# 1AC

# 1AC---Round 3---Texas

## Plan---1AC

The United States federal government should substantially increase its prohibitions on anticompetitive business practices by the private sector by at least expanding the scope of its core antitrust laws to account for competition-related harms to privacy.

## Openness---1AC

Advantage One is Internet Openness:

#### It’s under siege due to widening divergence between antitrust and privacy law---shoring up domestic capability to protect consumers prevents transatlantic splinternet.

Mehra ’20 [Salil; 2020; Professor of Law at Temple University; Cornell International Law Journal, “Data Privacy and Antitrust in Comparative Perspective,” vol. 53]

II. Consumer Data, Privacy Regulation, and Antitrust

Due to the increasing salience of business models built on gathering massive amounts of consumer data, antitrust enforcement will likely continue to confront privacy issues. As a non-price competitive dimension, in connection with price discrimination, or as an entry barrier, consumers’ privacy interests will determine how antitrust enforcement construes and handles claims built on these theories. But the definition of consumers’ privacy interests will also matter. An increasing source of tension between U.S. and EU antitrust approaches may emerge in the form of divergent privacy regulation.

A. Consumer Data and Privacy Regulation

How to govern consumer data has been a topic of debate since the early days of what was then referred to by now-quaint names such as “Cyberspace” and the “World Wide Web.”61 Clearly, different levels of protection for consumer privacy are emerging on each side of the Atlantic. Simply put, there is no U.S. equivalent to the EU’s GDPR.62

While a thorough review of the GDPR is beyond the scope of this Article, it can be seen as the culmination of a two decade-long discussion on how to handle online privacy. Perhaps the first prominent proposal was by Lawrence Lessig, who considered how to handle the sharing of personal data across websites. In the late 1990s, he advocated for a system in which rights to personal data would be allocated to users like property.63 Users would then transact with websites via software protocols that would manage or restrict the use of their data.64 Embedded in this regime was the conception of “cyberspace” as a world with minimal transaction costs, resembling the world of the Coase theorem, in which all that was needed was clear property rights since voluntary transactions could then achieve the efficient result.65

In contrast to Lessig’s distinctly Coasean vision, Paul Schwartz advocated for a mixed-property liability regime.66 Like Lessig, Schwartz’ proposal would involve allocating users with property rights to their personal data.67 However, unlike Lessig’s, it would also involve restrictions that “run with” that property right even after the transfer, particularly the right to block further transfers of personal data beyond the initial one.68 Such right could be waived, but only with affirmative consent.69 Schwartz’s regime drew on the landmark work of Guido Calabresi and Douglas Melamed, which counseled for property rules with few obstacles in order to facilitate voluntary cooperation between parties, and liability rules where such obstacles do exist.70 Schwartz saw user privacy as demanding a degree of restriction on inalienability, but not enough to prevent some trade in personal data— hence, the hybrid regime.71

Arguably, with the GDPR, the EU has adopted something resembling Schwartz’s hybrid regime.72 The GDPR gives “consumers . . . clear entitlements to their own data; the data, even after it is transferred, carries. . . [restrictions] that ‘run[ ] with’ it and bind[ ] third parties; and consumers are protected” with affirmative remedies for violations.73 By contrast, the closest thing to the GDPR in the U.S. may be the California Consumer Privacy Act of 2018 (CCPA).74 However, the CCPA has not been implemented yet, and it faces pending federal legislation to overrule it.75 Moreover, even if the CCPA were to survive, it would be complicated to use it as a baseline to understand privacy issues germane to federal antitrust law. Accordingly, at least for the foreseeable future, the GDPR represents a significant difference in the understanding of privacy norms and expectations between the U.S. and the EU.

B. The Antitrust Impact

As discussed in Part II above, privacy can be an antitrust concern, whether as a producer’s non-price output, as a price-discriminator’s input, or as an entry barrier to new competition. Because of the current transatlantic divergence in privacy protection, each of these three examples of privacy-antitrust issues can lead to antitrust divergence. Interestingly, this divergence could take different forms depending on the nature of the antitrust concern involved.

First, where privacy is a non-price dimension of competition, antitrust enforcement could result in tension over whether or not injury to competition from certain conduct or merger actually exists. To conclude that a consumer’s ability to protect their privacy has been harmed requires a definition of what consumer data should be protected by rights to privacy. Moreover, without a conception rooted in something like the GDPR allowing consumers to exercise sovereignty over their personal data, a conduct or merger that erodes consumers’ ability to govern their data might not be viewed as significant enough to merit anti-competitive concern. In the context of non-price competition, differing underlying notions of privacy could yield different outcomes even when using similar antitrust methods.

Second, where consumer price discrimination is viewed as an antitrust concern, privacy protection could lead to a form of antitrust “Splinternet.” To the extent that the GDPR prevents the collection of consumer data necessary to accomplish sophisticated price discrimination— and that the lack of similar legislation in the U.S. fails to prevent that data collection— we could see advanced forms of price discrimination, or individually targeted offers, emerge in the U.S. and not in the EU. As a result, depending on the reception of U.S. antitrust authorities to price discrimination based theories of consumer harm, we could see the development of a price discrimination antitrust regime in the U.S. without an EU analogue.

Finally, gathering of consumer data as an anti-competitive barrier to entry could yield a degree of harmonization. There is no area of antitrust law with more effort toward harmonization, competition agency investment, and concrete results than merger review. Regarding mergers of transnational firms, antitrust agencies in the U.S. and the EU already consider the competitive impacts of activities outside their own territory.76 As a result, the ability of consumer data collection to serve as a barrier to entry can be a source of antitrust action even where that data collection takes place abroad. Accordingly, it would not be surprising to see agreement between U.S. and EU approaches to data-related mergers— not just generally, but also in specific cases— since the source of the entry barrier need not necessarily matter to the enforcer.

Conclusion

Despite some differences, antitrust approaches on both sides of the Atlantic are characterized by a high degree of harmonization. However, a significant gap has developed in understanding consumer privacy, at least if legislative protection is used as a baseline. Due to the increasing importance of consumer data gathering to contemporary business models, consumer privacy will likely become a relevant antitrust consideration, at least in the facets discussed, but likely, in other aspects as well. As a result, some divergence in cross-Atlantic antitrust enforcement is also possible given the disparate approaches to privacy.

#### Data security vulnerabilities are concentrated in the private sector, empowering authoritarian assaults on internet openness AND deployment of Chinese AI.

Mansted ’19 [Katherine and Eric Rosenbach; September 17; Senior Adviser for Public Policy at the Australian National University’s National Security College; Co-Director of the Belfer Center at the Harvard Kennedy School and Former Assistant Secretary of Defense; Foreign Affairs, “How to Win the Battle Over Data,” <https://www.foreignaffairs.com/articles/2019-09-17/how-win-battle-over-data>]

The United States has yet to show up to this information fight. U.S. cyberstrategists prioritize defending physical infrastructure—routers, servers, and endpoint devices such as laptops and smartphones—but consistently underestimate the economic and political significance of the information carried on that infrastructure. The U.S. private sector, which rarely acts in the American national interest, is primarily responsible for protecting data and information platforms.

It can be tough to craft regulations and national security policies for data and technology that do not fall afoul of democratic and capitalist values. A national information strategy can sound, or indeed become, Orwellian without the right political leadership. But to thrive in the twenty-first century, democracies must now put information at the center of domestic, security, and foreign policy.

Marshaling Data

Russia’s interference in U.S. elections may be the most well-known case of a state using sensitive political and social information to attack another, but it is by no means the only example. In 2014, Chinese hackers stole the personal information of more than 22 million people connected to U.S. security clearance processes. That breach not only demonstrated the vulnerability of U.S. government systems to hostile actors but also provided China with a tremendous resource. China could use the stolen data to profile and target U.S. officials and their families. It could also use the “clean” and highly structured data to train the algorithms that power military-related artificial intelligence projects, sharpening the weapons in its cyberwar arsenal.

For similar reasons, China sponsors the theft of commercial data. Security officials believe that the data breach that rocked credit reporting giant Equifax in 2017—in which hackers stole the financial and personal information of approximately 147 million Americans—originated in China. That stolen U.S. information can make up for gaps in China’s own datasets. Although consumers provide plenty of data to Chinese e-commerce giants, China’s financial and health-care industries are threadbare compared to their U.S. counterparts. The Equifax operation provided the Chinese with detailed, organized information on nearly half the American population. Neat, easily searchable data, however acquired, is vital for companies to train artificial intelligence applications for both military and commercial use.

No advanced economy boasts a national artificial intelligence strategy more mercantilist than China’s. Beijing seeks to lead the world in this area by 2030. Xi’s doctrine of civil-military fusion yokes together the research efforts of private corporations, China’s military industrial base, and the intelligence agencies of the People’s Liberation Army. China subscribes to the zero-sum ethos of data competition; states want to acquire data from others, while limiting access to their own data. To that end, China, India, Russia, and other countries have introduced tough data localization laws to prevent companies from taking certain types of information across national borders.

In the private sector, access to data tends to create a virtuous cycle: more data lets companies build better applications, which makes them more profitable and allows them to harvest and monetize even more data. The dynamic explains why information giants, like Alibaba, Amazon, Facebook, Google, and Tencent are monopolies. But this commercial logic also prompts states to think in zero-sum terms.

The United States should prepare for the prospect of authoritarian regimes ramping up cyberattacks against the databases of its major companies. If China, for instance, wanted to boost its own national champion as the dominant player in a particular market, even a minor cyberattack against a rival firm could be very damaging. Stealthily disrupting or “poisoning” inputs through a data-integrity attack or by manipulating the quality-control algorithms that govern industrial processes and the delivery of products could result in inferior, potentially harmful outcomes. Before an affected company even detects this kind of attack, it could face numerous economic, legal, and reputational problems, losing consumers and becoming dislodged from supply chains.

Data-driven machine learning systems now assist decision-making in many areas of the private and public sectors. A data integrity attack does not even need to be successful to be catastrophic. The perception that an organization’s data is poisoned and its decision-making processes corrupted could reduce public trust in a company, in a government agency, and even in democratic process.

Since the Internet was introduced in China in the 1990s, China has developed the world’s most sophisticated system of network control, censorship, and propaganda, and has maintained heavy restrictions on market access for foreign media and technology companies. Russia is following China’s lead. During recent protests in Moscow, authorities jammed mobile Internet access in the city to keep protestors from communicating with one another. In a more ambitious gambit, Russia plans to test a procedure that would altogether disconnect Russian Internet users from the global Internet. Even the United Kingdom’s Ministry of Defense has warned that democracies may need to step back from a commitment to the open Internet and consider “national or regional cyber borders.” Such moves would unwind decades of economic liberalism, fragment the relative openness of current information flows, and give rise to suspicion and animosity. Unless the United States can chart a different course, the world might stumble down this path.

#### Splinternet collapses multilateral governance of transboundary risks---extinction. Asserting U.S. leadership solves.

Feldstein ’20 [Steven and Peter Pomerantsev; February 10; Senior Fellow at the Carnegie Endowment for International Peace’s democracy, conflict, and governance program; Senior Fellow at the SNF Agora Institute at Johns Hopkins University where he co-directs the Arena Initiative; American Purpose, “Democracy Dies in Disinformation,” <https://www.americanpurpose.com/articles/democracy-dies-in-disinformation/>]

President Joe Biden says he wants to renew America’s democratic alliances. He has outlined a new foreign policy agenda, which aims to reinvigorate democratic values and provide stronger competition to rising authoritarian powers. His administration writes about fighting kleptocracy and climate change, conquering inequality, and standing up for human rights. There’s talk about a “Summit for Democracy” to promote the new agenda.

None of it can succeed, though, without an information environment that allows arguments to be won with evidence and allows citizens to deliberate about significant issues in a full, free, and fair conversation. Such an environment does not exist today in the United States or most other democracies.

Donald Trump’s defining technological legacy was to demonstrate the vulnerability of citizens of democracies to digital exploitation. As President, he displayed a shrewd ability to manipulate our fractured information environment to his personal advantage, promoting a mix of extreme voices that inflamed polarization and nearly propelled him to a second term.

Our authoritarian adversaries, meanwhile, are busy pursuing their own information strategies. China and Russia have defined their “cyber sovereignty” agendas, based on the idea that countries are entitled to make their own rules for governing the internet even if those rules violate universal principles like human rights. U.S. efforts to oppose them have so far been contradictory and confused.

Trump may have ramped up rhetorical confrontation with China. In private, however, he undercut his public posture, telling Xi Jinping that the Chinese ruler should “[go ahead](https://www.wsj.com/articles/john-bolton-the-scandal-of-trumps-china-policy-11592419564)” with the building of concentration camps for Uighurs. Unsurprisingly, Trump’s messaging failed to unite democratic allies around a common agenda. When Trump did push back against the Chinese tech industry, he [adopted some of the same practices](https://www.scmp.com/comment/opinion/article/3105716/forcing-tiktok-sale-us-taking-page-out-chinas-playbook) for which he had criticized Xi, like impulsively banning China’s WeChat and TikTok apps from the U.S. market and pressing TikTok to offer itself for sale to a Trump [political supporter](https://www.vox.com/recode/2020/9/14/21437060/tiktok-trump-us-oracle-bytedance-china).

Trump tried to portray our tech competition with China as a matter of “their side” or “our side;” but since the sides were not defined by common values or even interests, it just looked like bullying, with no power to win over allies. Instead, many in the EU started to view China and America as equally bad options.

After Biden’s presidential victory, the EU [leaked a memorandum](https://www.ft.com/content/e8e5cf90-7448-459e-8b9f-6f34f03ab77a) arguing that national tech policies should be unified by “shared values.” Incoming Secretary of State Antony Blinken has said something [similar](https://www.washingtonpost.com/technology/2020/11/16/biden-huawei-trump-china/), describing “techno-democracies” that must work together to defend their values against the world’s “techno-autocracies.” But what are these values? Do we know what a democratic information environment looks like anymore?

It used to be pretty easy to define the difference between a democratic information environment and a dictatorial one. They had censorship and state-controlled media; we had freedom of speech, pluralism, and the “marketplace of ideas.”

Today, in contrast, dictators don’t just censor by constraining the amount of media content: They exploit freedom of expression to flood the environment with so much disinformation that the truth is swamped, a sort of censorship through noise. Some of the most egregious cases occur in democracies like Brazil or the Philippines. Even in Russia and China, leaders don’t just restrict communication but overload or flood information channels. Pluralism, meanwhile, displays a polarization so extreme that it destroys the possibility of a shared reality, let alone a “marketplace of ideas.”

Delineating Rights

America, of course, is in no position to lecture anyone on the subject of disinformation or tech regulation. Instead, there is a risk that democracies will fracture even further, into “splinternets,” unable to coordinate norms and standards. If so, it will become still easier for authoritarians to set their own rules. Or, if the EU continues with projects like its proposed digital regulations to govern data privacy, platform accountability, and the economic power of “gatekeeping” internet companies, the process could shift Europe away from the U.S. tech sphere. In fact, if growing numbers of countries see little cost to devising their own rules, the world could see a cyber race to the bottom.

The best current ideas in this field come from smaller frontline states, like Estonia and Taiwan, for which finding a way to design an open yet secure information environment is often existential. But without the United States, it will be hard to make real progress.

#### Authoritarians will weaponize AI---nuclear war through accidents AND intentional aggression.

Saalman ’20 [Lora; April 14; Associate Senior Fellow within SIPRI’s Armament and Disarmament and Conflict, Peace and Security, Ph.D. from Tsinghua University; East-West Center, “The Impact of AI on Nuclear Deterrence: China, Russia, and the United States,” <https://www.eastwestcenter.org/news-center/east-west-wire/the-impact-ai-nuclear-deterrence-china-russia-and-the-united-states>]

Roles are shifting

The US remains one of the largest drivers of AI and nuclear trends. In part this is because the US system is relatively transparent, thereby eliciting countermeasures and imitation. It also stems from the history of US military deployments in East Asia and elsewhere.

US development of unmanned combat aerial and underwater vehicles, as well as spaceplanes, has raised the attention of Russia and China, given their longstanding concerns over US attempts to gain an absolute strategic advantage. Not surprisingly, both Russia and China have engaged in similar, and in some cases more expansive and unpredictable, AI-driven weapons developments and deployments of their own.

The Chinese military has been leveraging AI research and development in private industry and universities under “military-civil fusion” (军民融合), with a focus on autonomous decision-making, early-warning, guidance, and targeting systems optimized by machine learning. China has also worked to integrate neural networks that can enhance the maneuverability of its hypersonic glide vehicles and unmanned underwater and aerial vehicles. These are currently thought to be platforms for conventional weapons, but they could serve as AI-enabled nuclear platforms in the future.

While Russia was late in releasing its national AI strategy, it has made strides in developing and testing a suite of AI-enabled platforms and gearing them toward nuclear delivery. These include an AI-equipped missile-carrying bomber, hypersonic glide vehicles that can deliver both nuclear and conventional payloads, and a nuclear-powered unmanned underwater vehicle that will reportedly carry a nuclear weapon. Unlike China that has hedged on the ultimate payload of its platforms, Russia has been much more explicit about its intention to use these systems for nuclear weapons.

Such Chinese and Russian advances have overturned the traditional view that these two countries are simply responding to the US. As revealed by the 2018 US Nuclear Posture Review and the growing interest in low-yield submarine-launched ballistic missiles (SLBMs) and cruise missiles (SLCMs), the US is increasingly reacting to China and Russia. China’s hedging on the ultimate payload and future aims of its hypersonic (DF-ZF) and unmanned systems, as well as Russia’s substantial tactical nuclear assets and projects to enhance survivability and nuclear delivery, such as the Poseidon (Status-6) unmanned underwater vehicle, are driving US strategic evolution.

Arms control mechanisms need to be revitalized

In light of these developments and threat perceptions, unmanned weapons platforms controlled by AI systems could increase the risk of nuclear escalation, in particular through the unintentional or intentional collision of unmanned vehicles. Despite these emerging challenges, current arms control mechanisms remain mired in decades of historical grievances. Both the multilateral Non-Proliferation of Nuclear Weapons (NPT) Review Conference and the largely stalled bilateral China-US and Russia-US strategic dialogues are plagued with ossified definitions of weapons platforms and nuclear deterrence.

#### Data authoritarianism causes global miscalculation, information wars, and cascading tech vulnerabilities---extinction.

Manstead ’20 [Katherine; May 28; Nonresident Fellow at the Alliance for Securing Democracy and Senior Adviser for Public Policy at the Australian National University’s Security College; Alliance for Securing Democracy, “Strong Yet Brittle: The Risks of Digital Authoritarianism,” <https://securingdemocracy.gmfus.org/wp-content/uploads/2020/05/Strong-Yet-Brittle-The-Risks-of-Digital-Authoritarianism.pdf>]

The Vulnerabilities of Digital Authoritarians

While digital authoritarianism can enhance regime durability and national power, it also introduces deep-seated vulnerabilities, eight of which are considered below. Significantly, digital authoritarians may find themselves in a state of constant contest with other regime types, trapped in cycles of overreach and backlash, and prone to strategic miscalculations that pull them into interstate conflict. The current turn to digital authoritarianism therefore also has broader implications for international peace and stability.

Brittle Legitimacy

Reliance on information control makes authoritarians brittle. Small chinks in their information control armor could have existential consequences, particularly during political or economic crises (i.e. when the regime needs to rely on control for legitimacy because it is not delivering for citizens). The information and ideas most dangerous to authoritarians include:

* the identity of opposition groups and leaders and their levels of support; 17
* technical means for subverting control of communications and surveillance technologies; 18
* ideas about values that transcend state sovereignty, such as liberalism and human rights; 19
* evidence that the central government is not delivering efficient outcomes; 20 and
* ideas that undermine the myths and narratives used to legitimize authoritarian rule or the power of the ruling elite. 21

Constant Contest

Since technologies and ideas are dynamic, the battle for information control is a constant struggle. It can never be ‘won.’ Authoritarians are therefore in a perpetual state of information warfare, inside and outside their regime, and feel perpetually insecure. This dynamic may lead authoritarian governments to assess that it is worth engaging in information or cyberattacks to discredit liberal ideas at their foreign source or to shape or disable systems that jeopardize their information control—despite real risks of conflict escalation and global pushback.

Overreach and Backlash

The fundamental importance of information control to authoritarians increases the likelihood of overreach, leading to cycles of backlash and reprisal. Many perceive China’s heavy-handed narrative warfare in Hong Kong and confrontational efforts to control narratives about coronavirus to be strategic missteps. For example, CCP efforts to stifle dissent by punishing online gaming company Blizzard and the National Basketball Association (NBA) arguably aided Hong Kong protester narratives;22 while CCP obfuscation about coronavirus has prompted unprecedented diplomatic rebukes from world leaders.23 Despite rising international awareness and condemnation of China’s sharp power tactics,24 China is accelerating, not muting, these behaviors.25 One explanation for this is that the CCP calculates that the risks of international backlash (and occasional overreach by its officials) are acceptable, compared with the risk of letting domestic information control falter.

Impaired Feedback Mechanisms

Authoritarians embrace technology to increase the legibility of their societies. But legibility requires cooperation from society. It is facilitated by an open information ecosystem, robust civil society, mechanisms of transparency, and protections for political speech.26 Conversely, information control and technology-enabled systems of surveillance and enforcement discourage accurate reporting and punish whistleblowing, while incentivizing officials to conceal failures and exaggerate successes.27 In 2007, Le Keqiang (before he became China’s premier) described China’s national income figures as “man-made” and unreliable, and noted that more objectively verifiable proxies should be preferred to official statistics collected by provinces.28 Without elections, authoritarians can also struggle to understand public sentiment, a problem highlighted by the Chinese government’s mismanagement of massive ongoing protests in Hong Kong. Party leaders wrongly assessed that the protestors’ grievances were primarily economic rather than political and that they did not enjoy broader public support.29 As Zeynep Tufekci has observed, the costs of China’s “authoritarian blindness” have been immense: a solvable issue (demands to withdraw a relatively unimportant extradition treaty) became “a bigger, durable crisis” with ongoing political consequences.30

China’s delayed reaction to coronavirus is a stark example of the authoritarian legibility and feedback problem. Local officials and hospital administrators in Wuhan suppressed information about the outbreak and punished doctor whistleblowers—depriving other provinces and the central government (not to mention international authorities) of vital signals that would have allowed swifter action to control the pandemic.31 Once authorities acknowledged the pandemic, China deployed the full weight of its digital surveillance capabilities. It was able to implement top-down lockdowns quickly; marshal its tech sector to build health apps; force citizens to download these apps; and access vast commercial holdings of personal data to cross-check compliance. However, it lacked critical bottom-up feedback systems that may have obviated the need for such draconian measures in the first place.32 Indeed, controlling for income and population size, authoritarian regimes appear to be more lethal than democracies during epidemics, arguably because of their closed information ecosystems.33

Overreliance on Technological Systems which ‘Fail Hard’

Many authoritarian governments are embracing AI-driven surveillance and control methods—from ‘smart cities’ to digital currencies, e-payment platforms and social apps. However, when AI systems fail, they tend to fail in unpredictable, often catastrophic ways. While citizens in democracies lament slow adoption of digital governance, authoritarians’ speed comes with the risk that authorities roll out unsafe or vulnerable systems.34 Imagine a critical failure of China’s social credit system—whether by accident or sabotage—which affected the integrity of records. The implications for regime stability could be significant.

AI systems do not need to fail to produce problematic results. They draw insights and make predictions based on correlations in vast datasets but are not good at identifying causal mechanisms. This means that AI systems often produce outcomes which humans cannot reverse engineer or routinely evaluate. Like using asbestos to build a city, AI governance systems might produce good results in the short-term, but inconsistencies or oversights in their approaches could lead to cascading failures that humans struggle to identify, let alone rectify.35

Unintended Consequences from High-Tech Modernism

Fixation by central governments on achieving targets or deploying certain technologies creates incentives for local officials to deploy “technology placebos” that do little to address underlying economic and social concerns. For example, many so-called smart city projects in authoritarian societies have failed to meet development and economic goals. They are fraught with issues such as “unclear strategic goals” (e.g. they often optimize for surveillance, not development) and “inadequate implementation.”36 This problem may be particularly pronounced for less-developed authoritarian governments which have been persuaded, for strategic reasons, to buy Chinese-exported digital surveillance tools that are not customized to local circumstances. These cities may also become locked into unstable or insecure technical architectures 37 and economic dependence on China.38

Commitments to targets, and ideological fervor about technology, can also distort commercial decisions and raise unrealistic public expectations. Analysis of China’s AI industry, for example, suggests that companies are eschewing investment in basic research and focusing on quick wins in applied research.39 Additionally, China is already behind on meeting a number of its technology targets40—a lag that will likely be exacerbated by the global economic downturn following the coronavirus pandemic, and rising security fears in foreign markets about the security of Chinese technology and IP theft by its companies.

From a strategic perspective, there are risks that authoritarian governments’ fixation on technology-centric strategies will lead them to overestimate what technology can in fact achieve. For example, Chinese military strategists have posited that AI could lift the ‘fog’ of war and eliminate uncertainty and confusion on the battlefield. This is an ahistorical and unlikely prediction that could inspire miscalculation.41 Russian strategists theorize about how psychological operations might subdue adversaries without a shot being fired—an approach that may overestimate what cognitive warfare can achieve, at least without being combined with other elements of national power.42

Challenges to Social Cohesion

The medium- and long-term social consequences of digital authoritarianism are yet untested. Overreliance on surveillance and enforcement systems could attenuate relationships within a society, exacerbating authoritarians’ underlying low trust problems. Since they tend to reduce citizens to data inputs, these systems may deny citizens’ intrinsic desire for dignity and identity—with unexpected results.43 Information control tactics—such as flooding—can repress opposition, but long-term may exacerbate public uncertainty and decrease business confidence and trust in official information, with implications for social cohesion and economic progress.44

Dysfunctional Innovation Ecosystems

Information control and state-led pushes for technology dominance risk hampering innovation. For example, to achieve Xi Jinping’s ‘Made in China 2025’ goals, the CCP is supporting high-tech monopolies, restricting international collaboration, and yoking the state and market together.45 However, monopolies are notoriously inefficient and cross-border collaboration is an important driver of innovation. Further, innovation works best under free market conditions and in open societies.46 Some analysts argue that China’s success in deploying AI applications is an exception to this rule. However, there is a risk that Chinese companies are prioritizing short-term breakthroughs (e.g. analyzing existing datasets to find new insights) at the expense of long-term investment in basic research.47 While authoritarians may excel at developing and deploying AI applications, conceptual research is arguably the real engine of AI advancement—and something that will continue to thrive in open societies.

Summary and Further Research

All states face risks in the information age, but the extent to which regime type affects the relative likelihood of these risks materializing, and their magnitude, is understudied. For example, much has been written about liberal democracies’ vulnerabilities to propaganda and foreign interference via social media.48 But while information warfare against open societies is more likely, arguably it is a higher magnitude threat for authoritarians, where control of information is core to regime survival. Similarly, analysts often lament that democratic governments have been slow to digitize governance systems and craft forward-looking technology policy.49 But while digital authoritarians might outcompete democracies in the roll-out of advanced technologies, this creates new vulnerabilities and risks. Inappropriate safeguards and accidents may result in cascading failures, while heavily digitized governance systems may be susceptible to foreign attack. Regime type may also affect the relative ability of authoritarians and democracies to mitigate their information age risks. For example, a democracy can build resilience to cyber and information threats through a variety of civil society and market-based interventions. Digital authoritarians must rely on a more limited set of top-down policy tools. Ultimately, a more systematic effort to map the comparative strengths and vulnerabilities of authoritarians and democracies in the information age could help both to better understand the other’s threat perceptions and manage escalation risks. It might also highlight ways in which democracies can hold digital authoritarians’ core interests at risk, in order to deter authoritarian interference in their own digital environments.

#### Internet fragmentation causes snapback digital protectionism and trade shocks.

Box ’16 [Sarah and Jeremy West; 2016; Economist in the OECD Directorate for Science, Technology and Industry, Master of Commerce in Economics from the University of Auckland; Assistant Professor of Economics at the University of California, Santa Cruz; OECD Digital Economy Papers, “Economic and Social Benefits of Internet Openness,” no. 257]

1.2.1 Economic benefits of Internet openness in international trade

There is a growing literature on the positive effects of the Internet on trade and the potential costs to trade of policies that introduce frictions to “business as usual” data flows on the Internet. Internet openness facilitates international trade for existing businesses by making it easier for suppliers to connect with existing consumers who are located beyond the borders of the supplier’s home country (or countries) and by improving logistics control. Openness can also boost trade by providing access to a wider customer base via e-commerce. And it enables new firms to enter more geographic markets and (for the most efficient ones) to enter global value chains (GVCs). At the same time, Internet openness and digitisation make it possible to complete transactions and deliver products, services, and payments faster and more efficiently by replacing some physical trade with online trade (in books and music, for instance – or with more complex products via online shipment of designs followed by local production such as with 3D printers).

GVCs are central to the trade and Internet story. Behind aggregate trade data lie a huge number of intermediate trade flows, with inputs sourced globally and stages of production shifting from location to location to complete a final product. Both goods and services may be produced in GVCs – electronics and cars are common examples where design, raw material, production and marketing inputs are spread across countries. One can also think of aircraft, clothing, film animation, law briefs and medical advice being created in GVCs. The rise of GVCs has been made possible in part by technological advances, notably the information management systems that allow firms to co-ordinate their participation in GVCs. The combination of GVCs and the Internet has not only enabled firms in developing countries to more easily engage in international trade (by specialising in one stage of a chain, e.g. auto electronics), but also small and medium-sized enterprises (SMEs), as digital platforms enable even tiny firms (micro-multinationals) to connect with global suppliers and purchasers.

Given the pervasiveness of GVCs, seamlessly moving potentially large amounts of data across countries is an essential part of supporting intermediate and final trade flows and allowing firms to participate in GVCs. In other words, reductions in Internet openness could create significant impediments to trade. Small frictions may multiply into large barriers, especially if production is split into stages that entail numerous border crossings where imposed frictions multiply. The Swedish National Board of Trade suggest that policies such as data localisation requirements (where firms are either forced to store data and locate data centres within a country’s borders, or have restricted ability to move and process data across borders) could lead a firm to reorganise its GVC, either moving or closing parts of its operations, with service to end-users being restricted in some cases (2015: 14-15). Ezell et al. (2013: 46-47) make a similar point, noting that localisation barriers to trade, including restrictions on data, undermine firms’ ability to participate in global networks because the barriers raise costs and reduce technology diffusion. The Software Alliance (BSA, 2014) additionally highlights the trade-dampening effect of country-specific technology standards and other forms of “digital protectionism,” such as nationally-oriented IT procurement.

Internet openness is especially important for enabling smaller firms to engage in international trade. Nicholson and Noonan (2014) comment that while localisation requirements can make cross-border trade difficult for large companies, they may make it “practically impossible for small businesses that cannot afford to implement separate systems and standards in every country in which they do business”. Moreover, these firm-level impacts can sum to significant negative outcomes for countries. Kaplan and Rowshankish (2015) note that as banks reduce their operations in countries with more stringent data regulations, financial services will grow more slowly, with potentially adverse consequences for development. There are also more general concerns that policies enacted to reduce Internet openness could create a “slippery slope” for additional interventions and possibly non-tariff barriers (such as local content requirements, or efforts to promote “indigenous innovation” via IP restrictions).

#### Breakdown causes civil and proxy conflicts that draw in Iran, Russia, and North Korea---nuclear war.

Kampf ’20 [David; June 16; PhD Fellow at the Center for Strategic Studies at The Fletcher School, MA in International Affairs from Columbia University; World Politics Review, “How COVID-19 Could Increase the Risk of War,” https://www.worldpoliticsreview.com/articles/28843/how-covid-19-could-increase-the-risk-of-war]

But that overlooked the ways in which the risk of interstate war was already rising before COVID-19 began to spread. Civil wars were becoming more numerous, lasting longer and attracting more outside involvement, with dangerous consequences for stability in many regions of the world. And the global dynamics most commonly cited to explain the falling incidence of interstate war—democracy, economic prosperity, international cooperation and others—were being upended.

If the spread of democracy kept the peace, then its global decline is unnerving. If globalization and economic interdependence kept the peace, then a looming global depression and the rise of nationalism and protectionism are disconcerting. If regional and global institutions kept the peace, then their degradation is unsettling. If the balance of nuclear weapons kept the peace, then growing risks of proliferation are disquieting. And if America’s preeminent power kept the peace, then its relative decline is troubling.

Now, the pandemic, or more specifically the world’s reaction to it, is revealing the extent to which the factors holding major wars in check are withering. The idea that war between nations is a relic of the past no longer seems so convincing.

The Pessimists Strike Back

More than any other individual, it was cognitive scientist Steven Pinker who popularized the idea that we are living in the most peaceful moment in human history. Starting with his 2011 bestseller, “The Better Angels of Our Nature: Why Violence Has Declined,” Pinker argued that the frequency, duration and lethality of wars between great powers have all decreased. In his 2019 book, “Enlightenment Now: The Case for Reason, Science, Humanism, and Progress,” he wrote that war “between the uniformed armies of two nation-states appears to be obsolescent. There have been no more than three in any year since 1945, none in most years since 1989, and none since the American-led invasion of Iraq in 2003.”

Optimists like Pinker held that, rather than the world falling apart, as a quick glance at headline news might suggest, the opposite was true: Humanity was flourishing. More regions are characterized by peace; fewer mass killings are occurring; governance and the rule of law are improving; and people are richer, healthier, better educated and happier than ever before.

In their book, “Clear and Present Safety: The World Has Never Been Better and Why That Matters to Americans,” Michael A. Cohen and Micah Zenko argued that the evidence is so overwhelming that it is difficult to argue against the idea that wars between great powers, and all other interstate wars, are becoming vanishingly rare. Even when wars do break out, they tend to be shorter and less deadly than they were in the past. John Mueller, a senior fellow at the Cato Institute, also reasoned that the idea of war, like slavery and dueling before it, was in terminal decline, while Joshua Goldstein, an international relations researcher at American University, credited the United Nations and the rise of peacekeeping operations for helping win the “war on war.”

But in recent years, a range of critics have begun to poke holes in these arguments. Tanisha M. Fazal, an international relations professor at the University of Minnesota, contends that the decline in war is overstated. Major advances in medicine, speedier evacuations of wounded soldiers from the field of battle and better armor have made war less fatal—but not necessarily less frequent. Fazal and Paul Poast, who is at the University of Chicago, further assert that the notion of war between great powers as a thing of the past is based on the assumption that all such conflicts resemble World War I and II—both are historical anomalies—and overlooks the actual wars fought between great powers since 1945, from the Korean War and the Vietnam War to proxy wars from Afghanistan to Ukraine. Meanwhile, Bear F. Braumoeller, an Ohio State political science professor, analyzed the same historical data on conflicts used by Pinker, Mueller and Goldstein, and found no general downward trend in either the initiation or deadliness of warfare over the past two centuries. What’s more, Braumoeller contends that the so-called “long peace”—the 75 years that have passed without systemic war since World War II—is far from invulnerable, and that wars are just as likely to escalate now as they used to be. Just because a major interstate war hasn’t happened for a long time, doesn’t mean it never will again. In all probability, it will.

And by focusing solely on interstate wars, the optimists miss half the story, at least. Wars between states have declined, but civil wars never disappeared—and these internal conflicts could easily escalate into regional or global wars.

The number of conflicts in the world reached its highest point since World War II in 2016, with 53 state-based armed conflicts in 37 countries. All but two of these conflicts were considered civil wars. To make matters worse, new studies have shown that civil wars are becoming longer, deadlier and harder to conclusively end, and that these internal conflicts are not really internal. Civil wars harm the economies and stability of neighboring countries, since armed groups, refugees, illicit goods and diseases all spill over borders. Some 10 million refugees have fled to other countries since 2012. The countries that now host them are more likely to experience war, which means states with huge refugee populations like Lebanon, Jordan and Turkey face legitimate security challenges. Even after the threat of violence has diminished in refugees’ countries of origin, return migration can reignite conflicts, repeating the brutal cycle.

