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### Advantage One is DERS

#### Runaway warming causes extinction

Sears 21 [Nathan Alexander Sears, PhD Candidate in Political Science at The University of Toronto, Former Professor of International Relations at the Universidad de Las Américas, Trudeau Fellow in Peace, Conflict and Justice at the Munk School of Global Affairs, “Great Powers, Polarity, and Existential Threats to Humanity: An Analysis of the Distribution of the Forces of Total Destruction in International Security”, Conference Paper: International Studies Association, 2021 Annual Conference, March/April 2021, https://tinyurl.com/bfbfspzx]

*Climate Change*

Humanity faces existential risks from the large-scale destruction of Earth’s natural environment making the planet less hospitable for humankind (Wallace-Wells 2019). The decline of some of Earth’s natural systems may already exceed the “planetary boundaries” that represent a “safe operating space for humanity” (Rockstrom et al. 2009). Humanity has become one of the driving forces behind Earth’s climate system (Crutzen 2002). The major anthropogenic drivers of climate change are the burning of fossil fuels (e.g., coal, oil, and gas), combined with the degradation of Earth’s natural systems for absorbing carbon dioxide, such as deforestation for agriculture (e.g., livestock and monocultures) and resource extraction (e.g., mining and oil), and the warming of the oceans (Kump et al. 2003). While humanity has influenced Earth’s climate since at least the Industrial Revolution, the dramatic increase in greenhouse gas emissions since the mid-twentieth century—the “Great Acceleration” (Steffen et al. 2007; 2015; McNeill & Engelke 2016)— is responsible for contemporary climate change, which has reached approximately 1°C above preindustrial levels (IPCC 2018).

Climate change could become an existential threat to humanity if the planet’s climate reaches a “Hothouse Earth” state (Ripple et al. 2020). What are the dangers? There are two mechanisms of climate change that threaten humankind. The direct threat is extreme heat. While human societies possesses some capacity for adaptation and resilience to climate change, the physiological response of humans to heat stress imposes physical limits—with a hard limit at roughly 35°C wet-bulb temperature (Sherwood et al. 2010). A rise in global average temperatures by 3–4°C would increase the risk of heat stress, while 7°C could render some regions uninhabitable, and 11–12°C would leave much of the planet too hot for human habitation (Sherwood et al. 2010). The indirect effects of climate change could include, inter alia, rising sea levels affecting coastal regions (e.g., Miami and Shanghai), or even swallowing entire countries (e.g., Bangladesh and the Maldives); extreme and unpredictable weather and natural disasters (e.g., hurricanes and forest fires); environmental pressures on water and food scarcity (e.g., droughts from less-dispersed rainfall, and lower wheat-yields at higher temperatures); the possible inception of new bacteria and viruses; and, of course, large-scale human migration (World Bank 2012; Wallace-Well 2019; Richards, Lupton & Allywood 2001). While it is difficult to determine the existential implications of extreme environmental conditions, there are historic precedents for the collapse of human societies under environmental pressures (Diamond 2005). Earth’s “big five” mass extinction events have been linked to dramatic shifts in Earth’s climate (Ward 2008; Payne & Clapham 2012; Kolbert 2014; Brannen 2017), and a Hothouse Earth climate would represent terra incognita for humanity.

Thus, the assumption here is that a Hothouse Earth climate could pose an existential threat to the habitability of the planet for humanity (Steffen et al. 2018., 5). At what point could climate change cross the threshold of an existential threat to humankind? The complexity of Earth’s natural systems makes it extremely difficult to give a precise figure (Rockstrom et al. 2009; ). However, much of the concern about climate change is over the danger of crossing “tipping points,” whereby positive feedback loops in Earth’s climate system could lead to potentially irreversible and self-reinforcing “runaway” climate change. For example, the melting of Arctic “permafrost” could produce additional warming, as glacial retreat reduces the refractory effect of the ice and releases huge quantities of methane currently trapped beneath it. A recent study suggests that a “planetary threshold” could exist at global average temperature of 2°C above preindustrial levels (Steffen et al. 2018; also IPCC 2018). Therefore, the analysis here takes the 2°C rise in global average temperatures as representing the lower-boundary of an existential threat to humanity, with higher temperatures increasing the risk of runaway climate change leading to a Hothouse Earth.

The Paris Agreement on Climate Change set the goal of limiting the increase in global average temperatures to “well below” 2°C and to pursue efforts to limit the increase to 1.5°C. If the Paris Agreement goals are met, then nations would likely keep climate change below the threshold of an existential threat to humanity. According to Climate Action Tracker (2020), however, current policies of states are expected to produce global average temperatures of 2.9°C above preindustrial levels by 2100 (range between +2.1 and +3.9°C), while if states succeed in meeting their pledges and targets, global average temperatures are still projected to increase by 2.6°C (range between +2.1 and +3.3°C). Thus, while the Paris Agreements sets a goal 6 that would reduce the existential risk of climate change, the actual policies of states could easily cross the threshold that would constitute an existential threat to humanity (CAT 2020).

#### And, triggers multiple nuclear hotspots in Southeast Asia, Siberia, and the Arctic.

Klare 20 [Michael, The Nation’s defense correspondent, is professor emeritus of peace and world-security studies at Hampshire College and senior visiting fellow at the Arms Control Association in Washington, D.C. “How Rising Temperatures Increase the Likelihood of Nuclear War”. 1/13/20. https://www.thenation.com/article/archive/nuclear-defense-climate-change/]

President Donald Trump may not accept the scientific reality of climate change, but the nation’s senior military leaders recognize that climate disruption is already underway, and they are planning extraordinary measures to prevent it from spiraling into nuclear war. One particularly worrisome scenario is if extreme drought and abnormal monsoon rains devastate agriculture and unleash social chaos in Pakistan, potentially creating an opening for radical Islamists aligned with elements of the armed forces to seize some of the country’s 150 or so nuclear weapons. To avert such a potentially cataclysmic development, the US Joint Special Operations Command has conducted exercises for infiltrating Pakistan and locating the country’s nuclear munitions. Most of the necessary equipment for such raids is already in position at US bases in the region, according to a 2011 report from the nonprofit Nuclear Threat Initiative. “It’s safe to assume that planning for the worst-case scenario regarding Pakistan’s nukes has already taken place inside the US government,” said Roger Cressey, a former deputy director for counterterrorism in Bill Clinton’s and George W. Bush’s administrations in 2011.

Such an attack by the United States would be an act of war and would entail enormous risks of escalation, especially since the Pakistani military—the country’s most powerful institution—views the nation’s nuclear arsenal as its most prized possession and would fiercely resist any US attempt to disable it. “These are assets which are the pride of Pakistan, assets which are…guarded by a corps of 18,000 soldiers,” former Pakistani president Pervez Musharraf told NBC News in 2011. The Pakistani military “is not an army which doesn’t know how to fight. This is an army that has fought three wars. Please understand that.”

A potential US military incursion in nuclear-armed Pakistan is just one example of a crucial but little-​discussed aspect of international politics in the early 21st century: how the acceleration of climate change and nuclear war planning may make those threats to human survival harder to defuse. At present, the intersections between climate change and nuclear war might not seem obvious. But powerful forces are pushing both threats toward their most destructive outcomes.

Harry Reid Understood Power

In the case of climate change, the unbridled emission of carbon dioxide and other greenhouse gases is raising global temperatures to unmistakably dangerous levels. Despite growing worldwide reliance on wind and solar power for energy generation, the global demand for oil and natural gas continues to rise, and carbon emissions are projected to remain on an upward trajectory for the foreseeable future. It is highly unlikely, then, that the increase in average global temperature can be limited to 1.5 degrees Celsius, the aspirational goal adopted by the world’s governments under the Paris Agreement in 2015, or even to 2°C, the actual goal. After that threshold is crossed, scientists agree, it will prove almost impossible to avert catastrophic outcomes, such as the collapse of the Greenland and Antarctic ice sheets and a resulting sea level rise of 6 feet or more.

Climbing world temperatures and rising sea levels will diminish the supply of food and water in many resource-deprived areas, increasing the risk of widespread starvation, social unrest, and human flight. Global corn production, for example, is projected to fall by as much as 14 percent in a 2°C warmer world, according to research cited in a 2018 special report by the UN’s Intergovernmental Panel on Climate Change (IPCC). Food scarcity and crop failures risk pushing hundreds of millions of people into overcrowded cities, where the likelihood of pandemics, ethnic strife, and severe storm damage is bound to increase. All of this will impose an immense burden on human institutions. Some states may collapse or break up into a collection of warring chiefdoms—all fighting over sources of water and other vital resources.

A similar momentum is now evident in the emerging nuclear arms race, with all three major powers—China, Russia, and the United States—rushing to deploy a host of new munitions. This dangerous process commenced a decade ago, when Russian and Chinese leaders sought improvements to their nuclear arsenals and President Barack Obama, in order to secure Senate approval of the New Strategic Arms Reduction Treaty of 2010, agreed to initial funding for the modernization of all three legs of America’s strategic triad, which encompasses submarines, intercontinental ballistic missiles, and bombers. (New START, which mandated significant reductions in US and Russian arsenals, will expire in February 2021 unless renewed by the two countries.) Although Obama initiated the modernization of the nuclear triad, the Trump administration has sought funds to proceed with their full-scale production, at an estimated initial installment of $500 billion over 10 years.

Even during the initial modernization program of the Obama era, Russian and Chinese leaders were sufficiently alarmed to hasten their own nuclear acquisitions. Both countries were already in the process of modernizing their stockpiles—Russia to replace Cold War–era systems that had become unreliable, China to provide its relatively small arsenal with enhanced capabilities. Trump’s decision to acquire a whole new suite of ICBMs, nuclear-armed submarines, and bombers has added momentum to these efforts. And with all three major powers upgrading their arsenals, the other nuclear-weapon states—led by India, Pakistan, and North Korea—have been expanding their stockpiles as well. Moreover, with Trump’s recent decision to abandon the Intermediate-Range Nuclear Forces (INF) Treaty, all major powers are developing missile delivery systems for a regional nuclear war such as might erupt in Europe, South Asia, or the western Pacific.

Runaway warming: Expanses of ice are melting at unprecedented rates, with potentially grim geopolitical repercussions. (David Silverman / Getty Images)

All things being equal, rising temperatures will increase the likelihood of nuclear war, largely because climate change will heighten the risk of social stress, the decay of nation-states, and armed violence in general, as I argue in my new book, All Hell Breaking Loose. As food and water supplies dwindle and governments come under ever-increasing pressure to meet the vital needs of their populations, disputes over critical resources are likely to become more heated and violent, whether the parties involved have nuclear arms or not. But this danger is compounded by the possibility that several nuclear-armed powers—notably India, Pakistan, and China—will break apart as a result of climate change and accompanying battles over disputed supplies of water.

Together, these three countries are projected by the UN Population Division to number approximately 3.4 billion people in 2050, or 34 percent of the world’s population. Yet they possess a much smaller share of the world’s freshwater supplies, and climate change is destined to reduce what they have even further. Warmer temperatures are also expected to diminish crop yields in these countries, adding to the desperation of farmers and very likely resulting in widespread ethnic strife and population displacement. Under these circumstances, climate-related internal turmoil would increase the risk of nuclear war in two ways: by enabling the capture of nuclear arms by rogue elements of the military and their possible use against perceived enemies and by inciting wars between these states over vital supplies of water and other critical resources.

The risk to Pakistan from climate change is thought to be particularly acute. A large part of the population is still engaged in agriculture, and much of the best land—along with access to water—is controlled by wealthy landowners (who also dominate national politics). Water scarcity and mismanagement is a perennial challenge, and climate change is bound to make the problem worse. Climate and Social Stress: Implications for Security Analysis, a 2013 report by the National Research Council for the US intelligence community, highlights the danger of chaos and conflict in that country as global warming advances. Pakistan, the report notes, is expected to suffer from inadequate water supplies during the dry season and severe flooding during the monsoon—outcomes that will devastate its agriculture and amplify the poverty and unrest already afflicting much of the country. “The Pakistan case,” the report reads, “illustrates how a highly stressed environmental system on which a tense society depends can be a source of political instability and how that source can intensify when climate events put increased stress on the system.” Thus, as global temperatures rise and agriculture declines, Pakistan could shatter along ethnic, class, and religious lines, precisely the scenario that might trigger the sort of intervention anticipated by the US Joint Special Operations Command.

Assuming that Pakistan remains intact, another great danger arising from increasing world temperatures is a conflict between it and India or between China and India over access to shared river systems. Whatever their differences, Pakistan and western India are forced by geography to share a single river system, the Indus, for much of their water requirements. Likewise, western China and eastern India also share a river, the Brahmaputra, for their vital water needs. The Indus and the Brahmaputra obtain much of their flow from periods of heavy precipitation; they also depend on meltwater from Himalayan glaciers, and these are at risk of melting because of rising temperatures. According to the IPCC, the Himalayan glaciers could lose as much as 29 percent of their total mass by 2035 and 78 percent by 2100. This would produce periodic flooding as the ice melts but would eventually result in long periods of negligible flow, with calamitous consequences for downstream agriculture. The widespread starvation and chaos that could result would prove daunting to all the governments involved and make any water-related disputes between them a potential flash point for escalation.

As in Pakistan, water supply has always played a pivotal role in the social and economic life of China and India, with both countries highly dependent on a few major river systems for civic and agricultural purposes. Excessive rainfall can lead to catastrophic flooding, and prolonged drought has often led to widespread famine and mass starvation. In such a setting, water management has always been a prime responsibility of government—and a failure to fulfill this function effectively has often resulted in civil unrest. Climate change is bound to increase this danger by causing prolonged water shortages interspersed with severe flooding. This has prompted leaders of both countries to build ever more dams on all key rivers.

India, as the upstream power on several tributaries of the Indus, and China, as the upstream power on the Brahmaputra, have considered damming these rivers and diverting their waters for exclusive national use, thereby diminishing the flow to downstream users. Three of the Indus’s principal tributaries, the Jhelum, Chenab, and Ravi rivers, flow through Indian-controlled Kashmir (now in total lockdown, with government forces suppressing all public functions). It’s possible that India seeks full control of Kashmir in order to dam the tributaries there and divert their waters from Pakistan—a move that could easily trigger a war if it occurs at a time of severe food and water stress and one that would very likely invite the use of nuclear weapons, given Pakistan’s attitude toward them.

The situation regarding the Brahmaputra could prove equally precarious. China has already installed one dam on the river, the Zangmu Dam in Tibet, and has announced plans for several more. Some Chinese hydrologists have proposed the construction of canals linking the Brahmaputra to more northerly rivers in China, allowing the diversion of its waters to drought-stricken areas of the heavily populated northeast. These plans have yet to come to fruition, but as global warming increases water scarcity across northern China, Beijing might proceed with the idea. “If China was determined to move forward with such a scheme,” the US National Intelligence Council warned in 2009, “it could become a major element in pushing China and India towards an adversarial rather than simply a competitive relationship.”

Severe water scarcity in northern China could prompt yet another move with nuclear implications: an attempted annexation by China of largely uninhabited but water-rich areas of Russian Siberia. Thousands of Chinese farmers and merchants have already taken up residence in eastern Siberia, and some commentators have spoken of a time when climate change prompts a formal Chinese takeover of those areas—which would almost certainly prompt fierce Russian resistance and the possible use of nuclear weapons.

In the Arctic, global warming is producing a wholly different sort of peril: geopolitical competition and conflict made possible by the melting of the polar ice cap. Before long, the Arctic ice cap is expected to disappear in summertime and to shrink noticeably in the winter, making the region more attractive for resource extraction. According to the US Geological Survey, an estimated 30 percent of the world’s remaining undiscovered natural gas is above the Arctic Circle; vast reserves of iron ore, uranium, and rare earth minerals are also thought to be buried there. These resources, along with the appeal of faster commercial shipping routes linking Europe and Asia, have induced all the major powers, including China, to establish or expand operations in the region. Russia has rehabilitated numerous Arctic bases abandoned after the Cold War and built others; the United States has done likewise, modernizing its radar installation at Thule in Greenland, reoccupying an airfield at Keflavík in Iceland, and establishing bases in northern Norway.

Increased economic and military competition in the Arctic has significant nuclear implications, as numerous weapons are deployed there and geography lends it a key role in many nuclear scenarios. Most of Russia’s missile-carrying submarines are based near Murmansk, on the Barents Sea (an offshoot of the Arctic Ocean), and many of its nuclear-armed bombers are also at bases in the region to take advantage of the short polar route to North America. As a counterweight, the Pentagon has deployed additional subs and antisubmarine aircraft near the Barents Sea and interceptor aircraft in Alaska, followed by further measures by Moscow. “I do not want to stoke any fears here,” Russian President Vladimir Putin declared in June 2017, “but experts are aware that US nuclear submarines remain on duty in northern Norway…. We must protect [Russia’s] shore accordingly.”

#### The plan solves utility emissions---that's sufficient to stop extinction

Murray 18 [Michael, President of Mission:Data, has over fifteen years of experience with building automation, energy management, metering and public utility regulation. “IS IT TIME TO ENFORCE ANTI-TRUST LAWS AGAINST UTILITIES?”. 10/18/18. http://www.missiondata.io/news/2018/10/18/is-it-time-to-enforce-anti-trust-laws-against-utilities]

Since the electric utility industry’s inception over a century ago, utilities have acted in -- or meddled with, depending upon your point of view -- markets adjacent to the traditional power business. APS, in Arizona, sold energy-hogging washing machines and dryers in retail locations as late as the 1970s in order to increase demand for power. The founder of Commonwealth Edison, Samuel Insull, who was once Thomas Edison’s personal secretary, realized that peak demand occurred in the evening due to “illumination,” and so he built and purchased streetcar lines, sold electric irons and stimulated demand from various appliances usable during the daytime in order to improve power plant utilization around the clock. Even the Tennessee Valley Authority, a federal agency, offered substantial rebates for appliances in order to induce demand for electrons.

Despite all the talk of “natural monopoly,” electric utilities have played well outside the poles-and-wires sandbox for decades. Even today, utilities are in the news for building their own electric vehicle charging infrastructure. Some would say these actions, which are outside of the state statutory mandate to provide “safe and reliable” electric service, are sometimes thought to be sensible, or even desirable, evolutions of a maturing industry. But anti-trust enforcement is an often-ignored tool in the toolbox that deserves reexamination for at least three reasons.

First, the pace of climate change is frightening enough that scientists and world leaders are calling for unprecedented, dramatic shifts in American energy systems in the next twelve years. There is a significant possibility that electric utilities aren’t up to the task -- at least on the timescale needed. Looking at the railroads or telecommunication industries throughout history, regulated monopolies have rarely, if ever, adapted to new conditions in any timeframe that scientists now consider reasonable. (We could refer to electric utilities’ pace of change as “glacial,” but the irony is that the world’s glaciers are melting much faster than anticipated.) Can large, bureaucratic utilities compress their clockspeeds in order to rapidly decarbonize? It seems much more likely that the marketplace of distributed energy resources (DERs) could provide precisely the velocity that utilities lack. Connecting DERs to the grid as quickly as possible can likely only be accomplished by harnessing market forces.

Second, electric utilities have long used token gestures toward clean energy or “consumer empowerment” to neutralize opponents in ways that are anti-competitive. For example, one utility argued to us that third party data access was unnecessary because the utility offered its own website and mobile app. The utility has a state-granted monopoly over power distribution, yet where in statute did the state grant the utility a monopoly on websites and smartphone apps that use customer energy data? Similarly, utilities with energy efficiency (EE) programs have long argued that the existence of such programs make wholesale business model changes unnecessary. Gradualism, it is argued, is sufficient, and saving 0.5% to 1.0% of energy demand per year with EE programs is good enough. Unfortunately, however, utilities can stifle competition in the process. Why enable a truly competitive market for EE when you can control it entirely? In the wake of Cambridge Analytica, many see Facebook’s actions to increase user privacy as merely a ploy to delay sweeping new legislation from Congress. DER proponents should similarly view utilities’ token gestures for what they are -- small concessions that prolong the utilities’ dominance at the expense of cheaper, cleaner and more reliable distributed resources from a competitive market.

Third, new energy around anti-trust enforcement has recently entered the national political scene. America’s 40-year low in company formation coupled with the reaction to Facebook’s Cambridge Analytica scandal (which we wrote about before) have caused members of Congress to ask not only whether individuals’ data are adequately protected, but whether market concentration in the hands of a few players is in part responsible for the vulnerability in the first place. As recently as this week, twelve state Attorneys General wrote to the Federal Trade Commission expressing concern over data monopolies’ effects on competition:

“[T]here is concern that the immense advantages certain firms have in consumers’ data...may effectively block new entry or expansion, thereby limiting choice and, in some cases, harming competition.

“Firms that have obtained a disproportionate advantage in one line of business may find it easy to abuse that advantage by applying it to other lines of business in order to keep out competitors – who may be equally or more efficient but for the data advantage carried over from the first market. This could be of concern with new lines of business, and perhaps particularly in the context of new services. For example, firms with an asymmetric advantage in data might be able to identify competitive rivals at a very early stage, and perhaps eliminate competition…”

As data monopolies such as Facebook come under increasing scrutiny by politicians, we can harness the national attention on this topic to ask: Are electric and gas utilities data monopolies, too?

In our recent report, we highlighted the “demarcation point” in telecommunications. This is the point where the public telephone system ends and the customer’s in-home wiring begins. The FCC’s 1968 Carterfone decision defined this electrical interface and limited the telco’s role and responsibility to their side of the fence, thereby allowing market innovations on the customer’s side of the system such as wireless telephony, voice mail and modems. Without the Carterfone decision, we might still be using landline telephones manufactured by AT&T. Ma Bell would sue you for connecting another manufacturer’s telephone to their network.

Similarly, electric utilities will tend to exert their power over anything that touches the electricity system, whether that serves the public interest or not. Anti-trust enforcement by the Federal Trade Commission, Department of Justice and state Attorneys General is worthy of consideration to meet our pro-competition, pro-consumer and pro-environment goals. The DER community could use a fascinating 1976 Supreme Court Case, Cantor v. Detroit Edison Co., as a model: A retailer of lightbulbs sued the utility, Detroit Edison, for using its monopoly power to unfairly restrain the sale of lightbulbs in violation of the Sherman Anti-Trust Act. The Supreme Court agreed that state regulation does not exempt the utility from certain anti-trust laws.

There are limits to the utility’s monopoly. As a strategy for the DER community, settling with utilities for another decade of uninventive EE programs in which utilities pick winners and control the market is not going to meet our objectives. It’s time to look at anti-trust law to enforce limitations on utilities and mandate utility-to-DER interoperability standards. After all, restrictions on “behind-the-meter” activities of utilities are not only necessary to protect competition, but they may be necessary to save the planet.

#### Otherwise utilities turn rate changes into artificial barriers against new DERs entrants

Wara 17 [Michael, Associate Professor and Justin M. Roach, Jr. Faculty Scholar, Stanford Law School. “COMPETITION AT THE GRID EDGE: INNOVATION AND ANTITRUST LAW IN THE ELECTRICITY SECTOR”. 10/25/17. https://www.nyuelj.org/wp-content/uploads/2016/09/Wara\_ready\_for\_printing\_v2.pdf]

Following the release of Disruptive Challenges, utilities around the country, but especially in key solar markets, have responded in two significant ways to the challenge presented by distributed solar energy. First, they have sought to change rate structures to eliminate the incentives their customers may have to adopt the new technology, thereby suppressing the trigger of the death spiral.20 Second, and to a lesser extent, they have entered into direct competition with the companies that seek to provide distributed solar to electricity consumers, thereby positioning themselves to succeed in the new market environment to which the industry is transitioning.

