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#### CP: The United States federal government should reduce appropriation of outer space by private entities that engage in anti-competitive business practices in accordance with the higher ethical principles of the outer space treaty and establish an ex-post review and publication process. That review process should include industry experts, members of outside agencies, and internal quantitative analysis done by the requisite agencies. The results of said review should be shared with competition agencies internationally.

#### Ex-post review creates greater clarity and accountability – that refines compliance and shores up rule of law

Kovacic 1 [Professor, George Washington University Law School. Former Commissioner, Federal Trade Commission. “EVALUATING ANTITRUST EXPERIMENTS: USING EX POST ASSESSMENTS OF GOVERNMENT ENFORCEMENT DECISIONS TO INFORM COMPETITION POLICY.”]

A basic principle of the rule of law is that public authorities should make the rationale for public policies and the processes for establishing such policies transparent. Transparency promotes clarity in forming public competition policy, increases the understanding of legal commands by af- fected parties, and disciplines the exercise of discretion by public officials by subjecting their actions to external review and criticism. 3 Transparent policymaking methods inform external observers (especially business operators) about the content of and rationale for specific decisions and help ensure the regularity and honesty of public administration. 14 Common transparency-enhancing measures include publishing decisions in law en- forcement matters, issuing guidelines, and using speeches to articulate the basis for specific initiatives.

In several important respects, public enforcement of competition laws is insufficiently transparent. Antitrust policy in the European Union (EU) and the United States today features substantial reliance on settlements, a number of which impose expansive ongoing regulatory oversight.15 The most important source of this condition is the establishment of mandatory advance notification mechanisms for merger control. 6 The adoption of premerger notification systems has expanded recourse to settlements to resolve competitive concerns with individual transactions. 7

The increased use of consent agreements as policy formation tools has created problems that result from the limited transparency surrounding the acceptance of a settlement. In the typical settlement, it is difficult for those other than the parties to the negotiations to accurately assess the basis for or significance of the consent agreement. 8 Press releases and competitive impact statements that accompany the announcement of the Department of Justice's (DOJ) Antitrust Division or FTC consent decrees usually contain statements of the facts that favorably portray the enforcement agency's decision to prosecute.

The respondent firms ordinarily have the best informed perspective on the government's claims for about the value and significance of consent decrees. Firms subject to consent decrees might challenge government exaggerations about the rationale for and scope of such agreements. Though they have the information to point out enforcement agency exaggerations, their incentives to do so are weak. The repeat-game nature of the regulatory process, in which companies and external advisors such as law firms and economic consulting firms appear regularly before the antitrust agencies, discourages private entities from candid, public discussion of the merits of settlements to which they are parties.

Over time, the fuller context surrounding a consent agreement be- comes somewhat clearer as enforcement officials give speeches, as news organizations conduct inquiries, and enforcement officials, respondents, or external advisors reveal what took place during deliberations between the enforcement agency and the firm. A more complete picture of the underly- ing decision often emerges over time, but the picture and the means that generate it can be unsatisfying. Many elements of the picture are articulated informally, by agency officials and respondents, and lack the certainty that permits outsiders to make confident judgments about future enforcement. The process puts a premium on the ability of insiders with access to en- forcement officials to garner insight into how discretion was in fact exer- cised.

The incomplete and sometimes one-sided nature of the information surrounding a consent agreement impedes efforts by outsiders to evaluate the wisdom of the decision to prosecute. Unlike a trial, which usually gen- erates a relatively rich, publicly available record, the consent agreement supplies only a limited basis for outsiders to evaluate the enforcement agency's strategy and tactics. 9 One is left to sift though the enforcement agency's announcement that it has gained valuable relief and the respon- dent's vague public suggestions that, while it accepted the remedy, the transaction emerged essentially unscathed.

There are several ways to address transparency problems associated with using settlements to resolve public antitrust cases. One approach is for enforcement agencies to reveal more information about the theory of competitive harm and the rationale for remedies in the competitive impact statements that accompany settlements.2" Enforcement officials also could use speeches or formal statements to explain why they decided not to inter- vene to challenge or modify specific transactions.

A second approach, emphasized in this Article, is to rely on periodic, ex post audits to examine the decision making process, to evaluate its soundness, and to consider the effects of the consent agreement. As de- scribed below,2 the ex post audit could be performed by the agency or by an individual or entity outside the agency, with no relationship to the re- spondent or industry members affected by the consent agreement. The results of the audits would be made public. Among other contributions, audits would be especially useful in determining the value of firewalls and anti- discrimination mandates as tools for resolving concerns about vertical mergers in sectors such as telecommunications and defense.

#### Rule of law solves extinction

Feldman ‘8 [Noah; September 28; Professor of Law at Harvard University School of Law; New York Times, “When Judges Make Foreign Policy,” lexis]

Why We Need More Law, More Than Ever

So what do we need the Constitution to do for us now? The answer, I think, is that the Constitution must be read to help us remember that while the war on terror continues, we are also still in the midst of a period of rapid globalization. An enduring lesson of the Bush years is the extreme difficulty and cost of doing things by ourselves. We need to build and rebuild alliances — and law has historically been one of our best tools for doing so. In our present precarious situation, it would be a terrible mistake to abandon our historic position of leadership in the global spread of the rule of law.

Our leadership matters for reasons both universal and national. Seen from the perspective of the world, the fragmentation of power after the cold war creates new dangers of disorder that need to be mitigated by the sense of regularity and predictability that only the rule of law can provide. Terrorists need to be deterred. Failed states need to be brought under the umbrella of international organizations so they can govern themselves. And economic interdependence demands coordination, so that the collapse of one does not become the collapse of all.

From a national perspective, our interest is less in the inherent value of advancing individual rights than in claiming that our allies are obligated to help us by virtue of legal commitments they have made. The Bush administration’s lawyers often insisted that law was a tool of the weak, and that therefore as a strong nation we had no need to engage it. But this notion of “lawfare” as a threat to the United States is based on a misunderstanding of the very essence of how law operates.

Law comes into being and is sustained not because the weak demand it but because it is a tool of the powerful — as it has been for the United States since World War II at least. The reason those with power prefer law to brute force is that it regularizes and legitimates the exercise of authority. It is easier and cheaper to get the compliance of weaker people or states by promising them rules and a fair hearing than by threatening them constantly with force. After all, if those wielding power really objected to the rule of law, they could abolish it, the way dictators and juntas have often done the world over.

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#### Combination is impossible – it makes review discretionary and causes agency managers to lie, cheat review, and undercut the process of the CP

Kovacic 6 [Professor, George Washington University Law School. Former Commissioner, Federal Trade Commission. “Using Ex Post Evaluations to Improve Competition Policy Authorities.” The Journal of Competition Law]

A second approach to evaluation focuses on process. In lieu of, or in addition to, evaluating outcomes, an evaluation program might seek to assess the quality of the competition agency's internal operations-the mix of managerial methods and organizational choices that determine how the agency allocates and applies its resources. This approach treats management and organization as critical inputs into the implementation of competition policy and seeks to identify improvements in how the competition agency operates. The logic is that progress toward superior managerial and organizational techniques will increase the likelihood that the agency's substantive outputs generally promote the realization ofthe competition law's objectives.

In striving to cope with the crisis of the moment or the press of new business, public (and private) institutions might be tempted to regard performance evaluation as a purely optional and discretionary undertaking. The need for a competition agency to address current exigencies-for example, to cope with an unusually large number of merger filings-can encourage acceptance of the view that the expenditure of effort to evaluate substantive outputs or managerial inputs is an unaffordable luxury or a costly "diversion" of resources away from the treatment of immediate operational needs. In this frame of mind, an agency's managers may reason that they can either support current operations or conduct ex post assessments, but not both.

#### It competes :

#### Antitrust is irreversible.

Konstantinos Stylianou 18, Lecturer in Competition Law and Regulation at the University of Leeds School of Law, S.J.D. from the University of Pennsylvania School of Law, LL.M. from Harvard Law School, “Exclusion in Digital Markets,” Michigan Technology Law Review, Vol. 24, Spring 2018, accessed via Lexis

The previous part on ability to exclude discussed the conditions that determine how easy or hard it is for firms to amass the necessary market power to effectively exclude rivals from the market. But, even if firms succeed in positioning themselves in a way to be able to engage in exclusionary conduct, adopting preventive or suppressive measures is not warranted unless the exclusionary conduct can persist in time. 211 This is for two reasons: first, because regulatory, judicial, or antitrust measures are quasi-irreversible, whose effect extends into the future, and therefore should be forward looking and reflect expected future conditions. 212 Starting from the assumption of free self-correcting markets, intervention is warranted when the markets' self-correcting mechanism has been given enough time to generate results, and it has failed. 213 In its stead, regulatory or antitrust intervention will artificially create the desirable conditions. However, because these measures do not expire and are not recalled (sunset clauses are rare, and changes in regulatory and antitrust policy are infrequent), the conditions they will create are semi-permanent until they are rendered irrelevant by market forces (or a policy change). Therefore, one should make sure that they are indeed needed to replace what the market should have taken care of itself.

#### ‘Should’ is certain.

David H. Sawyer 17, Judge on the Michigan Court of Appeals, J.D. from Valparaiso School of Law, “Spartan Specialties, Ltd. v. Senior Servs.”, Court of Appeals of Michigan, 2017 Mich. App. LEXIS 1178, 7/20/2017, Lexis

The specifications in the drawings for the mini-piles stated that the capacity for the mini-piles was "to be" 6,000 or 8,000 pounds and that the length of the mini-piles was "to be" adequate to get into undisturbed soil to a depth adequate for obtaining the required capacity. The specifications in the project manual stated that the mini-piles "should" have a capacity of 4 tons and 3 tons, that the mini-piles "should" be driven to minimum depth of 25 feet, and that a grout bulb "should" be formed at the base of a mini-pile. Kenneth Winters, an expert in structural engineering, and Richard Anderson, an expert in geotechnical engineering, agreed with Steve Maranowski, plaintiff's president, that the specifications in the project manual, because those specifications used the word "should," were permissive and suggestions of what plaintiff could do to achieve the required capacity. However, the trial court, when it instructed the jury on how to interpret the contract, instructed the jury that it was to interpret the words of the contract by giving them their ordinary and common meaning. An ordinary and common meaning of the word "should" is that it denotes a mandatory obligation. [\*9] See People v Fosnaugh, 248 Mich App 444, 455; 639 NW2d 587 (2001) (stating that "the word 'should' can, in certain contexts, connote an obligatory effect"); Merriam-Webster's College Dictionary (11th ed) (defining "should," in pertinent part, as "used in auxiliary function to express obligation, propriety, or expediency"). Accordingly, viewing the evidence in a light most favorable to defendant, reasonable jurors could have honestly reached different conclusions on whether the specifications in the project manual were mandatory and, because Maranowski admitted that plaintiff did not use grout bulbs and did not drive all the mini-piles at least 25 feet into the ground, whether plaintiff breached the contract. Morinelli, 242 Mich App at 260-261.