A Yugoslav Federal Army tank.

Perhaps most importantly, recent research indicates that civil wars increase the risk of interstate war, in large part because they are attracting more and more outside involvement. In a 2008 paper, researchers Kristian Skrede Gleditsch, Idean Salehyan and Kenneth Schultz explained that, in addition to the spillover effects, two other factors in civil wars increase international tensions and could possibly provoke wider interstate wars: external interventions in support of rebel groups and regime attacks on insurgents across international borders.

Immediately after the Cold War, none of the ongoing civil wars around the world were internationalized. According to the Uppsala Conflict Data Program, there were 12 full-fledged civil wars in 1991—in Afghanistan, Iraq, Peru, Sri Lanka, Sudan, and elsewhere—and foreign militaries were not active on the ground in any of them. Last year, by contrast, every single full-fledged civil war involved external military participants. This is due, in part, to the huge growth in U.S. military interventions abroad into civil conflicts, but it’s not only the Americans. All of today’s major wars are in essence proxy wars, pitting external rivals against one another. Conflicts in Syria, Yemen and Libya are best understood not as civil wars, but as international warzones, attracting meddlers including the United States, Russia, Saudi Arabia, Turkey, Iran, France and many others, which often intervene not to build peace, but to resolve conflicts in a way that is favorable to their own interests. These internationalized wars are more lethal, harder to resolve and possibly more likely to recur than civil wars that remain localized. It is not that difficult to imagine how these conflicts could spark wider international conflagrations. Wars, after all, can quickly spiral out of control.

As Risks Increase, Deterrents Decline

To make matters worse, most of the global trends that explained why interstate war had decreased in recent decades are now reversing. The theories that democracy, prosperity, cooperation and other factors kept the peace have been much debated—but if there was any truth to them, their reversals are likely to increase the chance of war, irrespective of how long the coronavirus pandemic lasts.

Democracy is often considered a prophylactic for war. Fully democratic countries are less likely to experience civil war and rarely, if ever, go to war with other democracies—though, of course, they do still go to war against non-democracies. While this would be great news if democracy and pluralism were spreading, there have now been 14 consecutive years of global democratic decline, and there have been signs of additional authoritarian power grabs in countries like Hungary and Serbia during the pandemic. If democracy backslides far enough, internal conflicts and foreign aggression will become more likely.

Other theories posit that economic bonds between countries have limited wars in recent decades. Dale Copeland, a professor of international relations at the University of Virginia, has argued that countries work to preserve ties when there are high expectations for future trade, but war becomes increasingly possible when trade is predicted to fall. If globalization brought peace, the recent wave of far-right nationalism and populism around the world may increase the chances of war, as tariffs and other trade barriers go up—mostly from the United States under President Donald Trump, who has launched trade wars with allies and adversaries alike.

The coronavirus pandemic immediately elicited further calls to reduce dependence on other countries, with Trump using the opportunity to pressure U.S. companies to reconfigure their supply chains away from China. For its part, China made sure that it had the homemade supplies it needed to fight the virus before exporting extras, while countries like France and Germany barred the export of face masks, even to friendly nations. And widening economic inequalities, a consequence of the pandemic, are not likely to enhance support for free trade.

This assault on open trade and globalization is just one aspect of a decaying liberal international order, which, its proponents argue, has largely helped to preserve peace between nations since World War II. But that old order is almost gone, and in all likelihood isn’t coming back. The U.N. Security Council appears increasingly fragmented and dysfunctional. Even before Trump, the world’s most powerful country ratified fewer treaties per year under the Obama administration than at any time since 1945.

Trump’s presidency only harms multilateral cooperation further. He has backed out of the Paris Agreement on climate change, reneged on the Iran nuclear deal, picked fights with allies, questioned the value of NATO and defunded the World Health Organization in the middle of a global health crisis. Hyper-nationalism, rather than international collaboration, was the default response to the coronavirus outbreak in the U.S. and many other countries around the world.

It’s hard to see the U.S. reluctance to lead as anything other than a sign of its inevitable, if slow, decline. The country’s institutionalized inequalities and systemic racism have been laid bare in recent months, and it no longer looks like a beacon for others to follow. The global balance of power is changing. China is both keen to assert a greater leadership role within traditionally Western-led institutions and to challenge the existing regional order in Asia. Between a rising China, revanchist Russia and new global actors, including non-state groups, we may be heading toward an increasingly multipolar or nonpolar world, which could prove destabilizing in its own right.

Finally, the pacifying effect of nuclear weapons could be waning. While vast nuclear arsenals once compelled the United States and the Soviet Union to reach arms control agreements, old treaties are expiring and new talks are breaking down. Mistrust is growing, and the chance of an unwanted U.S.-Russia nuclear confrontation is arguably as high as it has been since the Cuban missile crisis.

The theory of nuclear peace may no longer hold if more countries are tempted to obtain their own nuclear deterrent. Trump’s decision to abandon the Iran nuclear deal, for one thing, has only increased the chance that Tehran will acquire nuclear weapons. It’s almost easy to forget that, just a few short months ago, the United States and Iran were one miscalculation or dumb mistake away from waging all-out war. And despite Trump’s efforts to negotiate nuclear disarmament with Kim Jong Un’s regime in Pyongyang, it is wishful thinking to believe North Korea will give up its nuclear weapons. At this point, negotiators can only realistically try to ensure that North Korea’s nuclear menace doesn’t get even more potent.

In other words, by turning inward, the United States is choosing to leave other countries to fend for themselves. The end result may be a less stable world with more nuclear actors.

If leaders are smart, they will take seriously the warning signs exposed by this global emergency and work to reverse the drift toward war.

If only one of these theories for peace were worsening, concerns would be easier to dismiss. But together, they are unsettling. While the world is not yet on the brink of World War III and no two countries are destined for war, the odds of avoiding future conflicts don’t look good.

The pandemic is already degrading democracies, harming economies and curtailing international cooperation, and it also seems to be fostering internal instability within states. Rachel Brown, Heather Hurlburt and Alexandra Stark argue that the coronavirus could in fact sow more civil conflict. If this proves accurate, the increase in civil wars is likely to lead to more external meddling, and these next proxy wars could soon precipitate all-out international conflicts if outsiders aren’t careful. With the usual deterrents to conflict declining around the world, major wars could soon return.

#### Balancing the integration of antitrust and data privacy creates powerful norms for information governance AND transatlantic harmonization, optimally balancing conflicting doctrine.

Douglas ’21 [Erika; January 18; Assistant Professor of Law at Temple University; Yale Law Journal, “The New Antitrust/Data Privacy Law Interface,” <https://www.yalelawjournal.org/pdf/DouglasEssay_pv1pt6ak.pdf>]

Introduction

Antitrust law and data privacy law are powerful forces shaping the treatment of digital information. Both are converging on the companies that hold and use our data—digital platforms like Facebook, Google, Apple and Amazon.1 These entities are perennial favorites of Federal Trade Commission (FTC) data privacy enforcement,2 and of the strict new European data protection regime.3 At the same time, these digital giants face antitrust scrutiny from federal and state antitrust authorities, 4 both Houses of Congress,5 and international competition law enforcers6 for their data-driven competition practices.

We are only beginning to theorize this new convergence of digital data privacy and antitrust law. This Essay argues that, so far, our understanding of the new antitrust/data privacy law interface is incomplete. It provides a descriptive, historical and comparative account of the tension appearing between antitrust and data privacy law, which has been overlooked by existing theories.

Part I explains why this intersection of law is new, then describes the two main theories on the antitrust/data privacy law interface. One insists on doctrinal separation between these areas of law, and the other treats privacy as an element of quality in antitrust analysis. Both theories emphasize complementarity between privacy and competition.

Part II argues that these theories are incomplete in two related ways. First, the interests of data privacy and antitrust law are not always complementary— they can be in tension, proof of which is developed throughout this Essay. Competition may be enhanced by data access, while data privacy is eroded by it. Second, and relatedly, these theories ignore the interaction of antitrust with data privacy law as a separate, and potentially opposing, area of new legal doctrine— not merely as a factor within antitrust analysis.

The recent Ninth Circuit decision, HiQ v. LinkedIn, provides an example of this new tension.7 LinkedIn terminated HiQ’s access to user profile data on the LinkedIn social network. LinkedIn argued that HiQ violated user privacy settings through its collection and dissemination of profile data in data analytics sofware.8 HiQ argued the termination was, in fact, unfair competition—that HiQ competed with LinkedIn to supply such sofware, and LinkedIn selectively banned it to eliminate a rival.9 The Ninth Circuit upheld a preliminary injunction that granted HiQ continued access to LinkedIn user profile information.10 This effectively guaranteed that HiQ could continue to override user privacy settings, in the name of competition.11 The Ninth Circuit remedy is difficult to reconcile with the FTC’s privacy law enforcement against other digital platforms for their failure to honor user privacy settings—settings much like those disregarded by HiQ.12

Part III of this Essay offers a foundational shift in thinking about the new antitrust/data privacy interface. It paints a picture of the emerging tension between antitrust and data privacy law, first with specific examples where data privacy and competition are facing off on digital platforms. It then contextualizes the tension, situating it within the history of consumer protection law and the comparative European legal landscape. Both perspectives suggest an impending clash between data privacy and antitrust law. This Part concludes with an early-stage observation: faced with tradeoffs between competition and privacy, the tendency of theoretical, institutional and evidentiary biases will likely be to prefer competition—as occurred in the HiQ v. LinkedIn case.

Part IV proposes the first analytical framework to address tension between antitrust and data privacy law. When there are claims of legitimate, but conflicting, data privacy and competition interests, the proposal treats both doctrines as relevant to determining the scope of permitted conduct. Neither antitrust law nor data privacy law is presumed to have primacy. Instead, the importance of the interests at stake are evaluated with reference to each area of law. This proposal is modeled on theory from other, more established doctrinal intersections with antitrust law, such as patent and consumer protection law.

I. Existing Theories on the Antitrust/Data Privacy Interface

This Part provides a short history to illustrate why the interaction between antitrust law and data privacy is new. It then explains the two most commonly articulated, but opposing, theories on the antitrust/data privacy interface. Lastly, it describes the tendency of both theories to emphasize complementarity between these two areas of law.

These theories are new, as the intersection of law is itself quite new. It is only in the last twenty-five years that the FTC has established the “new common law of privacy.”13 The rise of the agency as the de facto federal data privacy regulator occurred in lockstep with the emergence of the internet, from the mid-1990s to the present. 14 Individuals were suddenly engaging in a myriad of new electronic activity, placing their data online in ever-growing amounts. Spotty, sector-specific privacy legislation left large swathes of that new online activity unprotected by any data privacy laws.15 Congress urged the FTC to fill these gaps, which the agency did using its general consumer protection authority under section 5 of the FTC Act. Section 5 empowers the FTC to prevent unfair or deceptive acts or practices in the marketplace.16 The FTC began to police companies’ false or misleading promises regarding the collection, use, and sale of consumers’ personal data. Over time, these efforts expanded and developed into a body of standards that seek to protect consumers’ reasonable expectations of privacy. An early internet company was among the FTC’s first enforcement targets,17 and the agency has continued to focus on digital companies and their privacy practices ever since.

The novelty of the interface between antitrust law and data privacy is best illustrated in the context of monopoly enforcement.18 Consider that the rise of data privacy law coincides precisely with a twenty-year absence of monopolization enforcement by U.S. antitrust agencies. Around the time data privacy law began to take hold, “the anti-monopoly provisions of the Sherman Act went into a deep freeze from which they have never really recovered.”19 The last significant government anti-monopoly case ended around 2001. 20 Monopolization enforcement has unthawed only very recently, with a case filed against Google in late 2020. 21 This coincidence of timing—quiet in anti-monopolization enforcement while data privacy law bloomed—means that these areas of law are only now beginning to coexist in American law. The theories of their interaction are thus new, and still developing.

A. Existing Theories: Separatist and Integrationist Views

The first theory on this legal interface casts data privacy as beyond the purview of antitrust law.22 This “separatist” perspective emphasizes the historical and doctrinal separation between the FTC’s competition mandate and its consumer protection mandate.23 It advocates for the continued delineation between data privacy (which is rooted in the consumer protection mandate) and antitrust law. Separatist theory views each of these areas of law as protecting against distinct legal harms. Antitrust law is seen as best suited to address conduct harmful to overall consumer welfare or economic efficiency in the marketplace.24 Data privacy law, in contrast, is seen as a better fit for ensuring that individual consumers receive the benefit of their bargains, given its focus on informed choice and reasonable consumer expectations.25 The central concern of separatists is that the incorporation of privacy considerations into antitrust analysis will create confusion in the application of antitrust law’s consumer welfare standard.26

The second widely articulated view on the interface between antitrust and data privacy posits that antitrust analysis ought to consider data privacy whenever it is an element of quality-based competition. This “integrationist” approach incorporates data privacy into longstanding antitrust analytical frameworks.27 It starts from the well-established position that consumer welfare is improved by competition that is based not only on price, but also on non-price factors, like quality.28 It then interprets the concept of “quality” broadly, to encompass privacy-based competition.

When the facts indicate that “[c]ompanies compete to offer more or less privacy to users,”29 the integrationist view considers whether mergers or misconduct are likely to impact that privacy-based competition. For example, consider two internet browser companies who seek to merge. If, pre-merger, those companies compete to offer consumers better online privacy protection, then their combination could reduce the privacy options available to consumers in the market post-merger. Integrationist theory would consider that reduction in privacy-as-quality in its assessment of whether the merger will substantially reduce competition. If, instead, there was no privacy-based competition between the merging parties, then integrationist theory would deem any privacy concerns related to the merger to be beyond the purview of antitrust law.30

To date, integrationist theory is the most developed and accepted view on the interaction between antitrust law and data privacy.31 The FTC, 32 DOJ, 33 and European competition authorities 34 have adopted this integrated view and have applied it in merger cases. Several scholars have also expressed support for integrationist theory.35

B. Existing Theories Emphasize Complementarity

Under both the separatist and integrationist theories, agencies and scholars have tended to emphasize complementarity between antitrust and data privacy interests. Separatist theory casts these areas of law as puzzle pieces, “complementary [in] nature,” but not overlapping.36 In the same vein, the typical example used to describe integrationist theory is a merger analysis that casts data privacy as correlated with competition. As in the browser example above, integrationist theory considers whether a transaction is likely to lessen pressure on the merging firms to compete based on privacy, resulting in fewer privacy-protective product options for consumers post-merger.37 This reflects a relationship where competition drives privacy, and when one declines, so does the other. Recent characterizations of digital market power and abuse of dominance similarly link the decline of competition with the erosion of data privacy.38

Policy discussions reflect this same complementarity narrative. A favorite example of antitrust agencies is the presumed positive effect of data portability rights on competition.39 Data privacy laws around the world have begun to grant consumers the right to move their digital data from one online service provider to another, referred to as “data portability.”40 Antitrust agencies often point to such data portability rights as positive for competition.41 In the absence of portability, the thinking is that consumers may hesitate to switch to a competing digital service because that would mean leaving their data behind on the old service. When consumers are empowered to port their data, the assumption is that this encourages consumers to switch to new services, which fuels new entry and digital competition.

If this prevailing narrative of complementarity always holds true, that is incredibly convenient for the enforcement of both antitrust and data privacy law against the same digital platforms. It creates a cohesive legal landscape, in which each doctrinal area can pursue its respective enforcement goals without any question of which to prefer.

#### Incorporating privacy violations stops authoritarian abuses of data and generates transatlantic cohesion.

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V. Broader Implications

This Part briefly discusses the implications of our research. Given that monopoly power enables platforms to protect data in haphazard fashions, this recognition bears consequences for the relationship between technology firms and the government, behavioral economics, and merger policy. We also discuss how our approach for identifying privacy’s relationship with competition may inform future research in this space.

A. When Monopoly Power, Technology and the Government Meet

The power wielded by platforms to safeguard privacy is especially problematic when considering the potential for these companies to combine forces with governments. After World War II, the legal community enforced a loose interpretation of antitrust law, condemning a vaster array of activities than today.179 Driving this approach was the dark reminders of collusion between cartels in Nazi Germany and U.S. firms; Congress not only sought to prevent concentrated economic power among dominant trusts, but it also feared such market power could threaten social values.180 These misgivings included the possibility that monopolists could unravel seminal institutions, thereby increasing autocratic tendencies.181 Today, in a similar fashion, a chorus of politicians and citizens have expressed concerns for the power marshalled by platforms to influence social institutions.182

Much of this anxiety extends beyond the extensive resources of platforms 183 to include their ability to mobilize users politically.184 Through this capacity to manipulate decisional privacy, they can trigger users to act in malleable and predictable ways.185 While such power in the hands of private companies may seemingly alarm governments, their capacity to influence political behavior—as evidenced by the Cambridge Analytica Scandal—can be attractive to governments.186

Indeed, as platforms generate insights about populaces, as well as sophisticated ways to alter behaviors, governments have established strong bonds with technology companies in hopes of benefitting from their capabilities.187 For instance, Google representatives held 427 meetings with the Obama White House, averaging more than one meeting per week.188 While we can only speculate about the meetings’ contents, more concrete evidence exists. For instance, AT&T’s infrastructure permitted the George W. Bush Administration to spy on the U.S. public.189 The New York Times reported that AT&T expressed an “extreme willingness to help” the government uncover information about private citizens—without a warrant.190 Via this collaboration, AT&T supplied the Bush White House with emails found on its servers, offered technical support to wiretap information flowing through the internet, and even “installed surveillance equipment in at least 17 of its Internet hubs on American soil . . . . And its engineers were the first to try out new surveillance technologies invented by the [National Security Agency].”191 In light of this and other events, activists have grown especially concerned about, as examples, Facebook’s relationship with the U.S. government192 as well as WeChat’s connection with China—as it appears the Chinese government spies on its people via this app.193

So the question is not whether governments have used private technology and data collection efforts to surveil individuals, or even whether this has happened in the United States, but to what extent.

We think that imposing antitrust liability for infracompetitive privacy could provide relief against political abuses of privacy. While autonomy of choice is a key feature of the political system,194 as demonstrated earlier, market forces have yet to promote this quality. But because increased competition would force firms to consider consumers and users in crafting privacy policies, firms would likely display less willingness to perpetrate abuses on behalf, and in collaboration with, governments. Consider that state actors can reward platforms for their willingness to surveil users while consumers can impose costs once the program is detected—so long as the benefits exceed the costs, the firm is likely to comply with the government’s request. However, as competition increases, the ability of consumers to impose costs on platforms mounts as well; at some level of competition, the expectation is that private companies would refuse to enable the government’s efforts to spy. So given the Sherman Act’s goals, we think that, privacy should be incorporated into antitrust law to ensure “that the fortunes of the people will not be dependent on the whim or caprice, the political prejudices, [or] the emotional stability of a few self-appointed men.”195

B. Merger Policy

The volume of acquisitions by the dominant platforms is astonishing. For example, Google has made almost 200 acquisitions since 2001, spending billions in the process.196 Finding an appropriate conceptualization of privacy within the consumer welfare analysis will thus impact merger analysis. In particular, as large platforms acquire smaller firms, principal questions include what data are they acquiring? How might that data surplus increase the comprehensiveness of user profiling? How much does the risk of data dissemination increase for consumers? Nevertheless, as with litigation under the Sherman Act, merger enforcement under the Clayton Act has given primacy to the manner in which a proposed merger affects prices.197 So while debate exists about the proper framework for U.S. enforcement, merger policy should take the approaches used in other countries into account.198

Traditionally, the United States’ and Europe’s views on antitrust and privacy were in concert.199 Europe, which too was influenced by the Chicago School, believed that monopolies were not intrinsically bad.200 However, European officials have since begun to question the utility of isolating issues related to big data and privacy to the consumer protection sphere and away from the antitrust’s scope. In 2016, the French Autorité de la Concurrence and the German Bundeskartellamt (“Federal Cartel Office”) released a report explaining their views on privacy’s relationship with antitrust law:201

[E]ven if data protection and competition laws serve different goals, privacy issues cannot be excluded from consideration under competition law simply by virtue of their nature. . . . [T]here may be a close link between the dominance of the company, its data collection processes and competition on the relevant markets, which could justify the consideration of privacy policies and regulations in competition proceedings.202

## Security---1AC

Advantage Two is Data Security:

#### Privacy is a market failure---insulation from competitive pressure creates systemic data breaches. Only changing federal antitrust law solves.

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It is hard to overstate the modern value of data. Platform-based technology firms (“platforms”) thrive by attracting users with “free” 6 and low-priced services, enabling these companies to mine, exploit, and market their users’ data to third parties.7 Google, for example, is able to capture personal information from Gmail accounts 8 while Uber can, as reports indicate, track certain user activities even after one has deleted the company’s application (“app”).9

The deal offered by platforms is this: Individuals may enjoy “free” or cheap services in exchange for their personal information, which is turned into revenue. Google’s acquisition of Nest thus makes sense considering the volumes of user data collected by Nest and purchased by Google.10

Platforms can, however, inflict a greater cost on users in the form of lost privacy, outweighing the efficiencies generated by low prices. The issue is that platforms enjoy data’s economic potential without bearing the full costs of protecting privacy. Society instead suffers deadweight loss, as consumers, companies, and governments spend billions of dollars annually to redress identity theft 11 and data breaches.12 Enabled by inadequate security, hackers alone impose between $375 and $500 billion in damages per year.13 More subtly yet perhaps more importantly, platforms can manipulate their users’ behaviors, prompting observers to remark that technology firms are compromising human agency.14 In fact, this landscape may qualify as a market failure—a condition whereby the market systemically encourages actors to engage in inefficient behaviors 15—as platforms have little incentive to bolster data security as long as they can avoid scrutiny.

We demonstrate that “infracompetitive privacy” is the root of the problem. The term “supracompetitive” almost always refers to supracompetitive pricing—defined as the high prices a monopolist charges in the absence of competition16—which is the primary injury that antitrust law condemns.17 We assert that, like prices, privacy relies on competition. Because an array of platforms compete in markets devoid of meaningful competition,18 they enjoy insulation from market forces which incentivizes them to pass the burdens of protecting privacy onto users. Disguising this market failure is the cheap or “free” price of platform services—i.e., low prices create the illusion of vigorous competition.19 If technology markets were sufficiently competitive, as we explain, firms would enhance their privacy safeguards to vie for users.

Given that insufficient competition may enable privacy breaches, it is problematic that the laws meant to protect consumers from the ill effects of uncompetitive markets—i.e., the antitrust laws—are so far unable to remedy privacy injuries. To explain this blind spot, platform and tech firms have abandoned retail prices as their chief means of competition, creating fundamental problems for antitrust enforcers.20 Because antitrust law is solely meant to promote the economic interests of consumers,21 antitrust courts have typically conditioned liability on evidence that the defendant raised prices (i.e., supracompetitive prices) or restricted output (which produces supracompetitive prices).22 The issue is that, since the courts have yet to recognize privacy as a quality that antitrust may protect, the cheap prices offered by platforms have insulated them from antitrust scrutiny.23 Perhaps antitrust’s architects never foresaw an era when firms could render anticompetitive effects without charging prices.

We assert that antitrust should condemn anticompetitive practices leading to inadequate privacy.24 This is because heightened competition would (1) allow users to punish offenders, (2) disseminate information about the true costs of data breaches, and (3) introduce more secure products and services into the stream of commerce. But so long as tech firms enjoy de facto antitrust immunity for lapses in privacy, we can expect them to externalize the costs of protecting data. To illustrate our case, data by IBM suggests a relationship between monopoly power and privacy breaches; consumers seem to punish firms for costly data breaches except in concentrated markets. We think that consumers do demand heightened privacy, yet firms in concentrated industries—e.g., most platform markets—are able to resist pressures to supply it.25 If monopolists can better survive a privacy breach, market power may encourage firms to shift the economic costs of protecting privacy onto consumers, which should implicate antitrust enforcement. Our argument is not that all tech giants are violating the Sherman Antitrust Act (“Sherman Act”),26 but rather that antitrust law should consider privacy lapses to entail an actionable injury, especially as firms abandon prices as their primary means of competition.

Footnote 24:

24. John M. Newman, Antitrust in Zero-Price Markets: Foundations, 164 U. PA. L. REV. 149, 160 (2015) (explaining that courts and scholars have considered zero-price goods to be “de facto” immune from antitrust scrutiny because antitrust’s focus concerns price competition and thus whether the challenged act has rendered above market pricing).

End of Footnote 24.

This Article also contributes to the burgeoning debate over antitrust’s goals. Scholarship, politicians, and activists27 have begun to question whether the Sherman Act should be expanded beyond its dominant scope of promoting competitive prices—colloquially known as “hipster antitrust.”28 With the rise of breached privacy and other social harms, the debate has concerned whether enforcement should condemn practices that, as examples, lead to political injuries, social inequality, and other harms caused by monopolists. We contribute to this literature by demonstrating that antitrust is poorly equipped to remedy the anticompetitive effects of modern business; privacy is a function of competition and that the resulting costs are economic. We also support the belief held by international authorities that antitrust’s relationship with privacy must be examined—e.g., the decision by the German competition authority to condemn Facebook’s use of data. So in shedding economic light on privacy, and given the obsolescence of conventional pricing, we contribute to the greater debate about whether privacy should fit into antitrust’s framework.

#### Stimulating competition prevents cascading cyber vulnerabilities AND corporate monocultures.

Duan ’20 [Charles; 2020; Senior Fellow at the R Street Institute, J.D. from Harvard University; Santa Clara High Technology Law Journal, “Of Monopolies and Monocultures: The Intersection of Patents and National Security,” vol. 36]

A. Cybersecurity as Competitive Value-Add

Competition enhances national security by reducing the incidence of technical vulnerabilities. That effect is especially important for security sensitive systems such as mobile telecommunications.

Intuitively, a causal chain from competition to cybersecurity makes logical sense. Computer security is a value-added benefit to consumers, so firms in competitive markets are likely to use security to gain an edge over their competitors.158 In monopolized markets, though, there may be less external impetus to test products for flaws, and the monopolist may choose to focus less on security and more on new product features or increased product quality.

Economic research confirms these hypotheses about competition leading to better cybersecurity. A 2009 empirical study of web browsers considered the impact of market concentration on the amount of time that vendors took to fix security vulnerabilities as they were discovered.159 The study found that the presence of more competitors correlated with faster cybersecurity response—a reduction of 8–10 days in response time per additional market rival.160 Similarly, business researchers in 2005 modeled incentives for firms to engage in sharing of cybersecurity information, and concluded that the “inclination to share information and invest in security technologies increases as the degree of competitiveness in an industry increases.”161 Another study found that, where two software firms are in competition, at least one will be willing to take on some degree of risk and responsibility for cybersecurity, whereas a monopoly software firm will consistently fail to accept such responsibility.162 To be sure, an unpublished study from 2017 found that some market concentration can make firms more responsive to cybersecurity issues, but only to a point: “being in a dominant position reduces the positive effect of having less competitors on the responsiveness of the vendor,” and indeed the “more dominant the firm is, the less rapid it is in releasing security patches.”163 This research confirms that competition is more conducive to cybersecurity.

It is not hard to see how this applies to emerging communication technologies markets. In the absence of competition, the above research suggests that device manufacturers, chip makers, and software developers will lack incentives to respond to vulnerabilities, to share information about cybersecurity practices and issues, and to take responsibility for security matters. Mobile phone chips have had their share of cybersecurity failures already.164 The best way to flush out ongoing and future cybersecurity issues is to maintain competitive pressure at all levels of the supply chain.

B. Vulnerabilities of “Monocultures”

A second reason why monopoly undermines cybersecurity is that monopoly leads to a “monoculture” of single-vendor products, opening the door to massive systemic failure in the case of a cyberattack. Computer researchers developed the theory of software monocultures in the early 2000s, in response to the regular phenomenon of computer viruses and other attacks spreading rapidly by exploiting flaws in the dominant operating system at the time, Microsoft Windows.165 Where a computer system such as Windows has a commanding share of users, a virus that exploits a flaw in that system can quickly spread to infect a whole interconnected ecosystem. An operating system monopoly thus enables fast and easy spread of cyberattacks, and better cybersecurity would be achieved through greater diversity in online systems.166 As one research group posited, “a network architecture that supports a collection of heterogeneous network elements for the same functional capability offers a greater possibility of surviving security attacks as compared to homogeneous networks.”167

There has been considerable study of the theory that computer monocultures are naturally more vulnerable to attacks.168 In one study, computer science researchers reviewed a catalog of 6,340 software vulnerabilities recorded in 2007, to compare whether comparable software would share the same flaws.169 Of the 2,627 vulnerabilities applicable to application software (as opposed to operating systems, web scripts, and other software components), only 29 (1.1%) applied to substitute products from different vendors but providing the same functionality.170 By contrast, different versions of a single software product were found to share vulnerabilities 84.7% of the time.171 Thus, software monocultures share exploitable flaws even when there is some variation in versions across the monoculture; by contrast, diversity in software is almost guaranteed to prevent a single flaw from affecting all users.

In the case of 5G and wireless mobile communications, a monoculture is an especially concerning possibility. To the extent that systems such as smart city sensors or communication networks are widely deployed in a monoculture fashion, a widespread attack could have devastating consequences, potentially blacking out a region and affecting essential services such as 911.172 A monoculture that is vulnerable to so-called “rootkits” or “backdoors”—maliciously installed software that enable bad actors to commandeer systems—could also enable mass surveillance or spying by private hackers or foreign governments.173 The presence of systems from multiple vendors would mitigate these possibilities.

#### Private providers are uniquely vulnerable to attacks---triggers catastrophic collapse of critical infrastructure.

Wintch ’21 [Timothy; April 30; active-duty major in the United States Air Force, M.A. in Military Studies from the American Military University; Homeland Security Today, “Perspective: Cyber and Physical Threats to the U.S. Power Grid and Keeping the Lights on,” <https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/>]

Among critical infrastructure sectors in the U.S., energy is perhaps the most crucial of the 16 sectors defined by the Department of Homeland Security. This sector is so vital because it provides the energy necessary to run every other critical infrastructure sector. However, the U.S. power grid, the backbone of the energy sector, is built upon an aging skeleton that is becoming increasingly vulnerable every day. Whether from terrorists or nation-states like Russia and China, the power grid is susceptible to not just physical attacks, but also to cyber intrusion as well. However, much of this threat can be mitigated if the U.S. takes the appropriate steps to safeguard the power grid and avoid a potential catastrophe in the future.

Since Sept. 11, 2001, terrorism on U.S. soil has been at the forefront of American consciousness. Critical infrastructure provides an appealing target because of the disproportionally large impact even a small attack can have on the sectors. In particular, the power grid represents a particularly lucrative target, both in terms of the ease of access and the large impact it can make. The National Research Council stated that the U.S. power grid is “vulnerable to intelligent multi-site attacks by knowledgeable attackers intent on causing maximum physical damage to key components on a wide geographical scale.”[[1]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn1) Additionally, the physical security of transmission and distribution systems is difficult due to the dispersed nature of these key components, which in turn is advantageous to attackers as it reduces the likelihood of their capture.[[2]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn2) From 2002-2012, approximately 2,500 physical attacks occurred against transmission lines and towers worldwide and approximately 500 attacks against transformer substations.[[3]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn3) Terrorists have the motivation to attack the U.S. power grid but the very nature of the grid makes it highly vulnerable. The power grid is not only at risk from physical attacks, but also nation-state cyberattacks.

One nation that has shown both the capability and intent to use attacks against critical energy infrastructure is Russia, as demonstrated in their 2015 annexation of Crimea from Ukraine. A Russian cyber threat group known as Sandworm, which used its BlackEnergy malware, attacked Ukrainian computer systems that provide remote control of the Ukraine power grid.[[4]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn4) This attack, and another in 2016, each left the capital Kiev without power, prompting cyber experts to raise concern about the same malware already existing in NATO and the U.S. power grids.[[5]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn5) In any conflict between Russia and NATO, not only would similar cyberattacks pose a threat, but so would potential physical attacks severing fuel oil and natural gas lines to Western Europe. Russia has both the capability and intent to attack critical infrastructure, particularly power grids, during future conflicts in their “hybrid warfare” approach.

Another nation that has the capability to attack critical energy infrastructure is China, representing a threat to not just the U.S. energy infrastructure but also that of our allies whose support would be vital in a major conflict. A recent NATO report highlighted this threat from China’s Belt and Road Initiative, stating that “[China’s] foreign direct investment in strategic sectors [such as energy generation and distribution] …raises questions about whether access and control over such infrastructure can be maintained, particularly in crisis when it would be required to support the military.”[[6]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn6) Like Russia, China has been active with cyber intrusions in U.S. energy infrastructure. The Mission Support Center at Idaho National Laboratory characterized these as attacks as “multiple intrusions into US ICS/SCADA [Industrial Control Systems/Supervisory Control and Data Acquisition] and smart grid tools [that] may be aimed more at intellectual property theft and gathering intelligence to bolster their own infrastructure, but it is likely that they are also using these intrusions to develop capabilities to attack the [bulk electric system], as well.”[[7]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn7) China, therefore, has both the capability and intent to conduct cyber intrusions and attacks for myriad reasons.

Another arm of this threat is the reliance the U.S. energy industry has on imports from China, especially transformers. In early 2020, federal officials seized a transformer in the port of Houston that had been imported by the Jiangsu Huapeng Transformer Company before sending it to Sandia National Laboratory in Albuquerque. Sandia is contracted by the U.S. Department of Energy for mitigating national security threats.[[8]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn8) The Wall Street Journal reported that “Mike Howard, chief executive of the Electric Power Research Institute, a utility-funded technical organization, said that the diversion of a huge, expensive transformer is so unusual – in his experience, unprecedented – that it suggests officials had significant security concerns.”[[9]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn9) Previously destined for the Washington Area Power Administration’s Ault, Colo., substation, the transformer is believed to have been seized due to “backdoor” exploitable hardware emplaced by the Chinese prior to shipment.[[10]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn10) Shortly after these events, President Trump issued Executive Order 13920, “[Securing the United States Bulk-Power System](https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-securing-united-states-bulk-power-system/),” essentially limiting the import of Chinese-built critical energy infrastructure components due to concerns about cybersecurity.[[11]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn11) Interestingly, Jiangsu Huapeng “boasted that it supported 10 percent of New York City’s electricity load.”[[12]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn12)

Franklin Kramer, the former Assistant Secretary of Defense for International Security Affairs, testified before a U.S. House of Representatives Energy and Commerce subcommittee during an energy and power hearing in 2011 and said that a “highly-coordinated and structured cyber, physical, or blended attack on the bulk power system, however, could result in long-term (irreparable) damage to key system components in multiple simultaneous or near-simultaneous strikes.” He added that “an outage could result with the potential to affect a wide geographic area and cause large population centers to lose power for extended periods.”[[13]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn13) Even the inclusion of features such as smart grids to the overall grid structure poses new vulnerabilities through their connectivity. Kramer stated that “such connectivity means that the distribution system could be a key vector for a national security attack on the grid.”[[14]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn14)

#### Infrastructure collapse undermines societal resilience AND the nuclear deterrent---extinction.

Weiss ’19 [Matthew and Martin; May 29; National Sales Director at United Medical Instruments, UMI and Research assistant at the American Jewish University; Neurosurgeon at UCLA-Olive View Medical Center; Energy, Sustainability, and Society, “An assessment of threats to the American power grid,” vol. 9]

Consequences of a sustained power outage

The EMP Commission states “Should significant parts of the electrical power infrastructure be lost for any substantial period of time, the Commission believes that the consequences are likely to be catastrophic, and many people will die for the lack of the basic elements necessary to sustain life in dense urban and suburban communities.” [67].

Space constraints preclude discussion on how the loss of the grid would render synthesis and distribution of oil and gas inoperative. Telecommunications would collapse, as would finance and banking. Virtually all technology, infrastructure, and services require electricity.

