Marshall here. Welcome back to The Re-alignment.
Hey everyone, welcome back to the show.
Quick note before we dive into this episode.
Last Friday, Sagar and I released the latest Supercast.
Ask me anything discussion episode.
Subscribers to our Supercast who support the show get access to those AMA episodes
and get to submit their own questions and comments.
If you'd like to hear the full audio from the preview we released on Friday,
you can go to realignment.supercast.com or click the link at the top of your show notes.
Today's episode is with Consumer Financial Protection Bureau director Rohit Chopra.
We are discussing recent remarks he gave at the big anti-monopoly summit earlier this month,
discussing the future of the anti-monopoly movement from the perspective of his tenure at the CFPB
and the Federal Trade Commission.
The basic idea here is that one of the issues at the center of the political re-alignment
of our country right now is the debate over how both left and right will handle corporate power.
There are areas where left and right are just completely not in sync,
perfect example being tech companies.
A lot of people see the examples of left and right critiquing companies like Meta,
Facebook, Twitter, etc., etc., and say to themselves,
okay, these companies are going to be broken up or sanctioned for their behavior.
When you actually dive into the actual proposals and critiques left and right are making,
however, you'll find they are completely different and contradictory.
For example, the left critique of Meta, Facebook is that Meta, Facebook are irresponsible
with the content they allow on their platform and need to crack down harder.
The right critique is basically that said crackdown, if it is occurring, is biased, unfair,
and a result of their monopoly power.
Obviously, both of these things cannot be true at the same time.
Luckily, however, there are anti-monopoly issues and categories outside of the traditional culture wars,
so getting direct to Chopra's perspective on the past, present, and future of the anti-monopoly tradition
is deeply relevant and important.
Hope you all enjoy this conversation and a huge thank you to the foundation for American Innovation
for supporting the podcast work.
Director Rohit Chopra, welcome to the realignment.
Thank you so much for having me, Marshall.
Yeah, it's great to chat with you.
Before we get into the ideas side of things, can you just start by explaining what the Consumer Financial Protection Bureau,
which is a relatively new in the geological timescale of federal agencies' agencies, actually is?
Yeah, it's pretty brand new.
I think what you saw in the financial crisis was a fundamental failure of the regulatory structure.
And what happened was Congress really stripped a lot of powers from the Federal Reserve Board of

Governors
and the Federal Trade Commission and others and put it in an agency.
So our job is essentially to make sure that those key markets, mortgages, credit cards, student loans, credit reporting,
that they're actually fair, transparent, and competitive.
Yeah, and I'm glad you referenced the financial crisis because we spent a lot of time on this podcast discussing how the O8 crisis really reshaped American politics, especially at a discourse level.
Can you kind of explain how the work of the CFPB and your time at the agency when it started from 2010 to 2015
was really shaped by that post-2008 moment?
Well, let me just share at a big picture level.
I think people across the country really wondered how on earth did this happen?
How did we let financial institutions gamble and ultimately get massive bailouts?
How did we allow so many people across the country to be illegally foreclosed upon?
And frankly, what kind of accountability was there?
And the answer, I think, was not very satisfying to people.
Unlike past scandals in the financial industry, we saw almost no criminal actions.
We saw very little in terms of accountability that the public really thought was credible.
And I think that really did shape so many people and how they think about the role of government regulators.
It really ignited more attention to the cozy relationships between these government agencies
and the largest dominant incumbents in the industry.
It opened up new criticism of the revolving door.
This back-and-forth relationship between lawyers and lobbyists in and out of government.
And I think we've started to do a little to reverse that, but there's so much more that needs, I think, to fundamentally change
when it comes to making sure that agencies are really doing the job that the public demands of them.
We'll obviously get into Silicon Valley Bank and First Republic,
given your role with the Federal Deposit Insurance Commission.
But I would wonder, I'd say at least colloquially, most listeners are going to have this response of that issue resonated so much
because it doesn't feel like things changed.
Since 2008, we're having the same conversation.
We're talking about bailouts.
What would you say to folks who do not feel as if, despite new agencies,
despite all this intellectual work that we're discussing here,
it really feels like the war has not shifted from 2007 that much?
What do you say to that lack of trust?
Yeah, I actually always take the view there is so much in our laws on the books
that just sometimes get ignored, and it's a big problem.
You look at the latest failures of banks and you think the CEO of Silicon Valley Bank
was somehow able to get tens of millions of dollars in bonuses,

