for certain keywords,6 then pruned the thousands of articles down to a few hundred articles (see Appendix) which statistically analysed the connection between the democracy and the four expected outcomes.

The first finding is that a **reverse wave** away from democracy **has not happened** (see Chapter 2). Not yet, at least. Democracy is not doing worse than before, at least not in comparative perspective. While it is true that there is a dramatic decline in democracy in some countries,7 a general trend downwards cannot yet be detected. It would be better to talk about ‘stagnation’, as not many dictatorships have democratized recently, while democracies have not yet collapsed.

Another finding is that the instrumental value of democracy is **very questionable**. The field has been deeply polarized between researchers who endorse a link between democracy and positive outcomes, and those who reject this optimistic idea and instead emphasize the negative effects of democracy. There has been ‘**no consensus’** in the quantitative literature on whether democracy has instrumental value which leads some beneficial general outcomes. Some scholars claim there is a consensus, but they only do so by ignoring a **huge amount** of literature which rejects their own point of view. After undertaking a **large-scale analysis** of carefully selected articles published on the topic (see Appendix), this book can conclude that the connections between democracy and expected benefits **are not** as **strong** as they seem. Hence, we should not overstate the links between the phenomena.

The overall evidence is **weak**. Take the expected impact of democracy on peace for example. As Chapter 3 showed, the study of democracy and interstate war has been a flourishing theme in political science, particularly since the 1970s. However, there are four reasons why democracy does not cause peace between countries, and why the empirical support for the popular idea of democratic peace is **quite weak**. Most statistical studies have not found a strong correlation between democracy and interstate war at the dyadic level. They show that there are other—more powerful—explanations

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for war and peace, and even that the impact of democracy is a **spurious one** (caveat 1). Moreover, the theoretical foundation of the democratic peace hypothesis is **weak**, and the causal mechanisms are unclear (caveat 2). In addition, democracies are not necessarily more peaceful in general, and the evidence for the democratic peace hypothesis at the monadic level is inconclusive (caveat 3). Finally, the process of democratization is dangerous. Living in a democratizing country means living in a less peaceful country (caveat 4). With regard to peace between countries, **we cannot defend the idea that democracy has instrumental value.**

Can the (instrumental) value of democracy be found in the prevention of civil war? Or is the evidence for the opposite idea more convincing, and does democracy have a ‘dark side’ which makes civil war more likely? The findings are **confusing**, which is exacerbated by the fact that different aspects of civil war (prevalence, onset, duration and severity) are mixed up in some civil war studies. Moreover, defining civil war is a delicate, politically sensitive issue. Determining whether there is a civil war in a particular country is incredibly difficult, while measurements suffer from many weaknesses (caveat 1). Moreover, there is no linear link: civil wars are just as unlikely in democracies as in dictatorships (caveat 2). Civil war is most likely in times of political change. Democratization is a very unpredictable, dangerous process, increasing the chance of civil war significantly. Hybrid systems are at risk as well: the chance of civil war is much higher compared to other political systems (caveat 3). More specifically, both the strength and type of political institutions matter when explaining civil war. However, the type of political system (e.g. democracy or dictatorship) is not the decisive factor at all (caveat 4). Finally, democracy has only limited explanatory power (caveat 5). Economic factors are far more significant than political factors (such as having a democratic system) when explaining the onset, duration and severity of civil war. To prevent civil war, it would make more sense to make poorer countries richer, instead of promoting democracy. Helping countries to democratize would even be a very dangerous idea, as countries with changing levels of democracy are most vulnerable, making civil wars most likely. It is true that there is evidence that the chance of civil war decreases when the extent of democracy increases considerably. The problem however is that most countries do not go through big political changes but through small changes instead; those small steps—away or towards more democracy—are dangerous. Not only is the onset of civil war likely under such circumstances, but civil wars also tend to be longer, and the conflict is more cruel leading to more victims, destruction and killings (see Chapter 4).

A more encouraging story can be told around the value for democracy to control corruption in a country (see Chapter 5). Fighting corruption has been high on the agenda of international organizations such as the World Bank and the IMF. Moreover, the theme of corruption has been studied thoroughly in many different academic disciplines—mainly in economics, but also in sociology, political science and law. Democracy has often been suggested as one of the remedies when fighting against high levels of continuous corruption. So far, the statistical evidence has strongly supported this idea. As Chapter 5 showed, dozens of studies with broad quantitative, cross-national and comparative research have found statistically significant associations between (less) democracy and (more) corruption. However, there are vast problems around conceptualization (caveat 1) and measurement (caveat 2) of ‘corruption’. Another caveat is that democratizing countries are the poorest performers with regard to controlling corruption (caveat 3). Moreover, it is not democracy in general, but particular political institutions which have an impact on the control of corruption; and a free press also helps a lot in order to limit corruptive practices in a country (caveat 4). In addition, democracies seem to be less affected by corruption than dictatorships, but at the same time, there is clear evidence that economic factors have more explanatory power (caveat 5). In conclusion, more democracy means less corruption, but we need to be modest (as other factors matter more) and cautious (as there are many caveats).

The perceived impact of democracy on development has been **highly contested** as well (see Chapter 6). Some scholars argue that democratic systems have a positive impact, while others argue that high levels of democracy actually reduce the levels of economic growth and development. Particularly since the 1990s, statistical studies have focused on this debate, and the empirical evidence is clear: there is no direct impact of democracy on development. Hence, both approaches cannot be supported (see caveat 1). The indirect impact via other factors is also questionable (caveat 2). Moreover, there is too much variation in levels of economic growth and development among the dictatorial systems, and there are huge regional differences (caveat 3). Adopting a one-size-fits all approach would not be wise at all. In addition, in order to increase development, it would be better to focus on alternative factors such as improving institutional quality and good governance (caveat 4). There is not sufficient evidence to state that democracy has instrumental value, at least not with regard to economic growth. However, future research needs to include broader concepts and measurements of development in their models, as so far studies have mainly focused on explaining cross-national differences in growth of GDP (caveat 5).

Overall, the instrumental value of democracy is—at best—**tentative**, or—if being less mild—**simply non-existent.** Democracy is not necessarily better than any alternative form of government. With regard to many of the expected benefits—such as less war, less corruption and more economic development—democracy does deliver, but so do nondemocratic systems. High or low levels of democracy **do not make a distinctive difference.** Mid-range democracy levels do matter though. Hybrid systems can be associated with many negative outcomes, while this is also the case for democratizing countries. Moreover, other explanations—typically certain favorable economic factors in a country—**are much more powerful to explain the expected benefits**, at least compared to the single fact that a country is a democracy or not. The impact of democracy **fades away** in the powerful shadows of the economic factors.8

## Inequality

### 1NC

**Solvency takes decades---they have to both win suits and then earn the money back from better wages.**

**No empirical or statistical evidence that antitrust decreases inequality**

Jonathan **Klick** **et al. 19**—University of Pennsylvania Law School, Erasmus School of Law; Elyse Dorsey, Adjunct Professor at Antonin Scalia Law School; Joshua D. Wright, Law professor at George Mason University, executive director of the Global Antitrust Institute, former member of the Federal Trade Commission; Jan Rybnicek, Freshfields Bruckhaus Deringer LLP. ("Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust," January 9, 2019, from George Mason Law & Economics Research Paper No. 18-29, Arizona State Law Journal, 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3249524)

On the whole, the relationship between the enforcement metrics and consumption is **comparable** for the households in both the **first and fifth income quintiles**. There is not much **empirical evidence** to substantiate the proposed correlation between antitrust enforcement activity and inequality. And certainly not evidence **significant enough** to justify the aggressive policy proposals recently injected into discussion of competition policy.

Stepping away from this aggregate analysis for a moment, it is interesting to note that the new(-old) focus on “big is bad” when it comes to inequality ignores an impressive literature on the effects of one of the biggest players in the US in recent decades – Walmart. Work by Jerry Hausman and Ephraim Leibtag shows that when Walmart Supercenters enter a market, food prices paid by consumers in the market drop by about 3 percent, and because they have detailed longitudinal data on household expenditures, they are able to estimate household welfare effects due to this price decrease. They find that the welfare effects are **substantial** and they are most pronounced for those at the lower end of the socio-economic spectrum.158 In addition to this price effect, David Matsa shows that Wal-Mart’s entry into a market induces competitor supermarkets to improve the quality of their service so as to avoid losing even more business to Wal-Mart and its lower prices.159 Thus, in the posterchild case for big is bad, the behemoth Wal-Mart would appear to improve inequality by its very existence.

Although we believe **consumption** is the most relevant measure for assessing the welfare effects (in absolute or, as here, in relative terms) of antitrust policy, we provide similar analyses of **income** and wealth. Using Census data,160 in Table 6, we again provide estimates from an AR(1) distributed lag model examining the effects of DOJ investigations, both merger specific and total, on the income shares received by those individuals in the first quintile and the fifth quintile, while also controlling for a background linear trend.

As with consumption measures, there is generally **no statistically significant effect** (individually or jointly) of current or past investigations (regardless of whether we focus on merger-specific or total investigations) on the **income** shares of those at the **bottom or the top** of the income distribution. Putting aside statistical significance, while past investigations are associated with increases in the income share received by those at the bottom of the distribution, current investigations have the **opposite effect**. Further, many of the investigation coefficients are **positive for the fifth quintile** income share as well. If we examine **combined ratios of the shares** as we did with the consumption data, we still find **no support** for the assumption that an increase in antitrust enforcement has **any systematic effect on inequality**.16

**Alt causes: education access, tax laws, housing markets, healthcare costs, etc.**

**Market concentration doesn’t lower wages**

**Kennedy 20** --- Joe Kennedy, PhD, is a senior fellow at the Information Technology and Innovation Foundation. He focuses on economic policy., “Monopoly Myths: Is Concentration Eroding Labor’s Share of National Income?”, Oct 13th 2020, https://itif.org/publications/2020/10/13/monopoly-myths-concentration-eroding-labors-share-national-income

WHY MARKET POWER IS NOT LIKELY TO BE THE CAUSE OF A DECLINE IN LABOR’S SHARE OF INCOME

Central to the arguments presented in the previous section is the theory that lax antitrust enforcement has encouraged firms to acquire market power, which allows them to raise prices and reduce wages while increasing profits. Earlier papers in ITIF’s Monopoly Myths series challenge each of these arguments.27

First, although concentration has been increasing in many industries, in most, it is still far below the levels that normally trigger antitrust concern, especially when markets are defined more narrowly.28 Moreover, recent studies show that concentration in local markets—which are the most relevant for many industries, including restaurants and retail shopping—**is** actually **decreasing**. Esteban Rossi-Hansberg and two other economists looked at competition in local markets between 1990 and 2014 and found that while concentration increased at the national level, **it fell in local markets.** Although large firms captured a growing portion of the national market, their expansion into new markets **increased local choice**. The entry of a top firm reduced local concentration for at least seven years.29

Some studies have also shown concentration falling **in labor markets.** Kevin Rinz of the U.S. Census Bureau arrived at this conclusion using data from the Longitudinal Business Database and IRS W-2 forms. He estimated that in 2015 earnings were about 1 percent higher than they would have been if local competition had remained at its 1976 level.30 Economists Anna Stansbury and Lawrence Summers also noted that local labor market concentration has declined over time, which should help workers. **Most workers are not in highly concentrated labor markets,** especially when considering the full range of occupations many workers could fill.31

David Berger et al. looked directly at local labor markets using data from the Longitudinal Business Dynamics database and defining local labor markets through a combination of three-digit NAICS codes for tradable industries and commuting zones. He then looked at a series of changes to state corporate income taxes and compared the reaction of company establishments within the same state. The model shows that existing imperfections in local labor markets are significant; costing workers on average 5.4 percent of their lifetime consumption. These lower wages cause them to work 19.6 percent less than otherwise. But the problem has been **getting better, not worse**. The team found that rising labor market power has not contributed to the declining labor’s share because the concentration of local labor markets **declined** between 1976 and 2014. The change in concentration equates to going from 5.0 to 7.1 equal-sized employers within each commuting zone.32

Second, although markups have been rising in many industries, they are notoriously hard to measure. They may not have been rising at all if functions such as marketing and R&D are included in variable costs. Indeed, most of any increase can be explained by the rising importance of hard-to-measure intangible assets, high fixed costs, rapidly diminishing marginal costs, and significant network effects. In these situations, it is possible for a company to have high markups but still lose money.33

Finally, looking at nonfinancial domestic corporate profits as a share of net value added shows that, although the profits share rose significantly in the first six years of this century, it remained below its share from 1950–1965. Since then, it basically held steady for several years, before declining for the last six years, giving back almost half of its gain.34

The studies showing a rise in market power also have some weaknesses. The De Loecker paper in particular has come under criticism from other scholars. Susanto Basu, for example, pointed out that the authors’ model produces implausible estimates for other economic values, such as implying that adding more capital to the production process actually decreases output.35 Economist Chad Syverson noted that, even if profits were zero in 1980, De Loecker’s finding that the pure profit rate jumped from 1 percent to 8 percent means firms succeeded in turning 25 percent of all revenues into profits in 2016, which is significantly higher than other estimates.36 For example, in 2016, domestic corporate profits as a share of net value added was 17.7 percent. Syverson also pointed out that the fastest rise in markups occurred between 1980 and 2000, while much of the decline in labor’s share did not take place until after 2000.37

More broadly, these studies use econometric models and firm data to measure the relationship between concentration, profits, and margins on the one hand, and the decline in labor’s share and wages on the other. The outcomes can be heavily dependent on the specific model being used. In addition, their samples are never complete. At most, they show the relationships that prevail in a portion of the economy. Moreover, the models only show correlation. The causal relationships may run both ways and involve many more variables. Finally, some studies use a fairly comprehensive source of corporate data such as Compustat, and in doing so, ignore the noncorporate sector. Because corporations are on average larger and more efficient than other kinds of firms, this would skew the data toward a smaller labor share among these firms, but not necessarily in the broader economy.38 This gets to the importance of looking at the issue through macroeconomic data that is representative of the entire economy.