An EMP attack that collapses the electric power grid will collapse the water infrastructure—the delivery and purification of water and the removal and treatment of wastewater and sewage. Outbreaks that would result from the failure of these systems include cholera. It is problematic if fuel will be available to boil water. Lack of water will cause death in 3 to 4 days [68].

Food production would also collapse. Crops and livestock require water delivered by electronically powered pumps. Tractors, harvesters, and other farm equipment run on petroleum products supplied by an infrastructure (pumps, pipelines) that require electricity. The plants that make fertilizer, insecticides, and feed also require electricity. Gas pumps that fuel the trucks that distribute food require electricity. Food processing requires electricity.

In 1900, nearly 40% of the population lived on farms. That percentage is now less than 2% [69]. It is through technology that 2% of the population can feed the other 98% [68]. The acreage under cultivation today is only 6% more than in 1900, yet productivity has increased 50 fold [69].

As stated by Dr. Lowell L Wood in Congressional testimony:

“If we were no longer able to fuel our agricultural machine in the country, the food production of the country would simply stop, because we do not have the horses and mules that used to tow agricultural gear around in the 1880s and 1890s”. “So the situation would be exceedingly adverse if both electricity and the fuel that electricity moves around the country……… stayed away for a substantial period of time, we would miss the harvest, and we would starve the following winter” [70].

People can live for 1–2 months without food, but after 5 days, they have difficulty thinking and at 2 weeks they are incapacitated [68]. There is typically a 30-day perishable food supply at regional warehouses but most would be destroyed with the loss of refrigeration [69]. The EMP Commission has suggested food be stockpiled for a possible EMP event.

A prescription for failure

Even if all the recommendations of the Congressional EMP Commission were implemented, there is no guarantee that the grid will not sustain a prolonged collapse. There should therefore be contingency plans for such a failure.

There is also another consideration. The foundational pillars of prior American nuclear defense policy, in today’s climate, are of uncertain validity. Mutual assured destruction is the Maginot line of the 21st century. Nonproliferation will prove difficult to resurrect.

The consequences of a widespread nuclear attack have been positioned to the public as massive deaths from blast effects, and then further lingering deaths from the effects of radiation. We suspect there will be no electricity, and there will be no electricity for a very long time.

There should be an actionable plan in anticipation of a possible prolonged collapse of the grid—a retro-structure and a skill set to provide a framework for survival. Our sense is there is no plan.

#### Cyber-attacks trigger retaliation and false readings---nuclear war.

Klare ’19 [Michael; November 19; Professor Emeritus of Peace and World Security Studies at Hampshire College, Senior Visiting Fellow at the Arms Control Association; Arms Control Today, “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation” <https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation>]

Yet another pathway to escalation could arise from a cascading series of cyberstrikes and counterstrikes against vital national infrastructure rather than on military targets. All major powers, along with Iran and North Korea, have developed and deployed cyberweapons designed to disrupt and destroy major elements of an adversary’s key economic systems, such as power grids, financial systems, and transportation networks. As noted, Russia has infiltrated the U.S. electrical grid, and it is widely believed that the United States has done the same in Russia.[12](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote12) The Pentagon has also devised a plan known as “Nitro Zeus,” intended to immobilize the entire Iranian economy and so force it to capitulate to U.S. demands or, if that approach failed, to pave the way for a crippling air and missile attack.[13](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote12)

The danger here is that economic attacks of this sort, if undertaken during a period of tension and crisis, could lead to an escalating series of tit-for-tat attacks against ever more vital elements of an adversary’s critical infrastructure, producing widespread chaos and harm and eventually leading one side to initiate kinetic attacks on critical military targets, risking the slippery slope to nuclear conflict. For example, a Russian cyberattack on the U.S. power grid could trigger U.S. attacks on Russian energy and financial systems, causing widespread disorder in both countries and generating an impulse for even more devastating attacks. At some point, such attacks “could lead to major conflict and possibly nuclear war.”[14](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote14)

These are by no means the only pathways to escalation resulting from the offensive use of cyberweapons. Others include efforts by third parties, such as proxy states or terrorist organizations, to provoke a global nuclear crisis by causing early-warning systems to generate false readings (“spoofing”) of missile launches. Yet, they do provide a clear indication of the severity of the threat. As states’ reliance on cyberspace grows and cyberweapons become more powerful, the dangers of unintended or accidental escalation can only grow more severe.

#### Breaches fund terror and organized crime---private sector vulnerabilities are the key node.

Wallace ’20 [Clyde; 2020; Deputy Assistant Director in the Cyber Division at the Federal Bureau of Investigation; FBI, “Dangerous Partners: Big Tech and Beijing,” <https://www.fbi.gov/news/testimony/dangerous-partners-big-tech-and-beijing>]

Chairman, ranking member, and members of the committee, thank you for the opportunity to appear before you today to discuss the current threats to the United States homeland. Our nation continues to face a multitude of serious and evolving threats ranging from homegrown violent extremists (HVEs) to cyber criminals to hostile foreign intelligence services and operatives. Keeping pace with these threats is a significant challenge for the FBI. Our adversaries—terrorists, foreign intelligence services, and criminals—take advantage of modern technology to hide their communications; recruit followers; and plan and encourage espionage, cyber-attacks, or terrorism to disperse information on different methods to attack the U.S. homeland, and to facilitate other illegal activities.

Cyber Threats

Virtually every national security threat and crime problem the FBI faces is cyber-based or facilitated. We face threats from state-sponsored hackers, hackers for hire, organized cyber syndicates, and terrorists. On a daily basis, these actors seek to steal our state secrets, our trade secrets, our technology, and our ideas—things of incredible value to all of us and of great importance to the conduct of our government business and our national security. They seek to hold our critical infrastructure at risk and to harm our economy.

The FBI is investigating a wider-than-ever range of threat actors, from transnational organized cybercrime to nation-state adversaries to terrorists using social medial for recruiting and radicalization purposes. The scale, scope, speed, and impact of cyber threats is constantly evolving, which may explain why we are also seeing a blending of threats, such as nation state adversaries using criminal actors as proxies to mask their activities. The frequency and severity of malicious cyber activity on our nation’s networks have increased dramatically in the past decade when measured by the amount of corporate data stolen or deleted, the volume of personally identifiable information compromised, or the remediation costs incurred by U.S. victims. Companies that hold large amounts of Personally identifiable information (PII) are susceptible to loss of American’s personal data to criminal organizations, terrorists, and nation-state cyber actors. Hotel chains, airlines, health care companies, credit bureaus, government agencies, and cleared defense contractors have previously been victims of PII theft.

Cyber Criminal Trends

Cyber threats are not only increasing in size and scope, but are also becoming increasingly difficult and resource-intensive to investigate. Cyber criminals often operate through online forums, selling illicit goods and services, including tools that lower the barrier to entry for aspiring criminals and that can be used to facilitate malicious cyber activity. These criminals have also increased the sophistication of their schemes, which are more difficult to detect and more resilient to disruption than ever. In addition, whether located at home or abroad, many cyber actors are obfuscating their identities and obscuring their activity by using combinations of leased and compromised infrastructure in domestic and foreign jurisdictions. Such tactics make coordination with all of our partners, including international law enforcement partners, essential.

Increasingly sophisticated obfuscation techniques are also enabling actors to stealthily obtain data from victims or re-purpose victim computers into cryptocurrency-mining botnets. Botnets used by cyber criminals have been responsible for billions of dollars in damages over the past several years. The widespread availability of malicious software (malware) that can create botnets allows individuals to leverage the combined bandwidth of thousands, if not millions, of compromised computers, servers, or network-ready devices to disrupt the day-to-day activities of governments, businesses, and individual Americans.

Cyber threat actors are conducting ransomware attacks against U.S. systems, encrypting data and rendering systems unusable—thereby victimizing individuals, businesses, and even emergency service and public health providers. Our threat reporting has demonstrated that ransomware attacks are becoming more targeted, sophisticated, and costly, even as the overall frequency of ransomware attacks is holding steady or declining. Since early 2018, the incidence of broad, indiscriminate ransomware campaigns has sharply declined, while losses from ransomware attacks have increased significantly. Allow me to restate that for emphasis: while the number of reported attacks has gone down, the effects and impacts of the attacks are going up. Meanwhile, state and local governments have been particularly visible targets for ransomware attacks. However, ransomware campaigns have also heavily impacted health care organizations, industrial companies, and the transportation sector.

Business email compromise (BEC) remains a pervasive threat due to its low barrier of entry and maturing social engineering techniques, and cyber criminals almost certainly will continue to use BEC to target industries indiscriminately. BEC threat actors have widened their money laundering networks, including domestic transfers prior to laundering the money overseas, which presents challenges and opportunities for countering this type of fraud. Readily available online personal and business information enhances the reconnaissance capability of actors, providing BEC threat actors with more credible social engineering lures. Spoofed domains are seen in the majority of BEC attempts, and likely will remain a technique used by cyber actors. BEC attacks combining social engineering with network intrusions demonstrate an increase in attack sophistication that can use keyloggers or other malware to identify potential targets, such as business vendors, as well as sell access to or further exploit compromised systems.

Actors have learned that BEC is effective and are adapting lures to target human resources departments for PII, such as W-2 tax forms to commit stolen identity return fraud, rather than requesting wire transfers. Additionally, industry partners have observed BEC actors increasingly instruct victims to send automated clearinghouse transfers to prepaid cards in the initial laundering phase.

Nation State Activities: China

While several nation-states pose a cyber threat to U.S. interests, no other country presents a broader and more comprehensive threat to our ideas, innovation, and economic security than the People’s Republic of China (PRC) under the leadership of the Chinese Communist Party (CCP). The threat takes many different forms. Beijing employs a whole-of-government approach to its intelligence collection strategy. While cyber network operations remain a primary and possibly increasing collection tool, the CCP also relies on techniques such as intellectual property theft, purchases of U.S. corporations, and physical and property theft to acquire U.S. data.

For example, less than a month ago, on February 10, the Department of Justice (DOJ), in coordination with the FBI, publicly unsealed an indictment against four Chinese cyber actors who allegedly acted as agents of the People’s Republic of China’s People’s Liberation Army (PLA). All four actors are currently located in China. The alleged crimes occurred between May 13, 2017 and July 30, 2017. The actors targeted a software vulnerability to gain unauthorized access to Equifax’s network and ultimately obtain PII for 145 million American citizens, as well as the intellectual property of the U.S. company.

The indictment alleges the four individuals named therein reside in Beijing, China and are members of the 54th Research Institute. The 54th Research Institute is a component of the PLA. The indicted individuals gained unauthorized access, via a software vulnerability, to Equifax’s internal network, where they allegedly ran approximately 9,000 queries on Equifax’s systems and obtained the names, birth dates, and social security numbers for approximately half of all adult American citizens. The defendants also took deliberate steps to evade detection in the system, including routing traffic through approximately 34 servers located in nearly 20 countries to obfuscate their true location, using encrypted channels in order to blend in normal traffic within Equifax’s network, and wiping log files on a daily basis to try to eliminate records of their activity.

DOJ, the FBI, and our partners will continue to work tirelessly to combat this threat posed by the Chinese government against our nation. Although the PRC continues to modify the ways in which it conducts nefarious cyber activity, including through working with criminal hackers, the cases prosecuted by the DOJ in partnership with the FBI reflect an increasingly sophisticated ability to attribute criminal conduct to the individuals and nation states involved. We will be relentless in our pursuit of such malicious activity against our citizens and our industry.

There are other risks. Chinese companies are increasingly acquiring or launching social media applications not housed in mainland China for the global consumer market. These applications generate big data and collect PII, such as biometric information, contact lists, location data, log data, communication metadata, content (text and photographic), bank and credit card details, and financial transactions of U.S. persons. The associated user agreements and privacy policies typically obfuscate the companies’ data handling responsibilities or directly state any and all data can be transferred to other locations and associated entities to include the Chinese parent company. These data handling policies create a risk for U.S. big data and PII to be targeted and exploited by PRC actors. More broadly, consumers should be aware of the privacy implications of any application they install, especially applications from foreign countries with weak data protection laws.

In June 2017, the PRC introduced a new national cyber security law that requires foreign firms to store data locally and submit to data surveillance measures. Although implementing regulations are still being drafted, Beijing could likely use these authorities and policies to compel access to U.S. commercial and sensitive personal data, including sensitive information stored or transmitted through Chinese systems. U.S.-based subsidiaries of Chinese corporations and entities, or organizations in the U.S. partnering on cooperative research and development efforts, are among the entities affected by this law. The law has raised fears by those concerned with Beijing’s control of sensitive company information and increased opportunity to steal intellectual property.

Threats Exposing Vulnerabilities on Critical Infrastructure Networks and the Public

Virtually all companies collect and maintain sensitive data either of their own employees or customer information. The overall trend of digitizing data for ease of use or access makes many different industries vulnerable to data breaches. For instance, over recent years the health care industry has moved to centralizing patient data and using Internet-connected devices, which has increased the sector’s potential attack surface. Cyber actors benefit from this target-rich environment as the passage of patient data between health care departments and networks is critical to their care, but often levels of cybersecurity vary. Ransomware, denial of service attacks, and data breaches can all impede the ability to provide basic patient care and privacy for protected health information (PHI). Electronic medical records typically contain PII, which, combined with medical record information, is known as PHI.

It is also highly likely cyber actors target the IT sector to access their customers’ data and networks. IT sector entities manage and store valuable customer data and have unique, privileged access to client networks. These vital services create an environment where IT sector networks are compromised as a means for malicious cyber actors to reach a final target for fraud, hacktivism, and counterintelligence purposes.

#### Illicit economies enflame all hotspots AND are a threat multiplier---extinction.

Luna ’21 [David; 2021; Founder and Executive Director of ICAIE, former U.S. diplomat and national security official with over 20 years of federal service; LinkedIn Pulse, “Why We Must Confront the Growing Threat to National Security Posed by Illicit Economies and Cesspools of Corruption and Organized Crime,” https://www.linkedin.com/pulse/why-we-must-confront-growing-threat-national-security-david-m-?trk=public\_post\_promoted-post]

Illicit economies are not harmless and can have tremendous human, economic, societal and security costs and consequences.

Illicit economies come with vulnerabilities to peace and security — including corruption, violence, chaos, organized crime, terrorist financing and instability. Illicit economies are the lifeblood of today’s bad actors, enabling kleptocrats to loot their countries, criminal organizations to co-opt states and export violence and terrorist groups to finance their attacks against our societies.

Illicit economies are pervasive threats that undermine democracy, corrode the rule of law, fuel impunity, imperil effective implementation of national sustainability and economic development strategies, contribute to human rights abuses and enflame violent conflicts.

Across today’s global threat environment, criminals and bad actors exploit natural disasters, human misery and market shocks for illicit enrichment.

The lucrative criminal activities enabling and fueling the multitrillion-dollar illicit economies include the smuggling and trafficking of narcotics, opioids, weapons, humans, counterfeit and pirated goods; illegal tobacco and alcohol products; illegally harvested timber, wildlife and fish; pillaged oil, diamonds, gold, natural resources and precious minerals; and other contraband commodities. Such contraband and illicit goods are sold on our main streets, on social media, in online marketplaces and on the dark web every minute of every day. The United Nations has estimated that the dirty money laundered annually from such criminal activities constitutes up to 5 percent of global gross domestic product, or $4 trillion.

The International Coalition Against Illicit Economies recognizes that illicit economies and crime convergence are threat multipliers that ripple across borders and imperil supply chain security, market integrity, democratic freedoms and institutions and systems of open, free and just societies.

In Mexico and Central America, for example, organized crime infiltrated the government at every level, and has diversified into other sectors such as agriculture, mining and transportation. Criminals also control strategic and critical infrastructure such as the country’s major ports. In recent years, the Jalisco New Generation Cartel has killed judges, police officers, politicians and thousands of civilians. Gangs like MS-13 and the Mexican cartels also remain a significant threat across the United States.

The significant market penetration of the Latin cartels has resulted in illicit economies that have corrupted and destabilized Mexico’s justice system and rule of law, and threaten regional stability. Their reach is now global, expanding to other regions of the world like Africa, Europe, and the Asia-Pacific.

China’s involvement in the expansion of illicit economies — including the booming trade in fraudulent consumer goods, money laundering/trade-based money laundering and the corruptive and malign influence of the Chinese Communist Party — continues to harm American national interests, our economy and competitiveness and the health and safety of our citizens.

In Africa, authoritarian governments, ungoverned spaces and conflicts have created the perfect storm for criminals and terrorist groups to expand their illicit trafficking and smuggling operations. The lucrative business of illicit trade has also been militarized in some areas, bribing complicit government officials to shield illicit enterprises from scrutiny and coercing soldiers to protect the illicit markets.

In other parts of the world – from Southeast Asia to the Caucasus – ruthless corrupt leaders and malign actors are similarly engaging in criminality and undermining global security, financing criminalized markets and creating illicit economies.

According to Euromonitor, while COVID-19 has brought economic malaise to most sectors, the illicit economy continues to accelerate, especially across the digital world. E-commerce platforms and online marketplaces are generating tremendous prosperity for scammers, fraudsters, counterfeiters and other predatory criminals that are raking in tens of billions of dollars selling fake pharmaceuticals and vaccines, personal protective equipment, counterfeit apparel and footwear, copyrighted electronics knock-offs and other illicit goods. Recent Organisation for Economic Co-operation and Development estimates put sales of fake goods and pirated products globally at $464 billion per year, with the International Trademark Association projecting that such illicit trade could reach up to $2.3 trillion by 2022.

These illicit economies divert revenue from legitimate market drivers such as businesses and governments and impair the ability of communities to make the investments necessary to stimulate economic growth, especially during these hard economic times. Revenue that could be used to build roads to facilitate commerce, hospitals to fight pandemic outbreaks and diseases, homes to raise and protect families or schools to educate children and future leaders, is instead lost to criminals’ greed crimes.

But this goes beyond just economic harm. Illicit economies incur a significant negative social cost, and in some cases, help to foment market instability, enslave our human capital, pillage our natural world and endanger national efforts to implement sustainable development goals.

Given the scale, Congress and the Biden administration need to elevate the fight against illicit economies by empowering our law enforcement agencies with new legal authorities and the necessary resources to disrupt illicit markets and anonymized criminal communications, prosecute illicit actors and threat networks, combat corruption and money-laundering safe havens and elevate the issue as a national security and foreign policy priority.

#### Strengthening data security diffuses public backlash against applied data.

CBFR ’18 [Global Banking and Finance Review; July 11; Finance magazine; Global Banking and Finance Review, “Data Revolution Backlash: Digital Privacy Angst Grips US, According to Latest Privitar Study,” https://www.globalbankingandfinance.com/data-revolution-backlash-digital-privacy-angst-grips-us-according-to-latest-privitar-study/]

US consumers believe technological advancements pose a risk to their data privacy; believe it is the responsibility of organisations to make the purpose of data use clear and say organisations that fail to protect peoples data should face immediate penalties from regulators. ˜Privitar Privacy Pulse, an inaugural study published today, has researched the views of thousands of consumers and businesses across the UK, France and the US, shining a light on widespread concerns on the march of the digital revolution.

The research found that the majority of US consumers not only have a punitive mindset when it comes to data breaches but are also prepared to take decisive action where organisations mishandle data, stating that they would stop using a brand if they did not protect their data.

Jason du Preez, CEO of Privitar, commented:

What we’re seeing is a real backlash against the data revolution. Our extensive study has shown that most consumers in the UK, US and France have real fears around the use of their data and will stop engaging with organisations they do not trust. The research also points to a lack of privacy literacy amongst consumers, leading to a breakdown of communication and trust.

In the US, the research shows a contradiction between the fears of consumers and the confidence of business. More pronounced than British and French consumers, 70% of US consumers are concerned about the ways companies are using their data. This contrasts starkly with the views of US business, which are more confident than their counterparts in the UK and France. While 68% of French upper level management feel the risks associated with using company data outweigh the potential benefits, only 38% of their US equivalents agree. Similarly, 79% of French businesses say preventing data breaches is a top priority for the next year, whereas only 66% of US businesses agree.

du Preez added:

While we see universal privacy concerns across the UK, US and France, there are clear points of difference. US consumers are distinctly more concerned about how companies use their data. However, US businesses are more comfortable with privacy risk and it is less of a priority compared with French and British businesses. Apple may have made privacy a key selling point of its products but many US organisations are not as progressed. Given public sentiment and, of course, the high profile Cambridge Analytica scandal, it is no surprise that regulatory moves are being made in the US.

Headline research findings:

Global consumers

90% believe technological advancements pose a risk to their data privacy (US: 92% / France: 90% / UK: 89%)

77% believe it is the responsibility of organisations to make the purpose of data use clear (UK: 81% / US: 76% / France: 73%)

23% believe it is their own responsibility to manage their data privacy (UK: 19% / US: 24% / France: 27%)

68% would stop using a brand if they did not protect their data (UK: 73% / US: 68% / France: 65%)

79% say organisations that fail to protect peoples data should face immediate penalties from regulators (UK: 83% / US: 78% / France: 76%)

Global businesses

74% say preventing data breaches is a top priority for the business in the next year (France: 79% / UK: 75% / US: 66%)

74% recognise risking the loss of customer trust and reputation damage if they fail to protect their customers data (France: 78% / UK: 76% / US: 69%)

72% say they need more support in protecting their customers data (France 77% / UK: 72% / US: 67%)

57% of senior executives say that risks associated with using company data are not worth the potential benefits to the organisation (France: 64% / UK: 57% / US: 53%)

46% say organisations that fail to protect peoples data should face immediate penalties from regulators (US: 50% / UK: 45% / France: 42%)

The research also shines a light on the lack of understanding of technology and data privacy protection. Most worrying is the lack of awareness of the big data revolution prizes such as tackling climate change and improving healthcare.

The big social opportunity

33% of consumers are aware their data is used to create innovative solutions to tackle climate change (UK: 32% / France: 33% / US: 34%)

41% of consumers are aware their data is used to find cures for common preventable diseases (France: 36% / UK: 42% / US: 45%)

du Preez went on to say:

Policy-makers, data scientists and businesses should heed the inherent warning of this research. Around the world, data scientists are working to improve healthcare outcomes “ be they curative or improving services “ and working on the transition from carbon to clean energy. Our research shows neither the purpose, nor the existence, of this work is well understood by the population at large. Consumers, who feel ill-informed and have legitimate privacy fears, are prepared to withdraw data use consent. The data revolution amounts to nothing without the trust and support of consumers.

There are important education and communications battles to be won. It is vital that the public feels knowledgeable and onside. We know that this is possible when we compare the so-called digital natives (18-34 year olds) against the over 55s. Younger generations, who feel more comfortable managing their privacy and understand how their data is used, have not only grown up with technology but have many have experienced focussed education in schools. Education and communication will be crucial for public sector organisations and businesses engaging with the older generation, in particular, who feel most fearful of a data-led world.

Data science needs to inspire, reassure and explain clearly its purpose to engage individuals and support innovation.

## Solvency---1AC

Finally, Solvency:

#### The plan is goldilocks---antitrust is the ideal grounds to remedy privacy injuries. It generates strong, market-oriented protections BUT avoids excessively chilling behavior OR displacing economic frameworks.

Day ’19 [Gregory and Abby Stemler; 2019; Assistant Professor of Legal Studies at the University of Georgia, Ph.D. in Political Science from the University of Mississippi, J.D. from the University of North Carolina; Assistant Professor in the Kelley School of Business at Indiana University, faculty associate at the Berkman Klein Center for Internet and Society at Harvard University; Iowa Law Review, “Infracompetitive Privacy,” vol. 105]

E. What Does This All Mean

We argue that antitrust could provide a remedy for privacy injuries while continuing to ground liability in purely economic terms. The solution is to measure the costs spent by society, markets, and consumers to prevent and cure privacy lapses. In other words, the economic costs incurred by consumers to remedy a privacy breach are analogous to supracompetitive pricing, especially in markets lacking prices. Key to our argument is that (1) uncompetitive technology markets enable firms to offload their privacy costs, creating market failure; (2) platform companies use anticompetitive practices to bolster their market supremacy; and (3) increased levels of competition would diminish the incentives to externalize privacy’s costs. So, to construct an antitrust claim, we think that consumers should be able to approximate the actual costs spent by consumers to ex ante and ex post guard one’s data in excess of what would be expended in a competitive market. Although a difficult calculus, it is no less abstract than the typical antitrust analysis in which the plaintiff must show evidence that monopoly prices have risen above the competitive level.175

To do so, a plaintiff could compare the privacy economics of the challenged market to a more competitive market. Key would entail evidence of costs not incurred in the competitive market to protect one’s personal information. For instance, if plaintiffs could trace their injury to a monopolist whose privacy policy provided inadequate protection, then evidence of superior privacy regimes found in a comparable yet more competitive market would indicate an antitrust violation. For an effective argument, the plaintiff could demonstrate that added competition would have likely incentivized rivals to offer a more secure regime, yet the nature of the platform’s market power enabled it to withhold adequate privacy. Or, upon a data breach, consumers could indicate the economic costs to remedy the breach in excess of comparable breaches in more competitive markets. So to initiate such a claim, a plaintiff should first show evidence of the defendant’s anticompetitive conduct to implicate a violation of § 1 or § 2 of the Sherman Act; then the complaint should provide evidence that, as a result of anticompetitive practices, the costs incurred to protect privacy or remedy a breach surpassed the competitive level.

A plaintiff could also demonstrate that increased competition would have produced a greater array of products or services on the market to secure one’s privacy. But due to the platform’s monopoly power, the platform resisted demands for those products. Consider for example the heightened levels of privacy available in more competitive technology sectors, such as the email market. With email, not only do companies offer email accounts designed to protect privacy, but such markets have also avoided the privacy disasters arising out of less competitive technology markets.176 Although more secure products might come at a greater price than services lacking comparable safeguards, the point is that competitive markets are more likely to offer consumers a choice. So if consumers can demonstrate that infracompetitive privacy resulted from a monopolist’s ability to erect barriers to competition, limiting the security of products available, this should implicate antitrust’s framework.

We think the benefits of instituting a cause of action for infracompetitive privacy under the Sherman Act are intuitive. First, as outlined in Part III, because the current privacy regimes are targeted to specific types of data, they fail to protect consumer welfare on either a broad or significant level.177 And considering the difficulty of asking Congress to enact comprehensive privacy regulations, the best answer lies in current law. In fact, antitrust is particularly well-suited for this task, as one of its chief advantages lies in its restraint. Because enforcement would only target companies that shifted the burdens of protecting privacy onto consumers beyond a competitive level, this framework would resist condemning firms that genuinely sought to protect privacy yet were overcome by sophisticated hackers. Indeed, since antitrust liability requires anticompetitive behavior or an unreasonable (attempt to generate a) monopoly (per § 1 and § 2, respectively), enforcement of infracompetitive privacy would only condemn antisocial conduct—e.g., anticompetitive practices.178 This enforcement would also, instead of being punitive, encourage firms to protect privacy ex ante, that is, it would incentivize platforms and technology to protect privacy before a breach occurs. Antitrust law is thus not only capable but the preferable body of law to foster privacy in the modern economy.

#### There’s scattershot and extensive antitrust now---developing federal standards on privacy is key.

Castro ’21 [Daniel Castro and Aurelien Portuese; May 17; vice president at the Information Technology and Innovation Foundation (ITIF) and director of ITIF's Center for Data Innovation, M.S. in information security technology and management from Carnegie Mellon University; director of antitrust and innovation policy at ITIF, doctor in law from the University of Paris II, adjunct professor of law at the Global Antitrust Institute of George Mason University; Information Technology & Innovation Foundation, “How Antitrust Regulators Threaten Consumer Privacy Innovations,” https://itif.org/publications/2021/05/17/how-antitrust-regulators-threaten-consumer-privacy-innovations]

For example, Google has announced that it is phasing out third-party cookies in its Chrome browser and is instead replacing them with the “Privacy Sandbox” (also known in tech circles as federated learning of cohorts, or FLOC). The idea is that instead of associating individuals with unique identifiers, users will instead be grouped based on common interests that advertisers can target. But in March, a group of state attorneys general filed an antitrust complaint arguing that Google’s Privacy Sandbox unfairly hurts other advertisers—never mind the fact that other major browsers likewise have blocked third-party cookies. The European Commission and the UK’s Competition and Markets Authority have similarly announced that they are investigating these actions as potential anti-competitive acts.

Or consider how Apple made changes to how apps can access user location data from mobile devices, at least partially in response to the many policymakers who have repeatedly argued that tech companies should do more to protect consumers’ sensitive location data on mobile devices. After making that change, of course some apps that use location data were impacted, and so Apple has been hit with accusations that its changes are designed, as U.S. Sen. Amy Klobuchar (D-MN) recently argued, to “exclude or suppress apps that compete with their own products.”

While some antitrust regulators have given the green light to such changes, most appear to be taking the countervailing antitrust arguments seriously. There is a fundamental tension between antitrust regulators prohibiting privacy innovations and antitrust regulators requiring them. And if regulators take a narrow view of foreclosure effects—viewing privacy innovations by large tech companies as unfairly restricting access to a market—they will frustrate global efforts to improve data protection and undermine privacy innovations. For example, the United States should pass legislation to create a national privacy framework that streamlines regulation, preempts state laws, and establishes basic consumer data rights while minimizing the impact on innovation. But unless antitrust regulators resolve this issue, large tech companies will still struggle to implement the spirit of a new privacy framework. Unfortunately, antitrust regulators have already created this privacy dilemma, and the resulting legal uncertainty will slow the deployment of many advances in consumer privacy, thereby hurting the very people regulators say they are trying to protect.

#### Only federal standard setting solves.

Huddleston ’19 [Jennifer and Ian Adams; 2019; Director of Technology and Innovation Policy at AAF. Her research focuses on the intersection of emerging technology and law; Managing Director, former aide to the U.S. Secretary of Energy and worked at the White House; Regulatory Transparency Project, “Potential Constitutional Conflicts in State and Local Data Privacy Regulation,” https://regproject.org/wp-content/uploads/RTP-Cyber-and-Privacy-Paper-Constitutional-Conflicts-in-Data-Privacy-final.pdf]

In August 2018, California passed the California Consumer Privacy Act (CCPA). The Golden State’s framework is set to become effective on January 1, 2020 and enforceable on July 1, 2020. Other states, including Nevada and Maine, have likewise passed consumer data privacy laws, and more still are considering such legislation.4 Many of these bills (and, potentially, executive orders) use California’s legislation as a model, but they are far from uniform. Generally, such laws signal a shift from the American approach to data governance—largely permissionless innovation with a post hoc regulatory response to concrete harms—to a European-style approach with the precautionary principle at its center.

While these laws purport to apply only inside each state’s borders, they burden an inherently interstate — indeed, global — media, and the direct and indirect costs and effects of state laws and regulations are significant. A recent regulatory impact assessment from the California Department of Justice concluded that the CCPA would cost California firms — to say nothing of firms outside California — $55 billion in compliance costs up front and $16.5 billion over the next 10 years.5 Notably, the CCPA’s costs impact not only companies in the technology sector but a wide range of industries: from retail and entertainment to construction and mining. This would affect up to 570,000 California businesses.6

While these internal regulatory compliance costs alone may be high, they fail to capture secondary economic losses such as potential lost advertising revenues of up to$60 billion.7 Nor do they count the costs to non-resident firms that will be impacted by the law’s requirements. Given the scope of its covered entities and its definition of who may invoke rights under the law, the CCPA is broad enough to capture many smaller businesses that have a limited number of California IP addresses in their web traffic and/or draw the bulk of their users or data from other states.8

Privacy regulation is not cost-free, and regulations in populous and economically significant states such as California may have particularly dramatic effects far beyond their borders. Already, one large technology firm, Microsoft, has signaled its intention to enforce CCPA’s requirements nationwide.9 But even smaller states considering similar laws would effectively subject both resident and nonresident businesses to sizeable compliance costs and lost revenue. In either case, as both large and small states act, businesses will encounter an ever-increasing compliance burden as seemingly minor differences compel the development, deployment and maintenance of state-specific systems to handle conflicting laws.10 As a result, while some states may be more likely to give rise to compliance challenges, constitutional concerns and risks of a potential patchwork exist regardless of the size and economic power of the state.

The impact of greater compliance burdens, from one state or many, would be two-fold and informed directly by recent experiences with GDPR’s enactment. First, significantly higher compliance costs will make firms hesitate to invest in smaller companies less equipped to handle compliance and to avoid enforcement actions, even one of which could be fatal to a firm, given the public relations sensitivity of “privacy.”11 Second, market leaders such as Google and Facebook would be better protected from new competition as they are more capable of building out compliance infrastructure to address regulatory challenges, while newer and smaller players may struggle with increased barriers to entry from such requirements.12

Conversely, the potential benefits of these laws are not readily calculable as an empirical matter and are, as a result, more difficult to discern. This is not to say that there are no benefits to consumer privacy legislation, but the value of such benefits is far more dependent on personal preferences. For example, various analyses have noted potential unintended consequences of overly precautionary privacy laws as well as the comparably low benefits based on consumers’ willingness to pay.13

These negative effects are compounded by the uncertainty created for covered entities, possible inconsistencies in enforcement between states, 14and overly broad definitions of germane terms (particularly “personal information”) Even slight inconsistencies among states are likely to frustrate consumer expectations,15 as well as the companies subject to them, by introducing confusion about what rights exist and what rules apply when trying to comply.16

Ultimately, while these proposals may be well-intentioned attempts by state lawmakers to provide a solution in the absence of federal action, sub-national data privacy laws have the potential to create a disruptive mesh of inconsistent, but always applicable, standards that splinter the internet and raise costs.17

# 2AC

## DA---Status Denial

### 2AC---DA---China

#### US leadership solves every threat, but decline emboldens rivals and causes miscalc and arms races that escalate.

Hal Brands 18. Henry A. Kissinger Distinguished Professor of Global Affairs at the Johns Hopkins University School of Advanced International Studies, Senior Fellow at the Center for Strategic and Budgetary Assessments and the Foreign Policy Research Institute, Ph.D. in history from Yale University. “Chapter 6: Does America Have Enough Hard Power?” American Grand Strategy in the Age of Trump; pp. 129-133.