Electric utilities have shareholders whose interests they are legally obligated to protect. And utilities appear to be acting to head off the nascent threat to a business model that has served them well for more than a century. Depending on one’s perspective, and on the details, these regulatory changes amount to either a more accurate allocation of grid costs or the erection of barriers to prevent entry of new, innovative competition. Utilities may be protecting their non-solar customers from the burden of subsidizing those who install solar, or they may be working to ensure that competition with their entrenched monopolies never occurs. Telling the difference has become a key unaddressed policy and legal question for public utility commissions.

Traditionally, utilities have billed their customers with rate structures based on energy sales. A customer’s bill was a function of their total energy consumption, measured in kilowatt hours (kWh) over a billing period, usually a month. In the face of new competition, utilities and their regulators are rapidly reassessing this energy sales-based rate structure and moving to a more complex structure, sometimes for all customers, but more often only for those customers that choose to install distributed energy resources. The new rate structures involve either a large fixed charge, independent of usage; a demand charge, which is set based upon a customer’s maximum rate of consumption during the billing period; or both, in addition to a charge for energy consumption. These rate structures are not novel—they have long been common for large customers such as large commercial or industrial customers, but they have never before been applied to the residential customers whose installation of solar PV poses a competitive threat to utilities.

Normally, when firms with market power move to quash competition, antitrust liability under the Sherman Act, or at least the risk of it, is created. However, because investor owned electric utilities are state-chartered monopolies, they are generally exempt from federal regulation of their anticompetitive conduct. But this exemption from antitrust liability is not unlimited. Moreover, the contours of the exemption are relatively unclear given current U.S. Supreme Court jurisprudence, especially in the face of a radical change in the technological structure of the industry. Thus, moves by utilities to prevent entry or forestall competition create at least a risk of antitrust liability, even if approved by their PUCs.

The division of regulatory authority between the federal and state governments under the Federal Power Act allocates oversight of wholesale electricity sales to the Federal Energy Regulatory Commission and oversight of retail electricity sales to state PUCs. Because the technological and economic challenge to utilities is coming from the retail customers of utilities rather than from, for example, large power plants that wish to sell power across the utilities’ transmission systems, state regulators will make the key decisions governing the competition between solar energy providers and regulated utilities. The Federal Power Act leaves to states the authority to regulate retail and intrastate energy transactions.22 The heart of this jurisdiction is the authority of state public utility commissions to regulate the rates that utilities charge their retail customers for power sales. Thus, public utility commissions are in the position of having to manage a difficult transition from a highly stable monopoly structure to a much more dynamic and competitive one, although one in which grid-supplied electric energy will remain central for many years to come.

Attempts to ensure market competition, or to avoid the social costs that occur when markets are not sufficiently competitive, require taking account of industries’ technological and economic structure. Traditionally, in the United States, competition has been policed in structurally competitive markets using antitrust law.23 However, in markets that are best characterized as natural monopolies, a grant of monopoly power has often been provided to a single firm that is then subject to an obligation to serve all customers and to price regulation via cost-of-service ratemaking.24 While both systems are far from perfect,25 many legal and economic scholars have argued that in their appropriate contexts— a structurally competitive market or a natural monopoly—these approaches fill a similar need.26 The most challenging context in which to apply either, however, is when industries undergo transition, often because of technological change, between a stable, naturally monopolistic structure, and unstable, structurally competitive one.2

In this Article, I detail the utility industry response to the call to action in Disruptive Challenges. I present evidence for the widespread existence of potentially anticompetitive actions by utilities from a survey of rate cases. My survey shows that, from 2013 to 2015, utilities in at least 19 states sought to restructure rates to reduce competition from distributed energy resources. Some utilities are also going into direct competition with solar providers. I explore the legal implications of this response by today’s utility industry to current and anticipated competition from distributed solar generation. I examine the ambiguities that exist in the current doctrine on utility antitrust immunity. I then suggest approaches for public utility commissions that may serve to reduce the anticompetitive aspects of new rate structures and so reduce the risk of antitrust liability for electric utilities as they respond to emerging competition from distributed energy resources. Finally, I argue that in managing responses to competition by electric utilities, public utility commissions must exercise oversight of the competitive impacts of rate cases.

#### Non price barriers ALONE stop DERs adoption

Wara 17 [Michael, Associate Professor and Justin M. Roach, Jr. Faculty Scholar, Stanford Law School. “COMPETITION AT THE GRID EDGE: INNOVATION AND ANTITRUST LAW IN THE ELECTRICITY SECTOR”. 10/25/17. https://www.nyuelj.org/wp-content/uploads/2016/09/Wara\_ready\_for\_printing\_v2.pdf]

Of course, this cannot be the whole story. Regulated utilities recognize the competitive threat, exercise market power, and are likely to respond in anticompetitive ways if permitted to do so. One would expect that regulated utilities, seeking to protect their shareholders’ value, would act to modify rates in ways that would forestall or eliminate new competitive entrants. Rates are just one method of creating barriers to entry for new technologies that may reduce returns for grid-supplied energy.

Other methods include rules that explicitly limit or forbid such competition or rules that erect non-price barriers to entry such as complicated, expensive, or time-consuming processes governing connection of DERs.43 The evidence suggests that utilities can, and to some degree are, engaging in a number of non-price-related practices that would normally raise competition concerns. Utility permission is required to interconnect distributed energy resources with the grid.44 Getting interconnection permission often results in varying time delays.45 Furthermore, it can result in substantial and unpredictable costs because utilities can require mitigation for new distributed energy resources in the form of distribution system investments.46 Utilities also have important informational advantages regarding where on the grid distributed energy may be most valuable.47

Nevertheless, given that most utilities have to routinely submit rate cases to their commissions, attempts to modify rates to forestall or eliminate competition are to be expected given the business incentives facing the utilities. The traditional job of the commission in this context is to evaluate these rates and to protect ratepayers—presumably balancing the interests of customers both with and without DERs against the expectation of utilities for a fair return on their investment. Generally speaking, protecting the interests of other firms that might compete with the utility, or considering the impacts of a rate on innovation, are not part of the process.

#### DERs are a renewable accelerant and solve warming

Roberts 21 [David, Clean Energy Expert with 15 Years of Experience, CE Writer @ Vox, Previously Writer @ Grist. “Rooftop solar and home batteries make a clean grid vastly more affordable”. 5/28/21. https://www.volts.wtf/p/rooftop-solar-and-home-batteries]

Energy nerds love arguing over the value of distributed energy resources (DERs), the rooftop solar panels and customer-owned batteries that are growing more popular by the day. There’s a fight in California right now over the value of energy from rooftop solar, just the latest skirmish in a long war that has ranged over numerous states.

The conventional wisdom in wonk circles is that the value provided by DERs is not sufficient to overcome the fact that the energy they produce is, on a per-kWh basis, much more expensive than that produced by utility-scale solar, wind, and batteries (residential solar is roughly 2.5 times as expensive as utility-scale solar, according to NREL).

For that reason, many wonks view DERs as a kind of boutique energy and argue that public funds are better spent on utility-scale energy.

Turns out: no, that’s wrong. Some groundbreaking new modeling demonstrates that the value of DERs to the overall electricity system is far greater than has typically been appreciated.

The work didn’t get the attention it deserved when it came out in late December, so I want to spend some time with it. First, though, let’s get clear on what we’re talking about.

The misguided battle between centralized and distributed energy

To understand the difference between centralized and distributed energy, it’s important to understand the distinction between transmission grids, the high-voltage power lines that carry electricity over longer distances, and distribution grids, the nests of low-voltage power lines (strung from the familiar brown poles) that carry electricity to local consumers. If the transmission grid is the interstate highway system of electricity, distribution grids are the local road systems that branch off those main trunks.

Centralized energy generally refers to utility-scale power generators (or energy storage) hooked up directly to the transmission grid: coal or natural gas plants, wind farms, solar fields, grid-scale battery stacks, what have you. The big stuff.

Distributed energy consists of anything that generates, stores, or manages electricity on distribution grids: rooftop solar panels, ground-mounted “community solar” arrays, consumer batteries, electric vehicles, building energy management software, and the like. (And then there’s truly distributed energy, in the form of off-grid installations that don’t connect to any larger grid. We won’t be getting into that today.)

Some distributed solar covering a parking lot. (Photo: Getty Images)

Some distributed solar covering a parking lot. (Photo: Getty Images)

To paint in broad and somewhat crude strokes, advocates for centralized renewable energy tend to view advocates for distributed energy as crunchy pastoral proto-hippies who can’t handle modernity. They note that utility-scale energy is cheaper and capable of powering highly energy-dense modern economies, whereas distributed energy is expensive and diffuse.

Advocates for distributed energy tend to view advocates for centralized energy as corporate capitalists in thrall to perpetual growth. They note that distributed energy brings a range of benefits, from resilience and independence to savings on avoided infrastructure, whereas utility-scale energy tends to do greater damage to landscapes and concentrate economic power.

Like many disputes in the energy world, this one has hardened into an identity battle, which is annoying and unproductive, since the answer, like with so many other disputes, is both-and.

Nonetheless, it’s worth noting that advocates for distributed energy have been at something of a disadvantage to date. It can be devilishly difficult to quantify the benefits of DERs, so a lot of the discussion gets into hand-wavey intangibles.

It can be especially difficult to quantify the benefits of DERs to larger grid systems, because energy modeling to date has effectively ignored distribution grids (which represent about a third of US spending on electricity). It has treated them purely as load, as demand to be satisfied, rather than as active, flexible participants in grid management.

Until now!

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Or, until a few months ago anyway. In December, energy modeler Christopher Clack (a familiar name to Volts readers) and his team at Vibrant Clean Energy (VCE) debuted a new way to model the energy system that takes into account DERs and the services they provide. They used it to study the effect of DERs on the electricity system and the results are summarized in “A New Roadmap for the Lowest Cost Grid.” (Full technical report here; slideshow presentation here.)

Spoiler: the cheapest possible carbon-free US grid involves vastly more centralized renewable energy, but it also involves vastly more distributed energy. What’s more, far from being alternatives, they are complements: the more DERs you put in place, the more centralized renewables you can put on the system. DERs are a utility-scale renewable accelerant.

The practical implication is that going all out on DERs is to everyone’s benefit, up and down the electricity supply chain, from utilities to consumers.

It is difficult to exaggerate just what a revolutionary change this represents in energy modeling and how much it turns conventional wisdom on its head. By making distribution grids visible to their model and co-optimizing those grids with the transmission system, the team at VCE uncovered a source of grid flexibility that could save a decarbonizing electricity system some half a trillion dollars through 2050. That’s real money.

(If you want to take a deep dive into the material, check out this interview with Clack on Chris Nelder’s Energy Transition Show. It is gleefully nerdy; I cannot recommend it highly enough.)

The cheapest energy scenario is clean and distributed

At the heart of VCE’s work is Clack’s state-of-the-art modeling tool: Weather-Informed energy Systems: for design, operations and markets planning (WIS:dom). It allows resolution down to two-mile square areas and makes dispatch decisions every five minutes. It takes into account granular weather data stretching over decades, climate impacts, policy, all forms of generation, storage, transmission, and on and on. VCE boasts that it “leverages 10,000 times more data points than traditional models.”

For this study, WIS:dom was augmented to better understand and represent distribution grids, so that it could bring transmission and distribution systems together in one system and co-optimize them. It was given better information about the costs and capabilities of DERs and more options; for example, instead of spinning up a new generator to meet peak demand, it could draw on distributed solar and batteries.

The transmission/distribution interface. (VCE)

The transmission/distribution interface. (VCE)

No one to Clack’s knowledge has done this before, so there was a lot of experimenting to get it right. “I had to spend a lot of money and time and resources upgrading the model to include this, with a lot of failures along the way,” says Clack. “That's why I'm confident that we did it first, because I spent a lot of time trying to find someone else that had done it, so I didn’t have to do the hard work.”

The modeling question was: if a high-resolution optimization tool is given DERs as an option, will it choose to deploy them? If so, how much?

The broader social question was: can DERs help lower the overall costs of a clean electricity system? If so, by how much?

The paper presents four core scenarios (which were run across a range of geographies):

BAU (business as usual), which includes existing policies and mandates but otherwise lets economics drive dispatch decisions; it deploys WIS:dom in a way that mimics traditional models;

BAU-DER, which does the same but uses the augmented form of WIS:dom, with greater visibility into distribution systems;

CE (clean energy), which models a system that reduces power sector carbon emissions 95 percent from 1990 levels by 2050; WIS:dom mimics traditional models;

CE-DER, which models a 95 percent reduction but uses the augmented form of WIS:dom.

To skip straight to the results: if you make DERs an option for the model, it deploys an absolute boatload of them (spending about $10 billion extra over the first 10 years), and by doing so substantially reduces overall system costs.

(VCE)

(VCE)

BAU-DER is $301 billion cheaper than BAU (the blue line above), which means we would save money from day one by deploying more DERs even if we didn’t care about climate change.

CE-DER is $473 billion cheaper than CE (the green line), which means DERs will make the decarbonization of electricity much less expensive than doing it all with centralized renewables and storage.

And here’s the kicker: CE-DER is $88 billion cheaper than BAU (the red line), which means, economically speaking, we’d be better off reducing electricity emissions by 95 percent using DERs than continuing with the status quo.

(And this is all just the pure economics — it leaves out the enormous health savings and environmental justice benefits of reduced point-source pollution.)

Whether you’re concerned about climate change or not, whether you want to reduce emissions or not, whether you care about the health and resilience of local communities or not, deploying DERs brings down system costs. It’s the fiscally responsible thing to do.

Now, note the shape of the red line above (and to a lesser extent, the green line). Scenarios that decarbonize using DERs are a smidgen more expensive for the first 10 years or so because they use those early years to deploy an enormous quantity of DERs.

The US currently has about 98 gigawatts of rooftop solar and less than a gigawatt of distributed energy storage installed. Through 2025, CE-DER deploys an additional 75 gigawatts of distributed solar and 27 gigawatts of distributed storage; by 2035, it is 200 and 90, respectively. (By 2050, it is 247 and 160.)

That is an absolute DER building binge, starting now.

(VCE)

(VCE)

After that early period of heightened investment, though, savings begin to skyrocket as DERs pay off in system benefits.

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DERs make everything else on the grid work better

For the entire history of electricity up until about five minutes ago, grid operators viewed electricity demand as an exogenous variable, a set figure they had to meet with supply, not something they had much control over.

The key to the value of DERs is that they make electricity demand more controllable. With energy generation and storage scattered throughout distribution grids, grid operators have a way to move energy around, both geographically and temporally, without firing up more power plants. They can absorb extra energy if there’s a dip in demand or produce extra energy if there’s a spike. The overall effect is to smooth out the “demand curve.”

Look at the thick black line on the top right graph below — that’s the distribution demand curve throughout a representative year:

Look at the demand curve on the top right and then on the bottom right: flatter! (VCE)

Look at the demand curve on the top right and then on the bottom right: flatter! (VCE)

Now note the same black line on the bottom right graph. By satisfying the little demand peaks with distributed solar and storage, the demand for utility-scale energy is leveled off.

Here’s a graph that shows a “load duration curve,” which reveals how high demand is, for how often in the year, and how DERs affect it:

(VCE)

(VCE)

As you can see by the sharp spike on the left, there are relatively rare periods of extremely high demand (peaks). The problem is that the current electricity system has to be sized to meet those peaks, even if that means many power plants end up idle most of the time. Clack says that today, roughly 20 to 25 percent of generation capacity on the grid — some 300-350 gigawatts — covers around 3 percent of the energy load each year. (This, in a nutshell, is why electricity systems everywhere are so overbuilt.)

The light blue-shaded area on the curve shows the reduction in demand that DERs can provide (the dark blue on the right is the increase in demand). Not only can DERs “shave the peak” by an average of 17 percent nationwide, they can reduce the demand for utility-scale energy for 80 percent of the hours of the year. They make the load duration curve more level as well.

These demand-leveling effects bring four big benefits:

First, if you don’t have those big peaks in demand for utility-scale energy, then you don’t need that 20 to 25 percent of capacity that only runs during peaks. Not building those plants, or shutting them down early, saves lots of money.

Second, a more level demand curve means that all generators on the system will run more consistently, with fewer ramps up and down, at closer to their full capacity, helping to maximize their value.

Third, a more level demand curve means that transmission congestion will be reduced and transmission assets will be more efficiently utilized. (In one of my Transmission Month posts, I discussed “energy storage as a transmission asset.” This is the same idea, on a broader scale.)

Fourth, DERs offer the system the option to shift demand to meet variable supply, rather than always forcing it to shift supply to meet demand. Shifting demand is often much cheaper.

These benefits explain why CE-DER is so much cheaper than CE, and even than BAU. They explain why, even though rooftop solar may cost more than centralized solar on a per-kWh basis, its value is greater.

Infusing distribution systems with DERs allows grid operators more stability and more options — including more renewables.

DERs enable more utility-scale renewables

Wind and solar are cheap, but they are variable. They come and go on their own schedule, outside of our control. There will be times — seconds, minutes, hours, sometimes weeks and months — when wind and solar dip and something else is needed to fill the gaps.

Conventionally, this role is played by dispatchable generators that can be turned up and down at will — these days, mostly natural gas plants. Given that most natural gas plants, at least those without carbon capture, will have to be phased out in a decarbonized system, there’s a hunt on for “firm” zero-carbon alternatives — think nuclear, hydro, natural gas or biomass with carbon capture, or geothermal.

But VCE’s modeling shows that a big chunk of that role can be played by DERs, which Clack calls a “firming agent on the load.”

By bringing demand more under grid operators’ control, DERs virtually eliminate curtailment, or discarding of renewable energy due to temporary oversupply, through 2045. Just as they allow transmission to be used more effectively, they allow us to consume more of the energy generated by existing utility-scale renewables.

They also prevent the familiar problem of “value deflation” — more wind and solar energy at particular times and places competes with existing wind and solar energy from the same times and places — by giving grid operators a whole series of time- and location-specific demand knobs that they can turn up or down at will to better accommodate renewables.

By preventing value deflation, DERs will allow for more new renewables on the system (and the retirement of more thermal and fossil generation). That’s why the CE-DER scenario builds more utility-scale wind and solar than the CE scenario. CE-DER builds 800 gigawatts of utility wind, 800 of utility solar, and 200 of utility storage, whereas CE builds 60 gigawatts less wind and 50 less solar (though slightly more batteries).

By enabling renewable energy to be moved around, DERs unlock more of it — with, again, enormous public health benefits that are not captured in the model.

Put technically, as Clack told Nelder, “the model says that distributed [solar] and storage in some combination ends up being higher value than the differential in the [levelized] cost of utility-scale solar and distributed solar.”

Put more colloquially, though it will require enormous upfront investment in the coming decade, laying a quilt of DERs over the nation’s distribution systems is the best thing we can possibly do to enable the rapid emission reductions we will need in the decade after.

DERs are not a boutique version of, or a distraction from, utility-scale renewables; they are a necessary complement, an enabler and accelerator.

(VCE)

(VCE)

DERs will mean more jobs

VCE did some analysis estimating that the DER-enhanced scenarios would add an additional million jobs per year relative to conventional scenarios.

It stands to reason that a huge deployment of DERs would create lots of jobs. These are very hands-on, labor-intensive projects. And since distribution systems are ubiquitous in the US, it would create jobs in every part of the country (though not uniformly).

I’m generally suspicious of employment projections, so I don’t know how much stake to put in the particular figure, but we can be confident that more DERs = more jobs.

DERs could hasten the collapse of existing power markets

VCE’s modeling shows that current electricity markets, if they are not reformed, basically collapse in the next 10 to 20 years. DERs will hasten that collapse in two ways.

First, they will reduce demand peaks, which produce a great deal of value in current markets. Lots of peaker plants will get cancelled or shut down and peaker money will dry up.

Second, DERs will enable more utility-scale wind and solar, which have zero marginal costs. They are all upfront capital costs; once a solar panel is in place, it doesn’t cost it anything more to produce the next kW. It can bid into markets at $0. Pretty soon, so much of the market’s power will come from zero-marginal-cost sources that prices will be $0 most of the year, and $0 means zero profit for participating generators.

Electricity markets were built for fossil fuel generators. They need reform — but that’s a topic for a different post. (This is a good start.)

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Clean electrification boosts the value of DERs

An intriguing note: Clack says that if WIS:dom is told not just to decarbonize electricity but to decarbonize the whole economy (i.e., electrify everything), the value of DERs to the grid effectively doubles.

An economy-wide decarbonization scenario that makes use of DERs saves a trillion dollars relative to one that doesn’t. VCE will have a new report on economy-wide decarbonization coming out soon.

DERs also provide a range of co-benefits

VCE’s modeling only captures DERs’ contribution to overall grid performance and cost. It does not capture many of the benefits that have long attracted customers to them: resilience against brownouts and blackouts, the capacity to go off-grid temporarily (or permanently), independence from the whims of utilities and state regulators, reduced personal greenhouse gas emissions, and most of all, lower electricity bills.

All of those benefits will help drive early adoption of DERs as their value to the grid ramps up (though they should be boosted by utility, state, and federal incentives).

The value of DERs should be visible in all models and states

Clack says that it’s just four paragraphs of code that open WIS:dom up to distribution grids — other models, including the models that utilities use in planning, could easily replicate this.

“One of the reasons I was so keen on having it be relatively simplistic is, it should be able to be adopted by other models,” he says. “Maybe they wouldn't show as much savings as we do, because of different model logic, but I'm pretty confident they will show similar trajectories.”

Today, we have released our full technical report on the "Why Local Solar and Storage Costs Less". Two weeks ago, we released the main findings: savings of $473 billion when co-optimizing distribution. This released provides more details!

Image

December 14th 2020

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This is just one more area where outdated utility models and practices are keeping costs too high and the clean-energy transition too slow. Utilities have traditionally been hostile to DERs, viewing them as competitors or net costs, but VCE’s modeling demonstrates what should have been obvious: having flexible generation and storage infused throughout distribution grids offers a fantastic tool to help stabilize a grid with growing renewables and increasing electric loads and bring costs down for all ratepayers.

#### Integration in the US is modeled globally.

Shen 21 [Bo Shen, Energy Analysis and Environmental Impacts Division, Lawrence Berkeley National Laboratory, Fredrich Kahrl, 3rdRail Inc., and Andrew J. Satchwell, Energy Analysis and Environmental Impacts Division, Lawrence Berkeley National Laboratory, "Facilitating Power Grid Decarbonization with Distributed Energy Resources: Lessons from the United States", Annual Review of Environment and Resources, vol. 46, no. 1, 7/2/21, https://www.annualreviews.org/doi/pdf/10.1146/annurev-environ-111320-071618]

Globally, renewable energy is already playing a significant and growing role in electricity systems. The world's renewable energy power generation capacity more than doubled from 1,223 GW in 2010 to 2,532 GW in 2019 (9). Wind and solar account for most of the recent growth in renewable generation. The installed capacity of wind energy increased from 181 GW in 2010 to 622 GW in 2019 while the installed solar photovoltaic capacity increased significantly from 40 GW in 2010 to 579 GW in 2019 (9).

The United States is among the world's fastest-growing countries in terms of both renewable installed capacity and power generation (10). Renewable electricity generation in the United States doubled from 2008 to 2018, with wind and solar generation accounting for the majority of growth (11). As a result of rapid growth, the share of nonhydro renewable generation rose from 3% of US electricity generation in 2008 to 10% in 2018 (11, 12). The share of renewable generation is expected to continue to grow in order to meet state-level renewable energy targets and state and federal climate goals.