### 1NC

#### FTC funding increase now---that’s key to merger and economy-wide investigation enforcement

Klar ’3/29 [Rebecca; March 29, 2022; “Biden administration boosts support for antitrust efforts,” https://thehill.com/policy/technology/600270-biden-administration-boosts-support-for-antitrust-efforts]

President Biden’s $5.8 trillion budget proposal requests $227 million in increased funding for the Federal Trade Commission (FTC) and the Department of Justice (DOJ) combined — a bump advocates and agency leaders say is needed to tackle cases against the nation’s wealthiest companies.

In addition to the request for increased funding, the DOJ sent letters to top lawmakers on the House and Senate Judiciary committees endorsing a key antitrust bill, a move that some advocates said could sway lawmakers who are hesitant to back the seemingly stalled legislation.

“It’s very significant and it’s definitely a step in the right direction. I think the thing that’s been dogging any antitrust enforcement efforts, whether that’s at the FTC or the Department of Justice, for decades is really a lack of capacity,” Matt Kent, a competition policy advocate at Public Citizen told The Hill.

The DOJ and the FTC enforce antitrust laws, which means that they face dominant companies — not just in the tech industry — with access to some of the best legal representation and monetary resources in the nation.

Advocates say that the boost in funding would put the administration on a more equal playing field with big corporations.

The 2023 budget proposal would increase the DOJ’s antitrust division funding by $88 million and the FTC’s funding by $139 million.

“It would represent a serious step toward closing the huge funding gap that the agencies confront today,” said Daniel Francis, a Harvard Law School lecturer and former deputy director of the FTC competition bureau.

“It would go a long way to help the agencies complete timely evaluations of proposed deals, giving consumers comfort that their interests are being protected, and giving businesses comfort that the agencies have been able to take a real look at transactions before they close,” he added.

The additional resources would also help offset what Robyn Shapiro, director of communications at the American Economic Liberties Project, called an “unprecedented merger wave.”

“Very simply, the DOJ and the FTC need more money to do their jobs,” she said.

One high-profile acquisition, Microsoft’s purchase of gaming publisher Activision Blizzard for $70 billion, is under review by the FTC, Bloomberg reported earlier this year. The agencies are also in the middle of active antitrust cases against Google and Facebook.

The funding increase could also help the agencies keep nonmerger investigations moving forward at an “appropriate pace” when they often can “take a back seat” to merger reviews subject to a timed deadline, Francis said.

Biden appointed critics of Big Tech companies to top antitrust roles — naming Lina Khan as director of the FTC and Jonathan Kanter to head the DOJ’s antitrust division.

Despite Khan’s and Kanter’s lofty goals to revamp antitrust enforcement, they are still largely subject to the constraints of their predecessors in terms of resources and existing antitrust law.

“I think the funds are essential for them to pursue a pro-competition environment,” said Bill Baer, a visiting fellow at the Brookings Institution and former antitrust head at both the DOJ and FTC.

“Both of them are committed to making sure competition works for everybody,” Baer added.

Biden’s nomination of Khan and Kanter, along with a sweeping executive order on competition released in July, signaled a tough stance from the administration on market concentration.

#### Plan expands Congressional opposition, derailing antitrust funding hikes

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

THE POLITICAL ASSAULT ON THE FTC

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Inadequate and Misdirected Enforcement Activity Narrative

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Aggressive merger enforcement and economy-wide antitrust investigations solves extinction – this is also the thesis of the aff

Sitaraman ’20 [Ganesh; September/October; Professor of Law at Vanderbilt Law School, Foreign Affairs, “A Grand Strategy of Resilience,” Foreign Affairs, https://heinonline.org/HOL/Page?handle=hein.journals/fora99&div=128&g\_sent=1&casa\_token=&collection=journals]

“Grand strategy” is a slippery term, with perhaps as many deinitions as authors who invoke it. It can describe a framework that guides and focuses leaders and societies on their aims and priorities. Critics of the notion believe this is impossible: no paradigm, they say, can help navigate a chaotic, uncertain future, and in any case, U.S. society is too polarized to identify a consensus paradigm today. But the skeptics have it backward. Grand strategy is won, not found. It emerges from argument and debate. And it is useful precisely because it offers guidance in a complex world.

Start with pandemics. For hundreds of years, quarantines have been essential to preventing the spread of infectious diseases. But today’s stay-at-home orders have exacted a devastating social, eco-nomic, and psychological toll on individuals and communities. Small businesses that are closed may never reopen. Tens of millions of people are out of work. Families are struggling to juggle childcare, homeschooling, and working from home. The government’s goal should be to minimize those disruptions—to build a system that can prevent economic disaster, secure supply chains for essential materials, and massively scale up production and testing when needed.

Climate change could pose an even bigger threat. A sustained drought, akin to the one that created the Dust Bowl during the Great Depression, could threaten the global food supply. Rising sea levels, especially when coupled with storms, could flood low-lying cities. Fires already disrupt life in California every year. Climate-induced crises will also lead to population migrations globally and, with them, social unrest and violence. Part of the answer is aggressive action to limit increases in temperature. But in addition, the United States must be able to endure climate shocks when they arise.

Consider also the country’s dependence on technology and the vulnerabilities it entails. Cyberattacks have already targeted U.S. election systems, banks, the Pentagon, and even local governments. The city of Riviera Beach, Florida, was forced to pay a ransom to cybercriminals who had taken over its computer systems; big cities, such as Atlanta and Baltimore, have faced similar attacks. Cyberattacks on the U.S. power grid, akin to the one that led to blackouts in Ukraine in December 2015, could “deny large regions of the country access to bulk system power for weeks or even months,” according to the National Academy of Sciences.

All these challenges will play out at a time of growing rivalry—and especially geoeconomic competition—among great powers. Over the last half century, the United States has been the world’s most powerful economy and has thus been relatively safe from outside economic pressures. But as China’s economic strength grows, that is likely to change. The United States and other democracies have become dependent on China for essential and nonessential goods. China’s ability to exploit that dependence in a future crisis or conflict should be extremely worrisome. A strategy based on resilience would help deter such coercion and minimize the disruption if it does occur.

THE HOME FRONT

One foundational weakness is that American democracy is beset by broken processes and vulnerable to outside meddling. Four years after Russia interfered in the 2016 presidential election, the United States has yet to take serious steps to protect is voting systems from hostile foreign governments and cybercriminals. Comprehensive reforms would include voter-veriied paper ballots and the auditing of voting results. A new agency charged with election security could develop standards and conduct mandatory training for election oicials, as Senator Elizabeth Warren, Democrat of Massachusetts, has proposed. And as the pandemic has made clear, voting should not require a trip to the ballot box on Election Day. Nationwide vote-by-mail and early voting policies would provide resilience during a crisis—and make voting easier and safer in ordinary times, too. Democracy is not resilient if people do not believe in it. Yet Americans’ trust in the government has been stuck near historic lows for years, and surveys show that startling numbers of citizens do not think democracy is important. It is no accident that this loss of faith has coincided with decades of widening economic inequality and a rising consensus that the government is corrupt. Study after study has shown that the U.S. government is far more responsive to the wealthy and big corporations than to ordinary citizens. Only sweeping changes to the rules regulating lobbying, government ethics, corruption, and revolving-door hiring from the private sector can restore public trust. Generations of racist policies—redlining, militant policing, and the failure to regulate predatory lending, to name just three examples— have done much to undermine U.S. resilience, too. A country will have trouble bouncing back when entire communities are disproportionately vulnerable in a crisis and when leaders use divide-and-conquer ideas to stir division and prevent solidarity across races. Fighting for justice is the morally right thing to do—and it makes American society stronger. When it comes to economic policy, an entire generation of American leaders embraced deregulation, privatization, liberalization, and austerity. The result has been staggering inequality, stagnant wages, rising debt loads, an intolerable racial wealth gap, shrinking opportunity, and rising anxiety. Low wages, limited social beneits, and an unafordable and ineicient health insurance system have weakened the country’s resilience by turning any economic shock into a potentially existential threat for many citizens. “Deaths of despair,” such as suicides and overdoses, plague rural areas. Meanwhile, the wealthy and powerful continue to push for and win lower tax rates, which increase their wealth and power and create artiicial political pressure to oppose social infrastructure spending. The damage to American resilience, in ordinary times and especially in a crisis such as the current one, has been considerable, as has the resulting loss of economic opportunity and innovation that could boost the United States’ power. Resilience demands reversing these trends: expanding health care and childcare to all Americans, restructuring the economy so that people gain higher wages, restoring the power of unions, making early education universal, and ensuring that students can graduate from college debt free. All these goals are eminently achievable. Oicials must also provide the basic infrastructure necessary to operate in the modern world. The United States has a long tradition of public investment in infrastructure—from the post oice to rural electriication to the national highway system. In recent decades, however, that legacy has been abandoned. The pandemic has revealed that, whether for telemedicine, remote work, or education, high-speed Internet is an essential utility, just like water and electricity. But nearly a quarter of rural Americans do not have adequate access to it, in part because Internet provision has been left to the marketplace. The country’s inancial infrastructure also needs to be updated. Millions of unbanked Americans are dependent on check cashers to access their hard-earned dollars, which eats into their wages and their time. Both in normal times and during a crisis, the Federal Reserve’s policies are less efective than they could be and favor inancial institutions because the Fed uses banks as intermediaries rather than interfacing directly with consumers. If every person or business instead had access to a no-fee, no-frills account at the Federal Reserve, it could reduce the unbanked population and ensure that everyone could get stimulus payments instantaneously in a crisis.

MARKET FAILURES

Decades of neoliberal capitalism have not made markets more resilient, either. Competition is suffering, and fewer companies are being founded, as monopolists and mega-corporations come to dominate one sector after another. The “shareholder primacy” philosophy and growing pressure from inancialization have turned some corporate leaders into short-term tacticians who use buybacks, leverage, tax strategies, and lobbying to increase their stock prices, even if doing so means greater fragility, volatility, and boom-and-bust economic cycles that lead to big taxpayer bailouts. As some sectors come to depend on just a few firms, prices rise, innovation surfers, and supply chains become fragile. Meanwhile, some companies amass so much power that they distort the democratic process by throwing their weight around in Washington.

Combating these trends will require reforms designed to deconcentrate wealth and power: robust inancial regulations (including a new Glass-Steagall Act, to separate investment banking from retail banking), a more progressive tax structure, stronger unions, and aggressive antitrust enforcement to prevent anticompetitive mergers and to divorce platforms from the commercial activity that traics across them. Such reforms, especially when applied to the financial, telecommunications, and technology sectors, would discourage business models that increase systemic risk and make individual companies “too big to fail.” These reforms would also make it harder for wealthy individuals and well-funded special interest groups to capture the government.

