# 1NC

### OFF

T-Per Se

#### ‘Prohibiting’ a practice requires per se illegality – they defend the rule of reason

Lee Mendelsohn 6, Director at Edward Nathan, “KIPA Conduct Amounts to Price Fixing”, Business Day (South Africa), 6/12/2006, Lexis

The first step in any competition law analysis is to define the relevant market. There are two components to an analysis of the relevant market, namely the relevant product market and the geographic market.

The relevant product market consists of those products and services that operate as a competitive constraint on the behaviour of the suppliers of those products and/or services.

The relevant product market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to substitute the product with another product or would cause suppliers of other products to begin producing the product in question.

The relevant geographic market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to purchase the product from other geographic areas, alternatively suppliers of the product in other geographic areas to supply those products into the area in question.

For the purposes of this case study, we are instructed to accept that each medical speciality constitutes a relevant product market and that the relevant geographic market for each of them is Kleindorpie.

The Competition Act provides that "an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if … it involves … directly or indirectly fixing a purchase or selling price or any other trading condition".

An "agreement" is defined as including a contract, arrangement or understanding, whether or not legally enforceable. The term agreement is very widely defined. A "horizontal relationship" is defined as a "relationship between competitors".

The prohibition on the fixing of a purchase or selling price or any other trading condition is one of the so-called "per se" prohibitions which are included in our Competition Act. The prohibition is automatic and absolute and the fixing of prices or other trading condition cannot be justified on the basis of any technological, efficiency or other procompetitive gains that could outweigh the potential anticompetitive effect of the fixing of the price or trading condition. If the capitation plan of KIPA falls within the restrictive horizontal practice prohibiting price fixing and the fixing of other trading conditions, such practice will be a contravention of the act.

#### Vote neg for limits and ground – infinite standards make the topic unmanageable and fringe standards dodge links and allow bidirectional permissiveness.

### OFF

Adv CP

#### The United States federal government should

#### Substantially invest in renewable energy technology;

#### Announce that it will no longer apply its antitrust laws extraterritorially; and

#### Engaging in diplomatic negotiations with the Republic of China to develop communication mechanisms to stop East China Sea conflict.

### OFF

International CP

#### The Association of Southeast Asian Nations should harmonize their antitrust laws with the U.S., including adopting the consumer welfare standard.

### OFF

T Private Sector

#### “Private sector” means all non-governmental entities – the plan only affects [X].

Senate Report 95 [Senate Report. 104-1, “UNFUNDED MANDATE REFORM ACT OF 1995,” https://www.congress.gov/congressional-report/104th-congress/senate-report/1 , date accessed 9/10/21]

"Private sector" is defined to cover all persons or entities in the United States except for State, local or tribal governments. It includes individuals, partnerships, associations, corporations, and educational and nonprofit institutions.

#### Vote neg for limits and ground – the number of potential subsets is infinite – any industry, product, single companies, individuals – only big affs have link uniqueness.

### OFF

Unconscionability CP

#### The US federal judiciary should define anticompetitive business practices protected by the Export Trading Company Act and the Webb–Pomerene Act as unconscionable market behavior when those business practices harm the markets of foreign nations without protections for export cartels.

#### Treating market exploitation as unconscionable alone and instead of an antitrust violation solves the aff, avoids circumvention, and spills over to create norms to counter inequality.

HiLA KEREN, Professor of Law, Southwestern Law School, ’15, “LAW AND ECONOMIC EXPLOITATION IN AN ANTI-CLASSIFICATION AGE” [Vol. 42:313, 2015]

In the same vein, treating the exploitation of vulnerability as unconscionable market behavior can fit the profile of a dignity claim. Like the right to control our intimate life, we all should have a right to not be exploited by others when we are vulnerable. Exploitation of vulnerability in the market not only causes devastating economic damage, it also harms dignity. It shames the vulnerable party, leaving him helpless and looking pathetic and unable to take care of his own matters. Therefore, the accumulative consequences of exploitation pose a direct threat to human dignity and courts should be allowed and even encouraged to intervene. 222 Of course, dignity and equality are intertwined, and group-based protection is not really extinct.223 As Yoshino reminds us, "[i]n finding all thirteen sodomy statutes unconstitutional, Lawrence clearly helped gay people more than it helped straight people. '224 This point is pertinent in our context as well, because establishing a norm against exploitation of vulnerability in the market would clearly assist weaker market players of disenfranchised groups more than their stronger counterparts. In that sense, predatory loan agreements cannot-and should not-be divorced from their socio-economic context. Indeed, as Siegel points out, working in the space between colorblindness and classification "entails practical, contextual judgments attentive to the concerns of differently situated members of the polity.' 22

The vulnerability theory calls upon the state to be more responsive, and therefore serves as additional theoretical support for utilizing unconscionability where reverse redlining has failed. Accordingly, as a measure of help to vulnerable subjects, this theory underscores the state's deep commitment to a proactive countering of inequalities instead of a minimalistic engagement in keeping formal equality intact. Such an expectation reflects a giant step beyond what is allowed under the private/public dichotomy, where private loans are marginally scrutinized by the public legal system. Further, it echoes a belief, shared by many (albeit not all), that contract law-despite its "private" image has a meaningful public role to play in the social arena and "is a mode of social regulation whose rules ought to serve social goals. 226

Furthermore, the use of an extensive contractual doctrine, like unconscionability, is strategically advantageous in the context of economic exploitation. Using specific legislation to forbid particular kinds of abuse, such as the ban on notorious pay-day loans, does not defend against greedy market players who will simply identify loopholes and find ways to continue to profit from exploiting others' vulnerability, such as lending via the internet to avoid state regulations. 227 At least one state has explained the special value of the unconscionability doctrine as a "blanket rule," stating, "[t]he legislative process is too slow to keep up with market practices, so the courts must have power to monitor the market for the protection of all participants. '228 Although the law cannot totally stop people from trying to make more profits by taking advantage of others, it can make it harder for them to succeed and discourage them from further attempts. This goal can be achieved by utilizing the concept of unconscionability to send a clear and general message, that any form of exploitation is forbidden regardless of the concrete method used. At least one court that had dismissed a reverse redlining argument but allowed an unconscionability argument to proceed referred to this "residual" or "catch-all" attribute of the doctrine, explaining that "[i]t also seems to the court that the purpose of the unconscionability doctrine, in providing protection to vulnerable, unsophisticated parties, is to plug the gaps left open by applicable statutory provisions when they do not afford consumers adequate protections. '229 This is the known advantage of broad standards like good faith and unconscionability over specific rules: it is much harder to escape their coverage.230 A clear and general message against exploitation will support and strengthen social and moral norms that disapprove of such behavior, which can encourage stronger market players to exercise more self-restraint.

#### Inequality is ethically intolerable and poses a linear existential risk that turns every impact.

Benetar, 13 – Solomon BENETAR MBChB, DSc (Med) is Emeritus Professor of Medicine at the University of Cape Town and Professor at the Dalla Lana School of Pubic Health and Joint Centre for Bioethics, University of Toronto; st President of the International Association of Bioethics, elected foreign member of the US National Academy of Sciences' Institute of Medicine and the American Academy of Arts and Sciences ’13 ( “Global Health and Justice: Re-examining our Values” Bioethics 27 (7) p. Wiley)

Widening disparities in health within and between nations reflect a trajectory of ‘progress’ that has ‘run its course’ and needs to be significantly modified if progress is to be sustainable. Values and a value system that have enabled progress are now being distorted to the point where they undermine the future of global health by generating multiple crises that perpetuate injustice. Reliance on philanthropy for rectification, while necessary in the short and medium terms, is insufficient to address the challenge of economic and other systems spinning out of control. Innovative approaches are required and it is suggested that these could best emerge from in-depth multidisciplinary research supported by endeavours to promote a ‘global mind-set.’

The human development approach begins from a premise that has deep roots in liberal political theory – namely, the idea that justice is properly about the basic social structure[s] … (political, legal, social and economic institutions of a community that have a profound impact on the health status of community members) and whether these structures guarantee community members the ‘fair value’ of their most basic human capacities.1

Descriptions abound of the extent to which we live in an unjust world and of how disparities in wealth and health within and between nations have been widening inexorably over many years.2 The state of the world in the early years of the twenty first century is characterized by multiple, deep and interlinking crises in health, education, energy, water, food security, the economy and the environment that constitute an ‘organic global crisis,’ with already evident and further predictable adverse implications for the lives and well being of all globally.3 It is arguable that these crises and escalating injustice are to a considerable extent the outcome of the way in which the global political economy has been re-structured over the past 40 years,4 and that this is causally related to a value system that has failed to lead to the benefits of economic growth and scientific and medical advances (including those in public health) being applied to processes that could reduce inequities in health and human well being.5

A recent review of four prominent theories of justice (consequentialist, relational, human rights and social contract approaches) reveals general agreement on the ethical requirement for international assistance to relieve poverty and improve the health of the most deprived. An example is the widespread agreement to pursue the Millennium Development Goals (MDGs).6

However, many such approaches are arguably minimalist in the sense that they have a dominant emphasis on philanthropy, although some attention is directed to the need to rectify previous economic and other harms. It should be noted that for every $1 of Official Development Assistance (much of which is used to pay donor country staff who assist in delivering aid),7 developing countries pay about $6 in debt repayment – mostly interest on debt.8 The beneficial effects of well directed philanthropy are acknowledged, but the limited success of philanthropy in narrowing disparities, illustrated by inability to raise the resources for the MDGs, provides insights into the need for a bolder vision for poverty reduction. Briefly, achievement of the MDGs (and these are modest in terms of needs beyond the severely poor) requires about $3/4 trillion over 15 years. The sad fact is that this sum has not been raised (and that donor fatigue is increasing) while about $17 trillion (22 x as much) was mobilized in three months for the bailouts of financial institutions during the early stages of the 2008 global economic crisis. This asymmetry between the privatization of profits and the socialization of losses reflects the extent to which the lives of a minority are valued and protected while the lives of the majority are devalued and undermined. 9

Furthermore, while discussions on health and justice are conducted under the rubric ‘global health,’ they are located within what would more accurately be called an ‘international health’ approach. International health, with its focus on the provision of biomedical health care assistance, in one form or another across regional or national boundaries, has long been an item on the agendas of many wealthy countries and academic institutions. Global Health is a newer term and properly used, goes beyond international health to include acknowledgment of health in more than merely a biomedical sense, and the critical interdependence of the health of all in a world characterized, inter-alia by excessive (often wasteful) consumption of limited resources, population growth, demographic changes, porous borders and environmental and biological dangers that threaten all lives globally.10 Seeing the health of all as interconnected and intimately linked to social and economic forces, and to the values that underlie these requires a new perspective on ways of viewing ourselves and the world.

In this commentary I provide a personal view of some distortions of our values that may in part explain our predicament of persistent global injustice 11 and suggest that ignoring these prevents us from acting with the vision and wisdom to use available intellectual and financial resources to reduce injustice, improve health and ensure better lives for billions of people**.**12 I conclude by considering some attitudes and approaches that could facilitate reduction in injustice. Throughout this commentary I ask readers to keep in mind the implications of ongoing widespread poverty, depletion of limited and unrenewable natural resources, population growth, global warming and the threat of new infectious diseases as major threats to global health in the 21st century.

Distortions of Our Values

Widely and strongly held values over many centuries include respecting the lives, rights and freedoms of all within democratic systems characterized by a significant degree of social solidarity and driven by both ongoing scientific advances and well structured economies. The extent to which many of these values have become distorted, with potentially adverse effects on modern life, has long been perceived by prescient scholars,13 and it has been argued that these inter-linked distortions are underpinned by a desire and strategy for power and control through hegemonic ideas.14

Hyper-individualism

The analysis, offered here, of a variably distorted value system, centres on an ongoing process of shifting from hard-won and highly prized individualism that has enabled magnificent economic, scientific and technological advances for the benefit of individuals and many societies, to a form of hyper-individualism characterized by demands for immediate gratification and endless economic expectations by the most privileged, whose short-term horizons and lavish consumptive patterns endanger the future for us all**.** Charles Taylor has described this ‘dark side of individualism,’ as excessively focused on individuals in a way that:

… flattens and narrows our lives, makes them poorer in meaning and less concerned with others and society. [He contends moreover, that] social relationships are depersonalised by the rise of ‘instrumental reasoning’ that values specialised knowledge, the extension of technical rationality to favour calculation, systematization, formal procedures, cost-benefit evaluations, maximizing efficiency and control over nature.15

Extreme individualism and three other characteristics underpinning the economic system, (viz. unlimited desires, short-term self-interest and a form of ‘rationality’ that emphasizes calculable and measurable issues), were identified many decades previously by John Kenneth Galbraith, who predicted that these would pose long-term threats to all.16

Within healthcare systems, hyper-individualism is revealed by expectations that everything that can possibly be done for any individual comes to be incorporated into a sense of entitlement regarding what should be provided – often at little or no cost to the recipient. As a result, health care is driven by the desire to postpone death at all costs, with little appreciation of the limits of life and of medicine.17 This applies particularly when futile health care is continued with public resources in healthcare systems that aspire to be egalitarian. Patients kept alive for extended periods in ICUs, when they have multiple organ failure and large, untreatable, suppurating pressure sores exemplify this.18 As a consequence, a high proportion of health budgets in many ‘developed countries’ is spent on prolonged end-of-life treatments that have only marginal benefits. Largely ignored in the pursuit of such ‘rescue medicine’ are the lost opportunities to prioritize many effective treatments that, if promptly applied, would result in greatly improved lives for many who are relegated to long waiting lists by current health funding priorities. Under such ideological pressures, all healthcare systems are to some extent, and in varying combinations, distorted (not structured to meet local health needs), dysfunctional (driven by vested interests with money/profits as the bottom line, within increasingly corporatized frameworks) and unsustainable (costs rising more rapidly than can be afforded even in wealthy nations).

Narrow conceptions and distorted application of human rights

Human Rights, now a widespread moral language used to promote respect for life and individuals, has been remarkably successful in many complex situations. However, instead of a comprehensive approach as outlined in the Universal Declaration of Human Rights (UDHR), the focus has largely been on civil and political rights. Protection of the privacy and confidentiality of those with HIV/AIDS is a good example of successful use of this approach. However, it is notable that there has also been considerable inconsistency and selectivity in the application and pursuit of human rights. For example security threats in the USA have led to abuses of civil and political rights that Americans have long-championed and chastened others for abusing,19 with ‘significant implications for the moral authority of civil societies in more authoritarian regimes’.20

In the context of identifying and punishing individual perpetrators of human rights abuses, a narrow conception of rights and perpetrators of abuses has also neglected powerful ‘systems-based’ forces that could promote either achievement of rights or abuses of these. The role of many structural forces (including the granting of rights to corporations as ‘persons’) imposed on the global economy by wealthy nations (and their collusion with despots) that undermine the basic rights to life for billions of people is one example.21 Other distressing examples of systemic misuse of the idea of Human Rights include the many failings of the United Nations Council on Human Rights (UNCHR), as recorded by UN Watch,22 and through the Canadian experience within the UNCHR.23

Regrettably a narrow focus on human rights tends to neglect social, cultural and economic rights as integral components of the UDHR that has been widely praised and advocated as a set of ‘indivisible’ and ‘inalienable’ rights. It is gratifying that the rationale for promoting and ensuring a more comprehensive application of rights is being advanced.24

Erosion of social solidarity and of stewardship for the future

Further distortions of our value system arise from erosion of the sense of community and social cohesion required to meet aspirations for fairness and solidarity in society, thus reducing the ability to adequately protect valued public goods (highways, urban infrastructure, legal systems etc) and to reproduce caring social institutions (such as basic educational facilities, colleges, universities, and health care), universal access to which are essential for community well being.25 Indeed private (consumer) goods are increasingly viewed as having priority over essential public goods**.** A restricted concept of ‘freedom’ as ‘freedom to act’ (liberty) that focuses on narrow and short-term self-interest does injustice to the concept of freedom that should also include ‘freedom from want’, that requires a sense of obligation, duty and commitment to others.26