Much contemporary commentary favors the first option—reducing commitments—and denounces the third as financially ruinous and perhaps impossible.5 Yet significantly expanding American capabilities would not be nearly as economically onerous as it may seem. Compared to the alternatives, in fact, this approach represents the best option for sustaining American primacy and preventing a slide into strategic bankruptcy that will eventually be punished. Since World War II, the United States has had a military second to none. Since the Cold War, America has committed to having overwhelming military primacy. The idea, as George W. Bush declared in 2002, that America must possess “strengths beyond challenge” has featured in every major U.S. strategy document for a quarter century; it has also been reflected in concrete terms.6 From the early 1990s, for example, the United States consistently accounted for around 35 to 45 percent of world defense spending and maintained peerless global power-projection capabilities.7 Perhaps more important, U.S. primacy was also unrivaled in key overseas strategic regions—Europe, East Asia, the Middle East. From thrashing Saddam Hussein’s million-man Iraqi military during Operation Desert Storm, to deploying—with impunity—two carrier strike groups off Taiwan during the China-Taiwan crisis of 1995– 96, Washington has been able to project military power superior to anything a regional rival could employ even on its own geopolitical doorstep. This military dominance has constituted the hard-power backbone of an ambitious global strategy. After the Cold War, U.S. policymakers committed to averting a return to the unstable multipolarity of earlier eras, and to perpetuating the more favorable unipolar order. They committed to building on the successes of the postwar era by further advancing liberal political values and an open international economy, and to suppressing international scourges such as rogue states, nuclear proliferation, and catastrophic terrorism. And because they recognized that military force remained the ultima ratio regum, they understood the centrality of military preponderance. Washington would need the military power necessary to underwrite worldwide alliance commitments. It would have to preserve substantial overmatch versus any potential great-power rival. It must be able to answer the sharpest challenges to the international system, such as Saddam’s invasion of Kuwait in 1990 or jihadist extremism after 9/11. Finally, because prevailing global norms generally reflect hard-power realities, America would need the superiority to assure that its own values remained ascendant. It was impolitic to say that U.S. strategy and the international order required “strengths beyond challenge,” but it was not at all inaccurate. American primacy, moreover, was eminently affordable. At the height of the Cold War, the United States spent over 12 percent of GDP on defense. Since the mid-1990s, the number has usually been between 3 and 4 percent.8 In a historically favorable international environment, Washington could enjoy primacy—and its geopolitical fruits—on the cheap. Yet U.S. strategy also heeded, at least until recently, the fact that there was a limit to how cheaply that primacy could be had. The American military did shrink significantly during the 1990s, but U.S. officials understood that if Washington cut back too far, its primacy would erode to a point where it ceased to deliver its geopolitical benefits. Alliances would lose credibility; the stability of key regions would be eroded; rivals would be emboldened; international crises would go unaddressed. American primacy was thus like a reasonably priced insurance policy. It required nontrivial expenditures, but protected against far costlier outcomes.9 Washington paid its insurance premiums for two decades after the Cold War. But more recently American primacy and strategic solvency have been imperiled. THE DARKENING HORIZON For most of the post–Cold War era, the international system was— by historical standards—remarkably benign. Dangers existed, and as the terrorist attacks of September 11, 2001, demonstrated, they could manifest with horrific effect. But for two decades after the Soviet collapse, the world was characterized by remarkably low levels of great-power competition, high levels of security in key theaters such as Europe and East Asia, and the comparative weakness of those “rogue” actors—Iran, Iraq, North Korea, al-Qaeda—who most aggressively challenged American power. During the 1990s, some observers even spoke of a “strategic pause,” the idea being that the end of the Cold War had afforded the United States a respite from normal levels of geopolitical danger and competition. Now, however, the strategic horizon is darkening, due to four factors. First, great-power military competition is back. The world’s two leading authoritarian powers—China and Russia—are seeking regional hegemony, contesting global norms such as nonaggression and freedom of navigation, and developing the military punch to underwrite these ambitions. Notwithstanding severe economic and demographic problems, Russia has conducted a major military modernization emphasizing nuclear weapons, high-end conventional capabilities, and rapid-deployment and special operations forces— and utilized many of these capabilities in conflicts in Ukraine and Syria.10 China, meanwhile, has carried out a buildup of historic proportions, with constant-dollar defense outlays rising from US$26 billion in 1995 to US$226 billion in 2016.11 Ominously, these expenditures have funded development of power-projection and antiaccess/area denial (A2/AD) tools necessary to threaten China’s neighbors and complicate U.S. intervention on their behalf. Washington has grown accustomed to having a generational military lead; Russian and Chinese modernization efforts are now creating a far more competitive environment. Second, the international outlaws are no longer so weak. North Korea’s conventional forces have atrophied, but it has amassed a growing nuclear arsenal and is developing an intercontinental delivery capability that will soon allow it to threaten not just America’s regional allies but also the continental United States.12 Iran remains a nuclear threshold state, one that continues to develop ballistic missiles and A2/AD capabilities while employing sectarian and proxy forces across the Middle East. The Islamic State, for its part, is headed for defeat, but has displayed military capabilities unprecedented for any terrorist group, and shown that counterterrorism will continue to place significant operational demands on U.S. forces whether in this context or in others. Rogue actors have long preoccupied American planners, but the rogues are now more capable than at any time in decades. Third, the democratization of technology has allowed more actors to contest American superiority in dangerous ways. The spread of antisatellite and cyberwarfare capabilities; the proliferation of man-portable air defense systems and ballistic missiles; the increasing availability of key elements of the precision-strike complex— these phenomena have had a military leveling effect by giving weaker actors capabilities which were formerly unique to technologically advanced states. As such technologies “proliferate worldwide,” Air Force Chief of Staff General David Goldfein commented in 2016, “the technology and capability gaps between America and our adversaries are closing dangerously fast.”13 Indeed, as these capabilities spread, fourth-generation systems (such as F-15s and F-16s) may provide decreasing utility against even non-great-power competitors, and far more fifth-generation capabilities may be needed to perpetuate American overmatch. Finally, the number of challenges has multiplied. During the 1990s and early 2000s, Washington faced rogue states and jihadist extremism—but not intense great-power rivalry. America faced conflicts in the Middle East—but East Asia and Europe were comparatively secure. Now, the old threats still exist—but the more permissive conditions have vanished. The United States confronts rogue states, lethal jihadist organizations, and great-power competition; there are severe challenges in all three Eurasian theaters. “I don’t recall a time when we have been confronted with a more diverse array of threats, whether it’s the nation state threats posed by Russia and China and particularly their substantial nuclear capabilities, or non-nation states of the likes of ISIL, Al Qaida, etc.,” Director of National Intelligence James Clapper commented in 2016. Trends in the strategic landscape constituted a veritable “litany of doom.”14 The United States thus faces not just more significant, but also more numerous, challenges to its military dominance than it has for at least a quarter century.

#### **China is an aggressively revisionist state that seeks to hide its true intentions---prefer structural readings because their theory is a non-falsifiable post-hoc rationalization, but offensive realism explains every one of their empirics better**

Noguchi, ’11 Kazuhiko Noguchi, the Institute of Asian Research, the University of British Columbia, read by Brian Job, Tsuyoshi Kawasaki, Akitoshi Miyashita, Cheung Mong, Regina Titunik, Noato Yoshikawa, Shigemitsu Konno, and John J. Mearsheimer, December 11th, 2011, “Bringing Realism Back In: Explaining China's Strategic Behavior in the Asia Pacific”, Asia-Pacific Review, <http://dx.doi.org/10.1080/13439006.2011.640580>, EO

It is no wonder, then, that China does and did attempt to maximize its relative power before and after the Cold War. As Johnston himself admits, “The motivation for the...modernization of Chinese military capabilities—particularly its power projection forces—is more consistent with the desire to improve relative power.”32 Therefore, China’s strategic behavior fits offensive realism. If the theory of offensive realism is plausible, as John J. Mearsheimer concludes, we can predict that “China is likely to try to dominate Asia...It is unlikely that China will go on a rampage and conquer other Asian countries. Instead, China will want to dictate the boundaries of acceptable behavior to neighboring countries...In the anarchic world of international politics, it is better (for China) to be Godzilla than Bambi.”33 In sum, China’s post-Cold War strategic behavior in the Asia-Pacific region can be explained in terms of offensive realism. China’s grand strategy and its naval ambitions Deng’s legacy and China’s naval strategy China’s grand strategy is a product of realist power politics in an anarchical world and its naval ambition was driven by a power shift in its favor. The demise of the Soviet Union enabled China to turn its focus from land to sea. China has made the most of this opportunity and created a sophisticated long term strategy. The most important element of its post-Cold War strategy is represented in Deng Xiaoping’s guidance expressed on September 1989. He constructed an international strategy known as the “24 character strategy” designed to enhance China’s power and international position for the future. Some of these characters manifest as “observe calmly; secure our position; cope with affairs calmly; hide our capacities and bide our time (until the completion of modernization); maintain a low profile.”34 As I will demonstrate hereafter, these imperatives have framed China’s grand strategy and its security behavior since the end of the Cold War.35 In accordance with Deng’s guidance, his successors, Jiang Zemin, and Hu Jintao, have sought to increase China’s “comprehensive national power (CNP, zonghe guoli)” in order to catch up the United States and other powers.36 The track record of post-Cold War Chinese strategic behavior not only follows Deng’s statements but also corresponds with his imperatives.37 Deng’s grand strategy emphasized the enhancement of China’s sea power. While China has traditionally been a land power, the disappearance of the Soviet threat made it possible for China to shift its strategic focus from land to sea. In other words, this new emerging distribution of power clearly encouraged Deng’s decision to shift the strategic focus from total war to limited war in 1985.38 And his decision helped to produce the new naval strategy and buildup. Deng acknowledged the importance of command of the sea for China’s future. His unprecedented appointment of Admiral Liu Huaqing to the vice chair of the Central Military Commission (CMC) reflected Deng’s strong belief that China should make efforts to increase its naval power. Deng urged Huaqing to develop a modernized naval strategy. As a result, he elaborated the concept of “offshore (near-seas) active defense,” envisioning stubborn defense near the shore, mobile warfare at sea, and surprise guerrilla-like attacks in the Western Pacific Ocean.39 The main purposes of this strategy are to reunify Taiwan, restore lost and disputed islands, protect China’s maritime resources, protect sea lines of communication (SLOCs), and deter and defend against aggression from the sea.40 Above all, SLOCs are very important for China’s security and economy because its survival and prosperity are increasingly dependent upon the Western Pacific, the South China Sea. For Chinese strategists, these sea lines are crucial not only for securing access to energy resources, foreign trade, and direct investment but also for ensuring its protection from possible external threats since the control of waters provides China with a large buffer zone that could be utilized to eliminate military interventions from foreign powers. China’s changing naval strategic goals China’s strategic goal is allegedly to establish an area of sea control within the first island chain in the near term and an area of sea denial capability within the second island chain in the long term (see Figure 1).41 In order to achieve these goals, China has engaged in a modernization program of its naval and air forces since the end of the Cold War.42 In the early stage of this naval modernization, the Chinese leadership probably wanted to build a blue water navy.43 However, the Beijing leadership soon acknowledged that a full-fledged blue water navy was beyond China’s capabilities.44 Instead, China shifted focus to the construction of a brown water navy for a resource efficient naval buildup while preserving the building of its blue water navy as a long-term strategic goal.45 A brown water navy is useful for defending the surrounding East and South China Sea littorals, and preventing the United States and other navies including the Japan Maritime Self-Defense Forces (JMSDF) from taking hostile actions against China. To establish command of its coastal waters, China has recently increased the People’s Liberation Army Navy (PLAN) movements in the Asia-Pacific region. China’s frequent dispatches of submarines to the East and South China Seas, and recent PLAN investigations of the topology of the East China Sea and the Western Pacific Ocean and possible responses from the United States and Japan are necessary activities for this purpose.46 While China makes efforts to complete its strategic planning, the timetable for the modernization of China’s naval forces has been delayed mainly by technological backwardness. According to some military specialists, the PLAN is clearly inferior to the US navy and the JMSDF, even to the Taiwanese navy. For example, Chinese submarines have limited war fighting capabilities. As a result of their outdated designs, they can be easily detected by western navies such as the JMSDF.47 Moreover, the PLAN possesses only limited power projection capabilities. For example, China’s nuclear submarines and aircraft carrier are not ready to go to the Pacific. Hence, China has had to concentrate on modernizing its conventional submarines (replacement of the obsolete and noisy Type 033 and 035 SSKs with modern 039 Song attack submarines), deploying destroyers equipped with anti-ship cruise missiles (production of the new Luyang Il/Type 052C destroyer), and short-range ballistic missiles (WS-1, WS-2, DF-15, etc),48 to overcome its military weakness and inferiority. Therefore it lacks the means to be actively aggressive towards other states in the AsiaPacific.49 Some pundits might deny China’s expansive ambition by citing evidence of China’s cooperative diplomacy in border talks with the Russia and other continental countries. China has solved its border disputes even in cases where this has resulted in unfavorable terms for China. A recent comprehensive study shows that China has demilitarized and compromised in many border negotiations with continental neighbors in the 1990s.50 Although China’s cooperative attitude in territorial disputes can be interpreted as evidence that China does not have expansive ambitions, an alternative explanation remains possible. From a strategic point of view, avoiding a two-front confrontation by lessening the risk of continental conflict is rational for China if it wants to be a sea power. It also makes sense for China to compromise in land border talks for moving its defensive perimeter seaward from the coast because the resources it can allocate are limited. It can even be argued that China swallowed these unfavorable deals with its continental neighbors as a necessary cost in order to focus its resources on its naval and air forces efficiently in southern coastal area. The solution of border disputes enabled China to reduce military equipment spending and the number of soldiers in the PLA. Several reductions have downsized the PLA from approximately 4 million personnel in 1985 to 2.3 million personnel in 2007. The main purpose of the PLA’s personnel reduction, according to Chinese explanations, is to strengthen the PLAN, PLAAF (People’s Liberation Army Air Force), and nuclear forces by correcting the greater emphasis that had previously been placed on the PLA.51 This shows that China’s strategic focus has already shifted from land security to maritime security. In short, China’s compromises on border issues can also be understood in the context of grand strategy. Generally speaking, the course of China’s strategic behavior has been directed by structural imperatives embodied in Deng’s grand strategy; it is rational for a rising China to solve border conflicts and act peacefully until its military modernization of the PLAN is complete. Building a powerful brown water navy as well as developing short-range ballistic missiles (for securing its position), and maintaining a low-profile diplomacy (for coping with affairs calmly) serves China’s coastal strategy (jinhai fangyu zhanlue) well. Thus, the post-Cold War record of China’s strategic behavior is quite consistent with offensive realism’s predictions: states construct a grand strategy (Deng’s 24 charters) for establishing “regional hegemony” (its maritime ambition represented in the first and second island concept) and allocate military resources to achieve their goal (relative emphasis on the PLAN).52 China’s military spending China’s priority of military to economy China’s consistent military build-up in the post-Cold War period also offers strong evidence that China is still following the offensive realist grand strategy. China has invested more money into military forces than other public welfares for nearly two decades: the growth rate of Chinese military spending is almost consistently higher than that of its Gross Domestic Product (GDP) since Deng’s guidance and the end of the Cold War (see Figure 3). Why does China’s military spending increase at such an unusually rapid pace? To what ends does China invest in its armed forces while facing no clear external threat? China’s long-term military spending trends give us clues in finding answers. As an offensive realist argues, states never feel secure until they establish regional hegemony or global hegemony. To achieve this goal, states prefer military power to economic power relative to other countries if many rival regional states cannot match their efforts.53 China’s behavior is consistent with the expectations of offensive realism. It is natural and rational for China to spend more money on building stronger military forces for improving its relative power position toward “regional hegemony” when other neighboring countries do not counter the rise of China seriously.54 For example, Japan, the most powerful rival state for China in the region, does not match China’s efforts at least in terms of military spending. The share of defense budget in Japan’s general account remained the same just before and after the Cold War. Moreover, Japan’s defense budget has been flat since 1994 and even declining in nominal and real terms.55 Furthermore, the JDA budget has been declining since 2003. ASEAN countries also do not counter China’s military build-up effectively (I will discuss this later). Why has China kept increasing its military spending at an extraordinary high pace with almost no neighboring states’ arms build-up? The liberal argument faces difficulty to answer this question. Rather, this evidence offers strong reasons to challenge the liberal argument that what China really wants is a peaceful international environment to sustain its economic growth through active foreign trade and the attraction of Foreign Direct Investment (FDI).56 Richard Rosecrance argues that China is especially sensitive to the advantages of intensive growth and to the potential for the disruption of essential economic arrangements.57 Likewise, Yong Deng contends that China secures an international environment to persuade other nations that China’s rise represents an opportunity for economic prosperity.58 If their arguments hold water, China should have eschewed provocative and risky military modernization so as not to undermine a stable international environment. However, China has continued strengthening its military power, which potentially invites hostile reactions from foreign powers, thus risking harm to its economic interests. Moreover, China sometimes demonstrates and even uses force when its vital interests are at stake. The 1996 Taiwan Strait Crisis is a typical case for challenging the liberal thesis. China’s missile exercise against Taiwan to prevent the election of Lee Tunghui could undermine the stability of international environment and cause negative effects on its own economy. These facts damage the liberal explanation of China’s behavior and the argument that economic growth has priority in China’s decision-making. Do domestic politics matter? The rapid growth of the Chinese military budget is sometimes explained in the context of Chinese domestic politics. Some Chinese specialists imply that political bargaining in Beijing shapes its defense spending: civilian leaders’ political power is not strong enough to ignore demands from China’s military and as a result they are forced to compromise on some of the PLA’s demands in order to maintain tight civilian control and political stability and avoid potential domestic turmoil. In short, China’s strategic choice among possible policies is a function of the changing dynamics of the power balance among domestic actors, particularly civilian and military leaders. Certainly, domestic variables affect the details of Chinese decision-making, but liberal explanations for China’s defense budget are not robust. Susan L. Shirk argues that a tax reform imposed by Zhu Rongji in 1994 allowed the Chinese central government to take in more revenues and invest most heavily in military projects.59 Contrary to Shirk’s argument, the double digit growth of the Chinese military spending had already begun several years prior to Rongji’s tax reform initiative and its growth rate shows no substantial variance prior to or after the reform. As Figure 3 shows, the 1994 tax reform did not substantially affect the growth rate of military spending. The Taiwan factor, frequently referred to as a critical variable for determining China’s security policy, has no obvious correlations with the growth rate of the China’s defense budget. It is almost a cliche´ in modern Chinese security studies to assert that the Taiwan factor defines the direction of China’s military buildup. Shirk contends that the greater budget allocation to the PLAN and PLAAF are crucial for preparing for Taiwan-related contingencies. She cited an article in The China Daily as evidence that “the double-digit increase in military spending did not take place until very recent years when tension escalated across the Taiwan Strait.”60 By referencing this article, Shirk suggests that the Taiwan crisis compelled China’s military leaders to demand a larger military budget for modernizing its military power to counter US naval forces. China could not match the two aircraft carrier groups dispatched into the Taiwan Strait by the United States during the crisis. As a result, when PLA leaders demanded an increased budget to overcome China’s military inferiority to US forces, the civilian leadership had to yield to the PLA’s demand. Again this interpretation is not necessarily corroborated with the data: the double-digit growth in Chinese military spending had already started long before 1996. According to China’s National Defense in 2006, an official Chinese government document, its growth rate has stayed in the double digits at least since 1991.61 Thus there is no clear correlation between the 1996 Taiwan crisis and the Chinese military budget as far as its growth rates are concerned. Furthermore, the growth rate in 1997, the year following the Taiwan Strait crisis, actually slightly decreased. Although Taiwan is central to the Chinese leadership’s political agenda, this analysis suggests that the “Taiwan bias” sometimes overshadows how other variables affect China’s security policy decision-making.62 This suggests that China’s military buildup is not directly caused by its domestic bureaucratic politics. Rather China has consistently strengthened its military forces in accordance with a coherent long-term national strategy. Although the distribution of political power or bargaining between civilian political and military leadership may affect details of China’s defense policy, the long term trend and pattern of its military spending shows that Beijing is pursuing a monolithic strategy designed to maximize its military power, just as Deng’s 24 character guidance suggested. This evidence may also indicate that there may exist little opinion gap between civilian and military decision-makers in China’s strategic directions. As Jonathan D. Pollack points out, “the PLA had begun to develop a more compelling rationale and logic of long-term military development that civilian leaders were prepared to support.”63 In any case, the constant high growth rate of China’s military spending corresponds with the predictions of offensive realism: a state enjoying prosperity is likely to convert its economic resources into military power even at the expense of economy under some condition. Does identity matter? Finally, some constructivists make a counterargument against realists that China’s increase in defense spending has not invited countermeasures from neighboring states due to its “pacifist” identity. China more than doubled its defense spending to $48 billion by 2002, while combined ASEAN spending had risen to only $19 billion. This, David C. Kang asserts, refutes the realist hypothesis of balancing behavior because ASEAN countries do not balance against China.64 First, in contrast to his interpretation, this data is not contradictory to a hypothesis of offensive realism: a strong state questing for hegemony maximizes its relative power at the expense of other nations. China has spent more on its military budget precisely in order to outcompete the ASEAN countries. China’s military buildup is most effective for strengthening its relative comprehensive national power. Hence this confirms offensive realism’s hypothesis mentioned above. Second, ASEAN countries may carefully avoid provoking China by “passing the buck” to other great powers. As Mearsheimer argues, threatened states usually prefer buckpassing to balancing, mainly because the buck-passers avoid the costs of fighting the aggressor in the event of war.65 Probably this is the case for ASEAN. Thus, we should regard China’s recent low-profile cooperative policy not as a grand strategy per se but as a tactic to buy time for completing the modernization of the PLA. Of course, the statistical data on China’s military spending alone cannot tell us the whole story or a complete picture of its grand strategy, but this still offers evidence that China continuously seeks to become a strong military power. China’s policy towards Taiwan The most difficult theoretical puzzle to explain is China’s attitudes toward Taiwan. For China’s leadership, the Taiwan issue is the top priority of its “foreign” policies. China is likely to do anything to prevent Taiwan from gaining independence. China clearly asserts that it will launch a war against Taiwan if it declares political independence. Although the use of force inevitably poses the potential of doing serious damage to China’s identity, reputation, and prosperity, China has committed to stopping Taiwanese independence at any cost. Why does China consider Taiwan’s political status such a serious issue? Pitfalls of constructivist explanations There are two competing explanations advanced in previous studies: one is the realist-oriented explanation and the other is a constructivist-oriented explanation. On one hand, realists emphasize the geopolitical importance of Taiwan for China. On the other hand, constructivists interpret Taiwan as a matter of identity politics. From the strategic point of view, the geopolitical constraint imposed by Taiwan on China’s naval activities is a serious problem for Beijing. As far as Taiwan holds its virtual independence and alignment with the United States, China cannot effectively control the coastal waters vital to its security and economy. Thus it is necessary for China to control Taiwan politically and militarily in order to establish its command of the sea in the near coastal waters and move forward into the Western Pacific Ocean and the South China Sea.66 As Toshi Yoshihara and James Holmes point out, “for China ...Taiwan’s geographic position...imposes a physical barrier to power projection from the mainland and prevents Beijing from completing its offshore defense perimeter...Taiwan sits conspicuously and directly across from the center point of the mainland’s coastline.”67 In sum, Taiwan is a matter of national security: whether China successfully achieves its strategic goals or not largely depends upon Taiwan’s future position. I think that these realist explanations above are strong and sound. However, some constructivists try to provide quite different explanations from realist ones: they emphasize the role of identity in accounting for China’s Taiwan policy. David C. Kang argues that the Taiwan issue is a matter of identity. According to him, “Taiwan is not an issue because of power politics: it’s an issue because of competing conceptions of whether Taiwan is an independent, sovereign nation state, or whether it is a part of China...this disagreement over Taiwan’s identity, Taiwan’s status remains an issue in international politics...control of Taiwan could (not) tip the balance of power in the region...Chinese view Taiwan as an issue of nation building, not of territorial expansion (emphasis added).”68 Although his view has some merit, he overemphasizes the impact of identity and underestimates the strategic importance of Taiwan for China’s ambitions. If we take Taiwan’s geographical position into account, a different strategic picture emerges.69 Geographic importance of Taiwan China’s maritime strategy shows how important Taiwan’s geographic position is. As I demonstrated above, China seeks to establish an area of sea denial, and hopefully sea control, within “the first island chain.” Taiwan is located at the center of the Chinese southern coastal waters within the first island chain. In order to eliminate this geographic obstacle, China has modernized its military capability. China has constantly increased the number of its short-range ballistic missiles directed against Taiwan and has also built naval vessels such as destroyers and cruisers equipped with cruise missiles. If the identity of Taiwan simply matters for China, why does China constantly demonstrate an intention to conquer or control Taiwan and acquire the state-of-art military equipment now targeting Taiwan? Why do interactions between China and Taiwan not construct a “peaceful” identity that downplays the role of military forces in China’s Taiwan policy? No matter who takes political power in Taiwan, whether a pro-China politician such as Ma Ying-jeou or anti anti-China and pro-independence politician such as Chen Shui-bian, no matter how many mutual economic activities increase between mainland China and Taiwan,70 China continues to strengthen the military forces it has deployed against Taiwan.71 As has been indicated above, China continues to modernize its naval vessels and increase the number of short-range ballistic missiles arrayed against Taiwan. According to the United States Department of Defense, as of 2009 the PLA has deployed between 1050-1150 CSS-6 and CSS-7 short-range ballistic missile (SRBM) against Taiwan. “China is increasing the size of this force at a rate of more than 100 missiles per year.”72 This not only suggests the robustness of the offensive realist explanation for China’s revisionist intention and hegemonic ambition and its military resource allocation but also casts strong doubt on the role of identity in China’s Taiwan policymaking. Status quo power vs. revisionist: Where does China fit in? China’s revisionist intentions The analysis thus far indicates that China cannot be categorized as a genuine status quo power but rather as a cautious revisionist. First, China shows a clear intention to expand its power toward the Western Pacific Ocean as the first and second island chain concept demonstrates.73 China’s ambition to control Taiwan is only one of the political goals in its grand strategy. Second, for nearly two decades China has consistently invested capital in its military forces even at some expense to economic welfare.74 The growth rate of China’s military spending constantly exceeds that of GDP and has almost never changed no matter what has happened in international and domestic settings. These Chinese behavioral patterns and strong will to modernize its military forces can be aptly explained in terms of offensive realism. As one commentator rightly points out, today’s China may not be a revisionist in the sense that it is not using forces to change the existing order.75 However, what is more important is to infer why China has refrained from employing forces while expanding its power seaward. As Figure 1 shows, China’s strategic aim is to extend its political and military influence far beyond its territorial waters. In order to achieve this goal, “China pursues a development strategy in modernizing its national defense.”76 Needless to say, when Taiwan declares independence, China is willing to use force to prevent it. China’s revisionist intention is arguably evidenced by its diplomacy in the Asia-Pacific. As Deng’s grand strategy suggests, China is willing to establish a new international security order in its own favor by utilizing diplomatic activities. China tends to regard both Japan and the United States as potential adversaries; therefore, it tries to undermine the United States-led hub-and-spoke security mechanism in the Asia-Pacific as much as possible.77 This does not necessarily mean that China will go to war with the United States, but instead will make use of available tools to marginalize the United States’ influence in the AsiaPacific. This policy preference can be observed even in China’s multilateralism. China’s preferences toward regional institutions China has been recently enthusiastic about enlarging and institutionalizing ASEAN instead of utilizing Asia-Pacific Economic Cooperation (APEC). There are several reasons for China’s move towards ASEAN. First, this was partly a response to the US initiative to promote APEC as a security institution in the mid-1990s. China moved closer to ASEAN in order to counter the US diplomatic campaign to isolate China because the US influence in ASEAN was relatively small. Second, ASEAN is a more favorable institution than APEC for China. China was once reluctant to strengthen ASEAN in the early 1990s, being afraid that ASEAN would become an anti-China front. However, the US initiative to strengthen the alliance with Japan and APEC in the mid-1990s encouraged China to move closer to ASEAN. Not only did China become positively disposed to the institutionalization of ASEAN plus 3 (ASEAN plus 1 with no Japan and Korea is preferable for China though), but also agreed to the Treaty of Amity and Cooperation (TAC) in the late 1990s and the Declaration on the Conduct of Parties in the South China Sea at ARF in 2003. This Chinese preference shows its willingness to replace the US-centric huband-spoke system with a new Sino-centric order in the Asia-Pacific by reaching an accommodation with Southeast Asian countries. Since the United States had already declared a policy of non-intervention in South China Sea conflicts,78 China can now effectively marginalize its US influence by strengthening the ARF in the region. A series of cooperative agreements with ASEAN countries can be interpreted as a Chinese effort to establish a new order. As David Martin Jones and Michael L.R. Smith explain, “[d]espite signing the Declaration on the South China Sea, China avoided any commitment to a legally binding code, and did not relinquish its historical claim to its lost territory or its preference to resolve the dispute bilaterally. Rather, China moderated the manner in which it addressed ASEAN....China had not, therefore, abandoned its goal of achieving control over the South China Sea or, by extension, securing a wider regional hegemony. Instead, it had prudentially adjusted the means by which it pursued its grand strategy.”79 What is lacking for China now is not its revisionist intention but “comprehensive national power,” particularly the power projection capability.80 To overcome its military deficiency, China has made the most of acquiring and modernizing military hardware, software, and information technologies (C4ISR). According to some analyses, China is seeking the capacity to hold surface ships at bay through layered capabilities reaching out to the islands extending south and east from Japan to Guam in the Western Pacific Ocean. This would provide China with preemptive and coercive options in a regional crisis.81 In any case, these behavioral patterns corroborate the logic of offensive realism that states have always revisionist intentions for establishing their favored order.82 Conclusion Since considerable evidence shows that China is trying to maximize its power and interest in the Asia-Pacific as other great powers have done, we should bring realism back into the study of China’s security behavior in order to uncover and understand the impetus of China’s foreign policy. Contrary to constructivist and liberal arguments, ideational and domestic factors are not the primary causes of China’s strategic behavior. Instead, structural and material factors such as anarchy and the distribution of relative power significantly shape how China behaves in the Asia-Pacific. Furthermore, they have a larger impact relative to non-material/unit-level variables on China’s policymaking. Available evidence strongly indicates that China’s strategic behavior is driven by power-based rational calculations. China’s grand strategy, its maritime ambition as well as naval modernization, rapid growth rate of military expenditure all confirm the hypotheses of offensive realism. Furthermore, the general patterns of China’s post-Cold War strategic behavior do not pose a puzzle for realism as a whole. Arguably it can also explain the course China has taken since the end of the Cold War. As one prominent realist argues, “China’s current foreign policy is grounded in realist ideas....As China modernizes its economy and enters international institutions...it behaves in a way that realists understand well: developing its military slowly but surely as its economic power grows, and avoiding a confrontation with superior US forces.”83 As I have demonstrated in this paper, China’s post-Cold War strategic behavior is consistent with this explanation and, consequently, the realist account is persuasive. Explanations based on identity (non-material factors) are often incoherent and unit-level analysis is contradictory for various aspects of China’s strategic behavior, hence policy prescriptions inferred solely from them are misleading. Constructivist works cited here may implicitly assume that current interactions among states necessarily produce a positive effect toward normative cooperative state behaviors a priori. Unfortunately interactions per se can logically produce any outcome. This can be true of the consequences of Sino-US relations. As Robert Jervis rightly points out, “interaction effects remind us that the impact of any two variables (IV and DV) at any point in time may not be additive....[T]he growth of China’s economy...would have a negative effect if it were seen as menacing the United States’ ally.”84 Thus, interactions themselves can produce either progressive or destructive results. This logical problem may come from constructivists’ theoretical tendency towards overemphasizing identity as well as other social factors and underestimating the impact of structural and material variables on state behavior.85 Therefore, scholars should specify the conditions under which these social variables produce cooperative relations between states. Otherwise, constructivism remains a posthoc description of phenomena and hence is not very useful for making policy prescriptions.86 Likewise, liberal explanations overstate the effect of domestic variables on a state’s foreign policy. This theoretical shortcoming makes liberals’ policy recommendations less reliable.

#### China can’t solve governance---US never coops, need wars

#### Collapses global goverance

Denmark ’20 [Abraham; 8/18/20; Professor at the Edmund A. Walsh School of Foreign Service at Georgetown University, Senior Fellow at the Center’s Kissinger Institute on China and the United States, Director of the Asia Program at the Woodrow Wilson International Center for Scholars; U.S. Strategy in the Asian Century: Empowering Allies and Partners, p. 46-50]

China is emerging as a kind of world power never seen before: a wealthy, technocratic, and confident authoritarian state based on the strictures of Leninism, and with ambitions driven by a force that goes beyond nationalism.21 China’s ambitions blur the lines between domestic and foreign affairs, and seek to ensure that the CCP is able to pursue its interests and prerogatives without restriction. Although Beijing likely views its approach as benevolent and virtuous, a Chinese-led world order would nevertheless cast aside assumptions of liberal internationalism, and embrace a system founded on calculations of raw power, subtle influence, hierarchy, and great power spheres of influence.

China’s ambitions for a revised regional order are rooted in its strategic motivations. A tremendous amount of ink has already been spilled by analysts attempting to describe the incredible rise to power of Xi Jinping. Although much has been made of Xi’s recent success at removing term limits to his position, his equally significant bureaucratic successes have received much less notice. He has established himself as the chief decisionmaker in all critical political, economic, and military issues. Under his leadership, China has all but abandoned the idea of collective leadership and has centralized authority and power in a single individual.

So far in the international arena, Xi has demonstrated a penchant for decisive, opportunistic leadership that plays to China’s strengths while minimizing its vulnerabilities. He has also demonstrated a greater willingness to tolerate risk and turbulence in international affairs, even going so far as to reportedly threaten military conflict with Vietnam over a dispute over maritime oil drilling.22

When the Nineteenth Congress of the CCP convened in Beijing in October 2017, it enshrined a new phrase into China’s Constitution: “Xi Jinping Thought for the New Era of Socialism with Chinese Special Characteristics.” This elevated Xi to the hallowed status of Mao and Deng, but also raised a critical question—what is this new era? To my mind, it was best described by an editorial published in Chinese media several weeks after the Nineteenth Party Congress, reflecting language used by Xi Jinping himself in his work report to the congress. It identified three phases of Chinese socialism: under Mao, China stood up; under Deng, China grew rich; and under Xi, China will become strong.23

Just a few days after becoming general secretary of the CCP, Xi Jinping gave a speech describing China’s guiding ideology, in which he gives more specificity to his vision. In this speech—which was not published until June 2019 in the Chinese magazine Qiushi, the primary journal for party theory—Xi declared:24

Some foreign academics believe that the rapid pace of China’s development has called Western theories into question. A new form of Marxist theory is overturning the traditional theories of the West! Yet from beginning to end, we have maintained that every country’s road to development should be decided by the people of that country. The so-called China model, the road of socialism with Chinese characteristics, was created through the Chinese people’s own struggles. We firmly believe that as socialism with Chinese characteristics develops further, our system will inevitably mature; it is likewise inevitable that the superiority of our socialist system will be increasingly apparent. Inevitably, our road will become wider; inevitably, our country’s road of development will have increasingly greater influence on the world.25

Yet while Xi’s role in explaining China’s foreign policy behavior is essential, there are also broader institutional forces at work. Specifically, the CCP—as the source and conduit for all credible political power in China—is a critical force that must be understood.

The CCP today is both the driver and the purpose of all political activity that is considered legitimate in China. Beijing has constructed a narrative that places the party at the center of modern Chinese history: According to its propaganda, it was the party that ended the so-called century of humiliation, consolidated power across China, stood up to the West, and enabled it to grow prosperous. And we would be remiss to ignore the role that the party itself plays as a driver and purpose of Chinese foreign policy.