Approximately half of the growth in renewable energy deployment in the United States can be attributed to state-level renewable energy targets (13). As of 2019, 13 states as well as Washington, DC, and Puerto Rico had either enacted legislation or issued executive orders with a commitment to achieving either 100% renewable energy or 100% clean energy goals (14).1 Figure 1 shows state-level renewable energy targets adopted across the United States by the end of 2019.

[FIGURE 1 OMITTED]

Despite ambitious renewable energy targets, major obstacles must be overcome to enable future energy systems to economically and reliably operate with high penetration of variable renewable energy (VRE). As the US Department of Energy points out, “[o]ne of the greatest challenges to integrating VRE lies in managing its effects (variability, uncertainty, location specificity, nonsynchronous generation, and low capacity factor) on grid operations and planning” (15, p. 61). With the large-scale deployment of wind and solar generation on both the grid side and customer side, transmission system operators and distribution utilities face new operational challenges. Distributed energy resources (DERs) are emerging as a potential solution alongside traditional generation, transmission, and distribution infrastructure for addressing these challenges.

As the US Federal Energy Regulatory Commission (FERC) points out, there is no uniform definition of DERs, and the definition keeps changing (16). The US National Association of Regulatory Utility Commissioners (17, p. 45) broadly defines DERs to reflect their diversity:

A DER is a resource sited close to customers that can provide all or some of their immediate electric and power needs and can also be used by the system to either reduce demand (such as energy efficiency) or provide supply to satisfy the energy, capacity, or ancillary service needs of the distribution grid. The resources, if providing electricity or thermal energy, are small in scale, connected to the distribution system, and close to load. Examples of different types of DER include solar photovoltaic (PV), wind, combined heat and power (CHP), energy storage, demand response (DR), electric vehicles (EVs), microgrids, and energy efficiency (EE).

DERs have seen rapid growth in the United States. Distributed PV installations grew from 0.4 GW in 2010 to 10.5 GW in 2017 (18). According to data from the US Energy Information Administration (19, 20), the total existing small-scale storage power capacity connected to the US distribution network increased from 66 MW in 2016 to 234 MW in 2018. Among the capacity in 2018, 97% were behind-the-meter installations, and the share in the commercial, residential, and industrial sectors were slightly higher than 50%, 31%, and 15%, respectively. Demand response (DR), which is a program aimed at adjusting electricity demand “in response to price, monetary incentives, or utility directives so as to maintain reliable electric service or avoid high electricity prices (21, p. i),” has been active in the United States over the past five years. Between 2015 and 2019, the number of customers enrolled in DR programs increased from 9 million in 2015 to almost 11 million in 2019. At the same time, the actual peak demand savings averaged 12.2 GW per year, and the average annual power savings was 1357.4 GWh (22). Advanced metering infrastructure (AMI) is the foundation for the expansion of distributed energy systems. AMI is “an integrated system of smart meters, communications networks, and data management systems that enables two-way communication between utilities and customers” (23, p. 4). The number of advanced meters increased from 58.5 million in 2014 to 86.8 million in 2018. Its penetration rate (the proportion of advanced meters in the total number of meters deployed in the United States) jumped from 38.8% to 56.4% in the same period (24).

The role of DERs as an electricity system resource has evolved over time. Historically, most DERs in the United States were demand-side management programs funded and administrated by utilities with the goals of cost-effectively reducing demand and enhancing utilities’ interactions with their customers. These traditional programs focused primarily on energy efficiency and interruptible load management programs oriented around peak reliability needs.

Advanced DER applications go beyond traditional power system reliability needs to serve customers’ growing interests in new, customer-sited applications such as distributed generation (DG), energy storage, load response, and managing electric vehicles while helping address emerging power system challenges. These challenges include the need to balance a large amount of solar and wind energy output that is neither constant nor fully predictable and the need to more actively operate distribution systems that have growing penetrations of customer-sited resources. Through bidirectional power flow, advanced system control, and real-time information flow, DERs are well suited to provide flexible resources to enable dynamic load adjustments to real-time operational conditions, thus improving the stability of the grid and enhancing grid flexibility for integrating VRE (25).

DERs offer numerous services and provide value to three different power system perspectives—regional system operators, utilities, and customers (see Table 1). Many of these services are critical for operating a stable and flexible electricity system powered by VRE (26). In addition to the benefit of grid flexibility, DERs could also play an increasingly critical role in improving power system resilience to deal with significant disruptions resulting from severe weather, deadly wildfires, and other extreme events (27).

[TABLE 1 OMITTED]

This article examines US regulatory policy and implementation experience in deploying DERs to offer insights for the design of energy and climate policies and the potential role and challenges of DERs in decarbonization and improved power system resilience, in both the United States and other countries. The remainder of the article is organized as follows. Section 2 presents the framework through which this article reviews the US experience and lessons learned in adopting enabling policies and creating effective markets and business models for DER. Section 3 focuses on the role of specific federal and state policy measures in the United States in driving DER deployment. Section 4 discusses various market strategies and business models adopted in the United States in facilitating DER expansion. Section 5 describes major challenges and lessons learned thus far that may inform possible solutions in both the United States and elsewhere. Section 6 concludes the article with insights for other countries.

#### Only antitrust solves—provides vital private deterrence and regs fail

Vaheesan 19 [Sandeep Vaheesan is legal director at the Open Markets Institute. Vaheesan previously served as a regulations counsel at the Consumer Financial Protection Bureau, where he helped develop and draft the first comprehensive federal rule on payday, vehicle title, and high-cost installment loans. Paula Bliss, of counsel, Bernheim Kelley Battista & Bliss, MARK A. GOTTLIEB Counsel of Record PUBLIC HEALTH ADVOCACY INSTITUTE, PNE Energy Supply LLC, On Behalf Of Themselves And Others Similarly Situated V. Eversource Energy And Avangrid, Inc. Motion Of Open Markets Institute For Leave To File Amicus Curiae Brief In Support Of Plaintiff-Appellant. 10/25/19, https://static1.squarespace.com/static/5e449c8c3ef68d752f3e70dc/t/5eaa1d9d2790182e187cc171/1588207017816/19-1678\_Documents-as-filed.pdf]

Since Congress and FERC have committed to market-based pricing in wellhead gas, resales of gas, and wholesale electricity, the full application of the antitrust laws is critical for ensuring the success of this legislative and regulatory market creation. Even as FERC maintains oversight of the electricity and natural gas markets, this regulatory supervision has important limitations and cannot be expected to root out all anticompetitive conduct. Antitrust enforcement complements FERC oversight and provides vital deterrence against anticompetitive practices in gas and electricity markets. Specifically, antitrust suits brought by injured consumers and businesses provide strong deterrence of anticompetitive conduct as well as compensation. In dismissing the plaintiff-appellant’s suit, the district court severely weakened the effectiveness of the antitrust laws and empowered sellers of gas and electricity to profit through anticompetitive market conduct. FERC oversight is not adequate to prevent anticompetitive conduct and ensure that markets in natural gas and electricity are free from collusive, exclusionary, and other unfair market conduct. Although FERC has an obligation to maintain “just and reasonable rates” under the Natural Gas and Federal Power Acts, 15 U.S.C. § 717c, it has only very limited tools to police specific anticompetitive conduct in the gas and electricity markets and to provide any remedy for anticompetitive market conduct it discovers after the fact.

Even assuming FERC acts against anticompetitive and other unfair conduct, 5 its remedies provide inadequate deterrence and cannot be counted on to compensate injured parties. FERC can impose monetary penalties of up to a fixed maximum amount per day on parties over whom it has jurisdiction and who have violated FERC rules in gas or electricity markets. 15 U.S.C. 717t-1; 16 U.S.C. 825o-1(b). All such penalties, however, go to the United States Treasury, not to the injured customers, absent agreement by the defendant. FERC can also order disgorgement of ill-gotten profits as a result of market manipulation. Revised Policy Statement on Enforcement, 123 FERC ¶ 61,156 (2008). Both remedies are, at best, an imperfect approximation of market-wide injury to purchasers and, at worst, a small fraction of market harm and woefully inadequate to deter market misconduct. And they offer no guarantee of full compensation for injured parties.

Given FERC’s limited market oversight powers, antitrust enforcement plays an important role in gas and electricity markets. Antitrust lawsuits help identify and stop anticompetitive practices and ensure that market-based pricing serves the public. When sellers engage in collusion, exclusion and mergers, they can enhance and maintain their market power and profit at the expense of purchasers and rivals. See, e.g., Keyspan, 763 F.Supp. at 636 (describing alleged effects of anticompetitive swap agreement involving rival generators in New York City). As federal regulators have renounced or been deprived by Congress of direct price setting authorities, the full effectiveness of the antitrust laws is essential. Jim Rossi, Lowering the Filed Tariff Shield: Judicial Enforcement for a Deregulatory Era, 56 Vand. L. Rev. 1591, 1648 (2003). See also Alfred E. Kahn, Deregulatory Schizophrenia, 75 Calif. L. Rev. 1059, 1059 (1987) (“While prepared to defend enthusiastically the deregulations with which I have been involved, I feel equally strongly that they have greatly accentuated the importance of antitrust enforcement.”).

The filed rate doctrine’s limitation on private antitrust enforcement subverts the effectiveness of the antitrust laws. The ability of injured consumers and businesses to bring antitrust suits is a pillar of the American antitrust enforcement regime. Under the Clayton Act, “[a]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue . . ., and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.” 15 U.S.C. § 15. See, e.g., Blue Shield of Va. v. McCready, 457 U.S. 465, 472 (1982) (quoting Mandeville Island Farms, Inc. v. Am. Crystal Sugar Co., 334 U.S. 219, 236 (1948)) (“Congress sought to create a private enforcement mechanism that would deter violators and deprive them of the fruits of their illegal actions, and would provide ample compensation to the victims of antitrust violations. . . . As we have recognized, ‘[t]he statute does not confine its protection to consumers, or to purchasers, or to competitors, or to sellers. . . . The Act is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated.’”).

Empirical research shows the public importance of “private attorneys general” and the value of having more enforcers on the beat against corporate collusion, consolidation, and monopolization. A study of 60 private antitrust lawsuits between 1990 and 2011 found that these actions generated more deterrence than the federal government’s entire criminal antitrust enforcement activity over the same period. Joshua P. Davis & Robert H. Lande, Defying Conventional Wisdom: The Case for Private Antitrust Enforcement, 48 Ga. L. Rev 1, 26 (2013). And these lawsuits compensated injured parties, whereas public enforcement generally did not.

#### Extinction level warming is reversible

Bendix 21 [Aria Bendix , Senior Reporter at Insider, covering science and health citing IPCC Aug 2021 Climate Report. Aylin Woodward , and Morgan McFall-Johnsen. “Climate scientists want you to know it's not too late”. 8/10/21. https://www.businessinsider.com/still-time-to-address-climate-change-ipcc-scientists-report-2021-8]

At first glance, Monday's long-awaited report from the Intergovernmental Panel on Climate Change was bleak. It found that some consequences of human-driven emissions are irreversible for centuries to millennia, and that warming will continue to some extent over the next two to three decades, regardless of how much emissions drop.

But the assessment also emphasizes that the worst-case climate disasters aren't inevitable: Every half-degree of warming that can be averted makes a huge difference — including in the intensity and frequency of extreme heat, rainfall, and drought. Even incremental reductions in emissions today would stave off more catastrophic events in the coming decades.

The IPCC report comes from a working group of hundreds of scientists whose last assessment was in 2013. This new report shows that human-caused emissions have led the planet to warm by 1.1 degrees Celsius in the last 170 years. Some glacial melting and sea-level rise will continue for millennia, no matter what happens next.

But Youba Sokona, vice-chair of the IPCC, highlighted a more optimistic takeaway: "We are in the right moment to completely change the direction we are taking," he told Insider.

In the IPCC's worst-case scenario, global emissions would double by 2050, causing temperatures to rise an average of 2.4 degrees Celsius between 2041 and 2060. But in the best-case scenario, the global temperature would rise just 1.5 degrees between now and 2040, then dip back down by the end of the century.

That means there's still time to act.

"It is virtually certain that global surface temperature rise and associated changes can be limited through rapid and substantial reductions in global greenhouse-gas emissions," the IPCC authors wrote.

The world has some time to lower emissions

paris climate agreement

A woman walks past a map at the World Climate Change Conference 2015 (COP21) at Le Bourget, near Paris, France, on December 11, 2015. Reuters/Stephane Mahe

In the Paris agreement, world leaders pledged to cut greenhouse-gas emissions enough to keep global temperatures from rising more than 1.5 degrees Celsius above pre-industrial levels. Now, Earth's temperature is very likely to blow past that mark in the next 20 years, according to the IPCC report.

But the Paris agreement's larger goal was to avoid a 2-degree rise at all costs. That's still possible, scientists say.

"It's very likely that we'll exceed 1.5 degrees," Greg Flato, a climate scientist from the Canadian Center for Climate Modeling and one of the new report's co-authors, told Insider. "It's possible to exceed slightly and stabilize if we follow a pathway of deep emissions cuts by midcentury."

Already, the world cut carbon emissions by 2.5 billion tons in 2020, since pandemic-related lockdowns meant fewer vehicles on the road, planes in the sky, and less collective electricity use at peak times. That's a roughly 6% decline from the year prior, following decades of rising global emissions.

"The lesson we can learn from that is that we can change our behavior drastically in the short term," Sokona said.

The IPCC found that every trillion tons of carbon emitted leads the world's temperature to rise roughly 0.45 degrees. To stay under the 2-degree threshold, we have about 900 billion tons of carbon left in the budget. In 2019, emissions reached about 37 billion tons — so if that rate continues and no carbon gets removed from the atmosphere, we'd have about 25 years remaining.

There's still time to mitigate extreme heatwaves, drought, and floods

Drought Brazil

A Brazilian worker surveys the cracked ground of Jaguary dam in Braganca Paulista on January 31, 2014. Nacho Doce/Reuters

A difference of half a degree may sound minor, but avoiding that increase would make the difference between extreme and deadly heatwaves, droughts, and floods and milder, less frequent versions of these events.

At 2 degrees of warming, extreme temperature changes could be twice as pronounced as they would be at 1.5 degrees, the IPCC report found. Globally, the chance of at least three months of drought per year would rise from about 20% at a 1.5-degree temperature rise to 35% at 2 degrees.

The Atlantic Meridional Overturning Circulation (AMOC), meanwhile, could lose nearly 30% of its pre-industrial strength if global temperatures rise anywhere between 1.5 and 2 degrees Celsius. This system of ocean currents moves warm water from the equatorial tropics up to Europe and the north Atlantic. The influx of warmer water contributes to western Europe's mild, temperate climate, so if the current gets weaker, it could result in more intense winters in some places and more frequent heatwaves and droughts in others.

Higher temperatures will also shrink the planet's ice sheets, snow cover, glaciers, and permafrost — a layer of soil that used to stay frozen year-round. As permafrost thaws, it releases carbon, which traps heat and contributes to additional warming. With each degree of warming, the top 3 meters of permafrost could lose 20-30% of its volume, the IPCC found.

Even if humanity doesn't wind up avoiding all of these disasters, the report at least tells policymakers what's in store.

"Having that information today allows us to begin the actions that will make us ready a decade from now, mid-century, and at the end of the century," Alex Ruane, one of the report's lead authors, told Insider.

"This provides a kind of roadmap, or at least a forewarning, of the types of changes that we have to be prepared for," Ruane said, adding, "This is where my optimism lies."

### Advantage Two is Prices

#### Filed rate immunizes manipulation of market prices for utility profits. Causes blackouts and energy price hikes.

Vaheesan 19 [Sandeep Vaheesan is legal director at the Open Markets Institute. Vaheesan previously served as a regulations counsel at the Consumer Financial Protection Bureau, where he helped develop and draft the first comprehensive federal rule on payday, vehicle title, and high-cost installment loans. Paula Bliss, of counsel, Bernheim Kelley Battista & Bliss, MARK A. GOTTLIEB Counsel of Record PUBLIC HEALTH ADVOCACY INSTITUTE, PNE Energy Supply LLC, On Behalf Of Themselves And Others Similarly Situated V. Eversource Energy And Avangrid, Inc. Motion Of Open Markets Institute For Leave To File Amicus Curiae Brief In Support Of Plaintiff-Appellant. 10/25/19, https://static1.squarespace.com/static/5e449c8c3ef68d752f3e70dc/t/5eaa1d9d2790182e187cc171/1588207017816/19-1678\_Documents-as-filed.pdf]

\*italics from original document

Under a system of market-based pricing, full and robust antitrust enforcement is vital to protect the public from the collusive, exclusionary, and other unfair practices of producers and traders of electricity and natural gas. See Alfred E. Kahn, Deregulatory Schizophrenia, 75 Calif. L. Rev. 1059, 1059 (1987) (“While prepared to defend enthusiastically the deregulations with which I have been involved, I feel equally strongly that they have greatly accentuated the importance of antitrust enforcement.”). In this case, however, the court expanded the filed rate doctrine, which was created to protect the integrity of *regulator-approved rates*, to immunize Eversource Energy and Avangrid’s manipulation of *market prices* for electricity and gas from a private antitrust lawsuit. In broadening the filed rate doctrine to dismiss the plaintiff-appellant’s lawsuit, the district court granted a *de facto* license for sellers of gas and electricity to use their market power to transfer millions or even billions of dollars from the public into their own coffers.

Plaintiff-appellant accuses Eversource Energy and Avangrid (two vertically integrated utilities that distribute gas and electricity to end-use customers and own power generation assets) of misusing their market power at the natural gas resale level and engineering a chain of events that inflicted substantial harm on New England residents. The defendants-appellees abused their gas pipeline use rights to create an artificial shortage of resale gas, a key input for generating electricity in New England. By limiting the supply of gas in New England and raising the price of natural gas, the defendants-appellees increased the costs of generating electricity. And by raising the costs of generating electricity, they increased wholesale electricity prices and ultimately retail electricity costs for New Englanders by more than $3 billion.

Over the past four decades, legislators and regulators have limited and even withdrawn public utility regulation over the production and sale of natural gas and the generation of electricity and introduced market-based pricing in these areas. In lieu of cost-of-service regulation, market-based pricing now governs the sale of gas at the wellhead where gas is produced, the resale of surplus gas to purchasers like electricity generators, and the sale of electricity at the wholesale level. In contrast to the previous regulated environment, the conduct of sellers in these markets is today “governed in the first instance by business judgment, and not regulatory coercion.” Otter Tail Power Co. v. United States, 410 U.S. 366, 374 (1973).

As these legislative and regulatory decisions have lifted traditional price controls, participants in the wellhead gas, gas resale, and wholesale electricity markets exercise discretion that they previously did not have. Competition in wellstructured markets constrains this private discretion and can ensure the availability of plentiful and affordable gas and electricity. When markets are concentrated or when market participants engage in collusive, exclusionary, or other unfair practices, however, this private discretion becomes private power. Under these circumstances, sellers can use their unilateral or collective market power to profit at the expense of purchasers of gas and electricity.

As the plaintiff-appellant alleges, the risk of misconduct in these markets is real. And the alleged misconduct is not an aberration. In electricity markets, generators have engaged in market power abuse on a recurring basis. This abuse was most powerfully illustrated in the California electricity crisis in 2000. In-state generators with market power created artificial shortages of electricity and caused price spikes and rolling blackouts in the state, extracting billions of dollars in private taxes from the public. Severin Borenstein, James B. Bushnell & Frank A. Wolak, Measuring Market Inefficiencies in California’s Restructured Wholesale Electricity Market, 92 Am. Econ. Rev. 1376 (2002).

#### And, high prices undermine growth—addressing anticompetitive conduct solves

Moss 13 [Diana Moss is Vice President and Director, American Antitrust Institute (AAI), and Sandeep Vaheesan is Special Counsel, AAI, "Collusive Agreements in the Energy Industry: Insights into U.S. Antitrust Enforcement", 1/10/13, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2198539&download=yes]

The importance of the energy sector in the U.S. economy needs little explanation. According to the Energy Information Administration (EIA), Americans spent over $1 trillion, or roughly eight percent of U.S. gross domestic product, on energy in 2009.4 Energy expenditures comprise a major fraction of household budgets in the U.S. EIA estimates show that U.S. households spent an average of $2,024 on energy for heating in 20095 and $2,832 on gasoline in 2011.6

Because energy is the lifeblood of the modern economy, energy prices play a critical role in economic growth. Although the U.S. economy is not as energy intensive as it was several decades ago,7 rising energy prices can still slow economic growth. As an important input for industry and transportation, higher energy prices increase costs and lower profits. Moreover, consumers’ ability to modify their energy use and transportation arrangements in the short run is limited8 and only mildly responsive to short run changes in prices.9 Higher energy prices can take a particularly large toll on low-income households that spend a larger fraction of their budgets on energy than middle- and upper-income households.10

Because of the important macroeconomic and microeconomic role of energy prices, anticompetitive conduct in energy markets can be particularly harmful. Petroleum markets are vulnerable to collusive agreements, and the incidence of anticompetitive behavior at multiple levels in the supply chain compounds the adverse effects on consumers. Cartelization of the global crude oil market by the Organization of Petroleum Exporting Countries (OPEC) is one of the most well known examples. OPEC’s decision to restrict crude oil production in the early 1970s plunged much of the world economy into recession.11 Anticompetitive agreements also extend to price fixing at the retail level for products such as diesel and gasoline. Agreements to fix and raise prices between local competing retailers of refined petroleum products directly harm consumers by extracting supracompetitive prices on an essential commodity for which consumers cannot easily adjust consumption in the short run. More recently, collusion has surfaced in auctions for oil and gas exploration leases on federal and private land. Agreements between bidders not to compete against each other depress prices and reduce an important revenue stream for the government.12

The pernicious effects of collusive schemes in energy are not limited to petroleum markets. On a more local level, anticompetitive agreements between sellers in regional wholesale electricity markets have forced consumers to pay hundreds of millions of dollars more for electricity than they would have in the absence of such conduct. In these markets, which are structurally vulnerable to the exercise of market power, anticompetitive agreements spanning even a short time can result in large wealth transfers from consumers to suppliers.13

Collectively, these examples illustrate the serious harm to consumers and to the economy that flow from collusive agreements, making the case for rigorous Section 1 enforcement. A key component of Section 1 enforcement, however, is the choice of enforcement approach (e.g., criminal vs. civil) and remedy, the effectiveness of which is gauged by how well it deters future collusive behavior.consumers cannot easily adjust consumption in the short run. More recently, collusion has surfaced in auctions for oil and gas exploration leases on federal and private land. Agreements between bidders not to compete against each other depress prices and reduce an important revenue stream for the government.12 The pernicious effects of collusive schemes in energy are not limited to petroleum markets. On a more local level, anticompetitive agreements between sellers in regional wholesale electricity markets have forced consumers to pay hundreds of millions of dollars more for electricity than they would have in the absence of such conduct. In these markets, which are structurally vulnerable to the exercise of market power, anticompetitive agreements spanning even a short time can result in large wealth transfers from consumers to suppliers.13 Collectively, these examples illustrate the serious harm to consumers and to the economy that flow from collusive agreements, making the case for rigorous Section 1 enforcement. A key component of Section 1 enforcement, however, is the choice of enforcement approach (e.g., criminal vs. civil) and remedy, the effectiveness of which is gauged by how well it deters future collusive behavior.