Dedication to economic dogma

Another major distortion stems from dedication to a poorly regulated market system that is now increasingly widely acknowledged as based on flawed economic theory and the notion of endless economic growth within practices that are riddled with corruption and fraud, propagated by obtuse bureaucratic processes, all of which increasingly pervade all facets of life.27 Galbraith has eloquently described how the modern economic system is characterized by fraud, perpetrated not necessarily by bad people, but rather under the influence of corporations28 that seem to have all the defining characteristics of psychopaths,29 and which others more recently have recognized as unsustainable.30

The still unfolding recent global economic crisis (with associated major increases in food prices) is seriously harming the lives and health of about 50% of the world's population who live on less than $3–4 per day. The middle classes in the USA, UK, Europe and elsewhere are also affected, and even in the USA millions of families are losing their homes.31 Between 1980 and 2006, the wealthiest 1% of Americans tripled their after-tax percentage of national income, while the share of the bottom 90% dropped by 20%. Between 2002 and 2006, 75% of national economic growth went to the top 1% who own 70% of national wealth. The fact that four hundred US billionaires own more than 155 million Americans combined 32 and that disparities in wealth are wider in the USA than in all other wealthy countries (with associated higher indices of morbidity, mortality, imprisonment and other social pathologies),33 speaks volumes about the distortion of values in that society – the worst of which many seek to emulate. Once a much admired nation with the intellectual and economic potential to lead the world into a more equitable and sustainable 21st century, it is arguable that the USA's opportunity to improve global health is being squandered by short-sighted policies that undermine its own citizens, and many others globally.34 Among other highly adverse effects of a pervasive market ideology is the transformation of medical care into a product for consumption in a ‘free market’.35 With increasing commodification, much else that is valued in life is demeaned, by turning ‘goods’ that should not be sold into marketable commodities.36 Moreover, the world is rendered increasingly unstable and insecure when lives are reciprocally devalued by poverty of moral imagination that ignores the concept of social justice and the role of fairer distribution of resources.37

These criticisms also apply to the new South Africa, where adoption of the above-mentioned economic dogma generally and in relation to provision of health care services specifically, combined with pervasive corruption, has led to widening disparities in wealth (Gini co-efficient increased from 0.6 in 1995 to 0.66 in 2007 and to 0.679 in 2009),38 and health.39 This has contributed to escalating social unrest, and undermining of the hope for greater equity in this new constitutional democracy.40

Most nations now have larger debts than they can easily sustain.41 Corporate goals have come to dominate in life generally and in health care specifically.42 The now threatened middle classes are coming to appreciate the fact that their plight results from the same processes that, in the past, allowed them to flourish at the expense of those lower in the chain of exploitation. It is also arguable that within the professions, greed and personal aspirations increasingly eclipse professionalism.43

The idea of living a life in which there is place for at least some degree of modesty in expectations has seemingly been suppressed. Living beyond our means and accumulating debt seems to have become a norm. Few individuals or nations seem to realize that the solution to global health problems, the economic crisis and all the other social crises we face, lies in doing better with less rather than demanding more. Of course this is also the challenge for dealing with climate change and environmental degradation.44 Whether or not this crucial message can be absorbed and internalised by those who feel the world owes them long, luxurious and safe lives, while billions of others face daily risks and premature death, is an issue that has not been adequately addressed.45

Over-reliance on science for solutions

While it is undisputed that scientific advances have provided, and will continue to provide many solutions to the manifold problems we face,46 undue faith in ‘science’ as the solution to all problems, results in selective and idiosyncratic value being placed on knowledge, with distinct preference for old knowledge over new knowledge, and preference for both new and old knowledge over wisdom in the application of knowledge.47 For example, it should be asked why there is so much emphasis on ensuring that all who could benefit from anti-retroviral drugs (ARVs) have access to these, but insufficient attention is paid to providing food to starving people (much easier to do than supplying drugs).

Another example is how, in child health research, 97% of grants are designed to develop new technologies that could reduce child mortality by 22%. If more were spent on research on effective delivery of existing treatments, child mortality could be reduced by 66%.48 In health care, new research agendas and arrangements that include explicit priority setting and allocation of resources could address the distortions, dysfunctionality and unsustainability that characterize health services everywhere.\

The Report, ‘Beyond Technology: Strengthening Energy Policy through Social Science’, notes that despite having spent over $70 billion since 1977 on research programs in the USA to develop advanced, more efficient, cleaner and more cost-effective energy technologies, these have not been widely implemented.49 Reasons given for this lack of implementation include the complexity of a diverse political milieu with multiple layers of governance and weak public understanding of energy-related challenges and opportunities.

Seeking Solutions

A decade ago we described several values that need to be widely promoted to address the moral challenges posed by global health disparities: respect for all life and universal ethical principles; human rights, responsibilities and needs; equity; freedom; democracy; environmental ethics; and solidarity.50 It seems that distortions of these values may in part account for inadequate progress. In addition to the transformative approaches we suggested at that time, some additional suggestions are provided here.

Individual level

Faced with such daunting crises, I suggest that in order to overcome feelings of helplessness, the first task for each of us, as privileged people, is to become more introspective about our privilege and to re-examine our lives. Questions we need to ask ourselves include: Who am I? What does it mean to be a privileged person? What are my goals in life? What are my academic responsibilities in relation to global health? Should the pursuit of social justice be a priority for health care professionals? Am I a citizen of the world, and should global health be a significant focus for those with an interest in bioethics?

Social level

In responding to what needs to be done at the levels of institutions, states and internationally to seek and achieve significant constructive changes, an important task is to recognize that faith in a market ‘guided by an invisible hand’ as the means of improving the lives of all, has been severely undermined by decades of widening disparities between the wealthy and the poor, and by the implications of the most recent and ongoing severe global economic and other social crises world wide.51

On one account, systematic abuses of basic human rights, including those rights that are critical for achieving a basic, decent minimum good life, are contingent on the absence (or perversion) of an ethics of virtue both in individuals and in institutions.52 Allen Buchanan provides a conceptual framework for what he calls ‘social moral epistemology’ that considers individual virtues to be either strengthened or subverted by the extent to which institutional frameworks are based on factually correct and morally virtuous concepts.53 The pervasiveness of the moral corrosion of institutions and individuals, that allows the perpetuation of harmful or evil practices, poses daunting and complex global problems.54 Addressing these may require a ‘Grand Challenges’ approach, and new depths of understanding to assist in re-framing the ways in which we see ourselves, and the world that could foster thoughtful and constructive approaches towards more sustainable life trajectories.55

A new Grand Challenges agenda

By ‘Grand Challenges’ I mean a large scale, multi-disciplinary series of research projects to explicate in some detail the workings of a complex global system that is undergoing entropy.56 Identification of ‘nodal points’ and ‘receptors’ to target for generating and amplifying change could serve as a prelude to modelling possible ways of effecting constructive changes with the potential to improve global health through structural changes to our economic and values systems. The magnitude of this task is arguably no less than the task of producing an HIV vaccine, which also requires profound understanding of the ways in which the HIV damages the immune system, and how systems' defences can be mounted to oppose such damage. There are no simple answers to either of these challenges, hence the need for a visionary research programme. Similarly suggested solutions for energy sustainability include creating a national vision for future energy use through systematic interdisciplinary social science-based research and policy formulation.57

Among the many issues that need to be pursued through such an agenda would be promotion of understanding and acknowledgment of the values and processes that have shaped the world over the past century, and of the modes of reasoning that have played a central role in framing and driving these values and processes.58 A critical, open and well-publicized re-appraisal of the currently dominant value system and of the adverse effects of the global political economy on health will require interrogation and modification of overt and covert power structures.59 Exposure and critiques of how the wealthy are deeply causally implicated in causing and perpetuating poverty and inequality, and what this implies in terms of distributive and retributive justice,60 could lead to new ways of thinking about progress through nurturing progressive values.61

These would include enhancing literacy and empowerment among women, socialization of many of the ‘risks experiences’ suffered by the global majority,62 and modification of taxation with reduction of tax avoidance and evasion mechanisms.63 Reviewing and restructuring many current institutional arrangements64 could lead to rebuilding the social commons. Within health care, re-examination of the quest for health and how health care services are structured and could be improved, would be a major task.65

### OFF

Bizcon DA

#### Unpredictable shifts in antitrust spill over, decimating confidence and overall recovery.

Mitchell 21 [Trace; March 3; Research Associate at the Mercatus Center at George Mason University, J.D. from George Mason University; Morning Consult, “Weaponizing Antitrust to Attack Big Tech Is a Bad Idea,” https://morningconsult.com/opinions/weaponizing-antitrust-to-attack-big-tech-is-a-bad-idea/]

From the House Judiciary report calling for dramatic antitrust reform to federal antitrust regulators and state attorneys general initiating lawsuits against Facebook and Google, government officials are once again calling for more aggressive antitrust enforcement to go after America’s tech businesses.

And while critics from all sides are reaching for any and all tools to go after “Big Tech,” weaponizing antitrust will only end up harming American consumers and the American economy at a time when we’re still trying to keep our heads above water.

Using antitrust to go after American tech won’t stop at Silicon Valley. Every sector of our economy will be at risk of politically motivated antitrust enforcement. And that won’t just hurt consumers searching for information on Google or shopping for products on Amazon — America’s economy could lose its global competitiveness amid a global pandemic.

In fact, the recent cases against [Google](https://www.justice.gov/opa/pr/justice-department-sues-monopolist-google-violating-antitrust-laws) from the Department of Justice and state attorneys general are a great example of just how this misuse of antitrust could harm Americans across the country and halt innovation in its tracks.

These suits conveniently forget how consumers benefit from Google’s suite of products in attempts to claim that Google unfairly monopolized the search and search advertising markets. Even worse, by claiming consumer harm, the government fails to truly grasp what consumers actually want.

You see, under the consumer welfare standard, antitrust enforcement is built to focus on what consumers want and whether consumers benefit. When the government argues Google is harming Americans because its products are preinstalled and even the default search engine on Apple, the government forgets that American consumers don’t think this is a problem.

The [vast majority](https://www.businessinsider.com/how-google-retains-more-than-90-of-market-share-2018-4) of search users prefer Google to its competitors. And through preinstallation, we get free-to-use products, quick searches and near-limitless information in an integrated system with the click of a mouse. It isn’t a problem; it’s a time saver. Further, because Google can reinvest in developing more user-friendly tech in a preinstalled ecosystem, we get interoperable apps that make our experience that much more convenient and intuitive. And even if consumers do want a different app, they can fix this problem with no heavy leg work or travel — just the swipe of a finger.

But if the government gets its way, the message could be disastrous for innovation: Even if your business benefits Americans and improves the user experience, the government can still put a target on your back. Not to mention, the government would be more likely to put a target on your back if you’re large and politically disfavored. Consumers across the internet and the American economy would be hurt and left without more accessible and more affordable technology as options.

We should be working to reward, not punish, innovation. Otherwise, the next Google may just decide it isn’t worth the time and effort.

Similarly, the Federal Trade Commission’s recent case against Facebook also puts the wants of policymakers above the actual interests of consumers.

Here, the government claims that Facebook harms consumers by acquiring and then integrating services like Instagram and WhatsApp. So harmful, the Federal Trade Commission says, that Facebook must divest from these services, even if that would harm American consumers, innovation and entrepreneurship for decades to come.

But this is not a case of consumer harm or bad behavior — Facebook’s acquisition of Instagram and WhatsApp helped ensure that consumers’ desires were prioritized. Through millions of investment dollars into research and development, Facebook turned good services into great services that consumers actively keep coming back to.

Through relentless product improvement, WhatsApp became a free-to-use platform and Instagram became one of the most successful photo-sharing social media apps in the world. In both cases, consumers benefited from convenient and state-of-the-art advancements. No longer do we have to pay to use messaging or search through multiple results to shop our influencer feed.

As it stands, the Federal Trade Commission case could splinter one successful tech company into multiple, less efficient organizations, setting a precedent that could affect every American industry. Consumers would not only lose Facebook’s free-to-use services but also potentially the next big clothing brand or the next hit microbrewed beer.

By impeding mergers, the sheer fear of potential antitrust enforcement would shutter the doors on small businesses from all sectors of the economy. So much investment in innovation is built on the possibility of being acquired by a larger player. Entrepreneurs and innovators from manufacturing, automotive and tech alike would be left with an unfortunate takeaway — succeed and benefit consumers, but not too much.

And with an economy still struggling to recover, the absolute last thing we need is to leave consumers without innovative and affordable choices, small businesses without key investment opportunities and our economy without a competitive edge globally.

But by weaponizing antitrust, we’ll get neither thoughtful intervention nor consumer benefits. Instead, the United States will lose ground to foreign competitors and American consumers will ultimately pay the price.

#### Extinction.

Skaperdas 20 [Stergios; June 16; Professor of Economics at the University of California Irvine, former Director of the Center for Global Peace and Conflict Studies; Peace Economics, Peace Science and Public Policy, “The Decline of US Power and the Future of Conflict Management after Covid,” vol. 26]

Whether the pandemic ends soon or is longer-lasting, the global economy and global geopolitics are very likely to have a different shape than they had before its onset. The high likelihood of a world depression and the differential responses across countries – especially those of China and the US – is changing the existing distribution of power across the world.

After going over recent trends in the US’s superpower status, I will discuss the pandemic’s implications for the rise of China as a challenger to the US’s position and a consequent urgent importance for improving global conflict management. Urgency is justified because international institutions have atrophied over the past few decades whereas the possibilities for conflict are expanding.

During the late 90’s when many thought that the end of US dominance was ending, Wohlforth (1999) argued well that unipolarity – with the US as the sole superpower – was likely to last for decades. More recently, Brooks and Wohlforth (2016) noted that “[T]he United States currently has defense pacts with sixty eight countries – a security network that spans five continents, contains a quarter of the Earth’s population, and accounts for nearly three-quarters of global economic output.” Bleckley (2018) even asserts that unipolarity will last for the rest of this century.

I don’t confront the debate on “unipolarity” here. However, with the rapid economic growth of China and the emergence of Russia as a military and diplomatic competitor to the US in Eurasia, the US’s dominance in Eurasia cannot be taken for granted. If anything, as I will argue, the trends over the past two decades have been more negative for the US than is commonly recognized. With Eurasia having nearly 70 percent of the world’s population and about the same in total GDP (at PPP, IMF 2020), it will be no longer possible for a non-Eurasian power to dominate the world’s economics and geopolitics by itself.

1 Trends before the Pandemic

I will discuss recent trends relating China to the US in terms of three dimensions that are often used to assess great power status: the economy, military capabilities, and technology.

1.1 Economy

China has been quickly catching up with the US in its economy. In fact, by the beginning of 2020, China’s GDP at PPP was 37 percent higher than that of the US (IMF 2020). While GDP at nominal exchange rates might be better in projecting economic power, GDP at PPP is better in gauging the actual productive capacity of an economy.

The trend, however, that has been in favor of the US lately, has been the enhanced status of the US dollar as a reserve currency, paradoxically since 2008. The currency swaps between the Fed and other Central Banks – to help primarily the banks of US allied countries – appears to have been the major factor in this trend (Tooze 2018). This financial power has been increasingly used in sanctions against adversaries but even Allies.

1.2 Military

China has been rapidly modernizing and expanding its conventional forces but is very far away from becoming a peer to the US militarily.

The US has maintained its extraordinary predominance to move military resources by sea, land, and air throughout the world. However, the actual ability for the US to force its will on others has been shown to be limited recently. It can barely hold onto its troops in Afghanistan and Iraq and has had limited influence in Syria and in Libya. The fact that, after the assassination of Iranian General Suleimani, Iran was allowed to hit the US Al-Asad military base in Iraq (with apparently pretty accurate missiles) without any reaction shows the limits of US power projection. I suspect this is the first time that the US had one of its bases hit by another sovereign state without retaliating against them. While Iraq could be occupied, Iran is unlikely to be so – it is three times as big and populous as Iraq and its invasion would involve many additional complications.

Moreover, US aircraft carriers and bases are vulnerable to increasingly accurate missiles not just from Russia and China but from Iran as well. Hypersonic missiles are even deadlier, with Russia and China being reportedly ahead of the US in their development. With such vulnerabilities the US’s ability to project military power in Eurasia becomes much more limited. It would be no exaggeration to say that it is “game over” for the US’s projecting military power in Eurasia without the expectation of a challenge.

Finally, the relatively small wars that US have already entered have been extremely costly. The cost of the Iraq and Afghanistan wars to US alone was estimated 10 years ago by Stiglitz and Bilmes (2012) to be between $4-6 trillion, a quarter to 40% of US GDP at the time.