**Gridlock inevitable but manageable – things like executive orders solve but passing necessary laws still happens --- Hard infrastructure proves**

**Inequality doesn’t cause diversionary war**

Gal **Ariely 15**, senior lecturer in the Department of Politics & Government, Ben-Gurion University of the Negev, PhD from the University of Haifa’s School of Political Sciences, “Does National Identification Always Lead to Chauvinism? A Cross-national Analysis of Contextual Explanations,” Globalizations, 2015, https://s3.amazonaws.com/academia.edu.documents/43980028/Ariely\_Globalizations\_2015.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=1515397197&Signature=78lnbbHNRVjhLgOKyRPKm%2BK8M1o%3D&response-content-disposition=inline%3B%20filename%3DDoes\_National\_Identification\_Always\_Lead.pdf

With respect to internal explanations, the effects of income inequality and ethnic diversity are presented in Table 3. Models 3.1 and 3.2 indicate that **neither directly affects chauvinism**. H4 is therefore not supported. The results suggest, however, that **both have a negative effect on** the **national-identification slopes. Contrary to our expectations,** countries with higher levels of economic and ethnic division appear to exhibit a **weaker relation between national identification and chauvinism**. While these findings might seem to contradict H5, the pattern was caused by outliers. After excluding South Africa—the most unequal and ethnic diverse country in our sample—the effect of ethnic diversity is not even of borderline significance. After excluding Chile—the most unequal country in our sample—**the interaction effects for economic inequality were also far from significant**. The results, therefore, do not support H5.21¶ Conclusions¶ During the historic phone call between President Obama and Iranian President Sheikh Hasan Rouhani in September 2013, the latter stated that his country’s nuclear program ‘represents Iran’s national dignity’.22 This declaration reflects the common perception that Iran’s nuclear program mobilizes Iranians in support of resisting further national humiliation at the hands of foreigners (Moshirzadeh, 2007). This reflects the important role national feelings play in the contemporary international arena. Evidence from other examples—such as the Israeli-Palestine conflict—indicates that national identity serves as a key factor in conflict resolution. The prominence of national feelings is not limited to the Middle East, their effect on public attitudes towards international issues, and conflicts also being manifest in the West (Billig, 1995; Kinder & Kam, 2010).¶ It is thus hardly surprising that scholars seeking to develop a better understanding of conflicts adopt a social-psychology perspective, replacing the **deterministic view** that identification with one’s in-group **necessarily** leads to antagonism towards out-groups with an **examination of the broader social context.** In line with this approach, the present paper focuses on the way in which political and social contexts encourage chauvinistic views towards the international arena and how they affect the relation between national identification and chauvinism.¶ Integrating various social and psychological theories, we investigated two external contextual explanations (globalization and conflict) and an internal explanation (social division). Employing cross-national survey data, we examined the relation between national identification and chauvinism across 33 countries. The findings indicate that a positive relationship exists between national identification and chauvinism across most of the countries, although the level differs from country to country. Using a multilevel regression analysis, we tested to see whether globalization, conflict, and social division correlate with this variation. The results indicate that social and political contexts are related to chauvinism and the ways national identifi- cation and chauvinism are linked. Although a closer relation exists between national identification and chauvinism in more globalized countries, globalization failed to explain the variation in chauvinism itself. These findings support the notion that globalization highlights the importance of national identity (Calhoun, 2007; Castells, 2011). While those sections of globalized societies that are attached to their country also tend to resist international cooperation and endorse hostile views, the complexity of the phenomenon—as evinced by the divergent findings of previous studies (e.g. Jung, 2008; Norris & Inglehart, 2009)—calls for further research of this interpretation. The fact that the current study is cross-sectional must also be taken into account, the findings adducing the relation but not the causal relations between the variables. In contrast to experimental studies, the present design is similarly limited in its ability to offer a robust control for alternative explanations.¶ Another external factor found to be relevant—to a certain degree—was conflict. Countries that suffered large numbers of deaths in conflicts and mobilized resources and personnel exhibited higher levels of chauvinism. When other indices for conflict were used, however, these results were not replicated. A possible explanation for this finding lies in the inherent limitation in the way in which conflicts are measured across various countries. Measuring international conflicts is a challenging task (Anderton & Carter, 2011). While the ways of measuring conflict were chosen because they reflect different dimensions of conflict in order to be representative of a wide range of countries, the problem of comparability cannot be ignored. An alternative explanation may derive from the fact that only deaths from conflict and resources/personnel mobilization are sufficiently significant to contribute to chauvinism. The limitations of our measurements of conflict and research design mean that this idea must remain speculative, however. In addition, it is important to emphasize that the sample of countries is also limited as many countries are not involved in conflict and there is also limited variation in the types of conflicts.¶ **Contrary to what the divisionary theory of national mobilization would lead us to expect,** neither economic inequality nor ethnic diversity were related to chauvinism or affected the relation between **national identification** and **chauvinism**. This finding might also be explained by the limitation of the current research design. The number of countries included in the ISSP 2003 National Identity Module being relatively small and the sample only covering countries with available survey data, the results relate solely to this specific sample of countries. Across another set of countries, social division might play a far more significant role. Another explanation might be the meaning given to national identification and chauvinism across the countries. While evidence exists for the comparability of the scales across most of the countries, the divergent meaning probably attributed to them in Germany, the United States, and Israel might form an additional limitation.

#### Inequality doesn’t cause populism

**Mutz 18** --- Diana C. Mutz, Professor of Political Science and Communication Director, Institute for the Study of Citizens and Politics, “Status threat, not economic hardship, explains the 2016 presidential vote”, PNAS, May 8, 2018 115 (19), https://www.pnas.org/content/115/19/E4330

There are two reasons for skepticism regarding the assumption that personal **economic hardship** drove Trump support. **First and foremost**, over **many decades** of scholarship, evidence of voters **politicizing** personal **economic hardship** has been **exceedingly rare** (8). Although aggregate-level evidence has been suggestive of a public that blames incumbents for general economic downturns and rewards incumbents for economic gains, these relationships **seldom hold up at the level of individual economic hardship**. For example, those who recently lost jobs **are unlikely to blame government policy** for their personal circumstances (9), and those who have personally suffered financially under a given administration **are no more likely to vote against the incumbent** (10, 11). Across a wide **range** of issues, scholars have found that citizens **seldom form policy or candidate preferences** on the basis of their **family’s personal economic self-interest**. This is not to suggest that citizens never do so, but the conditions under which this occurs are **very rare** (12, 13). Even membership in groups with economic interests that have been helped or hurt **seldom changes political preferences** (14).

A second reason for skepticism regarding the left behind thesis involves **timing**. Trump’s victory took place in the context of an **economic recovery.** Throughout the year preceding the election, **unemployment was falling**, and economic indicators were **on the upswing**. Likewise, the dramatic drop in US manufacturing jobs took place during the first decade of the 21st century; since 2010, manufacturing employment in the United States has **actually increased** somewhat (15). Research on economic voting suggests that recent economic events are most influential for voting (16, 17). Given all of the **positive economic indicators**, why would 2016 be ripe for an economic backlash? The most common explanation is that it is precisely those who did not recover from the Great Recession of 2008 who elected Trump, those who were left behind by virtue of ongoing joblessness and/or stagnant wages.

**LIO resilient.**

**Ikenberry ’18** [John; June 28; Professor of International Relations at Princeton University; Ethics & International Affairs, “Why the Liberal World Order Will Survive,” vol. 32, no. 1]

Self-Reinforcing Characteristics of Liberal International Order

The United States has **dominated** the post-war **international order**. It is an order built on **asymmetries of power**; it is hierarchical. But it is **not** an **imperial system**. It is a **complex** and **multilayered** political formation with **liberal characteristics**— openness and **rules-based** principles—that generate incentives and opportunities for other states to **join** and **operate within** it.

Four characteristics reinforce and draw states into the order. First, it has **integrative tendencies**. Over the last century states with **diverse characteristics** have found pathways into its “**ecosystem**” of rules and institutions. Germany and Japan found roles and positions of authority in the post-war order; and after the cold war **many more states**—in **Eastern Europe**, **Asia**, and elsewhere—have joined its **economic** and **security partnerships**. It is the **multilateral logic** of the order that makes it relatively **easy** for states to **join** and rise up within the order. Second, the liberal order offers opportunities for leadership and **shared authority**. One state does not “**rule**” the system. The system is built around **institutions**, and this provides opportunities for shifting and expanding **coalitions** of states to **share leadership**. Formal institutions, such as the IMF and World Bank, are led by boards of directors and weighted voting. Informal groups, such as the G-7 and G-20, are built on principles of **collective governance**. Third, the actual **economic gains** from participation within the liberal order are **widely shared**. In colonial and informal imperial systems, the gains from trade and investment are disproportionately enjoyed by the lead state. In the existing order, the “profits of modernity” are distributed across the system. Indeed, China’s great economic ascent was **only possible** because the liberal international order **rewarded** its pursuit of **openness** and **trade-oriented** growth. For the same reason, states in **all regions** of the world have made **systematic efforts** to integrate into the system. Finally, the liberal international order accommodates a **diversity** of models and strategies of growth and development. In recent decades the Anglo-American model of neoliberalism has been particularly salient. But the post-war system also **provides space** for other capitalist models, such as those associated with European social democracy and East Asian developmental statism. The global capitalist system might generate some pressures for **convergence**, but it also provides space for the **coexistence** of alternative models and ideologies.

These aspects of the liberal international order create **incentives** and **opportunities** for states to **integrate** into its core economic and political realms. The order allows states to **share** in its economic spoils. Its **pluralistic** character creates possibilities for states to “**work the system**”—to join in, **negotiate**, and **maneuver** in ways that **advance their interests**. This, in turn, creates an order with **expanding constituencies** that **have a stake** in its continuation. Compared to imperial and colonial orders of the past, the existing order is **easy to join** and **hard to overturn**.

**Trade doesn’t solve war.**

**Musgrave 20** --- Paul Musgrave is an assistant professor of political science at the University of Massachusetts Amherst, “The Beautiful, Dumb Dream of McDonald’s Peace Theory”, Foreign Policy, NOVEMBER 26, 2020, https://foreignpolicy.com/2020/11/26/mcdonalds-peace-nagornokarabakh-friedman/

**Of course**, I would explain to my students, war could also proceed from other causes. **Economic integration may be no panacea** to interstate war after all. John Vasquez writes: “War among equals has followed the failure of power politics to settle certain highly salient issues”—none, he writes, more than “issues involving territory, especially territorial contiguity.”

In the former Soviet Union, the wars over Chechnya, Georgia, Ukraine, and now Nagorno-Karabakh have all involved territory as a crucial element, a story much closer to what Vasquez’s theory would predict than to Friedman’s.

Globalization may have increased the costs of these wars, **but they have** obviously **not prevented them**. To be sure, Armenia has no McDonald’s, an issue grave enough to have been raised in the parliament at Yerevan earlier this year. The Azerbaijan franchise’s cheerleading was also slapped down by the Home Office.

Regardless, Friedman’s logic suggests the conflict shouldn’t have begun, or shouldn’t have been so bloody once it did. Both Armenia and Azerbaijan score highly (and almost identically) on the ETH Zurich KOF Globalisation Index. The pace of deaths suggests that the conflict could qualify as a so-called real war by the traditional 1,000 battle-related-deaths criterion. (Indeed, some reports say the death toll blew past that level quickly.)

And if the conflict has knocked the final support from the Golden Arches theory, it has also finally toppled whatever confidence remained in the 1990s belief in the eternal sunshine of the American order.

The resurgent Nagorno-Karabakh conflict provides yet another reason to worry that the world is entering a new phase of more violent conflict—including major wars—and globalization will **no more prevent them** than **burgeoning** trade before Archduke Ferdinand’s assassination prevented World War I.

After all, **wars keep emerging** that challenge the optimistic assessment that war is a relic of the past. The specific ways these conflicts emerge, moreover, point to the possibility that **new wars** could break out that make **even bloody conflicts** like those in Syria and Yemen **seem relatively minor.**

Driven by processes of imperial dysfunction and internal breakdown, today’s wars have causes that are enormously difficult to heal.

The conflicts in the former Soviet Union, from Chechnya in the 1990s to Nagorno-Karabakh today, represent a set of wars in the post-Soviet succession. Russia has attempted to maintain its central role against real and perceived rivals throughout that vast region including transnational Islam, the European Union, the United States, China, and now arguably Turkey.

In the Middle East, revisionist regional powers like Saudi Arabia and Iran contend for power as the United States continues to loudly proclaim that it is unwilling to continue playing its imperial stabilizing role (even if Washington never actually seems to find the exit).

And China, which once preferred to keep its border disputes quiet, seems increasingly willing to saber-rattle from the Taiwan Straits to the Himalayas.

# 2NC---Texas R3

## CP---Advantage

### 2NC---O/V

### 2NC---AT: PDCP

#### Core antitrust laws are Sherman, Clayton, and FTCA

Kendall Kuntz 21, J.D. Candidate at The University of Maryland Francis King Carey School of Law, “Can the Courts and New Antitrust Laws Break Up Big Tech?,” 2/23/21, https://www.law.umaryland.edu/Programs-and-Impact/Business-Law/JBTLOnline/Break-Up-Big-Tech/

There are three core antitrust laws in effect today: the Sherman Act, the Clayton Act, and the Federal Trade Commission Act. These three antitrust laws attempt to protect market competition for the benefit of consumers. The Sherman Act outlaws monopolies and contracts that unreasonably restrain trade. The Clayton Act prohibits mergers and acquisitions that substantially lessen competition or create a monopoly. Lastly, the Federal Trade Commission Act bans “unfair methods of competition” and “unfair or deceptive acts or practices.” Antitrust laws are not established to punish success, but are focused on preventing anticompetitive effects, exclusionary practices, reduced consumer choice, and hindered innovation.

### 2NC---Solvency---Tech Leadership

#### Only the CP solves innovation – investment is vital

**McPherson 19** [Peter McPherson, president of the Association of Public and Land-grant Universities, served as deputy Treasury secretary from 1987 to 1989. 5-20-2019 https://www.usatoday.com/story/opinion/2019/05/20/china-us-scientific-research-technology-innovation-column/3685672002/]

But even if all trade issues were resolved tomorrow, China has been racing ahead in scientific investment and progress. That poses an increasingly urgent challenge to U.S. scientific supremacy. China’s objective, President Xi Jinping said in a speech last year, is to achieve global dominance in science and technology for the 21st century.

And it is well on its way to achieving that goal in several areas. China’s top university now leads the world with the most citations in math and computing research and is making similar gains with other highly cited STEM research. China became the first country to land on the far side of the moon this year. It is already the world’s leading producer of supercomputers. And it has taken the lead in next-generation green energy.

Long seen as the world’s factory floor, China has developed a sophisticated strategy for achieving supremacy in the industries of the future. The country’s Made in China 2025 initiative outlines its intent to become the global leader in frontier sectors such as advanced robotics, aerospace and biotechnology. Made in China 2025 presents “a real existential threat to U.S. technological leadership,” China expert Lorand Laskai wrote last year when he was a research associate at the Council on Foreign Relations. The Chamber of Commerce echoed that concern in a recent report.

We must invest in scientific research

But if the **U**nited **S**tates cedes its role as the global leader in technology and innovation, it is far more likely to result from our own dithering than deft Chinese leadership. The Business Roundtable issued a clarion call for a U.S. whole-of-government research and development strategy that redoubles **federal investment in research**. For decades, robust **fed**eral investment in scientific research enabled great surges in our understanding of the world while fueling economic growth. The internet, GPS and life-saving immunotherapies all grew out of discoveries supported by federal research dollars.

Despite these great strides, however, federal investment in scientific research as a share of the economy has not just languished but significantly diminished over the past few decades. Today, the U.S. government’s investment in research and development is roughly half what it was in the mid-1970s as a percent of GDP. With congressional leadership, the United States recently approved funding increases to several federal research agencies after many years of cuts or essentially flat funding.