#### New energy inflation triggers US recession

Falath 1/7 [Jujaj Falath, senior analyst at the National Bank of Slovakia and a visiting lecturer in economics at the Comenius University in Bratislava, Martin Pažický, economist at the Institute for Financial Policy at the Ministry of Finance of the Slovak Republic and a visiting lecturer at the Faculty of Management, Comenius University in Bratislava. “The big risk now for the US is not hyperinflation, but long-term elevated inflation rates”. 1/7/22. https://blogs.lse.ac.uk/usappblog/2022/01/07/the-big-risk-now-for-the-us-is-not-hyperinflation-but-long-term-elevated-inflation-rates/]

Although some price increases were expected, US inflation figures have now consistently exceeded economists’ expectations. Seven of the last ten CPI inflation readings surprised analysts on the upside, while none of them surprised on the downside. Risks include new, more transmissible COVID mutations, slower vaccine rollouts (causing supply bottlenecks in emerging countries), and lower vaccine efficacy, supply chain disruptions, climate threats, and rising property and energy prices.

Sustained high inflation is mixed news for debts. A moderate amount of inflation above target could help wipe out some of the record government debt burden and allow countries to consolidate. However, if inflation gets out of control and central banks have to slam on the brakes by sharply raising rates, those record debt levels will hurt much more. Furthermore, suppressing economic activity too sharply could spur another recession.

Inflation soared because of COVID

To understand whether we should panic about inflation, we need a deeper discussion of the current sources of inflationary pressures. In principle, the only source of inflation that should spur a contractionary macroeconomic policy response (either monetary by higher interest rates, or fiscal by smaller budget deficits) is inflation driven by the labour market. When workers have enough bargaining power to secure a pay rise that outpaces the long-term potential of the economy, there is a risk of “overheating”. Only this situation, where wage growth runs ahead of productivity growth, should lead to macroeconomic policy intervention. Other supply-related sources of inflation (for example, commodity prices) are volatile and driven primarily by global markets. These inflationary pressures are not the result of overheating and are far more likely to be temporary.

At the beginning of 2021, the main factors driving the rise in inflation were energy prices and factors associated with the reopening of the US economy. Both are usually temporary. Since the second quarter of 2021, however, the rise in CPI inflation has been increasingly driven by rises in the prices of core goods not related to reopening (Figure 1, green columns). This might indicate that inflation is growing more persistent.

The world is currently facing the most severe energy shock in recent decades. The prices of gas and electricity have reached record highs. Partly, this can be seen as compensation for exceptional price falls in 2020, when many factories were forced to halt production. Lifting restrictions boosted demand for commodities, which has resulted in rising energy prices. More expensive emission allowances, representing a form of green tax, have also contributed. As winter sets in, the demand for natural gas and oil is rising. Since stocks are limited, the severity of the situation will depend on how low temperatures drop.

#### That ripples through the whole economy.

Salzman 11/9 [Avi; November 9; Senior writer at Barron's, covering stocks, the economy, and the impact of new technology on financial markets; *Barron’s,* “High Energy Prices Are Rippling Through the Economy,” <https://www.barrons.com/articles/high-energy-prices-are-rippling-through-the-economy-51636477167>]

The latest government inflation figures show that prices are rising fast, and much of the momentum is coming from energy. The trends are already hitting businesses in several industries and will continue rippling through the economy. Investors should keep an eye out for shrinking margins—and possibly pressure on valuation—in the months ahead.

On Tuesday, the Bureau of Labor Statistics released the monthly producer price index, which measures prices of goods and services as they make their way through the supply chain. The report showed that the PPI rose 0.6% in October on a month-over-month basis, and 8.6% on a year over year basis, in line with economists’ expectations.

The consumer price index, which measures prices at the retail level, is scheduled to be released on Wednesday. That report is likely to show that escalating energy prices are forcing consumers to pay up for heating oil, propane, gasoline, and other fuels.

“I think more pain is going to come to the consumer, certainly, for this winter,” said Marcus McGregor, an energy analyst at asset manager Conning. “I think if you look at the latest reports, costs for propane, natural gas and any sources that are leading into the consumer’s home—if we have a really cold winter—are expected to increase significantly this winter. So I see more pain before relief when it comes to the U.S. consumer.”

Businesses are already having to adjust. The PPI shows how the escalating energy costs are affecting corporations—and how they may end up flowing through to consumers in several industries. The price of goods that were at the final stage of production (as opposed to component parts) rose 1.2% in the month, with three quarters of that jump having to do with a rise in the price of energy, according to the report. In October, oil prices rose 13%. Natural gas prices were flat in October, after jumping 34% in September, the largest one-month gain in 12 years.

That has been a boon for energy companies, which have led the market higher this year after trailing for much of the previous decade. Exxon Mobil (ticker: XOM) stock has soared 58% this year, and BP (BP) is up 34%.

But escalating energy prices are a draw on several other industries. Consumer goods get more expensive because it costs more to truck them to warehouses and stores.

“Higher commodity and freight cost impacts combined were a 400 basis point hit to gross margins,” said Procter & Gamble (PG) CFO Andre Schulten on the company’s earnings call last month.

Airlines get pinched, too, because fuel can account for about one-fifth of their expenses. Delta Air Lines (DAL), for instance, said on its latest earnings call that high fuel prices “will pressure our ability to remain profitable in the December quarter.”

“At present time, we’re expecting a modest loss in the fourth quarter with crude prices driving that up nearly 60% year-to-date and more than 15% just over the last month,” said CEO Ed Bastian.

Companies that make or process fuels and chemicals often run on natural gas. Refinery operator Valero Energy (VLO) said that its refinery operating expenses rose 6% in the third quarter largely because of higher natural gas prices. And any other business—including office work—that uses substantial amounts of electricity can be hurt when energy prices rise. Natural gas now accounts for the largest share of U.S. electricity generation.

Industrial companies can be hit too, as their operating expenses rise. Processed fuels used in manufacturing—things like oils, greases, natural gas, and diesel—are on average 34% more expensive than they were a year ago, according to the PPI. That, along with supply-chain problems around the world, are causing some industrial companies to warn investors that their margins could be hurt.

German chemicals company BASF (BASFY) said that high natural gas prices cost it 600 million euros in the first nine months of the year, but that October prices increases would make its operations even more expensive.

“Throughout basically all value chains, our suppliers, our customers and we ourselves continue to be confronted with increasing raw material, energy and transportation costs, supply chain constraints and the related and largely unforeseeable issues with material availability,” said CEO Martin Brudermüller on the company’s latest earnings call.

It’s a global problem that won’t be going away soon, and one that consumers are starting to feel too.

#### Econ decline causes great power war

Liu 18, [Qian Liu is an economist based in China, The next economic crisis could cause a global conflict. Here's why, https://www.weforum.org/agenda/2018/11/the-next-economic-crisis-could-cause-a-global-conflict-heres-why/]

The response to the 2008 economic crisis has relied far too much on monetary stimulus, in the form of quantitative easing and near-zero (or even negative) interest rates, and included far too little structural reform. This means that the next crisis could come soon – and pave the way for a large-scale military conflict.

The next economic crisis is closer than you think. But what you should really worry about is what comes after: in the current social, political, and technological landscape, a prolonged economic crisis, combined with rising income inequality, could well escalate into a major global military conflict.

The 2008-09 global financial crisis almost bankrupted governments and caused systemic collapse. Policymakers managed to pull the global economy back from the brink, using massive monetary stimulus, including quantitative easing and near-zero (or even negative) interest rates.

But monetary stimulus is like an adrenaline shot to jump-start an arrested heart; it can revive the patient, but it does nothing to cure the disease. Treating a sick economy requires structural reforms, which can cover everything from financial and labor markets to tax systems, fertility patterns, and education policies.

Policymakers have utterly failed to pursue such reforms, despite promising to do so. Instead, they have remained preoccupied with politics. From Italy to Germany, forming and sustaining governments now seems to take more time than actual governing. And Greece, for example, has relied on money from international creditors to keep its head (barely) above water, rather than genuinely reforming its pension system or improving its business environment.

The lack of structural reform has meant that the unprecedented excess liquidity that central banks injected into their economies was not allocated to its most efficient uses. Instead, it raised global asset prices to levels even higher than those prevailing before 2008.

In the United States, housing prices are now 8% higher than they were at the peak of the property bubble in 2006, according to the property website Zillow. The price-to-earnings (CAPE) ratio, which measures whether stock-market prices are within a reasonable range, is now higher than it was both in 2008 and at the start of the Great Depression in 1929.

As monetary tightening reveals the vulnerabilities in the real economy, the collapse of asset-price bubbles will trigger another economic crisis – one that could be even more severe than the last, because we have built up a tolerance to our strongest macroeconomic medications. A decade of regular adrenaline shots, in the form of ultra-low interest rates and unconventional monetary policies, has severely depleted their power to stabilize and stimulate the economy.

If history is any guide, the consequences of this mistake could extend far beyond the economy. According to Harvard’s Benjamin Friedman, prolonged periods of economic distress have been characterized also by public antipathy toward minority groups or foreign countries – attitudes that can help to fuel unrest, terrorism, or even war.

For example, during the Great Depression, US President Herbert Hoover signed the 1930 Smoot-Hawley Tariff Act, intended to protect American workers and farmers from foreign competition. In the subsequent five years, global trade shrank by two-thirds. Within a decade, World War II had begun.

To be sure, WWII, like World War I, was caused by a multitude of factors; there is no standard path to war. But there is reason to believe that high levels of inequality can play a significant role in stoking conflict.

According to research by the economist Thomas Piketty, a spike in income inequality is often followed by a great crisis. Income inequality then declines for a while, before rising again, until a new peak – and a new disaster. Though causality has yet to be proven, given the limited number of data points, this correlation should not be taken lightly, especially with wealth and income inequality at historically high levels.

This is all the more worrying in view of the numerous other factors stoking social unrest and diplomatic tension, including technological disruption, a record-breaking migration crisis, anxiety over globalization, political polarization, and rising nationalism. All are symptoms of failed policies that could turn out to be trigger points for a future crisis.

Voters have good reason to be frustrated, but the emotionally appealing populists to whom they are increasingly giving their support are offering ill-advised solutions that will only make matters worse. For example, despite the world’s unprecedented interconnectedness, multilateralism is increasingly being eschewed, as countries – most notably, Donald Trump’s US – pursue unilateral, isolationist policies. Meanwhile, proxy wars are raging in Syria and Yemen.

Against this background, we must take seriously the possibility that the next economic crisis could lead to a large-scale military confrontation. By the logic of the political scientist Samuel Huntington , considering such a scenario could help us avoid it, because it would force us to take action. In this case, the key will be for policymakers to pursue the structural reforms that they have long promised, while replacing finger-pointing and antagonism with a sensible and respectful global dialogue. The alternative may well be global conflagration.

#### Only antitrust can solve surging energy prices

Reich 11/11/21 [Robert, a former US secretary of labor, is professor of public policy at the University of California at Berkeley (been to a few of his lectures, good speaker), 11/11/21. https://www.theguardian.com/commentisfree/2021/nov/11/us-inflation-market-power-america-antitrust-robert-reich]

You can see a similar pattern in energy prices. If energy markets were competitive, producers would have quickly ramped up production to create more supply, once it became clear that demand was growing. But they didn’t.

Why not? Industry experts say oil and gas companies saw bigger money in letting prices run higher before producing more supply. They can get away with this because big oil and gas producers don’t operate in a competitive market. They can manipulate supply by coordinating among themselves.

Since the 1980s, two-thirds of all American industries have become more concentrated

In sum, inflation isn’t driving most of these price increases. Corporate power is driving them.

### Advantage Three is Federalism

#### Filed rate reinforced the jurisdictional bright line—maintains dual sovereignty

Rossi 16 [Jim Rossi, Professor of Law and Director, Program in Law & Government, Vanderbilt University, "The Brave New Path of Energy Federalism", 2016, https://texaslawreview.org/wp-content/uploads/2017/01/Rossi.pdf]

Federalism has always structured the regulation of domestic energy markets. It has now been eighty years since Congress first began the regulation of interstate energy markets with the adoption of the Federal Power Act (FPA) in 19351 followed by the Natural Gas Act (NGA) in 1938.2 Each of these statutes gave the Federal Power Commission (FPC), which later would become the Federal Energy Regulatory Commission (FERC), jurisdiction to regulate wholesale energy sales but preserved state authority over retail transactions. Courts traditionally refer to this allocation of authority between wholesale (federal) and retail (state) energy sales as the jurisdictional “bright line” that defines spheres of exclusive authority based on a fixed, legalistic inquiry.3

For many decades following the New Deal, dual sovereignty4 coexisted rather peacefully with traditional utility-rate regulation in energy industries. The jurisdictional bright line proved useful for sorting out jurisdictional disputes where both state and federal regulators set energy prices under similar cost-of-service principles. Aided by field-preemption doctrine, judicial recognition of comprehensive federal authority over wholesale energy sales helped to minimize the dysfunctions presented by state regulators’ insulation of energy utilities from the interstate energy market.5 During this era, judicial resolution of federalism disputes helped to minimize the problems presented to energy firms by having two potential regulators and eased regulators’ implementation of traditional rate regulation. Legal formalities such as the “filed rate doctrine” (which served as a form of federal preemption) helped to reinforce the jurisdictional bright line.6

However, as these New Deal-era statutes enter their octogenarian phase, new developments in the energy industry have revealed serious cracks in the foundational facts behind dual sovereignty.7 Today, energy firms face a dynamic economic environment. Energy markets, previously were insulated from the pressures of competition, now face volatility from new entrants and technologies.8 An electric-power sector once dominated by the staid, vertically integrated utility has evolved into a diverse range of energy suppliers and related service providers, many lacking the same service obligations as utilities.9 Customers who were once captive to regulated utilities now face choices of energy suppliers and are exposed to price volatility.10 New technologies such as digital metering interfaces, rooftop solar, and energy storage have also enabled customers to become energy resources.11 A once-predictable sector now faces disruption from rapid innovation and the onset (and occasional failure) of new technologies.12 With the rise of interstate energy markets since the 1990s, coupled with the transformation of the traditional public utility, state regulation of the energy sector can no longer operate in isolation of broader regional and national energy policies.13 The emergence of new environmental regulations of carbon emissions from existing power plants also calls into question the efficacy of any neat separation of federal and state spheres of authority. As one recent agency report observes, any federal regulation of carbon emissions will require the Environmental Protection Agency (EPA) to coordinate its policies with state and federal energy regulators, depending on their support to ensure that environmental regulations do not interfere with reliable generation and transmission.14

While it was once believed, at least by some, that federalism conflicts would begin to disappear with the rise of competitive energy markets,15 in fact the opposite has occurred. The competitive threat of new technologies has seriously blurred the clear jurisdictional lines of dual sovereignty.16 Litigants routinely invoke dual sovereignty as they ask courts to step in and referee any time regulators are perceived as stepping outside of their predefined bounds.17 At the extreme, dual sovereignty’s legacy can bind regulators by reinforcing judicially-defined limits on their authority. This approach hamstrings agency regulators from adopting proactive regulatory approaches that can adapt as they seek to balance important goals in the regulation of energy markets, such as expanding clean-energy resources, integrating those resources into the grid, protecting reliability, addressing energy security, and monitoring anticompetitive conduct that is harmful to consumers.18

#### Specifically—rate based preemption undermines state environmental regulations

Rossi 16 [Jim Rossi, Professor of Law and Director, Program in Law & Government, Vanderbilt University, "The Brave New Path of Energy Federalism", 2016, https://texaslawreview.org/wp-content/uploads/2017/01/Rossi.pdf]

In order for these kinds of institutional federalism arrangements to succeed, however, courts must eliminate once and for all the doctrinal relics of dual sovereignty.357 It is time for the Court to recognize that field preemption, long celebrated in energy regulation, is an anachronism that should no longer have a role in modern preemption analysis under these statutes. At the very least, field preemption needs to be limited to its supporting precedents involving cost-of-service regulation, where state and federal regulators were applying the same basic regulatory model and objectives. In areas where concurrent jurisdiction is authorized, it remains important for courts and federal regulators to be attentive to the factual and policy rationales that support jurisdiction, approaching these questions prospectively rather than in reaction to dual sovereignty arguments advanced by litigants. Finally, courts must recognize their own limits in resolving energy-federalism disputes and better clarify the significance of democratic agency procedures and expertise in advancing federalism.

1. Ending Wholesale-Market Field Preemption.—The rise of concurrent jurisdiction calls into question whether the traditional field preemption doctrine should continue to play any role under energy statutes. Precedents such as Nantahala and Schneidewind remain good law. However, at the very minimum they need to be limited in their application to scenarios involving similar cost-of-service regulatory tools, if not recast as applications of conflict rather than field preemption. Field preemption is simply incompatible with the recognition of concurrent jurisdiction over aspects of wholesale energy markets under these statutes. It leads to overly broad federal preemption decisions, routinely confuses courts, and thwarts the primary purposes of these energy statutes by creating the potential for new regulatory gaps.358

Even the core energy precedents decided by the Court using fieldpreemption language acknowledge that field-preemption analysis cannot, on its own terms, answer the core federalism questions that need to be addressed. Consider again Nantahala, one of the leading modern field-preemption cases under the FPA. The Court held that since “FERC clearly has exclusive jurisdiction over the rates to be charged . . . interstate wholesale customers,” a state “may not conclude in setting retail rates that the FERC-approved wholesale rates are unreasonable.”359 A state is prohibited, for example, from “trapping” costs by exercising its “undoubted jurisdiction over retail sales to prevent the wholesaler-as-seller from recovering the costs of paying the FERC-approved rate.”360 While the Court spoke here in terms of exclusive jurisdiction, it is a mistake to conclude that, as a categorical matter, the setting of wholesale rates “field preempts” states. The Court did not reason that the statute itself occupied the field, but instead spoke in terms of the potential “interference” that states could present to FERC-approved rates without a finding of federal preemption.361 Courts have recognized that this is not a bright-line or categorical approach to preemption. Some have devised an exception to the filed-rate-preemption approach of Nantahala, recognizing that states may deny a utility the opportunity to recover costs incurred as a result of buying power at FERC-approved rates if the specific purchase (apart from the actual rate that was paid) is deemed imprudent.362

To the extent that Nantahala’s reasoning relies on an assessment of whether a specific state-regulatory action interferes with a particular federal rate, however, it is not an application of field preemption at all. Instead, in placing its primary attention on tensions between a federal and state approach, the key inquiry becomes whether the state-regulatory action presents an obstacle to the implementation of a federal-approved wholesale rate. Using field preemption to reach this conclusion would eliminate a broad range of state-regulatory decisions assessing prudence, which the Court in Nantahala explicitly preserved for state regulators.363 Field preemption simply does none of a court’s primary analytical work in reaching a preemption conclusion. Instead, at the very minimum, a court reaching a conclusion of federal preemption always implicitly depends on its assessment of whether a state-regulatory decision presents an obstacle. Moreover, resorting to field preemption can lead to overbroad preemption decisions, in effect foreclosing a broad range of otherwise permissible state regulatory actions.364

The recent rise of concurrent jurisdiction also throws into question whether Schneidewind, another darling of the dual sovereignty approach, should continue to be understood as a field preemption case. Field preemption would foreclose any state regulation in the relevant field as a matter of implied preemption. However, despite its strong field preemption rhetoric, Schneidewind itself suggests that the scope of the field can only be determined upon an examination of the objective of the particular state regulation at issue.365 Drawing on a similar approach, ONEOK elaborates that this requires an inquiry into “the target at which the state law aims.”366 In other words, this is more of a conflict or obstacle than a field preemption test. A broad interpretation of Schneidewind is even more problematic in that it would authorize FERC to make broad regulatory decisions that undermine state environmental-protection goals under the Clean Water Act or other environmental statutes that delegate a role to state regulators. 367

If the form of field preemption Justice Brandeis had in mind in Napier was ever appropriate for energy statutes, these cases illustrate that it no longer has a place in federalism disputes in modern energy markets. At the very minimum, if these decisions continue to be construed as field preemption cases, their scope should be limited to wholesale rates actually set or approved by FERC and should not include federal regulation of practices affecting rates. Instead of relying on the fiction of field preemption, courts need to focus on whether federal and state regulations of energy markets are compatible. For example, in finding federal preemption of the Maryland generation incentives, Hughes relies on foundational facts regarding FERC’s approach to regulating PJM’s capacity market368 and the regulatory target at which the Maryland program aims (namely, the FERC-approved wholesale capacity market).369 It did not frame the preemption analysis in terms of some abstract, fixed field defined by statute, but carefully assessed facts regarding the nature of FERC’s regulation of the PJM capacity market and applied the aims test from ONEOK. 370 For all practical purposes, it thus appears that the Supreme Court has replaced energy field preemption with an assessment of obstacle preemption (in the setting of wholesale rates, under FERC’s substantive jurisdiction) or conflict preemption (in assessing FERC’s exercise of remedial jurisdiction over practices affecting rates).371

#### Key to wetlands protection and biod

Holmes 20 [Henry Holmes, "ENVIRONMENTAL FEDERALISM AND GRASSROOTS CONSERVATION IN THE PRAIRIE POTHOLE REGION", Summer 2020, Arizona Journal of Enviornmental Law & Policy, Volume 10 Issue 3, https://www.perc.org/wp-content/uploads/2020/09/henry-holmes-protecting-wetlands-final.pdf]

Wetlands cover just 5.5 percent of the conterminous states, but are home to thirty-one percent of the country’s plant species, more than one-third of the country’s endangered or threatened species, and rival the ecosystem productivity of rainforests and coral reefs.3 Wetlands are valuable natural resources, so it is important to evaluate the extent to which federal regulation impacts optimal wetlands conservation.4 Environmental federalism considers this balance between different levels of government and private actors in determining their respective roles in protecting natural resources.