and then the institution fails and the rest of us have to clean up the mess.
You see all sorts of reforms that give powers to the regulators to really stop these abuses.
But what do they really do?
They often accommodate the largest and most powerful entities and industries.
And I think you really see skepticism from across the spectrum on this about what the hell is happening here.
And I really take the view that we can't give up.
We have to actually start acting and using those laws on the books to create a more competitive market
where the largest players don't get to dictate the rules for everybody.
Yeah, I'm really taking a lot of these questions from remarks you recently issued at the anti-monopoly summit that went on earlier.
And it really struck me how you really are strong on this idea that so many of these issues that we're describing in this conversation,
there are laws on the books that could enforce accountability, competition, et cetera, et cetera.
When you came into the FTC Federal Trade Commission in 2018 and then obviously your role as director of the CFPB,
were you surprised by how much was actually already there relative to, okay, I'm showing up.
It's 1933, I need all these new laws and these new ideas.
Like, did that surprise you?
You know, in some ways it did, in some ways it didn't.
One of the things I never really imagined working in government as a regulator.
But when I came after the financial crisis, I was quite struck to see how much of the problem was not about laws on the books.
It was really about courage and about rigor.
You know, there was sometimes just a fundamental misunderstanding of what we learn in the history of our country,
of why we became such an extraordinary economic power.
And it wasn't because we allowed a European-style system where a few players dominate every industry,
or a Chinese-style system where industry and government are sort of often locked at the hip.
We had our own way of doing it and often those laws, the foundation of that, was set sometimes a century ago.
So I was in many ways always thinking, yes, maybe we do need stronger laws.
Maybe we do need more.
But let's also use the laws we have.
And the Federal Trade Commission was one of the perfect examples of this,
where you essentially saw an agency over 40 years under multiple administrations of both parties decay into something that many people just found to be irrelevant.
But I really felt that there was so much we could do with the existing laws on the books to really make the economy work better.
And that's really what we focused a lot of attention on.
Yeah, let's get to the vision-slash-idea side of things.

We've written and spoken about a quote-unquote anti-monopoly tradition in American political life and also in political economy.
Could you just speak to that vision directly and how it operationalizes itself?
So you made the point about how you contrasted it, our system with the European and Chinese systems.
How does that vision operationalize itself?
And I guess the one thing I'd add to it too is, where then did the break happen?
Because you basically say that for 40 years, the institution that you ran was broken or Ron was broken.
What explained the breakaway from that tradition?
I think if you look industry after industry after industry, you really see a similar story about where our country gained so much edge.
Whether it's science and technology, whether it's telecommunications, whether it's banking.
We often had markets that sure there were big players, but there was a whole lot of small players and a lot of medium players too.
And in some ways, we had a system where the large players really had to invest in order to compete, to create new products.
Something did change where we started allowing a boardroom focus on how to block new players to get in the game.
And in some ways, we saw how older policies just vanished and instead a big move toward concentration and big mergers.
And frankly, a lot of conduct that would have otherwise never been allowed.
So one of the lessons I always draw is the strength of our country comes from people being able to come up with ideas and take them to market without getting lots of permission slips from the incumbents.
And instead, you really see across so many industries, fintech, consumer online digital technologies, biotech, people raise capital to start firms with sometimes the sole goal of selling it to one of the dominant actors.
When I was at the FTC, I would talk a lot to startups and investors and they would say, often if I can't sell this company to Google, Facebook, Amazon, name the big tech firm, I'm not going to be able to make a profit.
And they would actually assess investments about what the risk of a big firm just completely copying it.
I'm not really sure that's the model that made us so strong.
I think in banking, for example, we have thousands of banks.
We've had a lot fewer than we did a generation ago.
But part of that was making sure that the banking system was almost the plumbing for Main Street businesses, new businesses, for agricultural interests, industrial interests.
The more and more it got concentrated, the more you see a shift in focus away from consumers, households, local businesses.
And I'm not sure that's been such a good trend.
We learned a hard lesson with that in PPP, the Paycheck Protection Program, where the smaller local banks were very responsive in saving businesses and it was much harder with bigger banks.