But sporadic, short-lived increases are **woefully inadequate** for what’s required to maintain our competitive edge. As Massachusetts Institute of Technology President Rafael Reif has argued, **America needs to make significant increased investments** in areas like **a**rtificial **i**ntelligence and quantum computing. These efforts **must** add to federal research funding or we risk falling critically behind in other vital fields. And crucially, this increased support must continue into the future to ensure our sustained global leadership.

#### They dropped the tech transfer alt cause---only the counterplan’s scrutiny solves innovation.

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

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

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

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

### 2NC---New Plank

#### The United States federal government should fully fund and construct broadband in the United States.

### 2NC---AT: A/O

#### Alt causes: state-level regulations and other factors INSERT

**Mitchell 21 –** Director of the Community Broadband Networks Initiative

[Christopher Mitchell, "How Telecom Monopolies are Blocking Better Internet Access, and What We Can Do About It," ILSR, January 2021, https://ilsr.org/wp-content/uploads/2021/01/SLPG\_Broadband.pdf, accessed 11-23-2021]

Monopoly power in the U.S. has reached catastrophic levels, affecting every corner of our economy and society. While this crisis is gaining more attention, particularly in the tech industry, there is much more to understand about how it affects our lives. In this report, we describe the less understood problem of concentrated corporate power in the broadband sector.

High-speed Internet access is core infrastructure for life in the 21st century. Yet lack of broadband access drives a digital divide that leaves tens of millions of Americans unable to fully access the resources they need for their personal, economic, and civic lives. Yet monopoly control of this essential public infrastructure is leaving many Americans — particularly rural communities and communities of color — disconnected, underserved, or, at best, paying too much for substandard service. While community scaled internet service providers are more effective at delivering fast, affordable, and reliable Internet, monopolies, state-level regulations, and other factors stand in the way of these locally driven solution to America’s broadband challenges

### 2NC---Condo---Short

## ADV---Innovation

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

#### Market share will self-correct

**Crews & Young 19** --- Clyde Wayne Crews, vice president for policy and a senior fellow at the Competitive Enterprise Institute, He holds a Master of Business Administration from William and Mary, Ryan Young, Senior Fellow at the Competitive Enterprise Institute, M.A. in economics from George Mason University, “The Case against Antitrust Law”, Competitive Enterprise Institute, 04/16/2019, <https://cei.org/studies/the-case-against-antitrust-law/>

Government usually **stifles competition**. If antitrust regulation is to be retained, it should **not be a first-resort policy**. If a company has an overwhelming competitive advantage, it is important to first ask what is causing it. If the advantage is due to superior performance, then consumers are not being harmed.

**In most cases,** dominance does not last long, as evidenced by how quickly any list of America’s largest companies changes from year to year. If a company does remain dominant for a long period of time, one of two possibilities must be true. The first option is that **it continues to be consumers’ preferred option**. The second is that it is engaging in rent- seeking behavior. In the first case, there is no need for an antitrust intervention. In the second case, **the solution is not antitrust regulation,** but to take away the government’s power to tilt the scales in rent-seekers’ favor.

### 2NC---UQ

### 2NC---AT: Tech Leadership !

#### No China war or rise.

Norrlof ’21 [Carla; March 23; Visiting Professor at the Finnish Institute of International Affairs in Helsinki, Senior Fellow at The Atlantic Council and at Massey College, Associate Professor at the University of Toronto, and Research Associate at The Graduate Institute of Geneva; The Washington Quarterly, “The Ibn Khaldûn Trap and Great Power Competition with China,” vol. 44]

The return of great power rivalry has been the defining feature of the 21st century. Since the beginning of the new millennium, China and Russia have openly defied the United States and upset the stability of the liberal international order. Both China and Russia share physical and material attributes possessed by the United States that are traditionally required for great power status: land mass, a sea portal, a large population, and technology to field and develop a competitive military capability. Most scholars and policymakers agree that China presents the largest challenge to US interests and the US-led liberal international order. Economic and military growth in China has been astounding, surpassing Russian expansion. China’s outward extension is not primarily resource-based as is Russia’s but multidimensional, posing a structural challenge to US military and economic dominance.

Much ink has been spilled over the nature of US-China rivalry and whether the two great powers are destined for war. Structural factors figure prominently when predicting US-China relations. A famous deadly Greek trap describes how the fear of a hegemonic power sparks catastrophic war with a rising power. In the History of the Peloponnesian War, Thucydides writes, “What made war inevitable was the growth of Athenian power and the fear which this caused in Sparta.” 1 Thucydides’ statement has been widely adopted as a metaphor for the dangers associated with great-power transition. Both A.F.K. Organski’s power transition theory and Robert Gilpin’s realism see great-power wars as most likely to occur when a rising challenger is about to surpass a declining hegemonic power. 2 Today, the Thucydides Trap is highly relevant insofar as we have a clear incumbent power, the United States, and according to many measures of great powerhood, a clear rising power—China—with military, manufacturing, and commercial, and corporate power.

However, the analogy mismatches international hierarchy and regime type. In classical times, the incumbent land power, Sparta, was the authoritarian power who feared the rise of the democratic maritime power, Athens.3 This incongruity is not even the biggest problem with the analogy. In order for the Thucydides Trap to apply, China would have to significantly narrow the power gap with the United States. While China has caught up with the United States in important respects, it has not caught up with the United States in terms of the logic and networks that inform dominance in the key economic and security areas required for power transition.4 Apart from the obvious inhibiting factors of nuclear weapons and economic interdependence, the United States and China are nowhere close to the power parity likely to spark a major power war between them. The Thucydides Trap is a powerful analogy for bellicose dynamics between a hegemonic power and a rising power, but in the near term, war between the United States and China for the reasons proposed in the Thucydidean analogy is highly unlikely.

#### China lags in digital tech.

Jun ’18 [Jun; August 3; dean of the School of Economics at Fudan University and director of the China Center for Economic Studies; Nikkei Asia, “The West exaggerates China's technological progress,” https://asia.nikkei.com/Opinion/The-West-exaggerates-China-s-technological-progress]

This is a serious misrepresentation. While it is true that digital technologies are transforming China's economy, this reflects the implementation of mobile-Internet-enabled business models more than the development of cutting-edge technologies, and it affects consumption patterns more than, say, manufacturing. This kind of transformation is hardly unique to China, though it is occurring particularly rapidly here, thanks to a huge consumer market and weak financial regulation.

Furthermore, it is not so obvious that these changes have anything to do with the government's industrial policies. On the contrary, the growth of China's internet economy has been driven largely by the entrepreneurship of privately owned companies like Alibaba and Tencent.

In fact, Western observers -- not just the media, but also academics and government leaders, including U.S. President Donald Trump -- have fundamentally misunderstood the nature and exaggerated the role of China's policies for developing strategic and high-tech industries. Contrary to popular belief, these policies do little more than help lower the entry cost for firms and enhance competition. In fact, such policies encourage excessive entry, and the resulting competition and lack of protection for existing firms have been constantly criticized in China. Therefore, to the extent that China relies on effective industrial policies, they do not create much unfairness in terms of global rules.

Having said that, what are China's actual technological prospects? The Chinese are certainly fast learners. Over the last 30 years, Chinese manufacturers have proved adept at seizing opportunities to emulate, adapt and diffuse new technologies.

But technological advances in the Chinese business sector occur at the middle of the smile curve (where gains are generally lower than at the innovative start of a new product or at the end, in marketing finished goods to consumers).

Foreign core-technology owners extract most of the added value from Chinese manufacturing. For example, in Danyang, a county of Jiangsu Province that is a production hub of optical lenses for global markets, manufacturers can produce the most sophisticated models. Yet they lack the core software to produce, say, progressive lenses, so they must pay a fixed royalty to a U.S. company for each progressive lens they make. Likewise, China's automobile manufacturers still import their assembly lines from developed countries.

Clearly, there is a big difference between applying digital technologies to consumer-oriented business models and becoming a world leader in developing and producing hard technology. The latter goal will demand sustained investment of time, human capital, and financial resources in sectors with long basic R&D cycles (such as pharmaceuticals).

Given this, China probably remains 15-20 years away from matching the R&D input of, say, Japan or South Korea, and when it comes to output -- the more important factor -- it is much further behind. While China can accelerate progress by attracting creative talent and strengthening incentives for long-term research, there are no real shortcuts when it comes to achieving the gradual shift from learning to innovating.

**No impact - China won’t weaponize AI**

**Wu et. al.,** Researcher at the National Laboratory of Pattern Recognition, Institute of Automation, Chinese Academy of Sciences, **2017**

(Huai-Yu, Feiyue Wang, Chunhong Pan, “Who Will Win Practical Artificial Intelligence? AI Engineerings in China,” February 6 2017, <https://arxiv.org/abs/1702.02461>)

The AI epidemic has triggered a heated discussion among China’s intelligentsia. Wu Gansha, former president of the Intel China Research Center, wrote a paper entitled Race with the Machine: Win or Die, sharing his opinion that the intelligence of machines would finally surpass human beings, but he thought that it was important to adopt an attitude of prediction but not forecasting. Yu Kai, former vice-president of the Baidu Research Institute, thought that there must be a clear direction for the development of technology. If humans do not take any control over technology, then AI will turn into an evil thing. However, if humans assume sensible control, then AI will actually represent humanity. Professor and Executive Director from the School of Software of the Nankai University, Li Qingcheng, who translated the book The Singularity Is Near: When Humans Transcend Biology into Chinese, further thought that humanity should guide the development of scientific technology and that the binding of the robot to Asimov’s three laws of robotics was not reliable; therefore, it would be necessary to constrain the creators of the robot-humans. At the same time, China’s traditional culture stressed the human factors more. Although current AI has aroused fresh interest around the world, China’s industry insiders have a calm understanding. According to the opinion of the president of Microsoft Research Asia, Hong Xiaowen, it was first necessary to make the differences between Intelligence, Intellect and Wisdom clear, while the machine was still at the stage of intelligence. Professor Zhou Zhihua from the Nanjing University simply divided AI into strong AI and weak AI, and holds that the current scientific research is mainly in the area of weak AI. Professor Zhang Changshui from Tsinghua University considers11 that even for weak AI, current machine-learning methods still faces some challenges, including problems of high-dimensional space, difficulty in seeking the best solution and poor interpretability. In conclusion, it is very important for us to regard AI as a huge and complicated engineering subject (not simply as a pure scientific subject) formed by many scientific theories, which will have a great influence for AI to be practically possible. From an overall perspective, China is still a follower in the field of AI science. However, from the impressive record of academic publications, state-level investment and the broad participation and support of the whole society, China could catch up quickly in multiple aspects. There are plenty of reasons to believe that, based on centralized support by the national resources in computing ability, big data, labor cost, China will achieve top rankings in AI engineerings soon. China will do a very good job by applying AI in engineerings with the faith of Pragmatic. Moreover, under the influence of the Confucian school of thought’s golden mean and harmony over the past thousands of years, human intelligence based on carbon and AI based on silicon could coexist in China, with neither replacing the other. In the future, they will mix and evolve into a new form of intelligence. Such intelligence would not only give play to the powerful ability of memory, computing and recognition but would also develop and evolve toward people and foremost toward humanism.

**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 **U**nited **S**tates 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 **U**nited **S**tates 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” **U**nited **S**tates 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 **U**nited **S**tates 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.

### 2NC---AT: Authoritarianism !

#### Use of authoritarian tech is inevitable and dependent on a country’s impulses

Williams 21 --- Alexandria Williams, Nairobi-based journalist and podcast producer. Her work focuses on technology in China and the future of China’s tech giants in Africa, “Some Myths Versus Realities of Africa-China Tech Narratives”, May 27th 2021, https://medium.com/@AINowInstitute/some-myths-versus-realities-of-africa-china-tech-narratives-75c97f43bf8a

I realized that half-truths and misunderstandings abounded. In 2018, news of a Guangzhou-based company called Cloudwalk installing facial-recognition-enabled cameras on the streets of Zimbabwe hit the media. According to outlets reporting the story, China’s government was exporting digital authoritarianism to Africa and using the African population to train facial recognition tech. Arguments like these contained compelling insights but completely sidestepped citizens’ agency and the varied experience of different African nations, flatlining all residents into a monolithic category of oppressed experimental subjects. This oversight and lack of attention to the difference would become the defining characteristic of the narratives I encountered in my work in the years that followed.

Myths about China’s tech presence in Africa

African nations have been engaging with China for centuries. In the 1400s, Ming Dynasty admiral Zheng He returned to China from a voyage to East Africa with a giraffe. China’s former premier Zhou Enlai toured ten countries in Africa in 1963, discussing anti-imperialism with African leaders along the way. In the modern era, China’s Belt and Road Initiative has paved the way for a host of new trade and infrastructure projects and connections on the continent. While this shared history has not always been mutually beneficial, it has helped build a sense of shared understanding which makes African governments and people more willing to take up Chinese technology.

As the ‘US-China tech war’ narrative has grown more mainstream, China’s tech companies have become increasingly aware of the distrust they face in Western markets. As a result, Africa has become a more attractive target, offering a market that has been historically ignored by tech companies (especially those based in the West). For example, while Twitter has been a popular platform in Kenya, Ghana, and Nigeria for years, the San Francisco-based social media company only opened an Africa office in Ghana in 2021. Tiktok on the other hand, which began international operations in 2017, joined a co-working space in Nairobi in early 2020.

The view from on the ground

The other side of the argument is the assumption made by those covering China in Africa that China is the cause of rising digital authoritarianism in the region. I and others with experience in the region will tell you that this idea is unfounded, and erases complex histories on the continent. History shows us that a number of African governments have had decades of practice exercising authoritarianism without China’s help or influence.

The heart of the ‘Silicon Savannah,’ Kenya’s capital Nairobi, was a site for Huawei’s 2014 ‘Safe Cities project, a suite of technologies aimed at ‘leaders’ with the goal of making dangerous cities safer to live in. In Kenya, this meant 1,800 CCTVs set up around downtown Nairobi to be monitored by the national police. Official figures from Huawei claim that there was a 46 percent drop in crime in Nairobi in the project’s first year, but these numbers have not been externally validated and are often debated.

If you ask most people in Nairobi why officially reported crime numbers have declined over the past few years, they won’t point to Huawei. They’ll attribute it to increased securitization following multiple rounds of terrorist attacks from 2011–2014. It hasn’t always been the case, but today, posh neighborhoods and popular hangout spots are patrolled by private security companies, trained dogs, and the occasional rifle-wielding soldier. Whether a crime was caught on video or not has little to do with how a crime is prosecuted, who is criminalized, and how data is (or is not) collected and recorded.

Neighboring Uganda has also contracted with Huawei to install city-wide facial recognition-enabled CCTV cameras. But Uganda’s government has utilized their Huawei cameras and other technology to the fullest extent, reportedly enlisting the help of the company’s technicians to tap into opposition leader Bobi Wine’s phones and regulate his movements.

These two cases highlight the fact that how African governments employ the Chinese technology they license has much more to do with the governments themselves. Uganda, a country whose president has been in power for more than thirty-five years, is known to be a riskier environment for media workers. Though Kenya is regarded as a nation of (relative) freedom, speaking out against the state is still regulated, even without the help of Chinese tech.