Federal regulation under the 2015 Clean Water Rule (2015 Rule) abrogated the ability of the states to make certain regulatory decisions over their waters. The Environmental Protection Agency (EPA) and Army Corps of Engineers (the Corps), however, recently promulgated the Navigable Waters Protection Rule (2020 Rule) that narrows the definition of “waters of the United States” (WOTUS) and decreases federal agency power—but that may be better for wetlands conservation.5 As Professor Jonathan Adler observes, “[b]y expanding [federal] regulatory authority, the agencies may crowd out potentially complementary efforts by state and local governments and conservation organizations.”6

The definition of WOTUS is critical because it demarcates the scope of the federal government’s authority under the Clean Water Act (CWA) to regulate beyond traditionally navigable waters.7 Congress defined “navigable waters” as “waters of the United States, including the territorial seas” and left the agencies to define WOTUS in a manner that is constitutional and consistent with the legislative text.8

The dominant approach to environmental protection has been centralized federal regulation.9 The 2015 Rule is one such example. Much of the existing literature on environmental federalism, in contrast, argues that less federal regulation may lead to better state protection of natural resources.10 This may hold true in certain states, but private conservation can be a critical aspect of this theory. While regulation of navigable waters, and adjacent and interstate wetlands serves an important national purpose, carte blanche federal regulation over isolated wetlands may inhibit complementary state regulation or private conservation.11

#### Biod loss causes extinction

Yule 13 (Jeffrey V. Yule, Dixie State University, “Biodiversity, Extinction, and Humanity's Future: The Ecological and Evolutionary Consequences of Human Population and Resource Use,” June 2013 *Humanities* 2013(2):147-159, DOI:10.3390/h2020147)

Ecologists recognize that the particulars of the relationship between biodiversity and community resilience in the face of disturbance (a broad range of phenomena including anything from drought, fire, and volcanic eruption to species introductions or removals) depend on context [16,17]. Sometimes disturbed communities return relatively readily to pre-disturbance conditions; sometimes they do not. However, accepting as a general truism that biodiversity is an ecological stabilizer is sensible— roughly equivalent to viewing seatbelt use as a good idea: although seatbelts increase the risk of injury in a small minority of car accidents, their use overwhelmingly reduces risk. As humans continue to modify natural environments, we may be reducing their ability to return to pre-disturbance conditions. The concern is not merely academic. Communities provide the ecosystem services on which both human and nonhuman life depends, including the cycling of carbon dioxide and oxygen by photosynthetic organisms, nitrogen fixation and the filtration of water by microbes, and pollination by insects. If disturbances alter communities to the extent that they can no longer provide these crucial services, extinctions (including, possibly, our own) become more likely. In ecology as in science in general, absolutes are rare. Science deals mainly in probabilities, in large part because it attempts to address the universe’s abundant uncertainties. Species-rich, diverse communities characterized by large numbers of multi-species interactions are not immune to being pushed from one relatively stable state characterized by particular species and interactions to other, quite different states in which formerly abundant species are entirely or nearly entirely absent. Nonetheless, in speciose communities, the removal of any single species is less likely to result in radical change. That said, there are no guarantees that the removal of even a single species from a biodiverse community will not have significant, completely unforeseen consequences. Indirect interactions can be unexpectedly important to community structure and, historically, have been difficult to observe until some form of disturbance (especially the introduction or elimination of a species) occurs. Experiments have revealed how the presence of predators can increase the diversity of prey species in communities, as when predators of a superior competitor among prey species will allow inferior competing prey species to persist [18]. Predators can have even more dramatic effects on communities. The presence or absence of sea otters determines whether inshore areas are characterized by diverse kelp forest communities or an alternative stable state of species poor urchin barrens [19]. In the latter case, the absence of otters leaves urchin populations unchecked to overgraze kelp forests, eliminating a habitat feature that supports a wide range of species across a variety of age classes. Aldo Leopold observed that when trying to determine how a device works by tinkering with it, the first rule of doing the job intelligently is to save all the parts [20]. The extinctions that humans have caused certainly represent a significant problem, but there is an additional difficulty with human investigations of and impacts on ecological and evolutionary processes. Often, our tinkering is unintentional and, as a result, recklessly ignores the necessity of caution. Following the logic inherited from Newtonian physics, humans expect single actions to have single effects. Desiring more game species, for instance, humans typically hunt predators (in North America, for instance, extirpating wolves so as to be able to have more deer or elk for themselves). Yet removing or adding predators has far reaching effects. Wolf removal has led to prey overpopulation, plant over browsing, and erosion [21]. After wolves were removed from Yellowstone National Park, the K of elk increased. This allowed for a shift in elk feeding patterns that left fewer trees alongside rivers, thus leaving less food for beaver and, consequently, fewer beaver dams and less wetland [22,23]. Such a situation represents, in microcosm, the inherent risk of allowing for the erosion of species diversity. In addition to providing habitat for a wide variety of species, wetlands serve as natural water purification systems. Although the Yellowstone region might not need that particular ecosystem service as much as other parts of the world, freshwater resources and wetlands are threatened globally, and the same logic of reduced biodiversity equating to reduced ecosystem services applies. Humans take actions without considering that when tugging on single threads, they unavoidably affect adjacent areas of the tapestry. While human population and per capita resource use remain high, so does the probability of ongoing biodiversity loss. At the very least, in the future people will have an even more skewed perspective than we do about what constitutes a diverse community. In that regard, future generations will be even more ignorant than we are. Of course, we also experience that shifting baseline perspective on biodiversity and population sizes, failing to recognize how much is missing from the world because we are unaware of what past generations saw [11]. But the consequences of diminished biodiversity might be more profound for humans than that. If the disturbance of communities and ecosystems results in species losses that reduce the availability of ecosystem services, human K and, sooner or later, human N will be reduced.

#### Filed rate’s key—reversing restores overall jurisdictional balance

Rossi 16 [Jim Rossi, Professor of Law and Director, Program in Law & Government, Vanderbilt University, "The Brave New Path of Energy Federalism", 2016, https://texaslawreview.org/wp-content/uploads/2017/01/Rossi.pdf]

But concurrent jurisdiction is hardly neat and tidy. The Supreme Court’s recognition of concurrent jurisdiction leaves many questions unanswered and is certain to motivate new jurisdictional challenges regarding the scope of both federal and state regulatory authority.297 In contrast to dual sovereignty, concurrent jurisdiction requires regulators and courts to be more attentive to the core purposes behind energy statutes as they address modern market disputes—a fundamental insight that could help to bring a principled resolution to some current issues pending before courts involving state incentives for power-generation capacity. EPSA highlights the value of state experimentation, yet it also recognizes that it is ultimately FERC that possesses a powerful range of federalism possibilities to aid its regulatory approach for modern power markets. But how far can these state initiatives go, and when will they be preempted?

The Supreme Court has recently provided part of the answer in Hughes, which concluded that Maryland’s incentives to encourage new natural-gas plants interfered with FERC’s regulation of the wholesale market under the FPA.298 Hughes favors a preemption conclusion for certain state initiatives that conflict with federally approved wholesale-market energy prices, but its holding is narrow. As I argue below, the decision does not reject concurrent jurisdiction in the regulation of wholesale energy markets and envisions continued leeway for state energy resource subsidies and incentives— especially for energy-supply attributes that FERC-approved rates do not price in the wholesale market. However, if courts do not approach these issues carefully, they risk converting Hughes’s into a sweeping application of field preemption, which would be inconsistent with a concurrent jurisdiction in energy federalism. This would be a mistake. In order for regulatory federalism to evolve and to adapt to modern energy markets, it will be necessary for courts to carefully approach some of the precedents and remaining doctrinal relics of dual sovereignty, especially after Hughes.

They can start by eliminating use of judicial field preemption with regards to “practices. . .affecting” rates language in energy statutes. Courts should instead review FERC’s actual regulatory decisions, including agency determinations of jurisdictional facts and policy rationales, and employ conflict-preemption principles while doing so. In addition, while concurrent jurisdiction still contains some meaningful limits on federal authority under energy statutes, these are primarily grounded in pragmatic agency law and policy findings, not some predefined notion of state sovereignty or judicial precedents that fix the scope of FERC’s jurisdiction.

#### Only constructive policy debates nurture information literacy necessary for every model of politics – the process of sifting through evidence and subjecting positions to researched scrutiny is essential to managing emerging crises and information overload

Leek 16 [Danielle R. Leek, professor of communications at Grand Valley State University, “Policy debate pedagogy: a complementary strategy for civic and political engagement through service-learning,” Communication Education, 65:4, 399-405]

Through policy debate, students can develop information literacy and learn how to make critical arguments of fact. This experience is politically empowering for students who will also build confidence for political engagement. Information literacy While there are many definitions of information literacy, the term generally is understood to mean that a student is “able to recognize when information is needed , and have the ability to locate, evaluate, and use effectively the information needed” for problem- solving and decision-making (Spitzer, Eisenberg, & Lowe, 1998, p. 19). Information exists in a variety of forms, in visual data, computer graphics, sound-recordings, film, and photographs. Information is also constructed and disseminated through a wide range of sources and mediums. Therefore, “information literacy” functions as a blanket term which covers a wide range of more specific literacies. Critiques of service-learning’s knowl- edge-building power, such as those articulated by Eby (1998) and Colby (2008), are chal- lenging both the emphasis the pedagogy places on information gained through experience and the limited scope of political information students are exposed to in the process. Policy debate can augment a student’s civic and political learning by fostering extended information literacies. Snider and Schnurer (2002) identify policy debate as an especially research intensive form of oral discussion which requires extensive time and commitment to learn the dimensions of a topic. Understanding policy issues calls for contemplating a range of materials, from traditional news media publications to court proceedings, research data, and institutional propaganda. Moreover, the nature of policy debate, which involves public presentation of arguments on two competing sides of a question, motivates students to go beyond basic information to achieve a more advanced level of expertise and credibility on a topic (Dybvig & Iverson, n.d.). This type of work differs from traditional research projects where students gather only the materials needed to support their argument while neglecting contrary evidence. Instead, the “debate research process encourages a kind of holistic approach, where students need to pay attention to the critics of their argument because they will have to respond to those attacks” (Snider & Schnurer, 2002, p. 32). In today’s attention economy, cultivating a sensibility for well- rounded information gathering can also aid students in recognizing when and how the knowledge produced in their social environments can be effectively translated to specific contexts. The “cultural shift in the production of data” which has followed the emergence of Web 2.0 technologies means that all students are likely “prosumers”—that is, they consume, produce, and coproduce information online all at the same time (Scoble, 2011). Coupling service- learning with policy debate calls on students to apply information across registers of public engagement, including their own service efforts and their own public argumentation, in and outside of their debates. Information is used in the service experience, which in turn, informs the use of information in debates, where students then produce new information through their argumentation. The process is what Bruce (2008) refers to “informed learning,” or “using information in order to learn.” When individuals move from learning how to gather materials for a task to a cognitive awareness and understanding of how the information-seeking process shapes their learning, they are engaged in informed learning. Through this process, students can come to recognize that information management and credibility is deeply disciplinary and historically con- textual (Bruce & Hughes, 2010). This understanding, combined with practical experience in locating information, is a critical missing element in contemporary political engage- ment. Over 20 years ago, Graber (1994) argued that one of the biggest obstacles to political engagement was not apathy, but a gap between the way news media presents information during elections, and the type of information voters need and will listen to during electoral campaigns. The challenge extends beyond elections into policy-making, especially as younger generations continue to revise their notions of citizenship away from institutional politics towards more social forms of activism (Bennett, Wells, & Freelon, 2011). For stu- dents to effectively practice more expressive forms of citizenship they need experience managing the breadth of information available about issues they care about. As past research indicates a strong correlation between service-learning experience and the motiv- ation and desire for post-graduation service, it seems likely that students who debate about policy issues related to service areas will continue their informed learning practices after they have left the classroom (Soria & Thomas-Card, 2014). Arguing facts In addition to building information literacies, students who combine policy debate with service-learning can practice “politically relevant skills,” which will help them have confidence for political engagement in the future. As Colby (2008) explains, this confidence should be tempered by tolerance for difference and differing opinions. On the surface, debating about institutional politics might seem counterintuitive to this goal. Politicians and the press have a credibility problem among college-aged students, and this leaves younger generations less inclined to feel obligated to the state or to look to traditional modes of policy- making for social change (Bennett et al., 2011; Manning & Edwards, 2014). This lack of faith in government and media outlets also makes political argument more difficult (Klumpp, 2006). Whereas these institutions once served as authoritative and trustworthy sources of information, the credibility of legislators and journalists has decreased over the last 40 years or so. Today, politicians and pundits are viewed as political actors interested in spectacle, power, and profit rather than truth-seeking or the common good. While some political controversies are rooted in competing values, Klumpp (2006) explains that arguments about policy are more often based in fact. Indeed, when engaged in public arguments over questions of policy, people tend to “invoke the authority of facts to support their positions.” Likewise, “the governmental sphere has developed elaborate legal and deliberative processes in recognition of the power of facts as the basis for a decision.” Yet, while shared values are often quickly agreed upon, differences over fact are more difficult to resolve. Without credible institutions of authority that can disseminate facts, public deliberation requires more time, information-gathering, evaluation, and reasoning. The Bush administration’s decision to take military action in Iraq, for example, was presumably based on the “fact” that Saddam Hussein had acquired weapons of mass destruction. This has now become a classic example of poor policy-making grounded in faulty factual evidence. This shortcoming is precisely why policy debate is a valuable complement to service- learning activities. Not only can students use their developing literacies to better understand social problems, they can also learn to access a broader range of knowledge sources, thereby mitigating the absence of fact-finding from traditional institutions. Fur- thermore, policy advocacy gives students experience testing the reasoning underlying claims of fact. Issues of source credibility, analogic comparisons, and data analysis are three examples of the type of critical thinking skills that students may need to apply in order to engage a question of policy (Allen, Berkowitz, Hunt, & Louden, 1999). While the effect may be to undermine government action in some instances, in others students will gain a better understanding of when and where institutional activities can work to make change. As students gain knowledge about the relationship between institutional structures and the communities they serve, they grow confidence in their ability to engage in future conversations about policy issues. Zwarensteyn’s (2012) research high- lights these sorts of effects in high school students who engage in competitive policy debate. Zwarensteyn theorizes that even minimal increases in technical knowledge about politics can translate to significant increases in a student’s sense of self-efficacy. Many students start off feeling very insecure when it comes to their mastery of insti- tutional politics; policy debate helps overcome that insecurity. Moreover, because training in policy debate encourages students to address issues as arguments rather than partisan positions, it encourages them to engage policy-making without the hostility and incivility that often characterizes today’s political scene. Indeed, it is precisely that perceived hostility and incivility that prompts many young people to avoid politics in the first place. I do not mean to imply that students who debate about their service-learning experi- ences will draw homogenous conclusions about policies. Quite the contrary. Students who engage in service-learning still bring their personal visions and history to bear on their debates. As a result, students will often have very different opinions after engaging in a shared debate experience. More importantly, the practice of debating should operate to particularize students’ knowledge of community partners and clients, working against the destructive generalizations and power dynamics that can result when students feel privileged to serve less fortunate “others.” For civic and political engagement through service-learning to be meaningful and productive, it must do more to challenge students’ concepts of the homogenous “we” who helps “them.” Seligman (2013) argues that this civic spirit can be cultivated through the core pedagogical principle of a “shared practice,” which emphasizes the application of knowledge to purpose (p. 60). Policy debate achieves this outcome by calling on students to consider and reconsider their understanding of themselves, institutions, community, and policy every time the question “should” may arise. As Seligman writes: ... the orientation of thought to purpose (having an explanation rest at a place, a purpose) is of extreme importance. We must recognize that the orientation of thought to purpose is to recognize moving from providing a knowledge of, to providing a knowledge for. This means that in the context of encountering difference it is not sufficient to learn about (have an idea of) the other, rather it means to have ideas for certain joint purposes—for a set of “to-does.” A purpose becomes the goal towards which our explanations should be oriented. (p. 61) Put another way, policy debate challenges students “to maintain a sense of doubt and to carry on a systematic and protracted inquiry” in the process of service-learning itself (Seligman, 2013, p. 60). This is precisely the type of complex, ongoing, reflective inquiry that John Dewey had in mind. Political engagement through policy debate This essay began with a discussion of the growing attention to civic engagement programs in higher education. The national trend is to accomplish higher levels of student civic responsibility during and after their time in college through service-learning experiences tied to curricular learning objectives. A challenge for service-learning scholars and teachers is to recognize a distinction between civic activities that are accomplished by helping others and political activities that require engagement with the collective institutional structures and processes that govern social life. Both are necessary for democracy to thrive. Policy debate pedagogy can help service-learning educators accomplish these dual objectives. To call policy debate a pedagogy rather than just a style of debate is purposeful. A pedagogy is a praxis for cultivating learning in others. The pedagogy of service-learning helps students to know and engage social conditions through physical engagement with their environments and communities. Policy debate pedagogy leads students to know and engage these same social conditions while also challenging them to apply their knowledge for the purpose of political advocacy. These pedagogies are natural compliments for cul- tivating student learning. Therefore, future studies should explore how well service-learn- ing combined with policy debate can resolve concerns that policy debate alone does not go far enough to invest students with political agency (Mitchell, 1998). The present analysis suggests the potential for such an outcome is likely. Moreover, research is clear that the civic effects of service-learning as an instructional method are improved simply by increasing the amount of time spent on in-class discus- sion about the service work students do (Levesque-Bristol, Knapp, & Fisher, 2010). Policy debates related to students’ service can accomplish this goal and more. Policy debates can also facilitate the political learning students need to build their political efficacy and capacity for political engagement. Through informed learning about the political process—especially in the context of service practice—students develop literacies that will extend beyond the classroom. Using this knowledge in reasoned public argument about policy challenges invites students to move beyond cynical disengagement towards a productive recognition of their own potential voice in the political world. Policy debate pedagogy brings unique elements to the process of political learning. By emphasizing the conditional and dynamic nature of political arguments and processes, debates can work to relieve students of the misconception that there is a single “right answer” for questions about policy-making and politics, especially during election time. The communication perspective on policy debates also highlights students’ collective involvement in the ever-changing field of political terms, symbols, and meanings that constitute interpretations of our social world. In fact, the historical roots of the term “communication” seem to demand that speech and debate educators call for such emphasis on political learning. “To make common,” the Latin interpretation of communicare, situ- ates our discipline as the heart of public political affairs (Peters, 1999). Connecting policy debate to service-learning helps highlight the common purpose of these approaches in efforts to promote civic engagement in higher education.

#### The United States federal government should substantially increase its prohibitions on anticompetitive business practices by private electricity and gas companies by reducing the application of regulatory antitrust immunities.

#### NEW 9th circuit decision thumps da’s but doesn’t solve the aff

**Hale 2/2** [Zach, Author @ S&P Global Market Intelligence. “9th Circuit ruling a 'game changer' in rooftop solar charge battle”. <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/9th-circuit-ruling-a-game-changer-in-rooftop-solar-charge-battle-68685918>]

In a Jan. 31 ruling, a federal appeals court reversed a lower court's ruling and determined that a Salt River Project rooftop solar customer demonstrated that he **suffered antitrust injury** when the utility dramatically **hiked the rates** for its **solar customers**.

A three-judge panel for the U.S. Court of Appeals for the 9th Circuit determined that rather than increasing competition among power suppliers — a state policy preference — the rate hike decreased competition and, therefore, was exclusionary.

Jean Su, a senior attorney and energy justice director with the Center for Biological Diversity, tweeted that the ruling "is a **game changer** in the struggle to defend rooftop solar" as utilities across the U.S. seek to charge rooftop solar owners more for systems that effectively run billing meters in reverse. However, SRP's status as a federal utility that **sets its own rates** without oversight complicated the ruling.

At issue was a new pricing scheme introduced by SRP in 2015 that established separate rates for rooftop solar customers, allowing the utility to charge solar customers up to **65% more** than earlier net-metering plans.

William Ellis, a rooftop solar customer, was joined by several other **plaintiffs** in **suing SRP** over the rate hikes. The plaintiffs alleged that the new program was designed to discriminate against customers who wish to use rooftop solar generation and stifle competition in the electricity market.

A district court dismissed the complaint on multiple grounds, including finding that the plaintiffs failed to comply with state statutory requirements and to show that the rate hike violated federal antitrust laws.

The 9th Circuit's Jan. 31 ruling upheld several of the lower court's findings, including the dismissal of Ellis's state-law claims. However, it **reversed** the lower **court's ruling barring** the **antitrust** claims, citing the court's "uncontested conclusion" that SRP's rate hikes were designed to discourage more rooftop solar installations by making them too expensive.

"By the district court's own logic, solar-energy systems are uneconomical, at least in part, because of SRP's exclusionary conduct," Judge Eric Miller wrote for the court. Ellis was "'directly and economically hurt by' SRP's exclusionary pricing scheme, which is aimed at suppressing competition by discouraging customers from installing solar-energy systems."

The court also **shot down SRP's argument** that the rate at issue **cannot be challenged due to** the **filed-rate** doctrine, which bars federal antitrust challenges to rates approved by federal and state agencies.

"The problem for SRP ... is that it does not file its rates with anyone other than itself," Miller noted. SRP's board sets the utility's rates, which are **not reviewed** by the Federal Energy Regulatory Commission or any state body.

"We have never extended the filed-rate doctrine to unilateral, unsupervised rate-setting by a market participant," Miller continued. "In that context, there is no reason to presume that 'rates are just and reasonable as a matter of law' and should be immune from collateral challenge."

The court similarly dismissed SRP's assertion that the displacement of competition "is a natural consequence" of its authority to set just and reasonable rates. Noting that Arizona has "clearly" stated the need for the state's power generation and supply to be competitive, the court found SRP's action is **not entitled to** so-called **state action immunity** because that action is inconsistent with state policy.

However, the court also concluded that the Local Government Antitrust Act, which precludes the recovery of antitrust damages "from any local government, or official or employee thereof acting in an official capacity," shields SRP from federal antitrust damages.

But because Ellis also sought declarative and injunctive relief, which is not barred by the Local Government Antitrust Act, the court remanded the case to the U.S. District Court for the District of Arizona for further proceedings.

#### Tons of antitrust now

Lina **Saigol,1-18**-22. reporter for Barron's in London, spent 16 years at the Financial Times Reuters. "M&A Is Booming. Gear Up for an Antitrust Crackdown.". Barrons. 1-18-2022. <https://www.barrons.com/articles/mergers-booming-us-regulators-crackdown-51642534456?tesla=y>

Aggressive antitrust enforcement is back. That is the stark message that President Joe Biden has sent the business community, and regulators have already kicked into action, threatening to rein in a [record-setting merger boom](https://www.wsj.com/articles/m-a-likely-to-remain-strong-in-2022-as-covid-19-looms-over-business-plans-11640255406?mod=Searchresults_pos9&page=1). Those charged with delivering Biden’s message are two Big Tech critics: Lina Khan, chair of the Federal Trade Commission, and Jonathan Kanter, head of the Justice Department’s antitrust division. On Tuesday, they outlined a plan to [revise how the agencies will review mergers](https://www.ftc.gov/news-events/press-releases/2022/01/ftc-and-justice-department-seek-to-strengthen-enforcement-against-illegal-mergers). They want public comment on how to update federal guidelines “to better detect and prevent illegal, anticompetitive deals,” they said in a statement. “Our country depends on competition to drive progress, innovation, and prosperity,” Kanter said. “We need to understand why so many industries have too few competitors, and to think carefully about how to ensure our merger enforcement tools are fit for purpose in the modern economy.” Earlier on Tuesday, [Microsoft](https://www.barrons.com/market-data/stocks/msft)(ticker: MSFT) said it would acquire gaming company [Activision Blizzard](https://www.barrons.com/market-data/stocks/atvi)(ATVI) in [an all-cash transaction valued at nearly $70 billion](https://www.barrons.com/articles/microsoft-buys-activision-blizzard-stock-acquisition-51642513147?mod=hp_LEAD_1&mod=article_inline). The acquisition needs regulatory and shareholder approval. Wedbush analyst Dan Ives wrote that there may be regulatory hurdles because of [the acquisition’s size](https://www.barrons.com/articles/microsoft-stock-activision-blizzard-deal-metaverse-51642522838?mod=hp_LEAD_1_B_1&mod=article_inline). But he expects the deal to close because Microsoft isn’t under the same scrutiny as some of its tech rivals. Earlier this month, a federal judge ruled the [FTC can move forward with its revised antitrust lawsuit](https://www.wsj.com/articles/federal-judge-rejects-facebooks-request-to-dismiss-ftcs-latest-antitrust-lawsuit-11641932982?mod=Searchresults_pos5&page=1) against [Meta Platform](https://www.barrons.com/market-data/stocks/fb)‘s (FB) Facebook that alleges the social media platform is unlawfully suppressing competition. Many bankers and lawyers say they aren’t too worried, contending that tighter enforcement might slow the mergers and acquisitions market rather than derail it. That is due in part because the FTC is constrained by limited manpower and budget. Also, regulators don’t have authority on their own to block a merger—federal judges can issue orders blocking it. “Of course there has been an increased level of scrutiny and managements and boards have raised the bar on what they will consider, but we will continue to see large deals with compelling strategic imperative,” Bruce Evans, global co-head of M&A at [Deutsche Bank](https://www.barrons.com/market-data/stocks/db), told Barron’s. In December, the FTC [sued to block](https://www.barrons.com/articles/ftc-sues-to-block-nvidias-40b-acquisition-of-arm-51638481709?mod=article_inline) computer-chip powerhouse [Nvidia](https://www.barrons.com/market-data/stocks/nvda)(ticker: NVDA) from spending [$40 billion](https://www.ftc.gov/news-events/press-releases/2021/12/ftc-sues-block-40-billion-semiconductor-chip-merger) for British technology provider Arm, saying the blockbuster deal would unfairly stifle competition. Just weeks earlier, the Justice Department [sued to halt](https://www.barrons.com/articles/justice-department-penguin-random-house-simon-schuster-merger-51635873536?mod=article_inline) a proposed [$2.2 billion](https://www.justice.gov/opa/press-release/file/1445916/download) tie-up between publishers Penguin Random House and Simon & Schuster, which would create a mega-publisher in the books market. The agency argues that consolidation would hurt authors and readers. The lawsuits come after Biden signed a sweeping [executive order](https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/) in July aimed at curbing the power of big business by cracking down on anticompetitive practices in sectors ranging from agriculture to pharmaceuticals to labor. Consolidation in industries over the past several decades has denied Americans the benefits of an open economy and widened racial, income, and wealth inequality, the executive order stated. The administration sees less corporate competition as one of the causes of inflation. “Higher prices and lower wages caused by lack of competition are now estimated to cost the median American household [$5,000](https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/) a year,” according to the order. Rising equity markets and widespread stimulus measures helped spur companies worldwide to clinch more than 62,000 deals worth [$5.8 trillion](https://www.barrons.com/articles/global-deal-making-record-high-2021-51640960224?mod=article_inline) last year, up 64% from the previous year, according to data provider Refinitiv. [Big pharmaceutical companies](https://www.barrons.com/articles/drug-companies-cash-product-buys-research-51641423117?tesla=y&mod=article_inline) could be one of the biggest sectors at risk of regulatory scrutiny. The FTC put the industry on alert in July when it said it would review more deals amid skyrocketing drug prices and ongoing concerns about anticompetitive conduct. The industry still has record levels of cash to spend and needs to merge to innovate. By the end of this year, 18 large-cap U.S. and European biopharmas will have more than $500 billion in cash on hand, according to estimates by SVB Leerink analyst Geoffrey Porges. Deal makers will be closely watching [Pfizer](https://www.barrons.com/market-data/stocks/pfe)‘s (PFE) [$6.7 billion takeover](https://www.barrons.com/articles/pfizer-arena-pharmaceuticals-acquisition-51639396154?mod=article_inline) of [Arena Pharmaceuticals](https://www.barrons.com/market-data/stocks/arna), announced in December, which could become a test case for the FTC’s view of pharma M&A. Citi analyst Andrew Baum said the deal was “highly attractive” for Pfizer, but the key issue would be whether the “newly muscular” FTC would fight it and allow it to proceed given the significant overlap between important drugs. The two companies might need to sell parts of the business to push the deal through. Some companies are calling off their planned mergers as soon as they receive feedback. In December, outdoor sporting goods retailer [Sportsman’s Warehouse Holdings](https://www.barrons.com/market-data/stocks/spwh)(SPWH) and Great Outdoors Group, owner of the Bass Pro Shops chain, [canned](https://www.marketwatch.com/story/sportsman-s-warehouse-shares-fall-19-after-takeover-deal-terminated-271638556601) their deal in the belief that it wouldn’t be approved, according to a regulatory filing. Months earlier, insurance brokers [Aon](https://www.barrons.com/market-data/stocks/aon)(AON) and [Willis Towers Watson](https://www.barrons.com/market-data/stocks/wtw)(WTW) pulled their merger after the DOJ sued to stop the [$30 billion](https://www.barrons.com/articles/aon-willis-towers-scrap-30-billion-merger-amid-antitrust-impasse-51627328024?mod=article_inline)tie-up. The brokers said regulators’ objections created “**unacceptable delay and uncertainty**.”