1.3 Technology

While the US was far ahead of China in technology and basic research barely a few years ago, China has been rapidly catching up. For example, one respectable index of current high-quality research is the Nature Index (natureindex.com) which includes articles only in the top natural science journals. In 2012 China’s scientific productivity was at 24% of the US but by 2019 it was 67% of the US’s level. This is likely a much better level than the Soviet Union ever achieved relative to the US. In technological disciplines such as computer science and AI China is likely in even better place.

Furthermore, China has been demonstrating the ability to rapidly learn how to adapt foreign technologies and implement them in production at large scale. Highspeed rail, for instance, expanded from nothing to a 30,000 km network within a decade, while pushing the technology to new limits. The US by contrast seems to have largely divested itself of the necessity of maintaining primacy in engineering and manufacturing. The US’s emphasis on expensive high-tech weaponry is largely driven by military-industrial complex rent-seeking and is, at best, a gamble that would have highly uncertain returns in a hypothetical conventional battlefield.

Overall, China, while still markedly militarily inferior, has become at least an equal to the US economically and has been catching up rapidly in technology, while Russia has been counter-balancing the US militarily and diplomatically in Eurasia.

2 Effects of the Pandemic

The pandemic has brought about Depression levels of unemployment in the US in record time and almost all countries are facing severe contraction.1 Employment is unlikely to reach its pre-pandemic level for a long time and, because this is happening simultaneously around the world, there is no single large country or region that could help lift the rest of the world with its demand.

However, in relative terms China and East Asia have been less affected thus far and will continue to do so as long as they maintain a better health policy response to the pandemic.2 China will likely have to restructure its economy to be less dependent on existing supply chains, rapidly expand the Belt-and-Road initiative, and expand its social welfare so as to rely more on internal demand for continued growth. Nevertheless, although all predictions now can be expected to have high variance, China is likely to come out in the end economically better off relative to the US.

Other widely discussed probable effects include the strengthening of the nation-state and a retreat of globalization in production, trade, and capital movements. We can envision scenarios from a mild retreat of globalization with shorter supply chains to a full blown new Cold War with two or more separate economic blocks.

Regardless of what the medium and long run will look like, the pandemic appears to have accelerated pre-existing trends of US declining power to the extent that we cannot say that there is one superpower dictating the international politics and economics of Eurasia. China and, secondarily, Russia will have much to say about how the global political economy evolves. Under such conditions opportunities for conflict increase and institutions of conflict management become ever more important.

3 The Alarming Future of Conflict Management

US policy until recently was as if the liberal trade hypothesis were true and there was no chance of an adversarial relation with China in the future. That is consistent with a neoclassical economic perspective according to which more trade is always better. However, trade policy cannot be separated from security considerations when there is the possibility of insecurity (Garfinkel et al. 2015; Skaperdas and Syropoulos 2001). Now US policy seems to have been reversed with China being treated, not as trade partner, but effectively as an enemy.

In such a case international institutions of conflict management would be important for reducing the chance of conflict, reducing the costs of arming, and allowing for smoother trade relations; most of all, for minimizing the chance of nuclear war. Those institutions, however, have gradually atrophied or have been intentionally boycotted during the time of US dominance. Over the past two decades, for example, and contrary to previous practices the US entered a number of wars without UN Security Council resolutions (including those that it could have obtained agreement such as the Afghanistan war). The recent withdrawal from the WHO, and the series of withdrawals from arms-control agreements (ABM, INF, Open Skies, and perhaps START) are other examples of the weakening of international institutions. Perhaps this is to be expected of a world hegemon, but the unilateralism appears to have increased while US power has been decreasing and the need for future restraint on all has become more visible. The conditions appear to be leading to a “bad” equilibrium without investments in conflict management and high probability of conflict as opposed to a “good” equilibrium with investments in conflict management and low probability of conflict (Genicot and Skaperdas 2002).

The times we are now have similarities with the pre-WWI period which combined a high degree of globalization with the absence of institutions of conflict management (instead of their atrophy that we now have). At the time, there was a wide-spread belief that economic interdependence, and the break of that interdependence and other costs that war brings about, would by themselves guarantee peace (see, e.g., Angell 1913). Yet war came unexpectedly and with a vengeance.

With the dismantling of previous arms control agreements, without good prospects for their replacement in the future, and the weakening of the UN and other international organizations, the risks and challenges facing the world include the following:

* Multiple-pronged arms races that go beyond hypersonic weapons to cyberweapons, autonomous weapon systems, other AI technology-enabled systems, and deployments in outer space. The costs and, most important, the multiple uncertainties that such arms races can generate are of immense risk. Highly risk averse leaders, perhaps as a result of a mistake or misunderstanding but not only so, could launch wars from which there might be no going back (Mearsheimer 2001; Wong et al. 2020).
* In the absence of nuclear weapons treaties, the only restraint on nuclear war is Mutual Assured Destruction (MAD). With new platforms, such as hypersonic missiles, that make possible delivery of nuclear weapons faster than it ever has been, could there be a greater temptation for a first strike (thinking that retaliation would never come)? Many examples of preconceptions, mishaps, and near-accidents from the 1950s and 60s that were not previously known (reported in Ellsberg 2017) show how the world we are now entering is likely more dangerous than the Cold War ever was.
* A scramble for trading partners and Allies across the world that could go beyond just the offering of carrots. The undermining of governments that are perceived to be unfriendly by one side and their shoring up by the other side often leads to less autonomy, externally-induced political conflicts, increased authoritarianism, and not infrequently to outright civil war. The danger of many countries in Eurasia, Africa, and Latin America becoming battlegrounds for continual proxy conflicts between the superpowers is increasing.

### OFF

FTC DA

#### FTC focusing on algorithmic bias now – success is key for follow-on litigation.

Fath 10/19 [Kyle Fath, Kristin Bryan, Christina Lamoureux, and Elizabeth Helpling, \* counsel in the Data Privacy, Cybersecurity & Digital Assets Practice at Squire Patton Boggs, “Data Privacy and Cybersecurity FTC Priorities Going Forward,” 10/19/21, *Consumer Privacy World*, https://www.consumerprivacyworld.com/2021/10/data-privacy-and-cybersecurity-ftc-priorities-going-forward/, EA]

In mid-September, the FTC voted to approve a series of resolutions, directed at key enforcement areas, including the following, each discussed in further detail below:

• Children Under 18: Harmful conduct directed at children under 18 has been a source of significant public concern, now, FTC staff will similarly be able to expeditiously investigate any allegations in this important area.

• Algorithmic and Biometric Bias: Allows staff to investigate allegations of bias in algorithms and biometrics. Algorithmic bias was the subject of a recent FTC blog.

• Deceptive and Manipulative Conduct on the Internet: This includes, but is not limited to, the “manipulation of user interfaces,” including but not limited to dark patterns, also the subject of a recent FTC workshop.

The approval of this series of resolutions will enable the Commission “to efficiently and expeditiously investigate conduct in core FTC priority areas. Through the passage of the resolutions, the FTC has now directed that all “compulsory processes” available to it be used in connection with COPPA enforcement. This omnibus resolution mobilizes the full force of the FTC for the next ten years and gives FTC staff full authority to conduct investigations and commence enforcement actions in pursuit of this goal. The FTC has offered very little elaboration on this front, however, regarding how it will use such “compulsory processes,” which include subpoenas, civil investigative demands, and other demands for documents or testimony.

What does seems clear, however, is that the FTC is buckling down on the enforceability of its own actions. Previous remarks by Chair Lina M. Khan before the House Energy and Commerce Committee expressed frustration at the frequent hamstringing of the agency at the hands of courts in its enforcement efforts in the past. With this declaration of renewed energy, the FTC is summoning all the power it can to do its job, and we should expect to see an energized FTC kick up its patrol efforts in the near future. Businesses that conduct activities that implicate these renewed areas should be aware of the FTC’s focus and penchant for investigations and enforcement in such areas.

Children Under 18

The FTC’s mandate to focus on harmful conduct directed at children under 18 is a signal that the Commission plans on broadening and doubling down on its already active enforcement efforts in this area. Areas of the Commission’s prior and current focus on children include marketing claims, loot boxes and other virtual items that can be purchased in games, and in-app and recurring purchases made by children without parental authorization. Most importantly, the FTC is the main arbiter of children’s online privacy through its enforcement of the Children’s Online Privacy Protection Act (“COPPA”), but that law only applies to children under 13 (i.e., 12 and under). With this new proviso to focus on children under 18, we can certainly expect the FTC to focus on consumer privacy issues, broader than COPPA, for children from ages 13 to 17 as well.

Algorithmic and Biometric Bias

The FTC already has enforcement capabilities to regulate the development and use of artificial intelligence (“AI”) and its associated algorithms. These include the Section 5 of the FTC Act, which prohibits “unfair or deceptive acts or practices,” the Fair Credit Reporting Act, which rears its head when algorithms impact lenders’ decisions to provide credit, and the Equal Opportunity Credit Act, which prohibits the use of biased algorithms that discriminate on the basis of race, color, sex, age, and so on when making credit determinations. In using these tools, the FTC aims to clarify how algorithms are used and how the data that feeds them contributes to algorithmic output, and to bring to light issues that arise when algorithms don’t work or feed on improper biases.

Bias and discrimination arising from use of biometrics will also now be a focus of the FTC. Interestingly, much recent research and criticism has pointed out that algorithms and biometric systems are biased against faces of color. This has arisen in many contexts, from the iPhone’s FaceID feature to the 2020 remotely-administered bar exam that threatened to fail applicants of color because their webcams could not detect their faces. These are just some of the issues that arise when companies turn to algorithms to try to create heuristics in making business decisions. The FTC has not let these concerns go by the wayside, and after preliminarily addressing them in an April 2021 blog post, has now reestablished that algorithmic and biometric bias is a new focus for the upcoming years.

Notably, AI and other automated decision-making, particularly that which results in legal and/or discriminatory effects, will also become regulated under omnibus privacy legislation in California, Virginia, and Colorado, forthcoming in 2023.

Deceptive and Manipulative Conduct on the Internet (Including “Dark Patterns”)

The sinisterly-nicknamed practice of “dark patterns” happens constantly to online consumers, albeit in ways that tend to seem benign. For example, shoppers contemplating items in their cart may be pressured to complete the sale if they receive a notification like, “Hurry, three other people have this in their cart!” More annoyingly, online consumers who wish to unsubscribe to newsletters or email blasts may find themselves having to click through multiple pages just to free their inboxes, rather than an easily-identifiable and quickly-accessible “unsubscribe” button. “Dark patterns” is the term coined for these sorts of techniques, which impair consumers’ autonomy and create traps for online shoppers.

Earlier this year, the FTC hosted a workshop called “Bringing Dark Patterns to Light,” and sought comments from experts and the public to evaluate how these dark patterns impact customers. The FTC was particularly concerned with harms caused by these dark patterns, and how dark patterns may take advantage of certain groups of vulnerable consumers. The FTC is not alone in its attention to this issue; in March, California’s Attorney General announced regulations that banned dark patterns and required disclosure to consumers of the right to opt-out of the sale of personal information collected through online cookies. These regulations also prohibit companies from requiring consumers who wish to opt out to click through myriads of screens before achieving their goals. On the opposite coast, the weight-loss app Noom now faces a class action alleging deceptive acts through Noom’s cancellation policy, automatic renewal schemes, and marketing to consumers.

With both public and private entities turning their eyes toward dark patterns, the FTC has now declared the agency will put its full weight behind seeking out and investigating “unfair, deceptive, anticompetitive, collusive, coercive, predatory, exploitative, or exclusionary acts or practices…including, but not limited to, dark patterns…” Keeping an eye on this work will be important—just as important as keeping an eye on which cookies you accept, and which are best to just let go stale.

In addition to being in the crosshairs of the FTC, dark patterns are also a focus of regulators across the globe, including in Europe, and will be regulated under California’s forthcoming California Privacy Rights Act.

Anticipated Litigation Trends

With the FTC declaring its intent to vigorously investigate these three aforementioned areas, we now turn to what the agency’s new enforcement priorities mean for civil litigation. As practitioners in this field already know, it is unlikely that they will result in an influx of new litigations. The FTC’s enforcement authority exists pursuant to Section 5(a) of the FTC Act, which outlaws “unfair or deceptive acts or practices in or affecting commerce,” but does not contain a private right of action – so plaintiffs cannot technically bring new suits based on the new enforcement priorities, as they have no private right to enforce those priorities.

However, these areas of focus could influence broader trends in civil litigation, even if, on their own, they do not create any new liability. Successful enforcement actions by the FTC could bring about new industry standards with respect to algorithmic bias, dark patterns, and other areas of focus. These standards, in turn, could be cited in consumer privacy class action complaints. New civil actions could also stem from enforcement actions by the FTC and the information revealed in settlements resulting from such actions. For example, the FTC announced a settlement with fertility-tracking app Flo Health Inc. in January; this month, a consolidated class action complaint was filed against Flo Health, stemming from seven proposed class actions filed against it this year, alleging that the app unlawfully shared users’ health information with third parties.

#### The plan trades off – empirically privacy and antitrust are zero-sum.

Kovacic 13 [William E. Kovacic & David A. Hyman, Professor of Law at George Washington University, "Competition Agencies with Complex Policy Portfolios: Divide or Conquer?" GW Law Faculty Publications, 2013, https://scholarship.law.gwu.edu/faculty\_publications/631, accessed 7-4-21]

A second mechanism is to fund new projects adequately by a relatively silent form of triage. This consists of draining resources away from other programs ostensibly designed to implement congressionally imposed duties. To support new programs in areas such as privacy, data protection, and mortgage lending fraud, the FTC over time has quietly abandoned other programs that used to be mainstays of enforcement. To some extent this is done with at least the implicit approval of Congress. Through official budget requests and oversight hearings, Congress is at least generally aware of how the Commission is spending its money. It can detect that some areas of policy responsibility seem to be inactive. Congress can observe, for example, that the FTC has brought two Robinson-Patman Act price discrimination cases in the past 23 years.112 This reliably indicates diminished attention to a statute whose enforcement in the 1960s yielded hundreds of cases. For the most part, the FTC has constructed or retooled major programs involving privacy, financial services, mergers, horizontal restraints, and single firm conduct by severely reducing outlays for the enforcement of the Robinson-Patman Act and consumer protection statutes dealing with fur and textile labeling.

#### Extinction

Thomas 20 [Mike Thomas, Quoting AI experts including MIT Physics Professors, Senior Features Writer for BuiltIn, “The Future of Artificial Intelligence: 7 ways AI can change the world for better ... or worse,” 04/20/20, *BuiltIn*, https://builtin.com/artificial-intelligence/artificial-intelligence-future]

Klabjan also puts little stock in extreme scenarios — the type involving, say, murderous cyborgs that turn the earth into a smoldering hellscape. He’s much more concerned with machines — war robots, for instance — being fed faulty “incentives” by nefarious humans. As MIT physics professors and leading AI researcher Max Tegmark put it in a 2018 TED Talk, “The real threat from AI isn’t malice, like in silly Hollywood movies, but competence — AI accomplishing goals that just aren’t aligned with ours.” That’s Laird’s take, too.

“I definitely don’t see the scenario where something wakes up and decides it wants to take over the world,” he says. “I think that’s science fiction and not the way it’s going to play out.”

What Laird worries most about isn’t evil AI, per se, but “evil humans using AI as a sort of false force multiplier” for things like bank robbery and credit card fraud, among many other crimes. And so, while he’s often frustrated with the pace of progress, AI’s slow burn may actually be a blessing.

“Time to understand what we’re creating and how we’re going to incorporate it into society,” Laird says, “might be exactly what we need.”

But no one knows for sure.

“There are several major breakthroughs that have to occur, and those could come very quickly,” Russell said during his Westminster talk. Referencing the rapid transformational effect of nuclear fission (atom splitting) by British physicist Ernest Rutherford in 1917, he added, “It’s very, very hard to predict when these conceptual breakthroughs are going to happen.”

But whenever they do, if they do, he emphasized the importance of preparation. That means starting or continuing discussions about the ethical use of A.G.I. and whether it should be regulated. That means working to eliminate data bias, which has a corrupting effect on algorithms and is currently a fat fly in the AI ointment. That means working to invent and augment security measures capable of keeping the technology in check. And it means having the humility to realize that just because we can doesn’t mean we should.