So I think, Marshall, there was something that did change about 40 years ago.
It was a mixture of, I think, ideology of certain types of economic analysis that I don't think served us really well.
And at a personal leadership level, something I'm deeply interested in is that you've made the point that, you know, a lot of listeners who are decently read on the Anthrodust discourse will know that this is where I say a cliche about Robert Bork and Borkingism might came in and it changed how we approach questions of antitrust.
But your focus has been so much on the enforcement side around there being a bipartisan consensus around, well, maybe we're not going to lean into enforcing laws on the books because you can enforce laws on the books and also basically adopt Robert Bork's ideology when it came to antitrust.
So can you explain at a leadership level why the, especially on the democratic side, where that wouldn't necessarily seem to be a clear reality because you're always seeing a democratic administration, why the lack of leaning into regulation happened?
There was something that was so separate and, of course, all of what you're sharing about antitrust is important.
There was, I think, a broader shift in thinking about the role of government in promoting economic activity, in promoting prosperity.
And I don't want to shorthand it as libertarianism.
I think it's something different, which is the government being totally uninvolved would be what created the most benefits.
And I think instead you saw a lot of people say, let's craft these regulations that are so prescriptive and highly technocratic.
In some ways, that only ended up helping the big guys too.
So rather than clear and simple bright lines, you started seeing a more complex form of regulation that I think in many ways did not.
Did not serve the interests of new businesses that were forming.
They really were about the current state of play.
So I don't have a terrific answer for you other than whatever was happening didn't seem to work very well.
I think, again, when I look a lot at history, often you see major industries like banking that fundamentally have a huge amount of government participation, federal deposit insurance, discount window access.
The list goes on and on.
And there was some clear rules of the road to protect the public and something about that went really awry.
And that's why I think you saw a lot more financial pain, a lot more crises, a lot more bailouts.
And I think that's what I'm really encouraged.
There's so much energy from all corners of the ideological spectrum of political parties wanting to kind of create a new vision on that.
Yeah, and something that really fascinated me in your remarks is that when we're discussing a huge set of issues that once again at a bipartisan level have gotten so much attention, opioid crisis for profit colleges and student loans,
unchecked commercial surveillance, subprime mortgage lending, the problems that small businesses

are impacted by the FTC actually could have played a role over the during that 40 year period.
So I think it's I think important for us if we're articulating this vision that it's important to enforce rules to lean into issues.
How you don't have to go through every single of the examples I listed.
How give kind of an alternate history of how the FTC and government regulators in general could have addressed aspects, not the whole thing, obviously, but aspects of those issues, given the laws that are already on the books.
Yet, you know, a century ago, there was a really incisive set of reports that the Federal Trade Commission did about the families who really controlled the biggest meat industries,
meat businesses in America and they showed and demonstrated the levels of, in some ways, collusion and unfair practices targeted at small farmers across the country.
And they wanted to see some real reforms and a Congress ends up passing the Packers and Stockyards Act soon after it, really with a goal of giving that giving small farmers a chance to compete fairly in the system.
And in some ways, there was a lot of blowback a century ago by the biggest players in the meat industry against them, but you saw them willing to really confront powerful incumbents for the benefits of every farmer.
And frankly, the entire public, what you saw happen in the last 40 years is rather than taking that ethos of wanting fair and competitive markets, you actually saw a whole set of work talking about how the laws that Congress passed really aren't good.
And it was incredible in some ways, a law called the Robinson-Patman Act, which was supposed to help protect local businesses from abuses of chains and others.
That was the law in the books and the FTC just decided we're not going to enforce it.
And I think we see this in agency after agency after agency in this period of time where those laws on the books were essentially read out of the, read out of the statutes.
And you saw the results of that.
And I think in banking, there was a lot of abilities to stop the financial crisis.
You saw the Financial Crisis Inquiry Commission, others really make clear that the bank regulators, the Federal Reserve Board had a lot of authorities didn't use it and in fact were counterproductive to when states were trying to protect their own citizens.
I really think that rule of law, focusing on those existing legal prohibitions, when you don't enforce those, you pay the price for it as a country.
I think an interesting example of it actually got a more of a decent amount of news coverage because it spoke to the interesting political coalitions that emerged during the Trump presidency was the made in America violations work.
You all did at the FTC. So could you just like explain the issue, explain how there was a statute on the books already that wasn't being enforced and actually once again like spoke to the interesting ideological coalitions were speaking to.
Yeah, one of the things I saw at the Federal Trade Commission was a very weird type of approach to enforcement, which was a no money, no fault settlement.
So essentially the FTC would identify fraud and then rather than penalize the company, they would get a settlement where there was no really no finding of liability and there was actually no refunds to consumers, no forfeiture of their illegally earned profits.