For example, in early April, there was a debate among Kenyans on Twitter about International Monetary Fund (IMF) loans. Kenyans flooded timelines, calling out the IMF for loaning money to the Kenyan government whom, they believed, was misappropriating funds. In the weeks that followed, one of the leaders of the Twitter movement was taken into custody. What led to his arrest was not China’s digital authoritarian influence, but rather Kenya’s very own Computer Misuse and Cybercrimes Act of 2018 which, among many things, prohibits the ‘false publication’ of information online.

The Consequences

Shirking the responsibility of rising digital authoritarianism in Africa by pinning the blame solely on China is dangerous. It fails to hold African governments and leaders accountable for their actions and agendas. Moreover, it misses a critical story: activists, journalists, and thinkers on the ground exercise their own agency and actively push back against suppression. Falling for the narrative that China has exported digital authoritarianism to Africa is a distraction that can be harmful to the future of tech, media, and journalism on the continent.

## ADV---Inequality

### 2NC---T/L

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

**Monopsonies not key to inequality**

**Bivens 18** (Josh Bivens is the director of research at the Economic Policy Institute (EPI), Lawrence Mishel is a distinguished fellow at EPI after serving as president from 2002–2017, John Schmitt is senior economist and senior adviser at EPI, April 25, 2018, “It’s not just monopoly and monopsony” Economic Policy Institute, <https://www.epi.org/publication/its-not-just-monopoly-and-monopsony-how-market-power-has-affected-american-wages/>) MULCH

This paper highlights some empirical findings from the new literature on the effect of labor and product market concentration on wages. We address three questions about market concentration that have not always been placed front and center in this literature. The first question is, “Does concentration adversely affect wages at a point in time?” The second question is, “Has concentration grown over time?” The third question is, “Can growing concentration by itself explain a significant portion of the change in wage trends in recent decades?” We find there is evidence to answer “yes” to the first and second questions but not the third. To be clear, the failure to answer affirmatively to the third question is not a criticism of these studies. **The studies are not claiming that rising concentration alone can explain wage stagnation or inequality. Yet too many readers have taken these studies’ findings to this conclusion.**

Finally, this paper makes two broader points about market power. First, market concentration is not the only source of power—particularly employer power—in markets. Second, even unchanged employer power (like that conferred by market concentration) can play a role in growing wage suppression and inequality if it is accompanied by a collapse of workers’ market power. The new literature on market concentration tells us a lot about employer power, but further exploration of what has happened to workers’ market power remains a key research agenda.

This paper highlights the need to tackle sluggish wage growth and rising inequality with a broad menu of policy interventions that go beyond those provided by competitive models to focus on employer and worker power, and even beyond the antitrust agenda suggested by focusing exclusively on market concentration.

Following are our key conclusions:

Labor market concentration is negatively correlated with wages, **but the scope of its downward pressure on wages is limited.**

New research shows that labor market concentration is negatively correlated with wages. However, the effect of labor market concentration is comparatively modest when scaled against what we consider the most significant wage trend in recent decades: the growing gap between typical (median) workers’ pay and productivity.

The new literature on market concentration has not yet provided concrete empirical estimates of a key labor market trend of recent decades—rising compensation inequality. This should be a priority for this research agenda in the future.

The new concentration literature does allow us to estimate the effect of market concentration on the share of overall income claimed by labor compensation. These estimates suggest that **concentration has not risen enough, nor is its effect on labor’s share of income strong enough, to account by itself for an economically important share of the divergence between economywide productivity and the typical worker’s pay in recent decades.**

The new research on labor market concentration implies that this concentration reduced wage growth by roughly 0.03 percent annually between 1979 and 2014, a decline that would explain about **3.5 percent of the total divergence** between the median worker’s pay and economywide productivity over the same period.

One important study shows that the “average” labor market is “highly concentrated.” But differences between measures of concentration of the average labor market and the labor market experienced by the average worker have important implications for how to assess the impact of labor market concentration on long-term wage trends. In other words, many labor markets suffer from high degrees of concentration, but most people work in labor markets with only low-to-moderate degrees of concentration.

#### Tons of alt causes

-Trade Liberalization -Automation -Technology -manufacturing collapse -education -healthcare -minimum wage -less powerful unions - climate change

**Bhatt et al 2020 (**Anjali, Melina Kolb, and Oliver Ward. Assistant Professor in the Organizational Behavior Unit at HBS and a Fellow at the Santa Fe Institute for the study of complex adaptive systems. Melina Kolb is Assistant Vice President for Digital Communications at Peter G. Peterson Institute for International Economics. “How to Fix Economic Inequality?” <https://www.piie.com/microsites/how-fix-economic-inequality> first published on November 17, 2020 and last updated December 17, 2020, MSU-MJS)

Technology and trade are factors, but policies determine outcome. Automation and trade liberalization have profoundly transformed labor markets across advanced economies, giving disproportionate advantages to highly skilled and educated workers, and research shows these forces have played a role in widening inequality. But it is important to emphasize the role of governments in mitigating these effects. The United States and Europe have very different levels of inequality despite similar levels of technological change and trade liberalization. Divergent policies among countries must logically have influenced their disparities in the growth in inequality. Figure 14: Imports from emerging-market countries as percent of GDP, 1988–2014 Trade data show how the United States and many European countries have increased their imports from emerging-market countries at similar levels since 1980, suggesting factors other than trade are influencing differences in inequality levels. How have technology and globalization widened inequality within the United States? Economists generally think globalization has contributed marginally to rising US wage inequality but that technology has played a much bigger role. For the last half century, the United States has generated tremendous economic growth and wealth as a result of technological innovations and international trade and investment. Tech giants emerged with the advent of the internet. Businesses tapped global supply chains, technology breakthroughs, and international markets to expand their reach, turning some into multinational powerhouses, generating high-end jobs, and making a whole new range of products affordable for consumers. But some workers have lost out. US industrial production is still at historically high levels, but automation makes that achievement possible with far fewer workers. The US economy, like many advanced economies, has been driven more by services (information, business and professional services, health care, restaurants, travel, financial services) and less by manufacturing, with consumers spending a smaller percent of their incomes on manufactured goods than they used to. Figure 15: Percent of US employment in manufacturing vs. nonmanufacturing industries, 1939–2019 Manufacturing as a share of total employment has been in decline since the 1940s. Technology has reduced demand for certain low- and middle-wage workers, such as in factory assembly lines, and increased demand for high-skilled, higher-paid workers. To cut costs and stay competitive, many businesses outsourced manufacturing production from domestic factories to countries like China, Vietnam, and Mexico, displacing some domestic manufacturing jobs. (A Peterson Institute study finds about 156,000 US manufacturing jobs were lost on net each year between 2001 and 2016 from expanded trade, or less than 1 percent of the workers laid off in a typical year).1 Men and workers without a college degree have been hardest hit, especially in factory towns outside major US cities. Many of these workers have dropped out of the labor force. By contrast, highly educated and skilled workers, particularly in urban areas, earned a premium. Learn more about the effects of trade and investment in this guide, “What Is Globalization?” Governments have cut top tax rates. Tax policy is one of the most important factors in determining inequality levels in advanced economies. Taxes in the United States and many other rich countries have become less progressive in the past 50 years, meaning that tax obligations have declined for those with the highest incomes. The top earners used to pay much higher tax rates on their income than they do now. Less progressive taxation has accelerated the growth of top incomes. Figure 16: Average tax rate by pretax income group in the United States The average tax rate paid by the top 1 percent of US earners has steadily declined over many decades; since 2010, the highest-earning individuals have been paying an average tax rate roughly equal to or even less than other Americans. (Income levels of taxpayers do not account for government transfers). Figure 17: Top marginal income tax rate, 1900–2020 In the 1950s, the top US marginal income tax rate was above 90 percent, a legacy of the war-footing economy of World War II. It is now just below 40 percent. (In the United States, the top marginal tax rate is charged only on earnings above $510,000 for an individual). Other countries, like Japan and France, had similar declines. Figure 18: Change in top marginal tax rate vs. change in share of income held by top 1 percent since the 1970s As top marginal tax rates have declined in many richer countries, the share of income going to the top 1 percent of earners has grown. Countries like Germany, Spain, Denmark, and Switzerland cut top tax rates by little or not at all, and also experienced little to no increase in top income shares. Poor Americans are much less likely to attain higher education than rich Americans. In the United States, 90 percent of children with parents in the top 10 percent of the income distribution will likely attend college. For children with parents in the poorest 10 percent, less than a third will. American families are more burdened by college tuition costs than families in Europe, where higher education is more likely to be free or subsidized. US college tuition for four-year institutions has risen five-fold since 1985, adjusted for inflation, reaching $27,000 a year on average in 2017. US children today are less likely to exceed their parents’ standard of living because education levels are failing to grow at the rate required to meet the demand for a more educated workforce. Healthcare in the United States is not universal. The United States is the only wealthy nation without universal health coverage. Healthcare expenditures grew from 5 percent of GDP in 1960 to almost 18 percent in 2018. Americans spend more than double on healthcare per person than other wealthy countries on average, many of which have some form of publicly funded healthcare system, yet the country lags on many health outcomes such as life expectancy and infant mortality. In 2018, 8.5 percent of people, or 27.5 million, did not have health insurance at all (though the Affordable Care Act made some headway in reducing the number after 2010). Employers that provide health benefits to workers shoulder the costs of rapidly rising insurance premiums. The US federal minimum wage has fallen. The US federal minimum wage, currently $7.25 an hour, has dropped by almost 30 percent since the 1960s when adjusted for inflation. More than half of US states have set higher minimum wages but the rest have not. France’s minimum wage grew more than 80 percent between 1980 and 2016 when adjusted for inflation, to almost €10 or nearly $12 an hour. Unions are less powerful than they used to be. Union membership has long been declining across rich countries, especially in the United States. In the 1950s, approximately one-third of all US workers belonged to a union. In 2019, that figure was just 10 percent. Most European countries still have much higher shares of workers in unions than the United States. Some European countries (Germany, for example) also have employees on corporate advisory boards or board seats that can be reserved for trade unions, increasing their influence over wages and workplace regulations. Americans are moving less often while cities attract high-paying jobs. In the past three decades, the share of the US population making an interstate move fell by half, limiting the ability of families to pursue new job opportunities in response to declines in manufacturing jobs. It’s not clear why mobility fell, but rising housing prices in areas of opportunity may be a factor. In cities, wages for highly educated workers grew faster than for the less educated, widening the income gap between urban and nonurban areas. The economic fallout from the COVID-19 pandemic has disproportionately harmed already vulnerable groups. Low-income workers, minorities, and women are among those who have suffered the biggest economic losses. (See Section 5) Climate change hits the poorest the hardest. Extreme weather patterns attributed to climate change are widening inequality. Low-income groups tend to be more exposed to environmental threats, like flooding, hurricanes, and heat waves, and live in communities without effective disaster relief strategies. Additionally, certain policy responses to limit the climate crisis could disproportionally affect low-income workers. An example is the French government’s attempt to implement a fuel tax, which provoked street protests throughout the country.

**No inequality crisis and antitrust makes it worse---prefer studies on consumption instead of capital.**

**Wright** et al **19** [Joshua D. Wright is University Professor and the Executive Director of the Global Antitrust Institute at Scalia Law School at George Mason University. Professor Wright also holds a courtesy appointment in the Department of Economics. In 2013, the Senate unanimously confirmed Professor Wright as a member of the Federal Trade Commission (FTC), following his nomination by President Obama. He rejoined Scalia Law School as a full-time faculty member in Fall 2015. "Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement." https://regproject.org/paper/consumer-welfare-the-rule-of-law-the-case-against-the-new-populist-antitrust-movement/]

Another assertion **populist antitrust** supporters regularly make is that prices have increased and output has decreased. Again, the evidence here is **mixed at best**.

The movement’s proponents claim increased monopoly power economy-wide has led to increased prices for consumers. One study by De Loecker and **Eeckhout**, for instance, purports to demonstrate an increase in markups since 1980, which they argue indicates market power has increased over this period.68 This study utilizes Compustat-compiled input and output data for firms across the U.S. economy to calculate firm-level markups, examining measures of sales, input expenditure, capital stock information, industry activity classifications, and accounting data measuring profitability and stock market performance.

While this study purports to demonstrate an increase in markups and, therefore, an increase in market power, there are **several problems** with this methodology and reasoning. Fundamentally, industrial organization economics literature has clearly established that profit margins, alone, are **not reliable evidence** of market power.69 Additionally, it is clear that increased markups, alone, are not reliable evidence of price increases. To understand whether higher markups translated to higher prices, we would need to understand additional factors, such as whether marginal costs have changed.70 If, for example, marginal costs decreased, markups could increase even if prices remained the same; indeed, depending upon how much marginal costs decreased, margins could increase even while prices decreased. Moreover, a trend toward higher markups does not necessarily indicate firm profits are likewise trending higher, as De Loecker and Eeckhout acknowledge. As they explain, a technological change that reduces variable, but increases, fixed costs might result in increased markups but not **increased profits**.

In addition, higher markups might simply reflect a shift in the **composition** of **firms** within the economy. Today, high-tech (and other) firms with low marginal costs but substantial R&D costs comprise a more significant percentage of the economy than they have historically. Consider, for instance, a software company that spends a tremendous amount developing an innovative new software that consumers download on their personal devices. While the marginal cost of selling each new unit of software would be miniscule, the company—to stay in business—would need to charge a price that helped it recoup the costs incurred to create its innovative product. The more firms within the economy employing this business model, the more we would expect to see higher markups, and so the less we could assume, based upon the existence of higher markups, alone, that those markups derive from increased market power.