“Our situation with technology is complicated, but the big picture is rather simple,” Tegmark said during his TED Talk. “Most AGI researchers expect AGI within decades, and if we just bumble into this unprepared, it will probably be the biggest mistake in human history. It could enable brutal global dictatorship with unprecedented inequality, surveillance, suffering and maybe even human extinction. But if we steer carefully, we could end up in a fantastic future where everybody’s better off—the poor are richer, the rich are richer, everybody’s healthy and free to live out their dreams.”

### OFF

States CP

#### The 50 states and all relevant territories should, by at least expanding the scope of their core antitrust laws, substantially increase prohibitions on anticompetitive business practices protected by the Export Trading Company Act and the Webb–Pomerene Act when those business practices harm the markets of foreign nations without protections for export cartels.

### OFF

Court Clog DA

#### Antitrust litigation is uniquely complex and resource-intensive – a spike trades-off with judicial functioning in other areas

Warren 15 [Daniel R., JD from the Boston University School of Law, BS from Ohio State University, “Stress Fractures: The Need to Stop and Repair the Growing Divide in Circuit Court Application of Summary Judgment in Antitrust Litigation”, Review of Banking and Financial Law, 35 Rev. Banking & Fin. L. 380, Lexis]

A. Summary Judgment Can Cut Short Extreme Costs

Antitrust litigation can involve enormous discovery costs, particularly when antitrust litigation overlaps with class action litigation. Due to the wide scope of many antitrust claims, discovery can implicate a broad range of documents, records, interrogatories, and depositions. In fact, "[s]trategically minded" plaintiffs can take advantage of antitrust law's "onerous discovery costs" by requiring the defendant "to respond to wide-ranging interrogatories, produce documents, and prepare for and defend depositions" with only a "facially plausible allegation" of an antitrust violation. These costs can take a very large toll on both large and small businesses. The legal hours necessary to answer and address discovery challenges can also impose extreme costs.

Plaintiffs can often use discovery costs as a weapon against defendants in antitrust litigation. The Seventh Circuit Court of Appeals stated that "antitrust trials often encompass a great deal of expensive and time consuming discovery and trial work" in explaining that the "very nature" of antitrust litigation should encourage summary judgment. The court's language here supports [\*389] the idea that in antitrust litigation, summary judgment has a special value, greater even than its normal use in other areas of the law. Summary judgment can be used to cut short lengthy litigation where parties have already accrued extreme costs from discovery and one party still cannot produce a genuine issue of material fact.

In antitrust litigation, the value of summary judgment to mitigate discovery costs through shortening litigation is elevated to a special importance even greater than normal for three reasons. First, antitrust litigation normally involves large organizations, which magnifies the costs of those firms going through the discovery process. Large firms have a great number of involved employees and departments, all of which would likely be subject to the broad discovery that is characteristic of antitrust litigation. Summary judgment, though normally considered after discovery, is a procedural weapon available at nearly any point in this process, as "a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." The existence of a stay for extension of discovery shows that summary judgment need not automatically wait for discovery's completion, and thus can be an invaluable safeguard against otherwise incredibly costly discovery. This safeguard allows summary judgment to be a powerful tool to radically lower discovery time and costs without "railroad[ing]" the other party.

Second, antitrust litigation is normally a slow process that takes a great deal of time. The amount of time necessary to process and review evidence produced by discovery leads to incredible legal costs, often disproportionately placed on the defendant firm. The plaintiff has the advantage over the defendant in deciding the scope of discovery costs, and may often tailor its claim in such a way as to avoid the discovery costs that a defendant's counterclaim may reflect [\*390] back on the plaintiff. These lengthy trials can be effectively truncated by summary judgment, and thus summary judgment's normal value is even greater in the world of antitrust litigation where protracted trials are the norm.

Finally, the vast amount of evidence necessary to prove the elements of an antitrust claim contribute to the large discovery costs tied to antitrust litigation by overwhelming judges' ability to reign in discovery costs. Currently, we rely on judges to limit the range of discovery requested, but in the context of antitrust litigation, judges have difficulty dealing with the broad variety of evidence that may be called for. One analysis of the power of discovery described it as a costly and potentially abusive force, and determined judges' abilities to limit discovery costs on their own as "hollow" at best:

A magistrate supervising discovery does not--cannot--know the expected productivity of a given request, because the nature of the requester's claim and the contents of the files (or head) of the adverse party are unknown. Judicial officers cannot measure the costs and benefits to the requester and so cannot isolate impositional requests. Requesters have no reason to disclose their own estimates because they gain from imposing costs on rivals (and may lose from an improvement in accuracy). The portions of the Rules of Civil Procedure calling on judges to trim back excessive demands, therefore, have been, and are doomed to be, hollow. We cannot prevent what we cannot detect; we cannot detect what we cannot define; we cannot define "abusive" discovery except in theory, because in practice we lack essential information. Even in retrospect it is hard to label requests as abusive. How can a judge distinguish a dry hole (common in litigation as well as in the oil business) from a request that was not justified at the time?

[\*391] Summary judgment can also reduce costs to both parties by reducing time and discovery costs to the parties, and to the judicial system itself, by cutting short lengthy litigation. Both sides often incur costs from employing experts in various areas, researching and producing evidence necessary to prove or disprove elements of antitrust actions, and in the great many legal hours necessary for both plaintiffs and defendants--not to mention costs to the state--during lengthy litigation that is often fruitless due to an "incentive to file potentially equivocal claims." Antitrust law is structured in such a way as to have a "special temptation" for what would otherwise be frivolous litigation. As antitrust law is, by its very nature, between competitors, there is significant motivation to force costs on to other firms, perhaps even through frivolous legal claims or intentionally imposing other large legal costs. Costs can also multiply in antitrust litigation because antitrust actions are often combined with other particularly complex areas of law, such as patent law or class actions. Class actions particularly in the antitrust context can make trials "unmanageable." Combining two already complex areas of law is a recipe for large legal costs and prolonged litigation. The value of cutting costs short cannot be overstated, as antitrust litigation takes place in the arena of business competition. This means that firms are already engaged in close competition for antitrust cases to be relevant, and thus unnecessary costs can further distort the market.

#### Efficient court review underpins patent-led innovation – that stops nuclear war and a range of existential threats

Rando 16 [Robert J., Founder and Lead Counsel of The Rando Law Firm P.C., Fellow of the Academy of Court-Appointed Masters, Treasurer for the New York Intellectual Property Law Association, Chair of the Federal Bar Association Intellectual Property Law Section, “America’s Need For Strong, Stable and Sound Intellectual Property Protection and Policies: Why It Really Matters”, IP Insight, June 2016, p. 12-14] [language modified] [abbreviations in brackets]

Robert F. Kennedy’s speech, which includes his reference to the oft-quoted “interesting times” curse, applies throughout history in many contexts and, indeed, with both negative and positive connotation. While he focused on the struggles for freedom and social justice, the requisite ascendancy of the individual over the state, and the institution and integration of those ideals for the greater good, he also promoted the goals of greater global unity, cooperation and communication, which were, and could be, achieved by advances in technology. And, as noted in the excerpt, he championed “the creative energy of men.”

Intellectual Property in “Interesting Times”

It is beyond question that starting with the last decade of the twentieth century and throughout the first two decades of the twenty-first century, when it comes to matters relating to intellectual property, we have been living in “interesting times.” Some may interpret these interesting times as defined by the curse and others may view it by the ordinary meaning of “interesting.” In either case, those of us that toil in the fields of patents, copyrights, trademarks, trade secrets, and privacy rights have experienced an unprecedented sea change in the way those rights are procured, protected and enforced. Likewise, and perhaps more importantly, even those of us that do not practice in these areas of law, as well as the general public, have been, and continue to be, impacted by the consequences of these changes (both positive and negative).

The Changes In Intellectual Property Law

Examples of some of the changes in intellectual property law are: the sweeping 2011 legislative changes to the patent laws under the America Invents Act (AIA), which impact is only beginning to be fully appreciated; the various proposals for patent law reform, on the heels of the AIA, beginning with the 113th and 114th Congress; the copyright laws Digital Millennium Copyright Act (DMCA) and numerous 114th Congressional proposed copyright law changes; the recently enacted federal trade secret law (Defend Trade Secrets Act of 2016 (DTSA))2; the impact of the internet, domain names and globalization on Trademark law; the intellectual property law harmonization requirements included in various global/regional trade agreements; and the proliferation of devices (both invasive and non-invasive) that defy any rational basis for believing we can still adhere to the republic’s libertarian understanding of the right to privacy.

Without engaging in “chicken and egg” analysis, it is sufficient to observe that technological advancement, societal needs, globalization, existential threats, economic realities, and political imperatives (or what James Madison referred to in the Federalist Papers No. 10 as factious governance), have combined to create the “interesting times” for the United States intellectual property laws.

What was said by Bobby Kennedy in 1966 remains true today. We live in dangerous and uncertain times. Many of the existential threats remain the same (nuclear war and proliferation, [genocides] ~~genocidal maniacs~~ and natural disease) and some are new ([hu]manmade disease, greater awareness of environmental changes and possibly human interrelationship factors, and the unintended consequences of genetic manipulation and robotic technologies). The danger and uncertainty that pervades changes in intellectual property laws, though not an existential threat of the same manner and kind, correlates with the threat and remains “more open to the creative energy of man than any other time in history.”

Apropos the creative energy of man, there is a non-coincidental congruence and convergence of activity across and among the three branches of government, occurring almost simultaneously with the congruence and convergence of the rapid developments of technological innovation across various scientific disciplines and the information age, reflected in the transformation of the intellectual property laws in the United States.

Patents

The passage of the AIA was a culmination of efforts spanning several years of Congressional efforts; and the product of a push by the companies at the forefront of the twenty-first century new technology business titans. The legislation brought about monumental changes in the patent law in the way that patents are procured (first inventor to file instead of first to invent) and how they are enforced (quasi-judicial challenges to patent validity through inter-party reviews at the Patent Trial and Appeals Board (PTAB)).

The 113th and 114th Congress grappled with newly proposed patent law reforms that, if enacted, may present additional tectonic shifts in the patent law. Major provisions of the proposals include: fee-shifting measures (requiring loser pays legal fees - counter to the American rule); strict detailed pleadings requirements, promulgated without the traditional Rules Enabling Act procedure, that exceed those of the Twombly/Iqbal standard applied to all other civil matters in federal courts, and the different standards applicable to patent claim interpretation in PTAB proceedings and district court litigation concerning patent validity.

The Executive and administrative branch has also been active in the patent law arena. President Obama was a strong supporter of the AIA3 and in his 2014 State Of The Union Address, essentially stated that, with respect to the proposed patent law reforms aimed at patent troll issues, we must innovate rather than litigate.4 Additionally, the USPTO has embarked upon an energetic overhaul of its operations in terms of patent quality and PTO performance in granting patents, and the PTAB has expanded to almost 250 Administrative Law Judges in concert with the AIA post-grant proceedings’ strict timetable requirements.

The Supreme Court, not to be outdone by the Articles I and II branches of the U.S. government, has raised the profile of patent cases to historical heights. From 1996 to the 2014-15 term there has been a steady increase in the number of patent cases decided by the SCOTUS5. The 2014-15 term occupied almost ten percent of the Court’s docket. Prior to the last two decades, the Supreme Court would rarely include more than one or two patent cases in a docket that was much larger than those we have become accustomed to from the Roberts’ Court6.

While the SCOTUS activity in patent cases is viewed by some as a counter-balance to the perceived Federal Circuit’s pro-patent and bright line decisions, it can just as assuredly be viewed as decisions rendered by a Court of final resort which does not function in a vacuum devoid of the social, economic and political winds of the times. In recognition of the effect new technologies have on the patent law, the politicization of intellectual property law matters, especially patent law (through factious governing principles of the political branches of the government), and the maturation of the Federal Circuit patent law jurisprudence, the SCOTUS has rendered opinions in cases that impact, and perhaps are/were intended to mitigate the concerns regarding, some of the vexing issues confronting the patent community today (e.g., non-practicing entities or in the politicized parlance “patent trolls,” the intersection of patent and antitrust laws in Hatch-Waxman so called “pay-for-delay” settlements between Branded and Generic pharma companies, and the fundamental tenets that comprise the very heart of what is patent eligible subject matter).

Copyrights

The advent and ubiquity of the internet, social media and digital technologies (MP3s, Napster, Facebook, YouTube, and Twitter) represents the impetus for changes in the Copyright laws. The DMCA addressed the issues presented by these advances or changes in the differing media and forms of artistic impressions. The proliferation of digital photos, graphic designs and publishing alternatives, as well as adherence to globalization harmonization have given rise to changes in the statutory law and jurisprudence in this area of intellectual property law. Additionally, there is an overlap of patent rights and copyrights for software driven by the ebb and flow of the strength of each respective intellectual property protection.

Notably, the Patent and Copyright Clause7, in addition to Author’s writings, has been viewed as discretely applying to two different types of creativity or innovation. When drafted the “sciences” referred not only to fields of modern scienctific inquiry but rather to all knowledge. And the “useful arts” does not refer to artistic endeavors, but rather to the work of artisans or people skilled in a manufacturing craft. Rather than result in ambiguity or confusion, perhaps the Framers were either quite prescient or, just coincidentally, these aspects of the Patent and Copyright Clause have converged.

For example, none other than the famous Crooner, Bing Crosby, benefited from both protections. Well-known as a prolific and popular recording artist he also benefited from his investments in the, then innovative, recording technologies. Similarly, the Beatles, Beach Boys, as well as many other rock and roll artists, experimental efforts in music performance, recording and production, helped to transform the music industry in both copyrightable artistic expression and patentable inventions. Similarly, film, literary and digital arts reap benefits at the crossroads of both copyright and patent protections.

Trademarks

Trademark laws have been impacted by numerous changes in the business landscape. They include the internet, Domain names, international rights in a global economy, different venues and avenues for branding, marketing and merchandising, global knock-offs from nations that have a less than stellar respect for intellectual property rights, and international trade agreements. More recently, politicization (or perhaps political correctness) has creeped into the trademark law arena pitting branding rights and protections against first amendment rights.

Trade Secrets

As with Copyright and Trademark law, trade secrets law includes some of the same issues related to trade agreements. TRIPS required members to have trade secret protection in place. Initially, the United States compliance with this requirement has relied upon the trade secret law of the individual states. That compliance may be supplanted by the recently enacted DTSA. Similarly, the Trans Pacific Partnership (TPP) trade agreement contains intellectual property rights provisions that will trigger required changes to United States statutory Intellectual Property Laws.

The proposed trade secret legislation also gives rise to several concerns. For instance, there is an absence of a specific definition for trade secret, as well as potential issues of federalism, conflict with state law precedent (despite no preemption), remedies, and the impact on employer/employee relations.

There is also a real concern that the strengthening of trade secret protection in conjunction with the perceived weakening of patent protection (e.g., high rate of invalidating patents in post-grant proceedings before the PTAB and strict limitations on what is patent eligible subject matter) may very-well have the unintended consequence of contravening the purpose behind the Patent and Copyright Clause: “to promote the progress of the sciences and the useful arts.” Moreover, the incentive to innovate may very well be usurped by the advantage of withholding patent law disclosure of highly beneficial scientific advancements that directly affect the human condition, alter life expectancies and the evolution of the human species (rather than by mere “natural selection”), and what is the very essence of a human being (for better or worse). Thus, crippling innovation and the progress of the sciences and useful arts.

Privacy Rights

It is increasingly more difficult to function “off the grid.” The invasive and non-invasive attributes of the internet, the reliance upon the multitude of devices, social media, and information age technologies, and access to big data, all contribute to the decrease in and dilution of the right to privacy. Wittingly or otherwise, the strong libertarian roots of the republic have been replaced by dependence upon these modes of an information-age life. Commentary on the benefits and deficits of this reality are beyond the subject and purpose of this writing. Suffice to acknowledge that the right to privacy has been significantly reduced. The laws that protect these rights are in a constant struggle to maintain those rights while yielding to the demands of the lifestyle and security concerns. Laws that relate to cybersecurity in the global and domestic space create interplay with privacy rights. Legislation, trade agreements and jurisprudence all impact this area of intellectual property. Cross-border theft of trade secrets, competitor espionage, and loss of control over personal data are all implicated in the intellectual property law arena.