I mean, essentially it was it was a nothing burger and I looked at our laws on the books.
And in 1994 around the time of NAFTA, you saw Congress pass a new authority that gave the FTC the ability to seek pretty big penalties, redress for consumers, all sorts of good tools to make sure that we were protecting the made in USA label.
And time after time you saw the same set of facts that there was products made in China or made in some other jurisdiction and it was falsified as made in USA.
And there was even a belief by some at the FTC that you know these made in USA things, you know, this is silly.
We started talking to ranchers about falsified made in USA beef.
We I met with footwear makers and others who said you know this really hurts us because there are many consumers who see the made in USA label as a sign of higher product quality of so many other positive attributes.
And if we can't get the benefits of that label, we'll just move our operations overseas.
So we found the authority and we really pushed to turn it on and slowly and slowly we were able to see a consensus emerge.
But we also were pushing a boulder uphill because there was really an entrenched set of thinking that everything is fine here.
Let's not change a thing but boy did it need to change and ultimately we were able to win that vote.
We also saw, as you mentioned, some unusual coalitions form.
This was something where on one hand you had President Trump's own FTC commissioners on one side speaking totally on a different song from a different song sheet than actually the Trump White House itself.
And ultimately we worked with the Trump White House and members from across the spectrum on Capitol Hill to get it done.
This is just a fascinating example.
But my immediate question, especially as someone who like we spoke to the folks who are making these violations, is this as simple as someone just said, hey, we could just put a label on this and there won't be any consequences.
Do you kind of get what I'm saying? I guess maybe it's just sort of why I'm a podcaster and not like a massive meat packer.
But it just seems to me that that seems so stupid and so insane that someone would even just do that in the first place.
Do you kind of get what I'm basically saying? How did this start? Did people just realize that they could just put labels on?
Because I guess there seems to be implications for like other whole other aspects of our commercial life in general beyond just a made in American label.
There's always going to be natural incentives from businesses to try and juice their margins in any way.
I mean, I'm not saying that in a bad way. That's how our system is.
We're always going to be looking for more ways to either sell more or increase margins, whatever it may be.
And I think what you see is when an industry that makes their products overseas and sells here and can start getting away with it,

what happens is there's a huge amount of pressure on the law abiding businesses to start moving into more gray areas.
So maybe they get some of their parts from overseas, but they really do much of the manufacturing here.
The law says they can't give an unqualified made in USA claim.
They would have to say manufactured in the USA or using foreign parts.
But they start saying, look, no one is checking this.
And even those who are getting caught are basically not facing any penalties.
So that's where they make the risk calculation and the net result is a complete race to the bottom where then you start seeing in board rooms.
Well, there's not even going to be much benefits of producing domestically if we can't get the increased market share, increased pricing.
And you see this in so many spheres where once the enforcers who are supposed to check big business on these core consumer protections,
these core fair dealing laws, when they just stop, the results are that market competition doesn't work the way it's supposed to.
And I think that's really what we always have to correct.
So nearing the last section here, I really was interested in the articulation you've given in the past about how we can take lessons from both the way the FDIC handled First Republic, Silicon Valley Bank,
and then obviously you're joining of the FTC five years ago.
I just love to kind of go through those lessons so people just have a clear takeaways to actually do something with.
So the first lesson, which I'll summarize and will have you just expand is just this idea that oftentimes laws on the books are enough to curb abuse.
They're just hiding in plain sight.
So I guess the two ways I'll ask this question is one, just sort of expand on that.
But two, we've talked about how there are all these things that we could do.
They're all there already.
Like what are some things you would like as well though, right?
Like what like in a perfect world, like what other regulations, what other powers, what can maybe states or localities do, etc.
So like once explain the comment and then two, what would expensive look like?
Yeah, you know, the list is so long of ideas and policies we could really put into practice that would really change things.
I think one of the things the CFPB is working on, we have a dormant legal authority from over a decade ago that could really accelerate the move in the US to open banking.
Creating more seamless switching of accounts to be able to reduce the reliance on credit scores.
That's an authority that's on the books and could create so much more market competition in ways that would really help consumers, small businesses.
I think you see so many places across government where the words on the page of our statutes just don't really get put into practice.
That's such a common theme.