### 1NC – Space Law

#### no spillover - their first piece of evidence is the only one that comes close and it’s predictive, not prescriptive–it says that it would be good if space law was used as a precedent, not that it would be and doesn’t specify any other industries where it would be used

#### Chow – makes no sense – RPOs are developed by STATES not COMPANIES – they can’t apply antitrust to the PRC or Russia

#### new laws fail—courts refuse to enforce, including SCOTUS

Newman 19 [John Newman is a University of Miami School of Law professor and a former attorney with the U.S. Department of Justice Antitrust Division, "What Democratic Contenders Are Missing in the Race to Revive Antitrust", 4/1/19, https://www.theatlantic.com/ideas/archive/2019/04/what-2020-democratic-candidates-miss-about-antitrust/586135/]

But the federal courts represent a massive stumbling block for any progressive antitrust movement. Reformers have identified two paths forward; both lead eventually to the court system. The first is relatively moderate: appoint regulators who will actually enforce the laws already on the books. Warren’s plan rests in part on this straightforward idea. The second, more audacious path requires congressional action to amend and strengthen our current laws. Warren’s call for a new ban on technology companies’ buying and selling via their own platforms falls into this category. Klobuchar has also proposed new antitrust legislation that would make it easier to block harmful mergers and acquisitions.

But no matter its content, enforcing a law requires persuading a judge. When it comes to U.S. antitrust laws, federal judges—not Congress, and not regulatory agencies—are the ultimate arbiters. The Department of Justice Antitrust Division, one of our two public enforcement agencies, files all its cases in federal courts. And although the Federal Trade Commission (the other) can decide cases internally, the inevitable appeals eventually end up in court as well.

No matter how strongly worded a law may be, ideologically driven judges can usually find a way around enforcing it. The cyclical history of U.S. antitrust law is proof that judges wield nearly limitless institutional power in this area.

Soon after Congress passed the Sherman Act in 1890, a conservative Supreme Court began to chip away at its effectiveness. Congress reacted in 1914 with the Clayton Act, which sought to ban anticompetitive mergers. In 1936, at the height of the New Deal era, Congress passed the Robinson-Patman Act, which prohibits price discrimination (charging different prices to different buyers for the same product). These laws were actively enforced for decades.

But starting in the late 1970s, conservative judges began to erode the Clayton Act. Today, megamergers among competitors such as Bayer and Monsanto barely raise eyebrows. So-called vertical mergers, which combine suppliers and their customers, are now all but immune from antitrust enforcement—see the DOJ’s failed challenge to AT&T and Time Warner’s recent tie-up.

Under the business-friendly Roberts Court, the Robinson-Patman Act has similarly been eviscerated. By the 2000s, the ideas of the conservative Chicago School had become mainstream in antitrust circles. Robinson-Patman, a law intended to protect small businesses, was an easy target for Chicago School critics narrowly focused on efficiency and low consumer prices. Their attacks found a receptive audience in the federal judiciary. Among insiders, Robinson-Patman is now known as “zombie law.” It remains on the books, but regulators no longer bother trying to enforce it.

If Democrats want to change antitrust law, they will first and foremost need to change the judges who apply it. Yet none of the 2020 contenders championing antitrust reform have even mentioned the possibility of appointing progressive antitrust thinkers to the bench.

Conservatives, on the other hand, have long recognized the centrality of antitrust to broader questions about the apportionment of power in society. In his seminal work, The Antitrust Paradox, Robert Bork called antitrust a “microcosm in which larger movements of our society are reflected.” Battles fought in this arena, Bork wrote, “are likely to affect the outcome of parallel struggles in others.” Strong antitrust enforcement keeps powerful monopolies in check. Toothless antitrust allows the unlimited accumulation of corporate power.

Recognizing the high stakes, the Republican Party has gone to great lengths to appoint conservative antitrust experts to the federal judiciary. Bork was an antitrust professor at Yale Law School before becoming an appellate judge in 1982.\* Frank Easterbrook practiced and taught antitrust before donning the black robe in 1985. Douglas Ginsburg served as the head of the Justice Department’s Antitrust Division before he became a federal judge in 1986. None of the three managed to join the Supreme Court, but not for lack of trying. Reagan nominated both Bork and Ginsburg to serve as justices, though Ginsburg withdrew and Bork was famously rejected after a contentious Senate hearing.

And whom did the GOP select as its very first U.S. Supreme Court nominee during the Trump Administration? None other than Neil Gorsuch, who practiced antitrust law for more than a decade before joining the Tenth Circuit. Even as a judge, Gorsuch continued to teach a law-school course on antitrust until his confirmation to the Supreme Court in 2017.

Once upon a time, progressives demonstrated similar concern about judicial treatment of antitrust laws. Justice Stephen Breyer, for example, served as special assistant to the head of the DOJ Antitrust Division before his judicial appointment by President Jimmy Carter. Earlier still, Justice John Paul Stevens was an antitrust lawyer, scholar, and professor before his appointment to the bench.

Today’s Democratic 2020 hopefuls seem to have forgotten the lessons of history. Their antitrust proposals focus exclusively on appointing the right regulators and amending our current statutes. These are right-minded ideas, but they overlook the central role judges play in our political system.

There is an old saying in the legal community: “Hard cases make bad law.” That may be true, but it is just as often the case that bad judges make bad law. Real antitrust reform will require more than regulatory and legislative tweaks; it will require the right judges.

#### Monopolies use antitrust law to their advantage – turns the aff

Young 19 [Ryan Young, Senior Fellow at the Competitive Enterprise Institute (CEI). Clyde Wayne Crews, Jr. vice president for policy and a senior fellow at the Competitive Enterprise Institute. “The Case against Antitrust Law.” April 2019. https://cei.org/sites/default/files/Wayne\_Crews\_and\_Ryan\_Young\_-\_The\_Case\_against\_Antitrust\_Law.pdf]

Rent-seeking. Neo-Brandeisians rightly want to reduce rent-seeking, but they routinely propose policies that will backfire because of a common misunderstanding of how governments work in practice. Government employees do not operate with only the public interest in mind. They are human beings, with the same incentives and flaws as other human beings. They want to increase their budgets and power and enjoy the publicity that accompanies big cases. It also makes regulators especially vulnerable to what is known as a Baptist-and-boot- legger dynamic. In Clemson University economist Bruce Yandle’s classic example, a moralizing Baptist and a profit-seeking bootlegger will both favor a law requiring liquor stores to close on Sundays, though for different reasons. A true-believing “Baptist” in Congress or at the Justice Department or the FTC would be inclined to listen seriously to the entreaties of corporate “bootleggers” who can come up with virtuous-sounding reasons for why regulators should give their businesses special favorable treatment.36

Oracle, one of Microsoft’s rivals, ran its own independent Microsoft investigation during that company’s antitrust case, for what it alleged were Baptist-style reasons. “All we did is try to take information that was hidden and bring it to light,” said Oracle CEO Larry Ellison. “I don’t think that was arrogance. I think it was a public service.”37 Former Sen. Orrin Hatch (R-UT), who counted Oracle among his constituents, was one of the loudest anti-Microsoft voices in Congress. Around that time, he also received $17,500 donations from executives at Netscape, AOL, and Sun Microsystems. Perhaps heeding Hatch’s admonition that, “If you want to get involved in business, you should get involved in politics,” Microsoft expanded its presence in Washington from a small outpost at a Bethesda, Maryland, sales office to a large downtown Washington office with a full-time staff plus multiple outside lobbyists.38 Microsoft quickly went from a virtual non-entity in Washington to the 10th-largest corporate soft money campaign donor by the 1997-1998 election cycle. Sen. Hatch’s campaign was among the beneficiaries.39

The lines between Baptist and boot- legger can be blurry, and some actors play both parts. But such ethical dynamics are an integral part of antitrust regulation in practice.

#### Antitrust fails – history, resources, and political opposition

Jones 20 [Alison Jones, Professor of Law at King's and a solicitor at Freshfields Bruckhaus Deringer LLP. William E. Kovacic, George Mason University Foundation Professor at the George Mason University School of Law. “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” 2020. https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884]

The proponents of change have set out a breathtaking agenda for reform. The various papers and reports are powerfully reasoned and argued but devote relatively little attention to the question of how their proposals can be achieved successfully. Rather many of them seem to be predicated on the assumption that any legislative changes required can be introduced rapidly and that the new, more aspiring, program can be driven home straightforwardly by agencies led by courageous leaders and supported by a larger staff that shares the vision for fundamental change.

The discussion below, and history, seems to indicate, however, that more courage and more people will not necessarily overcome the implementation obstacles that stand in the way of a program that requires the rapid prosecution of a large number of complex cases against well-resourced and powerful companies. Indeed, the criticisms levied at the current system, the proposals for more effective enforcement and reform, and the scale of the action being demanded bear some resemblance to those that led to a more re-invigorated and aggressive antitrust enforcement policy in the 1960s and early 1970s. For example, at that time complaints that the FTC was in decay, was obsessed with trivial cases and failing to address matters of economic importance, anticompetitive conduct, and rising concentration,77 led the FTC to embark on a new, bold, and astoundingly broad enforcement program.78 In an effort to meet criticisms of it as a shambolic and failing institution, the FTC sought to upgrade its processes for policy planning, made concerted efforts to improve its human capital in management and case handling, and sought to improve substantive processes and the quality of its competition and consumer protection analysis.

In the end, FTC’s efforts to improve capability proved insufficient to support the expanded enforcement agenda, partly because the Commission failed to formulate an adequate plan to overcome the full range of implementation obstacles. The FTC seriously overreached because it did not grasp, or devise strategies to deal with, the scale and intricacies of its expanded program of cases and trade regulation rules, the ferocious opposition that big cases with huge remedial stakes would provoke from large defendants seeking to avoid divestitures, compulsory licensing, or other measures striking at the heart of their business, and the resources required to deliver good results. The Commission lacked the capacity to run novel shared monopoly cases that sought the break-up of the country’s eight leading petroleum refiners and four leading breakfast cereal manufacturers79 and simultaneously pursue an abundance of other high stake, difficult matters involving monopolization, distribution practices, and horizontal collaboration. The FTC also overlooked swelling political opposition, stoked by the vigorous lobbying of Congress, that its aggressive litigation program provoked.80

New legislation envisaged by reform advocates could ease the path for current government agencies seeking to reduce excessive levels of industrial concentration by arresting anticompetitive behavior of dominant enterprises (through interim and permanent relief) and by blocking mergers that pose incipient threats to competition. It seems clear, however, that such dramatic legislative proposals are likely to be fiercely contested through the legislative process and so will take time, and be difficult, to enact. Further, even if armed with a more powerful mandate, the DOJ and the FTC will still have to bring what are likely to be challenging cases applying the new laws (see Section F). The adoption, setting up, and bedding in of new legislation or regulatory structures and bodies is therefore unlikely to happen very quickly and is, consequently, unlikely to meet the demands of those seeking urgent and immediate action now.