#### Filed rate preempts state/agency regulations AND creates incentives for corporate capture broadly---causes flagrant non compliance

**Rossi 10** [Jim Rossi, Harry M. Walborsky Professor and Associate Dean for Research, Florida State University College of Law . Edited by Daniel A. Farber and Anne Joseph O’Connell. “Research Handbook on Public Choice and Public Law”, Ch 13 ‘Public choice, energy regulation and deregulation’. 7/30/10. <https://www.e-elgar.com/shop/usd/research-handbook-on-public-choice-and-public-law-9781847206749.html>]

One of the cases that illustrates the **broad scope** – and potential cost – of the filed rate doctrine for the operation of deregulated energy markets involved a price squeeze claim by a municipal utility in Massachusetts against New England Power Company, alleging, among other claims, that the defendant offered the city’s affiliates preferential treatment as customers over Norwood.32 FERC had purportedly approved these terms as ‘just and reasonable’ as a part of New England Power Company’s restructuring plan, which included approval of market-based tariffs; since both tariff s were on file with the FERC, the US Court of Appeals for the First Circuit invoked the filed rate doctrine as a complete bar to the price squeeze claim. The court reasoned that, ‘[i]t is the filing of the tariffs, and **not any affirmative approval** or scrutiny by the agency, that triggers the filed rate doctrine’.33 Because ‘the rationale for the filed rate doctrine is to protect the exclusive authority of the agency to accept or challenge such tariff s’,34 in the view of the First Circuit, ‘this is not a case that calls out for revisiting the fi led rate doctrine or for strenuous efforts to carve out exceptions . . . ’35

Federal courts continue to vigorously endorse the filed tariff shield, keeping competitor and consumer claims almost completely out of the **hands of both state regulators** and **federal courts** (Rossi 2003). For example, the US Court of Appeals for the Ninth Circuit applied the fi led tariff doctrine to imply federal pre-emption of the California Governor’s eff ort to protect consumers against strategic manipulation of its deregulated power market.36 In the court’s view, ‘interstate power rates fi led with FERC must be given binding effect’ by state regulators, even when regulating in areas subject to state jurisdiction. Thus, the court stated with a sweeping confidence, ‘FERC-approved rates preempt conflicting regulations adopted by the states’.37

Public choice themes reveal how the filed tariff doctrine not only influences the **course of litigation** after a tariff has been filed with regulators; it also creates incentives that can influence the private behavior of regulated firms in interacting with regulators **before litigation** commences. Specifically, by encouraging strategic filing of tariffs with regulators to pre-empt litigation, the fi led rate doctrine may encourage a type of **forum-shopping** behavior by private fi rms in the regulatory process before actual litigation commences (Rossi 2003). Institutionally, agencies and courts have **never been very effective**at monitoring the process of filing rates and other tariff s as a private forum-shopping strategy. Although many question the effectiveness of rate regulation, this may have been a moderately stable state of aff airs with cost-of-service regulation, given routine regulatory proceedings that served as some safeguard for public values. However, with the introduction of competition to formerly regulated industries and other regulatory transitions, market norms are emerging to expose a **gap**in regulatory agency **ability to deter** wrongdoing by private firms. To the extent the filed tariff doctrine encourages **strategic manipulation** of the tariffing process to foreclose judicial enforcement, it widens this gap and may even result in **more radical deregulation**

 than either Congress or **agencies intend** – essential firms may be able to elect to operate in markets **without any antitrust**, contract and tort protections.

Political scientists and economists have begun to analyze how interest groups, including regulated firms, decide to **allocate their resources** between various types of regulation, congressional, agency, or judicial (de Figueiredo and de Figueiredo 2002; Rubin 2001). Since it has unique implications for the behavior of regulated firms, the filed rate doctrine is a worthy candidate for similar analysis. Since the doctrine is only available on a widespread basis if a utility has fi led its tariff with federal regulators, the doctrine creates a strong ex ante incentive for private fi rms, such as regulated utilities, to invest more **heavily than otherwise** in **lobbying regulators** to accept or approve tariffs. By engaging in such conduct ex ante, private firms can avoid the uncertainty of an ex post judicial proceeding in which courts enforce antitrust, tort, or contract law. The doctrine thus encourages a type of forum shopping, triggered primarily by private decisions to provide information in the regulatory process. If a private fi rm desires the protection of the fi led tariff shield – immunity from antitrust and state common law suits for its market behavior – it has a strong incentive **to divulge** information (especially **ambiguous information**) to regulators ex ante, in anticipation that this information will be included in published tariffs and will minimize unpredictable, ex post judicial meddling (Rossi 2003). Where there is no check on the accuracy, clarity and relevance of the information fi rms are submitting in the regulatory process with tariff fi lings, opportunities for **manipulation of regulation** – and in particular institutional choice – are presented.38 To the extent regulated firms engage in strategic conduct ex ante, an institutional bias in favor of regulatory agencies, and away from courts and markets, is likely to result.

In the context of asymmetric information disclosure of non-verifiable information in contractual bargaining, Eric Talley has observed a need for judicial monitoring or verifi - cation (Talley 2001, 192–3). Typically, the balance between disclosure, on the one hand, and institutional decisions to regulate, on the other is monitored by the oversight of a third party who has the ability to protect the public interest. For example, in the context of tort litigation, securities regulation, and witness immunity from criminal prosecution, each of which use information disclosure to influence regulatory choices, third party oversight plays an important role in monitoring the divulgence of information to ensure that the choice is welfare-enhancing. In the context of many price-regulated industries, however, third-party monitoring of strategic disclosure is ineffective. Third-party monitoring of information disclosure in the utility regulation would depend on the actions of either regulators, as in the context of the SEC, or courts, as in the context of criminal immunity. To the extent that the filed rate doctrine applies, however, both **regulators and courts** have been **ineffective** at policing this balance ex ante to ensure that the application of the shield is not harmful to social welfare ex post in the **utility regulation** context.

As regulators have moved towards restructured markets, and away from cost-of service regulation, agencies have tended to **acquiesce in**, rather than seriously scrutinize or refuse, tariff filings. In fact, often filed tariff s become effective by operation of law after the passage of time, with little or **no scrutiny** by agencies. So the filed tariff bar curiously aligns the incentives of both private fi rms and regulators to include as many terms and conditions as possible in tariff s – even when these terms and conditions **are a sham**, in the sense that agencies often lack the power to seriously enforce them. This is not as much of a problem with cost-of-service regulation, since tariff s are subject to potential adjudication in a hearing; with restructuring, however, tariff s are frequently accepted without such scrutiny, presenting the potential for a new kind of private manipulation of the regulatory process.39 Given the principles of **deference** courts have provided to regulators in the late twentieth century (Kearney and Merrill 1998, 1396; Pierce 1989, 1046; Goldsmith 1989, 243), the judiciary has played very little role in policing private behavior in the tariffing process and its relationship to the fi led tariff shield.

# 2AC

### 2AC – A1

#### New FERC order doesn’t touch retail so can’t solve DERs

Campbell 20 [Bruce, Director of Regulatory Affairs at CPower. He is an expert in regulatory proceedings and market design with 40 years of experience in the electric industry including generating station management and strategic development. “A Primer for Understanding FERC Order 2222”. 12/18/20. https://cpowerenergymanagement.com/a-primer-for-understanding-ferc-order-2222/]

Order 2222 affects the wholesale power markets, NOT the retail markets.

It’s FERC’s responsibility to ensure that the competition in US wholesale power markets is just and reasonable. The markets exist to foster competition and FERC acts as essentially a referee, making sure one entity doesn’t have an unfair advantage over another.

In this respect, Order 2222 is right in the wheelhouse of FERC’s jurisdiction and mission.

Nonetheless, it is important to understand that the interconnection of DERs with the grid remains subject to local utility interconnection rules that are state jurisdictional and that these rules can encourage or discourage DER activity. 2

### 2AC – A2

#### Walt goes aff

Walt 20. [Stephen, Robert and Renée Belfer professor of international relations at Harvard University and a columnist for Foreign Policy. Will a Global Depression Trigger Another World War?. Foreign Policy. 5-13-2020. <https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/>]

If one takes a longer-term perspective, however, a sustained economic depression could make war more likely by strengthening fascist or xenophobic political movements, fueling protectionism and hypernationalism, and making it more difficult for countries to reach mutually acceptable bargains with each other. The history of the 1930s shows where such trends can lead, although the economic effects of the Depression are hardly the only reason world politics took such a deadly turn in the 1930s. Nationalism, xenophobia, and authoritarian rule were making a comeback well before COVID-19 struck, but the economic misery now occurring in every corner of the world could intensify these trends and leave us in a more war-prone condition when fear of the virus has diminished.

[THEIR CARD STARTS]

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”

Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term

#### Energy prices high

Williams 3/25 [Geoff Williams, "Why Is My Electric Bill So High?", 3/25/22, https://money.usnews.com/money/personal-finance/family-finance/articles/why-is-my-electric-bill-so-high]

It isn’t just your electric bill: Everyone’s paying more to power their homes these days.

This has actually been the case for at least a year. According to the U.S. Energy Information Administration, the average homeowner saw their electricity climb 4.3% last year, to 13.72 cents per kilowatt-hour. That was the largest jump since 2008.

#### Transition is impossible.

Smith ’21 [Noah; September 6; Finance Professor at Stony Brook University; Substack, “People are realizing that degrowth is bad,” <https://noahpinion.substack.com/p/people-are-realizing-that-degrowth>]

So even if there is a sustainable growth path, we are not currently on it. About this, degrowthers are right; a gentle, natural transition to green growth is possible, but is an unaffordable luxury. But degrowthers’ prescription is the wrong one.

The reason, in a word, is politics. The kind of massive intention reordering of global production and consumption that degrowthers fantasize about is not just pragmatically impossible to implement, it’s the kind of thing that essentially everyone in the world except for a few very shouty people in Northern Europe and the occasional Twitter activist is going to reject. To see why, let us turn to the excellent articles/podcasts by Milanovic, Piper, and Klein.

The political argument against degrowth

Milanovic actually has two excellent posts on the topic of degrowth. In the first one, he lays out why forcing developing countries to stay in poverty would be bad:

Let us suppose, for the sake of the argument, that we interpret “degrowth” as the decision to fix global GDP at its current level…Then, unless we change the distribution of income, we are condemning to permanent abject poverty some 15 percent of world population that currently earn less than $1.90 per day and some quarter of humankind who earn less than $2.50 per day…Keeping so many people in abject poverty so that the rich can continue to enjoy their current standard of living is obviously something that the proponents of degrowth would not condone.

Enforcing global degrowth would require freezing world income at about $17,000/year. That means that most people in the world would never even come close to current rich-world living standards — instead, they would at best only be able to reach the level currently enjoyed in China or Botswana. Perhaps that’s not such a horrible fate, but as Milanovic notes, this would require impoverishing most of the population of developed countries. He elaborates on this point in his new post, pulling no punches:

[In order to avoid keeping most of the world in poverty, degrowthers must] introduce a different [income] distribution (B) where everybody who is above the current mean world income ($PPP 16 per day) is driven down to this mean, and the poor countries and people are, at least for a while, allowed to continue growing until they too achieve the level of $PPP 16 per day. But the problem with that approach is that one would have to engage in a massive reduction of incomes for…practically all of the Western population. Only 14% of the population in Western countries live at the level of income less than the global mean…Degrowers thus need to convince 86% of the population living in rich countries that their incomes are too high and need to be reduced….It is quite obvious that such a proposition is a political suicide.

Milanovic quite rightly waves away degrowthers’ protestations that GDP is not a good measure of human welfare. GDP isn’t perfect, he notes, but it’s close enough where the basic point stands.

Demanding that people in rich countries accept absolutely catastrophic declines in their living standards is a political non-starter. Klein, on his podcast, tries to point this out as gently as possible:

I think that if the political demand of the [degrowth] movement becomes you don’t get to eat beef, you will set climate politics back so far, so fast, it would be disastrous. Same thing with S.U.V.s. I don’t like S.U.V.s. I don’t drive one. But if you are telling people in rich countries that the climate movement is for them not having the cars they want to have, you are just going to lose. You are going to lose fast…This is where the politics of [degrowth] for me fall apart…

I just don’t see the argument for degrowth as being anything but an extraordinarily slower way of approaching the politics, probably counterproductive compared to what we’re doing, which is I think you can make tremendous strides on climate change by deploying renewable energy technologies and giving people the opportunity to have a more materially fulfilling life atop those technologies.

Milanovic is less gentle, calling this “outright magical thinking”. He is correct. When you look at how much people in America are willing to sacrifice in terms of their material well-being in order to fight climate change, it’s far less than what Klein is talking about. And Klein is really softballing it here — it’s not just giving up beef and SUVs, it’s a dramatic reduction in the size of housing and the amount of food and the ease of transportation and the quality of medical care that people in rich countries enjoy. It is, frankly, not happening.

But even this vastly understates the political and practical difficulties of degrowth. Piper adds several key points. First of all, she notes, because developed countries have been decoupling resource use and growth for a while now, curbing resource use will actually cause a lot more restrictions on developing countries than Milanovic’s simple calculations would suggest:

From a climate change perspective, though, there’s a problem [with simply reducing rich-world living standards]. First, it means that degrowth would do nothing about the bulk of emissions, which are occurring in developing countries.

This is an incredibly important point. For example, China now produces more CO2 emissions than the U.S., the EU, and Japan combined:

(And no, this is not because of outsourcing, as you can see by looking at the trade-adjusted emissions numbers.)

Another way of looking at this is that China’s CO2 emissions per dollar of GDP are more than twice America’s, and about five times that of the EU. Any global degrowth plan that actually reduces resource use is going to entail more pain for China than its GDP numbers would suggest, simply because China is at a more resource-intensive stage of growth.

Do you think China will accept a substantial diminution of its living standards, in order to satisfy the environmental-economic diktats of activists in Northern Europe? If so, you need to rethink a great many things.

Anyway, Piper makes a second crucially important point. So far we’ve been waving our hands and talking about lowering rich-world GDP while raising GDP for poor countries. In fact, economies don’t work like that:

Second, the global economy is more interconnected than Hickel implies. When Covid-19 hit, poor countries were devastated not just by the virus but by the aftershocks of virus-induced slowdowns in consumption in rich countries.

There’s some genuine appeal to the idea of an end to “consumerism,” but the pandemic offered a taste of how a sudden drop in rich-world consumption would actually affect the developing world. Covid-19 dramatically curtailed Western imports and tourism for a time. The consequences in poor countries were devastating. Hunger rose, and child mortality followed.

Degrowth would thus require deep changes in the entire way that the global economy works. Change happens, but not like that; implementing the kind of reallocation schemes that degrowthers throw around with abandon would require global economic planning that would put Gosplan to shame. Klein points this out, again rather gently:

Degrowth is, as its advocates understand it, a act of global economic planning really without equal anywhere in human history. It is an act of extraordinary central planning.

In other words, it is abject fantasy.

Taken together, these criticisms are utterly devastating to the entire degrowth project. In its current form, it will not advance beyond a media fad. No matter how shrilly degrowthers quote apocalyptic projections, the things they call for simply will not happen.

#### Yes decoupling---best and most recent studies AND leakage is wrong.

Zeke Hausfather 21, Director, Climate and Energy at The Breakthrough Institute, "Absolute Decoupling of Economic Growth and Emissions in 32 Countries," Breakthrough Institute, 04/06/2021, https://thebreakthrough.org/issues/energy/absolute-decoupling-of-economic-growth-and-emissions-in-32-countries.

The past 30 years have seen immense progress in improving the quality of life for much of humanity. Extreme poverty — the number of people living on less than $1.90 per day — has fallen by nearly two-thirds, from 1.9 billion to around 650 million. Life expectancy has risen in most of the world, along with literacy and access to education, while infant mortality has fallen. Despite perceptions to the contrary, the average person born today is likely to have access to more opportunities and have a better quality of life than at any other point in human history. Much of this increase in human wellbeing has been propelled by rapid economic growth driven largely by state-led industrial policy, particularly in poor-to-middle income countries.

However, this growth has come at a cost: between 1990 and 2019, global emissions of CO2 increased by 56%. Historically, economic growth has been closely linked to increased energy consumption — and increased CO2 emissions in particular — leading some to argue that a more prosperous world is one that necessarily has more impacts on our natural environment and climate. There is a lively academic debate about our ability to “absolutely decouple” emissions and growth — that is, the extent to which the adoption of clean energy technology can allow emissions to decline while economic growth continues.

Over the past 15 years, however, something has begun to change. Rather than a 21st century dominated by coal that energy modelers foresaw, global coal use peaked in 2013 and is now in structural decline. We have succeeded in making clean energy cheap, with solar power and battery storage costs falling 10-fold since 2009. The world produced more electricity from clean energy — solar, wind, hydro, and nuclear — than from coal over the past two years. And, according to some major oil companies, peak oil is upon us — not because we have run out of cheap oil to produce, but because demand is falling and companies expect further decline as consumers increasingly shift to electric vehicles.

The world has long been experiencing a relative decoupling between economic growth and CO2 emissions, with the emissions per unit of GDP falling for the past 60 years. This is the case even in countries like India and China that have been undergoing rapid economic growth. But relative decoupling alone is inadequate in a world where global CO2 emissions need to peak and decline in the next decade to give us any chance at limiting warming to well below 2℃, in line with Paris Agreement targets.

Thankfully, there is increasing evidence that the world is on track to absolutely decouple CO2 emissions and economic growth — with global CO2 emissions potentially having peaked in 2019 and unlikely to increase substantially in the coming decade. While an emissions peak is just the first and easiest step towards eventually reaching the net-zero emissions required to stop the world from continuing to warm, it demonstrates that linkages between emissions and economic activity are not an immutable law, but rather simply a result of our current means of energy production.

In recent years we have seen more and more examples of absolute decoupling — economic growth accompanied by falling CO2 emissions. Since 2005, 32 countries with a population of at least one million people have absolutely decoupled emissions from economic growth, both for terrestrial emissions (those within national borders) and consumption emissions (emissions embodied in the goods consumed in a country). This includes the United States, Japan, Mexico, Germany, United Kingdom, France, Spain, Poland, Romania, Netherlands, Belgium, Portugal, Sweden, Hungary, Belarus, Austria, Bulgaria, El Salvador, Singapore, Denmark, Finland, Slovakia, Norway, Ireland, New Zealand, Croatia, Jamaica, Lithuania, Slovenia, Latvia, Estonia, and Cyprus. Figure 1, below, shows the declines in territorial emissions (blue) and increases in GDP (red).

To qualify as having experienced absolute decoupling, we require countries included in this analysis to pass four separate filters: a population of at least one million (to focus the analysis on more representative cases), declining territorial emissions over the 2005-2019 period (based on a linear regression), declining consumption emissions, and increasing real GDP (on a purchasing power parity basis, using constant 2017 international $USD). We chose not to include 2020 in this analysis because it is not particularly representative of longer-term trends, and consumption and territorial emissions estimates are not yet available for many countries.

There is a wide range of rates of economic growth between 2005-2019 among countries experiencing absolute decoupling. Somewhat counterintuitively, there is no significant relationship between the rate of economic growth and the magnitude of emissions reductions within the group. While it is unlikely that there is not at least some linkage between the two factors, there are plenty of examples of countries (e.g., Singapore, Romania, and Ireland) experiencing both extremely rapid economic growth and large reductions in CO2 emissions.

One of the primary criticisms of some prior analyses of absolute decoupling is that they ignore leakage. Specifically, the offshoring of manufacturing from high-income countries over the past three decades to countries like China has led to “illusory” drops in emissions, where the emissions associated with high-income country consumption are simply shipped overseas and no longer show up in territorial emissions accounting. There is some truth in this critique, as there was a large increase in emissions embodied in imports from developing countries between 1990 and 2005. After 2005, however, structural changes in China and a growing domestic market led to a reversal of these trends; the amount of emissions “exported” from developed countries to developing countries has actually declined over the past 15 years.

This means that, for many countries, both territorial emissions and consumption emissions (which include any emissions “exported” to other countries) have jointly declined. In fact, on average, consumption emissions have been declining slightly faster than territorial emissions since 2005 in the 32 countries we identify as experiencing absolute decoupling. Figure 2, below, shows the change in consumption emissions (teal) and GDP (red) between 2005 and 2019.