### 2AC---AT: AI

#### Pursuit of counterforcing is inevitable, BUT faster AI innovation caps escalation---precise intelligence obviates the need to use nukes

Gerson 10 [Michael S. Gerson, Michael S. Gerson is a research analyst at the Center for Naval Analyses (CNA), Fall 2010, “No First Use: The Next Step for U.S. Nuclear Policy”, <https://www.mitpressjournals.org/doi/pdf/10.1162/ISEC_a_00018>, Accessed 8/23/18 //GBS-DG]

The problem of successfully executing a nuclear first strike becomes even more challenging as current and potential adversaries develop and deploy mobile and relocatable ballistic missiles—a measure designed to enhance survivability and ensure a minimum second-strike capability. The ability to disperse nuclear-tipped missiles, and to quickly relocate them in the field, significantly increases the chances that some weapons will survive a preemptive attack and could be used in retaliation. Past experiences with targeting mobile (and fixed) ballistic missiles should temper contentions that the United States could launch a successful first strike. During the Gulf War, U.S. efforts to locate and attack both fixed and mobile Iraqi Scud missile launchers presented enormous intelligence and targeting challenges. “Scud hunting,” as the effort came to be called, proved remarkably difficult, and, as if locating targets was not difficult enough, Iraq employed terrain concealment tactics and decoys to ensure survivability. Coalition air forces launched approximately 1,500 sorties against Iraq’s fixed and mobile Scud missile launchers, and there was not a single confirmed kill of a mobile Scud launcher.62 According to the Gulf War Air Power Survey, “[E]ven in the face of intense efforts to find and destroy them, the mobile launchers proved remarkably elusive and survivable.”63 A declassified assessment of the Scud hunt by the Defense Intelligence Agency states, “[T]he inherently mobile nature of these targets will probably not support the translation of mobile missile targeting to a ‘fixed target’ type solution.”64 Similar challenges occurred in the 1999 campaign against Yugoslavia. In Operation Allied Force, components of Serbian air defense systems were routinely relocated to avoid destruction, and the Serbs employed decoys and camouflage tactics. According to NATO estimates, only three of the known twenty-five mobile SA-6 surface-to-air missile batteries were destroyed in the campaign.6

Notwithstanding improvements in mobile target detection and tracking capabilities and changes in operational procedures since the Gulf War66 (including advances in ISR capabilities such as the Joint Surveillance and Target Attack Radar System and the Global Hawk unmanned aerial vehicle)67 the nature of the target—relatively small, mobile equipment traveling on an uncertain trajectory—will present significant targeting challenges for the foreseeable future. If U.S. military planners were unsure of the exact location of the adversary’s nuclear weapons, a preemptive attack would require the use of many relatively high-yield nuclear weapons to cover a wide area of terrain. Such an attack would still not guarantee destruction of the weapons, and the large number of high-yield warheads used in the attack might justify a more powerful response from the adversary with any remaining nuclear forces. If U.S. intelligence regarding the location of the opponent’s mobile nuclear capabilities is robust, the use of nuclear weapons is unnecessary because conventional forces would be sufficient to destroy (or at least ~~disable~~) mobile missile launchers. In sum, if intelligence were uncertain or incomplete, the United States would have to use so many high-yield nuclear weapons as to make the potential benefits prohibitively risky and costly; and if intelligence is believed to be accurate and complete, nuclear weapons are unnecessary for attacking mobile targets.68

#### Nuclear primacy is stabilizing---parity increases the likelihood of escalation

Kroenig 18—Matthew Kroenig, Associate Professor in the Department of Government and the Edmund A. Walsh School of Foreign Service at Georgetown University, Ph.D. in Political Science from UC Berkeley (“Strategic Stability,” Chapter 6 in The Logic of American Nuclear Strategy: Why Strategic Superiority Matters, Oxford University Press, pages 131-142)

International Relations Theory, Causes of War, and Nuclear Strategic Stability This section explores the concept of strategic stability through the prism of international relations theory. It shows that, contrary to the claims of strategic stability theorists, state-of-the-art international relations research would suggest that nuclear superiority is stabilizing and it is in fact nuclear parity that is destabilizing. When considering a specific problem, a good international relations scholar will often ask: what is this a case of? When trying to understand the ongoing insurgencies in Iraq and Afghanistan in the mid-2000s, for example, many smart analysts recognized these as cases of the broader phenomenon of interethnic civil war and turned to the academic literature on this subject for guidance.15 This section makes a similar move. Arguments about military nuclear advantages and nuclear strategic stability are essentially arguments about how the military balance of power affects the likelihood of war. What then does the international relations scholarship tell us about this subject? International relations scholars have long debated the effects of balances of power or preponderances of power for international stability. Traditional realist arguments have maintained that the balance of power is a near law-like phenomenon in international politics. As Jean-Jacques Rousseau wrote, “It maintains itself without effort, in such a manner that if it sinks on one side, it reestablishes itself very soon on the other.”16 Taking the balance of power as a given, structural realists have theorized about whether different distributions of power balances are more or less stable. Kenneth Waltz, for example, theorized that multipolar (p.132) worlds, with several great powers, are less stable than bipolar worlds, made up of only two major powers.17 Other international relations scholars, however, did not take the balance of power for granted. They theorized that preponderances of power are possible and may be more stabilizing than power balances. In 1973, for example, Geoffrey Blainey famously argued that the fundamental cause of war was, in fact, disagreements about the balance of power.18 He argued that in order for two states to choose to go to war, leaders on both sides must believe that they have at least some shot of winning. And he argued that both sides were likely to believe they had a shot of winning when they were close to evenly matched. On the other hand, according to Blainey, a clear preponderance of power is the surest guarantor of peace. James Fearon has further developed this line of thinking in what has become the dominant theoretical paradigm for understanding international conflict in contemporary international relations theory: the bargaining model of war.19 Fearon conceives of war, and much of international politics, as a bargaining problem. Two states have a significant disagreement over some issue (whether it be territory, policy, or something else), but fighting a war over the dispute is suboptimal, because wars are costly and states would be destroying some of what they are fighting over. It would be much better to simply come to a negotiated settlement and avoid the costs of conflict. War, therefore, according to Fearon, should be understood as a breakdown in bargaining. He argues that among rational states there are three causes of bargaining failure: private information and incentives to misrepresent that information, issue indivisibility, and problems of credible commitment. The first cause, private information and incentives to misrepresent, is most relevant to the question of strategic stability. Fearon maintains that if the balance of military power and the balance of resolve were perfectly known, then war would never occur. States would assess the likely outcome of conflict based on which side was stronger and which side cared more about the issue at stake. Then they would cut an appropriate deal that reflected the bargaining power of the two sides as determined by the underlying balances of power and resolve. Rather than fight a costly war in what was bound to be a losing effort, the weaker state would simply concede the contested issue. It would be better off with this bargain than it would be to fight and lose a war only to arrive at a similar outcome. According to this perspective, therefore, in a world with perfect information and rational states, war would never occur. The problem is that states do not have perfect information about the power and resolve of their adversaries, and this can lead to bargaining failure. As Blainey argued decades before, wars result from disagreements about which side will win. Even the imperfect information problem could be resolved in theory, according to Fearon, because states could simply reveal information about their power (p.133) and resolve in order to clear up any misperceptions. The problem with this solution, however, is that both sides have an incentive to misrepresent their power and resolve. In order to get the best possible bargain short of war, states have an incentive to portray themselves as more powerful and more willing to fight over the contested issues than they actually are. How many times have leaders promised that “all options are on the table” when they really had no intention of ever using force? This prevents states from accurately revealing true information about their power and resolve and obstructs peaceful resolutions to conflicts. Since all states have an incentive to say they are willing and able to fight if necessary to get their way, their opponents have no way of knowing who is sincere and who is bluffing. So, if a state assumes wrongly that its opponent is bluffing, then bargaining can break down and war can occur even among “rational” states. In sum, according to Fearon, private information about the balance of power and the balance of resolve and incentives to misrepresent that information are a cause of war. When are states most likely to make mistakes about the balance of power (our focus in this chapter)? Holding other factors constant, war is most likely when there is military parity. When there is a rough balance of power, the outcome of conflict is less certain and bargaining failure more likely. When, on the other hand, there is a clear preponderance of power, the outcome of conflict can be predicted with greater confidence. The more lopsided the balance of power, the less likely states are to misperceiveit, and the more likely they will be to reach a bargain short of military conflict.This theoretical logic has also been supported in recent empirical research. Scholars have consistently shown a tight correlation between rough parity in the balance of power and the frequency of militarized interstate disputes. Contrariwise, imbalances of power are associated with peace.20 As Douglas Gibler writes in a recent issue of the American Political Science Review, “study after study finds that equally-capable states experience higher rates of conflict.”21 Bringing this discussion back to the question of strategic stability, therefore, contemporary international relations theory suggests that a lopsided nuclear superiority should enhance strategic stability and nuclear parity should be destabilizing. Would China’s leaders be more likely to believe that they could prevail in a nuclear conflict with Washington if Beijing possessed 2,000 nuclear weapons capable of reaching the United States, rather than the 65 or so it possesses today? Intuition would suggest that they would, but this is diametrically opposed to the arguments of strategic stability theorists. This suggests either that traditional arguments about strategic stability are mistaken, or that nuclear conflict operates according to its own special logic. It has been argued, for example, the high cost of nuclear war convinces leaders facing a nuclear-armed opponent that they have no shot of winning at an acceptable cost, thus eliminating (p.134) uncertainty about the balance of power. This is plausible, but it is not the case made by strategic stability theorists. Rather, strategic stability theorists argue the exact opposite. They claim that nuclear-armed states may intentionally choose to start nuclear wars with nuclear-armed states when there is an imbalance of nuclear power. As we will see in the next section, this argument does not hold up under interrogation, even in a nuclear specific context. Why Strategic Instability Is Not a Cost of US Nuclear Superiority This section will reevaluate the traditional notions of nuclear strategic stability and show that the logic of these arguments is quite weak and rests on many questionable assumptions. Moreover, a more careful consideration suggests that, if anything, US nuclear superiority enhances instability that works in Washington’s favor and diminishes problematic instability. In sum, therefore, strategic instability is not a cost of US strategic superiority. In theory, there are two possible pathways by which US nuclear superiority could increase the risk of nuclear war: either a nuclear superior United States may strike first, or a nuclear inferior US adversary may have an incentive to initially pull the nuclear trigger. We explore each of these possibilities in turn. A Nuclear Superior United States Strikes First Strategic stability theorists argue that a US first-strike advantage is destabilizing, but this section shows that, in fact, a US first-strike advantage is just that: an advantage. Typically, strategic stability theorists argue that a US nuclear advantage is destabilizing because it could entice an enemy to strike first. I will cover this argument later in the chapter. Logically, however, the first reason that nuclear superiority might increase the risk of nuclear war is that the side with nuclear superiority (in this case the United States) might initiate a nuclear war because its leaders assess that they could initiate a “splendid” first strike.22 In other words, they may believe that they could conduct a nuclear attack that would succeed in disarming an adversary, allowing them to fight and win a nuclear war while avoiding retaliation altogether, or suffering only acceptable levels of damage in return. The strategic stability paradigm assumes that first-strike advantages are destabilizing regardless of which side possesses it, but from Washington’s point of view, there is a clear difference between a US ability to conduct a first strike and (p.135) an adversary’s ability to conduct a first strike on the United States. Namely, the latter is much more threatening. It is obvious that a US nuclear posture that renders the United States vulnerable to an enemy first strike would be dangerous for the United States. That position of extreme weakness could invite an enemy nuclear attack on the United States and its allies, or render them vulnerable to nuclear coercion. Fortunately, as the first state to develop nuclear weapons, the United States has never faced this situation, and, if it did, it would be motivated to take whatever steps necessary to expand and strengthen its nuclear forces in order to deter potential enemy nuclear attacks. On this point, therefore, strategic stability theorists and I agree: an extreme imbalance of power (in favor of US enemies) is problematic (for the United States). Let us then consider the possibility of a US first strike. The United States currently possesses a splendid first-strike advantage against roughly 190 states. This list includes all of the nonnuclear weapon states in the international system and the three nuclear-armed states (Israel, Pakistan, and India) whose nuclear delivery systems currently prevent them from launching a nuclear attack against the US homeland. (Of course, it is nearly impossible to imagine the United States conducting a nuclear attack on any of these countries, but it does have the capability.) At present, the United States can conduct, or threaten to conduct, a nuclear attack against these countries without worrying about the possibility of nuclear retaliation against US territory. As we saw in the first part of the book, this nuclear superiority provides a significant source of strategic advantage. Would the United States be more secure if it possessed a more “stable” nuclear deterrence relationship with North Korea, Venezuela, Iran, or other states? Would the United States be better off if Iran had a reliable means of holding US cities hostage with nuclear threats? It is hard to answer this question in the affirmative. The United States would be worse off in such a scenario. The United States would have less leverage over these states and be vulnerable to nuclear coercion and even nuclear attack. For decades, therefore, there has been a bipartisan consensus that the United States must work to stop the spread of nuclear weapons to additional states. Some scholars, known as proliferation optimists, challenge these views, but as I have argued at length elsewhere, they work from an unsophisticated understanding of deterrence theory and their arguments contain internal, logical contradictions.23 Moreover, their arguments have never found favor in the corridors of power.24 To be sure, US superiority may tempt Washington to use nuclear weapons first, undermining stability as defined in this chapter. Indeed, the United States was the only country to use nuclear weapons in wartime, against a nonnuclear (p.136) Japan in World War II. For this reason, a US first strike advantage likely does increase the risk of US nuclear use, but this is not a problem for the United States. After all, the United States won a world war with the help of its nuclear superiority over Japan. Instability due to the possibility of US first use is, therefore, instability that is desirable from Washington’s perspective. It is good instability. It certainly is not a reason for Washington to refrain from pursuing military nuclear advantages.// The same is true when considering America’s relations with established nuclear powers, such as Russia and China. With a large margin of superiority over these rivals, Washington might be tempted to launch a splendid first strike. This would certainly be “destabilizing” in the sense that it would increase the risk of nuclear war, but, again, this is a nuclear war of the United States’ choosing. The purpose of US national security policymaking is often, and should be, to provide the president with a range of options. While any US president should be extremely cautious about employing nuclear weapons, there are conceivable scenarios in which a US president might want the ability to conduct a nuclear first strike. Indeed, the 2010 US Nuclear Posture Review explicitly states that the United States reserves the right to use nuclear weapons against nuclear weapon states and against nonnuclear weapon states in noncompliance with their nonproliferation obligations.25 In the event that these states engage in major conventional aggression, or **a** chemical or biological weapons attack against the United States or its allies, for example, a US president might decide to use nuclear weapons first. Moreover, even if the president never chooses to conduct a nuclear first strike, the ability to credibly do so is necessary in order to deter adversaries and reassure allies. Although the United States does not possess a splendid first strike capability over Russia and China, such a capability would very much be in the US national interest. A possible objection may be that a US nuclear attack on a nuclear power would be dangerous because it might not fully succeed in disarming its opponent. Since Russia and China have delivery vehicles capable of reaching the United States, any US nuclear first strike that failed to destroy every single Russian or Chinese warhead could result in nuclear retaliation against the US homeland. This is an important consideration and the primary reason why any US president would be extremely hesitant to conduct a nuclear first strike against a nuclear-armed country. Indeed, it is nearly impossible to imagine a US president launching a nuclear first strike on Russia or China. But, if in an extreme scenario, a US president still chose to launch a nuclear attack knowing full well the likely consequences, this would be a deliberate choice because he or she believes the attack is in America’s interests and that the alternatives are even worse. Furthermore, and as demonstrated throughout this book, the ability to credibly do so, even if the option is never employed, enhances Washington’s bargaining leverage in scenarios short of war. (p.137) The fear of possible retaliation following a US nuclear first strike, therefore, is not a good reason why the United States should not maintain a nuclear advantage over rivals. Indeed, the principal fear in this scenario is that a disarming strike might not work. The concern, therefore, is one of insufficient US superiority, not too much. In sum, a nuclear balance of power that provides the United States with a first-strike capability may very well be destabilizing, but it is instability in America’s favor and, therefore, not a good reason why Washington should not pursue the capability. A Nuclear Inferior Adversary Strikes First The second, and more common, argument as to why nuclear superiority might be destabilizing is because the state in the position of nuclear inferiority (in this case, America’s adversaries) may feel “use ’em or lose ’em” (UELE) pressures, but this argument also withers under interrogation.26 According to strategic stability theorists, a US nuclear advantage increases the danger of nuclear war because the inferior opponent may fear that its nuclear arsenal is vulnerable to a first strike. Rather, than wait for the adversary (in this case the United States) to move first and wipe out, or seriously blunt, its strategic forces, the argument goes, the inferior state may decide to intentionally launch a nuclear war early in a crisis in order to avoid suffering a disarming first strike. This is the logic most often invoked by strategic stability theorists when they claim that US nuclear advantages are destabilizing. This is also the precise problem identified and inspired by Wohlstetter’s basing studies. Use ’em or lose ’em enjoys a certain superficial plausibility, but, upon closer inspection, there are two fundamental reasons why the logic simply does not hold up. First, it ignores the fact that the superior state retains a healthy ability to retaliate. So, even if the inferior state is worried about having its nuclear weapons eliminated in a first strike, the decision to launch its nuclear weapons first as a coping mechanism would be a decision to intentionally launch a nuclear war against a state with at least a secure, second-strike capability. This means that even if the inferior state launches its nuclear weapons first, it will be virtually guaranteed to suffer devastating nuclear retaliation. Moreover, given that it is in a situation of extreme inferiority (so extreme that it might even be vulnerable to a preemptive nuclear strike), this would mean intentionally launching a devastating nuclear war that will likely turn out much worse for itself then for its opponent. It would simply be irrational for a state to intentionally launch a nuclear war against a state with an assured retaliatory capability. Let us consider a concrete example. The United States maintains nuclear superiority over China, as we have seen in previous chapters. Strategic stability (p.138) theorists want us to believe that if the United States takes additional steps to further enhance its superiority, then China would face even greater temptations to launch a nuclear first strike against the US homeland in the event of a serious crisis. In other words, strategic stability theorists hold that China would be so worried about losing a devastating nuclear war against United States that it would intentionally choose to start a devastating nuclear war against the United States. The argument does not make sense. But academic deterrence theorists and other critics of American nuclear strategy try to have it both ways. They attempt to argue that a second-strike capability is sufficient to deter any nuclear-armed state from launching a nuclear attack. Therefore, they advocate that the United States need not build a nuclear force that goes beyond this requirement because a second-strike capability is more than enough. But, then they warn that if Washington strengthens its nuclear forces too much, other countries will be tempted to launch a nuclear attack against a United States armed with a second-strike capability. So, which is it? Does a second-strike capability reliably deter intentional nuclear attack, or not? If not, then they cannot maintain that a second-strike capability is more than enough for deterrence. If so, they cannot claim that a second-strike capability-plus will provoke a nuclear attack. Some readers may retort that my argument also attempts to have it both ways too, but they would be mistaken. As the attentive reader will recall, this book has consistently argued that a second-strike capability is sufficient to deter an intentional nuclear attack and that nuclear superiority contributes to a state’s national security goals in other ways: limiting the damage of nuclear war, deterring lower-level disputes, and enhancing bargaining leverage in high-stakes crises. In sum, the argument of this book is internally consistent, but the claims of strategic stability theorists contain a logical contradiction. Furthermore, UELE arguments are unpersuasive for a second reason. These arguments overlook the fact that the inferior state has a more attractive option at each stage of the crisis: backing down and living to fight another day. A state in a position of inferiority involved in a high-stakes crisis always has a choice between three options: (1) intentionally launching a nuclear first strike in a devastating nuclear war that it will almost certainly lose; (2) playing brinkmanship, escalating the crisis, and raising the risk of nuclear war in a contest that it is also likely to lose; or (3) simply de-escalating the crisis and avoiding any further danger. Faced with this menu, option 1 is by far the least attractive, but this is precisely the option we must believe leaders will purposely choose in order for the UELE logic to hold. This is untenable. Indeed, much of nuclear deterrence theory and strategy as it has developed over the past 70 years is based on the premise that option 1 is simply unacceptable. Contrary to the claims of strategic stability theorists, therefore, UELE does not pose a problem to strategic stability. (p.139) To be sure, if a nuclear war were preordained to occur with 100% certainty, then an inferior state might have good reason to go first, but the risk of nuclear war is never certain. Indeed, the risk of nuclear war is in the control of both states. To avoid any risk of nuclear conflict, all they must do is capitulate. While an unattractive option, it is more desirable than intentionally launching a devastating nuclear war that it is bound to lose. Indeed, even the highly stylized game theoretic model in chapter 1, which relies on a spontaneous risk of nuclear war, assumes that states can avoid any further risk of catastrophe by submitting at any stage of the crisis. There are five possible counterarguments to these claims, but none of them are persuasive. First, one could argue that the above case against strategic stability theory rests on states making rational calculations, but the leadership of future US adversaries might not be fully rational. Kim Jong Un in North Korea, for example, may be irrational or extremely risk acceptant and may be willing to run great risks of, or even to intentionally fight, a nuclear war. This is possible. But, if this is the case, then, we should not expect strategic stability through mutual vulnerability and nuclear parity to discourage him from starting a nuclear war either. Surely, the subtleties of strategic stability theory would be lost on a lunatic. Moreover, even madmen and excessive risk takers have some understanding of power. If anything, a future reckless leader should be even more willing to launch a catastrophic nuclear war from a position of parity (i.e., a situation of so-called strategic stability), than from a position of inferiority. Second, one might counter that states will refrain from UELE in most circumstances, but in truly dire straits, when their backs are against the wall and they have nothing left to lose, then we cannot rule out the possibility of inferior states lashing out with nuclear strikes. For example, they might claim, a state on the verge of being overrun in a conventional invasion might use nuclear weapons rather than lose everything.27 Some analysts believe that Russia or North Korea, for example, may conduct limited nuclear “de-escalation” strikes rather than lose a conventional war against the United States.28 This is a compelling argument, but note that this is not an argument about UELE, or about the nuclear balance of power. Rather, this is an argument about the dangers of putting an opponent’s back against the wall in international politics. This is a cardinal rule of diplomacy, but it is not a reason to avoid military nuclear advantages. Indeed, if anything (and as above), a country in a dire position would likely be even more tempted to gamble for resurrection through nuclear use from a position of parity, rather than from a position of severe inferiority. Once again, the idea that US nuclear superiority somehow increases the risk of nuclear war against the United States does not add up. Third, and related, my colleagues have argued that it is possible that a US adversary might pursue a limited nuclear war strategy with a vulnerable nuclear (p.140) force. Rather than lose the opportunity to “escalate to de-escalate,” therefore, the state may conduct a limited nuclear strike early in a crisis to shock the United States into suing for peace, before the United States succeeds in wiping out its nuclear forces. This would be a true UELE situation, they maintain, because the enemy is incentivized to escalate early precisely in order avoid losing the option. This argument, however, solves one logical contradiction only to create another. Theories of limited nuclear war do not maintain that limited nuclear strikes are decisive in and of themselves. Rather, they have coercive power because they signal the threat of more devastation to come. It is one of the highest rungs on brinkmanship’s escalation ladder. If a state is vulnerable to a first strike, however, then it cannot credibly threaten that there is more devastation to come. The United States would have little incentive to sue for peace in response to a limited strike from such a state. It could simply retaliate (with the full moral and legal authority that would follow victimization in a nuclear attack) and disarm the enemy’s remaining nuclear forces. Again, this state would be better off simply backing down than inviting the disarming nuclear strike it was trying to ward off. If, on the other hand, the state has a survivable force, then it would not have needed to escalate early for fear of UELE in the first place. The only possible exception to this logic would be for a state with a vulnerable force, following a limited nuclear war strategy, that believes that Washington’s stake in the crisis is so insignificant, that the United States would prefer to back down after suffering a limited strike, rather than follow through with a disarming retaliatory strike of its own. This would be one rational pathway to nuclear escalation due to UELE, but it is a bit of a stretch. A number of unusual conditions must be necessary to make this scenario possible. It is certainly not the broad class of instability problems often portrayed by strategic stability theorists. Moreover, it is a problem that can be addressed. In these cases, Washington can simply take additional steps to demonstrate its stake in these scenarios and to disabuse adversaries of the notion that Washington would simply buckle after a limited nuclear attack from a state with a vulnerable nuclear force. Fourth, one Washington DC-based colleague has argued that the theory of this book itself provides a reason for superiority to undermine stability. He argued that a state in an inferior position may conduct a massive counterforce nuclear strike on the United States in order to vault itself into the superior position and then use its newfound superiority to deter US retaliation. This is certainly an interesting idea. But it would again require us to believe that the state would intentionally launch a massive nuclear war against a state with a second-strike capability. This is a notion that is contrary to every major theory of nuclear deterrence, including strategic stability theory itself. In addition, this argument would have to maintain that this hard-to-fathom scenario would be more likely if the United States enjoys superiority. But, if anything, an enemy attempt to (p.141) conduct a nuclear first strike and then “deter our deterrent” should be more attractive to an enemy in a position of parity than one in an inferior position.29 Fifth, and finally, some might object that UELE does not cause leaders to intentionally launch nuclear war, but rather, in a bid to ensure the survivability of their arsenals, they might be forced to take steps to ensure, should the need arise, that they can use them before they are wiped out. They might be tempted, therefore, to adopt launch on warning nuclear postures, put their nuclear forces on hair-trigger alerts in a crisis, or delegate nuclear launch authority to low-level commanders. While these steps might be logical to ensure the survivability of the force, they also might make it harder for national leadership to control exactly when and how nuclear weapons are used and, therefore, increase the risk of accidental or inadvertent nuclear exchange. In other words, this line of argument essentially holds that inferior states will be more willing to run risks of nuclear war in serious crises. Note, however, that this logic runs exactly counter to the expectation of the superiority-brinkmanship synthesis theory. The central argument of this book maintains that inferior states will be much more cautious in games of brinkmanship. Theoretically, the argument of this book demonstrates that there is good reason why inferior states should be less willing to run nuclear risks—because they will suffer disproportionality should things escalate. Which perspective is correct? To some degree, this is a debate that cannot be definitively settled in the empirical realm. We therefore finish this chapter with a consideration of the empirical record. Strategic Stability: The Evidence If the UELE argument from strategic stability theory is correct, then we should expect that nuclear inferior states will intentionally launch nuclear wars against states with superior nuclear arsenals. We should also expect that inferior states will engage in risky behavior in high-stakes crises to ensure that their nuclear weapons can be launched before they are destroyed. If, on the other hand, the argument of this book is correct, then we should expect that nuclear inferior states should never intentionally launch nuclear wars and they should be hesitant to run risks of nuclear war against nuclear superior adversaries. Turning back to the empirical record reviewed in the first half of the book, we see that nuclear inferior states have frequently backed down in high-stakes crises with nuclear superior opponents. Nuclear inferior states have placed forces on alert in crises and have otherwise run risks of nuclear war, but they have been less, not more, likely to do so than their superior opponents. Nuclear inferior states have never issued a compellent threat against a nuclear superior opponent. (p.142) And nuclear inferior states have never intentionally launched a nuclear war against a superior opponent due to UELE fears or for any other reason. It is certainly possible that some future leader may intentionally launch nuclear weapons in order to avoid the risk that they will be destroyed in a nuclear attack. But logic and over 70 years of evidence give us strong reason to be skeptical that this is a likely outcome. Conclusion This chapter examined the effect of the nuclear balance of power on strategic stability. Specifically, it examined past arguments about how US nuclear superiority might undermine strategic stability and increase the risk of nuclear war. By reviewing international relations theories on the causes of war, examining the specific logic of strategic stability theory, and considering the available evidence, this chapter did not find any support for the idea that imbalances in nuclear power cause dangerous strategic instability. In fact, if anything, theory and evidence suggested that a preponderance of power reduces the risk of war. Moreover, this chapter showed that US nuclear superiority increases instability that works in Washington’s favor and dampens problematic instability. As it relates to US nuclear strategy, therefore, this chapter suggests that nuclear strategic stability is not a downside to the maintenance of a robust nuclear posture. These findings, therefore, provide further support for the logic of American nuclear strategy.

## K---Cap

### Perm---Do Both---2AC

#### Perm do both---it expands antitrust to leverage the benefits of capitalism while moving towards socialism.

Meagher ‘20 [Michelle; 9/10/20; Senior Policy Fellow at the Centre for Law, Economics and Society at the University College of London, LL.M. in Antitrust Law from Georgetown University; “Stakeholder Antitrust,” in Competition is Killing Us: How Big Business is Harming Our Society and Planet - and What to Do About It, eBook]

With these realities in hand, the primordial blind spot of free market competition can be seen more clearly: competition is a race to power, and companies compete in part by producing social and environmental spillovers they do not have to pay for. Our models of competition minimize or ignore these aspects of competition, and it is on this basis that the antitrust regime does not, after all is said and done, produce markets that could genuinely be called ‘competitive’ or ‘efficient’. Markets are instead highly concentrated and replete with social and environmental harms. Competition by itself will not spread power and make everyone better off; instead, we must actively contain any power that arises from market distortions and share out the residual corporate power that we cannot contain to stakeholders so that they may be empowered to protect their own interests.

But these realities do not yet take up the same space that the myths, with their decades of augmentation, have come to occupy – they need their own accompanying narrative and logic to bind them to the structure of twenty-first-century capitalism.

Corporate capitalism currently operates completely untethered from the state that supports it, almost in an attempt to be as much the opposite of command and control, state-governed socialism as possible. But it turns out that, in order to have the best of both worlds – the progress and industry of capitalism, and the socialization of competition and markets – we can take a middle ground. Private corporations can remain in private hands, guided not by the central arm of the state but by the decentralized will of stakeholders embedded within companies.

The aim is to attempt to reap the benefits of fruitful competition by aligning companies to the public interest whilst avoiding the entropic inequality, injustice and negative spillovers that otherwise suffuse and overwhelm the economic system. The free-flowing flood of money and power could be replaced with a controlled irrigation system, directing the creative ability of capitalism towards the cultivation of desired and desirable projects and enterprises.

This can be achieved through a structural change in corporate capitalism, designed to dissipate power through a much more broadly conceived system of antitrust, striking at both the heart and periphery of corporate power. Whatever power cannot be dispersed should be shared, through participatory mechanisms empowering people to engage actively in the stewarding of the markets.

### Turn---2AC

#### Expansive antitrust drives structural reforms that reverse neoliberalism. The alternative cements corporate stranglehold on communication which makes organizing impossible.

Lynn ‘21 [Barry; January 2021; executive director of the Open Markets Institute; "How Biden Can Transform America," https://washingtonmonthly.com/magazine/january-february-march-2021/how-biden-can-transform-america/]

One set of tools offers the promise of true transformation, without the need for large sums of money or strong congressional support. This is the use of America’s vast suite of anti-monopoly laws already on the books to address the extreme and growing concentration of private power that has harmed the economic and political well-being of almost every American. An anti-monopoly agenda would enable Biden to frame, direct, and drive deep structural reforms tailored to deliver everything from better health care to better jobs to real solutions to the climate crisis, and to create opportunity and stimulate investment and innovation across the entire economy. Such an agenda would even offer ways to steer political debate in a more constructive and civil direction.

Rather than button himself into a beige cardigan next to the White House fire, President Biden can stride forth as a second Harry Truman, taking the fight to the thieves and bullies and demagogues while telling a story of America that explains who broke our nation, how they did it, and how we can fix it.

Fully understood and embraced, anti-monopolism offers Biden the opportunity to establish the foundations for a 21st-century political economy that is fair, just, safe, prosperous, and sustainable, and to do so on the cheap. Even better, anti-monopolism offers him the chance to establish a liberal political regime in America able to protect his achievements for decades to come.

The idea that monopolists pose some sort of threat to the public weal is now widely accepted. In the case of Google, Facebook, and Amazon, for instance, three of every four American voters favor some sort of breakup of the corporations.

Reaction against extreme concentration of wealth and power has in fact played a large and growing role in the nation’s politics for more than a decade. In 2008, Obama’s promise to fight farm monopolies proved key to his win in the Iowa caucus. When he then failed to deliver, and instead bailed out the biggest of banks, populist anger powered the rise of the Tea Party in 2010 and of Occupy Wall Street in 2011. That same anger was a key to Bernie Sanders’s shocking rise in 2016, and to Donald Trump’s even more shocking victory that November. And it played a big role in the Republicans’ strong showing in 2020, as Trump, aided by supporters like the Fox News hosts Sean Hannity and Laura Ingraham, continued to paint Democrats as supercilious servants of financiers and data barons.

Since 2016, elements of the Democratic Party have made big advances in steering the raw anti-wealth and anti-elite anger in a constructive direction. Elizabeth Warren led the way in June 2016, delivering a speech in which she characterized the rise of monopoly as a fundamental threat to the economic well-being of Americans and to democracy. During the 2020 primaries, Amy Klobuchar, Cory Booker, and Bernie Sanders all built on Warren’s analysis of the fundamental role played by bad competition policy.

Then, in early October, the Democratic-led antitrust subcommittee in the House issued a groundbreaking report that detailed how Google, Facebook, and Amazon exploit their power in ways that threaten America’s democracy and system of capitalism, and sketched how to use anti-monopoly law to break that power. Two weeks later, Democratic state attorneys general played a major role in prodding Bill Barr’s Justice Department into filing the first major antitrust suit against Google. Finally, in December, Democratic appointees on the Federal Trade Commission drove the FTC’s decision to sue to break up Facebook.

The Biden team has clearly paid close attention, and a detailed read of the campaign’s policy papers reveals an assortment of promises to break concentrations of power. The statements are simple and strong. Biden’s “Plan for Rural America” promises to “make sure farmers and producers have access to fair markets where they can compete and get fair prices for their products.” The campaign’s “Agenda to Boost America’s Small Businesses” sounds as folksy as Biden himself in its pledge to “combat corporate power, promote competition, and ensure markets work for everyone so that small businesses have a fair shot.”

Unfortunately, beyond these demonstrations of recognition, there’s little sign that the Biden team comprehends the systemic nature of America’s monopoly crisis, or the full suite of tools available to fix the problem. On the contrary, Biden thus far has left the shaping of anti-monopoly policy largely to the same people who failed to address the threat under Obama, and who generally continue to embrace the old Reagan-era doctrines that treat the concentration of private power as mostly benign.

To be sure, part of the art of making campaign promises is to leave plans vague enough that everyone sees what they need to in order to support a particular candidate. And in this case, it worked. Simply not being Donald Trump was good enough to give Biden comfortable margins in both the Electoral College and the popular vote.

But walking into the White House is different, and the lack of a coherent plan to address concentrated power poses two large and immediate challenges.

The first problem is that Biden’s team does not understand the array of tools available to fix many of the most pressing challenges we face today. Consider Biden’s “Plan to Rebuild U.S. Supply Chains,” which aims to address two grave dangers at one go—the shortages of masks and other protective gear that contributed to the COVID-19 pandemic, and America’s growing dependency on China for industrial goods that are vital to U.S. national security.

There is a lot to admire in the document. In the pledge to address “anti-competitive practices,” we see a recognition that monopolists played a role in creating these problems. The plan also focuses on the right industries—semiconductors, telecom, and electricity grid technologies. And it has the right overarching aim. “The goal here is not pure self-sufficiency, but broad-based resilience.”

But when it comes to fixing the problem, Biden’s team has little to offer. If we mean to force powerful, private, for-profit corporations to spend billions of dollars to build new factories to manufacture the goods we need, the smart use of tariffs, quotas, and anti-monopoly law is essential. Instead, we get a collection of grossly inadequate half measures, in the form of promises to “leverage” government purchasing, to tweak the tax code to “encourage” corporations to act better, and to publish a “Critical Supply Chain Review” once every four years.

Worse, Biden’s position paper takes no account of the fact that the Trump administration has already launched a supply chain war with China over the production of communications gear by the Chinese corporation Huawei. Given how dependent the United States has already become on China for many vital manufactured goods, the Biden team must be strategically prepared to wield all of America’s trade weapons on the first day, especially given that China could at any time reciprocate Trump’s use of industrial embargoes.

The second immediate problem is that a lack of an overarching plan to address corporate monopoly leaves others free to define Biden as a patsy of the powerful. And many Republicans are already doing exactly that, by attacking the president-elect for simply continuing Obama’s pro-bank and pro-Google agenda. Even before the Pennsylvania results had been called, for instance, Fox’s Tucker Carlson was gleefully labeling Biden a “corporate hologram” and warning that “Big Tech will have more than an ally in the White House; it will have a lackey.”

That’s probably not the decal Biden wants on his Corvette before he even drives past the green flag.

To grasp the full potential of anti-monopoly policy both to frame a fresh story of America and to fix many of our most pressing challenges, we have to first remind ourselves of how Americans, from the earliest days, understood the threat of concentrated private power and repeatedly mastered the problem. Look at U.S. history from 1776 to the election of Ronald Reagan and you’ll see two centuries in which the governing philosophy of American political economics centered on how to break or harness monopoly.

The American Revolution itself was not merely a reaction against certain types of control—such as the British East India Company’s monopoly on commerce. It was also a positive vision of new forms of human liberty. The Declaration of Independence, after all, is about far more than the liberation of the nation. With its claim of absolute equality among men, it is also a declaration of independence of man from man.

To achieve this end, America’s founding generation created what would become the world’s most sophisticated set of institutions, laws, and policies to protect every (white, male) citizen from concentrated private power. While Americans for many decades did not even pretend to extend such protections and privileges to Black people, Native Americans, or women, their commitment to checking concentrations of both political and economic power was revolutionary. They did so first by distributing homesteads designed to enable a family of modest means to care for itself, and second by devising ways to protect those freeholders from private monopolists. In my new book, Liberty from All Masters, I call this legal and policy arrangement the “American System of Liberty.”