These difficulties suggest that for the near future, at least, the agencies will have to achieve successful extensions of policy mainly through launching themselves into a number of lengthy, complex investigations and litigation based on the current regime. This means establishing violations under existing judicial interpretations of the antitrust laws and making a convincing case for the imposition of effective remedies, including structural relief.

**No ‘space war’ – Insurmountable barriers and everyone has an interest in keeping space peaceful**

**Dobos 19** [(Bohumil Doboš, scholar at the Institute of Political Studies, Faculty of Social Sciences, Charles University in Prague, Czech Republic, and a coordinator of the Geopolitical Studies Research Centre) “Geopolitics of the Outer Space, Chapter 3: Outer Space as a Military-Diplomatic Field,” Pgs. 48-49] TDI

Despite the theorized potential for the achievement of the terrestrial dominance throughout the utilization of the ultimate high ground and the ease of destruction of space-based assets by the potential space weaponry, the utilization of space weapons is with current technology and no effective means to protect them far from fulfilling this potential (Steinberg 2012, p. 255). In current global international political and technological setting, the utility of space weapons is very limited, even if we accept that the ultimate high ground presents the potential to get a decisive tangible military advantage (which is unclear). This stands among the reasons for the lack of their utilization so far. Last but not the least, it must be pointed out that the states also develop passive defense systems designed to protect the satellites on orbit or critical capabilities they provide. These further decrease the utility of space weapons. These systems include larger maneuvering capacities, launching of decoys, preparation of spare satellites that are ready for launch in case of ASAT attack on its twin on orbit, or attempts to decrease the visibility of satellites using paint or materials less visible from radars (Moltz 2014, p. 31). Finally, we must look at the main obstacles of connection of the outer space and warfare. The first set of barriers is comprised of physical obstructions. As has been presented in the previous chapter, the outer space is very challenging domain to operate in. Environmental factors still present the largest threat to any space military capabilities if compared to any man-made threats (Rendleman 2013, p. 79). A following issue that hinders military operations in the outer space is the predictability of orbital movement. If the reconnaissance satellite's orbit is known, the terrestrial actor might attempt to hide some critical capabilities-an option that is countered by new surveillance techniques (spectrometers, etc.) (Norris 2010, p. 196)-but the hide-and-seek game is on. This same principle is, however, in place for any other space asset-any nation with basic tracking capabilities may quickly detect whether the military asset or weapon is located above its territory or on the other side of the planet and thus mitigate the possible strategic impact of space weapons not aiming at mass destruction. Another possibility is to attempt to destroy the weapon in orbit. Given the level of development for the ASAT technology, it seems that they will prevail over any possible weapon system for the time to come. Next issue, directly connected to the first one, is the utilization of weak physical protection of space objects that need to be as light as possible to reach the orbit and to be able to withstand harsh conditions of the domain. This means that their protection against ASAT weapons is very limited, and, whereas some avoidance techniques are being discussed, they are of limited use in case of ASAT attack. We can thus add to the issue of predictability also the issue of easy destructibility of space weapons and other military hardware (Dolman 2005, p. 40; Anantatmula 2013, p. 137; Steinberg 2012, p. 255). Even if the high ground was effectively achieved and other nations could not attack the space assets directly, there is still a need for communication with those assets from Earth. There are also ground facilities that support and control such weapons located on the surface. Electromagnetic communication with satellites might be jammed or hacked and the ground facilities infiltrated or destroyed thus rendering the possible space weapons useless (Klein 2006, p. 105; Rendleman 2013, p. 81). This issue might be overcome by the establishment of a base controlling these assets outside the Earth-on Moon or lunar orbit, at lunar L-points, etc.-but this perspective remains, for now, unrealistic. Furthermore, no contemporary actor will risk full space weaponization in the face of possible competition and the possibility of rendering the outer space useless. No actor is dominant enough to prevent others to challenge any possible attempts to dominate the domain by military means. To quote 2016 Stratfor analysis, "(a) war in space would be devastating to all, and preventing it, rather than finding ways to fight it, will likely remain the goal" (Larnrani 20 16). This stands true unless some space actor finds a utility in disrupting the arena for others.

#### No space militarization --- too costly and technologically infeasible --- states prefer ground attacks

Rich Wordsworth 16, UK journalist, and write for Gizmodo, Kotaku and Vice, “Why We'll Never Fight a Real-Life Star Wars Space Conflict”, 18/12/2016, <http://www.gizmodo.co.uk/2015/12/why-well-never-fight-a-real-life-star-wars-space-conflict>

So Why Won’t It Happen? Well, never say never. You might not make to the end of this paragraph before the sky lights up and the world goes dark. **But there are some good reasons to be optimistic that won’t happen. One reassuring factor is that the more other countries develop their militaries, the more dependent on networks they become as well**. China is developing its own drone programme, and so is Russia, which will both presumably be dependent on satellites to operate. **And the more their (and our) economies and business interests develop, the more everyone will rely on satellites to further their economic ambitions. In the event that countries were to start knocking out each other’s satellites on a large scale, the consequences across the board – for everyone – would be disastrous.** It would also be expensive in the short term. **Getting things into orbit – peaceful or otherwise – still isn’t cheap, which is why only a handful of countries regularly do so.** And if you want to blow up a network of many satellites today (as you would have to in a first strike, to ensure other satellites couldn’t pick up the slack), launching small satellites or missiles into orbit is the only practical way to do that – **arming satellites with their own weaponry just isn’t financially or technologically feasible on a grand scale**. We are, happily, a long way from a Death Star. “I don’t think [a large first strike] would be financially too costly [if you’re] thinking about kinetic energy weapons and the air-based or ground-based lasers,” says Jasani. “It’s viable. But if you say, ‘I’m going to put an [ASAT] weapon [permanently] in orbit’, we are then getting into very expensive and very complicated technology. So my guess is that in the foreseeable future, what we are going to focus on are the kinetic energy weapons and possibly lasers that could blind satellites or affect, for example, the solar panels. That kind of technology will be delivered in the foreseeable future, rather than having lasers in orbit [like] the Star Wars kind of thing.” **But there’s another, possibly even more persuasive reason that a kinetic war in space may not happen: it’s just so much easier – and less damaging – to mess with satellites without getting close to them. “Jamming from the ground is not difficult,” says Quintana**. “If you look at the Middle East, pick a country where there’s a crisis and the chances are that the military in that country has tried to jam a commercial satellite to try and avoid satellite TV channels broadcasting anti-government messages.” “**My guess is that by the time we are ready for space warfare, I think you may not be banking on your hit-to-kill ASATs, but more on [non-destructive] high-energy laser-based systems,”** Jasani agrees. **“[Space debris] affects all sides, not just the attacked side.** The attacking side will have its own satellites in orbit, which might be affected by the debris [of its own attack].” And if you really need to remove an enemy’s satellite coverage, you can always try to flatten or hack the control stations on the ground, leaving the satellites talking with no-one to listen. **“I don’t think physically blowing things up from the ground is something that people are looking at again,**” says Quintana. “Countries and governments try to find means other than physical conflict to achieve their strategic ends. **So as space becomes more commercial and more civilian and as more scientific satellites go up, then you’ll find that** states will not seek to directly attack each other**, but will seek other means.** “It may just be that they will try to cyber-attack the satellites and take them over, which has been done in the past. It’s much easier to physically or cyber-attack the ground control station than it is to attack the satellite itself - so why would you not look to do that as a first port of call and achieve the same ends?” Ultimately, then, what might keep us safe from a war in space isn't the horror of explosives in orbit, but a question of cost and convenience.

#### No space war – ingrained normative frameworks, attributability, and space debris prevent escalation

Pavur and Martinovic 19 [James Pavur, DPhil Researcher Cybersecurity Centre for Doctoral Training Oxford University, Ivan Martinovic, Professor of Computer Science Department of Computer Science Oxford University, “The Cyber-ASAT: On the Impact of Cyber Weapons in Outer Space,” 2019 11th International Conference on Cyber Conflict: Silent Battle, <https://ccdcoe.org/uploads/2019/06/Art_12_The-Cyber-ASAT.pdf>]

STABILITY IN SPACE Given the uncomfortable combination of high dependency and low survivability, one might expect to observe frequent attacks against critical military assets in orbit. However, **despite decades of recurring prophesies of impending space war, no such conflict has broken out** [14]–[18]. It is true that a handful of space security crises have occurred; most notably, the 2007 Chinese anti-satellite weapon (ASAT) test and the 2008 US ASAT demonstration in response [19]. Moreover, a recent Centre for Strategic and International Studies report suggests increasing interest in attacking US space assets, particularly among the Chinese, Russian, North Korean and Iranian militaries [20]. Overall, however, the space domain has remained puzzlingly peaceful. In this section, we outline three major contributors to this enduring stability: limited accessibility, attributable norms, and environmental interdependence. A. Limited Accessibility Space is difficult. Over 60 years have passed since the first Sputnik launch and only nine countries (ten including the EU) have orbital launch capabilities. Moreover, a launch programme alone does not guarantee the resources and precision required to operate a meaningful ASAT capability. Given this, one possible reason why space wars have not broken out is simply because only the US has ever had the ability to fight one [21, p. 402], [22, pp. 419–420]. Although launch technology may become cheaper and easier, it is unclear to what extent these advances will be distributed among presently non-spacefaring nations. Limited access to orbit necessarily reduces the scenarios which could plausibly escalate to ASAT usage. Only major conflicts between the handful of states with ‘space club’ membership could be considered possible flashpoints. Even then, the fragility of an attacker’s own space assets creates de-escalatory pressures due to the deterrent effect of retaliation. Since the earliest days of the space race, dominant powers have recognized this dynamic and demonstrated an inclination towards de-escalatory space strategies [23]. B. Attributable Norms There also exists a long-standing normative framework favouring the peaceful use of space. The effectiveness of this regime, centred around the Outer Space Treaty (OST), is highly contentious and many have pointed out its serious legal and political shortcomings [24]–[26]. **Nevertheless, this status quo framework has somehow supported over six decades of relative peace in orbit.** Over these six decades, norms have become deeply ingrained into the way states describe and perceive space weaponization. This de facto codification was dramatically demonstrated in 2005 when the US found itself on the short end of a 160-1 UN vote after opposing a non-binding resolution on space weaponization. **Although states have occasionally pushed the boundaries of these norms, this has typically occurred through incremental legal re-interpretation rather than outright opposition** [27]. Even the most notable incidents, such as the 2007-2008 US and Chinese ASAT demonstrations, were couched in rhetoric from both the norm violators and defenders, depicting space as a peaceful global commons [27, p. 56]. Altogether, this suggests that **states perceive real costs to breaking this normative tradition and may even moderate their behaviours accordingly.** One further factor supporting this norms regime is the high degree of attributability surrounding ASAT weapons. For **kinetic ASAT technology, plausible deniability and stealth are essentially impossible**. The literally explosive act of launching a rocket cannot evade detection and, if used offensively, retaliation. **This imposes high diplomatic costs on ASAT usage and testing**, particularly during peacetime. C. Environmental Interdependence A third stabilizing force relates to the orbital debris consequences of ASATs. China’s 2007 ASAT demonstration was the largest debris-generating event in history, as the targeted satellite dissipated into thousands of dangerous debris particles [28, p. 4]. Since debris particles are indiscriminate and unpredictable, they often threaten the attacker’s own space assets [22, p. 420]. This is compounded by Kessler syndrome, a phenomenon whereby orbital debris ‘breeds’ as large pieces of debris collide and disintegrate. As space debris remains in orbit for hundreds of years, the cascade effect of an ASAT attack can constrain the attacker’s long-term use of space [29, pp. 295– 296]. Any state with kinetic ASAT capabilities will likely also operate satellites of its own, and they are necessarily exposed to this collateral damage threat. **Space debris thus acts as a strong strategic deterrent to ASAT usage.**