There is a pretty wide variation in the extent to which these countries have reduced their territorial and consumption emissions since 2005. Some countries — such as the UK, Denmark, Finland, and Singapore – have seen territorial emissions fall faster than consumption emissions, while the US, Japan, Germany, and Spain (among others) have seen consumption emissions fall faster. Figure 3 shows reductions in consumption and territorial emissions for each country, with the size of the dot representing the size of the population in 2019.

[Chart omitted]

Absolute decoupling is possible. There is no physical law requiring economic growth — and broader increases in human wellbeing — to necessarily be linked to CO2 emissions. All of the services that we rely on today that emit fossil fuels — electricity, transportation, heating, food — can in principle be replaced by near-zero carbon alternatives, though these are more mature in some sectors (electricity,

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## T

### 2AC – T Subsets

#### Counter-interpretation---the private sector includes an industry.

The Law Dictionary N.D., (The Law Dictionary: Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed. “Private Sector” , <https://thelawdictionary.org/private-sector/> , date accessed 9/11/21)

What is PRIVATE SECTOR?

An industry that is composed of private companies. The corporate sector and the personal sector are encompassed in the private sector and they are responsible for the allocation of the majority of resources within the economy.

#### The includes particulars

Random House 6 (Unabridged Dictionary, <http://dictionary.reference.com/browse/the>)

(used, esp. before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article *a* or *an*): the book you gave me; Come into the house

#### Scope of antitrust law is bounded by exemptions and immunities – we are T

Layne E. Kruse 19, Co-Chair, Melissa H. Maxman, Co-Chair, Vittorio Cottafavi, Vice Chair, Stephen M. Medlock, Vice Chair; David Shaw, Vice Chair; Travis Wheeler, Vice Chair; Lisa Peterson, Young Lawyer Representative; all on the Exemptions and Immunities Committee of the ABA Antitrust Section, “Long Range Plan, 2018-19,” American Bar Association, 3/18/2019, https://www.americanbar.org/content/dam/aba/administrative/antitrust\_law/lrps/2019/exemptions-immunities.pdf

D. Top 3 Accomplishments Since Last Long Range Plan in 2015

(1) Publications. In addition to our Annual ALD Updates, we are set to publish an update to the Noerr-Pennington Handbook, which should be out in 2019. We also published a new version of the State Action Handbook in 2016. The Handbook on the Scope of the Antitrust Laws was published in 2015.

(2) Commentary on Legislative and Regulatory Proposals. The Committee has been very active in supporting Section commentary on proposed legislation, regulations, and other policy issues.

For instance, in March 2018, the E&I Committee assisted former E&I Chair John Roberti in composing his article, “The Role and Relevance of Exemptions and Immunities in U.S. Antitrust Law”, presented to the DOJ Antitrust Division Roundtable on behalf of the ABA Antitrust Section.

In January 2018, in response to a request from the Section Chair, we submitted Section comments along with the Legislative and State AG Committees, addressing the proposed Restoring Board Immunity Act legislation that would impact the post-NC Dental exemptions and immunity climate. Previously, we commented on the Professional Responsibility Act.

(3) Spring Meeting Programs. We have sponsored or co-sponsored a program at every Spring Meeting since our last long range plan. In 2019 we will chair Sham Litigation after FTC v. AbbVie The FTC v. AbbVie decision – calling for the disgorgement of $448 million on the basis of sham patent litigation. In addition, we will co-sponsor in 2019 with the Trade, Sports & Professional Associations Committee, a program on “Antitrust Law's Anomalous Treatment of Sports,” addressing how US courts have shown broad deference to the "rules of the game," including near-immunity status for concepts such as "amateurism."

II. Major Competition/Consumer Protection Policy or Substantive Issues Within Committee’s Jurisdiction Anticipated to Arise Over Next Three Years

A. Issue #1: Will Certain Exemptions Be Eliminated or Expanded?

A goal of the current DOJ Antitrust Division is to streamline antitrust laws, and in particular, take a hard look at exemptions and immunities. This is in the wheelhouse of our Committee’s fundamental policy issue: How much of the economy has opted out of our antitrust system? Is that a problem or are ad hoc exemptions acceptable ways to fine tune the application of the antitrust laws?

We anticipate, therefore, that efforts to enact or to repeal existing statutory exemptions and immunities will continue. In recent years, there have been efforts to repeal the exemptions for railroads and (at least in part) the McCarran-Ferguson insurance exemption. The Section and the Committee has generally supported efforts to repeal statutory exemptions. Given that repeal issues are very political it is unlikely that we will see many exemptions actually repealed.

On the other hand, proposals for new exemptions and immunities will continue to be introduced in Congress. The Committee will improve on a template for use in assisting the Section in drafting comments to Congress on newly proposed exemptions and immunities.

One development that may continue in the health care area are issues over a "COPA" or "Certificate of Public Advantage" at the state level. A COPA is a state statutory mechanism that provides certain collaborations in the health care community with immunity from private or government actions under the antitrust laws by invoking the state action doctrine. The FTC has generally opposed such efforts at the state level, but several states have used them to immunize health care mergers. This is a major development that should be monitored.

Through programs, newsletters, and Connect entries, the Committee intends to educate its members about Congressional and other efforts to repeal, or introduce new, exemptions and immunities, as well as the application of existing statutory exemptions and immunities in the courts. The Committee’s Handbook on the Scope of Antitrust Law, published in 2015, addresses developments in the statutory immunities area. It built on the prior publication, Federal Statutory Exemptions from Antitrust Law Handbook in 2007. Our Scope book will need to be updated within the next three years.

B. Issue #2: Will There Be Legislative Solutions to State Action Issues at State and Federal Levels?

The FTC’s case against the North Carolina Board of Dental Examiners put the "active supervision" prong of the state action test front and center. North Carolina State Board of Dental Examiners v. Federal Trade Commission, 135 S.Ct. 1101 (2015). The Court agreed with the FTC’s position that state occupational licensing boards comprised of market participants must satisfy the active supervision requirement. This spurred additional suits against other types of state boards involving regulated professionals. Moreover, every State had to reassess its boards to determine if there is "active supervision." Courts and state legislatures are addressing those issues. We also expect the proper framing of the clear articulation prong of the state action doctrine will be addressed. The Supreme Court spoke to the clear articulation test in FTC v. Phoebe Putney Health System, Inc., 133 S.Ct. 1003 (2013), narrowing the foreseeability test to cover only situations in which the anticompetitive conduct is the “inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature.” How this test has played out in the lower courts will be of particular interest to the Committee and its membership. The COPA issues, at the state level, as previously mentioned, will impact this area.

The Committee expects to address these issues through updates to Connect, newsletters, Spring Meeting programs, committee programs, its contributions to the Annual Review of Antitrust Law Developments. The State Action Practice Manual addresses these issues, as well as the Committee’s Handbook on the Scope of Antitrust Law.

C. Issue #3: Will Noerr Be Restricted or Expanded?

The Noerr-Pennington doctrine is an exemption issue that is frequently litigated. In particular, the most likely area of further development is in the pharma industry. Alleged misrepresentations to government agencies has caught the attention of some courts. In addition, there may be more development on the pattern exception, which raises the issue of whether each act of petitioning in a pattern must satisfy the objectively and subjectively baseless requirements for sham petitioning. The Committee’s new Handbook on Noerr (forthcoming) and its earlier Handbook on the Scope of Antitrust Law addresses developments in the Noerr law.

III. Specific Long Term Plans to Strengthen Committee

The Committee provides important services to the membership of the Section through publications, drafting ABA Antitrust Section comments to proposed regulation and international competition proposed immunities, and programming. The goals of the Committee include: (1) to provide policy comments on key questions about the scope of the antitrust laws for legislation and policy-making; (2) produce a mix of publications and programming that provides relevant and useful information to our members; (3) to ensure that the Committee remains valuable to our members’ practices; and (4) to make the most productive use of electronic communications to deliver the Committee’s work product.

A. Potential Modifications to Charter: What is the Role of this Committee?

The Committee’s current charter accurately characterizes its purview—that is, addressing the scope of the antitrust laws. That scope, of course, is defined primarily in terms of exemptions and immunities (both statutory and non-statutory). The Committee, however, has dealt with other doctrines, such as preemption and primary jurisdiction. These areas may not necessarily be viewed as traditional exemptions or immunities, but they nonetheless directly affect the application and extent of the antitrust laws. In addition, the Committee expends significant efforts to address international issues, including statutory exclusions from the U.S. antitrust laws, including the FTAIA; the related doctrines of act of state, sovereign immunity, and foreign sovereign compulsion; and industry-specific exemptions and exclusions from non-U.S. antitrust laws, including blocking exemptions.

## K

### 2AC – Cap

#### The alternative would rapidly kill over 6 billion people from starvation – only the perm solves

David Harvey, Dec 19, 2019 [Marxist economic geographer and Distinguished Professor of anthropology and geography at the Graduate Center of the City University of New York “Anti-Capitalist Chronicles: Global Unrest” https://www.democracyatwork.info/acc\_global\_unrest]

So that is, if you like, one half of the problem. But the other part of the problem is this: that in Marx's time if there was a sudden collapse of capitalism, most people in the world would be able to feed themselves and reproduce. Because most people were self-sufficient in their local area with the kinds of, you know, things they needed to live on – in other words, people could put breakfast on their table irrespective of what was going on in the global economy. Right now that's no longer the case. Most people in the United States, but increasingly, of course, in Europe, and in Japan, and now increasingly in China, and India, and Indonesia, and everywhere are dependent entirely upon the delivery of food to them, so that they get the food from the circulation of capital. Now, in Marx's time, like I say, that would have not been true but now this is a situation where probably around 70 or maybe 80 percent of the world's people are dependent upon the circulation of capital in order to assure their food supply, in order to deliver them the kinds of fuels which are going to allow them mobility, going to actually deliver them all the necessities to be able to reproduce their daily life.

So this is a, I think, a situation which I can really summarize in the following kind of way: that capital right now is too big to fail. We cannot imagine a situation where we would shut down the flow of capital, because if we shut down the flow of capital, 80 percent of the world's population would immediately starve, would be rendered immobile, would not be able to reproduce themselves in very effective ways. So we cannot afford any kind of sustained attack upon capital accumulation. So the kind of fantasy that you might have had – socialists, or communists, and so on, might have had back in 1850, which is that well, okay, we can destroy this capitalist system and we can build something entirely different – that is an impossibility right now. We have to keep the circulation of capital in motion, we have to keep things moving, because if we don't do that, we are actually stuck with a situation in which, as I've said, almost all of us would starve.

And this means that capital in general is too big to fail. It is too dominant, and it is too necessary to us that we cannot allow it to fail. We have to actually spend some time propping it up, trying to reorganize it, and maybe shift it around very slowly and over time to a different configuration. But a revolutionary overthrow of this capitalist economic system is not anything that's conceivable at the present time. It will not happen, and it cannot happen, and we have to make sure that it does not happen. But at the same time, the other side of the coin is capital is too big, too monstrous, too huge to survive, that it cannot survive in its current form. So on the one hand, we can't do without it; on the other hand, it is on a suicidal path. So this is, if you like, what I think the central dilemma is.

#### Violent revolutions fail and enhance state power

**Flaherty 5.** Andrew, <http://cryptogon.com/docs/pirate_insurgency.html>, USC researcher in political affairs, activist and organic farmer in New Zealand, ACS = American Corporate State

THE NATURE OF ARMED INSURGENCY AGAINST THE ACS  Any violent insurgency against the ACS is sure to fail **and will only serve to enhance the state's power**. The major flaw of violent insurgencies, both cell based (Weathermen Underground, **Black Panthers,** Aryan Nations etc.) and leaderless (Earth Liberation Front, People for the Ethical Treatment of Animals, etc.) is that they are attempting to attack the system using the same tactics the ACS has already mastered: terror and psychological operations. The ACS attained primacy through the effective application of terror and psychological operations. Therefore, it has far more **skill** and **experience** in the use of these tactics than any upstart could **ever hope** to attain.4 **This makes the ACS impervious to traditional insurgency tactics.** - Political Activism and the ACS Counterinsurgency Apparatus  The ACS employs a full time counterinsurgency infrastructure with resources that are **unimaginable**to most would be insurgents. Quite simply, violent insurgents have **no idea** of just how powerful the foe actually is. Violent insurgents typically start out as peaceful, idealistic, political activists. Whether or not political activists know it, even with very mundane levels of political activity, they are engaging in low intensity conflict with the ACS.  The U.S. military classifies political activism as “low intensity conflict.” The scale of warfare (in terms of intensity) begins with individuals distributing anti-government handbills and public gatherings with anti-government/anti-corporate themes. In the middle of the conflict intensity scale are what the military refers to as Operations Other than War; an example would be the situation the U.S. is facing in Iraq. At the upper right hand side of the graph is global thermonuclear war. What is important to remember is that the military is concerned with ALL points along this scale because they represent different types of threats to the ACS.  Making distinctions between civilian law enforcement and military forces, and foreign and domestic intelligence services is no longer necessary. After September 11, 2001, **all national security assets would be brought to bear against any U.S. insurgency movement.**Additionally, the U.S. military established NORTHCOM which designated the U.S. as an active military operational area. Crimes involving the loss of corporate profits will increasingly be treated as acts of terrorism and could garner anything from a local law enforcement response to activation of regular military forces.  Most of what is commonly referred to as “political activism” is viewed by the corporate state's counterinsurgency apparatus as a useful and necessary component of political control.  Letters-to-the-editor... Calls-to-elected-representatives... Waving banners... “Third” party political activities... Taking beatings, rubber bullets and tear gas from riot police in free speech zones...  Political activism amounts to an utterly useless waste of time, in terms of tangible power, which is all the ACS understands. Political activism is a cruel guise that is sold to people who are dissatisfied, but who have no concept of the nature of tangible power. Counterinsurgency teams routinely monitor these activities, attend the meetings, join the groups and take on leadership roles in the organizations.  It's only a matter of time before some individuals determine that political activism is a honeypot that accomplishes nothing and wastes their time. The corporate state knows that some small percentage of the peaceful, idealistic, political activists will eventually figure out the game. At this point, the clued-in activists will probably do one of two things; drop out or move to escalate the struggle in other ways.  If the clued-in activist drops his or her political activities, the ACS wins.  But what if the clued-in activist refuses to give up the struggle? Feeling powerless, desperation could set in and these individuals might become increasingly radicalized. Because the corporate state's counterinsurgency operatives have infiltrated most political activism groups, the radicalized members will be **easily identified**, **monitored** and eventually compromised/turned, arrested or **executed**. **The ACS wins again**.

#### Violent backlash kills everyone – the PKK is dying

**ICG 22** [International Crisis Group. “Turkey’s PKK Conflict: A Visual Explainer.” 3/10/22. <https://www.crisisgroup.org/content/turkeys-pkk-conflict-visual-explainer>]

In July 2015, a two-and-a-half year long ceasefire broke down, and the almost four-decade long conflict between Turkish security forces and militants of the Kurdistan Workers’ Party (PKK) – recognised as a **terrorist** organisation by Turkey, the U.S. and the EU – entered one of its **deadliest** chapters in nearly four decades.

Since that date, violence has **devastated** communities in Turkey's majority-Kurdish south east and – at times – struck into the heart of the country's largest metropolitan centres. An unprecedented flare-up of fighting and attacks in some south-eastern urban districts in the first half of 2016, was followed by a gradual shift of **violence** into rural areas.

International Crisis Group has assembled a database of fatalities caused by this conflict since 2011. Our data is based on information available in open sources, including reports from Turkish language media, the Turkish military, local Kurdish rights groups, and the PKK itself. This platform presents some of the information that can be gleaned from this data. For our latest detailed analysis that also draws on this data, click here.

According to Crisis Group's fatality tally, last updated on 10 March 2022,

AT LEAST

**5,917**

**people have been killed** in clashes or terror attacks since 20 July 2015. This includes:

#### Growth is sustainable—newest data.

Pearce, 22—environment and development correspondent for the Breakthrough Institute, writing regularly for Yale Environment 360 among others, citing Narasimha Rao, Associate Professor of Energy Systems, Yale School of the Environment (Fred, “Green Growth Won’t Kill the Planet,” Breakthrough Journal, No. 15, Winter 2022, dml)

Rao’s findings ought to have a profound impact on the divisive discourse on climate change, which continues to pit the attempts of developing countries to eliminate poverty by mimicking Western modes of development against many in the West who see this path as ruinous for the planet and ultimately self-defeating for the poor. They are both wrong. In truth, there need be no incompatibility. Ecomodernists are right: humanity can have its cake and eat it, too.

Rao, who grew up in a middle-class family in Mumbai but with poverty around him, is now at Yale University and the International Institute for Applied Systems Analysis (IIASA), an Austria-based intergovernmental think tank. He has spent years as what he calls an “interdisciplinary scholar,” addressing both technological advances and social equity and how they might interact.

He says that, until recently, little climate-change analysis, social research, or futurology has seriously addressed whether climate and living standards can be fixed together. Ecomodernists stepped in with strong belief in the power of transformative technology to both deliver abundant energy and break the umbilical cord linking prosperity to pollution. But theirs is a predominantly supply-side and top-down perspective, which can lead to a presumption that the benefits of prosperity and abundant energy will trickle down to deliver decent living standards for all.

Critics like Anna Walnycki and Tucker Landesman at the International Institute for Environment and Development say a top-down perspective risks increasing social and economic inequality unless “policies are shaped around the needs of ordinary citizens,” especially those in low-income urban communities. Moreover, as Rao points out, energy inequality around the world is even greater than income inequality. And by some measures, more income seems to only increase energy inequalities, according to analysis by researchers at the University of Leeds.

To grapple with such issues, Rao’s work, centered in the Decent Living Energy project, takes a bottom-up approach. It starts with an assessment of the hard material needs for eliminating poverty—particularly for the billion-plus people living in informal urban settlements without decent housing, sanitation, water, and other basic services—and does the work of separating out the energy needs for eradicating poverty from those to meet the demands of affluence.

In this way, Rao has added real numbers to the idea of a decent living, upending past global measures of poverty, which were removed from the real lives and material needs of the poor. The most widely used is based on the single metric of daily income per head. Once a dollar a day, the cutoff has now become $1.90 per day for extreme poverty, with a higher threshold of $5.50 per day used by the World Bank for upper-middle-income countries. Almost half the world’s population does not achieve this standard. But what you can buy with those dollars varies vastly round the world, as does what you need to purchase to achieve a decent standard of living. Other measures have looked to well-being outcomes, most influential among them being the UN’s Human Development Index, which is based on life expectancy, years of schooling, and income. But it does not set a threshold level, or measure what material requirements are needed to get to an “acceptable” (different from “good”) outcome.

Rao, with his colleague Jihoon Min, attempts to do better by identifying a shopping bag of material requirements, or “satisfiers,” that are as near as possible universal prerequisites for a decent modern life. They call these requirements “material conditions that people everywhere ought to have, no matter what their intentions or conception of a good life, or what other rights they may claim.”

Those material needs fit into 10 broad indicators of basic human well-being: nutrition, shelter, living conditions, clothing, health care, air quality, education, access to information and communication services, mobility, and freedom to gather and dissent. A person who achieves them does not necessarily have a life that a wealthy person in the West would recognize as comfortable. But they would have a life that could be called decent and dignified.

Many of these requirements derive from widely accepted benchmarks, but others go further. For instance, nutrition requires not just sufficient calories, but also vitamins and minerals and a refrigerator to store food safely. There’s also the need for a cooker that does not fill the home with smoke, part of the air-quality category.

Shelter and adequate living conditions require not just a roof over your head, but also sufficient floor space (depending on household size, typically 30 square meters per person), durable home construction, and sufficient heating and cooling equipment for “thermal comfort.” Also required is “sufficient clothing to achieve basic comfort” and access to a washing machine.

Health care and living conditions requirements include on-premises sanitation and water supplies (50 liters per head per day), plus access to adequate health care facilities and a minimum of one physician per 1,000 people.

The social well-being criteria include not just nine years of education, but also access to communication networks including one phone and one television or computer per household. These new needs, Rao and Min say, may not appear essential to life, but are “globally desired by an overwhelming majority of people,” so not to have them risks social disengagement and ostracism. The electronics need not be personally owned, they note, but access is vital.

The same holds for mobility, which they regard as necessary for social engagement and employment or selling wares. The decent living requirement is set at access to motorized transport, such as a bus or motorbike, sufficient for an average of around 25 kilometres per person per day.

Rao and his colleagues’ analysis of needs is often surprisingly granular. Current thinking holds that households of a similar income level around the world generally want the same appliances. His household surveys nuance that. While most people in most places do want a TV, cellphone, and refrigerator, his study with Kevin Ummel found washing machines are less universally desired, and ovens and tumble driers even less so. Race, culture, and religion are all factors. Patterns also differ depending on whether people live in urban areas and on the status of women; urbanity and greater equality both drive up demand for appliances connected with cooking and washing. People who consume a lot of milk products—such as Sikhs in India—want a refrigerator more than those who do not.

White people, Rao and Ummel note, are more fixated on white goods—that is, large electrical appliances. But they care less about motorbikes and some cooking equipment such as rice cookers, which are much more widespread in Asia.

It is impossible to say what proportion of the world’s population meets all Rao’s standards—or none. Some places far outstrip the basics. The average American has almost six times the “decent” level of floor space and consumes almost seven times as much water. Germans average four and 2.5 times those “decent” levels, respectively. But Rao’s estimates suggest that only two-thirds of people have attained half of them, with nutrition the most achieved and mobility the least. In fact, “the majority of the global population does not currently have decent levels of motorized transport,” coauthor Jarmo Kikstra of Imperial College London, has pointed out.

All this confirms findings from Rao and his colleagues’ analysis published in the September Environmental Research Letters that “more people are deprived of DLS [decent living standards] than are income-poor.” Worldwide, more than three billion people lack access to clean cooking options, space cooling, sanitation, and transport, and more than two billion lack cold storage, decent housing, and proper access to clean water.

In sub-Saharan Africa, over 60 percent of people do not have access to eight of the requirements for a decent standard of living, with deficits for cooling, sanitation, transport, water access, cold storage, housing, television, and clean cooking. In South Asia, over half the population lacks adequate sanitation, transport, cooling, clean cooking, water access, and cold storage.

Most standards are almost universally met in rich nations. Yet the data also show that a third of North Americans and 44 percent of Western Europeans miss out on transport needed for mobility, while in both regions about a tenth miss out on decent sanitation. This means that, around the world, in every corner of it, hundreds of millions of people need more, and no green transition that denies it to them could be considered sustainable or just.

The Cost of Decency

But can the gaps in access around the world be filled—and without crashing the climate?

To be sure, creating a world where everyone can have a decent living standard will require new public infrastructure and more private energy use. As Rao points out, much of the progress will only be achievable collectively—through public water supply and sanitation services, clinics, schools, public transit, cellphone networks, and so on. Much else will be best secured—and with lowest energy needs—collectively as well, with better public transport rather than an automobile in front of every house, for instance.

But the great takeaway is that truly essential needs are, as Rao says, mostly “cheap in terms of energy.” Doing some calculations based on the information in Rao and his coauthors’ Environmental Research Letters article, the infrastructure needed to meet decent living standards worldwide by 2040 will add less than 4 percent to current consumer energy demand. Half of that will be for improved housing, a quarter for public transit systems. Annual requirements to sustain those living standards would add a further 17 percent, making a total increase in energy needs to meet decent living standards of the world of just around 20 percent. That compares with an expected increase in energy demand, without ensuring decent living standards for all, of around 50 percent.

Put another way, these authors say, “essential energy needs to meet everyone’s basic needs . . . could constitute a small share of projected energy growth, namely, around an order of magnitude lower than current US energy demand.” And their analysis, the authors point out, assumes “only modest efficiency improvements, rather than relying on an ideal, high-tech future.”