America’s Need For Strong Intellectual Property Protection

The need for strong protection of intellectual property rights is greater now than it was at the dawn of our republic. Our Forefathers and the Framers of the U.S. Constitution recognized the need to secure those rights in Article 1, Section 8, Clause 8. James Madison provides insight for its significance in the Federalist Papers No. 43 (the only reference to the clause). It is contained in the first Article section dedicated to the enumerated powers of Congress. The clause recognizes the need for: uniformity of the protection of IP rights, securing those rights for the individual rather than the state; and, incentivizing innovation and creative aspirations.

Underlying this particular enumerated power of Congress is the same struggle that the Framers grappled with throughout the document for the new republic: how to promote a unified republic while protecting individual liberty. The fear of tyranny and protection of the “natural law” individual liberty is a driving theme for the Constitution and throughout the Federalist Papers. For example, in Federalist No. 10, James Madison articulated the important recognition of the “faction” impact on a democracy and a republic. In Federalist No. 51, Madison emphasized the importance of the separation of powers among the three branches of the republic. And in Federalist No. 78, Alexander Hamilton, provided his most significant essay, which described the judiciary as the weakest branch of government and sought the protection of its independence providing the underpinnings for judicial review as recognized thereafter in Marbury v. Madison.

All of these related themes are relevant to the Patent and Copyright Clause and at the center of the intellectual property protections then and now. The Federalist Papers No. 10 recognition that a faction may influence the law has been playing itself out in the halls of congress in the period of time leading up to the AIA and in connection with the current patent law reform debate. The large tech companies of the past, new tech, new patent-based financial business model entities, and pharma factions have been the drivers, proponents and opponents of certain of these efforts. To be sure, some change is inevitable, and both beneficial and necessary in an environment of rapidly changing technology where the law needs to evolve or conform to new realities. However, changes not premised upon the founding principles of the Constitution and the Patent and Copyright Clause (i.e., uniformity, secured rights for the individual, incentivizing innovation and protecting individual liberty) run afoul of the intended purpose of the constitutional guarantee.

Although the Sovereign does not benefit directly from the fruits of the innovator, enacting laws that empower the King, and enables the King to remain so, has the same effect as deprivation and diminishment of the individual’s rights and effectively confiscates them from him/her. Specifically, with respect to intellectual property rights, effecting change to the laws that do not adhere to these underlying principles, in favor of the faction that lobbies the most and the best in the quid pro quo of political gain to the governing body threatens to undermine the individual’s intellectual property rights and hinder the greatest economic driver and source of prosperity in the country.

It is also important to recognize that the social, political and economic impact of strong protections for intellectual property cannot be overstated. In the social context, the incentive for disclosure and innovation is critical. Solutions for sustainability and climate change (whether natural, man-made or mutually/marginally intertwined) rely upon this premise. Likewise, as we are on the precipice of the ultimate convergence in technologies from the hi-tech digital world and life sciences space, capturing the ability tocure many diseases and fatal illnesses and providing the true promise of extended longevity in good health and well-being, that is meaningful, productive, and purposeful; this incentive must be preserved.

In similar fashion, advancements in technologies related to the global economy and communications will enhance the possibilities for solutions to political and cultural conflicts that arise around the globe. Likewise, the United States economy has always benefited when it is at the forefront of innovation and achieves prosperity from its leadership role in technological advancements.

Conclusion

As was the case in 1966, how we move forward today, to solve the many problems facing our country and the broader global community in these “interesting times,” both within and without the laws affecting intellectual property rights, depends upon the “creative energy of man” which must prevail. An achievable goal, dependent on the strong, stable and sound protection of intellectual property rights.

### OFF

BBB DA

#### Climate legislation passes now.

Zeballos-Roig 2-13 [Joseph Zeballos-Roig, journalist, “Here’s How Democrats Can Sweeten the Deal for Manchin to Back Biden’s Big Spending Bill,” BUSINES SINSIDER, 2—13—22, <https://www.businessinsider.com/democrats-manchin-deal-president-biden-spending-bill-budget-deficit-2022-2>, accessed 2-17-22]

President Joe Biden's $2 trillion social and climate spending bill is dead, and Democrats aren't likely to advance a skinnier bill anytime soon due to resistance from a holdout within their ranks and GOP resistance.

Democrats are likely to wait and try to pick up smaller pieces sometime in the spring, given Sen. Joe Manchin of West Virginia threw more cold water on new federal spending this week in light of stubborn inflation.

Talks between the conservative Democrat and the White House completely collapsed in late December after he put a dagger in the House-approved bill. Without Manchin's vote, the plan is stalled in the 50-50 Senate.

But there's one issue that Manchin has dropped breadcrumbs about recently that could draw him back to the negotiating table: addressing US national debt. He's grown increasingly alarmed since the fall and has expressed more interest in a package that slashes the federal deficit — the gap between what the government spends and collects in taxes — to some extent.

"That's the purpose that we have in this. We have to basically get our financial house in order," Manchin told Insider on Tuesday. "That's the whole purpose of reconciliation."

That means Democrats could sweeten the deal for Manchin by reshaping part of their plan into a deficit-cutting package. However, that presents a fresh challenge for Democrats to surmount.

Every dollar directed at shrinking the deficit means fewer dollars to establish new social benefit programs for Americans as they confront inflation. Planned initiatives to cap childcare costs, establish universal pre-K for younger children, or offer fresh subsidies to cut health premium costs could end up far less generous than the party envisioned — and therefore less effective at reining in rising costs.

During negotiations for the Affordable Care Act a decade ago, Democrats tried keeping the price tag below $1 trillion to avoid swelling the federal deficit and keep centrists onboard the endeavor. That strategy led them to delay its implementation for years, undercutting the law's ability early on to expand health coverage and exposing it to fierce GOP attacks.

Still, many Democrats believe passing a slimmer version of the social and climate spending plan is better than the alternative of doing nothing with rising prices eating into people's pocketbooks. The latest Consumer Price Index showed inflation rising 7.5% year-over-year in January.

"It's not easy for Congress to regulate the price of a gallon of milk, but it's easy for us to dramatically reduce the cost of childcare," Sen. Christopher Murphy of Connecticut told Insider in an interview.

White House officials are now opening the door to restructuring part of the plan towards deficit-reduction, The Washington Post reported on Friday. The White House didn't respond to a request for comment.

Manchin has spoken favorably about the climate chunk of the package, which contains roughly $555 billion in spending on tax credits meant to pave a transition to greener energy. In the past he's also said he's "all-in" on universal pre-K as well, along with maintaining boosted Obamacare subsidies.

#### Antitrust trades off – assumes bipartisanship.

Carstensen 21 – Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School [Peter C. Carstensen, “The “Ought” and “Is Likely” of Biden Antitrust,” 2021, *Concurrences*, No. 1, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#carstensen]

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

15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate!

16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Climate change causes extinction – their impact.

## Solvency

#### Vagueness dooms solvency – big business lawyers and judges subvert the plan

Stoller, 21 -- American Economic Liberties Project research director

[Matt Stoller, former policy advisor to the Senate Budget Committee, "Why Did Congress Just Vote to Break Up Big Tech?," BIG, 6-25-21, https://mattstoller.substack.com/p/why-did-congress-just-vote-to-break, accessed 6-25-2021]

The bad is pretty simple. The tech-specific bills, as written, probably won’t deliver what their sponsors think they will, because they didn’t get all the specifics right. This isn’t intentional, it’s just that it is hard to write this kind of legislation. A friend once told me a good legal expression, ‘to write a good law, you have to think like a criminal.’ And that’s basically right. There are **extremely well-paid lawyers** who will spend their time exploiting the **tiniest loophole**, so good drafting means thinking about making statutes airtight. Competition law is complex and warped to make drafting full of **legal minefields**, so without extreme care in the language, the law will likely be **subverted**.

To understand why it’s so hard to get these laws right, it helps to start with the two basic problems with antitrust law. The first is that regulators and enforcers make key policy decisions, and have done a very bad job at it. A good example is they just decided to stop enforcing the anti-chain store Robinson-Patman Act, which prohibits certain forms of kickbacks, as well as prohibiting giving better prices to bigger customers. At some point in the 1970s and 1980s, the Department of Justice and FTC chose not to enforce the law anymore. And when they stopped doing so, Walmart and other chain stores, and eventually Amazon, exploded in size and power.

And then there are judges. Judges have been trained in a type of thinking in which antitrust is all about promoting a certain form of economics, known as ‘consumer welfare.’ Most of the things you and I would consider unfair, like paying kickbacks to someone to stop them from selling rival products, or selling below cost to drive your competitors out of business, or intentionally making your products incompatible to undermine smaller rivals, judges tend to see as ‘pro-competitive,’ which is to say, good and efficient. I’m not kidding. Yesterday, Obama-appointed judge Daniel Crabtree dismissed an antitrust case against Epipen maker Mylan, which was paying bribes to stop their competitor’s product from being available to consumers. To Crabtree, such bribes weren’t corrupt, they were efficient!

It’s not that judges are corrupt, it’s that there is now 40 years of case law saying that they must generally be hands-off and let firms do what they want. And to get judges to rule in your favor, plaintiffs must spend millions of dollars getting an economist to make up fancy models saying that intervening in a particular case creates more economic value than not intervening, and then hopefully the judge flips a coin and likes your expert more than Amazon’s expert. To put it differently, imagine if, say, you had to show in any robbery case not just that your money was stolen, but that you would spend your money more wisely than the person who took it. That’s basically what antitrust is like these days. This is called ‘consumer welfare’ but it is in fact just a corrupt and foolish way to understand law.

The way to address both problems - bad regulators and bad judges - is to write very specific and careful legislative text. Give clear instructions on which practices are and are not legal, and try to avoid corrupted words like competition, which only invite judges to opine on economic questions. Moreover, have a clear vision on what gets broken off from what. These bills don’t really do that. (Neither did Klobuchar’s bill introduced earlier this year; state Senator Michael Gianaris’s antitrust update in New York came closer.)

The break-up bill, for instance, centers on conflicts of interest between lines of business. But it never defines what it means by “line of business,” and **this stuff gets very blurry**. **Big tech will use** this **ambiguity to its advantage**. Right now, for instance, Amazon has a marketplace on Amazon.com. It also has a logistics business, Fulfillment by Amazon. If you try to split these two obviously different divisions apart, Amazon will claim that these are all one line of business, with Amazon Prime, Fulfillment by Amazon, and Marketplace all one thing. And then a judge gets to decide whether that’s true, because this bill doesn’t. Judges really don’t like to make what they perceive of as product design decisions, preferring to defer to monopolists. So yeah, that’s a problem.

This problem is pervasive across the legislative text. The merger bill, rather than a straightforward ban on big tech mergers, instead says big tech firms have to jump through a bunch of hoops showing that whoever they are buying doesn’t compete with them or potentially compete with them. That sounds fine, except that judges understand ‘competition’ to mean very expensive and unwieldy fights over how to define the market, according to fancy expensive economists. So basically enforcers will still have to unnecessarily spend massive resources to stop big tech mergers, though they will have more authority to do so. (Also, during the mark-up, big tech managed to punch a hole through this one, exempting mergers of less than $50 million. But that happens.)

## Trade Adv

#### Diashowa thumps – didn’t impact US-Japanese trade

#### Plan doesn’t solve lobbying for protectionism – that’s not illegal under antitrust law

#### Murry’s not specific to export cartels – says competition law is manipulated domestically

#### No scenario for war – they haven’t identified countries that would stop trading with us

#### Trade is on the rise

**Brodzicki, 22** – Principal Economist at IHS Markit

[Tomasz Brodzicki, "Global Trade Outlook 2022. High global trade volume growth in 2021 and significant moderation in 2022. Supply chains disruption is likely to continue in the first half of 2022," IHS Markit, 1-12-2022, https://ihsmarkit.com/research-analysis/Global-Trade-Outlook-2022.html, accessed 2-12-2022]

PMI New Export Orders point to a positive outlook for both global manufacturing and trade in services

PMI New Export Orders (adjusted) by IHS Markit is an excellent predictor of the situation in trade over the coming quarter. The 50.0 points is a benchmark value with a value above pointing to recovery and below indicative of contraction. The analyses were performed to show a high correlation between PMI NExO and changes in IHS Markit GTA monthly data reported by states over the coming quarter (mostly the following month).

The adjusted PMI new exports orders (PMI NExO) readouts for the global manufacturing industry in November 2021 were above the benchmark value of 50.0 points (51.37) the 15th month in a row proving the sustained nature of recovery and still pointing to a positive short-term outlook for global trade; in comparison to October readouts, they were higher by 0.76.

The values for November were pointing to a positive short-term outlook for exports in eight out of the top 10 economies with the highest importance for the EU (54.42), Canada (53.65), Japan (52.78), India (51.73) above the global average); the values were below of 50.0 for the UK (49.00) & China (49.85); Russia scored a result above of 50.0 for the first time in 11 months.

PMI NExO in November 2021 for global manufacturing (50.60) and global services (51.44) were above the 50.0 points benchmark (49.31); PMI NExO for global services went up month-on-month for the second time in a row.

#### Alt causes to protectionism – we read green

1AC Oppenheimer 20 - (Michael Oppenheimer, Clinical Professor at the Center for Global Affairs at New York University, Senior Consulting Fellow for Scenario Planning at the International Institute for Strategic Studies, Former Executive Vice President at The Futures Group, Member of the Council on Foreign Relations, The Foreign Policy Roundtable at the Carnegie Council on Ethics and International Affairs, and The American Council on Germany; 10-2-2020, The Future of Global Affairs: Managing Discontinuity, Disruption and Destruction, "The Turbulent Future of International Relations," doa: 10-23-2021) url: <https://link.springer.com/chapter/10.1007/978-3-030-56470-4_2>

What will illiberal globalization look like? Consider recent events. The instruments of globalization have been weaponized by strong states in pursuit of their geopolitical objectives. This has turned the liberal argument on behalf of globalization on its head. Instead of interdependence as an unstoppable force pushing states toward collaboration and convergence around market-friendly domestic policies, states are exploiting interdependence to inflict harm on their adversaries, and even on their allies. The increasing interaction across national boundaries that globalization entails, now produces not harmonization and cooperation, but friction and escalating trade and investment disputes.14 The Trump Administration is in the lead here, but it is not alone. Trade and investment friction with China is the most obvious and damaging example, precipitated by China’s long failure to conform to the World Trade Organization (WTO) principles, now escalated by President Trump into a trade and currency war disturbingly reminiscent of the 1930s that Bretton Woods was designed to prevent. Financial sanctions against Iran, in violation of US obligations in the Joint Comprehensive Plan Of Action (JCPOA), is another example of the rule of law succumbing to geopolitical competition. Though more mercantilist in intent than geopolitical, US tariffs on steel and aluminum, and their threatened use in automotives, aimed at the EU, Canada, and Japan,15 are equally destructive of the liberal system and of future economic growth, imposed as they are by the author of that system, and will spread to others. And indeed, Japan has used export controls in its escalating conflict with South Korea16 (as did China in imposing controls on rare earth,17 and as the US has done as part of its trade war with China). Inward foreign direct investment restrictions are spreading. The vitality of the WTO is being sapped by its inability to complete the Doha Round, by the proliferation of bilateral and regional agreements, and now by the Trump Administration’s hold on appointments to WTO judicial panels. It should not surprise anyone if, during a second term, Trump formally withdrew the US from the WTO. At a minimum it will become a “dead letter regime.”18

#### Trade doesn’t solve war

van de Haar 20 [Edwin van de Haar, formerly a visiting fellow and lecturer in political theory at John Tomasi’s Political Theory Project at Brown University, a lecturer in international relations and political economy at the Institute of Political Science at Leiden University, and a lecturer in international relations at the European Studies Program at Ateneo de Manila University, “Free trade does not foster peace,” 2020, *Economic Affairs*, Vol. 40, Issue 2, pp. 281-286, https://doi.org/10.1111/ecaf.12405, EA]

Trade is unable to foster peace, because it is unable to overcome many causes of war. Think about cultural and religious differences, geopolitical causes such as the fight for natural resources, including increasingly rare raw materials, or more traditional wars between great powers or their proxies over a border dispute. States may also act against their economic interest for some perceived higher goal (Coker, 2014). The causes of war are often multifaceted and complex. Wars happen because people have reasons to fight, in the form of goals and grievances, and possess enough resources and resolve (Ohlson, 2009). Trade relations are just one factor in the mix of causes of war, which include such coincidental factors as chance, luck, or reckless behaviour by individuals who happen to influence public policy. International commerce is simply not a “perfectly effective antiwar device” (Suganami, 1996, pp. 153–210). The best one can say is that the protection of trade relations is sometimes one of the factors in the decision not to wage war. Nothing less, nothing more.