#### War stays conventional.

Caitlin Talmadge 18, Associate Professor of Security Studies at the Edmund A. Walsh School of Foreign Service at Georgetown University, November/December 2018, “Beijing’s Nuclear Option,” Foreign Affairs, Vol. 65, No. 5

As China’s power has grown in recent years, so, too, has the risk of war with the United States. Under President Xi Jinping, China has increased its political and economic pressure on Taiwan and built military installations on coral reefs in the South China Sea, fueling Washington’s fears that Chinese expansionism will threaten U.S. allies and influence in the region. U.S. destroyers have transited the Taiwan Strait, to loud protests from Beijing. American policymakers have wondered aloud whether they should send an aircraft carrier through the strait as well. Chinese fighter jets have intercepted U.S. aircraft in the skies above the South China Sea. Meanwhile, U.S. President Donald Trump has brought long-simmering economic disputes to a rolling boil. A war between the two countries remains unlikely, but the prospect of a military confrontation—resulting, for example, from a Chinese campaign against Taiwan—no longer seems as implausible as it once did. And the odds of such a confrontation going nuclear are higher than most policymakers and analysts think. Members of China’s strategic community tend to dismiss such concerns. Likewise, U.S. studies of a potential war with China often exclude nuclear weapons from the analysis entirely, treating them as basically irrelevant to the course of a conflict. Asked about the issue in 2015, Dennis Blair, the former commander of U.S. forces in the Indo-Pacific, estimated the likelihood of a U.S.-Chinese nuclear crisis as “somewhere between nil and zero.” This assurance is misguided. If deployed against China, the Pentagon’s preferred style of conventional warfare would be a potential recipe for nuclear escalation. Since the end of the Cold War, the United States’ signature approach to war has been simple: punch deep into enemy territory in order to rapidly knock out the opponent’s key military assets at minimal cost. But the Pentagon developed this formula in wars against Afghanistan, Iraq, Libya, and Serbia, none of which was a nuclear power. China, by contrast, not only has nuclear weapons; it has also intermingled them with its conventional military forces, making it difficult to attack one without attacking the other. This means that a major U.S. military campaign targeting China’s conventional forces would likely also threaten its nuclear arsenal. Faced with such a threat, Chinese leaders could decide to use their nuclear weapons while they were still able to. As U.S. and Chinese leaders navigate a relationship fraught with mutual suspicion, they must come to grips with the fact that a conventional war could skid into a nuclear confrontation. Although this risk is not high in absolute terms, its consequences for the region and the world would be devastating. As long as the United States and China continue to pursue their current grand strategies, the risk is likely to endure. This means that leaders on both sides should dispense with the illusion that they can easily fight a limited war. They should focus instead on managing or resolving the political, economic, and military tensions that might lead to a conflict in the first place. A NEW KIND OF THREAT There are some reasons for optimism. For one, China has long stood out for its nonaggressive nuclear doctrine. After its first nuclear test, in 1964, China largely avoided the Cold War arms race, building a much smaller and simpler nuclear arsenal than its resources would have allowed. Chinese leaders have consistently characterized nuclear weapons as useful only for deterring nuclear aggression and coercion. Historically, this narrow purpose required only a handful of nuclear weapons that could ensure Chinese retaliation in the event of an attack. To this day, China maintains a “no first use” pledge, promising that it will never be the first to use nuclear weapons. The prospect of a nuclear conflict can also seem like a relic of the Cold War. Back then, the United States and its allies lived in fear of a Warsaw Pact offensive rapidly overrunning Europe. NATO stood ready to use nuclear weapons first to stalemate such an attack. Both Washington and Moscow also consistently worried that their nuclear forces could be taken out in a bolt-from-the-blue nuclear strike by the other side. This mutual fear increased the risk that one superpower might rush to launch in the erroneous belief that it was already under attack. Initially, the danger of unauthorized strikes also loomed large. In the 1950s, lax safety procedures for U.S. nuclear weapons stationed on NATO soil, as well as minimal civilian oversight of U.S. military commanders, raised a serious risk that nuclear escalation could have occurred without explicit orders from the U.S. president. The good news is that these Cold War worries have little bearing on U.S.-Chinese relations today. Neither country could rapidly overrun the other’s territory in a conventional war. Neither seems worried about a nuclear bolt from the blue. And civilian political control of nuclear weapons is relatively strong in both countries. What remains, in theory, is the comforting logic of mutual deterrence: in a war between two nuclear powers, neither side will launch a nuclear strike for fear that its enemy will respond in kind. The bad news is that one other trigger remains: a conventional war that threatens China’s nuclear arsenal. Conventional forces can threaten nuclear forces in ways that generate pressures to escalate—especially when ever more capable U.S. conventional forces face adversaries with relatively small and fragile nuclear arsenals, such as China. If U.S. operations endangered or damaged China’s nuclear forces, Chinese leaders might come to think that Washington had aims beyond winning the conventional war—that it might be seeking to disable or destroy China’s nuclear arsenal outright, perhaps as a prelude to regime change. In the fog of war, Beijing might reluctantly conclude that limited nuclear escalation—an initial strike small enough that it could avoid full-scale U.S. retaliation—was a viable option to defend itself.

#### Wouldn’t go all out – it would stay conventional.

Natasha Kassam 20, Research Fellow in the Diplomacy and Public Opinion Program at the Lowy Institute, Bachelor of Laws (Hons I) and a Bachelor of International Studies from the University of Sydney, and Richard McGregor, Senior Fellow at the Lowy Institute, Former Fellow at the Wilson Center and Visiting Scholar at the Sigur Center at George Washington University, “Taiwan’s 2020 Elections”, Lowy Institute Report, 1/7/2020, https://www.lowyinstitute.org/publications/taiwan-s-2020-elections

Regionally, the conventional balance of military power is tipping towards China. The People’s Liberation Army has long equipped itself and planned for a cross-straits conflict. However, a full-frontal Chinese invasion of Taiwan remains unlikely in the near term. There are numerous factors that would deter such an invasion, including Taiwan’s unwelcoming geography and climate, the difficulties of staging an amphibious landing, the unknown appetite in the United States for intervention and Japan’s interests in the Taiwan Strait. Other military options which would be less risky, and potentially less disruptive to trade, include a targeted naval blockade.[36]

#### No US-China nuclear war – answers Chow and Kelley which has one line at the end about miscalc.

Shifrinson 2/8/19 [Joshua Shifrinson is an assistant professor of international relations at Boston University. The ‘new Cold War’ with China is way overblown. Here’s why. February 8, 2019. https://www.washingtonpost.com/news/monkey-cage/wp/2019/02/08/there-isnt-a-new-cold-war-with-china-for-these-4-reasons/?noredirect=on&utm\_term=.f8ca8195c4e4]

Is a new Cold War looming — or already present — between the United States and China? Many analysts argue that a combination of geopolitics, ideology and competing visions of “global order” are driving the two countries toward emulating the Soviet-U.S. rivalry that dominated world politics from 1947 through 1990.

But such concerns are overblown. Here are four big reasons why.

1. The historical backdrops of the two relationships are very different

When the Cold War began, the U.S.-Soviet relationship was fragile and tenuous. Bilateral diplomatic relations were barely a decade old, U.S. intervention in the Russian Revolution was a recent memory, and the Soviet Union had called for the overthrow of capitalist governments into the 1940s. Despite their Grand Alliance against Nazi Germany, the two countries shared few meaningful diplomatic, economic or institutional links.

In 2019, the situation between the United States and China is very different. Since the 1970s, diplomatic interactions, institutional ties and economic flows have all exploded. Although each side has criticized the other for domestic interference (such as U.S. demands for journalist access to Tibet and China’s espionage against U.S. corporations), these issues did not prevent cooperation on a host of other issues. Yes, there were tensions over the past decade, but these occurred against a generally cooperative backdrop.

2. Geography and powers’ nuclear postures suggest East Asia is more stable than Cold War-era Europe

The Cold War was shaped by an intense arms race, nuclear posturing and crises, especially in continental Europe. Given Europe’s political geography, the United States feared a “bolt from the blue” attack would allow the Soviet Union to conquer the continent. Accordingly, the United States prepared to defend Europe with conventional forces, and to deter Soviet aggrandizement using nuclear weapons.

Unsurprisingly, the Soviet Union also feared that the United States might attack and wanted to deter U.S. adventurism. Concerns that the other superpower might use force and that crises could quickly escalate colored Cold War politics.

Today, the United States and China spend proportionally far less on their militaries than the United States and the Soviet Union did. Though an arms race may be emerging, U.S. and Chinese nuclear postures are not nearly as large or threatening: Arsenals remain far below the size and scope witnessed in the Cold War, and are kept at a lower state of alert.

As for geography, East Asia is not primed for tensions akin to those in Cold War Europe. China can threaten to coerce its neighbors, but the water barriers separating China from most of Asia’s strategically important states make outright conquest significantly harder. Of course, as scholars such as Caitlin Talmadge and Avery Goldstein note, crises may still erupt, and each side may face pressures to escalate. Unlike the Cold War, however, U.S.-Chinese confrontations occur at sea with relatively limited forces and without clear territorial boundaries. This suggests there are countervailing factors that may give the two sides room to negotiate — and limit the speed with which a crisis unfolds.