Aside from the **methodological issues** with these studies, there is the added complication that other work finds **conflicting results**. Robert E. **Hall**, for instance, finds “no evidence that mega-firm-intensive sectors have higher price/marginal cost markups.”71 Notably, while he finds no real evidence of increasing markups in less regulated sectors like Manufacturing or Transportation and Warehousing, he does find a fairly strong trend of increasing markups in heavily regulated sectors like Finance and Insurance, and Health Care and Social Assistance—which is consistent with something other than **concentration** driving increased markups.72

Others examining the effect of concentration upon prices likewise find results that conflict with the populist antitrust movement’s claims. James **Traina**, for example, analyzes this same question, attempting to correct for another flaw in De Loecker and **Eeckhout’s method**ology: namely, De Loecker and Eeckhout focus only on the “cost of goods sold” (COGS) facet of firms’ operating expenses, omitting the “selling, general, and administrative expenses” (SGA) facet. Traina argues that SGA is an increasingly significant share of variable costs for firms in the U.S. economy, and demonstrates that once SGA is incorporated into De Loecker and Eeckhout’s measure of cost, **markups actually remain flat** (or decline).73

Similarly, **Ganapati** examines data from 1972-2012, and finds concentration issues **do not lead to higher prices**, but in fact correspond with **increased output**.74 He concludes that the concentrated industries he analyzes are concentrated not due to anticompetitive behavior, but “likely due to technical **innovation** or **scale** economies.”75 His findings are consistent with other work that finds that the trends in concentration populists condemn may, in fact, be related to changes in economies of scale and to their corresponding productivity improvements.76

Other studies upon which populist antitrust proponents rely purport to identify higher prices using different metrics. One such regularly-cited study is John Kwoka’s meta-analysis of retrospective studies of mergers, joint ventures, and other horizontal arrangements.77 Here, Kowka compiles data covering more than 3,000 mergers and concludes the average price effect for the studied mergers is a 7.22% increase.78 His findings have, however, been called into serious question. Experienced economists in the FTC’s Bureau of Economics, Michael Vita and David Osinski, identify several objections to Kwoka’s methodology and, accordingly, his findings. They explain why various methodological failings—including not using standard meta-analytic techniques to compute average price effects and standard errors, not weighting observations by their estimated variances (meaning all price estimates are treated the same regardless of their certainty), and omitting standard errors from his report—undermine Kwoka’s fundamental findings regarding price effects.79

The evidence upon which populist antitrust supporters rely in asserting that prices have increased is, accordingly, **mixed at best**. The studies they cite often attempt to examine very important—but also difficult to measure—questions. The limits of these studies must be acknowledged in any serious debate regarding the state of antitrust enforcement today. While many of these studies offer good initial insights, they mostly identify areas for further research. And in **no case** do they clearly identify **systemic shortcomings** in **current antitrust enforcement** efforts.

In addition to questionable empirical premises, the argument that we must **abandon** the **consumer welfare** standard because prices are higher and output is lower under this standard is in serious **tension** with **remedies** the populist antitrust movement proposes. Each of the proposed remedies would, as described above, **diminish consumer welfare**. If, for instance, we adopted a public interest standard, prices and output might be one concern—but employment, democracy, the environment, and inequality might be competing concerns. And lower prices, higher output, and product improvements would not have the trump card in the analysis they do today. Similarly, if we decided to ban vertical mergers or prohibit any transactions over a certain size, we would be preventing at least some transactions that would lower prices and increase output. This would appear to be particularly likely in the case of banning vertical mergers, a move which empirical evidence indicates has anticompetitive outcomes—i.e., higher prices or lower output—result only rarely.80 And it would lead to the perverse result of antitrust law deliberately **fostering higher prices** or lower output, meaning consumers would be less able to purchase products or services they desire.

Accordingly, even if prices and output have, in fact, trended in directions harmful to consumers, the better question to be asking is whether this is because enforcement under the consumer welfare standard is not at the optimal level. The consumer welfare standard focuses on just such factors—along with innovation, quality, and other consumer concerns. If the goal is to lower prices and increase output, it is difficult to see what **better standard** could be adopted than one that makes these **consumer concerns** its sole focus.

C. Increasing Antitrust Enforcement Would Reduce Inequality

Populist antitrust supporters further note that **income inequality** in the United States has increased dramatically in recent decades, and proffer that lax antitrust enforcement is (to varying degrees) to blame.81 The general intuition here is fairly easily stated: lenient antitrust enforcement allows firms to obtain market power, which allows them to reduce output, raise prices, and generate monopoly profits—all of which enriches shareholders. Shareholders are, by and large, in the top percentage of wealth and income distribution, so these increasing returns increase the wealth of the wealthiest and, thus, inequality.82

Imbedded in this theory are a couple key assumptions, both of which can be empirically tested. First, that inequality is increasing. The evidence here suggests inequality is likely increasing, though the **magnitude** of this increase is probably **overstated**. Second, that increasing antitrust enforcement would reverse this trend. On the proffered causal link between antitrust enforcement and inequality, there is, so far, a **notable dearth** of empirical **support or development**.

First, consider the evidence on inequality trends. Populist claims regarding increasing inequality largely rely upon analysis of the Gini coefficient for US incomes over the last 50 years, which appears to show a steep increase in inequality. Examining the ratio of the share of US income among the 5th quintile of income-earning households to the share among the 1st quintile of households likewise seems to show increasing inequality.83

While these data points offer interesting insights, it is again important to understand their limitations. As Robert Kaestner and Darren Lubotsky emphasize, for example, failing to account for government transfers and employee benefits—that presumably substitute, in part, for cash income—can meaningfully affect these kinds of inequality measures.84 One important example they explore is that of healthcare benefits. As healthcare costs have rapidly increased in recent years, omitting a measure of health insurance benefits (provided by employers or by the government) could significantly affect ultimate inequality findings. Kaestner and Lubotsky, in fact, analyze inequality measures accounting for this omission, and find that including health insurance benefits substantially lessens the difference between high-end and low-end incomes.85 They find the ratio of income between households at the 90th percentile and the 10th percentile to be approximately 5 in 1995, 5.2 in 2004, and 5.6 in 2012.86 So while their findings support the notion that inequality is increasing, they also suggest that the trend is significantly smaller than reported.

Examining household consumption trends tells a similar story. Scholars have argued that consumption might be a superior measure of welfare, given a “closer link between **consumption** and **well-being**.”87 Consumption trends would also seem to be relevant when considering **antitrust enforcement** efforts, as they offer more information regarding economic effects than isolated income or wealth measurements. Examining household consumption over the last couple decades indicates that inequality is increasing but at a **muted rate**.

Accordingly, the evidence does seem to indicate inequality is increasing by some amount. Potentially **more-accurate** measures of income and welfare, however, suggest this trend is not as significant as populists claim. So, the first assumption in this particular populist theory appears to be valid, if often overstated. That leads us to the second—and for this discussion, the critical—assumption that antitrust enforcement is driving the apparent inequality trend.

Second, consider the **empirical evidence** supporting a **causal link** between antitrust enforcement and **inequality**. This proffered link remains, thus far, largely theoretical and **undeveloped** empirically. Populist papers advocating for increased antitrust as a salve for increasing inequality do not offer empirical support for their preferred course of treatment. But other authors have begun to explore empirically the proposed tie between antitrust enforcement and inequality. Wright et al., for instance, present time series regressions relating measures of inequality to antitrust enforcement measures.88 While the authors acknowledge the standard reasons that these analyses cannot isolate, with confidence, causation, their work provides a useful foray into the empirical basis for the notion that antitrust enforcement and inequality are causally linked. The authors examine data from DOJ investigations between 1984 and 2016, focusing first on merger investigations, given the populist emphasis on merger activity, and then broadly examine all DOJ investigations for a more general enforcement measure. Their results do not offer “**much empirical evidence** to substantiate the proposed correlation between antitrust **enforcement** activity and **inequality**.”89

Populist claims that increased antitrust enforcement is necessary to combat a severe trend of increasing inequality thus appear to be **overstated**. While inequality appears to be increasing, the rate is likely more modest than the populist movement implies. And there is, as of yet, **no empirical support** for the underlying proposition that increasing antitrust enforcement levels would slow, stop, or **reverse this trend.**

### 2NC---AT: Multilat !

#### Multilateralism fails---competition overwhelms cooperation.

Wright 21 (Thomas Wright, Director of the Center on the United States and Europe @ the Brookings Institution; and a co-author with Colin Kahl of *Aftershocks: Pandemic Politics and the End of the Old International Order*; “The Center Cannot Hold;” September/October 2021, Foreign Affairs, <https://www.foreignaffairs.com/articles/united-states/2021-08-24/center-cannot-hold#author-info>, TM) [edited for language, font made small for readability]

Two Trump administration officials who favored continued engagement with China told me that before COVID-19, Trump was something of a check on the containment faction. Once he saw the virus as a threat to his reelection chances, however, he became willing to endorse the containment faction’s preferred policies to counter China’s assertiveness. According to another senior official associated with the containment faction, the pandemic and China’s response to it helped unify the administration behind a more comprehensive strategy to push back against Beijing. Between March 2020 and the end of the year, the senior official said, the United States put in place more containment measures than it had in the previous three years, including restrictions on Chinese technology firms, sanctions on Chinese officials, looser regulations on diplomatic contacts with Taiwan, and recognition of the repression in Xinjiang as a genocide. In this sense, the pandemic was a pivotal moment in the U.S.-Chinese rivalry.

Competition between the two countries overwhelmed everything else, including U.S. cooperation with allies on the pandemic, leaving a global leadership vacuum that no one could fill. The foreign ministers of the G-7 countries were unable to agree on even a communiqué in March 2020, and the G-7 leaders’ summit in June was canceled and never rescheduled during Trump’s presidency. The EU tried to step up by increasing funding for the WHO and for COVAX, the global initiative to share vaccines, but it never came close to organizing a global response. China’s assertive foreign policy, and its attempts to use pandemic assistance to advance its interests, aggravated European leaders and convinced them to harden their positions toward China throughout the course of 2020.

During this period, there was hardly any international cooperation on vaccine development or distribution, no coordination on travel restrictions or the distribution of medical supplies, and limited cooperation on achieving a cessation of hostilities in conflict zones. The economic disruption caused by COVID-19 devastated low-income countries, which received little in the way of international assistance. Especially hard hit were countries, such as Bangladesh, that had made significant development gains in the last two decades and were propelling themselves into the lower tier of middle-income economies. The Bill & Melinda Gates Foundation found that in just 25 weeks, the pandemic reversed 25 years of progress on vaccination coverage, a key public health indicator. And according to the UN, the pandemic could force a total of 490 million people into poverty—defined as the loss of access to clean water, adequate food, or shelter—pushing the global poverty rate to around seven percent by 2030, compared with the pre-pandemic target of three percent.

CLIMATE WEDGE

Pandemics are not the only transnational threat that promises to intensify great-power rivalry and diminish the prospects for much-needed cooperation. Climate change could do the same. The global economic downturn caused by the pandemic occasioned a brief and modest reduction of emissions of carbon dioxide and other heat-trapping gases, but those emissions have already begun to increase again. According to the Intergovernmental Panel on Climate Change, the international body of experts that represents the scientific consensus on the climate, the world is on track to warm by around three degrees Celsius by the end of the century—a rate and magnitude of change that scientists warn could be cataclysmic. Absent drastic, cooperative action, the world will see more frequent droughts and wildfires; more intense hurricanes, storms, and flooding; more transmission of diseases from animals to humans; the inundation of many coastal areas and low-lying nations due to sea-level rise, leading to the displacement of hundreds of millions of people; and the devastation of ocean and terrestrial ecosystems.

Rather than unite the world around a common purpose, climate change is likely to deepen competition between major powers, especially as the transition away from fossil fuels creates economic winners and losers. Countries that aggressively decarbonize could place sanctions and other trade restrictions on countries that do not, leading to counterresponses and new trade wars. In a recent report for the European Council on Foreign Relations, Janka Oertel, Jennifer Tollmann, and Byford Tsang argue that the [challenges] ~~impediments~~ to cooperation between Europe and China on climate change “are becoming higher” and warn that “decision-makers must not underestimate the highly competitive aspects of how China is changing its energy production and consumption.”

The United States and Europe will both compete with China for access to raw materials and in developing the technology needed to make their economies carbon neutral: magnets, batteries, high-performance ceramics, and light-emitting diodes, among other things. In some of these areas, the United States and Europe are at risk of dependence on China, so they will want to make themselves more self-reliant as they develop clean technology.

Climate change could even drive a wedge through the transatlantic alliance if the United States elects another president who seeks to undermine efforts to reduce carbon emissions, as Trump did. And even if the U.S. government remains broadly aligned with Europe on climate policy, the Europeans could still become disaffected if Congress blocks meaningful climate action, such as commitments to cut carbon emissions or invest in clean technology. This, in turn, could diminish Europe’s willingness to help uphold the U.S.-led international order.

THE LIMITS OF COOPERATION

Some analysts, mainly on the right, care about the foreign aspects of transnational threats only to the extent that they can blame China for them, effectively wielding China’s malign influence on the WHO or its centrality to the problem of climate change as a cudgel in the geopolitical rivalry. They do not even try to provide an affirmative agenda for international cooperation on these threats—all but guaranteeing that they will exact a heavy human toll and heighten geopolitical tensions. The disease that causes the next pandemic could be just as contagious as COVID-19 but much more lethal and impervious to vaccines. Climate change is only getting worse.

Other analysts, mainly on the left, argue that the United States should set aside its contest with China or at least attempt to ease tensions in order to cooperate on shared challenges. It is unclear what exactly they intend. If, on the one hand, they mean softening U.S. rhetoric without conceding much of substance to China, they would do well to look to Europe, where governments were much more inclined than the Trump administration to cooperate with China, but China did not take them up on the offer. To the contrary, China became much more assertive and confrontational in its approach to Europe. If, on the other hand, they mean unilaterally making major geopolitical concessions to China—on its territorial acquisitions in the South China Sea, for instance, or the status of Taiwan—the United States would not only pay an extremely high price but also likely embolden Beijing further without actually securing cooperation on pandemics or climate change beyond what Beijing has already offered. Deliberately undercutting U.S. interests on matters unrelated to transnational threats is not a sound strategy.

There is no getting around strategic competition with Beijing: it is deeply embedded in the international order, mainly because China seeks to expand its sphere of influence in Asia at the expense of the United States and its allies, which are in turn committed to thwarting Beijing’s plans. The United States and China are also engaged in what Jake Sullivan, Biden’s national security adviser, recently called “a competition of models.” China is seeking to make the world safe for the CCP and to demonstrate the effectiveness of its system. This entails pushing back against what it sees as pressure from liberal democratic countries that could thwart its objectives. For its part, the United States worries about the negative externalities of Chinese authoritarianism, such as censorship of international criticism of Beijing or the export of its tools of repression to other countries. The United States also worries about what would happen to the military balance of power if China secured an enduring advantage in key technologies. Even in diplomacy, friction will be endemic to the U.S.-Chinese relationship and will affect the broader international order for the foreseeable future. Outright confrontation can be avoided—but competition cannot.

This competition places real limits on cooperation. Take the arena of global public health: many studies on how to improve pandemic preparedness call on world leaders to dramatically strengthen the WHO, including by giving it the same power to enforce international health regulations as the International Atomic Energy Agency enjoys with nuclear nonproliferation rules. This recommendation is not new. Several reviews of the WHO’s performance during previous health emergencies, including the West African Ebola epidemic of 2014–16, have recommended sanctions in the event of noncompliance with international health regulations by member states, but the member states have not granted that power to the WHO.

The problem is getting every government to agree to a universally applicable mechanism for sanctions or some other enforcement mechanism. China will not agree to any reform that would involve intrusive inspections of its scientific research facilities. And even if Beijing were to agree to vague language that could be interpreted as allowing these actions, the lesson of the COVID-19 pandemic is that it will not live up to its word when a crisis occurs.