I'll also share on the enforcement powers and remedies.
One of a big area of focus for me has been the issue of repeat offenders.
When small entities break the law, boy, do they often get hit hard by regulators and enforcers, often for small infractions, but you see other places where big guys
break the law again and again and again, they write the check and they move on.
Their laws exist on the books today to really address some of that.
In the agricultural industry we have seen, they've admitted in some ways price fixing.
There's a lot of tools to restructure that industry with criminal violations like that.
In banking, when you have repeat offenses, the laws actually allow for the withdrawal of deposit insurance, limitations on the banks.
Really big things and again, that's an existing law.
We got to really also look, if we care about fair dealing, if we care about a competitive market, that means that we have to enforce the law equally
between small folks and big dominant incumbents.
I would say those two things, Marshall, those dormant authorities and those enforcement powers, those are two big categories that I think there's a strong bipartisan consensus about doing something about.
The next point you make is that other agencies have to be involved in this process.
We've talked about the FTC, the CFPB.
An example, though, that you offered is just the airline industry and the Department of Transportation.
What does integrating other agencies into this process look like?
You know what's so interesting for me, Marshall?
There's been a really renewed focus on the use of antitrust law.
I think that's fine and that's important.
There's a whole other set of laws that deal with fair dealing, fair competition that are sitting in our state and federal laws.
You asked about airlines.
The transportation department, when it comes to mergers and acquisitions, when it comes to the treatment of passengers, there's some old laws on the books that can really make sure that they are competing fairly.
We see that in the telecommunications industry.
We see it in healthcare.
I hope that everyone who's interested in thinking about and reflecting on how do we make our economy one that creates things that are socially useful, that help people climb the economic ladder, rather than what I would say is a more financialized point of view, which is how do you create dominance, how do you jack up your equity values by blocking new entrants who could threaten you, and how do you price in ways that make it complicated for people to compare so that you can increase your margins.
Those are two choices of how markets should work.
I think, again, we see a lot of growing consensus that it's these government policies that matter across the government, not just antitrust.
Yeah, and that actually leads into the next one, which is just that the anti-monopoly tradition can't

just be about literal antitrust.
There are other sets of new ideas about addressing these issues.
I'm just curious, what are some ideas that you're just interested in?
You're clearly, well, Rad, you're clearly very smart.
What aside from just the antitrust tool book or tool set?
There's no such thing as a tool book.
Are you interested in?
I'm really always pretty fixated on how do we make sure that our banking system, which is, I have to impress upon everyone.
It really is the plumbing of the economy.
When that system is not working, the lights turn off everywhere.
We've seen that throughout history.
So banking is clearly a place that there's a lot to make sure that it's working well.
And obviously, the recent failures have put that more into clear view.
But look, I do think right now you see a huge amount of interest about what is the path that the United States is charting when it comes to our industrial base, when it comes to the future of the digital economy.
And that involves a mix of trade, intellectual property, so much.
And for me, I see sometimes that certain industries are lurching toward a more European style system or a more Chinese style system.
For example, the entry of big tech firms in our payment system and financial services, you see at Apple Pay, Google Pay, others.
I look across the Pacific and see companies like Alipay, companies like WeChat Pay that are part of big tech conglomerates.
I'm not really sure that's the future America will want to replicate.
I also see in Europe where many of those countries just have a couple of very, very large dominant banks.
I'm not sure that's what we want to replicate either.
So I think as we think Marshall about resilience, about fair dealing, and about how the plumbing of our economy from banking to telecommunications to transportation and more.
And I think it's good that there is broader rethinking of that.
And what do we want to chart going forward that is not just copying and pasting what other countries are doing.
I am so happy you brought up the Alipay example because I think it gets to where this gets into the balancing act of traditions, priorities, etc.
Alipay and plenty of mobile first Chinese companies were deeply innovative.
And because they skipped over the desktop area, the basic level, they just were more innovative in that category than we were.
So I guess when you're saying that Apple Pay in many ways is reminiscent of that Chinese top-down model, I guess what we're curious about is what's the alternative.
Because I'll tell you, like when I came out of COVID and moved to New York and used Apple Pay to just like pay my subway fare, that was crazy to me.
That was actually like, wow, this is effective. This makes more sense. This is better than the fare