The Constitution was the centerpiece. Nowadays, we focus mainly on that document’s intricate system of checks and balances designed to break the power of the state. But the Framers also intended the Constitution to make it much harder for the financier and the landlord to concentrate dangerous amounts of private power. This was made clear in contemporary debates. After Thomas Jefferson called for the Bill of Rights to ban monopoly, for instance, James Madison assured him that the system of checks and balances would also prevent dangerous concentrations of private power. “Where the power, as with us, is in the many not in the few,” Madison wrote, “the danger cannot be very great that the few will be thus favored.”

This same vision of liberty also shaped how the founding generation framed some of the nation’s earliest and most far-reaching laws. This was especially true of the Northwest Ordinance of 1789, passed by the first Congress and signed into law by George Washington. Yes, the ordinance was in part an imperial document, a guide to settling the lands that now make up Ohio, Indiana, Illinois, Michigan, and Wisconsin. Even at the time, many understood that the plan would result in the displacement and death of many, if not most, of the Native Americans living there.

But the ordinance is also a radical vision for engineering a democratic society among the settlers. The document did so first by carving the lands into 160-acre plots and then by subsidizing their distribution to individual families. It protected those properties from being concentrated into a few immense estates by banning slavery, outlawing developers and speculators, and requiring parents to distribute the lands in equal portions to all of their children, both male and female. This was no libertarian utopia. On the contrary, the vision of state power distilled in the ordinance is of a people’s government actively working to build a good society, through public education, the creation of town-sized communities, and equal voting rights for both Black and white citizens.

In the greatest triumph of the American system of liberty, beginning in 1861 almost a million citizens raised on these small farms organized themselves into armies and joined with freeborn and freed Black people to overthrow the slave power in the South. Little more than a decade after the Civil War, however, came one of the greatest tragedies in American history. Almost as soon as they completed the original promise of the Declaration of Independence by destroying slavery, America’s citizens found themselves threatened by monopolists armed with great piles of capital concentrated during the war. When financiers combined this capital with sophisticated techniques for leveraging the power of the new railroad and telegraph technologies, the result was a sudden and massive concentration of corporate power that led first to the overthrow of Reconstruction in the South and soon to the throttling of democracy throughout the nation.

In the late 19th century, Americans managed to pass two foundational anti-monopoly laws: the Interstate Commerce Act, to outlaw most forms of discrimination in pricing and service by the railroads; and the Sherman Antitrust Act, to break the power of banker-controlled industrial cartels. Both, however, proved inadequate to the problem, and by the turn of the 20th century a small oligarchy centered around the banker J. P. Morgan had captured control of the heart of the U.S. economy. Or, as W. E. B. Du Bois described it in 1935 in Black Reconstruction, his foundational history of the United States, “it was a new rule of associated and federated monarchs of industry and finance wielding a vaster and more despotic power than European kings and nobles ever held.”

Theodore Roosevelt is often depicted as the first true “trustbuster,” and it was his Justice Department that—after being prodded by Ida Tarbell’s groundbreaking investigations into the corporation—used the Sherman Act to launch the breakup of Standard Oil. But Roosevelt himself repudiated the philosophy of trust-busting, believing that monopoly was natural, and the only practical option was to blend state and private power into a top-down command-and-control system of governance. One result was that he left the bankers largely free to concentrate further power, in what was widely called the “Money Trust.”

It was not until the election of 1912 that Americans figured out how to break the power of Wall Street, and in doing so they achieved nothing less than a second American revolution. Woodrow Wilson and his adviser, the later Supreme Court Justice Louis Brandeis, drove a set of reforms through Congress that entirely restructured the American economy. These included the Clayton Antitrust Act (which clarified and strengthened the Sherman Act); the Federal Trade Commission Act (which created the Federal Trade Commission and vested it with vast anti-monopoly powers); the Federal Reserve Act (which established a publicly controlled central bank to wrest control of credit and the money supply from Wall Street financiers); a progressive income tax (to break up personal fortunes and distribute wealth more equitably); and the first breakup of AT&T.

Wilson called his revolution the “New Freedom,” and 20 years later it served as the foundation for the New Deal. Although many historians depict the New Deal as devoted to centralization and bigness, right from the beginning Franklin D. Roosevelt focused on protecting independent farmers and businesses, while carefully limiting and dispersing the power of bankers and corporate bosses. In fact, even the notorious National Industrial Recovery Act was aimed largely at protecting smaller businesses, albeit through government-run cartels that the Supreme Court later held to be unconstitutional. Then, as the Great Depression persisted, Roosevelt doubled down in 1936 on the fight against the corporate and banking monopolists, in what is sometimes called the Second New Deal. “The struggle against private monopoly is a struggle for, and not against, American business,” Roosevelt said in October of that year. “It is a struggle to preserve individual enterprise and economic freedom.” Soon after reelection, Roosevelt boosted the number of antitrust lawyers at the Justice Department from 60 to more than 600.

Through the middle of the 20th century, Americans wielded traditional anti-monopoly principles to shape a highly sophisticated economic regime based on separating the economy into three distinct realms of policy. Each realm was governed by specific limits on the size and behavior of corporations, all carefully geared to achieve particular political and economic goals.

In the case of corporations that provide essential services and goods, the core rule was an absolute prohibition against discrimination in pricing and terms of service. The Interstate Commerce Act had applied this rule to railroads, and Congress later extended it to other transportation and communications networks, from trucks and airplanes to telegraphs and telephones.

In the case of industrial firms engaged in applying science to manufacturing, the core rule was that there never be fewer than four corporations competing in any industry, be it the manufacturing of chemicals, metals, automobiles, or, later, semiconductors. In the case of farming, retail, and light manufacturing, the core rule was to protect the independent businessperson and farmer from Wall Street predators armed with chain stores and processing monopolies.

It worked. Wages soared, both because of greater unionization and because employees had more firms competing for their talent. Independent businesses and communities thrived, as the war on chain stores and big banks largely blocked the transfer of wealth to a few coastal cities. And Americans unleashed the greatest period of technological innovation in history.

This vision of independent citizens, and the system of small property ownership designed to achieve it, even proved one of the most important tools for overcoming Jim Crow laws and segregation. Not only did the anti-discrimination provisions in the Interstate Commerce Act provide a key tool for desegregating public transportation, but independent Black-owned businesses and farms also provided essential support in the fight to break white systems of control and extend full citizenship to all. That’s why in the 20th century some of the strongest supporters of anti-monopoly laws included W. E. B. Du Bois, Martin Luther King Jr., and Thurgood Marshall, who was the last Supreme Court justice fully devoted to protecting these laws, which were so foundational to American democracy.

When Ronald Reagan took office in 1981, one of his first targets was the American system of liberty. Reagan’s team did not target the hundreds of individual anti-monopoly laws Americans had passed over the course of generations. Instead, they proposed an entirely new philosophy of competition, to govern how we understand and use all existing anti-monopoly law. In place of anti-monopolism’s traditional goal of protecting democracy and the liberty of the citizen, the administration said the laws should instead promote the material “welfare” of the “consumer.” Out were traditional bright-line rules used to structure markets and control the actions of corporations in ways that promoted broad political goals, such as preserving opportunities for upward mobility and personal liberty. In their place, Reagan’s team erected a new system in which economists were to judge each individual consolidation of power based solely on whether it would result in more “efficiency” in the production of goods and services, no matter the larger effects on society.

This enthronement of efficiency as the ultimate goal of the U.S. political economy, and of economists as the main arbiters of power, marked the single most dramatic ideological reversal in American history, a true intellectual and political coup. And yet the event went all but unnoticed. This was partly because anti-monopoly enforcement had become so successfully routinized by the early 1980s that few Americans thought much about it. It was also because highly influential “progressive” thinkers such as John Kenneth Galbraith and Lester Thurow largely agreed with the underlying goal of Robert Bork and the other libertarian scholars who were advising Reagan. They too favored extreme concentration of corporate power, but, in the tradition of Teddy Roosevelt, they intended it to be under the day-to-day direction of the executive branch.

In the 1990s, under the sway of these and other thinkers, Bill Clinton’s administration would largely complete Reagan’s overthrow of the American system of liberty. It did so mainly by applying Reagan’s pro-monopoly efficiency philosophy to the regulatory structures designed to govern America’s defense, telecommunications, media, energy, and banking sectors, and to the regulation of international trade. In Clinton’s second term, however, the Justice Department grew concerned about concentration of power over the internet and launched one of the biggest antitrust cases in decades, against Microsoft.

In the years since, the George W. Bush, Obama, and Trump administrations largely operated within the neoliberal intellectual and political framework. The one real exception was the last nine months of the Obama administration, which in April 2016 finally sounded an alarm about America’s monopoly crisis, albeit way too late in their time in office to have any real effect. The result has been a two-stage consolidation of power and control.

The first stage saw the rise to dominance of corporations like Walmart, Koch Industries, Goldman Sachs, News Corp, Citibank, Tyson Foods, Monsanto, Boeing, and Pfizer. It also saw the dramatic empowerment of Beijing, as many of the monopolists who captured various U.S. markets then chose to sell the factories and technologies under their control to Chinese corporations.

The second stage of monopolization—dating to around the Lehman Brothers crash of 2008—has been driven by the rise of Google, Facebook, Amazon, Apple, and a few other digital monopolists. Not only have these corporations grown far bigger than the giants of the first stage, they also have succeeded in capturing direct control over the communications and commercial platforms on which everyone, including the dominant monopolists of 15 years ago, must do business. And they have exploited this choke hold to exercise increasingly direct authority over other people’s businesses and lives.

In recent years, many Democrats have embraced the mantra that “personnel is policy.” If there’s one lesson we should learn from the neoliberal overthrow of anti-monopolism a generation ago, it is that philosophy is policy. Ideology truly matters. Nowhere is this more true than in the American political economy, where the diffusion of neoliberal ideas into both parties resulted in a pyramiding of power and control that would have awed even J. P. Morgan in his prime, as well as a vast and growing series of political and economic disasters.

Today just about every problem Americans face was either caused or made worse by the concentration of power that resulted from the overthrow of the American system of liberty. Monopolists have driven up the price of hospital beds and essential drugs while colluding food processing cartels drive up the cost of chicken, milk, and other staples. They have bankrupted millions of independent businesses and farms, and gutted the economies of small towns and midsize cities across America. Monopolists have undermined U.S. national security and subverted the communications systems on which our democracy depends.

That’s why it’s exactly here that Biden will find his one true opportunity.

Few of the executive actions the Biden team lists as priorities—such as rejoining the Paris Climate Agreement—would get at the source of any of the domestic problems that enrage so many Americans across the political spectrum. On the other hand, as soon as the Biden team frees itself from Reagan’s consumer welfare philosophy, they will discover a complex system of institutions and laws they can put to immediate use to bend the American political economy back toward liberty, democracy, and prosperity, on the cheap.

On day one, President Biden will be able to strap himself into the cockpit of a governing machine purpose-built during the Wilson and Roosevelt administrations—and fortified by Truman, Dwight Eisenhower, Lyndon Johnson, and even Richard Nixon—to break power, distribute opportunity, build community, protect security, and engage citizens in constructive activities. This system includes agencies with great untapped powers, like the FTC and the Department of Agriculture, which have far-reaching and long-neglected rule-making authority. And it includes strong anti-monopoly powers in just about every office of government, including the Federal Reserve, the Treasury Department, the Federal Communications Commission, the Securities and Exchange Commission, the Defense Department, the Transportation Department, and the Federal Energy Regulatory Commission, among many others.

What could Biden do if he made full use of the anti-monopoly powers the government holds? Consider, for a moment, how these tools could be applied to just a few of the problems that now threaten the American people and the United States.

The next pandemic. Biden can’t do much to lessen the harms of COVID-19, given the Trump administration’s grotesque mismanagement of the crisis. But he can use anti-monopoly tools to make us much less vulnerable going forward, such as by breaking cartels that have cornered the markets for masks, drugs, and other medical supplies.

Health care costs. Without control of the Senate, Biden won’t be able to complete the Affordable Care Act and achieve universal health coverage. But he can crack down on the hospital mergers that drive up prices and drive down service. He can also use antitrust and other competition policies to block drug company mergers, patent holdups, and other tactics that lead to higher prices, less innovation, and loss of capacity.

Falling real wages. Biden can’t decree a higher minimum wage. But he can use his appointments to the FTC to ensure that the commission uses it powers to stop corporations from imposing noncompete and no-poach agreements that keep workers from changing jobs. And by simply using the Justice Department, the FTC, and other agencies to block more mergers and bust up monopolies, he can increase the number of employers competing to hire each worker.

Climate. Without the Senate, the Green New Deal is DOA. But Biden can immediately use anti-monopoly to break the power of giant hydrocarbon combines like Koch Industries and thereby reduce their political power and funding of climate denialism. He can also use anti-monopoly laws to crack down on utilities that block people and companies who invest in solar and wind from selling their power on the grid.

The collapse of entrepreneurship and community. Biden, acting alone, can’t subsidize independent business. But he can use existing antitrust law to protect the upstart firms that have always been America’s prime source of new jobs and new ideas from the predations of Amazon, Google, Uber, and concentrated capital generally. In doing so, he will also restore America’s tradition of promoting opportunity through ownership of family businesses.

Stimulus. Without the Senate, Biden won’t get more than a fraction of the spending he has planned on to revive the economy. What he can do with vigorous enforcement of anti-monopoly laws is open up a flood of private investment. For years, giant reserves of capital have been building up because of the high barriers to entry created by cornered markets. Every market Biden opens to competition creates new opportunities to put more of that cash to productive use.

Failing rural economies. Biden might not be able to deliver on his promise of providing loans to beginning farmers. But he can use tougher antitrust enforcement and the creation of true cooperatives to free farmers from having to pay monopoly prices for seed, fertilizer, and tractors. And he can rebuild competitive markets for their crops—and for the labor of food chain workers—by breaking the power of the slaughterhouse and food processing monopolists.

International trade. Biden can’t rewrite any major international agreement on his own. But he can use anti-monopoly principles to guide how he enforces U.S. trade laws, and to ensure that no foreign nation ever be allowed to capture a choke hold over the manufacturing of any good or service vital to American security and well-being.

Arts and literature. Even if he wanted to, Biden wouldn’t be able to subsidize America’s writers and artists, who have found their business models entirely disrupted by the power of Google, Amazon, and other platform monopolies. But he can impose nondiscrimination rules on these corporations and strengthen copyright protections, so content creators can earn a fair market price for their work and never fear retaliation for speaking out against power.

Disinformation and censorship. No president will ever be able to stop propagandists, social saboteurs, or just plain crazy folks from having their say. But Biden can also use these same nondiscrimination rules to force Google and Facebook to abandon the business models that reward them for spreading information specifically designed to divide and radicalize voters. And he can use anti-monopoly law to stop these corporations from diverting into their own vaults the advertising dollars that—for the past 250 years—have helped to support trustworthy local journalism.

Some members of Biden’s team will surely oppose such a robust anti-monopoly agenda. One reason is fear that doing so will make it hard to keep the votes of the independent and Republican voters who helped put Biden in the White House. Another fear is that taking on Facebook, Google, and Amazon will hurt fund-raising. In short, they will argue that strong anti-monopoly policy makes for bad politics.

But any close reading of U.S. history shows the exact opposite to be true. Anti-monopoly policy is smart politics, both today and over the long run. This is especially true now that the American people have woken up to the problem of concentrated power and are looking for someone to protect them. Surveys show that this is as true of independents and Republicans as it is of Democrats.

The first thing Biden would get from fully embracing anti-monopolism is an easy-to-tell story of what went wrong in America, why it went wrong, how we can fix it, and where we are going as a nation. Biden would also gain the ability to demonstrate that he understands the anger and hopelessness that so many Americans feel about the loss of their prosperity and independence and about the destruction of their families and communities.

Learning how to tell this story will prove surprisingly easy. The beauty of traditional American anti-monopolism is precisely that the language is not technical, and enforcement does not depend on phalanxes of specially trained economists or any of the other “experts” long ago pressed into the service of oligarchy. It is a language Biden himself already fully understands. After all, anti-monopoly is about giving everyone “a fair shot” and ensuring that everyone is treated with “dignity” and “respect.” It is about fighting cheats and crooks and evildoers.

Consider Biden’s speech on the Saturday when CNN finally called the race. “I’ve always believed we can define America in one word: possibilities. That in America everyone should be given an opportunity to go as far as their dreams and God-given ability will take them.” That is the essence of the original idea of America, the America the neoliberals broke when they unleashed the monopolists.

The Biden team will also find anti-monopoly policy to be a strategic weapon of great potency.

Fully embrace anti-monopolism, and Biden will find himself able to unify the two wings of the Democratic Party. After all, anti-monopolism will allow him to begin to break down many of the economic and political structures that underlie inequality, the hydrocarbon economy, and even racism, while simultaneously creating opportunities for entrepreneurs and investors to build new businesses and create more and better jobs.

Fully embrace anti-monopolism, and Biden can also begin to break the GOP’s choke hold on the Senate and the Electoral College. Strong anti-monopoly policy will, after all, empower Biden to deliver millions of rural Americans from the isolation and humiliation that drove so many of them to Trump in the first place. It will do so by breaking the grip of the agricultural, retail, and transportation monopolists who for 40 years have appropriated these people’s lands, looted their communities, and destroyed their families.

Fully embrace anti-monopolism, and Biden might even be able to begin to unify much of the American people as a whole against the common threat posed to our national and personal security by the monopolists and their allies in China.

An assertive anti-monopolism will even give Biden the ability to scatter the corporate and judicial reactions and reveal them as the empty threat they are. As Wilson did in 1913, Roosevelt did in the 1930s, Truman and Dwight Eisenhower did in the 1950s, Johnson did in the 1960s, and Gerald Ford did in the 1970s, Biden can use anti-monopolism to pit the great majority of American entrepreneurs and investors against the few who seek to engross all opportunity and all power. The burst of public and private legal cases, meanwhile, many making arguments that have not been heard in decades, will overwhelm the judiciary’s already weakening embrace of Reagan-era neoliberal thinking.

By contrast, if Biden fails to seize the initiative, he might be remembered as little more than a woebegone regent for Trump in his exile, in Elba by the Sea Florida. And Democrats should be absolutely honest about what a defensive, cautious, backward-looking, tortoise-like Biden administration will deliver, which might be something like the end of democracy in America and around the world.

Failure to use anti-monopolism to seize the initiative would leave Trump’s Republican Party free to use the same populist rhetoric to divide and scatter the Democratic Party in 2022 and 2024, while once again bringing the Koch-funded neoliberal wing of the GOP back into gawky alignment with Trump’s national populist wing.

Even more dangerous, such a failure would leave Google, Facebook, and Amazon free to exploit their control over our communications and commercial systems to further separate each American into a perfectly isolated bubble of rage, bewilderment, and despair, in ways that might soon shatter forever the ability of either party to communicate coherently with America’s voters.

### Sustainability---2AC

#### Capitalism's sustainable and comparatively preferable to alternatives.

Schrager **‘**20 [Allison; Winter 2020; Ph.D. in Economics from Columbia University, Senior Fellow at the Manhattan Institute; "Why Socialism Won't Work," https://foreignpolicy.com/2020/01/15/socialism-wont-work-capitalism-still-best/]

WITH INCREASINGLY UBIQUITOUS IPHONES, internet, central air conditioning, flat-screen TVs, and indoor plumbing, few in the developed world would want to go back to life 100, 30, or even 10 years ago. Indeed, around the world, the last two centuries have brought vast improvements in material living standards; billions of people have been lifted from poverty, and life expectancy across income levels has broadly risen. Most of that progress came from capitalist economies.

Yet those economies are not without their problems. In the United States and the United Kingdom, the gap between the rich and poor has become intolerably large as business owners and highly educated workers in urban areas have become richer while workers' wages in rural areas have stagnated. In most rich countries, more trade has brought a bigger, better variety of goods, but it has also displaced many jobs.

With social instability in the form of mass protests, Brexit, the rise of populism, and deep polarization knocking at the capitalist economies' doors, much of the progress of the last several decades is in peril. For some pundits and policymakers, the solution is clear: socialism, which tends to be cited as a method for addressing everything from inequality and injustice to climate change.

Yet the very ills that socialists identify are best addressed through innovation, productivity gains, and better rationing of risk. And capitalism is still far and away the best, if not only, way to generate those outcomes.

TODAY'S SOCIALISM IS DIFFICULT TO DEFINE. Traditionally, the term meant total state ownership of capital, as in the Soviet Union, North Korea, or Maoist China. Nowadays, most people don't take such an extreme view. In Europe, social democracy means the nationalization of many industries and very generous welfare states. And today's rising socialists are rebranding the idea to mean an economic system that delivers all the best parts of capitalism (growth and rising living standards) without the bad (inequality, economic cycles).

But no perfect economic system exists; there are always trade-offs--in the most extreme form between total state ownership of capital and unfettered markets without any regulation or welfare state. Today, few would opt for either pole; what modern socialists and capitalists really disagree on is the right level of government intervention.

Modern socialists want more, but not complete, state ownership. They'd like to nationalize certain industries. In the United States, that's health care--a plan supported by Democratic presidential candidates Elizabeth Warren (who does not call herself a socialist) and Bernie Sanders (who wears the label proudly). In the United Kingdom, Labour Party leader Jeremy Corbyn, who was trounced at the polls in mid-December, has set his sights on a longer list of industries, including the water, energy, and internet providers.

Other items on the socialist wish list may include allowing the government to be the primary investor in the economy through massive infrastructure projects that aim to replace fossil fuels with renewables, as Green New Deal socialists have proposed. They've also floated plans that would make the government the employer of a majority of Americans by offering guaranteed well-paid jobs that people can't be fired from. And then there are more limited proposals, including installing more workers on the boards of private companies and instituting national rent controls and high minimum wages.

For their part, modern capitalists want some, but less, state intervention. They are skeptical of nationalization and price controls; they argue that today's economic problems are best addressed by harnessing private enterprise. In the United States, they've argued for more regulation and progressive taxation to help ease inequality, incentives to encourage private firms to use less carbon, and a more robust welfare state through tax credits. Over the past 15 years, meanwhile, capitalist Europeans have instituted reforms to improve labor market flexibility by making it easier to hire and fire people, and there have been attempts to reduce the size of pensions.

No economic system is perfect, and the exact right balance between markets and the state may never be found. But there are good reasons to believe that keeping capital in the hands of the private sector, and empowering its owners to make decisions in the pursuit of profit, is the best we've got.

ONE REASON TO TRUST MARKETS is that they are better at setting prices than people. If you set prices too high, many a socialist government has found, citizens will be needlessly deprived of goods. Set them too low, and there will be excessive demand and ensuing shortages. This is true for all goods, including health care and labor. And there is little reason to believe that the next batch of socialists in Washington or London would be any better at setting prices than their predecessors. In fact, government-run health care systems in Canada and European countries are plagued by long wait times. A 2018 Fraser Institute study cites a median wait time of 19.8 weeks to see a specialist physician in Canada. Socialists may argue that is a small price to pay for universal access, but a market-based approach can deliver both coverage and responsive service. A full government takeover isn't the only option, nor is it the best one.

Beyond that, markets are also good at rationing risk. Fundamentally, socialists would like to reduce risk--protect workers from any personal or economywide shock. That is a noble goal, and some reduction through better functioning safety nets is desirable. But getting rid of all uncertainty--as state ownership of most industries would imply--is a bad idea. Risk is what fuels growth. People who take more chances tend to reap bigger rewards; that's why the top nine names on the Forbes 400 list of the richest Americans are not heirs to family dynasties but are self-made entrepreneurs who took a leap to build new products and created many jobs in the process.

Some leftist economists like Mariana Mazzucato argue that governments might be able to step in and become laboratories for innovation. But that would be a historical anomaly; socialist-leaning governments have typically been less innovative than others. After all, bureaucrats and worker-corporate boards have little incentive to upset the status quo or compete to build a better widget. And even when government programs have spurred innovation--as in the case of the internet--it took the private sector to recognize the value and create a market.

And that brings us to a third reason to believe in markets; productivity. Some economists, such as Robert Gordon, have looked to today's economic problems and suggested that productivity growth--the engine that fueled so much of the progress of the last several decades--is over. In this telling, the resources, products, and systems that underpin the world's economy are all optimized, and little further progress is possible.

But that is hard to square with reality. Innovation helps economies do more with fewer resources--increasingly critical to addressing climate change, for example--which is a form of productivity growth. And likewise, many of the products and technologies people rely on every day did not exist a few years ago. These goods make inaccessible services more available and are changing the nature of work, often for the better. Such gains are made possible by capitalist systems that encourage invention and growing the pie, not by socialist systems that are more concerned with how the existing pie is cut. It is far too soon, in other words, to write off productivity.

Here, it is worth considering the lessons of a previous productivity boom: the Industrial Revolution. As the economist Joel Mokyr has shown, it took new innovations like the steam engine more than 100 years to appear in productivity estimates. The same could be happening today with smartphones and the internet. Meanwhile, even as that upheaval transformed the human experience, creating a more comfortable existence for most everyone, it was also messy and disruptive. The early part of that innovative cycle--like others since--displaced existing workers while the gains flowed to the owners of capital first, causing social instability.

## CP---Adv

### Cyber Defense CP---2AC

#### 2. Laundry list---standards get watered down, don’t solve, and lack of expertise means compliance doesn’t solve.

Peek 12 [Liz Peek After more than two decades on Wall Street as a top-ranked research analyst, Liz Peek became a columnist and political analyst. Aside from The Fiscal Times, she writes for FoxNews.com, The New York Sun and Women on the Web. "Cyber War: Why the Government Can’t Keep Us Safe." https://www.thefiscaltimes.com/Columns/2012/08/22/Cyber-War-Why-the-Government-Cant-Keep-Us-Safe#page1]

It calls for companies managing our power plants and stock exchanges to meet only minimal security standards while burdening those firms with costly compliance requirements. Moreover, it grants compliant organizations legal immunity in the event of an attack. In other words, companies would have arguably less incentive to truly protect our critical infrastructure than without the law. Passing the bill would have been another “checked box” for the White House and for Congress – nothing more.

Skeptics question whether the slow-moving federal government is capable of combating the invisible hydra-headed colony of Chinese or terrorist computer hackers constantly probing our computer networks. It’s like the British Redcoats during the Revolution, lining up in proper formation and firing off orchestrated volleys from their unwieldy rifles. They were no match for Colonial squirrel hunters darting between trees and refusing to play by the rules.

A leading security and information management company called nCircle asked techies at a recent gathering if government regulation would improve information security for critical infrastructure. Sixty percent said “no.” Lamar Bailey, nCircle’s director of security research, explained in a press release that Congress doesn't have the technical expertise to craft cybersecurity laws.

“While the U.S. government has some outstanding security researchers, they are confined to the DoD and other cabinet agencies where the focus is on gathering data, not sharing it.” He adds in a phone interview, “Regulations are always geared to the lowest requirements.” Companies might comply, but still not be secure.

Industry doubts are backed by the failure of the government to protect even its own systems and information. Last year, according to the General Accounting Office, there were 15,500 breaches of government agencies -- up 19 percent from the year before. Hackers stole personal info on roughly 123,000 Federal Retirement Thrift Savings Plan participants, for instance, who were not notified of the intrusion for a full ten months.

The head of the agency claimed it didn’t have a notification plan for lack of funding. No problem -- the agency will “address data protection issues as part of its next recordkeeping contract, to be awarded in fiscal 2013.” Welcome to the nimble federal government.

#### Breaches fund North Korean modernization

Russel ’20 [Daniel; June 2020; Vice President for International Security and Diplomacy at the Asia Society Policy Institute; Business Insider, “Kim Jong Un has quietly built a 7,000-man cyber army that gives North Korea an edge nuclear weapons don't,” <https://www.businessinsider.com/north-korea-kim-jong-un-cyber-army-cyberattacks-nuclear-weapons-2020-6>]

Russel: You're digging into technical areas for which I'm spectacularly unqualified because I'm not a digital or a cyber expert. But the people who are real experts, Mandiant, FireEye, or CrowdStrike, or for that matter the CIA or the NIS, South Korea's intelligence service, have a very sophisticated ability to conduct forensic detective work in the cyber realm. In many cases, they can identify patterns, code, servers and the like to trace things back to North Korea.

These companies issue an annual worldwide cyber-threat report. They track all of these various major hacking operations and rank them. They call them advanced persistent threats, APT. North Korea is the host of something they call APT38 — or the Lazarus Group, Guardians of Peace, or Hidden Cobra. These are sort of code names. APT38 is number one on their list of worldwide cyber threats.

In some cases North Korea directly claimed credit for a cyberattack. Beyond that, Kim Jong Un and the Korean Workers' Party have been speaking increasingly in a very open and direct way about its cyber capability.

They use the same vocabulary now for cyber as for their nuclear weapons. They call it "an all-purpose sword that guarantees our capability to strike relentlessly."

Insider: You called the Sony hack "chickenshit." Can you tell me what kinds of bigger projects are out there?

Russel: You could break it down into three categories: spying; sanctions circumvention through cyber theft; and harassment, disruption, and retaliation — the Sony hack was an example of that.

One important use of cyber for North Korea is to steal secrets. CrowdStrike has done a lot of documenting this, but it's the US government and foreign governments that are paying super-close attention to this.

In 2016, APT38 stole about 40,000 defense documents from South Korean contractors with information on F-16 fighters and drones. North Korea is also believed to have stolen a PowerPoint summary of the US military's top-secret operation plan, called Op Plan 5027, which is the war plan for the United States.

Second is the cyber theft category. In March, the Department of Justice unsealed indictments accusing some Chinese and North Korean nationals of laundering $100 million for North Korean nuclear activities. This indictment makes clear that the money these people laundered was part of a $250 million theft by North Korea in a cyberattack on a global cryptocurrency exchange. So this isn't just imaginary stuff.

Cyber theft effectively neutralizes UN and US sanctions against North Korea. If North Korea is denied a billion dollars in the sale of coal and iron and mushrooms, but it can go out and steal a billion dollars, then sanctions are not going to have the intended effect.

While the administration takes a lot of pride in its efforts to maintain sanctions against North Korea, this is an immense loophole, and it's not just going to buy those fancy Mercedes that we saw Kim Jong Un driving around in when he was hobnobbing with Donald Trump in Singapore and in Hanoi. This money is going to fund North Korea's nuclear weapons and intercontinental ballistic missile program. We're paying for the threat against ourselves.

At the high end, it's potentially a devastating destruction of critical infrastructure in the United States and Japan and South Korea.

The WannaCry virus, on the one hand, was ransomware; you could argue that it's aimed at getting money, but it caused a huge disruption of hospitals in the UK and, potentially, in something like 100-plus other countries where they had disseminated the ransomware. This was software that brought the operation of critical facilities to a standstill.

This is not hacking; this is cyber warfare.

Cyber weapons kind of level the playing field for North Korea in a way that nukes can't. Not only do the United States, China, Russia, have vastly more nuclear weapons than North Korea, but a nuclear weapon is an all-or-nothing proposition.

Cyber warfare has a very different risk-return calculation. it's a low-cost, asymmetric, relatively speaking, low-risk weapon system. And the US is the most vulnerable country on planet Earth to disruptive cyberattacks.

Most American infrastructure facilities were built in the pre-digital era — energy grids and the Hoover Dam. They get retrofitted with makeshift, MacGyver-style internet linkages, as opposed to new infrastructure that has digital safeguards built into it. So you have somebody firing up their router, like with one of those old "you got mail" connections.

The US has a lot of that stuff, number one. And something like 80% of America's critical infrastructure is privately owned. Who's going to pay to upgrade the power plant? Who's going to pay to upgrade the air traffic control systems? Who's going to pay to upgrade the rail systems, the cellphone network? Good luck getting these private companies to sell their shareholders on investing billions of dollars in upgrades.

If it's bad now, just imagine what it's going to look like with 5G and the internet of things. New interconnectivity is going to provide new opportunities for malicious cyberattacks, and you're going to wake up one morning and find that your toaster oven is getting ready to kill you, thanks to Kim Jong Un.

#### Modernization fuels nuclear aggression

Brewer ’20 [Eric; January 9; Deputy Director of the Project on Nuclear Issues with the Center for Strategic and International Studies, former Director for Counterproliferation on the National Security Council Staff; The Hill, “North Korean nuclear threat is here,” <https://thehill.com/opinion/international/477514-north-korean-nuclear-threat-is-here>]

Kim Jong Un has done a good job keeping the United States guessing about his next nuclear provocation. North Korea had threatened that it would pursue a more hardline “new path” by the end of last year unless the United States dropped its “hostile” policies toward the country. This was followed by promises of a “Christmas gift” in December, which was widely speculated to be the test of a more advanced long range missile system. Kim most recently announced that North Korea would no longer be bound by its own limits on long range missile and nuclear testing, and stated that “the world will witness a new strategic weapon” system soon.

Some experts have been concerned that the United States is on the cusp of losing its last chance to prevent a real nuclear threat from North Korea. Former national security adviser [John Bolton](https://thehill.com/people/john-bolton), for instance, tweeted only a few weeks ago that the United States needs to act fast before North Korea “has the technology to threaten the American homeland.” Others, though, including apparently some officials in the administration, view the lack of a “Christmas gift” as a demonstration of the success of [President Trump](https://thehill.com/people/donald-trump).

But these concerns miss the broader point that the nuclear threat from North Korea is already here. The days when North Korea was thought of having a handful of nuclear weapons that may not be deliverable with a missile are over. The bigger issue is how the United States and its allies need to adapt to rapidly expanding North Korean nuclear capabilities.

While Trump is right that North Korea has not tested a long range missile since his first summit with Kim back in 2018, North Korea has been busily advancing other elements of its nuclear deterrent. Kim has continued to churn out more nuclear warheads and missiles during this interim period. According to one estimate in 2018, he had as many as 60 warheads, and his stockpile has likely grown since. The pace of North Korean missile testing also kept up with some of the most aggressive years on record.

This included solid rocket missiles, which can be launched faster than their liquid counterparts thus reducing warning time, and missiles that could pose challenges to regional missile defenses, making American allies and regional bases more vulnerable. North Korea has also made progress in developing its own submarine launched ballistic missile. All these advances, made during a period when the relationship between Pyongyang and Washington was supposedly never better, show that Kim is not interested in disarming. Rather, he seeks a robust nuclear arsenal.

This has all occurred in the past year and a half. North Korea conducted what it claimed was its second test of a thermonuclear weapon in 2017, upping the lethality of its force. That same year North Korea also carried out three intercontinental ballistic missile tests, demonstrating that the entire United States is already likely within range of a North Korean attack. While the precise reliability of its reentry vehicle remains unclear, as in the odds that the warhead would survive the intense conditions of flight, any American president will operate under the assumption that North Korea could strike the homeland during a crisis. This is no small victory for Kim.

Coupled with these new technical developments, cleavages in the United States alliances with South Korea and Japan, and the critical relationship between Seoul and Tokyo, are creating a vulnerability that North Korea will likely try and exploit in 2020. For instance, American demands that South Korea, and reportedly Japan, drastically increase the amount they pay to support the American forces stationed on their soil has created a useless point of friction and has generated a backlash against the United States.

Moreover Trump, who ultimately decides whether the United States will honor its defense commitments, has stated that he could “go either way” on whether it is in American interests to keep troops in the region, has suggested he shares with Kim the view that exercises between the United States and South Korea are “ridiculous and expensive,” and has dismissed North Korean missile tests that pose a threat to American allies as “very standard.” If Kim focuses tensions on South Korea and Japan this year and Trump looks the other way, then this will further erode allied confidence.