#### LIO resilient---alternatives won’t gain purchase.

Fried **’20** [Daniel; 2020; Weiser Family distinguished fellow at the Atlantic Council; Atlantic Council; “Peering through the fog: The liberal international order in the real world,” https://www.atlanticcouncil.org/blogs/new-atlanticist/peering-through-the-fog-the-liberal-international-order-in-the-real-world/]

Porter suggests that the liberal world order is inherently expansionist. But perhaps the rule of law, democracy, and freedom has an attractive power of its own, an inherent appeal. In that case, it is the Realist’s preferred system of spheres of influence that is actually unstable: tyrannies, like Vladimir Putin’s Russia and possibly Xi Jinping’s China, exercise repression at home and in their “spheres” either because they can’t deliver for their people or are made insecure by the example of democracy too close to home. And, partly for the same reason, they will always push to expand their spheres.

Yes, the United States was inconsistent and hypocritical in its years leading the free world. And, yes, the more extravagant promises of the liberal world order, e.g. to usher in Immanuel Kant’s era of perpetual peace between republics, fall apart when set against the messy realities of the real world.

But does reality’s messiness mean that the post-1945 international system—the liberal world order that the United States led—was meaningless? Was it nothing more than fog and cant, as Porter and many others charge? Let’s peer through the fog. Let’s instead compare the liberal world order not against the purity of its adherents’ most extravagant claims or against its critics’ abstract standards of unattainable perfection, but against the track record of its recent competition, Soviet Communism; the previous competitor of fascism; or against the pre-1914 system of imperialist balance of power. The liberal order gave the world generations of general great power peace and unprecedented prosperity. Stack that against the first half of the twentieth century.

Let’s set the liberal world order, for all its faults, against its current challenger: neo-nationalism and might-makes-right, which appear to be the ultimate argument of this generation’s set of authoritarian challengers: Russian President Vladimir Putin, Chinese President Xi Jinping, and others including, in some sense, Trump himself.

Restoring some imagined Golden Age is not the issue. The issue is whether the liberal world order can be fixed and reengineered to meet today’s challenges. That’s akin to Roosevelt’s challenge of reengineering US capitalism from the pits of the Great Depression: it’s no fun, and we’ll be hit as we try from left and right. But we’d better get started.

# 1NR

## Inflation

### Overview

#### Link triggered before the solve their turns

**Bivens 21**, director of research at the Economic Policy Institute (Josh, 7-17-2021, "Should You Worry About Inflation? Experts Weigh In.", *NY Times*, <https://www.nytimes.com/2021/07/17/business/dealbook/inflation-questions-experts.html>)

Inflation hawks might argue that this is because the Fed successfully stayed ahead of the inflation curve. But too often the Fed has cut recoveries short **before** wages for most U.S. workers saw **decent growth**. In a recent study, we estimated that **too-austere** macroeconomic policy is the **most important reason** for **anemic wage growth** seen by the vast majority of U.S. workers after 1979.

So, recent inflation is a little worrisome, but an **inappropriate response** to it is **very worrisome**.

**Inflation fuels populism.**

**O’Sullivan 21**, Senior Contributor at Forbes (Mike, July 17th, “Is Inflation A Boon for Populists?” *Forbes*, <https://www.forbes.com/sites/mikeosullivan/2021/07/17/is-inflation-a-boon-for-populists/?sh=49de49e93de7>, Accessed 11-06-2021)

My hunch is that **inflation** is about to become the **latest populist focus**. Recent data show that in the US and increasingly in Europe, inflation is awakening after a long slumber. Indeed, many professional economists and investors have never experienced high inflation. In the USA, some inflation measures and price components are the highest that they have been since the 1980’s. The consensus and official view on rising inflation is that it is ‘transitory’ – driven by a burst of coronavirus recovery spending. The risk, across many fronts is that it proves more enduring and thus can cause financial, economic and political pain.

Inflation is transitory?

This is where inflation becomes **interesting to populists** – anything that **causes economic pain** and social discomfort is **populist ammunition**. Indeed, there is plenty of evidence to show that inflation is often the offshoot of populist economic policies as the economic history of Latin America shows.

Inflation, if it is here to stay, will become a political issue in at least three ways. The first is housing where the OECD’s housing affordability gauge has gone vertical (i.e. housing is extremely unaffordable), easily surpassing the levels of 2008 (recall the housing crisis). In some countries like Ireland there is a persistent and acute housing crisis, the debate around which is becoming populist – though it should be said that there has been a broad failure to manage this issue from a policy point of view.

Rising prices cause pain

The second way in which inflation becomes an issue is where rising real living costs are not matched by wage rises (we may see this in about six months’ time as economic activity and policy normalizes) and ‘the price of things’ becomes a topic of political debate and increasingly, agitation. In the past, and particularly in emerging economies where households spend a large amount of disposable income on food, price rises can lead to unrest (i.e. the Arab Spring).

Third, rising inflation brings the prospect of rising interest rates which will not only make life more complicated for mortgage holders but will ignite a debate on indebtedness, its consequences and remedies. Lurking behind this is the fact that central banks by declaring inflation ‘transitory’ and not yet giving any sense that they are worried about asset price inflation nor the consequences of asset purchases, find themselves snookered. As we have seen with the tussles between Donald Trump and Fed Chair Jay Powell, central banks make easy targets for populists and can be forced into bad policy decisions by them.

So, inflation if and when it materializes, may be **political fodder for populists** and if it does, this will complicate the policy and political outlook. Populism is difficult to counteract, and often the best remedy for it is the incompetence of populists themselves. What might be the best solution for inflation – I propose that it is populism. As the study I mentioned earlier shows, populists tend to depress growth, and therefore inflation.

#### Inflation turns wages

**Iacurci 21**, Personal Finance Reporter (Greg, July 27th, “Wages are rising, but inflation may have given workers a 2% pay cut,” *CNBC*, <https://www.cnbc.com/2021/07/27/wages-are-rising-but-has-inflation-given-workers-a-2percent-pay-cut.html>, Accessed 11-06-2021)

Workers saw their hourly pay in June jump at the fastest clip in more than a decade. Yet some of them saw those gains **erased by high levels of inflation**.

“Real wages” — a measure of income after accounting for the cost of goods and services people buy — **fell** by almost 2%, on average, last month compared with 2020. Senate Republicans said Wednesday that Americans were getting a pay cut as a result.

“The staples of American life are increasing exponentially,” according to Sen. Tim Scott, R-S.C., who cited examples like higher prices for gas, laundry, airfare, moving costs, hotels, bacon and TVs.

The thrust of the argument — that inflation **eats into rising wages** — is true, according to economists. Still, there are many nuances, they said.

For one, whether a consumer got a pay cut or not depends on their individual earnings and the things they buy.

“If prices are growing faster than wages, then people are getting inflation-adjusted **pay cuts**,” according to Michael Strain, director of economic policy studies at the American Enterprise Institute, a right-leaning think tank. “Ultimately, this varies dramatically for every individual.”

Plus, inflation has been volatile and may prove temporary — meaning a reduction in buying power could be short-lived, economists said.

Inflation and wage growth

Average hourly earnings rose 3.6%, to $30.40, in June compared with the same month in 2020. That’s the biggest spike since January 2009, according to data compiled by the Economic Policy Institute.

Meanwhile, the consumer price index, a measure of inflation, jumped 5.4% over the same period — the most since August 2008.

Together, this amounts to a 1.7% loss in buying power, on average, when factoring in seasonal adjustments, according to the Bureau of Labor Statistics.

“Inflation is a tax,” said William Foster, a vice president at Moody’s Investors Service. “That’s the best way to think about it.”

**Inflation most impacts lower earners**, who spend more of their average dollar on gas, food and other items that may be rising in price, Foster said. Wealthier individuals, who tend to hold more financial assets like stocks or homes, may be better able to offset the impact of inflation, he added.

## Bbb

### Crypto Addon

#### FTC’s already brought successful crypto cases and established a working group to handle it---thumps

Neil Chilson 18, Acting Chief Technologist, FTC, 3/16/18, “It’s time for a FTC Blockchain Working Group,” https://www.ftc.gov/news-events/blogs/techftc/2018/03/its-time-ftc-blockchain-working-group

Today, the FTC announced a lawsuit against four individuals alleging that they have promoted one or more fraudulent “chain referral schemes.” Such schemes are not new – in fact, the FTC has brought chain referral cases for years. What makes today’s announcement interesting is that the alleged schemes used bitcoin, a cryptocurrency. (The FTC brought its first cryptocurrency-related case in June 2015, another in February 2016, and held a public forum on blockchain technology in March 2017. But this is the FTC’s first chain referral case involving cryptocurrency.)

Cryptocurrencies, such as bitcoin, ether, Litecoin, and many others, are a hot topic, but what are they? Cryptocurrency technology enables one individual to electronically and verifiably transfer units of the cryptocurrency to another individual without requiring validation by a trusted third party such as a bank. As such, third parties generally cannot reverse these transfers. Cryptocurrencies fluctuate in value, and units may be valued in the hundreds or even thousands of dollars. (Indeed, much of the news coverage of cryptocurrencies has focused on fortunes made and lost during these fluctuations.) Cryptocurrencies achieve this independence from third parties through sophisticated software techniques such as encryption and blockchains. These systems are complex, although perhaps no more complex than the systems used to support withdrawing bank account dollars from an ATM. However, it is certainly true that consumers are less familiar with cryptocurrencies than with dollars.

Given these various properties, it is no surprise that fraudsters might use cryptocurrencies in their scams. As the primary federal general consumer protection agency, the FTC has seen this pattern before. Fraudsters often attempt to capitalize on the excitement and confusion around hot new technologies, and they are quick to dress up old schemes in the clothes of the latest and greatest innovations.

Today’s announced lawsuit targets one example. I expect that fraudsters will repurpose old schemes to capitalize on the current glamour and mystery of cryptocurrency. The FTC staff will diligently apply its expertise to identify such schemes. But while we expect fraudsters to continue to dress up old schemes with cryptocurrency, cryptocurrencies and related technologies likely will affect the FTC’s broader consumer protection and competition missions in at least five other ways:

Payment – Fraudsters and other bad actors have already begun seeking payment in cryptocurrency. We have seen this frequently in ransomware cases, where miscreants hack a computer and hold its files “hostage”— often encrypting them — and then demand bitcoin payments to release the hostage files.

New Schemes – New schemes could emerge that aren’t just old schemes dressed up, but actually use cryptocurrency and blockchain technology as a core part of the fraud. The FTC has already seen some of these cases and taken action.

For example, the FTC brought a case against Butterfly Labs alleging that the company charged consumers thousands of dollars for its Bitcoin mining machines, but then failed to deliver the computers until they were practically useless, or in many cases, did not provide the computers at all.

In another FTC case, an app company allegedly claimed that its “Prized” mobile phone app was a rewards program, but in fact the app used devices’ computing resources to “mine” for virtual currencies like DogeCoin, LiteCoin and QuarkCoin.

Furthermore, some so-called token offerings involve the sale of “tokens” in exchange for the use of a future service. (Some such offerings may be securities under U.S. law.) But what if the promised services aren’t delivered? That could be a deceptive practice in violation of the FTC Act.

Defendants’ Assets – Even where cryptocurrency is not a part of the illegal behavior itself, defendants may have cryptocurrency assets that they might have to turn over to the FTC if obtained through misconduct. Some defendants may even attempt to hide traditional assets from law enforcement by purchasing cryptocurrency.

Competition Policy – Cryptocurrency and blockchain technologies could disrupt existing industries. In disruptive scenarios, incumbent companies may sometimes seek to hobble potential competitors through regulatory burdens. The FTC’s competition advocacy work could help ensure that competition, not regulation, determines what products will be available in the marketplace.

New Solutions – Above, I’ve highlighted some of the potential risks consumers face in using cryptocurrencies. However, many entrepreneurs are applying blockchain technologies to address difficult consumer challenges such as micropayments, data privacy, and secure identity. Such tools could increase consumers’ control over information about them and help to prevent identity theft.

Because these developments broadly affect the FTC’s work across the agency, we have created an internal FTC Blockchain Working Group. This working group builds on the significant work the FTC has already done on these topics. (See below for a catalogue of the FTC’s past work on cryptocurrency and related issues.) The working group has at least three goals. First, build on FTC staff expertise in cryptocurrency and blockchain technology through resource sharing and by hosting outside experts. Second, facilitate internal communication and external coordination on enforcement actions and other related projects. And third, serve as an internal forum for brainstorming potential impacts on the FTC’s dual missions and how to address those impacts.

We believe this working group is an important step to ensure the FTC can continue its missions to protect consumers and promote competition in light of cryptocurrency and blockchain developments. If you have any questions about the FTC’s Blockchain Working Group, please contact me at [nchilson@ftc.gov](mailto:nchilson@ftc.gov)

#### Inevitable volatility blocks widespread crypto adoption

Justin Muzinich 21, Distinguished Fellow at the Council on Foreign Relations, November/December 2021, “America's Crypto Conundrum,” Foreign Affairs, 100(6), pp. 129-141

One of the biggest risks posed by cryptocurrencies is that they could weaken the U.S. Federal Reserve's ability to set monetary policy. Although such a scenario is unlikely, a cryptocurrency such as Bitcoin could conceivably become a common enough medium of exchange that it puts a meaningful portion of the money supply beyond the Fed's control. In addition, although cryptocurrencies usually have predetermined formulas for coin growth or limits on the total number of coins, most allow a certain group of decision-makers, such as a majority of coin holders, to alter these protocols. As a result, coin holders, rather than central bankers, could end up deciding to increase or decrease the amount of digital currency in circulation.

So far, this is a theoretical concern. Despite being labeled "currencies," Bitcoin and its cryptocurrency brethren are mostly held as investment assets in the United States. Goods and services are not priced in Bitcoin, so most holders are using it as a substitute for assets such as gold or equities, sometimes as a hedge against inflation. One reason Bitcoin has not become a medium of exchange is that the Internal Revenue Service has said that any transaction involving digital currency is a taxable "realization event"-meaning that users need to pay tax on any gain in the value of Bitcoin between when they bought it and when they used it to purchase something. In other words, for tax purposes, Bitcoin is treated like stock, which makes it impractical to use as currency.

But even if the IRS were to change its view, Bitcoin and similar cryptocurrencies would not be widely used as a medium of exchange for a more fundamental reason: their price volatility relative to the dollar. The price of Bitcoin has varied widely in just the last year-from a low of less than $15,000 to a high of over $60,000 per coin. As a result, anyone pricing goods and services in Bitcoin would either have to accept this volatility risk or perpetually change their prices to maintain purchasing power in dollars.