3. The Cold War had just two major powers

The Cold War took place in a bipolar system, with the United States and Soviet Union uniquely powerful, compared with other nations. This dynamic often pushed the United States and the U.S.S.R. toward confrontation and contributed to more or less fixed alliances; moreover, it encouraged efforts to suppress prospective great powers, such as Germany.

In 2019, it’s not at all clear we are back to bipolarity. Analysts remain divided over whether the U.S. unipolar era is waning (or is already over) — and, if so, whether we are heading for a new period of bipolarity, modern-day multipolarity or something else. Regardless, most analysts accept that other countries will play a central role in East Asian security affairs.

Russia, for example, still benefits from legacy military investments, India is developing economically and militarily, and Japan is beginning to build highly capable military forces to complement its still-significant economic might. Even if these nations aren’t as powerful as the United States or China, their presence makes for more fluid diplomatic arrangements and more diffuse security concerns than during the U.S.-Soviet competition. The resulting security dynamics are therefore likely to look very different.

4. Ideology plays less of a role in U.S.-Chinese relations

Many people see the Cold War as an ideological contest between U.S.-backed liberalism and Soviet-backed communism. But that’s not the whole story.

The early 20th century saw liberalism, communism and fascism vie for ideological preeminence. With fascism defeated alongside Nazi Germany, the postwar stage was set for a struggle between communism and liberalism to reinforce the U.S.-Soviet contest. That each ideology claimed universal scope ensured that the ideologies served as rallying cries for Third World conflicts, which were subsequently associated with the U.S.-Soviet struggle.

The respective “ideologies” of the United States and China do not favor this type of contest today. Indeed, analysts calling for a hard-line stance against China have faced difficulties even identifying a coherent Chinese ideological alternative. And while some researchers claim that a nascent ideological contest pitting an “autocratic” China against the “liberal” United States is emerging, this narrative ignores the political contests that shape Chinese politics (and have parallels in U.S. politics). Autocracies and democracies often cooperate. And on one important ideological issue — how they organize their economic lives — China and the United States have both embraced economic growth via trade, the private sector and semi-free markets.

#### But, invasion triggers political backlash – induces a democratic transition.

Wang Mouzhou 17 – Pen name of a former NSA intelligence officer, 3-24-2017, (“What Happens After China Invades Taiwan?” The Diplomat, <https://thediplomat.com/2017/03/what-happens-after-china-invades-taiwan/>) Recut Justin

Let’s assume, hypothetically, that the People’s Republic of China (PRC) successfully conquers Taiwan. Most analyses of an attempted invasion consider only if the PRC could successfully subdue Taiwan. The consequences of an attempted invasion –even a tactically successful one – have received little thought, however. This analysis considers some likely consequences for the PRC if it attempts and/or completes an invasion of Taiwan. Likely consequences include: the direct human and economic expenditures of the invasion itself; the costs of garrisoning Taiwan; the PRC’s post-war diplomatic and economic isolation; and, finally, the significant and potentially destabilizing process of incorporating 23 million individuals into the PRC. It is still too soon to say if Russia’s invasion of Ukraine in Crimea and the Donbass produced a strategic defeat or victory for Russia. However, the elements that advantaged Russia vis-à-vis Ukraine will not avail themselves to the PRC in a cross-straits crisis. Invading Taiwan would prove highly dangerous and costly for Beijing. Incorporation of Taiwan into the PRC would prove to be, at best, a Pyrrhic victory if attempted in the near or medium term. The Invasion of Taiwan While the People’s Liberation Army (PLA) is a highly capable and formidable force, a conventional military invasion of Taiwan would prove highly costly in treasure and blood and could fail to achieve the Communist Party of China’s (CPC’s) objectives. Ship-to-shore and shore-to-shore landings are extremely hazardous for the invasion force. In the first Gulf War, American military planners were rumored to estimate that an amphibious invasion of Saddam Hussein-occupied Kuwait would cost up to 10,000 American lives, despite the considerable relative military superiority of U.S. forces. The Republic of China (ROC) possesses a much more sophisticated military than Hussein did in 1991 and, due to advances in anti-access area denial doctrine and capabilities, can impose asymmetric costs on an invader. Additionally, American forces (and, potentially, other actors) would impose punishing costs on any invasion force. A 2015 RAND study estimated that United States submarines alone could sink 41 percent of Chinese amphibious ships in a theoretical 2017 conflict. A direct invasion attempt by the PRC would likely lead to significant – and potentially massive – casualties for all involved actors, as well as a regional or even global economic depression. In the “best-case” scenario for the PRC, a successful invasion would still suffer substantial casualties and cost tens of billions of dollars. Moreover, the consequences of an invasion would persist, as health expenses and pensions would burden the Chinese state for decades (at a time when Chinese veterans are already protesting about unpaid pensions). An invasion and the one-child policy could exacerbate an already hellish social crisis for the mainland, as wounded and deceased veterans – often only children – would be unable to support their elderly parents and grandparents. Instead of a direct invasion, the PRC could employ a blockade or another form of so-called “asymmetrical warfare.” Russia used the tactics of asymmetric warfare to achieve short-term political objectives in Crimea, the Donbass, and, according to some reports, the 2016 United States presidential election. It may also potentially achieve the dissolution of the European Union and stimulate a worldwide financial crisis through its intervention in European elections. Leaving aside, for now, the wisdom of these actions, it is worth noting that the PRC’s invasion of Taiwan would confront an environment hostile to asymmetric means. Several factors aided Russia’s asymmetric/hybrid invasion of Ukraine: popular support in Crimea and the Donbass for close political ties with Russia; a significant number of former Russian (and Soviet) citizens and even veterans in the invaded territories, especially in Crimea; a largely ineffective opposing military force; and the element of surprise. A PRC invasion of Taiwan would confront much more challenging conditions. Few in Taiwan desire reunification with the CPC-dominated mainland: a 2014 public opinion poll by the ROC’s Mainland Affairs Council found that 84 percent of respondents on the island wanted to “maintain the status quo defined in a broader sense.” The PRC could surely count on some fifth-column support in the event of an invasion or asymmetric campaign but the reality is that most individuals in Taiwan fear PRC rule and would actively resist a reduction in their political freedoms and economic prosperity. Finally, the ROC’s military – and other militaries – are unlikely to be surprised by asymmetric warfare and would respond vigorously. Therefore, in the highly likely event of an asymmetric invasion’s failure, the CPC’s political leadership would have to face a hard choice: accept a massive symbolic defeat, which could jeopardize the Party’s legitimacy, or escalate an asymmetric operation into a full military invasion with all attendant risks. Garrison Island The costs of invading Taiwan could, perhaps surprisingly, pale in comparison to the costs of maintaining control over it. In the best-case scenario for the PRC, the island would fall with minimal damage to its physical (not to mention human) infrastructure. It is perhaps more realistic to expect that a PRC invasion would lead to catastrophic destruction of private property (much of it owned by mainland elites); severe damages to Taiwan’s transportation infrastructure, such as railroads, bridges, ports, airports, and metro systems; ecological devastation from landmines and unexploded ordinance; and, perhaps, an anti-Communist insurgency. As many Chinese officials and scholars like to point out (especially when they are upset at American actions), the United States has spent significant blood and treasure in Iraq and Afghanistan and has achieved relatively few results. An invasion of Taiwan could provide the PRC with an object lesson in the difficulties of counterinsurgency (for an excellent exposition on guerrilla war in the cross-strait context, see the CSBA’s 2014 “Hard ROC 2.0” report). It is extremely difficult to pacify an invaded region. Unlike, say, Crimea, individuals in Taiwan are quite likely to actively resist their occupiers. If the PRC successfully invades Taiwan, it will likely re-learn many of the hard lessons that Washington experienced in the first two decades of the 21st century. PRC planners should perhaps consider some unpleasant questions. Would ROC security forces be disbanded immediately upon conquest of the island? If so, does the PRC have sufficient financial resources to bribe former ROC soldiers and security officials from conducting an insurgency? If the PRC bribed former ROC soldiers and security officials, how would PLA veterans respond to enemy combatants receiving higher pensions? More broadly, given that Taiwan’s per capita PPP GDP is, at $49,400, over three times larger than the mainland’s per capita GDP, who would finance Taiwan’s reconstruction? Would these expenditures provoke or sharpen resentments on either or both sides of the strait? And how would the PRC handle Taiwan’s old political leadership? Would the PRC murder the old leadership, ensuring a massive backlash from the international community and the people on the island? Would the PLA merely imprison them, perhaps creating a sustained, symbolic threat to the Party? Or would the PLA exile the old political leadership, constructing a sophisticated opposition with governing experience, international stature, and, for the CPC, an uncomfortable historical parallel to Sun Yat-sen, founder of the ROC and one of the few individuals revered on both sides of the strait? Subduing Taiwan would require massive investments of time, personnel, and resources. Counterinsurgency experts suggest that counterinsurgents often need to employ several times as many combatants as the insurgents. Therefore, garrisoning Taiwan would require a minimum occupying force numbering in the tens of thousands. Higher manpower requirements are probable. A PLA counterinsurgency force in Taiwan could require hundreds of thousands soldiers and paramilitary forces, tying down PRC military and financial resources for decades. The PRC’s Legitimacy Post-Invasion An invasion of Taiwan would signal the emergence of aggressive, might-makes-right Chinese nationalism. Indo-Pacific countries would likely respond by coalescing into a military and economic alliance aimed at countering PRC aggression. The PRC’s international isolation would constrain its economic potential and, ultimately, likely lead CPC leadership to seek an alternative legitimation model. Under Mao Zedong, the CPC derived political legitimacy from its assertion of Chinese autonomy, Marxist ideology, and, to a lesser degree, rising living standards (the survivors of Mao experienced improvements in life expectancy, literacy, and infant mortality). Under Deng Xiaoping, the CPC increasingly tied its legitimacy to rising living standards, while notionally adhering to Marxist ideology. An invasion of Taiwan would represent the end of the Deng Xiaoping epoch. Under a new political paradigm, the CPC would mainly legitimate itself through nationalism, not economics: the state would seek to maximize China’s international prestige, perhaps even at the expense of domestic welfare. In other words, the CPC would increasingly resemble Russia under President Vladimir Putin. Under the new legitimation model, several features would emerge. First, living standards would likely stall – while remaining relatively high. Second, China would increasingly seek to derive legitimacy from the domination of other sovereign countries. Third, China’s appetite would likely grow larger with eating: Chinese claims to former territories currently occupied by India, Mongolia, North Korea, Pakistan, and Russia could grow increasingly strident. This new legitimation model would present several challenges for the CPC. First, Chinese and Russians have different historical experiences and psychological expectations. Russians endured a profoundly scarring economic and financial crisis in the 1990s, increasing their tolerance for economic misery while largely sapping demand for free-market economics (not to mention rules-based government). Chinese, on the other hand, have enjoyed near-continuous economic and social improvements for nearly 40 years. A nationalism-induced recession – or even stagnation – could lead to a political backlash from Chinese accustomed to rising living standards. As Samuel P. Huntington wrote, “Urbanization, increases in literacy, education, and media exposure all give rise to enhanced aspirations and expectations which, if unsatisfied, galvanize individuals and groups into politics.” An invasion of Taiwan could trigger an economic crisis and political struggle on the mainland. Second, after invading Taiwan, what would the CPC do to score more nationalist “victories” – particularly if the invasion and/or occupation of Taiwan doesn’t go well? Most countries on China’s land and maritime borders possess nuclear weapons, enjoy an alliance or quasi-alliance with the United States and Japan, or both. Third, Taiwan’s incorporation into the PRC may increase the likelihood of democratic transition. Most individuals in Taiwan possess strong normative commitments to free markets, constitutional law, and open societies. Many mainland Chinese – particularly those from the 1989 generation – support these ideas. Adding 20 million liberals to China’s political discourse could have important implications for its domestic politics.