cards, etc.
What's the alternative in the payment category specifically? Do you know what I mean?
I totally do. Let's get into the detail on this. The thing you liked was tapping a device in order to pay. I like that too. It's more secure. There's so much to like.
But Apple Pay has tied that near field communication device, near field communication technology on your phone exclusively to Apple Pay.
That means everybody has to go through Apple Pay's fare gate.
They need to link to that. We actually have talked with so many innovative firms, small firms, who say, you know what?
If my app that I've developed, if that could use that near field communication to tap, I could actually offer so much more and maybe even at a lower price.
But I can't get it get in because it's locked up. And I think we see this time and time again where a lot of the new products and services are actually being driven by small and nascent firms, often purchased by bigger firms.
And then they integrate it into their suite of products in ways that can actually deter others from enjoying those same benefits.
So I see this across the economy and I actually would like to see a world where a lot more apps and services, maybe they should have to comply with all the security requirements others and they say, we will do that.
But they are often blocked by this gatekeeper power. And it's not just in big tech. We see that we see that across the economy and financial services.
It's so key that that is really resilient that there's not a lot of bottlenecks.
I'll also add Marshall, a lot of these core technologies were really incubated from our scientific agencies through grant programs.
You know, the list is long GPS others. The way in which these are commercialized to the entire economy really matters.
Are they giving exclusive licenses to just one big firm or they broadly licensing it so that the entire ecosystem can benefit from it.
So I hate to push back Marshall, but I do think it's a false choice to say I'm going to get the good stuff.
But I'm only going to get it at the expense of it being, you know, by a dominant big firm.
Yeah, no, I think that's that's I didn't know much about the issues to us just a helpful context.
So your point is that the flaw in my assumption was attaching the technology, the action as a user to the way that that technology and the company that operates it are actually structured.
The questions of gatekeeping and ownership, etc, etc, etc, acquisition is entirely separate from the fact that the New York City subway system is was a bit antiquated before one of the reforms that happened.
So you already explained the need for bright line simple rules at the start of the episode. So we'll just close with this one, your fifth and final lesson, which is that there's going to be forward progress.
We talked a lot about a forward progress in this conversation, but also there are going to be setbacks like what are what are some what are some setbacks that you've encountered over the past five years.

Well, look, I think the pace of change is never quick enough.
When it comes to reining in repeat offenders.
It's hard to deal with that it's also changing how we approach regulation and enforcement.
That's going to be a long process.
I think we have a situation where the instinct on how to craft rules and how to make the markets work better involves long and complicated proposals that are tough for people to understand.
I do think the more we can move to simplicity, the more we can move to ways to promote open access, the better.
And I think that's going to take take some time, but I don't feel we should be daunted by it.
I think in many ways we have so much we have to do to make sure that small players that don't even exist today who don't even have a voice today that they can benefit from this approach of structuring markets in ways that invite new entrants and where dominant incumbents can really fear that someone is breathing behind them
and coming for them.
I do think that's kind of whether it's banking, whether it's tech, whether it's pharmaceuticals.
I think that's what we really want and the rules should reflect that.
Director Chopra, this has been a excellent conversation.
Thank you so much for joining me on the realignment.
Thanks so much, Marshall.
Really appreciate it.
Hope you enjoyed this episode.
If you learned something like this sort of mission or want to access our subscriber exclusive Q&A, bonus episodes and more, go to realignment.supercast.com and subscribe to our $5 a month, $50 a year, or $500 for a lifetime membership rates.
See you all next time.
Thank you.