#### No cyber impact.

Wirtz 18 James J. Wirtz, National Security Affairs professor at the Naval Postgraduate School, former Director of the Global Center for Security Cooperation at the Defense Security Cooperation Agency, Political Science PhD from Colombia, internally citing Cyber War versus Cyber Realities, a book by Brandon Valeriano and Ryan C. Maness. [Cyber War or Monkey Business? International Journal of Intelligence and CounterIntelligence, 31(2), Taylor and Francis]//BPS

Between 4 and 7 September 2001, I attended the First Biennial Threat Reduction Conference that was sponsored by the Defense Threat Reduction Agency in Norfolk, Virginia. One of the panels featured a debate about the likelihood of mass casualty terrorism in the United States. One panelist asserted that such an event was unlikely—the Aum Shinrikyo sarin attack being a case in point. Although well-funded and left relatively unmolested by the authorities, cultists managed to kill only 13 people when they released a nerve agent in the Tokyo subway. Thus, inflicting mass casualties, even with sarin, was not easily accomplished. The threat of mass casualty terrorism was being exaggerated by scholars and pundits alike, the panelist asserted, urging the conferees to instead focus on plausible threats. The other panelist agreed that Aum Shinrikyo was inept but offered the obvious counterpoint: just because something has not occurred in the past does not guarantee that it will not occur in the future. The next morning, I contemplated this wonderfully “academic” debate on a pleasant United Airlines flight from Dulles to San Francisco. Soon afterwards it occurred to me that when it comes to picking an itinerary or making observations about the future, timing is everything. DOUBTING THE THREAT HYPE Brandon Valeriano and Ryan Maness acknowledge the “timing” problem inherent in their well-reasoned and empirically based assessment of state cyber conflicts that occurred between 2001 and 2011. Nevertheless, in their view, cyber war is **mostly hype**, created by **over-imaginative academics** and **a cyber security industry ready to profit** from cyber anxieties. By contrast, their analysis reveals that, at least in the period considered, cyber conflict was limited in **both scope and severity**, and was largely characterized by espionage or hooliganism (defacement of government websites) that **generally produced no lasting impact**. They note that in the vast majority of cases the incompetence of the victim or the aid of a witting or unwitting accomplice had facilitated penetration of some system. Here the 2015 hack of the U.S. Office of Personnel Management, which compromised the personal information of just about everyone who had ever applied for or possessed a U.S. security clearance, comes to mind. The Stuxnet attack against Iranian centrifuges, an outlier in their database, is used to illustrate their fundamental point: that the use of cyber warfare to inflict real damage is **a rare** and **extraordinarily difficult endeavor** that is probably within the technical reach of only a few states. Valeriano and Maness also back up their empirical observations with some theoretical musings about why the reality of cyber warfare is out of step with the cyber hype surrounding the issue. Zero-day exploits (using heretofore unknown system vulnerabilities) are **fleeting in their efficacy**; once revealed, they are quickly rectified. Because they begin to lose their effectiveness soon after they are employed, the tendency is to keep one’s powder dry, so to speak. Moreover, aggressive viruses can either propagate uncontrollably across the Internet or be **repackaged** and **returned to the sender with unpredictable consequences**. Because predicting the impact of more aggressive cyber attacks is difficult, states tend to exhibit **restraint in their use of cyber weapons**. Put somewhat differently, weapons that are likely to produce collateral damage or even fratricide are **not readily embraced by military professionals**. Although the authors do not mention it, attitudes toward the use of cyber weapons seem to mirror the history of biological warfare. Unleashing contagion is highly unpredictable; weapons with unknowable effects have little military utility. They might produce their intended impact, but there is no telling how far disease might spread. Because the same can be said for cyber weapons, restraint characterizes the way states engage in cyber conflict. Another theoretical insight offered by Valeriano and Maness is that cyber conflict is both profoundly political and strategic. Conflict is centered on a set of enduring rivalries: India and Pakistan, China and Japan, Russia and member states of the former Soviet Union, the United States and China, and the United States and Iran. With the exception of Stuxnet, these incidents tend to be limited, matching the “short-of-war” levels of acrimony present in these relationships. These observations are important because some policymakers and scholars tend to focus on what might happen in cyberspace, not why it might happen. For instance, it is theoretically possible to temporarily bring down the power grid in the United States, or to disrupt the stock market, or to cripple the banking system, creating significant disruption or even loss of life. But in focusing on these scenarios observers fail to stipulate **the strategic purpose** or **the political setting** that would motivate the launch of a highly devastating cyber attack. Admittedly, for those on the front lines of cyber defense, it might appear that the world has descended into a feral state of nature as they monitor thousands of attempts daily to hack into protected networks. Nevertheless, Valeriano and Maness correctly note that no one has yet died in a cyber attack, a requirement needed to turn an incident into a “war.” In a political and strategic sense, the world has not yet witnessed cyber war.

## Bedoya

### Turns case

#### Bedoya confirmation key to rulemaking

Conley et al 1/19 Wiley Rein LLP: Stephen Conley, Duane Pozza, and Kathleen Scott. “‘An Avalanche of Rulemakings’ – The FTC Gears Up for an Active 2022.” January 19, 2022. <https://www.jdsupra.com/legalnews/an-avalanche-of-rulemakings-the-ftc-1324181/> {DK}

Much of the FTC’s Expansive Rulemaking Agenda Likely Hinges on Confirmation of a Fifth Commissioner

President Biden originally nominated Alvaro Bedoya on September 13, 2021 to fill the FTC Commissioner seat vacated by former Commissioner Rohit Chopra upon his confirmation as Director of the Consumer Financial Protection Bureau on September 30. Bedoya is the founding director of the Center on Privacy & Technology at Georgetown Law and previously served as the first Chief Counsel to the U.S. Senate Judiciary Subcommittee on Privacy, Technology and the Law. He faced opposition from Republican senators on the U.S. Senate Committee on Commerce, Science, & Transportation (Committee) during his November 17, 2021 confirmation hearing, but President Biden renominated him to the FTC Commissioner spot on January 4, 2022. He appears likely to be the swing vote on many of these proposed rulemaking initiatives – not just whether they will go forward, but also their scope and ambition if they do so.

## 2AC 1 - UQ

### Uniqueness – T/L

#### AND…

Ownbey 2-2-22 (Austin A.B. Ownbey, counsel in Foley Hoag's Business Department, practice focuses on antitrust defense, JD University of Michigan Law School, “Cybersecurity 2022 – The Year in Preview: Privacy Regulations at the FTC,” JD Supra, 2-2-2022, https://www.jdsupra.com/legalnews/cybersecurity-2022-the-year-in-preview-5608106/)

As we think about what 2022 may hold with regard to privacy and data security regulation by the Federal Trade Commission (FTC), we should first look back at some of the developments from last year that set the stage for this year. Just like 2021, it appears that the regulatory culture at the FTC this year will be heavily entangled with the political environment. Recent events suggest that while privacy and data security related reforms previously enjoyed bipartisan support, there are limits to that bipartisanship and not everyone agrees on the FTC’s role in crafting new privacy and data security regulations. One thing that remains to be seen is will the partisan disagreements derail the FTC’s efforts to draft new regulations or will the FTC press ahead anyway.

The Politics of Filling the Fifth Seat

To start the new year, President Biden renewed his nomination of Alvaro Bedoya, founding Director of the Center on Privacy & Technology at Georgetown Law School, to fill the vacancy at the FTC created by Rohit Chopra’s departure last year to take over as Director of the Consumer Financial Protection Bureau. The nomination had to be renewed because it hit an unexpected delay at the end of last year in the Senate Commerce Committee, when what many expected to be an unremarkable vote, instead turned out to be a party line vote with all of the Republicans voting against Bedoya’s nomination.

Earlier in the year, during Bedoya’s confirmation hearing, only a handful of Republicans expressed concern over his nomination and most Senators appeared content with Bedoya’s privacy expertise. Among those who expressed concern at the hearing was Sen. Ted Cruz (R-TX) who criticized Bedoya for tweets that Cruz insisted show Bedoya to be “a left-wing activist, a provocateur, a bomb thrower, and an extremist.” Despite these accusations, Bedoya repeatedly expressed his support for collaboration and highlighted his previous bipartisan successes as a Senate staffer, but that was apparently insufficient in assuaging the concerns because no Republicans voted in favor of confirmation and the committee deadlocked at 14-14.

After the vote, the Committee’s ranking member, Sen. Roger Wicker (R-MS), echoed Sen. Cruz’s concerns when he summed up the opposition to Bedoya by stating that there “has been a troubling trend of politicization at the FTC, which is different from how it has been in previous years.” Sen. Wicker went on to express a concern that Bedoya may not bring “the cooperative spirit to the commission” that has historically set the FTC apart from other agencies.

The deadlocked vote is even more remarkable when considering that Chair Khan, who has since become a source of controversy during her tenure at the FTC, was voted out of the same committee and confirmed by the full Senate earlier this year with significant Republican support. (Only four Republicans on the Commerce Committee voted against sending her nomination to the full Senate and 22 Republicans ultimately voted in favor of her confirmation.) However, now that Bedoya’s nomination has been renewed and despite a delay caused by the need for an extra procedural vote to clear the full Senate, his nomination is not dead. Since the Democrats control the Senate, Bedoya is still likely to be confirmed early this year.

The Winds of Change at the FTC

This shift towards partisanship is another signal that support for new federal privacy and data security regulations, which once seemed unified and bipartisan, may become a victim of the partisan divide. But the deadlocked vote over Bedoya’s nomination was not the first sign of trouble. Instead of a bipartisan Commission unified in its goal “to engage in sound, vigorous privacy and data security enforcement,” Bedoya may be joining a Commission already divided by partisan conflict over the very nature of what privacy and data security enforcement should look like.

#### It’s likely – BUT needs every Dem

DiMolfetta 1-31-22 (David DiMolfetta, Tech Policy Reporter, S&P Global Market Intelligence; **internally quoting Aurelien Portuese, director of antitrust and competition policy at the Information Technology and Innovation Foundation**; “Contentious FCC, FTC nominees face Senate Commerce Committee vote,” S&P Global Market Intelligence, 1-31-2022, https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/contentious-fcc-ftc-nominees-face-senate-commerce-committee-vote-68598408)

Two critical nominations for President Joe Biden's tech and telecom agenda will stand for a vote this week that will determine the likelihood of their confirmation.

Gigi Sohn and Alvaro Bedoya, selected by the White House as commissioners to the Federal Communications Commission and Federal Trade Commission, respectively, will face their nomination votes in the Senate Commerce Committee on Feb. 2.

If advanced to a full Senate vote, the nominees will be one step away from giving their respective agencies Democratic majorities. Both the FCC and FTC are locked in a 2-2 partisan split. The FCC, in particular, has been down one commissioner for over a year.

"We are now a year into the Biden Administration and the FCC has important work to do on broadband, public safety, and restoring the agency's oversight of our communications networks," Public Knowledge Government Affairs Director Greg Guice said in an email to S&P Global Market Intelligence. Guice added that Sohn's "expertise and experience" would greatly benefit the FCC as it tackles those issues.

From 2001 to 2013, Sohn served as the co-founder and CEO of Public Knowledge, a communications and intellectual property policy advocacy organization.

Sohn faces a difficult path to confirmation. Senators from both sides of the aisle have expressed pushback on confirming the progressive net neutrality advocate who served as an adviser to former FCC Chairman Tom Wheeler.

Moderate Democratic Senator Kyrsten Sinema of Arizona will be a major determinant in Sohn's path to the commissioner post. Sinema, who has tended to side with GOP colleagues on FCC matters, has criticized Sohn's pro-net neutrality views. Sinema's office did not respond to a request for comment by the time of publication.

Republicans have also questioned Sohn's tweets criticizing FOX News Channel (US). Sohn argued that her opinions as a public interest advocate will not have bearing on her policymaking decisions.

Sen. Roger Wicker, R-Miss., the Commerce Committee's chief Republican member, has called out Sohn for her involvement in now-defunct TV streaming service Locast, where Sohn served as a board member. Locast was found by a court to be illegally streaming broadcasts without permission or compensation.

In an effort to offset bias concerns, Sohn late last week wrote a letter to the FCC saying she would recuse herself from any commission items relating to retransmission consent and TV broadcast copyright for the first four years of her tenure, assuming successful confirmation to the vacant seat.

As for Bedoya, he testified last year before the Commerce Committee, touting his past consumer privacy advocacy efforts and his support for oversight of facial recognition technologies. His post-testimony approval vote in the Commerce Committee was met on party lines, and the Senate decided to not take up his confirmation vote. At the start of 2022, his nomination, as well as Sohn's, was re-upped.

Aurelien Portuese, director of antitrust and competition policy at the Information Technology and Innovation Foundation, told Market Intelligence that Bedoya's confirmation is likely. Portuese, however, has concerns about how Bedoya would change the agency's approach to consumer protection and antitrust enforcement.

"With Alvaro's possible confirmation as FTC Commissioner, the blurred lines between consumer protection and antitrust are likely to marginalize, if not undermine, the rule of reason inherent to antitrust rules at the expense of efficiency considerations raised by companies, and ultimately at the expense of consumer welfare," Portuese wrote in an email.

#### Currently, pressure on swing Senators tilts in favor of confirmation – BUT it’s only a question of the scope of opposition lobbying

Kelly 1-10-22 (Makena Kelly, policy reporter for The Verge covering net neutrality, data privacy, and antitrust, “The FCC’s still in a stalemate a year into Biden’s presidency,” The Verge, 1-10-2022, https://www.theverge.com/22876628/fcc-biden-ftc-gigi-sohn-alvaro-bedoya-rosenworcel-net-neutrality)

After nearly a year into Joe Biden’s presidency, new pressure is mounting on the Senate to expeditiously confirm nominations for positions at two of the federal government’s top agencies with control over broadband and data privacy.

In new statements issued on Monday, public interest groups Free Press Action and Fight for the Future called on the Senate Commerce Committee to fill the final seats at the Federal Communications Commission and the Federal Trade Commission. Both Gigi Sohn and Alvaro Bedoya, for the FCC and FTC, respectively, have finished their confirmation hearing processes, but neither nomination has received a final committee vote to set them up for floor confirmation.

“Americans are in desperate need of these consumer protection agencies as their dependence on affordable access to the open Internet has grown during the pandemic,” Fight for the Future said in a statement on Monday. “Industry insiders have openly admitted that they are pushing for these delays because it benefits their bottom line, at the expense of the public.”

With open seats at these agencies, the FCC and FTC are unable to press forward on any partisan measures or Democratic policy priorities, like net neutrality. Late last year, Jessica Rosenworcel was confirmed as FCC chair, but no votes have been lined up for Sohn, Biden’s pick as the last remaining Democratic commissioner. Democratic FTC Commissioner Rohit Chopra stepped down from the agency after he was confirmed to lead the Consumer Finance Protection Bureau in October, leaving the FTC at a 2-2 deadlock.

Biden renominated Sohn and Bedoya on January 4th, setting the nominations up for further consideration by the Senate Commerce Committee. According to Politico on Monday, the committee plans to vote on nominees on January 24th, and the markup may include Sohn and Bedoya, but the final agenda has not been released as of publication.

“There’s no time to waste and so much to get done at the FCC: ensuring the billions being invested in broadband actually reach those who need it most, restoring Net Neutrality and Title II, reckoning with media regulators’ history on race and repairing the damage of the Trump years,” Craig Aaron, Free Press Action co-CEO, said in a Monday statement.

As FCC and FTC nominations saw some movement in the Senate last year, Republicans like Sen. Lindsey Graham and The Wall Street Journal editorial board argued that Sohn was a telecom policy extremist.