## CP---States

### States CP---2AC

#### 3. Interstate fragmentation---even perfect uniformity fails.

Huddleston & Adams 19 [Jennifer is the Director of Technology and Innovation Policy at AAF. Her research focuses on the intersection of emerging technology and law. s Managing Director, Ian Adams leads Clean Energy Trust’s efforts to identify new innovations and investment opportunities and works to develop new initiatives to support early-stage innovation. Ian also supports Clean Energy Trust’s portfolio, serving as a board observer for five companies. Prior to joining CET, Ian served as an aide to the U.S. Secretary of Energy and worked at the White House. "Potential Constitutional Conflicts in State and Local Data Privacy Regulations." https://regproject.org/wp-content/uploads/RTP-Cyber-and-Privacy-Paper-Constitutional-Conflicts-in-Data-Privacy-final.pdf]

Even if all 50 states independently established the same standards, those subject to such laws might still struggle with different standards of enforcement, creating uncertainty for offering similar products across state borders.26 Thus, as AEI’s Daniel Lyons has argued regarding potential state level Net Neutrality laws: [E]ven if the court construes these restrictions to apply only to contracts with instate consumers, such regulations can disrupt the orderly flow of interstate traffic. Permissible network management practices would differ from state to state, depending on whether and how each state chose to regulate. Even if all states adopted facially identical statutes, fragmentation is likely to occur over time as fifty different sovereigns may reasonably disagree on enforcement.27

More likely, even slight differences in state level privacy laws will create Dormant Commerce Clause-triggering undue burdens as out-of-state companies confront the choice to either comply with the most stringent state laws or create individual and less efficient products for each state or local regulation.28

#### 4. Exemptions---only federal reform of statute can cover data carriers or medical providers.

Cooper et al 20 [James C. Cooper brings over a decade of public and private sector experience to his research and teaching. Prior to joining the faculty at Scalia Law, he served as Deputy and Acting Director of the Federal Trade Commission’s Office of Policy Planning, Advisor to Federal Trade Commissioner William Kovacic, and as an associate in the antitrust group of Crowell & Moring, LLP. Professor Cooper returned to the FTC in 2018-19 to serve as a Deputy Director in the FTC’s Bureau of Consumer Protection. James C. Cooper, Antonin Scalia Law School, George Mason University Joshua D. Wright, Antonin Scalia Law School, George Mason University John M. Yun, Antonin Scalia Law School, George Mason University. George Mason University Law & Economics Research Paper Series, 20-13. "Testimony on the 'State of Competition in the Digital Marketplace' before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Antitrust, Commercial, and Administrative Law." ssrn.com/abstract=3584629]

We also believe that Congress should eliminates the FTC Act’s exemptions for non-profits and common carriers. This stricture on the FTC’s jurisdiction serves no purpose and creates ad hoc divisions of industries between the agencies. For example, although the FTC has a great deal of expertise in health care and hospital markets, it is prohibited from reaching mergers or conduct involving non-profit hospitals. Further, although the FTC can investigate acquisitions and conduct by edge providers, the FTC Act does not cover Internet service providers. What is more, as these sectors become increasingly vertically integrated, the FTC is potentially excluded from policing this important industry.

#### 5. Double bind---it’s either insufficient or preempted.

Huddleston & Adams 19 [Jennifer is the Director of Technology and Innovation Policy at AAF. Her research focuses on the intersection of emerging technology and law. s Managing Director, Ian Adams leads Clean Energy Trust’s efforts to identify new innovations and investment opportunities and works to develop new initiatives to support early-stage innovation. Ian also supports Clean Energy Trust’s portfolio, serving as a board observer for five companies. Prior to joining CET, Ian served as an aide to the U.S. Secretary of Energy and worked at the White House. "Potential Constitutional Conflicts in State and Local Data Privacy Regulations." https://regproject.org/wp-content/uploads/RTP-Cyber-and-Privacy-Paper-Constitutional-Conflicts-in-Data-Privacy-final.pdf]

Despite persistent rumors to the contrary, the United States is not lacking in data privacy law. In fact, federal laws already exist for many areas of sensitive data, including financial information, healthcare information, and children’s privacy.43 Likewise, states have sector-specific privacy laws of their own in areas like insurance. So far, states have sought to clarify that those already subject to these federal regulations are not subject to new state laws or the federal legislation.

However, when broader state-level data protection mandates present conflicts of laws, there is a possibility that preemption analysis will result in the primacy of federal law under the Supremacy Clause. While many federal privacy laws serve as a floor rather than a ceiling, this existing framework could create legal issues if new comprehensive data privacy laws create contradictions with existing federal requirements. In practice, “comprehensive” state privacy laws are unlikely to ever be truly comprehensive.

For instance, if such laws fail to carve out already regulated industries, there could be clear conflicts regarding proper legal requirements and handling for such data. In other cases, state laws may merely create additional compliance burdens for these regulated industries that create confusion for both consumers and industry. In still other instances, state laws could conflict with existing federal requirements and the supremacy of federal law may render at least those portions of the laws preempted.

## DA---PTX

### 2AC---DA---PTX

#### PC fails AND infinite thumpers.

Gray ‘11/7 [Freddy; 11/7/21; deputy editor of The Spectator; "Joe Biden’s plummeting presidency," <https://thenationonlineng.net/joe-bidens-plummeting-presidency/>]

Who can blame President Biden for nodding off at the COP26 summit on Monday? It was an astronomically boring session — opening statement after opening statement, pompous speaker after pompous speaker, insisting that the time for words on climate change is over. Now is the time for… zzzzzzzzzzzz. It’s a miracle the jet-lagged, 78-year-old leader kept his eyes open for as long as he did.

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

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

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

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

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

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

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

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

Still, Biden’s strength is the weakness of his opposition. With notable exceptions such as Youngkin, the Republicans continue to be hopelessly divided over their identity. Are they post-Trump these days? Given that the 45th President seems almost certain to run for the party’s nomination in 2024 and is highly likely to win, who wants to steer the Grand Old Party in another new direction? Even if Trump magically disappeared, how can Republicans appeal to their Trumpist core, who believe the last presidential election was stolen, as well as to the less rabidly partisan voters they need to win? There’s a reason senior Democrats mention Trump as often as they can.

Yet all the talk of the dreaded orange man cannot conceal the Democrats’ problem-in-chief, which is their own Commander-in-Chief. It’s the senility, stupid. Democrats may still bat away talk of his advancing dementia as nasty gossip. But it’s not just right-wing news anchors who wonder aloud about his health. Everyone does. Biden is pushing 80, has had two brain aneurysms, and often seems to have no idea where he is or what he is doing. He can get through a speech, just about, but the way his press team shield him from difficult question-and-answer sessions has gone from running joke among frustrated Washington journos to a source of international concern.

Biden recently got through a ‘townhall event’ with CNN’s Anderson Cooper without any major mind malfunctions. There was, however, the legendary ‘jet-pack moment’. Asked about inflation, Biden suddenly adopted a bizarre pose, raising two clenched fists in front of himself and standing rock-still for about 15 seconds. He also performed his weird whispering routine, theatrically hushing his voice for no clear reason.

Most revealing, perhaps, is Team Biden’s desperate insistence that he’s raring to go. His spokespeople talk about how ‘laser-focused’ the President is on finer policy details, which suggests that he doesn’t have the foggiest what is going on. ‘When I saw the President yesterday, he wasn’t just wide awake,’ said White House national climate adviser Gina McCarthy on Tuesday, even though nobody had asked her about Biden’s Glasgow snooze. ‘He was really on fire.’

There’s a realisation all over the world that Biden is not OK. He has honesty issues on top of his memory issues, which blur his strategy. For instance, according to reports, the American, Australian and British governments had all agreed the Australians would break the bad news to France about the cancellation of the £45 billion French-Australian submarines deal on 16 September, the day the Aukus security pact was announced. Yet after meeting the French President Emmanuel Macron in Rome last weekend, Biden said he felt the diplomacy around Aukus had been ‘clumsy’. ‘I was under the impression France had been informed long before that the deal was not going through, honest to God,’ said Joe. Was Biden being devious or dopey — or both? Was he throwing Australia under the bus? Had he forgotten the agreement? Or had his national security advisers kept him in the dark?

Such ‘strategic amnesia’ could be useful in international relations. And American voters might be sanguine if they believed that behind the doddery frontman, the Biden administration was brilliant, switched-on and dynamic. The evidence increasingly points the other way. His Vice-President, Kamala Harris, who many assume will emerge as Biden’s replacement, seems to be less forgetful than Joe Biden but is equally barmy and much more disliked. She’s been put in charge of the immigration crisis at the southern border — a bum gig, no doubt. But she’s made countless gaffes and missteps. The administration is now falling back on Trump-era tactics to stop illegal entry into the US, while incentivising the lucky ones who make it through with large cash prizes.

Harris’s laugh, which she deploys a lot, is widely recognised as the most irritating noise in America. A video of her speaking with hysterical gaucheness to some child actors about the wonders of space went viral for all the wrong reasons. If she is the break-glass-in-case-Biden-stops-working option, the Democrats must be dreading 2024.

The brain rot spreading across the whole administration only started to become clear — to non-obsessives, at least — in August, when Biden pulled America out of Afghanistan. That was unfortunate, since a large majority supported bringing the 20-year conflict to an end. But Americans found the botched withdrawal humiliating. The establishment media, which had hitherto slavered over everything Biden did, suddenly turn on their hero. It’s been downhill ever since. From August, Covid began to spread again, the vaccination programme slowed, and the daily death toll rose again to almost 3,000. Meanwhile, the Biden administration’s coercive vaccine mandates triggered a backlash.

#### The plan is popular, and everyone has already taken a side.

MacLeod 21 [Bill MacLeod chairs the Antitrust and Competition practice group at Kelly, Drye & Warren LLP. "Prospects Rise for Antitrust and Data Legislation." https://www.adlawaccess.com/2021/02/articles/prospects-rise-for-antitrust-and-data-legislation/?utm\_source=Mondaq&amp;utm\_medium=syndication&amp;utm\_campaign=LinkedIn-integration]

Displaying bipartisanship seldom seen on Capitol Hill, the Antitrust Subcommittee of the House Judiciary Committee held a hearing yesterday on Reviving Competition in which Democrats and Republicans appeared to agree on crucial issues.[1] Subcommittee Chairman David Cicilline and Ranking Member Ken Buck echoed one another on the need for reforms, while many members of the full Judiciary Committee, including Chairman Nadler and Ranking Member Jordan, weighed in with their own support for writing new laws on Big Tech.

Virtually unanimous was the sentiment to increase funding for the Federal Trade Commission and the Antitrust Division at the Department of Justice. So was the desire to accelerate antitrust litigation and the idea of easing the burden on the government to stop mergers. Consensus seemed close as well on making data more portable for consumers who switch vendors and products and on improving the interoperability of apps and devices. Proposals to create a new federal agency to regulate Big Data met with less favor, and arguments to break up large firms did not capture the day. The Commission emerged as the agency most likely to see an expansion of authority.

The hearing was the first of a series planned to develop legislation based on the extensive investigation of competition in Big Tech that the subcommittee had conducted in the last Congress. Chairman Cicilline opened with a warning that dominant companies have too much power and it needs to be curbed. “Mark my words, change is coming. Laws are coming.” He cited dominant firms’ acquisitions of nascent competitors, contractual conditions that platforms impose on other vendors, disadvantaged news media, and measures that other countries have taken to rein in the companies. Perhaps most importantly, he concluded by noting the agreement of Ranking Member Buck on many of the proposals.

For his part, Mr. Buck recounted examples of conduct attributed to Big Tech during the investigation last year, including allegations of collusion, unfair competition against vendors on platforms, markups added to competitors’ products and actions to silence political speech. He then expanded on the remedies he proposed. First, he advocated data portability and recalled that one of the most popular laws Congress ever passed was the Telecommunications Act of 1996, which allowed consumers to keep their phone numbers when they switched carriers. Second, he extolled interoperability – allowing “competing technologies to speak to one another” – so consumers are not locked into one choice. Third, he supported more robust enforcement of the antitrust laws, although he cautioned against a Glass-Steagall Act for the internet (referring to proposals to prevent platforms from competing with vendors on them).

#### Winners win---passage generates momentum, outweighs links based on popularity or capital, and spills over to the broader agenda.

Galston ’21 [William; September 7; Senior Fellow and Chair in the Brookings Institution’s Governance Studies Program; Wall Street Journal, “Biden Needs a Win on Infrastructure,” https://www.wsj.com/amp/articles/biden-win-infrastructure-manchin-reconciliation-approval-rating-11631028992]

August was a month of disasters for Joe Biden. September will be a month of decisions—big ones—about his domestic policy agenda.

The president faces his fall challenges with a weakened hand. As recently as May 25, his job approval stood at nearly 55%. Now, according to the two best-known poll averages, it has fallen by nine percentage points to 46%. Independents are turning against Mr. Biden.

Explanations for this dive are not hard to find. Americans are increasingly worried about inflation, which has wiped out nominal gains in wages. They are discouraged about the trajectory of the pandemic, which has exploded once again as the Delta variant replaces less transmissible forms of the virus. And although they broadly agree with Mr. Biden’s decision to withdraw from Afghanistan, they believe that he executed this decision poorly.

The early anecdotal evidence suggests the public has downgraded its assessment of Mr. Biden’s presidential capacities. Georgia’s DeKalb County is a pivotal battleground, and John Jackson, the chairman of the county’s Democrats, is concerned. “I just worry about his ability to achieve his agenda,” Mr. Jackson in a recent interview with the Washington Post. “I don’t necessarily disagree with a lot of his policies—it’s his execution.”

Beyond concerns about President Biden’s competence, Americans are concerned that things are spinning out of control. The way Mr. Biden addresses his domestic challenges in the coming weeks will either reinforce or refute these doubts about his competence.

Only two months ago, Americans allowed themselves to believe that things were finally returning to normal. The rate of infections had declined more than 90% from its January peak; hospitalizations and deaths decreased in turn. The economy was opening up, and jobs were growing at a monthly rate of nearly one million. Many people felt free to throw off their face masks, enter bars and restaurants, attend events, even go to the movies. Parents were preparing to send their children back to school; women were considering re-entering the paid workforce. This euphoria turned out to be premature.

Dashed expectations are hard to bear, and people tend to blame those they perceive as having encouraged them, in this case Mr. Biden and his advisers. As Great Britain faced the prospect of conquest by the Nazis in 1940, Winston Churchill was wise to promise his beleaguered countrymen and women only blood, toil, tears and sweat. And when the tide of the battle turned in Britain’s favor, he was equally wise to distinguish between the beginning of the end and the end of the beginning. Mr. Biden would be well advised to emulate him, at home and abroad, as he enters this critical phase of his presidency.

The immediate task is managing the rifts within the Democratic Party that have widened during this miserable summer. Progressives believe that only an expansive and expensive domestic agenda can solve the country’s problems and convince a skeptical electorate that Democrats can make their lives better. Moderates believe that their constituents won’t accept the full progressive agenda and that the pace of spending is reinforcing fears about inflation and debt.

House Speaker Nancy Pelosi has made two promises to rebellious moderates: The bipartisan infrastructure bill passed by the Senate will receive a House vote no later than Sept. 27; the House reconciliation bill will be hemmed in by what 51 Senators can accept. That means it will be less than $3.5 trillion in new spending. Two Democratic senators have said that they won’t accept anything close to the $3.5 trillion figure permitted, but not required by, the 2022 budget outline. West Virginia’s Joe Manchin last week called for a “strategic pause” in considering the reconciliation bill.

These developments define the political reality President Biden faces. To regain his momentum and convey a sense of control, he needs a win as soon as possible. The bipartisan infrastructure bill is the only realistic prospect of a quick victory, and if Speaker Pelosi honors her promise, it will receive a vote well before the reconciliation bill reaches the floor of either chamber. But many progressives continue to insist that the infrastructure and reconciliation bills must be considered in tandem, fearing that if the infrastructure bill passes first, they will lose leverage to enact large new spending programs. If more than a handful of progressives refuse to support the infrastructure bill this month, it will be hard to round up enough Republicans to reach a majority.

President Biden has no choice but to enter the fray. He must urge progressives to support the infrastructure bill and to accept what they can get through reconciliation, which will be much less than they want. The alternative would be the collapse of the president’s domestic agenda and certain disaster in the midterms.

### 2AC---AT: Climate Change

#### Warming doesn’t cause extinction---new studies.

Nordhaus 20 Ted Nordhaus, an American author, environmental policy expert, and the director of research at The Breakthrough Institute, citing new climate change forecasts. [Ignore the Fake Climate Debate, 1-23-2020, https://www.wsj.com/articles/ignore-the-fake-climate-debate-11579795816]//BPS

Beyond the headlines and social media, where Greta Thunberg, Donald Trump and the online armies of climate “alarmists” and “deniers” do battle, there is a real climate debate bubbling along in scientific journals, conferences and, occasionally, even in the halls of Congress. It gets a lot less attention than the boisterous and fake debate that dominates our public discourse, but it is much more relevant to how the world might actually address the problem. In the real climate debate, no one denies the relationship between human emissions of greenhouse gases and a warming climate. Instead, the disagreement comes down to different views of climate risk in the face of multiple, cascading uncertainties. On one side of the debate are optimists, who believe that, with improving technology and greater affluence, our societies will prove quite adaptable to a changing climate. On the other side are pessimists, who are more concerned about the risks associated with rapid, large-scale and poorly understood transformations of the climate system. But most pessimists do not believe that runaway climate change or a hothouse earth are plausible scenarios, much less that human extinction is imminent. And most optimists recognize a need for policies to address climate change, even if they don’t support the radical measures that Ms. Thunberg and others have demanded. In the fake climate debate, both sides agree that economic growth and reduced emissions vary inversely; it’s a zero-sum game. In the real debate, the relationship is much more complicated. Long-term economic growth is associated with both rising per capita energy consumption and slower population growth. For this reason, as the world continues to get richer, higher per capita energy consumption is likely to be offset by a lower population. A richer world will also likely be more technologically advanced, which means that energy consumption should be less carbon-intensive than it would be in a poorer, less technologically advanced future. In fact, a number of the high-emissions scenarios produced by the United Nations Intergovernmental Panel on Climate Change involve futures in which the world is relatively poor and populous and less technologically advanced. Affluent, developed societies are also much better equipped to respond to climate extremes and natural disasters. That’s why natural disasters kill and displace many more people in poor societies than in rich ones. It’s not just seawalls and flood channels that make us resilient; it’s air conditioning and refrigeration, modern transportation and communications networks, early warning systems, first responders and public health bureaucracies. New research published in the journal Global Environmental Change finds that global economic growth over the last decade has reduced climate mortality by a factor of five, with the greatest benefits documented in the poorest nations. In low-lying Bangladesh, 300,000 people died in Cyclone Bhola in 1970, when 80% of the population lived in extreme poverty. In 2019, with less than 20% of the population living in extreme poverty, Cyclone Fani killed just five people. “Poor nations are most vulnerable to a changing climate. The fastest way to reduce that vulnerability is through economic development.” So while it is true that poor nations are most vulnerable to a changing climate, it is also true that the fastest way to reduce that vulnerability is through economic development, which requires infrastructure and industrialization. Those activities, in turn, require cement, steel, process heat and chemical inputs, all of which are impossible to produce today without fossil fuels. For this and other reasons, the world is unlikely to cut emissions fast enough to stabilize global temperatures at less than 2 degrees above pre-industrial levels, the long-standing international target, much less 1.5 degrees, as many activists now demand. But recent forecasts also suggest that many of the worst-case climate scenarios produced in the last decade, which assumed unbounded economic growth and fossil-fuel development, are also very unlikely. There is still substantial uncertainty about how sensitive global temperatures will be to higher emissions over the long-term. But the best estimates now suggest that the world is on track for 3 degrees of warming by the end of this century, not 4 or 5 degrees as was once feared. That is due in part to slower economic growth in the wake of the global financial crisis, but also to decades of technology policy and energy-modernization efforts. “We have better and cleaner technologies available today because policy-makers in the U.S. and elsewhere set out to develop those technologies.” The energy intensity of the global economy continues to fall. Lower-carbon natural gas has displaced coal as the primary source of new fossil energy. The falling cost of wind and solar energy has begun to have an effect on the growth of fossil fuels. Even nuclear energy has made a modest comeback in Asia.

## DA---Pharma

### 2AC---DA---Pharma

#### FTC rulemaking is coming---it centers on privacy and data collection but doesn’t solve without the aff.

McKinnon & Tracy 21 [John D. McKinnon and Ryan Tracy. Wall Street Journal. "FTC Weighs New Online Privacy Rules" https://www.wsj.com/articles/ftc-weighs-new-online-privacy-rules-11632913200?mod=newsviewer\_click]

WASHINGTON—The Federal Trade Commission is considering strengthening online privacy protections, including for children, in an effort to bypass legislative logjams in Congress. The rules under consideration could impose significant new obligations on businesses across the economy related to how they handle consumer data, people familiar with the matter said. The early talks are the latest indication of the five-member commission’s more aggressive posture under its new chairwoman, Lina Khan, a Democrat who has been a vocal critic of big business, particularly large technology companies. Congressional efforts to assist the FTC in tackling perceived online privacy problems will also be the focus of a Senate Commerce Committee hearing Wednesday. If the agency chooses to move forward with an initiative, any broad new rule would likely take years to implement. In writing new privacy rules, the FTC could follow several paths, the people said: It could look to declare certain business practices unfair or deceptive, using its authority to police such conduct. It could also tap a less-used legal authority that empowers the agency to go after what it considers unfair methods of competition, perhaps by viewing certain businesses’ data-collection practices as exclusionary. The agency could also address privacy protections for children by updating its rules under the 1998 Children’s Online Privacy Protection Act. And it could use its enforcement powers to target individual companies, as some privacy advocates urge. The FTC might choose not to move forward with any major privacy initiative. And action could be delayed as agency Democrats wait for confirmation of President Biden’s newest nominee to the commission, privacy advocate Alvaro Bedoya. But since taking office June 15, Ms. Khan has made a number of moves to lay the groundwork for potential rule making, including by voting with the FTC’s two other Democrats to change internal procedures to expand her control over the rule-writing process. Mr. Biden has ordered the FTC to look at writing competition rules in a number of areas, including “unfair data collection and surveillance practices that may damage competition, consumer autonomy, and consumer privacy.” This week, the progressive-leaning advocacy group Accountable Tech petitioned the agency to ban “surveillance advertising” as an unfair method of competition, defining the practice as targeted advertising based on consumers’ personal data. As an example of the harms that an alleged lack of competition among online platforms can cause, the group cited a recent Wall Street Journal article about the impact of Facebook Inc.’s Instagram app on teens’ mental health. “The ability and incentive to extract more user data to unfairly monetize, even at the expense of children’s wellbeing, has proven too great a competitive advantage for dominant surveillance advertising firms to pass up,” the group’s petition said. Facebook has said it faces stiff competition and that the Journal mischaracterized internal research on Instagram’s impact. It said this week that it was pausing work on a version of the photo-sharing platform designed for children under 13. If the FTC decides to write a privacy rule, it would first have to publish a draft and seek public comment. In some circumstances, the law requires the agency to take additional, time-consuming steps such as asking for public input before even publishing a draft of a proposed rule. Such efforts could get a boost from congressional Democrats seeking more funding for the agency. Earlier this month, House Democrats proposed giving the FTC a $1 billion budget to fund a new bureau dedicated to overseeing “unfair or deceptive acts or practices relating to privacy, data security, identity theft, data abuses, and related matters.” That proposal will be subject to negotiations as the narrowly Democratic-led Congress looks to pass a broad new spending plan this fall. Meanwhile, several Senate Democrats wrote to Ms. Khan on Sept. 20 asking her to write rules protecting consumers’ privacy. The lack of a broad federal law protecting consumers’ privacy has become a bigger concern for advocates as online platforms and others have amassed vast troves of consumers’ search data and other information. Many privacy advocates are particularly worried about children, who can be more vulnerable to targeted online advertising and attention-grabbing algorithms. Legislation to establish broad-based federal privacy protections has stalled again in Congress this year over a range of concerns. Efforts to update an existing 23-year-old federal privacy law covering younger children haven’t gained significant traction among lawmakers. Critics say the Children’s Online Privacy Protection Act and the FTC-written rules that enforce it are ineffective and out-of-date, concerns that have helped lead the agency’s newly empowered Democrats to focus more on taking further action on privacy. “I think it’s a really, really important area for attention,” Democratic FTC Commissioner Rebecca Slaughter has said of adopting broad-based privacy rules. She said at a July congressional hearing that a potential rule could target suspected online harms to children, adding, “That is an issue that’s near and dear to my heart.” Ms. Khan and fellow Democratic commissioners indicated at that hearing that the agency would be giving more attention to how platforms might be abusing children’s privacy, as many kids have spent more time online during the Covid-19 pandemic. Democratic Commissioner Rohit Chopra added that the FTC should examine the underlying business models that can lead to privacy abuses. Republican Commissioner Christine Wilson has become an advocate for federal privacy legislation, saying that consumers don’t understand how their data is collected and monetized, creating what she terms a “market failure.” “Without this information, they cannot analyze the costs and benefits of using different products and services,” she said last week at Duke University. “And the risks to consumers from the unchecked collection of their data have intensified in recent years.”

#### Technological innovation is low. Competition solves.

Nead ’21 [Nate; February 1; CEO & Managing Member of Nead, LLC; Read Write, “Is Technological Progress Slowing Down?” <https://readwrite.com/2021/02/01/is-technological-progress-slowing-down/>]

There’s a compelling case to be made that while technological progress is still moving forward, it’s slowing down. And if that’s true, we need to be prepared for the consequences of such a shift in momentum.

The Low-Hanging Fruit

Our first clue that tech innovation is slowing down is a change to the traditional model of tech development. In many ways, technology is all about solving problems; every new tech advancement is a solution for some long-standing issue. It makes sense that our current wave of tech advancement resembles an exponential curve because new technologies make it faster and easier to solve other, often unrelated problems.

For example, the development of the internet was revolutionary for technological development overall. People now can review massive databases of information, communicate with other like-minded professionals, share ideas, and even publish their ideas to a broader audience. These capabilities have led to new ideas and new technologies that otherwise could never have been possible.

But this trajectory is limited. In the course of tech development, we often explore new territory very quickly – but only for a limited period of time. Think of it this way. As early human beings began exploring new territory, they found themselves surrounded by an abundance of game animals, trees, and fish. But as they hunted, harvested lumber, and fished, many of those resources began to dry up. In other words, they’d taken all the low-hanging fruit, and were forced to come up with new ideas. They had to explore new territory, invent new agricultural methods, and even find new sources of nourishment.

Our current burst of technological progress could be almost exclusively focused on low-hanging fruit. We’re solving the easiest problems first, and we’re solving them in quick succession. But the hard problems – like general intelligence-level AI, efficient battery storage, and even finding a cure for cancer – show little progress even over the course of decades.

Any futurist will tell you that all of humanity’s problems can be solved eventually. But we have to understand that our pace of innovation tends to slow down as we master all the “easy” problems and start looking at the “hard” ones.

Digital Innovation vs. Chemical Innovation

We also need to understand that most of the tech progress we’ve seen in the past 30 or 40 years has been limited to the digital world. These technologies have been astounding, accelerated by novel high-growth startups, but they’ve almost been exclusively focused on digital communication efficiency. The internet, software engineering, and AI have all taken amazing strides forward. But on the level of chemistry and physics, we’ve advanced very little.

We’re still incredibly reliant on non-renewable resources to fuel our consumption. We haven’t discovered any groundbreaking new elements, molecules, or chemical processes. And our understanding of the universe at the base level of physics hasn’t changed much, if at all, since the 1980s. We’re still struggling to reconcile major physics ideas that were first introduced nearly 100 years ago.

So what? Digital innovation may be so incredibly fast-paced that it can be the conduit through which we solve all other problems, right?

That may not be the case. For the majority of the digital age, we’ve depended on the momentum of Moore’s law. Moore’s law is an informal observation that the number of transistors that we can fit on a dense integrated circuit tends to double every two years. In other words, our computing power can double every two years, leading to major breakthroughs in a number of different technologies.

However, it appears that the age of Moore’s law may be nearing its end. There’s an absolute physical limit to the amount of space on a transistor chip. With exponential growth since the 1960s, we’ve gone from integrated circuits with 10 transistors to ICs with something like 10 billion transistors. How much further can we really go without breaking the laws of physics?

We may be able to push things even further, but to do so, we’ll need to invest in high-end chipmaking equipment and innovate entirely new manufacturing methods. Doing so will sharply increase the cost of chip production, ultimately negating the cost-effectiveness benefits.

Of course, there’s a solid counterargument here. It holds that digital innovation may continue at the same rate of exponential growth even if we’re unable to maintain the consistency of Moore’s law; even if the number of transistors on a chip remains more or less stagnant, we can find new ways to use the chips we already have.

Consumer Products and Perceptions

We see an endless conveyor belt of new gadgets and new consumer-facing technologies emerging on a constant basis. But how innovative are all these products, really?

Apple introduced the iPhone, a game-changing new type of technology, back in 2007. It combined several existing technologies into one, comprehensive unit, and changed the way we think about mobile tech forever. In the past 14 years, how much innovation have we truly seen in this space? We’ve seen a flock of competitors coming out with smartphone options of their own. And of course, we’ve seen Apple unveil a new model of iPhone nearly every year.

But these new, “innovative” smartphones only make marginal improvements to the original formula. Their cameras are sharper. Their processing power is beefier. Their storage capacity and battery life are more robust. But they can hardly be considered new technology, at least not at the same groundbreaking level of their predecessor.

#### No chilling effect---privacy review strengthens innovation.

Day and Stemler, 20—Assistant Professor, University of Georgia, Terry College of Business AND Assistant Professor, Indiana University, Kelley School of Business (Gregory and Abbey, “Are Dark Patterns Anticompetitive?,” Alabama Law Review 72, no. 1 (2020): 1-46, dml)

The issue of online manipulation implicates a greater debate about antitrust's relationship with innovation. Specifically, commentators contend that subjecting instances of innovation to antitrust review would chill research and development (R&D).329 There is also a practical issue: innovation is supposed to hurt rivals by usurping sales and market shares.330 So it could create confusion if courts and enforcers enhanced antitrust scrutiny targeting innovative firms.

We are sympathetic to the public policy of promoting innovation as well as confident that our proposal would do little to stymy R&D--if anything it would promote innovation. First, we think that condemning manipulation would refocus how firms design interfaces: instead of innovating methods to maximize dopamine releases and embed dark patterns, firms would have incentives to compete on the merits by creating services desired by users. Second, in situations where a firm harbors anxiety about whether its interface might be viewed as anticompetitive, it could institute a digital wellness program. If firms created safeguards enabling users to either maintain a healthy level of screen time or resist dark patterns, these steps would provide evidence that no anticompetitive effect was sought. Third, scholarship has persuasively argued that enforcement promotes innovation.331 The theory is that the chief incentive for firms to innovate stems from the desire to remain ahead of, or surpass, rivals. 332 Without competition, though, a firm could more easily maintain market power without investing in innovation. As such, our argument is that antitrust policy should not shirk its duty to examine anticompetitive behaviors occurring in innovative markets.

#### Data monopolization discriminates, not innovates.

Khan ’19 [Lina; Chairperson @ Federal Trade Commission, JD @ Yale Law School; “The Separations of Platforms and Commerce,” *Columbia Law Review* 119(4), p. 973-1098; AS]

1. Innovation Concerns. — Reports document that dominant digital platforms are using their integrated structure to discriminate against rivals and appropriate their competitively significant business information.548 If this dynamic depresses the incentive to innovate—as studies suggest it does549—then this cost of digital platform integration is worth taking seriously. While standard economic theory states that only under certain exceptions will dominant platforms have the incentive and ability to discriminate against complementors, digital markets characterized by network externalities help create the conditions under which platforms are likely to discriminate.550 Moreover, because dominant digital platforms passively capture highly precise and nuanced data on their business customers—information that is more valuable by virtue of being more sophisticated551—both the risk and cost of information appropriation is heightened in digital markets.

Concerns about information exploitation are not new. In 1971, when the FCC was considering whether its “maximum separation” regime should prohibit involvement by carriers in data processing entirely (or should require instead that their data-processing services be run as an independent affiliate),552 it noted that an integrated carrier could potentially misappropriate information against processor rivals.553 Data processors worried that integrated carriers would be able to collect their sensitive business information to exploit against them as rivals in data processing. The FCC concluded that this risk of misappropriation was low.554 Its final decision stated that that the majority of independent data processors would likely use the Bell System for communication services,555 and since Bell was forbidden from operating in unregulated markets (including data processing) altogether, there would be no risk of misappropriation of information by a rival.556 Still, the FCC recognized the potential threat and noted it would “consider any attempt on the part of a carrier to secure and use such information for the benefit of its data processing affiliate as a serious breach of the policy established herein.”557

#### Failure to regulated consumer data cases kill zones that undermine innovation.

Mehra 20 [Charles Klein Professor of Law, Temple University, James E. Beasley School of Law, Philadelphia, USA. "Data Privacy and Antitrust in Comparative Perspective." https://community.lawschool.cornell.edu/wp-content/uploads/2021/03/Mehra-final.pdf]

A third way in which privacy can become an antitrust concern is if the acquisition of consumer data by an incumbent firm becomes a barrier to enter the market.50 While antitrust implications are often discussed under the broader umbrella term “Big Data,” the relevant subcategory is often a large-scale gathering of private consumer information. A key factor is that the mosaic produced by data obtained from a myriad of individuals, not only produces insights about those individuals’ preferences, but can also generate value greater than the sum of its parts by revealing market insights about collective behavior.51

Mass collection of consumer data could produce entry barriers germane to several antitrust contexts. Hypothetically, incumbents could use a “Big Data”-related advantage to provide defensive leverage against a new insurgent firm or to favor their own products in new markets via exclusionary conduct.52 Because of the novelty of such issues, we cannot yet critique whether the facts of such cases would adequately support antitrust intervention against such alleged conduct.

The antitrust context in which consumer data collection has probably received the most scrutiny is merger review— specifically, Facebook’s acquisitions of Instagram and WhatsApp. In 2012, Facebook’s acquisition of Instagram was cleared relatively easily.53 While the Federal Trade Commission (FTC) also cleared Facebook’s acquisition of WhatsApp in 2014, it did notify Facebook that it would have to honor WhatsApp’s privacy commitments to users notwithstanding the acquisition.54 Although this could be seen as a form of consumer protection— requiring a firm’s acquirer to honor previously made commitments— it also discourages merging to prioritize retroactive reduction of competition over privacy commitments to users.55

In the intervening years, a significant debate emerged about the degree to which the FTC correctly analyzed Facebook’s acquisitions, and, more specifically, whether antitrust policy has properly reflected the advantages firms garner from mass consumer data collection.56 In addition to inhibiting entry, Tim Wu has described these advantages as promoting “the Kronos Effect.”57 Named after a Greek god who devoured his children, the Kronos Effect represents “the efforts undertaken by a dominant company to consume its potential successors in their infancy.”58 Such concerns align with observations that new entrants now avoid what they call the “kill zones” of Amazon, Facebook, and Google— that is, “the areas in which they are capable of crushing any competition.”59 And since “[b]reakthrough ideas often come from startups rather than from large firms, [ ] this could be depriving us of important innovations.”60

#### No disease or bioterror impact

Barratt 17, PhD in Pure Mathematics, Lecturer in Mathematics at Oxford, Research Associate at the Future of Humanity Institute. (Owen Cotton-Barratt et al, “Existential Risk: Diplomacy and Governance”, pg. 9, <https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf>)

1.1.3 Engineered pandemics

For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.38 None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic.

One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39

# 1AR

## Adv---Openness

### 1AR---AT: Trade Low

#### Their evidence is a snapshot---global trade is fine

Dr. Daniel Gros 21, Director of the Centre for European Policy Studies, Ph.D. in Economics from the University of Chicago, Fulbright Scholar, Former Visiting Professor at the University of California at Berkeley, BA in Economics from the University of Rome, Former Economic Advisor to the Directorate General II of the European Commission, “The Great Lockdown and Global Trade”, Project Syndicate, 6/8/2021, https://www.project-syndicate.org/commentary/how-globalization-and-trade-survived-the-pandemic-by-daniel-gros-2021-06?barrier=accesspay

Global supply chains have weathered the pandemic intact, and the deep recession has not unleashed a wave of protectionism. That is good for global trade, and probably for foreign direct investment, too, and suggests that predictions of globalization’s demise were premature.