#### landing would be peaceful – but public buy-in is key.

Pei 13 – Minxin, Tom and Margot Pritzker ’72 Professor of Government and director of the Keck Center for International and Strategic Studies at Claremont McKenna College, (“5 Ways China Could Become a Democracy”, <http://thediplomat.com/2013/02/5-ways-china-could-become-a-democracy/1/>) Recut Justin

“Happy ending” would be the most preferable mode of democratic transition for China. Typically, a peaceful exit from power managed by the ruling elites of the old regime goes through several stages. It starts with the emergence of a legitimacy crisis, which may be caused by many factors (such as poor economic performance, military defeat, rising popular resistance, unbearable costs of repression, and endemic corruption). Recognition of such a crisis convinces some leaders of the regime that the days of authoritarian rule are numbered and they should start managing a graceful withdrawal from power. If such leaders gain political dominance inside the regime, they start a process of liberalization by freeing the media and loosening control over civil society. Then they negotiate with opposition leaders to set the rules of the post-transition political system. Most critically, such negotiations center on the protection of the ruling elites of the old regime who have committed human rights abuses and the preservation of the privileges of the state institutions that have supported the old regime (such as the military and the secret police). Once such negotiations are concluded, elections are held. In most cases (Taiwan and Spain being the exceptions), parties representing the old regime lose such elections, thus ushering in a new democratic era. At the moment, the transition in Burma is unfolding according to this script. But for China, the probability of such a happy ending hinges on, among other things, whether the ruling elites start reform before the old regime suffers irreparable loss of legitimacy. The historical record of peaceful transition from post-totalitarian regimes is abysmal mainly because such regimes resist reform until it is too late. Successful cases of “happy ending” transitions, such as those in Taiwan, Mexico, and Brazil, took place because the old regime still maintained sufficient political strength and some degree of support from key social groups. So the sooner the ruling elites start this process, the greater their chances of success. The paradox, however, is that regimes that are strong enough are unwilling to reform and regimes that are weak cannot reform. In the Chinese case, the odds of a soft landing are likely to be determined by what China’s new leadership does in the coming five years because the window of opportunity for a political soft landing will not remain open forever.

#### Transition solves aggressive pursuit of domination and heg impact

Michael Mandelbaum 19, PhD in political science from Harvard University, Christian A. Herter Professor Emeritus of American Foreign Policy at The Johns Hopkins School of Advanced International Studies., March, "In Praise of Regime Change," Commentary, https://www.commentarymagazine.com/articles/in-praise-of-regime-change/

If revolution, as the word was defined in the last century, has become obsolete, its successor, regime change, has become discredited. The American military engagements in Haiti, Afghanistan, and Iraq not only failed to yield democratic governments; they proved, in the last two cases, costly to the United States, both in lives and treasure. The American public has, consequently, little appetite for more such ventures. Yet there is another type of regime change to consider: the peaceful replacement of dictatorship by democracy through the efforts of local people rather than the American military. That’s occurred with heartening frequency over the past four decades, and, in 2019, it has greater relevance and importance than ever. Such regime change offers the solution to the most dangerous challenge facing the United States and its friends and allies. That challenge comes from the ambitions of three major countries to overturn the existing political arrangements in their regions and to expand their own power and influence at the expense both of their neighbors and of the United States. All have already used force for this purpose. In Europe, Russia has seized Crimea and invaded and occupied eastern Ukraine. In East Asia, China has laid claim, contrary to international law, to virtually the entire western Pacific, where it has built artificial islands on which it has placed military installations. In the Middle East, Iran has funded, trained, equipped, and directed military forces outside the control of the local government in Lebanon, Iraq, Syria, and Yemen. At best, these revisionist ambitions portend Cold War–like political and military competition in the three regions. At worst, they will lead to wars involving the United States. These aggressive policies have, in each case, a variety of sources. But they have one major cause in common. Each of these aggressive governments is a dictatorship operating in what is still a predominantly democratic world, and each feels an acute need for domestic support and political legitimacy. To be sure, the rule of the current Russian, Chinese, and Iranian governments rests ultimately on coercion, but Vladimir Putin, Xi Jinping, and the Iranian mullahs are wary of relying on coercion alone to remain in power. The leaders of Russia and China, in particular, are known to monitor public sentiment carefully, if not obsessively. For the purpose of generating the support they believe they need, however, these dictators have few options. None can afford to indulge in the most common source of 21st-century legitimacy: democracy. For genuinely democratic politics would sweep them all away. Ideology was an important basis for autocratic regimes’ claims to rule in the 20th century. But ideology is unavailable to Russia and China, which have renounced, in the first case, and effectively abandoned, in the second, orthodox Marxism-Leninism (and in China, Maoism as well). The Iranian regime retains an ideological foundation—the Persian-Shia version of Islamic fundamentalism—but few Iranians outside the regime believe in it. Authoritarian Russia and China, although not Iran, have relied on economic success to produce support for, or at least acceptance of, their rulers; but their economic performance and future economic prospects have taken a turn for the worse. The Russian economy depends on the sale of energy. The price of oil reached record heights during Vladimir Putin’s first stint as president, which generated income that underpinned the high levels of popularity that he enjoyed. The price has since fallen and is unlikely to return to its peak, which makes Russia’s economic outlook a gloomy one. As for China, the ruling Communist Party presided over three decades of double-digit annual growth based on the large-scale movement of labor from the countryside to the cities, massive investment, and ever-growing exports. That model for growth has run its course: China needs a new one that, even in the best of circumstances, will not deliver the extraordinary advances to which the Chinese people have become accustomed. The Islamic Republic of Iran has seen only economic failure since its establishment in 1979, and unashamedly so. Its founder, Ayatollah Ruhollah Khomeini, said that the regime he installed was “not about the price of watermelons.” Still, the country’s poor economic performance, now aggravated by American sanctions, has increased the public’s already considerable discontent with its clerical rulers. In the face of this common predicament, the three revisionists have turned to the one source of support on which they believe they can rely: aggressive nationalism. This underlies the policies that all three use to threaten their neighbors. In this way, aggression is a form of regime protection. Putin, Xi, and the Iranian clerics tell the people they rule that such policies are designed to achieve regional dominance, which, for reasons of history and culture, they deserve. The Russian, Chinese, and Iranian governments also justify their aggressive foreign policies as necessary to ward off the hostility of their enemies—above all the United States—which, the dictators tell their subjects, are bent on weakening, subverting, and even destroying Russia, China, and Iran. Putin claimed that the Maidan Revolution in Ukraine in 2014, which triggered his invasion of that country, was part of an anti-Russian plot by the West. The Chinese government has repeatedly denounced what it alleges are American efforts to thwart China. The mullahs have, from the outset of the Islamic Republic, made opposition to the United States, “the Great Satan,” a cornerstone of their rule. Such evidence as there is suggests that this political tactic works for all three regimes. Putin’s aggressive policies in Ukraine and Syria, for example, have raised his popularity among Russians. The successful employment of such policies in bolstering each regime’s standing at home increases the temptation to employ it repeatedly, which makes Europe, East Asia, and the Middle East increasingly dangerous places. In sum, the roots of the greatest international problem that the United States and its friends and allies face—the Russian, Chinese, and Iranian challenges to the global order—lie in the nature of the regime that governs each country. The solution to the problem, it follows, is to change those regimes, and to change them not just to any other form of government but specifically to democracy. Democracy here means liberal democracy, a combination of popular sovereignty, whereby the people choose the government through free and fair elections, and liberty—the protection of religious, economic, and political freedom. The historical record shows that, in the modern era at least, liberal democracies seldom if ever go to war with one another. This is so because democracy’s basic features counteract the age-old incentives for armed conflict. Popular sovereignty, for example, imposes a check on the government’s freedom of action, including the freedom to wage war. Democracies resolve domestic differences by peaceful means and so are inclined to act similarly with respect to international disputes. None of this is to say that the spread of democracy guarantees the elimination of war: Nothing can do so. What has come to be called the “democratic peace” theory does not rise to the level of an iron law of politics because there are no such laws. It is to say, however, that were Russia, China, and Iran to become full-fledged democracies, each would surely conduct less belligerent foreign policies toward its neighbors.

#### increases cooperation and solves major security hotspots – Sino-Japanese war, Sino-Indo war, etc.

Aaron Friedberg 11, PhD in Government from Harvard, professor of politics and international affairs @ Princeton University, “Hegemony with Chinese Characteristics,” <http://users.clas.ufl.edu/zselden/coursereading2011/friedberg.pdf> Recut Justin

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

### 1NC

#### Stokes proposal is about redoing all of antitrust from the ground up, which is a totally different thing – they do not get rid of nearly all monopolies. Inequality caused by tons of exogenous factors

#### Stucke does not say applying US based antitrust law internationally is good, its analyzing why the free market was incentive in promoting innovations domestically, which a

#### No global regime – cooperation fails and states have unique incentives

Murray 19 [Allison Murray, Loyola Law School, Los Angeles, Juris Doctor, May 2019. "Given Today’s New Wave of Protectionism, is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade’s Coffin?" https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1785&context=ilr]

Despite the strong propensity towards the adoption of antitrust laws at the national level, countries appear to have generally abandoned all hope for an international body of antitrust enforcement.117 The U.S. continues to withhold support for internationalization, and its lack of support has proven to be quite persuasive to members of international cooperative efforts.

A. Failed Attempts at Establishing an International Body of Antitrust Governance or Harmonization

Formal international competition law attempts have failed, in large part, due to lack of support from the U.S.118 The first attempt was commissioned by the League of Nations, which explored whether an international system against cartel arrangements was within the realm of possibility.119 At the time, “Europeans looked at cartel arrangements as an attempt to preserve economic stability,” and the reports praised some cartels as “instruments of peace, international cooperation, and prosperity.”120 As a result, the League did not adopt any measures against cartel activity, citing the greater good.