To sum up, many of Adam Smith's arguments still stand, and are confirmed or complemented by modern research. There is no solid ground for the expectation that trade promotes, fosters, or leads to peace. Generally, international economic interests are not the crucial factors in decisions over war and peace. Too many other factors come into play. To believe that trade fosters peace was folly even hundreds of years ago. To still think so is to believe in fairy tales, to be ~~blinded~~ by the correlates computed by limited yet available datasets, or both.

#### No brink – protectionism doesn’t mean a complete collapse in trade

#### Plan doesn’t solve – their ev is about negotiations with other countries, which they don’t fiat

## Resources Adv

#### Squo solves – cartels are on the decline.

Verbeke & Buts 08-17 – Professor of International Business and Strategy, McCaig Chair in Management, University of Calgary; Professor at the department of applied economics of the Vrije Universiteit Brussel

[Alain Verbeke, Caroline Buts, “The Not So Brilliant Future of International Cartels,” Management and Organization Review, Cambridge University Press, August 2021, https://www.cambridge.org/core/journals/management-and-organization-review/article/not-so-brilliant-future-of-international-cartels/363CC718A5FD54F8BB390B9AB22150B7]

A NOT SO BRILLIANT FUTURE OF INTERNATIONAL CARTELS?

As explained in the previous section, we do not dispute the possibility that international cartels could become more important in the future under carefully defined conditions. We are doubtful, however, even when accepting B&C’s broad definition of this governance mode, that international cartels will gain ground more generally, vis-à-vis other forms of governance in international business, when multinational enterprises face increased political risk.

A key element, and perhaps a surprising one, explaining our doubt about the bright future of cartels is four clear trends in cartel regulation that are now creating significant political risk for international cartel members (admittedly not covering B&C’s benevolent cartels). First, competition policy is now a priority for policy makers around the world, as reflected in the progress made in detecting, investigating, and prosecuting cartels (OECD, 2020; OECD, 2021b). Recently published data indicate that 68% of global cartels (with members from at least two different continents) have been prosecuted by multiple jurisdictions, with average cartel fines being very high at €19.3 million (OECD, 2020).

Second, the consequences of being caught as a cartel member have gradually become more severe and far-reaching, both for the orchestrating and the participating companies, and for the employees involved (Ordóñez-De-Hano, Borrell, & Jiménez, 2018). Depending on the jurisdiction, a wide array of sanctions is now being deployed, including personal fines, trade prohibitions, and prison sentences (these have increased sevenfold over a recent five-year period, OECD, 2020). After a finding of cartel-behavior from the competition authority, the legal battle usually continues in the form of lawsuits for damages whereby victims file claims and may also coordinate their actions, e.g., to recover cartel overcharges (Burke, 2019).

Third, cartel investigations have also become more sophisticated. Leniency policies – providing immunity from fines for the first player who admits to the existence of a cartel and discloses information on its functioning – are on the rise. This powerful tool serves both detection and deterrence purposes in the realm of anticompetitive behavior (Margrethe & Halvorsen, 2020; Marvão & Spagnolo, 2018; Miller, 2009). It incentivizes cartel members to become whistle blowers. Companies will be less likely to join a cartel if they know that its members may be enticed to disclose cartel operations, (Brenner, 2009; Vanhaverbeke & Buts, 2020).

A larger number of agencies than before now also have the mandate to conduct ‘dawn raids’, in order to collect evidence of cartel behavior and they can even enter private premises of employees during their search for incriminating material. In addition, sophisticated econometric analyses have become standard practice to provide evidence of coordinated conduct in industry and to calculate cartel overcharges (Parcu, Monti, & Botta, 2021).

Fourth, competition authorities have invested more in outreach, communicating competition rules through dedicated events, online campaigns, and competition networks. Compliance programs have also been on the rise with an increasing number of mainly large companies investing in compliance training to abide by competition rules (De Stefano, 2018).

The increased efforts to fight anticompetitive agreements in industry are now deterring and destabilizing cartels. Following a substantial increase in the number of cartels that have been ‘caught’, the average life span of these cartels is now going down rapidly (OECD, 2020). The fight against illegal, anticompetitive behavior will intensify further in the near future, rather than governments shifting their focus to contemplate potential benefits. At the same time, the beneficial effects have been widely acknowledged of international collaboration forms that are legally allowed by various competition policy regimes (and are therefore not considered cartels), see for instance Martínez-Noya and Narula (2018) on international R&D cooperation.

#### Covid thumps – caused massive supply chain shortages

#### Minerals scenario isn’t specific to domestic export cartels AND there’s no ev cartelization even exists in that industry

#### No REM shortages – stockpiles, new deposits, and recycling.

Lovins 17, Cofounder and Chairman Emeritus of Rocky Mountain Institute, energy advisor to major firms and governments in 70+ countries for 45+ years, has written 31 books and more than 600 papers, advised major firms and governments worldwide, and received 12 honorary doctorates and many international awards [Amory, 5-23-2017, "Clean energy and rare earths: Why not to worry", *Bulletin of the Atomic Scientists*, https://thebulletin.org/2017/05/clean-energy-and-rare-earths-why-not-to-worry/]

Rare earths’ uses are highly specialized but diverse. These elements are used in mobile phones, superstrong magnets and hence advanced motors and generators, some oil-refinery catalysts, certain lasers and fluorescent-lamp or flat-screen phosphors, some batteries and superconductors, and other technologies important to modern life. Some rare earths are particularly useful in energy applications. Around 2010, some articles and commentators warned that shortages of rare earths, or China’s near-monopoly on them, could choke off the West’s shift to renewable energy and other clean technologies. This was never true—but the myth persists.

Bubble and burst. Rare earths concerned only specialists until about 2009–10. In the mid-1990s, China had consolidated its control over most of the global rare-earth market, and the last US mine and mill, once the world’s dominant producer, closed in 2002 because it was unprofitable. China began imposing export quotas in 2006, and limited exports to Japan (a major user of rare earths for high-tech miniature motors) during a diplomatic spat in 2009–10, so global prices and anxieties soared. US government agencies published urgent reports about the rare-earth crisis and its threat to national security. Could China’s control of these crucial elements—roughly 97 percent at the time—block Washington’s ability to produce Tomahawk missiles, F-35 jets, and night-vision goggles, as some military writers warned, never mind electric vehicles and wind-power turbines?

As a technologist who had advised major mining companies, written two books on metal mining and a 445-page text on efficient motor systems, done rare-earth physics experiments at MIT Lincoln Laboratory, and consulted for MIT’s Francis Bitter Magnet Laboratory, I knew enough to be unconvinced by rare-earth alarm bells. It all felt like a commodity bubble, based more on a shortage of understanding—of rare earths, economic geology, and resource efficiency and substitution—than on a shortage of rare earths.

Sure enough, the debate was heavy on the supply of rare earths but light and often misinformed on the demand side. The few observers who focused more on demand suspected that rare earths’ price spike wouldn’t last long, whether or not it reflected mining-stock hype. I called the coming crash, to general ridicule, in 2010. Rare-earth prices soared through spring 2011—when a rare-earth bonanza was fondly predicted for Helmand Province in Afghanistan—but then plummeted.

US supplier Molycorp reopened its California rare-earth mine in 2012, but went broke in 2015 when low world prices wouldn’t support its high costs. By 2015, MIT Technology Review asked, “What Happened to the Rare-Earths Crisis?” It misleadingly called rare earths “crucial to the permanent magnets used in wind turbines and motors in hybrid or electric cars,” and concluded that worries about them had “seemingly dissipated without much fanfare” as “demand fell more than expected,” but never connected the dots by asking why demand did that. By 2016–17, the market was in the doldrums, with China planning to limit annual production to 140,000 metric tons beginning in 2020 to try to raise prices again. An investor in the rare-earth industry in 2007 would have lost 81 percent of her portfolio value after a classic decade-long boom-and-bust wild ride (see the chart at the top of this article from buyupside.com).

This is not how a durably scarce and valuable commodity behaves. What happened? Just what you’d expect of a thin market influenced by ignorance but ultimately tamed by reality. When prices soared, stockpiles rose, idle mines reopened, explorers sought and found new deposits, and recycling increased (for example, cerium in glass polishing). Most important, as customers from General Electric to Toyota to Ford sought to cut costs and boost performance, the costlier materials were used more frugally and often replaced with cheaper, better solutions—all as I’d predicted in 2010. Prices fell accordingly.

#### Renewables fail – inefficient, offsetting, resource wars

Hoffmann 16 [Ulrich Hoffmann, chief economist, sustainability issues at the Research Institute on Organic Agriculture (FIBL), and former editor-in-chief of the UNCTAD Trade and Environment Review, UNCTAD Secretariat, “Green Growth: Ideology, political economy and the alternatives | Can green growth really work? A reality check that elaborates on the true (socio-)economics of climate change,” 2016, Zed Books, pp. 28-33, EA]

Increasing the use of renewable energy – easier said than done

Much hope was put on the contribution of changes in the energy mix to reducing GHG emissions. However, evidence suggests that a complete or significant replacement of fossil fuel by renewable energy (RE) is very challenging on a number of fronts:

• There is the need for compacting RE.

• One needs a significantly modified, renewed or new transmission infrastructure.

• There is a reduced energy return on energy input (EROI).

• Certain REs have to face up to material scarcities.

• There is not yet a really sustainable alternative for conventional transport fuel.

Wind and solar, the two most promising RE sources, are variable and intermittent, and therefore cannot serve as ‘base-load’ electricity, requiring substantial conventional electricity capacity as backup. They also require significant material input into the production of solar panels and wind turbines and a major upgrading of storage capacity, transmission lines and the creation of intelligent grids, all set to drive up material consumption (and related costs), in some cases completely exhausting the supply of strategic materials.24 Furthermore, two-thirds of fossil fuel is used as transport fuel, for which there is no real substitute within sight (biofuels cannot meet more than a small fraction of the world’s transport fuel demand).25

Hänggi cautions that a change in the energy mix does often not lead to a straightforward replacement of fossil by renewable fuel.26 Rather, the new energy is likely to be used in parallel with the old one for quite some time (a phenomenon that applies to many social innovations), both for technical reasons, but also linked to the rebound effect (see below). For instance, the present global consumption of coal is higher than that before the oil age; so is the current consumption of fuel wood compared to what was used before the coal age. Also, to assure reliable electricity supply, gas-reliant power stations are likely to play an important role in backing up wind and solar power facilities.27

It should also not be overlooked that, unlike conventional fuel, renewable energy is usually only available in non-concentrated form; it has to be ‘compacted’ to generate sufficient power. This ‘compaction’ or, in technical terms, the reduction of entropy of a system, can only be achieved by increasing the entropy in other parts. In practical terms of renewable energy, this means that one can only compact wind, solar, bio or hydro energy by increasing the use of conventional fuel or raw materials.28

As a result, EROI is low and sometimes even negative (in fact, even for conventional fuels the EROI has dramatically declined in recent decades).29 According to Hall et al., it is not important to have renewable energy alternatives per se, but that they have:

• a sufficient energy density;

• an appropriate transportability;

• a relatively low environmental impact per net unit delivered to society;

• a relatively high EROI; and

• that REs are obtainable on a scale that society demands.

Hall et al. stress that ‘we must remember that usually what we want is energy services, not energy itself, which usually has little intrinsic economic utility’.30 MacKay adds that ‘for a sustainable energy plan to add up, we need both the forms and amounts of energy consumption and production to match up. Converting energy from one form to another … usually involves substantial losses of useful energy … Conversion losses (in the United Kingdom, for example – added by the author) account for about 22 per cent of total national energy consumption.’31

In sum it should be noted that low EROI, losses in storage, transmission and conversion, and less efficiency at the point of use for renewable energy can mean that the need for energy supply can increase considerably compared to the current fossil-fuel-dominated energy mix – just to keep energy utility at the point of use the same.

The efficiency illusion: the rebound effect

Enhanced energy (and related material and resource) efficiency and ample availability of cheap renewable energy will encourage a ‘rebound effect’, i.e. physical consumption is likely to increase as a result of productivity increases, which leads to lower costs and prices and the shifting of thus saved consumer money or investment funds.32

The rebound effect was first described by the English economist William Stanley Jevons in his book The Coal Question, published in 1865. Jevons observed that England’s consumption of coal soared after James Watt introduced his coal-fired steam engine, which greatly improved the efficiency of Thomas Newcomen’s earlier design. Watt’s innovations made coal a more cost-effective power source, leading to the increased use of the steam engine in a wide range of industries. This in turn increased total coal consumption, even as the amount of coal required for any particular application fell. Jevons argued that improvements in fuel efficiency tend to increase, rather than decrease, fuel use: ‘It is a confusion of ideas to suppose that the economical use of fuel is equivalent to diminished consumption. The very contrary is the truth … no one must suppose that coal thus saved is spared – it is only saved from one use to be employed in others.’33

The rebound effect reflects the causality between efficiency increases and additional demand. The definition not only includes the energy/material/resource (EMR) efficiency, but also the additional demand impact of increased labour and capital productivity.

Besides the financial rebound effect (denoting that part or all of the EMR-efficiency-induced cost savings are used for reinvestment or additional consumption) there is also a material rebound effect. In addition, there are psychological and cross-factor rebound effects. Material rebound effects are caused by higher EMR consumption resulting from the need to change fixed capital and infrastructure for increasing EMR efficiency. The psychological rebound effect provokes higher EMR consumption, because the user of more efficient technologies is under the impression that he/she has economized on EMR use and that there is thus no harm in using the concerned device a bit more (e.g. the user of a more fuel efficient or electrical vehicle increases the mileage). The cross-factor rebound effect, in turn, is triggered by enhanced labour productivity, which replaces labour by mechanization and motorization, driving material and resource consumption, but in particular energy use. In other words, labour productivity increases are bought by reduced energy efficiency. Technological developments that besides EMR efficiency also increase the capital efficiency and labour productivity are likely to cause ‘backfire effects’, i.e. ultimately increasing EMR demand.34

There is yet another, more complicated aspect of Jevons’ paradox.35 Even if higher labour productivity can make workers redundant, it also increases the remaining workers’ salaries. This creates new demands and new employment opportunities. Those that are made redundant, in turn, are mostly productive in some other trade. Even if we see a lot of unemployment globally, one must admit that the enormous gains in productivity have not resulted in widespread or mass unemployment. To some extent, workers have reduced their work hours, but certainly not at all in parity with the increase in labour productivity. Therefore, despite all efficiency improvements, our society has significantly reduced neither the number of hours worked nor the resources used, not in total and not per capita. Rather, efficiency gains have fuelled increased consumption. Against this background, Foster, Clark and York point out that ‘An economic system devoted to profits, accumulation, and economic expansion without end will tend to use any efficiency gains or cost reductions to expand the overall scale of production … Conservation in the aggregate is impossible for capitalism, however much the output/input ratio may be increased in the engineering of a given product. This is because all savings tend to spur further capital formation …’36

Rebound effects have been poorly analysed so far, with some estimates limited to the financial rebound effects. The latter alone are estimated to neutralize up to half of the total EMR efficiency gains.37 Empirical information on material and cross-factor rebound effects is not yet available. Against this background, it will be simplistic to assume that EMR efficiency gains can play the main role in reducing GHG intensity. The key dilemma is that efficiency and productivity gains tend to boost economic growth, thus ushering in more physical consumption. This is one of the key reasons that call into question the effectiveness of the ‘efficiency revolution’ as a key element in the decoupling strategy at macroeconomic and global level.