The energy needed, in other words, may be even less than the headline figures suggest. For the poorest billion or so on the planet, reductions in deprivation will often come with reductions in energy use and environmental impact. Marta Baltruszewicz and her coauthors at the University of Leeds have recently shown from studies in Nepal, Vietnam, and Zambia that the households with higher well-being indicators used more energy than households with lower well-being. Without access to electricity or gas, the researchers found, low well-being households burned more firewood and charcoal than their higher well-being neighbors, resulting in more pollution and deforestation. And lacking clean drinking water, they were forced to constantly boil dirty water to make it safe. Overall, the study found that “households achieving well-being have 60%-80% lower energy footprint of residential fuel use” than the average in those countries.

The bottom line, according to Rao’s coauthor Alessio Mastrucci of IIASA, is that “we do not have to limit energy access to basic services. . . . even under very ambitious poverty eradication and climate mitigation scenarios, there is quite a lot of energy still available for affluence.”

Just how much, of course, matters a great deal for those of us in the rich world with energy-intensive lifestyles and a social conscience. But even before considering any energy technology transformation that can provide more power with fewer emissions, there is hopeful news.

The affluent still consume most of the planet’s resources, with the wealthiest tenth of the planet’s population consuming 20 times more energy than the poorest tenth. But there has been increasing discussion about whether some rich nations are reaching “peak stuff,” a tipping point beyond which material needs no longer rise with wealth—and may even fall. For example, Jesse Ausubel of Rockefeller University has long argued that Western societies in general are starting to dematerialize.

And the evidence is growing, as studies increasingly call into question the presumed ratchet linking wealth and energy demands. For example, Europeans consumed 18 percent fewer raw materials in 2020 than they did in 2008, according to the European Commission. The British government’s Office for National Statistics calculated that the personal materials footprint of the average Brit—in food, textiles, construction materials, metals, fossil fuels, and so on—fell from 24.2 metric tons in 2001 to 13.4 metric tons in 2020.

Some of this decoupling is due to long-standing trends in improved technological efficiency, combined with more recent digital innovation. A single smartphone replaces a computer, a compass, a newspaper, and an alarm clock—not to mention a radio, a camera, a magnifying glass, a flashlight, and a music player. One optical fiber can do the work of a thousand copper phone wires. Global digital camera sales have declined by 87 percent in the past decade, as cameras in phones take their place.

Both public and private consumption patterns are changing in other ways, too. In the public domain, the assembly of infrastructure tends to peak as economies rapidly industrialize, and then falls. (That is why China has, in recent years, consumed 20 times more cement than America, and around eight times more steel too.) Even US president Joe Biden’s trillion-dollar infrastructure plans may not reverse this, since those appear to have less to do with cement and steel structures than broadband connectivity and power grids.

And American consumers are increasingly spending their money on experiences rather than on disposable material goods, according to McKinsey & Company analysts. Their findings suggest that, whereas prior generations defined themselves through their possessions, we now define ourselves more through our experiences, both real and virtual. The new car in the driveway matters less than the vacation you take with it. We don’t eat more, but instead go to more and better restaurants. We don’t buy ever more cheap furniture; we buy quality. Other modern lifestyle choices may also drive down material and energy requirements: eating less meat, going to the gym, and meeting up remotely rather than in person, for instance. People were driving less even before the COVID-19 lockdown.

If such trends continue, and if energy becomes less carbon-intensive, it would not be a stretch to imagine a world that can achieve decent living standards for all with few environmental tradeoffs.

#### Transition wars zero solvency

Crownshaw et al 18 [Timothy Crownshaw, Economics for the Anthropocene (E4A) 2Department of Natural Resource Sciences, McGill University, Canada, Caitlin Morgan, Food Systems Graduate Program at the University of Vermont, Alison Adams, Rubenstein School of the Environment, University of Vermont, Martin Sers, Faculty of Environmental Studies, York University, Natalia Britto dos Santos, Alice Damiano, Laura Gilbert, Gabriel Yahya Haage, Daniel Horen Greenford, "Over the horizon: Exploring the conditions of a post-growth world", 2018, https://journals.sagepub.com/doi/pdf/10.1177/2053019618820350?casa\_token=\_O1GadWsXLwAAAAA:YjDaSmPLmQU5qV6fMt0lozJqG465r9ipDqM2Z9DqmXnjNTNfixx\_OFr4mEuXoCEiiLBfnRp6YZHX6Q]

Conflict in various forms is likely to increase significantly in frequency and severity in a post-growth world, driven by various factors such as migration, poverty, and population pressures, rising unemployment (particularly among young men), ecological degradation, climate change impacts, scarcity of natural resources (particularly food and energy), and geopolitical tensions (Ahmed, 2017; Brzoska and Fröhlich, 2016; Homer-Dixon, 1991, 2001; Myers, 2005; Omer and Dan, 2014; Rees, 2015). This conflict may occur at all levels – between states, communities, and individuals – although the incidence of conflict in specific locales will be highly unpredictable and subject to many emergent factors. Clearly, major wars between nations or blocs have the potential to disrupt adaptation to the end of growth and may significantly worsen and accelerate many post-growth challenges. Under these circumstances, attempts at conflict resolution will likely see mixed success and will depend critically on levels of inter- and intra-state economic inequality, political responses to violence, and the presence of existing social, religious, or ethnic tensions (Acemoglu et al., 2010; Horowitz, 1993; Karl, 2000).

#### Alt can’t spillover

* Constant pro-growth messages in media and politics make it the most effective frame—alt must fiat mindset shift to solve, which should be rejected
* The alt’s strategy fails—creates resistance and unifies the pro growth camp
* Prefer—sociological studies demonstrate difficulties creating a unified, successful anticap movement

Drews 16 [Stefan Drews, Institute of Environmental Science and Technology, Universitat Autònoma de Barcelona, Miklós Antal, Institute of Social Relations, Eötvös Loránd University, "Degrowth: A “missile word” that backfires?", June 2016, https://www.sciencedirect.com/science/article/pii/S0921800915305516?casa\_token=MdngnyoLsRYAAAAA:rfo3ysm8jZPC3m992fZng2HQB7iKrhE69yQO3WOSVoAwtO2aUeguS-9p0w-irLYI7jF\_54UBqcQ#!]

When thinking about economic growth, most people will make connections to positive ideas such as prosperity, employment, development, economic and social improvement, higher wages, and well-being (Mohai et al., 2010), which makes it a very effective frame in politics (GSG, 2015). How much these positive connections are justified by evidence is debatable, but most ordinary people will see economic growth as something good. Very few people would think about environmental unsustainability, resource/energy limits, or social limits to growth (Mohai et al., 2010). Again, the mass media plays an important role in shaping these associations simply by the constant repetition of explicit pro-growth messages.

Degrowth, on the other hand, may evoke thoughts about crisis, recession, spending cuts, lower salaries, and job losses. The reason for this is straightforward. In economic parlance, growth generally means GDP growth, which is a main policy goal. People who are not familiar with the term degrowth—i.e. the vast majority—may simply, and often unconsciously, negate that meaning and understand degrowth as economic contraction or an intentional reduction of the GDP. As past and current periods of GDP decline have been socially and psychologically painful (De Neve et al., 2015), the first spontaneous conscious reactions to the idea of degrowth will be generally negative. The retrieval of such negative conscious associations is facilitated by the initial affective judgment of degrowth. Clearly, losses loom larger than gains in the degrowth frame (see also Davey, 2014).

Therefore, attacking growth head on is a strategy that will inevitably create a lot of resistance and—if it ever becomes more influential—may even activate and unify the growth camp. Winning the battle seems unlikely as long as in most countries economic growth really is correlated with important short-term goals such as lower unemployment, better public finances, and higher social stability (Antal and van den Bergh, 2013). Furthermore, changing initially negative opinions about degrowth will be difficult because people are generally more reluctant to change their prior beliefs than to develop new and positive opinions about an issue (Lord et al., 1979). In addition, an abstract slogan like degrowth communicated by the far left is problematic because convincing an audience whose political positions differ from the speaker's is more effective with concrete messages (Menegatti and Rubini, 2013). If repoliticizing environmental issues is the way to go, then it should be done in a way that creates a more favorable starting position in the debate.

#### Alt can’t solve climate change fast enough.

Piper 21, \*Kelsey Piper, a Staff Writer for Vox's new vertical; (August 3rd, 2021,“Can we save the planet by shrinking the economy?”, https://www.vox.com/future-perfect/22408556/save-planet-shrink-economy-degrowth)

Degrowth is unrealistic — and gaining traction

As a policy program, degrowth suffers from being both too radical and not radical enough.

There’s a lot of broad-brush policy prescriptions in the degrowth lit, but those details never really add up.

While it’s not a short book, Less Is More feels surprisingly sparse when it comes to envisioning how the changes it recommends could be brought about. The chapter on solutions recommends cutting the workweek and changing tax policy — two solid proposals — but then rounds that out by recommending ending technological obsolescence, advertising, food waste, and student debt.

I’m not particularly opposed to those policies. But they seem laughably inadequate for the magnitude of the task at hand: confronting the climate crisis. Degrowth successfully persuades that guiding humanity and our planet through the 21st century will be really, really hard — but not in a way degrowth particularly solves.

Where degrowth literature is relentlessly pessimistic about the prospect of our problems being solved under our current economic system, it turns oddly optimistic about the prospect that they’ll be solved once we embrace a different way of viewing wealth and progress. If cutting carbon emissions fast enough to matter requires shrinking the global economy by 0.5 percent a year indefinitely, starting right now, as the Nature paper estimates, that’ll take policy measures much larger and more ambitious than any proposed in Less Is More.

“If we are to avert catastrophic warming, we have to lower carbon emissions by a factor of two within the next 10 years. I find it highly implausible that capitalism/market economics will be abandoned by the world on that time frame,” Pennsylvania State University climatologist Michael Mann told me. “That means we have to act on the climate crisis within the framework of the current system.”

In that sense, there’s actually something anti-radical about any climate plan so radical that it can’t be concretely brought about in the next decade.

#### The alt exacerbates warming – resource misallocation & subsidized energy prices

Regan 19 [Shawn Regan, research fellow and vice president of research at PERC. He is the executive editor of PERC Reports. “Socialism Is Bad for the Environment.” 5/17/19. https://www.perc.org/2019/05/17/socialism-is-bad-for-the-environment/]

How can this be? “Environmental deterioration was not supposed to occur under socialism,” Cuban-American researchers Sergio Díaz-Briquets and Jorge Pérez-López wrote in a detailed study of Cuba’s environmental legacy. “According to conventional Marxist-Leninist dogma, environmental deterioration was precipitated by the logic of capitalism and its relentless pursuit of profits.” Socialism, on the other hand, would avoid capitalism’s excesses. “Guided by ‘scientific’ principles, socialism’s goal was a classless and bountiful society,” they explained, “populated by men and women living in harmony with each other and the environment.”

But this was clearly not the case in the Soviet empire. Nor was it in Cuba, whose environmental record after decades of socialist control was described by Díaz-Briquets and Pérez-López as “far different from the utopian view.” The West, meanwhile, had not only the consumer goods that socialist societies lacked but also a cleaner environment.

One explanation for the disparity is that central planners, unlike markets, grossly misallocate resources, as a matter of routine. Energy prices, for example, were highly subsidized in the socialist economies of Eastern Europe and the Soviet Union. As a result, industrial production was far more energy-intensive throughout the socialist world than in Western European economies—five to ten times higher, according to one estimate—leading to more pollution. A 1992 World Bank study found that more than half of the air pollution in the former Soviet Union and in Eastern Europe could be attributed to subsidized energy pricing during this period.

A related problem was the fixation of socialist planners on heavy industry at the expense of the environment. “The singular dominant fact of the Soviet economic strategy,” Jeffrey Sachs has noted, “was the subordination of all human and economic goals to the development of heavy industry.” Industrial pollution from factories in Eastern Europe was so bad that Time described it as the region “where the sky stays dark.” Acid rain in Krakow severely damaged the city’s historic structures and buildings, some of which required renovations, and even corroded the faces of many centuries-old statues.

Of course, industry behind the Iron Curtain was anything but efficient, and central planning caused excessive use of natural resources. A 1991 study by Mikhail Bernstam found that market economies used about one-third as much energy and steel per unit of GDP as did socialist countries. Likewise, Polish economist Tomasz Zylicz found that the non-market economies of Central and Eastern Europe required two to three times more inputs to produce a given output than did Western European economies. (The former Soviet world, as well as China, also emitted several times more carbon per unit of GDP than the United States did—a trend that continues today.) Simply put, market economies make more with less and are therefore better for the environment.

Socialist planners, on the other hand, lack the knowledge necessary to rationally coordinate economic activity. Moreover, bureaucratic constraints make accurate price-setting impossible. In their 1989 book The Turning Point, Soviet economists Nikolai Shmelev and Vladimir Popov offered an illustrative example. To bolster the production of gloves, the Soviet government more than doubled the price it paid for moleskin. Warehouses soon filled with mole pelts, but glovemakers were unable to use them all, so many rotted. As the economists explained:

The Ministry of Light Industry has already requested Goskomtsen [the State Committee on Prices] twice to lower the purchasing prices, but “the question has not been decided” yet. And this is not surprising. Its members are too busy to decide. They have no time: besides setting prices on these pelts, they have to keep track of another 24 million prices. And how can they possibly know how much to lower the price today, so they won’t have to raise it tomorrow?

Therein lies a crucial flaw in socialist economic logic, and one that has real environmental consequences: Whereas a capitalist firm has ample incentive to act on such information to economize on the use of natural resources, socialist planners have no such motivation—Soviet bureaucracies, Shmelev and Popov noted, were “able only to correct the most obvious price disproportions several years after” they appeared—nor do they have the knowledge needed to accurately set millions of prices at once. And if there are no market prices to convey accurate information about the value of scarce natural resources, there is little chance of conserving them.

Finally, there is the issue of property rights. In a socialist society without them, it is impossible to hold individuals or governments accountable for environmental damages: Planners can increase industrial output without compensating those who bear its costs in the form of pollution. In a capitalist society, property rights offer protection against environmental harms and give resource owners incentives to conserve.

Socialism’s environmental record is just as bad elsewhere. As Díaz-Briquets and Pérez-López document, in Cuba, socialists’ quest to maximize production at all costs has caused extensive air, soil, and water pollution. And in Venezuela, socialist policies have contaminated the nation’s drinking-water supplies, fueled rampant deforestation and unrestrained mining activity, and caused frequent oil spills attributed to neglect and mismanagement by the state-owned energy company.

As socialist ideas capture the American imagination—and are often portrayed, as with the Green New Deal, as necessary to avoid environmental catastrophe—it’s important to remember socialism’s dismal environmental legacy. Capitalism may be a dirty word these days, but when it comes to producing the prosperity and creativity necessary to sustain a clean environment, it’s still the best system we’ve got.

#### No link and turn---antitrust is a middle ground.

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

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

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

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

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

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

# 1AR

### 1AR – Case

#### Growth stops extinction – combats Iran, ISIS, Russia, and China war AND transnational risks.

Haas ‘17 [Richard; January 10; President of the Council on Foreign Relations, former Director of Policy Planning for the US State Department (2001-2003), and President George W. Bush's special envoy to Northern Ireland and Coordinator for the Future of Afghanistan; Penguin Press, “A World in Disarray: American Foreign Policy and the Crisis of the Old Order,” Print]

A large portion of the burden of creating and maintaining order at the regional or global level will fall on the United States. This is inevitable for several reasons, only one of which is that the United States is and will likely remain the most powerful country in the world for decades to come. The corollary to this point is that no other country or group of countries has either the capacity or the mind-set to build a global order. Nor can order ever be expected to emerge automatically; there is no invisible hand in the geopolitical marketplace. Again, a large part of the burden (or, more positively, opportunity) falls on the principal power of the day. There is more than a little self-interest at stake. The United States cannot remain aloof, much less unaffected by a world in disarray. Globalization is more reality than choice. At the regional level, the United States actually faces the opposite problem, namely, that certain actors do have the mind-set and means to shape an order. The problem is that their views of order are in part or in whole incompatible with U.S. interests. Examples would include Iran and ISIS in the Middle East, China in Asia, and Russia in Europe.

It will not be an easy time for the United States. The sheer number and range of challenges is daunting. There are a large number of actors and forces to contend with. Alliances, normally created in opposition to some country or countries, may not be as useful a vehicle in a world in which not all foes are always foes and not all friends are always friendly. Diplomacy will count for a great deal; there will be a premium on dexterity. Consultations that aim to affect the actions of other governments and their leaders are likely to matter more than negotiations that aim to solve problems.

Another reality is that the United States for all its power cannot impose order. Partially this reflects what might be called structural realities, namely, that no country can contend with global challenges on its own given the very nature of these challenges. The United States could reduce its carbon footprint dramatically, but the effect on global climate would be modest if India and China failed to follow suit. Similarly, on its own the United States cannot maintain a world trading system or successfully combat terrorism or disease. Adding to these realities are resource limits. The United States cannot provide all the troops or dollars to maintain order in the Middle East and Europe and Asia and South Asia. There is simply too much capability in too many hands. Unilateralism is rarely a serious foreign policy option. Partners are essential. That is one of the reasons why sovereign obligation is a desirable compass for U.S. foreign policy. Earlier I made the case that it represents realism for an era of globalization. It also is a natural successor to containment, the doctrine that guided the United States for the four decades of the Cold War. There are basic differences, however. Containment was about holding back more than bringing in and was designed for an era when rivals were almost always adversaries and in which the challenges were mostly related to classical geopolitical competition.1 Sovereign obligation, by contrast, is designed for a world in which sometime rivals are sometime partners and in which collective efforts are required to meet common challenges.

Up to this point, we have focused on what the United States needs to do in the world to promote order. That is what one would expect from a book about international relations and American foreign policy. But a focus on foreign policy is not enough. National security is a coin with two sides, and what the United States does at home, what is normally thought of as belonging to the domestic realm, is every bit as much a part of national security as foreign policy. It is best to understand the issue as guns and butter rather than guns versus butter.

When it comes to the domestic side, the argument is straightforward. In order to lead and compete and act effectively in the world, the United States needs to put its house in order. I have written on what this entails in a book titled Foreign Policy Begins at Home.2 This was sometimes interpreted as suggesting a turn away from foreign policy. It was nothing of the sort. Foreign policy begins at home, but it ends there only at the country’s peril.3

Earlier I mentioned that the United States has few unilateral options, that there are few if any things it can do better alone than with others. The counterpart to this claim is that the world cannot come up with the elements of a working order absent the United States. The United States is not sufficient, but it is necessary. It is also true that the United States cannot lead or act effectively in the world if it does not have a strong domestic foundation. National security inevitably requires significant amounts of human, physical, and financial resources to draw on. The better the United States is doing economically, the more it will have available in the way of resources to devote to what it wants and needs to do abroad without igniting a divisive and distracting domestic debate as to priorities. An additional benefit is that respect for the United States and for the American political, social, and economic model (along with a desire to emulate it) will increase only if it is seen as successful.

The most basic test of the success of the model will be economic growth. U.S. growth levels may appear all right when compared with what a good many other countries are experiencing, but they are below what is needed and fall short of what is possible. There is no reason why the United States is not growing in the range of 3 percent or even higher other than what it is doing and, more important, not doing.4

#### Every hotspot explodes.

Lewis ’18 [Patricia; November 10; Research Director for International Security at Chatham House, PhD in Nuclear Physics from Birmingham University, Former Deputy Director and Scientist-in-Residence at the Center for Nonproliferation Studies at the Former Monterey Institute of International Studies, Former Director of the UN Institute for Disarmament Research, Former Director of the Verification Research, Training and Information Centre, Graduated in Physics from Manchester University; World Economic Forum, “How to Prevent World War 3,” <https://www.weforum.org/agenda/2018/11/how-to-prevent-world-war-3>]

Since the ‘war to end all wars’ − as H G Wells so wrongly predicted a century ago − the world has seen the ‘peace to end all peace’ lead to the horrors of the second world war, proxy wars through the Cold War and, today, violent conflicts that increasingly affect civilians disproportionately and cross the red lines laid by the laws of armed conflict. The machinery of war and the available firepower has increased dramatically. The risks of a third world war are enormous. If we add in all the means and methods of warfare − conventional, nuclear, cyber, drones, and so on − we have the military potential to destroy ourselves entirely.

Violence is raging in the Middle East, Europe and Russia are poised on the edge of conflict over Ukraine, the United States is once more engaged in military action in Iraq and, as NATO pulls out, Afghanistan is vulnerable. Other flashpoints over disputed islands in the South China Sea, tensions on the Korean peninsula and over Kashmir are just some of the easily identified points of escalation.

In the past 100 years, we have, however, learned a great deal about how to prevent conflict. After the Second World War, we established the United Nations with the primary purpose of saving succeeding generations from the scourge of war. The European Union grew over decades from a trade treaty to an organization that won the Nobel Peace Prize for its part in transforming Europe from a continent of war to a continent of peace. NATO has had its part to play in shoring up the transatlantic alliance that bonded many European countries in a common cause. Today war between Germany and France is almost impossible to imagine.

Other regional organizations have been established in Africa, Asia, the South Pacific and the Americas. International bodies have been established to implement disarmament and security treaties and civil society expertise has been channeled through universities and think tanks − including Chatham House, conceived in 1919 with a view to preventing future wars.

According to the Uppsala Conflict Data Program, 254 armed conflicts have been fought since 1946 of which 114 are classed as wars (defined as more than one thousand battle-related deaths per annum). Since the end of the Cold War, the numbers of armed conflicts have dropped dramatically. Of the 33 armed conflicts listed in 2013, only seven were classed as wars – a 50% reduction since 1989.

Many factors have supported the reduction in armed conflicts including the withering of proxy wars, UN sponsored peace processes and economic development. Research by the Human Security Report demonstrates that peace negotiations and cease-fire agreements reduce violent conflict even when they fail.

Six peace agreements were signed in 2013 and four were agreed in 2012. Over recent years, despite common perceptions, we do seem to have learned how to create, keep and enforce the peace.

The laws of armed conflict and human rights laws along with the international criminal court, war crime tribunals, economic and military sanctions and domestic justice commissions serve to protect civilians. Although nuclear weapons possession or use, outlawed for most countries, are yet to be globally forbidden, international law has proscribed the possession and use of devastating weapons systems such as chemical and biological weapons, antipersonnel landmines, cluster munitions and blinding lasers.

Academic disciplines that study war and peace have developed a rich body of research that helps us understand how wars start and how they can be prevented or ended. No approach or system is perfect, of course, but we understand how resource scarcity, environmental change, economic stress, refugee flows and racism all fuel the engendering of conflict. We understand the importance of history and culture, the role of gender and the ways in which different political systems exacerbate or diminish the risks of conflict.

In a study for the European Strategy and Policy Analysis System (ESPAS), Chatham House and FRIDE predicted that the world in 2030 will be more fragile and governments and international institutions will struggle to cope with the twin trends of increased interdependence and greater fragmentation. Most significantly, we realized that the risks of inter-state wars are rising and a major inter-state war cannot be ruled out in the near future.

In the lead up to the First World War, many foolishly imagined that Europe was ‘too civilized’ to go to war. Prior to the Second World War people hoped that the aggression from Nazi Germany could be contained. In so many cases of war, we tend to be overly optimistic about the length of time (‘we’ll be home by Christmas’), the scale and the outcome of the conflict.

It is time that we put aside complacency and become more realistic about war and peace and ourselves. We know a great deal about how to prevent war. We owe it to all others who sacrificed their lives and families to put into action all that we have learned and ensure peace in Europe, the Middle East and Asia for forthcoming generations. Otherwise, there will be few left to hear our excuses.