“Gigi Sohn is a complete political ideologue who has disdain for conservatives. She would be a complete nightmare for the country when it comes to regulating the public airwaves,” Graham said in a tweet thread last November. “I will do everything in my power to convince colleagues on both sides of the aisle to reject this extreme nominee.”

So long as every Senate Democrat, including Sen. Joe Manchin (D-WV), votes in favor of both Sohn and Bedoya, no Republican support would be necessary to confirm them.

## 2AC 2-3 – Thumpers

### AT: Thumper – T/L

#### NO thumpers – deadlock forces restraint – which necessarily prices in ANY and ALL prospective controversies from the existing agenda, because NONE OF IT has actually been enforced yet, which is the whole point

Hoffman 1-11-22 (D. Bruce Hoffman, partner at Cleary Gottlieb, practice focuses on antitrust enforcement, former Director of FTC’s Bureau of Competition, JD University of Florida Levin College of Law; and Henry Mostyn, partner at Cleary Gottlieb, practice focuses on EU and UK competition law, BPP Law School – London; “U.S. & EU Antitrust: Developments and Outlook in 2022,” 1-11-2022, https://www.clearygottlieb.com//news-and-insights/publication-listing/us-eu-antitrust-developments-and-outlook-in-2022)

The FTC in 2021 was characterized by staff and leadership turmoil, controversy and at least the appearance of a significant shift in agency priorities and practices. Initially, under Acting Chair Slaughter, the FTC largely continued its longstanding consensus-driven approach to antitrust, albeit with some aggressive statements on various issues from the Acting Chair and fellow Democratic Commissioner Rohit Chopra. That approach changed substantially with Lina Khan’s ascension to the position of FTC Chair.

Khan, a headliner antitrust progressive most famous for her criticism of Amazon and of the view that antitrust should focus on protecting consumers from higher prices or reduced output, was originally nominated by the President to be a Commissioner; no mention was made of her being Chair. Yet, to the surprise of observers and (as we understand it) much of the Senate, immediately after she was confirmed as a Commissioner the President designated her as Chair – an important distinction, because the FTC Chair controls the day-to-day administration of the FTC. Khan, with a three-Commissioner majority, moved swiftly to alter FTC practices in several areas:

Streamlining the process of adopting trade regulation rules and initiating discussion of several possible rules, notably including unprecedented rules on competition (such as on exclusive contracts, discounts and other widespread contractual practices)

Streamlining procedures for issuing compulsory process and eliminating the normal requirement of Commission votes for process in a wide range of cases

Rescinding longstanding bipartisan FTC guidance on antitrust enforcement to reflect a more regulatory, aggressive philosophy

Withdrawing from the recently adopted Vertical Merger Guidelines, leaving the FTC differently situated from the DOJ and with no clear guidance on vertical mergers.

Interestingly, though, these and other aggressive steps were not accompanied by an uptick in case filings (either initially under Acting Chair Slaughter or subsequently under Chair Khan); in fact, FTC case filings declined from the levels set under the Trump administration.

In any event, following this initial spate of activity, the progressive agenda has been slowed by the departure of Commissioner Chopra to serve as Director of the Consumer Financial Protection Bureau. While Commissioner Chopra cast a number of so-called “zombie votes” enabling the Commission to move forward on a limited number of issues after his departure, the Commission now has only four Commissioners, and so any controversial steps will have to wait until another Democratic Commissioner is confirmed, since the two Republicans can block new Commission actions they don’t support.

As a result, Commission action in the near future will either involve consensus – such as the study of supply-chain disruptions launched in December 2021, or the recently-filed challenge to the merger of NVIDIA and Arm – or areas in which the Chair and Bureau Directors can act without a vote, such as in issuing Second Requests triggering in-depth reviews of mergers (but actual challenges to mergers or consent decrees will require Commission votes, and thus at least some Republican support).

The President has nominated Alvaro Bedoya, a Georgetown law professor and privacy expert, to the Commission; however, his nomination (though supported by all four current FTC commissioners) drew significant opposition in the Senate and failed to advance in 2021. The President has just renominated Bedoya, re-starting the confirmation process. While we think it is still more likely than not that he will be confirmed, it may take several months for the process to play out.

So what will we see from the FTC in 2022? Initially, enforcement action in the form of consent decrees and litigated cases will likely be limited to consensus cases, given the 2-2 Commission split. Chair Khan has used the tools at her disposal to delay the review of some mergers, to launch full Second Request investigations of mergers that on their face don’t appear to raise competition issues and to issue threatening-sounding though legally insubstantial letters to merging firms reminding them that HSR clearance doesn’t mean that the merged firm is immune from antitrust scrutiny. We expect those trends to continue, even if they don’t result in enforcement action in the near term. While FTC staff has been subjected to a gag order and barred from public speaking since Chair Khan’s arrival, limiting insight into the FTC’s position and practices, we expect the limited public statements from the FTC to continue pushing for a progressive agenda. This will likely include criticizing large firms, touting the virtues of deconcentrating markets and expressing a general skepticism of mergers.

### AT: Thumper – Khan / Overreach Inevitable

#### Deadlock stalled all controversial agenda items – can’t move without Bedoya

Davis 1-28-22 (Wendy Davis, Senior Writer at MediaPost, “Senate Committee To Vote Wednesday On FTC, FCC Nominees,” MediaPost, 1-28-2022, https://www.mediapost.com/publications/article/370721/senate-committee-to-vote-wednesday-on-ftc-fcc-nom.html)

The Senate Commerce Committee has scheduled a vote for Wednesday on whether to approve the nominations of Gigi Sohn to the Federal Communications Commission and Alvaro Bedoya to the Federal Trade Commission.

President Biden nominated Sohn and Bedoya last year, but the Senate didn't confirm either before the session ended, leaving both the FTC and FCC deadlocked with two Republicans and two Democrats. Until a fifth, tie-breaking commissioner joins both agencies, they're not likely to advance the more controversial items on their leaders' agendas -- including FCC Chair Jessica Rosenworcel's plan to restore the Obama-era net neutrality rules.

## 2AC 4 – Plan Solves

### AT: N/L – T/L

#### 2 – FTC’s PC – is finite and key – intensifying centrists’ concerns about overreach is fatal

Salvino 11-1-21 (Mary Ashley Salvino, Cybersecurity Lawyer and Privacy & Data Security Professional at Bloomberg Law, CIPP/US, CIPM, member of the DC Bar, JD City University of New York School of Law at Queens College, “ANALYSIS: How Will the FTC Get Its Privacy Mojo Back in 2022?” Bloomberg Law, 11-1-2021, https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-how-will-the-ftc-get-its-privacy-mojo-back-in-2022)

Leveraging Democratic Political Capital

The odds are likely that the FTC will seek to optimize and strengthen its authority via its new left-leaning leadership. Lawyers should keep an eye on how the FTC leverages and aligns political capital in a way that maximizes innovation and cooperation with Democrats in Congress. Be ready for a robust rulemaking effort by the FTC, accompanied by a strong push for uniform privacy legislation.

The confirmation of Alvaro Bedoya as an FTC commissioner will likely give the FTC new leadership and momentum to focus on alternative rulemaking in consumer privacy protection. Additionally, Lina Khan, the new FTC chairwoman, has expressed interest in forging new antitrust rules, which could extend to creating additional privacy rulemaking.

In terms of political calculus, a strengthened regulator faces the same bipartisan gridlock characterized by a divided Congress. Yet legal practitioners should be aware of a growing momentum on both sides of the aisle, seeking more stringent regulations on unbridled Big Tech firms, as well as emerging nonpartisan sentiments toward seeking protection for children online.

Exploring Unprecedented Funding Initiatives

On Sept. 14, the House Committee on Energy and Commerce voted to appropriate an unprecedented $1 billion over 10 years to the FTC to establish and operate a new privacy bureau. Such an infusion, if passed by Congress, would instantly transform the FTC’s ability to effectively regulate unfair or deceptive acts or practices relating to privacy, data security, and data abuses. To put this infusion into perspective, it is critical to compare to FTC’s privacy budget for 2021 ($13 million) to its overall budget of $351 million.

Looking forward to 2022, it is likely that continued political alignment will be necessary to reinforce (and perhaps even expand) the FTC’s data privacy enforcement power. However, proponents of the FTC funding boost will need to reckon with rigorous bipartisan scrutiny in the Senate, as well as fierce opposition skepticism by Republicans and centrist Democrats alike. At the very least, proposals will face serious funding trimming, and even full-throated opposition, by legislators concerned about agency overreach.

## 2AC 5– DOJ and USDA

### DOJ Fails

### AT: USDA Solves

#### USDA fails – capture ensures circumvention

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

Introduction

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

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

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

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

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

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

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

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

Section I – Passing Through the Revolving Door

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

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

## 2AC 6

### A2: “Card’s about Garland”

#### DOJ can’t substitute – similarly circumventing Biden’s agenda – confirmation failure dooms solvency

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

The Biden administration is threatening new anti-monopoly enforcement actions against the Big Four meatpacking companies, in part to counter inflation at the grocery store and in part to address decades of exploitation of small farmers. On Monday, the president dispatched Agriculture Secretary Tom Vilsack and Attorney General Merrick Garland to hear grievances from small ranchers, while the White House builds a new web portal to gather complaints. While the White House’s proposals for funding small meat processors to increase competition are rather unsatisfying, the enforcement piece could have a real impact.

This initiative has caused the usual grumbling from neoliberal economists, and the usual corrections to the usual grumbling. But no one has yet explained how Biden plans to actually follow through on his threat—a problem for which Garland is partly to blame.

As The Information’s Josh Sisco reported on Tuesday, there are currently just two deputies trying to manage the entire DOJ Antitrust Division (ATR) alongside Assistant Attorney General Jonathan Kanter, who was confirmed only two months ago. ATR typically has at least 12 deputies and top advisers in the “front office” who oversee about 700 career staffers. And that was under past administrations, which didn’t have nearly as ambitious an antitrust agenda as Biden’s. Reversing four decades of Borkian antitrust sloth requires a cohesive and energetic senior leadership team.

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

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

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

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

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

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

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

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

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

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

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

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

#### DOJ fails

Brown 21 (Krista Brown, Senior Policy Analyst at the American Economic Liberties Project, former research associate at Open Markets Institute, helped draft amicus briefs in support of FTC’s suit against Qualcomm, BA economics, concentration in mathematics, Colby College; Pat Garofalo, Director of State and Local Policy at AELP; Lucas Kunce, Director of National Security Policy at AELP; Sarah Miller, Executive Director at AELP; Matt Stoller, Director of Research at AELP; Matt Buck, Kalen Pruss, Reed Showalter, and Olivia Webb, Fellows at AELP; “The Courage To Learn: A Retrospective on Antitrust and Competition Policy During the Obama Administration and Framework for a New, Structuralist Approach,” American Economic Liberties Project, January 2021, https://www.economicliberties.us/wp-content/uploads/2021/01/Courage-to-Learn\_12.12.pdf)

However, the USDA caved to industry and congressional pressure at critical moments, stalling and diminishing a promising slate of reforms. At the DOJ, despite powerful rhetoric from its leaders, the final report from its Antitrust Division disavowed much of a role for antitrust enforcement in addressing meatpackers’ and other agribusinesses’ enormous power. The administration eventually passed watered-down PSA rules in 2016 just before leaving office. All the while, DOJ failed to bring any significant cases against agribusiness after collecting ample evidence of illegal and unfair conduct from farmers, quietly closed an investigation into the seed and agrichemical industry, and even filed a legal brief in court supporting Monsanto’s ability to control farmers’ seed use.

# 2NR

### 2NR---AT: Gas Prices Thumper

#### The oil and gas announcement is a nothingburger – and everyone knows it

Cyran 11-19-21 (Robert Cyran, reporter at Breakingviews, Reuter, and columnist for Wall Street Journal, “Biden shoots antitrust blank at oil giants,” Reuters, 11-19-2021, https://www.reuters.com/breakingviews/biden-shoots-antitrust-blank-oil-giants-2021-11-18/)

Politicians everywhere know rising gasoline prices spell trouble. Just look at France’s "yellow vest" protests that started in 2018 against a planned rise in gas taxes. U.S. President Joe Biden has responded to recent high fuel costs by asking the Federal Trade Commission to look for evidence of anticompetitive behavior read more . He's shooting a blank, but it's a political necessity even if it conflicts with his bigger goals.

Similar tactics were even used by Biden’s oil-friendly predecessor George W. Bush, who ordered the Department of Justice to examine price gouging by energy firms back in 2006. Yet while Exxon Mobil (XOM.N) and Chevron (CVX.N) might double their net income this year compared to 2019, as Biden’s letter to FTC Chair Lina Khan points out, it’s almost certainly not because of collusion. Oil is a global commodity, and even America's biggest players are usually price takers.

Moreover, U.S. antitrust regulators are aware the market is competitive. Khan may see more risks than her predecessors have, but the FTC hasn’t stood in the way of a major oil merger in two decades.

#### These symbolic gestures happen all the time and companies are not threatened

Epstein 11-17-21 (Jennifer Epstein, Bloomberg News, “Biden Urges FTC to Probe Gasoline Market With Prices Up 50% (1),” Bloomberg Law, 11-17-2021, https://news.bloomberglaw.com/antitrust/biden-asks-ftc-to-probe-gasoline-market-suggesting-wrongdoing)

Biden wrote to Khan as Americans are feeling the effects of higher prices across much of the economy, an issue that’s also hurting him politically as his poll numbers continue to sag. The October consumer price index was up 6.2% from a year earlier, with energy costs a major driver. Gas prices were up 49.6% from October 2020.

But his letter is mostly symbolic. It’s not uncommon for state and federal regulators to open investigations of gasoline prices when they soar. Few of those probes translate into real action.

A White House official said the agency could decide to begin an investigation to collect data on how gas companies set prices, as well as data on actual pricing. Biden asked the commission to “further examine what is happening with oil and gas markets, and that you bring all of the commission’s tools to bear if you uncover any wrongdoing.”

The president said in his letter that “prices at the pump have continued to rise, even as refined fuel costs go down and industry profits go up.” He alleged an “unexplained large gap between the price of unfinished gasoline and the average price at the pump” relative to pre-pandemic differences.

Average prices at the U.S. pump have indeed soared to the highest levels in seven years, based on AAA data. But that’s primarily because of a run-up in crude prices as opposed to a disconnect between wholesale and retail gasoline markets. Oil prices account for well over half of the cost of gasoline. And while pump prices have surged 51% this year, oil futures have climbed even more -- by 65%.

It’s unclear what unfinished gasoline price Biden was referring to in his letter to the commission, but wholesale gasoline prices in the U.S. Gulf Coast, where much of the nation’s refining occurs, are up nearly 62% this year.

Biden’s message to Khan follows an August letter from White House National Economic Council Director Brian Deese urging that the FTC monitor gasoline markets and address any illegal conduct that might be increasing prices. After that, Khan directed her agency to ramp up its oversight of mergers in the oil and gas sector, a move the White House official said had already slowed the pace of mergers.

### 2NR---AT: Antitrust Legislation THumper

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

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

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

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

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

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

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

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

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