Theoretically, some rebound effects could be neutralized by eco-taxes. However, such taxes (being increased in line with higher EMR efficiency) would have to be designed in a way that does not remove the incentive for efficiency innovation and would also have to be coordinated internationally. Setting absolute EMR consumption limits would be more promising, for instance in the context of caps for emission/ pollution trading schemes. However, almost all of such trading schemes on carbon-emission reductions have not been very successful so far – the virtual collapse of the EU Emissions Trading Scheme in recent years is a case in point.38 One should also not overlook the equality challenges of emission trading schemes and the fact that there is no link between the value of the service in a free market and the total cost for society. What is more, even the smartest-designed carbon offset trading scheme cannot overcome the constraints set by the above-mentioned limits of the maths of decarbonization – as stressed by Pielke, carbon ‘markets cannot make the impossible possible’.39

Linear thinking and horizontal shifting

There is also a tendency for too much linear thinking and approaches to enhancing EMR efficiency, often resulting in an outcome that only shifts the problem. Some of the technical advances in EMR efficiency gains, for instance, rely on material that is either scarce or very energy intensive to produce or difficult to re-use, recycle or safely dispose of. According to Bleischwitz et al., ‘the upswing for eco-industries in the North may have a dark side in the South: resource-rich countries being moved into rapid extraction paths exceeding the eco-systems and socio-economic institutions of those regions and fuelling civil wars with resource rents’.40 To use a concrete example, according to Schmidt-Bleek, ‘the damages in nature caused by electrical vehicles are far bigger than the ecological savings obtained by lower emissions’.41

A considerable proportion of GHG intensity drops in developed countries has been achieved not by ‘real physical savings’, but by ‘outsourcing’ very EMR-intensive production to developing countries (almost a quarter of GHG emissions related to goods consumed in developed countries has been outsourced). A team of scientists at Oxford University, for instance, estimated that under a correct account, allowing for imports and exports, Britain’s carbon footprint is nearly twice as high as the official figure (i.e. 21 t CO2eq/person/ year instead of 11). The share of CO2 net imports to total carbon emissions of individual developed countries has recently ranged from about 15 per cent for Greece to almost 60 per cent for Switzerland.42 Against this background, EMR and carbon-efficiency gains in developed countries need to be scrutinized with care and are often far less impressive than they appear at first sight.

#### No reason US renewables solve warming globally – US is only 13% of total emissions

#### No warming impact and emissions are inevitable

Curry 19 [Judith Curry, President of Climate Forecast Applications Network (CFAN), Professor Emerita of Earth and Atmospheric Sciences at the Georgia Institute of Technology, Ph.D. in atmospheric science from the University of Chicago, 2/9/19, “Statement to the Committee on Natural Resources of the United States House of Representatives,” https://curryja.files.wordpress.com/2019/02/curry-testimony-house-natural-resources.pdf]

The urgency (?) of CO2 emissions reductions

In the decades since the 1992 UNFCCC Treaty, global CO2 emissions have continued to increase, especially in developing countries. In 2010, the world’s governments agreed that emissions need to be reduced so that global temperature increases are limited to below 2 degrees Celsius.17 The target of 2oC (and increasingly 1.5oC)18 remains the focal point of international climate agreements and negotiations.

The original rationale for the 2oC target is the idea that ‘tipping points’ − abrupt or nonlinear transition to a different climate state − become likely to occur once this threshold has been crossed, with consequences that are largely uncontrollable and beyond our management. The IPCC AR5 considered a number of potential tipping points, including ice sheet collapse, collapse of the Atlantic overturning circulation, and permafrost carbon release. Every single catastrophic scenario considered by the IPCC AR5 (WGII, Table 12.4) has a rating of very unlikely or exceptionally unlikely and/or has low confidence. The only tipping point that the IPCC considers likely in the 21st century is disappearance of Arctic summer sea ice (which is fairly reversible, since sea ice freezes every winter).

In the absence of tipping points on the timescale of the 21st century, the 2oC limit iss more usefully considered by analogy to a highway speed limit:19 driving at 10 mph under the speed limit is not automatically safe, and exceeding the limit by 10 mph is not automatically dangerous, although the faster one travels the greater the danger from an accident. Analogously, the 2oC (or 1.5oC) limit should not be taken literally as a real danger threshold. An analogy for considering the urgency of emissions reductions is your 401K account: if you begin making contributions early, it will be easier to meet your retirement goals.

Nevertheless, the 2oC and 1.5oC limits are used to motivate the urgency of action to reduce CO2 emissions. At a recent UN Climate Summit, (former) Secretary-General Ban Ki-moon warned that: “Without significant cuts in emissions by all countries, and in key sectors, the window of opportunity to stay within less than 2 degrees [of warming] will soon close forever.”20 Actually, this window of opportunity may remain open for quite some time. The implications of the lower values of climate sensitivity found by Lewis and Curry21 and other recent studies is that human caused warming is not expected to exceed the 2oC ‘danger’ level in the 21st century. Further, there is growing evidence that the RCP8.5 scenario for future greenhouse gas concentrations, which drives the largest amount of warming in climate model simulations, is impossibly high, requiring a combination of numerous borderline impossible socioeconomic scenarios.22 A slower rate of warming means there is less urgency to phase out greenhouse gas emissions now, and more time to find ways to decarbonize the economy affordably and with a minimum of unintended consequences. It also allows for the flexibility to revise our policies as further information becomes available.

Is it possible that something truly dangerous and unforeseen could happen to Earth’s climate during the 21st century? Yes it is possible, but natural climate variability (including geologic processes) may be a more likely source of possible undesirable change than manmade warming. In any event, attempting to avoid such a dangerous and unforeseen climate by reducing fossil fuel emissions will be futile if natural climate and geologic processes are dominant factors. Geologic processes are an important factor in the potential instability of the West Antarctic ice sheet that could contribute to substantial sea level rise in the 21st century.23

Under the Paris Agreement, individual countries have submitted to the UNFCCC their Nationally Determined Contributions (NDCs). Under the Obama Administration, the U.S. NDC had a goal of reducing emissions by 28% below 2005 levels by 2025. Apart from considerations of feasibility and cost, it has been estimated24 using the EPA MAGICC model that this commitment will prevent 0.03oC in warming by 2100. When combined with current commitments from other nations, only a small fraction of the projected future warming will be ameliorated by these commitments. If climate models are indeed running too hot,25 then the amount of warming prevented would be even smaller. Even if emissions immediately went to zero and the projections of climate models are to be believed, the impact on the climate would not be noticeable until the 2nd half of the 21st century. Most of the expected benefits to the climate from the UNFCCC emissions reductions policy will be realized in the 22nd century and beyond.

Attempting to use carbon dioxide as a control knob to regulate climate on decadal to century timescales is arguably futile. The UNFCCC emissions reductions policies have brought us to a point between a rock and a hard place, whereby the emissions reduction policy with its extensive costs and questions of feasibility are inadequate for making a meaningful dent in slowing down the expected warming in the 21st century. And the real societal consequences of climate change and extreme weather events (whether caused by manmade climate change or natural variability) remain largely unaddressed.

This is not to say that a transition away from burning fossil fuels doesn’t make sense over the course of the 21st century. People prefer ‘clean’ over ‘dirty’ energy – provided that all other things are equal, such as reliability, security, and economy. However, assuming that current wind and solar technologies are adequate for providing the required amount and density of electric power for an advanced economy is misguided.26

The recent record-breaking cold outbreak in the Midwest is a stark reminder of the challenges of providing a reliable power supply in the face of extreme weather events, where an inadequate power supply not only harms the economy, but jeopardizes lives and public safety. Last week, central Minnesota experienced a natural gas ‘brownout,’ as Xcel Energy advised customers to turn thermostats down to 60 degrees and avoid using hot water.27 Why? Because the wind wasn’t blowing during an exceptionally cold period. Utilities pair natural gas plants with wind farms, where the gas plants can be ramped up and down quickly when the wind isn’t blowing. With bitter cold temperatures and no wind, there wasn’t enough natural gas.

A transition to an electric power system driven solely by wind and solar would require a massive amount of energy storage. While energy storage technologies are advancing, massive deployment of cost-effective energy storage technologies is well beyond current capabilities.28 An unintended consequence of rapid deployment of wind and solar energy farms may be that natural gas power plants become increasingly entrenched in the power supply system.

Apart from energy policy, there are a number of land use practices related to croplands, grazing lands, forests and wetlands that could increase the natural sequestration of carbon and have ancillary economic and ecosystem benefits.29 These co-benefits include improved biodiversity, soil quality, agricultural productivity and wildfire behavior modification.

In evaluating the urgency of CO2 emissions reductions, we need to be realistic about what reducing emissions will actually accomplish. Drastic reductions of emissions in the U.S. will not reduce global CO2 concentrations if emissions in the developing world, particularly China and India, continue to increase. If we believe the climate model simulations, we would not expect to see any changes in extreme weather/climate events until late in the 21st century. The greatest impacts will be felt in the 22nd century and beyond, in terms of reducing sea level rise and ocean acidification.

Resilience, anti-fragility and thrivability

Given that emissions reductions policies are very costly, politically contentious and are not expected to change the climate in a meaningful way in the 21st century, adaptation strategies are receiving increasing attention in formulating responses to climate change.

The extreme damages from recent hurricanes plus the recent billion dollar disasters from floods, droughts and wildfires, emphasize that the U.S. is highly vulnerable to current weather and climate disasters. Even worse disasters were encountered in the U.S. during the 1930’s and 1950’s. Possible scenarios of incremental worsening of weather and climate extremes over the course of the 21st century don’t change the fundamental storyline that many regions of the U.S. are not well adapted to the current weather and climate variability, let alone the range that has been experienced over the past two centuries.

As a practical matter, adaptation has been driven by local crises associated with extreme weather and climate events, emphasizing the role of ‘surprises’ in shaping responses. Advocates of adaptation to climate change are not arguing for simply responding to events and changes after they occur; they are arguing for anticipatory adaptation. However, in adapting to climate change, we need to acknowledge that we cannot know how the climate will evolve in the 21st century, we are certain to be surprised and we will make mistakes along the way.

‘Resilience’ is the ability to ‘bounce back’ in the face of unexpected events. Resilience carries a connotation of returning to the original state as quickly as possible. The difference in impact and recovery from Hurricane Sandy striking New York City in 2012 versus the impact of Tropical Cyclone Nargis striking Myanmar in 200830 reflects very different vulnerabilities and capacities for bouncing back.

To increase our resilience to extreme weather and climate events, we can ‘bounce forward’ to reduce future vulnerability by evolving our infrastructures, institutions and practices. Nicholas Taleb’s concept of antifragility31 focuses on learning from adversity, and developing approaches that enable us to thrive from high levels of volatility, particularly unexpected extreme events. Anti-fragility goes beyond ‘bouncing back’ to becoming even better as a result of encountering and overcoming challenges. Anti-fragile systems are dynamic rather than static, thriving and growing in new directions rather than simply maintaining the status quo.

Strategies to increase antifragility include: economic development, reducing the downside from volatility, developing a range of options, tinkering with small experiments, and developing and testing transformative ideas. Antifragility is consistent with decentralized models of policy innovation that create flexibility and redundance in the face of volatility. This ‘innovation dividend’ is analogous to biodiversity in the natural world, enhancing resilience in the face of future shocks.32

Similar to anti-fragility, the concept of ‘thrivability’ has been articulated by Jean Russell:33 “It isn’t enough to repair the damage our progress has brought. It is also not enough to manage our risks and be more shock-resistant. Now is not only the time to course correct and be more resilient. It is a time to imagine what we can generate for the world. Not only can we work to minimize our footprint but we can also create positive handprints. It is time to strive for a world that thrives.”

A focus on policies that support resilience, anti-fragility and thrivability avoids the hubris of thinking we can predict the future climate. The relevant questions then become:

• How can we best promote the development of transformative ideas and technologies?

• How much resilience can we afford?

The threats from climate change (whether natural or human caused) are fundamentally regional, associated not only with regional changes to the weather/climate, but with local vulnerabilities and cultural values and perceptions. In the least developed countries, energy poverty and survivability is of overwhelming concern, where there are severe challenges to meeting basic needs and their idea of clean energy is something other than burning dung inside their dwelling for cooking and heating. In many less developed countries, particularly in South Asia, an overwhelming concern is vulnerability to extreme weather events such as floods and hurricanes that can set back the local economies for a generation. In the developed world, countries are relatively less vulnerable to climate change and extreme weather events and have the luxury of experimenting with new ideas: entrepreneurs not only want to make money, but also to strive for greatness and transform the infrastructure for society.

Extreme weather/climate events such as landfalling major hurricanes, floods, extreme heat waves and droughts become catastrophes through a combination of large populations, large and exposed infrastructure in vulnerable locations, and human modification of natural systems that can provide a natural safety barrier (e.g. deforestation, draining wetlands). Addressing current adaptive deficits and planning for climate compatible development will increase societal resilience to future extreme events that may possibly be more frequent or severe in the future.

Ways forward

Climate scientists have made a forceful argument for a future threat from manmade climate change. Based upon our current assessment of the science, the threat does not seem to be an existential one on the time scale of the 21st century, even in its most alarming incarnation. However, the perception of manmade climate change as a near-term apocalypse and alignment with range of other social objectives has narrowed the policy options that we’re willing to consider.

## Outreach Adv

#### Internal link is about extraterritorial antitrust – prosecuting domestic export cartels won’t suddenly cause countries to accept US imperialism

#### No backlash – comity concerns are bunk.

Ryu 16 [Jae Hyung Ryu, B.A., Yale University, New Haven, Connecticut. J.D. Candidate (2017), Washington University School of Law, St. Louis, “Deterring Foreign Component Cartels in the Age of Globalized Supply Chains,” 2016, *Wake Forest Journal of Business and Intellectual Property Law*, Vol. 17, No. 1, http://ipjournal.law.wfu.edu/files/2017/01/Ryu-V-17-I1.pdf, EA]

Common concerns, such as international comity, the indirect purchaser doctrine, endless plaintiffs, and over-deterrence, do not sufficiently justify not analyzing the importation of finished products incorporating price-fixed components under import inclusion. First, international comity concerns are minimal because the international norm is expanding extraterritoriality, other countries having already taken an expansive approach based on anticompetitive conduct’s effects on its domestic market. For one, imports necessarily affect the U.S. economy—an area that the United States is more than justified to protect. As analyzed above, the FTAIA’s drafters assumed that import commerce by definition would influence the U.S. domestic commerce.184 Anticompetitive conduct, even if it happens outsides the United States, would necessarily affect domestic commerce because its influx would affect all other parts of the market.

Empagran, the last Supreme Court case that squarely considered the issue of the extraterritorial reach of U.S. antitrust laws, based its holding primarily on the concerns of international comity. 185 Yet, international comity is not unilateral because the doctrine is based on mutuality between the United States and other countries; it is based on the silent agreement between sovereign nations not to interfere with each other’s sovereign authority.186 When other countries are more willing to punish foreign component cartels when finished products incorporating price-fixed components are imported, 187 there is little reason why the United States should sit on the sidelines and not protect the interests of its consumers and businesses. Moreover, the trend of the convergence of international regulations188 suggests that the United States would be more than justified in following the European Union’s steps in expanding the extraterritorial reach of U.S. antitrust laws.

The European Commission’s decision to fine companies for importing finished products manufactured outside the EEA189 and the Court of Justice upholding the expansive enforcement power 190 support that a similarly expansive reading of the FTAIA would not invoke international comity concerns. International comity is predicated on not infringing the sovereign regulatory and enforcement powers of other countries. 191 However, when other countries are similarly expansively regulating conduct outside its borders on the basis of effects felt within its borders, there is hardly any infringement on their sovereign authority to do the same. 192 In fact, this convergence of perspectives on the proper scope of the competitions laws focusing on the actual effects of allegedly anticompetitive conduct comports with the globalization of the world economy in which many corporations act across the borders and jurisdictions.193

#### No modeling – other countries see US antitrust as irrational, even if we get things right.

William E. Kovacic 15, Professor of Law and Policy at George Washington University, former General Counsel for the Federal Trade Commission, J.D. from Columbia University, “The United States and Its Future Influence on Global Competition Policy,” George Mason Law Review, Vol. 22, 2015, accessed via Lexis

One force that reduces the perceived legitimacy of the U.S. system is a widely accepted narrative, reflected in popular discourse and scholarly commentary, which portrays federal enforcement as irrational and unstable. 65 [\*1172] In this interpretation of modern U.S. enforcement history, antitrust policy undergoes recurring erratic shifts, with a small number of lucid intervals. For the most part, the irrationality narrative suggests that U.S. antitrust policy embraced unsupportable extremes of over-enforcement in the 1960s and 1970s, under-enforcement from 1981 to 1988 and 2001 to 2008, and achieved a sensible, balanced equilibrium only from 1993 to 2000 and 2009 to the present. 66 This accounting of antitrust history raises a troublesome question: why should any jurisdiction outside the U.S. respect a system that has lost its mind in roughly 41 of the past 55 years?