Trade is recovering robustly alongside the upticks in growth in major economies. This good news deserves more attention. Less than 12 months ago, many observers were predicting an end to globalization. The pandemic disrupted supply chains, and governments, suddenly confronted with the resulting vulnerabilities and dependencies, encouraged “reshoring” production of critical goods.

Today, the outlook is much brighter. There is little indication of a sustained movement away from global supply chains. And many governments have realized that trade is more of an opportunity than a threat to national sovereignty. As a result, the World Trade Organization expects the volume of global trade to increase by 8% in 2021, more than offsetting last year’s 5.3% decline.

True, foreign direct investment (FDI) still lags, having plummeted 42% in 2020. Europe actually recorded a negative flow. But the pandemic’s differential impact on trade and investment is not surprising. Transporting goods around the world requires little physical human interaction. Giant cranes, often remotely operated, load and unload containers, and supertankers pump oil ashore.

In contrast, acquiring a firm or establishing a new production facility in another country requires travel to meet potential partners, and in many cases close contact with foreign governments to obtain permits. Pandemic-induced border closures and travel restrictions obviously made this much more difficult.

But FDI is notoriously volatile, often plunging one year and recovering the next, so it could still bounce back strongly in 2021. In fact, the OECD has already detected signs of a recovery.

Moreover, global supply chains have proved to be less vulnerable than many had feared. The notion of a “supply chain” conjures up an image of a fragile arrangement, with each enterprise depending on inputs from the adjacent link. And a chain is only as strong as its weakest link.

The global trading system’s vulnerability to choke points seemed to be driven home in March, when a single large freighter blocked the Suez Canal, after sandstorms restricted visibility and transformed the huge stack of containers on board into sails. But this incident, which was resolved relatively quickly, is not representative of how global trade works.

It is more accurate to talk of interrelated networks of suppliers than supply chains. Most enterprises have more than one supplier of key components, and multinational companies with operations in many countries source supplies from many other countries. The pandemic has reinforced multi-sourcing, rather than triggering a retrenchment from the division of labor.

Yes, governments almost everywhere have interfered with trade during the pandemic to address acute shortages of key products, such as personal protective equipment in 2020 and COVID-19 vaccines during the first few months of 2021. But both of these products, while vital in the context of the pandemic, play only a marginal role in the wider economy. The rich countries could vaccinate the entire world for less than a dollar a week from each citizen.

The main danger is that governments, fearing similar dependence on foreign suppliers for many other key products, introduce protectionist measures. Prompted by the EU’s concern that such dependence could leave the bloc vulnerable to political pressures from hostile governments, the European Commission has recently completed a fascinating study of strategic dependencies and capacities.

The Commission examined more than 5,000 products and found only 137 in the most sensitive sectors, accounting for about 6% of all EU imports by value, for which the EU is highly dependent on imports from outside the bloc. For 34 of these products, constituting only 0.6% of all imports, the EU could be more vulnerable, owing to the low potential for further import diversification or substitution through EU production.

In other words, for the overwhelming majority of products, large economies like the EU have a sufficiently diversified supply base to make them independent of any single supplier. And broad protectionist measures like tariffs or quotas would have little impact on the few goods for which only a single source may exist.

Moreover, most of the 137 sensitive products that the Commission identified are raw materials and related commodities that are easy to store. It would thus be relatively straightforward for the EU to build up strategic stockpiles of those goods.

In the end, governments do not appear to have resorted to protectionism in response to the COVID-19 crisis. Although precise data on new trade barriers erected last year are not yet available, the strong expansion of trade in 2021 implies that the use of such measures must have been limited.

## Adv---Security

### 1AR---AT: Private Sector Not Key

#### Attacks on private sector decimate critical infrastructure

Curran ’20 [Dean; Assistant Professor in Sociology @ University of Calgary, PhD in Sociology; “Connecting risk: Systemic risk from finance to the digital,” *Economy and Society* 49(2), p. 239-264; AS]

Systemic financial and digital risk

The digital economy, which comprises ‘those businesses that increasingly rely upon information technology, data, and the internet for their business models’ (Srnicek, 2017, p. 4), is increasingly presenting itself as a hegemonic business model, which requires its own analytical treatment (Srnicek, 2017; see also Bauer & Latzer, 2016; Elder-Vass, 2016). Issues of risk and crisis raised by the financial crisis are particularly relevant to the emerging study of the digital economy in the face of the significant impacts from recent cyberattacks WannaCry and NotPetya and several breaches of confidential data, including 145 million people’s data held by Equifax and over 100 million held by Capital One.

While the shorthand of ‘digital economy’ is often and usefully used (Bauer & Latzer, 2016; Elder-Vass, 2016), core to this revolution is not simply the shift from analogue to digital, but in particular, the shift towards the use of computing devices that are networked. 4 As such ‘digital economy’ is employed as shorthand for the ‘networked digital economy’. This section further develops the framework for investigating emerging systemic risk proposed above, while also advancing evidence for the claim that the contemporary digital economy is manifesting systemic risk characteristics that have important similarities to the systemic risk characteristics of pre-2008 crisis finance. To pursue this dual task, I briefly develop a comparative systemic risk analysis of pre-crisis finance and the digital economy with respect to the following characteristics: interconnectedness and redundancy; interactive complexity, and mismatches between scope of knowledge and activity. Each of these subsections introduces brief illustrative cases to both clarify how to use this framework, or ‘toolbox’ of the political economy of systemic risk, and to provide prima facie evidence that significant digital systemic risk, and as is subsequently shown below, significant social systemic risk, is emerging from the current trajectory of the digital economy.

Problems of interconnectedness and redundancy in finance and the digital economy

As has been widely discussed in the literature on the 2008 financial crisis, in the lead-up to the crisis, the financial institutions that comprised the financial network became much more interconnected to the rest of the network, which increased the likelihood that solvency problems of one financial institution could threaten many other institutions in the network (Goldin & Mariathasan, 2014; Haldane, 2009; May et al., 2008). Alongside the growing interconnectedness of the financial network was a trend towards reduced redundancy, as banks significantly increased their leverage levels (Haldane et al., 2010). With increasing levels of leverage (the ratio of assets to equity), each financial institution had less back-up equity to employ when one of its investments failed to provide its anticipated return.

In the context of high interconnectedness and low redundancy, the failure of a small number of investments (such as when two of Bear Stearns’ hedge funds collapsed in July 2007) or, alternatively failure by an institution’s counterparty to meet their obligations (as occurred with Lehman Brothers in September 2008) could propagate risk across the network as these losses in turn created problems of liquidity and solvency for other counterparties and so on throughout the entire network (see Haldane, 2009). As the literature has previously discussed, with many investment banks having leverage ratios of 30 to one, losses of little more than 3 per cent could cause a bank to be insolvent (Curran, 2015; Haldane et al., 2010). With such a tightly connected network of firms and such little redundancy, the network was primed to have losses cascade throughout the network, until an institution with much greater levels of redundancy, the state, stepped in and ended the cascading losses through bailouts and stimulus packages.

In terms of analysing interconnectedness in the digitally networked economy, it is one of those few sectors that is considered to be even more connected than global finance. The growing scale of computing devices and their connection via the internet is a widely noted phenomenon (see Goldin & Mariathasan, 2014), with the internet being described as the world’s largest network (Perrow 2007, p. 249), and as a ‘world-spanning living organism’ (Pentland 2009, in Zuboff, 2015, p. 85). Moreover, this growth of connectivity has been extremely rapid, with not only massive increases in the number of digitally interconnected devices, but also the types of devices that are being connected continuing to proliferate (Schneier, 2018).

In terms of redundancy, while the internet is a massive network – which enables potential connection between any two devices that have IP addresses – it has been noted that the physical infrastructure of the internet exhibits a reasonably high level of redundancy. Even if one of the root-level servers was to be disabled, the system would be able to adjust, thus enabling continued availability of internet services (Perrow, 2007). Nevertheless, on top of this physical infrastructure of the internet has developed a series of oligopolistic or monopolistic providers of key services on the web such as Amazon, Apple, Google, Facebook and Microsoft, while Alibaba, Baidu and Tencent, occupy similar levels of market dominance in China (Webb, 2019). While monopolistic market structures are primarily viewed from a pricing perspective, market dominance also raises important questions from a systemic risk perspective that have only been addressed within the sector of finance. As such, while there is some recognition of the importance of ‘systematically important financial institutions’ (FSB, 2011), there has not yet been a corresponding regulatory recognition of the systemic risk associated with ‘systematically important digital institutions’. These dominant firms have become key nodes that support a vast array of web services, which in turn support a multitude of social practices. Google has eight products that have over one billion users, while Amazon, Microsoft, and Facebook exhibit similar levels of market dominance in their respective markets (Lardinois, 2018; Mazzucato 2018). This political economic structure of the digital economy, which benefits from the network effects of digital information markets (Hindman, 2018; Srnicek, 2017), alongside light-touch regulation (Curran, 2018), consequently has built a much more centralized functional web onto of the distributed technology of the internet.

Given the interoperability and interdependencies within these companies, the monopolistic, centralized nature of the web provision creates the potential for vulnerabilities to cascade widely through the web, even if the physical infrastructure is distributed. As Perrow (2007) has emphasized, having many systems that utilize the same software systems leaves them open to ‘commonmode’ failures, where a potential failure or breach anywhere in the network can lead to multiple, potentially cascading failures due to the systems being vulnerable to the same failure. The economic centralization of the infrastructure of the web thus leads to the potential for the identification and exploitation of a single vulnerability leading to the failure of thousands or even potentially millions of computing devices, which are vulnerable to the same weakness.5

The WannaCry cyberattack exemplifies the growing importance of the systemic fragilities involved with cyber risk, and on a truly global scale – affecting over 100 countries worldwide – based on the identification and exploitation of a single key vulnerability in Microsoft software (Larson, 2017). In terms of its impacts, one-third of the UK’s National Health Service (NHS) was rendered inoperative, Chinese students were locked out of their university files, over 1,000 computers at Russia’s interior ministry were disrupted, as were billion dollar businesses, such as FedEx and Telefónica. In total it is estimated that over 230,000 computers were infected by WannaCry (Thomas, 2019) and the costs of the attack are estimated at somewhere between $4–8 billion (Greenberg, 2018). For WannaCry, the malware took advantage of a vulnerability in Windows, which had been previously developed by the US-based NSA into an attack tool for its own hacking operations. This penetration tool, EternalBlue – based on a key ‘zero-day vulnerability’ for Windows operating systems – was stolen from the NSA and subsequently leaked on the internet in 2017 so that others could use it for cyber-attacks.

In evaluating cyber-threats there are three commonly discussed criteria for computer security: confidentiality, availability and integrity (Schneier, 2018). Confidentiality is that only parties that are authorized gain access to the information held on a system. Availability involves the continued access and functionality of computing services to authorized parties. Integrity involves only authorized parties making changes in a computer system.6 In the lead-up to WannaCry, one of, if not the most, sophisticated hacking groups in the world, the NSA, were unable to keep their own hacking tools confidential.

The EternalBlue vulnerability was again used the following year in the NotPetya malware. The NotPetya ransomware attack is considered the most costly attack yet, with estimates that it cost companies over $20 billion, while also shutting down key infrastructure (Clarke & Knake, 2019, p. 18). In this case, it was vulnerabilities in the update servers of a Ukrainian software company, Linkos, that provided a back door to thousands of computers in Ukraine, which enabled the hackers to release the NotPetya malware (Greenberg, 2018). NotPetya ‘crippled multinational companies including Maersk, pharmaceutical giant Merck, FedEx’s European subsidiary TNT Express, French construction company Saint-Gobain, food producer Mondele¯z, and manufacturer Reckitt Benckiser. In each case, it inflicted nine-figure costs’ (Greenberg, 2018).

Again, as with WannaCry, there were cascading effects on economic and material life. One example of its impacts is instructive, especially given the primary business model of the internet of maximizing connectivity and data collection and analysis.7 The Danish logistics company, Maersk, was hobbled by the attack. While Ukraine was the original target, given Maersk’s role in the global supply chain, ‘an attack on Maersk strikes everywhere at once’ (Greenberg, 2018). With a single breach of Maersk’s systems due to the installation of the unknowingly infected software in Odessa, this led to problems around the globe, as the malware caused the failure of a key ‘choke point’ in its shipping terminal system. This led to the closure for the day of 17 of its 76 terminals, including New Jersey, Los Angeles, Algericas (Spain), Rotterdam, and Mumbai, leading to massive delays and further problems given the focus on efficiencies and just-in-time deliveries in the global supply chain (Greenberg, 2018; see also Goldin & Mariathasan, 2014). While the software on Maersk’s ships were not infected, the terminals’ software had been wiped away, such that for ‘days to come, one of the world’s most complex and interconnected distributed machines, underpinning the circulatory system of the global economy itself, would remain broken’ (Greenberg, 2018).

The NotPetya attack is estimated to have cost Maersk $300 million; however, luckily the fundamental principle of the digital economy – connect (and collect) everything – was unintentionally violated in this case. In seeking to rebuild the logistics systems that plan how to sort and arrange their shipping process, a copy of the ‘domain controllers’, which serve as a map to the network, needed to be found. Maersk though had been syncing together all 150 domain controllers, and hence, in a clear case of the risks of the ethos of growing, almost reckless interconnectivity, all were wiped out by the NotPetya malware, except one, which remained exempt from the syncing process because a blackout in the Ghanaian office prior to the NotPetya infection had rendered the machine offline and disconnected from the network when NotPetya struck.8

As this case illustrates, a component can only serve effectively as redundancy if it is not too tightly-coupled to the network. If there is a high correlation between the failure of the part and its ‘back-up’ then there is not effective redundancy; yet the push to connectivity tends to infect all the parts in the case of an infection. In this case, redundancy was achieved, through a core principle of systemic risk minimization (modularity) unintentionally trumping the business model of the digital economy, of maximizing connectivity and interdependence.

Software increasingly functions as a core part of the infrastructure of our economic, social and political world. Yet, unlike the modularity of conventional infrastructure, networked software exhibits a series of interdependencies and potentialities for ‘common-mode’ failures that provides scope for an initial, single infection somewhere in the globe to cascade across the globe. Yet, despite the growing accumulation of costly ‘near-misses’ (see Perrow, 1984) little has changed in the fundamental business model of the digital economy, or of governments’ refusal to regulate for the systemic risk that is emerging from this massive growth in interconnectedness. In fact the digital economy aims to ever further increase the connectedness of life through the Internet of Things (IoT) (Schneier, 2018).

## DA---Pharma

### 1AR---AT: Disease

#### Bioterrror fails

Pinker 18 – Steven Arthur Pinker is a Canadian-American cognitive psychologist, Professor at Harvard University. [Enlightenment Now: The Case for Reason, Science, Humanism, and Progress, Viking, Penguin Group]//BPS

Biological agents are particularly ill-suited to terrorists, whose goal, recall, is not damage but theater (chapter 13).58 The biologist Paul Ewald notes that natural selection among pathogens works against the terrorist’s goal of sudden and spectacular devastation. 59 Germs that depend on rapid person-to-person contagion, like the common-cold virus, are selected to keep their hosts alive and ambulatory so they can shake hands with and sneeze on as many people as possible. Germs get greedy and kill their hosts only if they have some other way of getting from body to body, like mosquitoes (for malaria), a contaminable water supply (for cholera), or trenches packed with injured soldiers (for the 1918 Spanish flu). Sexually transmitted pathogens, like HIV and syphilis, are somewhere in between, needing a long and symptomless incubation period during which hosts can infect their partners, after which the germs do their damage. Virulence and contagion thus trade off, and the evolution of germs will frustrate the terrorist’s aspiration to launch a headline-worthy epidemic that is both swift and lethal. Theoretically, a bioterrorist could try to bend the curve with a pathogen that is virulent, contagious, and durable enough to survive outside bodies. But breeding such a fine-tuned germ would require Nazi-like experiments on living humans that even terrorists (to say nothing of teenagers) are unlikely to carry off. It may be more than just luck that the world so far has seen just one successful bioterror attack (the 1984 tainting of salad with salmonella in an Oregon town by the Rajneeshee religious cult, which killed no one) and one spree killing (the 2001 anthrax mailings, which killed five).60 To be sure, advances in synthetic biology, such as the gene-editing technique CRISPR-Cas9, make it easier to tinker with organisms, including pathogens. But it’s difficult to re-engineer a complex evolved trait by inserting a gene or two, since the effects of any gene are intertwined with the rest of the organism’s genome. Ewald notes, “I don’t think that we are close to understanding how to insert combinations of genetic variants in any given pathogen that act in concert to generate high transmissibility and stably high virulence for humans.”61 The biotech expert Robert Carlson adds that “one of the problems with building any flu virus is that you need to keep your production system (cells or eggs) alive long enough to make a useful quantity of something that is trying to kill that production system. . . . Booting up the resulting virus is still very, very difficult. . . . I would not dismiss this threat completely, but frankly I am much more worried about what Mother Nature is throwing at us all the time.”62 And crucially, advances in biology work the other way as well: they also make it easier for the good guys [public protectors] (and there are many more of them) to identify pathogens, invent antibiotics that overcome antibiotic resistance, and rapidly develop vaccines.63 An example is the Ebola vaccine, developed in the waning days of the 2014–15 emergency, after public health efforts had capped the toll at twelve thousand deaths rather than the millions that the media had foreseen. Ebola thus joined a list of other falsely predicted pandemics such as Lassa fever, hantavirus, SARS, mad cow disease, bird flu, and swine flu.64 Some of them never had the potential to go pandemic in the first place because they are contracted from animals or food rather than in an exponential tree of person-to-person infections. Others were nipped by medical and public health interventions. Of course no one knows for sure whether an evil genius will someday overcome the world’s defenses and loose a plague upon the world for fun, vengeance, or a sacred cause. But journalistic habits and the Availability and Negativity biases inflate the odds, which is why I have taken Sir Martin up on his bet. By the time you read this you may know who has won.65

### 1AR---LUQ

#### The FTC will bypass the courts AND exceed Sherman and Clayton.

Graham ‘9-16 [Jed; September 16; Author and analyst; Investor’s Business Daily, “FTC, Biden Antitrust Enforcement Push Takes On Amazon, Google — And The Supreme Court,” <https://www.investors.com/news/antitrust-enforcement-push-by-ftc-biden-takes-on-amazon-google-supreme-court/>]

Kahn Rejects Antitrust Enforcement 'Rule Of Reason'

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

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

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

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

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

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

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

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

#### State AND European action thumps.

CEPR ’21 [Center for Economic Policy Research; June 18; CEPR Competition Policy Event, “Privacy & Antitrust: "Integration", not just "Intersection,"” https://portal.cepr.org/meetings/337/info]

Privacy/data protection and antitrust enforcers continue to operate in silos: data protection agencies (supposedly) enforcing data protection rules, and antitrust agencies doing "market power" and traditional anticompetitive conduct. Yet market power allows violations of privacy and data protection, and those in turn entrench market power. Privacy experts deserve a place at the antitrust table to inform the analysis of mergers and conduct, to lessen consumer exploitation and discipline market power. We have long needed "integration", not just "intersection". Is it starting to happen? The State AG complaints in the US against Facebook and Google are concerned with privacy degradation as monopoly rents, and discriminatory privacy changes as anticompetitive conduct. There are calls for federal privacy regulation. In Europe, we have had the GDPR since 2018 but enforcement is lagging. Germany has been a pioneer with Facebook and new cases with a data focus being opened under the new competition law regime. France too. In the UK the competition and data protection agencies - CMA and ICO - just issued a joint statement setting out a "holistic" approach. This is unprecedented.

### 1AR---L/T

#### Anticompetive practices are impeding innovation in pharma -- deterring them is good

Gaynor ’21 [Martin; May 19; E.J. Barone University Professor of Economics and Public Policy at Heinz College in Carnegie Mellon University; Statement before the Committee on the Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights U.S. Senate, “Antitrust Applied: Hospital Consolidation Concerns and Solutions,” <https://www.judiciary.senate.gov/imo/media/doc/Gaynor_Senate_Judiciary_Hospital_Consolidation_May_19_2021.pdf>]

4 Evidence on the Impacts of Consolidation

There is now a considerable body of scientific research evidence on the impacts of hospital consolidation (see Gaynor et al., 2015; Tsai and Jha, 2014; Gaynor and Town, 2012a,b; Dranove and Satterthwaite, 2000; Gaynor and Vogt, 2000; Vogt and Town, 2006, for reviews of the evidence).

4.1 Impacts on Prices

4.1.1 Hospital Mergers

There are many studies of hospital mergers. These studies look at many different mergers in different places in different time periods, and find substantial increases in price resulting from mergers in concentrated markets (e.g., Town and Vistnes, 2001; Krishnan, 2001; Vita and Sacher, 2001; Gaynor and Vogt, 2003; Capps et al., 2003; Capps and Dranove, 2004; Dafny, 2009; Haas-Wilson and Garmon, 2011; Tenn, 2011; Thompson, 2011; Gowrisankaran et al., 2015). Price increases on the order of 20 or 30 percent are common, with some increases as high as 65 percent.6

These results make sense. Hospitals’ negotiations with insurers determine prices and whether they are in an insurer’s provider network. Insurers want to build a provider network that employers (and consumers) will value. If two hospitals are viewed as good alternatives to each other by consumers (close substitutes), then the insurer can substitute one for the other with little loss to the value of their product, and therefore each hospital’s bargaining leverage is limited. If one hospital declines to join the network, customers will be “almost as happy” with access to the other. If the two hospitals merge, the insurer will now lose substantial value if they offer a network without the merged entity (if there are no other hospitals viewed as good alternatives by consumers). The merger therefore generates bargaining leverage and hospitals can negotiate a price increase.

Overall, these studies consistently show that when hospital consolidation is between close competitors it raises prices, and by substantial amounts. Consolidated hospitals that are able to charge higher prices due to reduced competition are able to do so on an ongoing basis, making this a permanent rather than a transitory problem. Moreover, there is no difference between not-for-profit and for-profit hospitals in the extent to which they raise prices due to increased market power.

There is also more recent evidence that mergers between hospitals that are not near to each other can lead to price increases. Quite a few hospital mergers are between hospitals that are not in the same area (see Figure 4). Many employers have locations with employees in a number of geographic areas. These employers will most likely prefer insurance plans with provider networks that cover their employees in all of these locations. An insurance plan thus has an incentive to have a provider network that covers the multiple locations of employers. It is therefore costly for that insurer to lose a hospital system that has hospitals in multiple locations – their network would become less attractive. This means that a merger between hospitals in these different locations can increase their bargaining power, and hence their prices.

There are two recent papers find evidence that such mergers lead to significant hospital price increases. Lewis and Pflum (2017) find that such mergers lead to price increases of 17 percent. Dafny et al. (2019) find that mergers between hospitals in different markets in the same state (but not in different states) lead to price increases of 10 percent.

Understanding the competitive effects of cross-market hospital mergers is an important area for further investigation, and determining appropriate policy responses (Brand and Rosenbaum, 2019).

4.1.2 Hospital Acquisitions of Physician Practices

Studies that examine the impacts of hospital acquisitions of physician practices find that such acquisitions result in significantly higher prices and more spending (Capps et al., 2018; Neprash et al., 2015; Baker et al., 2014; Robinson and Miller, 2014). For example, Capps et al. (2018) find that hospital acquisitions of physician practices led to prices increasing by an average of 14 percent and patient spending increasing by 4.9 percent.

4.2 Impacts on Quality

Just as important, if not more, than impacts on prices are impacts on the quality of care. The quality of health care can have profound impacts on patients’ lives, including their probability of survival.

4.2.1 Hospital Mergers

A number of studies have found that patient health outcomes are substantially worse at hospitals in more concentrated markets, where those hospitals face less potential competition.

Studies of markets with administered prices (e.g., Medicare) find that less competition leads to worse quality. One of the most striking results is from Kessler and McClellan (2000), who find that risk-adjusted one year mortality for Medicare heart attack (acute myocardial infarction, or AMI) patients is significantly higher in more concentrated markets.7 In particular, patients in the most concentrated markets had mortality probabilities 1.46 points higher than those in the least concentrated markets (this constitutes a 4.4% difference) as of 1991. This is an extremely large difference – it amounts to over 2,000 fewer (statistical) deaths in the least concentrated vs. most concentrated markets.

There are similar results from studies of the English National Health Service (NHS). The NHS adopted a set of reforms in 2006 that were intended to increase patient choice and hospital competition, and introduced administered prices for hospitals based on patient diagnoses (analogous to the Medicare Prospective Payment System). Two recent studies examine the impacts of this reform (Cooper et al., 2011; Gaynor et al., 2013) and find that, following the reform, risk-adjusted mortality from heart attacks fell more at hospitals in less concentrated markets than at hospitals in more concentrated markets. Gaynor et al. (2013) also look at mortality from all causes and find that patients fared worse at hospitals in more consolidated markets.

Studies of markets where prices are market determined (e.g., markets for those with private health insurance) find that consolidation can lead to lower quality, although some studies go the other way. In my opinion the strongest scientific studies find that quality is lower where there’s less competition. For example, Romano and Balan (2011) find that the merger of Evanston Northwestern and Highland Park hospitals had no effect on some quality indicators, while it harmed others. Capps (2005) finds that hospital mergers in New York state had no impacts on many quality indicators, but led to increases in mortality for patients suffering from heart attacks and from failure. Hayford (2012) finds that hospital mergers in California led to substantially increased mortality rates for patients with heart disease. Cutler et al. (2010) find that the removal of barriers to entry led to increased market shares for low mortality rate CABG surgeons in Pennsylvania. Haas et al. (2018) find that system expansions (such as those due to merger or acquisition) can pose significant patient safety risks. Short and Ho (2019) find that hospital market concentration is strongly negatively associated with multiple measures of patient satisfaction.

4.2.2 Hospital Acquisitions of Physician Practice

Research on the effects of hospital ownership of physician practices does not find evidence of improved quality. McWilliams et al. (2013) find that larger hospital owned physician practices have higher readmission rates and perform no better than smaller practices on process based measures of quality. (Scott et al., 2018) find no improvement in quality of care at hospitals that acquired physician practices compared to those that did not. Koch et al. (2020) do not find significant effects of hospital ownership of physician practices on Medicare patients’ health outcomes. Short and Ho (2019) also find a limited effect of hospital ownership of physician practices on Medicare quality measures, but find that increased market concentration is strongly associated with reduced quality. Further, the testimony of Dr. Kenneth Kizer in a recent physician practice merger case (Federal Trade Commission and State of Idaho v. St. Luke’s Health System, Ltd, and Saltzer Medical Group, P.A.) documents that clinical integration is achieved with many different forms of organization, i.e., that consolidation isn’t necessary to achieve the benefits of clinical integration.8

4.2.3 Patient Referrals

There has been concern about the possible impact of hospital ownership of physician practices on where those physicians refer their patients, and whether that is in the patients’ best interests (Mathews and Evans, 2018). A number of studies have found that patient referrals are substantially altered by hospital acquisition of a physician practice. (Brot-Goldberg and de Vaan, 2018) find that if primary care physicians in Massachusetts are in a practice owned by a health system they are substantially more likely to refer to an orthopedist within the health system that owns the practice. They also estimate that this is largely due to anti-competitive steering. (Venkatesh, 2019) examines Medicare data and finds a 9-fold increase in the probability that a physician refers to a hospital once their practice is acquired by the hospital. Hospital divestiture of a practice has the opposite effect (Figure 6). A study by Walden (2017) also employs Medicare data and finds that hospital acquisitions of physician practices “increases referrals to specialists employed by the acquirer by 52 percent after acquisition”, and reduces referrals to specialists employed by competitors by 7 percent. Whaley et al. (2021) find evidence of a substantial shift of referrals to hospitals as a result of hospital ownership of physician practices, and Young et al. (2021) find that hospital acquisitions of physician practices led to increases in inappropriate referrals for diagnostic imaging.

4.2.4 Labor Market Impacts, Monopsony Power

It is also possible that health care consolidation can have impacts on labor markets. Consolidation that causes competitive harm in the output market does not necessarily cause harm to competition in the input market (monopsony power is the term for market power in buying inputs). For example, two local grocery stores may merge to monopoly in an area, but they purchase frozen food items on a national market with lots of competition. Conversely, it is possible that a merger may have no harm to competition in the output market, but cause competitive harm in an input market. For example, consider two coal mines located in the same area that merge. Coal is sold on a national market, so the merger will not cause competitive harm. However, if the coal mines are the largest (or only) employers in the area, then the merger will cause harm to competition in the labor market.

In the case of health care, however, both the output market for health care services and the input market for labor are local. As a consequence, a merger that causes harm to competition in the market for health care services has nontrivial potential to harm competition in the labor market. The extent to which such a merger will cause labor market harms depends on the alternatives that workers have in terms of the types of other jobs available and where they are located. Nonspecialized workers, such as custodians, food service workers, and security guards are less likely to be affected by a merger, since their skills are readily transferable to other employers in other sectors.9 Workers who have specialized skills that are not readily transferable to other employers in other sectors are more likely to be harmed. For example, consider a town with two hospitals, a large automobile assembly plant, and multiple retail and service establishments. If the two hospitals merge to monopoly, hospital custodians and security guards will have alternatives at the assembly plant or at the retail or service establishments. As a consequence, competition for these workers may be little affected by the merger. Nurses and medical technicians, however, have nowhere else to turn in the local market, so there will be substantial harm to competition for health care workers.

There are a number of papers that have demonstrated the presence of monopsony power in the market for nurses (see e.g., Sullivan, 1989; Currie et al., 2005; Staiger et al., 2010). These papers demonstrate that hospitals possess and exercise monopsony power in the market for nurses. They do not, however, provide direct evidence on the impacts of consolidation. A recent paper, however, looks directly at the impacts of hospital mergers on workers’ wages. Prager and Schmitt (2021) look at the impacts of 84 hospital mergers nationally between 2000 and 2010. They find that hospital mergers that resulted in large increases in concentration substantially reduced wage growth for workers with industry specific skills, but not for unskilled workers. They find that “Following such mergers, annual wage growth is 1.1 percentage points slower for skilled non-health professionals and 1.7 percentage points slower for nursing and pharmacy workers than in markets without mergers.” This suggests that hospital mergers can harm competition in the labor market for workers with skills specific to the hospital industry.

The impacts of consolidation on labor markets (and input markets generally) is an area where study is needed to understand the nature of the impacts of consolidation and evidence of those effects. Moreover, antitrust authorities need to know to what extent merger enforcement focused on output markets addresses potential input market competitive harms, and to what extent input markets require a separate focus. Further, if the agencies are to pursue enforcement in this area they need to develop economic and legal approaches to this issue.

4.3 Impacts on Costs, Coordination, Quality

It is plausible that consolidation between hospital, physician practices or insurers, in a number of combinations, could reduce costs, increase care coordination, or enhance efficiency. There may be gains from operating at a larger scale, eliminating wasteful duplication, improved communications, enhanced incentives for mutually beneficial investments, etc. However, it is important to realize that consolidation is not integration. Acquiring another firm changes ownership, but in and of itself does nothing to achieve integration. Integration, if it happens, is a long process that occurs after acquisition.

While the intuition, and the rhetoric, surrounding consolidation, has been positive, the reality is less encouraging. The evidence on the effects of consolidation is mixed, but it’s safe to say that it does not show overall gains from consolidation (Neprash and McWilliams, 2019). Merged hospitals, insurers, physician practices, or integrated systems are not systematically less costly, higher quality, or more effective than independent firms (see Burns and Muller, 2008; Burns et al., 2015; Goldsmith et al., 2015; Burns et al., 2013; McWilliams et al., 2013; Tsai and Jha, 2014).

For example, Burns et al. (2015) find no evidence that hospital systems are lower cost, Goldsmith et al. (2015) find no evidence that integrated delivery systems perform better than independents, Koch et al. (2018) find higher Medicare expenditures for cardiology practices in consolidated markets, and McWilliams et al. (2013) find higher Medicare expenditures for large hospital-based practices. In contrast, Schmitt (2017) finds evidence of significant cost savings (4-7 percent) due to hospital mergers, with the exception of mergers of hospital in the same market (and thereby likely competitors). Gaynor et al. (2021) examine the merger of two large hospital chains. They find that the acquisition led to adoption of a new electronic medical record system, and similarity of management practices, but neither the profitability of the acquired hospitals or the acquiring hospitals increased, nor did patient outcomes improve. Beaulieu et al. (2020) report that “Hospital acquisition by another hospital or hospital system was associated with modestly worse patient experiences and no significant changes in readmission or mortality rates. Effects on process measures of quality were inconclusive.”

After more than 3 decades of extensive consolidation in health care, it seems likely that the promised gains from consolidation would have materialized by now if they were truly there.

5 Anticompetitive Conduct

Firms that acquire a dominant market position usually wish to keep it. The incentive to maintain or enhance a dominant position can be beneficial when it leads the firm to deliver value to consumers in order to keep or gain their business. This can result in lower prices, higher quality, better service, or enhanced innovation. There may also be strong incentives for such firms to engage in anticompetitive practices in order to disadvantage competitors or make it difficult for new products or firms to enter the market and compete.

There are prominent instances of firms in the health care industry engaging in what appear to be anticompetitive tactics. Cooper et al. (2019) find that hospitals with fewer potential competitors are more likely to negotiate contracts with insurers that have payment forms that are more favorable to them (e.g., fee for service) and reject payment forms they dislike (e.g., DRG based payment). While this is not an anticompetitive practice, it suggests that hospitals with market power are able to negotiate contracts with insurers that contain anticompetitive elements. This indeed is the issue in some recent antitrust cases. These cases revolve around the use of restrictive clauses in hospital contracts with insurers.10

These clauses prevent insurers from using methods to direct their enrollees to less costly or better hospitals. One of these methods is called tiering - a practice where enrollees pay less out of their own pockets for care received from providers in a more favorable group (“tier”), and pay more if they see a provider in a less favorable tier. Insurers use tiering to give enrollees incentives to obtain care at less costly or higher quality providers. This system thus gives providers an incentive to do the things it takes to be in the more favorable tier, and is a way to promote competition. Another method is steering - enrollees are directed to providers who are preferred, due to lower costs or higher quality. Steering also promotes competition - providers have incentives to agree to lower prices or provide better quality or service in order to be in the preferred group. A third method employed by insurers is transparency – providing enrollees with information about the costs or quality of care at different providers. The intent is to provide enrollees with the information they need to choose the right provider, and by doing so to give providers incentives to compete on those factors.

In both of the antitrust suits mentioned above, the health systems had negotiated clauses in their contracts with insurers which prohibited the insurers from using any of these methods to try to direct patients to lower cost or better providers. The clauses prohibiting the use of these methods are called “anti-tiering,” “anti-steering,” and “gag” clauses. The concern with the use of these restrictive clauses is that they harm competition by preventing insurers by using methods that provide incentives to providers to compete to attract patients. The lawsuit by the DOJ against Carolinas Health System was settled, with the health system agreeing not to use these restrictive clauses.11 The California Attorney General’s lawsuit against Sutter Health System was also settled, with a similar outcome. 12

At present there is no systematic evidence on the extent to which anti-tiering, anti-steering, and gag clauses are being employed by health systems in their contracts with insurers, nor analysis of their impacts. This is an area which needs investigation to document the extent of the practice and its impacts.

Another practice that raises concerns is “data blocking” (Savage et al., 2019). Data blocking is a practice in which health systems impede or prevent the flow of patients’ clinical data to providers outside their system. It is also refers to a practice by electronic medical record (EMR) providers to impede the flow of data to rival EMR systems via lack of compatibility. Data blocking by providers makes it more difficult for patients to go to rival providers, locking them in, since their medical information doesn’t go with them. Reducing patient mobility across providers harms competition and benefits incumbents. While there are extensive reports of data blocking, there isn’t systematic evidence on the extent of the practice, or on its impacts. Study is needed to understand the nature of data blocking, and the extent to which it leads to harm to competition or to efficiencies.