After World War II, it was again argued that there was a need for international governing authority over antitrust enforcement.121 World leaders and lawmakers sought a new, more cooperative world and discussed competition laws during the proposed International Trade Organization (“ITO”) Havana Charter in 1947.122 The notes from those discussions contained “detailed rules regarding the substance and enforcement of competition law,”123 indicating that it was heavily debated and discussed, but ultimately no competition rules were decided upon.124 The U.S. was among those countries which refused to ratify the contemplated competition rules.125

Shortly after the Havana Charter, nations enacted the General Agreement on Tariffs and Trade (“GATT”).126 The GATT, like the agreements that came before it, remained silent on international competition rules.127 This repeated failure to address international competition rules in international trade agreements suggests that centralized international competition laws may be a non-starter for years to come.

The World Trade Organization (“WTO”) was established in 1995 and is the closest entity to a central authority on international trade laws, despite the fact that no centralized law exists.128 Again, the Doha Ministerial attempted to negotiate international competition rules and introduce them into the established authority of the WTO.129 By 2004, during the Doha Round of trade negotiations, the plans to adopt competition laws were foiled.130 Developing countries and the U.S. did not provide their support for the introduction of competition laws.131

As a result, although the WTO was established to be a primary venue to litigate antitrust matters between countries, the WTO can argue only that a country unfairly applied their own country’s domestic laws.132 There is still no international set of laws promulgated by the WTO. Given that discrepancies exist even between the three major trade countries, the lack of internationally set authority is quite limiting.

Given these historically failed and haphazard attempts, it is not likely that a uniform antitrust law can be adopted globally. China, the U.S., and the E.U. all subscribe to varying versions of free trade and what constitutes an appropriate method of enforcement. Further still, the national values significantly differ between these countries. In China, national security terms and the promotion of national industry is paramount.133 Similarly, the U.S., while not allowing for the same breadth of application as China in its national security terms, seems determined to preserve its domestic laws despite the clear preference of other nations for E.U. competition laws.134

#### US is a fringe case

Murray 19 [Allison Murray, Loyola Law School, Los Angeles, Juris Doctor, May 2019. "Given Today’s New Wave of Protectionism, is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade’s Coffin?" https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1785&context=ilr]

On a global scale, the E.U. model has displaced the U.S. model as the international example to follow.101 Perhaps the E.U. competition laws are perceived as more moderate, or perhaps the E.U. is just perceived as a better example of international cooperation. As the E.U. is a trade regime made up of many countries that have had to cooperate and negotiate amongst themselves, the E.U. laws were already the product of many great minds from many countries. To succeed at all, the sovereign nations of the E.U. have had to concede on national positions in order to form a centralized community position. The U.S. model was not subject to multinational negotiations. On the contrary, the U.S. generally does not make concessions during trade-related negotiations, and it is becoming increasingly clear that the Trump Administration is especially unwilling to make trade concessions.102 This may be a contributing factor to the perception that the U.S. model is necessarily more extreme than its E.U. counterparts.

Another reason for the trend toward the E.U. model may be the perception that the U.S. seems to look more favorably on dominant firms, especially given the reality that a large concentration of large firms were founded in the U.S.103 The E.U. and most non-U.S. countries are thought to be more suspicious of large and dominant firms, and therefore are perceived to be more objective in their antitrust analysis.104 In comparison to the U.S. model, the E.U. system has been said to have a more active government presence, wider policy goals, and less stringent theoretical guidelines.105

#### Modeling antitrust undermines sustainable development.

Cheng 12 [Thomas, assistant professor at the Faculty of Law of the University of Hong Kong. "Convergence and Its Discontents: A Reconsideration of the Merits of Convergence of Global Competition Law." https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1362&context=cjil]

Serious poverty and income inequality are prevalent in many developing economies. These phenomena present two main challenges to developing countries as far as competition law enforcement is concerned. One is the need to encourage entrepreneurship to promote inclusive growth; the other is the need to protect impoverished consumers from exploitative practices. A number of commentators, including Fox, have argued that developing countries must pursue inclusive growth that will alleviate poverty and reduce income inequality.162 Inclusive growth requires opportunities for upward economic mobility, an important avenue for which is entrepreneurship.'63 For those who are at the bottom of the economic ladder in a developing country, often the only way to break out of poverty is to start their own businesses, which are going to be, at least initially, SMEs. Therefore, encouragement of entrepreneurship and assistance to SMEs must be a central pillar in every inclusive growth strategy. If competition law is to complement an inclusive growth strategy, it must afford SMEs stronger protection than is customary in established jurisdictions and be particularly vigilant against abuse of dominance. This is especially so because dominant firms in developing countries are often former state monopolies that still benefit from official patronage or informal connections to the state. Their privileged positions make it even harder for new private firm rivals to compete with them.

The poorest in many developing countries live below the poverty line and often scrape by with no more than a dollar or two a day.'64 They are often malnourished, sick, and illiterate, which severely curtails their productivity and ability to improve their economic well-being. Therefore, an inclusive growth strategy must include policies to combat malnourishment, poor health, and illiteracy. While the bulk of the responsibility will fall on government programs that directly confront these problems, competition law has a role to play. Competition law enforcement may focus on goods that have the most direct impact on the nutritional, health, and educational needs of the poorest in developing countries. Anticompetitive conduct in these sectors should be dealt with harshly.

Beyond that, developing country competition authorities may consider taking a tougher stance on exploitative practices by dominant firms. This is despite the fact that most established jurisdictions, especially the US, have largely left exploitative practices out of the purview of competition law."' The usual justification for this stance is two-fold. First, there is a serious implementation problem of distinguishing between very high prices and excessive prices.'6 6 Such distinctions are notoriously difficult to draw. The inability to do so undermines effective enforcement and legal certainty for firms seeking to comply with the law. Second, there is the theoretical objection that the opportunity to reap temporary monopoly profit spurs firms to compete and innovate.'6 1 In the industrialized nations, the general view is that consumers are able to bear momentary high prices, which will be eroded once a new competitor enters the market. Short-run monopolistic prices are the price that consumers pay for the benefit of keener long-run competition and innovation. While consumers in developed nations may be in a position to withstand such high prices, the poorest consumers in developing countries are not. Any extra cost for a basic necessity will have a direct and severe impact on their overall standard of living. For example, 10 percent more spent on foodstuffs may require consumers to remove their children from school."' The plight of these consumers therefore may justify a more assertive stance on exploitative practices in markets for basic necessities.

#### SDGs are leverage points that solve extinction BUT failure causes cascading risks that cumulatively outweigh any single risk, causing extinction

Fenner and Cernev 20, [Richard Fenner (BSc (Hons) PhD CEng MICE FCIWEM) is Director of the MPhil in Engineering for Sustainable Development at Cambridge, Cernev – Australian National University, Canberra, Australia, The importance of achieving foundational Sustainable Development Goals in reducing global risk, Volume 115, January 2020, https://www.sciencedirect.com/science/article/pii/S0016328719303544]

Fig. 3 demonstrates that cascade failures can be transmitted through the complex inter-relationships that link the Sustainable Development Goals. Randers, Rockstrom, Stoknes, Goluke, Collste, Cornell, Donges et al. (2018) have suggested that where meeting some SDGs impact negatively on others, this may lead to “crisis and conflict accelerators” and “threat multipliers” resulting in conflicts, instability and migrations. Ecosystem stresses are likely to disproportionately affect the security and social cohesion of fragile and poor communities, amplifying latent tensions which lead to political instabilities that spread far beyond their regions. The resulting “bad fate of the poor will end up affecting the whole global system"(Mastrojeni, 2018). Such possibilities are likely to go beyond incremental damage and lead to runaway collapse.

The World Economic Forums’ Global Risks Report for 2018 shows the top five global risks in terms of likelihood and impact have changed from being economic and social in 2008 to environmental and technological in 2018, and are closely aligned with many SDGs (World Economic Forum, 2018). The report notes “that we are much less competent when it comes to dealing with complex risks in systems characterised by feedback loops, tipping points and opaque cause-and-effect relationships that can make intervention problematic”. The most likely risks expected to have the greatest impact currently include extreme weather events natural disasters, cyber attacks, data fraud or theft, failure of climate change mitigation and water crises.

These are represented in Fig. 3 by the following exogenous variables. “Climate change” drives the need for Climate Action (SDG 13), “Cyber threat” may adversely impact technology implementation and advancement which will disrupt Sustainable Cities and Communities (SDG 11); Decent Work and Economic Growth (SDG 8) and the rate of introduction of Affordable and Clean Energy (SDG 7), with reductions in these goals having direct consequences in also reducing progress in the other goals which they are closely linked to. “Data Fraud or Threat” has the capacity to inhibit innovation and Industrial Performance (SDG 9), reducing competitiveness (and having the potential to erode societal confidence in governance processes). “Water Crises” (linked with climate change) have a direct impact on Human Health and Well Being (SDG 3) as well as reducing access to Clean Water and Sanitation (SDG 6) and reducing agricultural production which increases Hunger (SDG 2). The causal loop diagram also highlights “Conflict” as a variable (driven by multiple environmental-socio-economic factors) which together with regions most impacted by climate degradation will lead to an increase in migrant refugees enhancing the spread of disease and global pandemic risk, thus impacting directly on Human Health and Well Being (SDG 3)

4.2. Existential and catastrophic risk

The level and consequences of these risks may be severe. Existential Risks (ER) have a wide scope, with extreme danger, and are “a risk that threatens the premature extinction of humanity or the permanent and drastic destruction of its potential for desirable future development” (Farquhar et al., 2017,) essentially being an event or scenario that is “transgenerational in scope and terminal in intensity” (Baum & Handoh, 2014). With a smaller scope, and lower level of severity, global catastrophic risk is defined as a scenario or event that results in at least 10 million fatalities, or $10 trillion in damages (Bostrom & Ćirković, 2008). Global Catastrophic Risk (GCR) events are those which are global, but they are durable in that humanity is able to recover from them (Bostrom & Ćirković, 2008; Cotton-Barratt, Farquhar, Halstead, Schubert, & Snyder-Beattie, 2016) but which still have a long-term impact (Turchin & Denkenberger, 2018b).

Achieving the Sustainable Development Goals can be considered to be a means of reducing the long-term global catastrophic and existential risks for humanity. Conversely if the targets represented across the SDGs remain unachieved there is the potential for these forms of risk to develop. This association combined with the likely emergence of new challenges over the next decades (Cook, Inayatullah, Burgman, Sutherland, & Wintle, 2014) means that it is of great value to identify points within the systems representations of the Sustainable Development Goals that could both lead to global catastrophic risk and existential risk, and conversely that could act as prevention, or leverage points in order to avoid such outcomes. This identification in turn enables sensible policy responses to be constructed (Sutherland & Woodroof, 2009).