Policy-making in the irrationality narrative is sharply discontinuous, and the enforcement institutions have little evident capacity for self-assessment or correction over time. 67 Individual leaders count for everything, and institutional arrangements fail to discipline policy-making; 68 appoint a wise official and you get good results, but pick a zealot and the agency swerves toward frantic hyperactivity or utter indolence. The irrationality narrative is the public policy equivalent of an interpretation of Formula One racing that attributes the outcome in races entirely to the driver and treats the quality of the car and supporting team as largely irrelevant.

The irrationality account of U.S. enforcement history derives power from the stature of the narrators. Despite its unreliable reading of U.S. experience, the narrative's academic pedigree is daunting. Some of the greatest scholars in U.S. competition law have contributed to the story. If nonentities constructed the narrative, foreign observers would dismiss it out of hand. Instead, the narrative of irrationality and instability, often presented with the metaphor of a wildly swinging pendulum, originated and developed in the work of some of the field's most influential commentators. On many occasions outside the U.S., I have heard enforcement officials, practitioners, and scholars speak of the irrationality narrative as though it were an established truth. To these observers, the stature of the scholars who popularized the irrationality narrative invariably lends verisimilitude to the story.

As described below, the irrationality narrative of the U.S. system serves the aims of the right and the left in the debate about federal enforcement policy. For those who favor more intervention or less intervention, alike, the image of a system dangerously out of control serves to frame their own "sensible" policy proposals. By this technique, the narrator emerges as the voice of wisdom in a crazed policy environment.

[\*1173] The architecture of the modern irrationality narrative took shape in 1978 when Professor Robert Bork published the first edition of his transformative treatise, The Antitrust Paradox. 69 Professor Bork's central thesis was that "modern antitrust has so decayed that the policy is no longer intellectually respectable." 70 Each institution with a role in the implementation of the antitrust laws--the courts, the Congress, and the federal enforcement agencies--caused the decay. On antitrust matters, the Congress displayed the mentality of "the sheriff of a frontier town" who "did not sift evidence, distinguish between suspects, and solve crimes, but merely walked the main street and every so often pistol-whipped a few people." 71 With few exceptions, the courts embraced a view of antitrust law that "teaches the necessity for government intervention when no such necessity exists, and even when intervention is positively harmful." 72 Without regard to adverse economic effects, the DOJ and the FTC "must continually press on to fresh territory, seeking theories that broaden the application of the law and make violations easier to establish." 73

In Professor Bork's telling, the implementing institutions were capricious, reckless, or bent upon self-aggrandizement. 74 As a group, the institutions have gone mad, for they have no tendency or, perhaps, any capacity to reflect on their experience, identify error, and make corrections. 75 Instead, the U.S. antitrust system had "an inbuilt thrust toward greater severity or further extension." 76 Nothing, Professor Bork warned, seemed able to contain the destructive march of intervention: "This process has no obvious stopping point." 77

The image of a system out of control served Professor Bork's rhetorical aims; it showed the urgency for reform by presenting a system in shambles. The image also distorted (more mildly, misread) current trends substantially. When The Antitrust Paradox appeared in January 1978, each institution Professor Bork rebuked--the Congress, the courts, and the federal enforcement agencies--had taken steps to rebalance the antitrust system. 78 The adjustments came slowly, but they were coming, nonetheless. If Professor Bork had acknowledged that the seemingly out-of-control institutions [\*1174] were making important adjustments, his book would have lost some (maybe much) of its force.

A second decisive contribution to the irrationality narrative came in the late 1980s and early 1990s from one of Professor Bork's harshest critics, Professor Robert Pitofsky. Though Professor Pitofsky scorned Professor Bork's calls for a vast retrenchment of antitrust enforcement, he used his own version of the irrationality narrative while setting out a more interventionist agenda. 79 Describing federal merger enforcement from the early 1960s through the early 1990s, Professor Pitofsky wrote:

American antitrust policy has tried to balance possible threats to competition against merger benefits, but remarkably, has careened from one extreme to another in this balancing process. For example, the United States had by far the most stringent antimerger policy in the world in the 1960s, striking down mergers among small firms in unconcentrated markets. By the 1980s, the United States maintained an extremely lenient merger policy, regularly allowing billion dollar mergers to go through without government challenge, even when they involved direct competitors. 80

Like Professor Bork in The Antitrust Paradox, Professor Pitofsky presented a system run amok. Federal policy "careen[s] from one extreme to another," like an automobile with an impaired driver swerving across the centerline. 81 No institutional feature in the U.S. system provided needed balance. 82

In Professor Pitofsky's version of the narrative, the solution to the aberrant enforcement behavior came by way of appointments--including his own--to the federal agencies. 83 In 2002, after chairing the FTC from 1995 to 2001, Professor Pitofsky said federal merger control by the late 1990s "stopped careening from aggressive enforcement based in some part on a populist ideology to minimalist enforcement based on hostility to the core assumptions of antitrust . . . ." 84 Under the Clinton Administration's appointees, federal policy stopped "careening," avoiding the extremes of an overheated, populist-inspired activism of the 1960s and the "minimalist" program of the Reagan presidency with its "hostility to the core assumptions of antitrust." 85

For Professor Pitofsky, like Professor Bork, the narrative of a system gripped by irrational, erratic variations in behavior served an important instrumental purpose. The portrayal of a regime swinging wildly between extremes allowed Professor Pitofsky to claim the role--as suggested in the [\*1175] title of his 2002 article, Antitrust at the Turn of the Twenty-First Century: A View from the Middle--of the wise centrist. 86 Professor Pitofsky underscored the rationality of his own program by juxtaposing it against the irrationality of his predecessors. 87 Clinton Administration antitrust officials strove to claim the mantle of wise centrism. 88 As the following passage from an essay in The Economist in 2000 shows, they framed their program as a sensible middle way between the irrational interventionism of the 1960s and 1970s and the inactivity of the 1980s:

It helps that [DOJ Assistant Attorney General Joel] Klein and his counterpart at the FTC, Robert Pitofsky, have been deliberately low-key in talking about their activities, claiming that they are modest and in the legal mainstream of legal thought and economics. They concede that they have been more interventionist than the laissez-faire ideologues of the Reagan years, but they say they are nothing like the trust-busting zealots of the 1960s who saw evil in every big company or merger. 89

In reporting on the Clinton administration strategy, The Economist presents the federal enforcement policy just as the DOJ and FTC leadership wished: a "modest" and "mainstream" program standing between two eras of irrationality; one guided by "trust-busting zealots" and the other led by "laissez-faire ideologues." 90

Taken on its own terms, the irrationality interpretation of U.S. antitrust history provides a grim picture of the American system. One should be wary of a system that intermittently has lucid policymaking intervals, but its normal state is irrationality. If everything depends on the appointment of wise centrists to head the agencies, nothing good can happen when the [\*1176] choice of DOJ or FTC leadership is not so inspired. Because personalities are decisive, when the wise centrists depart, nothing in the institutions themselves can prevent the system from returning quickly to bad old habits.

#### No reason prosecuting domestic cartels causes ASEAN to change their antitrust standard – their ev is normative not predictive

#### Institutional flaws make ASEAN useless

Pham 20 [Phuong Pham, graduate student in International Relations at School of Politics and International Relations, Queen Mary University of London, “COVID-19 has revealed ASEAN’s institutional weaknesses,” 06/07/20, *Global-is-Asian*, https://lkyspp.nus.edu.sg/gia/article/covid-19-has-revealed-asean-s-institutional-weaknesse]

The COVID-19 pandemic has taken the world by storm, with more than 8 million infections and approximately 448,000 deaths recorded at the time of writing. This is due to the incoherent and uncoordinated responses to the outbreak of many international institutions around the world. In a similar vein, the pandemic has illustrated ASEAN's institutional weaknesses as Southeast Asia has been hit hard by the outbreak.

ASEAN's efforts against the pandemic have been highly fragmented to date, in terms of efficacy and responsiveness, which has undermined ASEAN's institutional criticality. Countries like Vietnam or Singapore have implemented rigorous quarantine and lockdown policies and contained the spread of the virus effectively, while other countries such as the Philippines or Indonesia downplayed the risk from COVID-19 and did not carry out stringent measures to put it under control. The policy divergence of ASEAN's members sheds light on the limited role of ASEAN-led institutions in combatting the virus. On the one hand, it proves that even without ASEAN's mechanisms, there were still states that managed to control the pandemic effectively, suggesting that ASEAN's mechanisms play a minimal role in their successful containment of the COVID-19. ASEAN also seems to be unable to provide viable solutions for those members that failed to combat the pandemic as mentioned above, which has substantially reduced its institutional centrality.

Failure to orchestrate members response

Additionally, ASEAN institutional weakness is shown by the ineffectiveness of its initiatives in fighting against COVID-19. ASEAN has been making painstaking efforts to combat the pandemic by establishing both intra and extra-regional ad-hoc agencies such as the ASEAN-China Ad-Hoc Health Ministers Joint Task Force, the Special ASEAN Summit on the COVID-19, COVID-19 ASEAN Response Fund, and the Special ASEAN Plus Three Summit on COVID-19. These mechanisms aim to facilitate senior discussions among regional actors on how to contain the pandemic’s spread and to reduce its negative impacts on the region. However, their practical implementations are still insignificant when the cooperation among member states is insubstantial, as illustrated by the polarisation of their COVID-19 policies and the high number of cases and deaths in the region.

In the most recent virtual 36th ASEAN Summit hosted by Vietnam, ASEAN leaders illustrated their commitment to implementing targeted policies to assure ASEAN’s central role in the battle against COVID-19. Nevertheless, ASEAN efficiency is still not ensured when it has yet been able to contain the spread of the pandemic in the region, evidenced by the daily increasing number of new cases. In this regard, the institutional capacity of ASEAN has been put under the question, which casts doubt on its role as a fulcrum of the regional web of institutions.

The escalation of the US-China rivalry

Next, ASEAN's role in reducing the geopolitical rivalry between the US and China is relatively weak. The already strained US-China relations have worsened following the outbreak of the COVID-19. Both sides have been relentlessly blaming each other for causing the spread of the pandemic. Moreover, the COVID-19 outbreak has once again stirred up tensions in the South China Sea (SCS). After having partially recovered from the pandemic, China has been more assertive, fortifying islands and increasing its military presence in the SCS. The US, in response, has expanded its naval presence and taken part in the diplomatic battle of diplomatic notes against China. Sitting in the regional driver's seat, ASEAN is expected to be proactive in brokering the relationship between the US and China, as they hold membership of ASEAN-led institutions, most notably the ASEAN Regional Forum (ARF). ASEAN had actually held meetings with both the US and China to call for cooperation in response to the crisis. However, ASEAN has thus far been unable to play a brokerage role between the two great powers. There has been no step forwards in their relationship to date, meaning the US-China tensions will be far from being de-escalated.

The counter-effective non-interference

Furthermore, the principle of non-interference is also worth addressing to understand the inertia of ASEAN in responding to COVID-19 outbreak. Despite being arguably the albatross for ASEAN members, non-interference has been criticised by many scholars and policymakers as the main hindrance ASEAN faces in achieving its goals, for instance in the case of the Rohingya crisis. Although the principle has never been officially defined, it can be understood to refer to the action of preventing any ASEAN member states from intervening in others domestic affairs. In this respect, the level of institutionalisation of ASEAN members actions is lowered.

Responses to the current pandemic showcase a major disadvantage of the non-interference principle. As mentioned above, ASEAN members have been dealing with the virus in a divergent number of ways. In the midst of the outbreak, ASEAN, as the major regional organisation in Southeast Asia, should play a central role in coordinating its members actions, which may assist them in tackling the crisis more harmoniously and effectively. However, due to the principle of non-interference, ASEAN has failed to orchestrate its members actions towards the COVID-19 crisis, because it does not have the authority to implement intrusive policies to make sure all members are on the same page.

#### No East Asian war – escalation is structurally limited

Bowers 18 [Ian Bowers, Associate Professor at the Institute for Military Operations, “Escalation at Sea: Stability and Instability in Maritime East Asia,” 2018, *Naval War College Review*, Vol. 71, No. 4, Article 5, https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=7672&context=nwc-review, EA]

The Potential for Escalation

Currently, available data suggest that the trend of maritime interactions in the seas of East Asia is mirroring that seen during and after the Cold War. This would indicate that sustained low-level instability will continue to characterize the strategic picture, but that escalation is unlikely.

Significant clashes did occur in the South China Sea in 1974 and 1988. However, in both cases, Chinese and Vietnamese forces clashed over the control of disputed features, not as a result of operations at sea. In 1974, China wrested control of the Paracel Islands from Vietnamese forces, and in 1988 the militaries of the two countries fought as they attempted to secure Johnson South Reef in the Spratly Islands. While this article focuses on the potential for escalation arising out of clashes resulting from incidents at sea, it also is worth noting that following both of these cases no substantial further escalation occurred. 73

However, East Asia has a unique characteristic when it comes to strategic-level interactions. Unlike during the Cold War and the case of the Korean Peninsula, in East Asia the main crucible of interaction is located at sea. China and the United States have no forces opposing each other on land, and with the exception of Taiwan there are no arenas where the United States and China could clash that have significant populated areas. This arguably reduces the risk of a clash at sea spilling over onto land; therefore, the restraining effect of devastating war that was operative during the Cold War may be weaker. This may allow Chinese or U.S. commanders the freedom to escalate a clash, given that the potential strategic costs resulting therefrom would be lessened. 74

However, while there is no existential threat, conflict between the United States and China would mean conflict between the world’s two biggest economies in some of the world’s most economically vital seas. This places pressure on both sides to manage the instability caused by conflictual interactions. As Chinese foreign minister Wang Yi stated in 2017, “There cannot be conflict between China and the United States, as both sides will lose and both sides cannot afford that.” 75

Operationally, the increasing presence and prominence of civilian law-enforcement actors such as coast guards and the role of paramilitary maritime militias are new phenomena. This introduces a variable that has not been seen previously. A clash between coast guard or militia vessels may escalate to the involvement of naval vessels. However, so far—despite substantial clashes at sea between maritime law-enforcement actors—such escalation has not occurred. 76

A further issue arising from competing maritime claims in Asia is their linkage with nationalism and history. Contested claims over the sovereign control of islands and operations in contested waters have provoked significant public reaction in countries across the region, including China, Vietnam, and the Philippines. Clashes that occur at sea increasingly are portrayed on social media, and while that might constrain maritime actors from acting aggressively, it also could stoke protests to which governments might feel the need to respond, to assuage their publics. Significant protests occurred in China following Japan’s nationalization of the Senkaku Islands and in Vietnam following China’s exploration activities near the Paracel Islands, but these did not result in escalatory processes and the governments in question eventually acted to quell public displays of dissatisfaction. 77 However, it should be acknowledged that even a single future clash at sea may act as a trigger for nationalist sentiment, which could elevate an incident beyond its objective political or strategic value and result in unforeseen escalation.

As with the Cold War, tensions have produced some positive outcomes, particularly in managing interactions at sea and reducing the risk of miscalculation. The 2014 multinational Code for Unplanned Encounters at Sea (CUES) agreement indicated a desire to manage interactions at sea. Similarly, the 2016 agreement between China and the Association of Southeast Asian Nations (ASEAN) on CUES and ongoing negotiations over a code of conduct for the South China Sea should be seen as starting points to mitigate further the potential for unintended escalation at sea. 78

Given the concerns that the Soviet Union highlighted in the 1970s regarding the escalatory potential of inexperienced officers, the rapid expansion of Asian coast guards should be noted. The circumstances of East Asia, where coast guards are taking the lead in enforcing maritime claims, suggest a need for similar agreements within this context. Such agreements should be tailored to the specific roles that coast guards undertake. 79 As with naval agreements during the Cold War, for such agreements to be successful it is vital that all sides perceive their operational and political benefits.

Hotlines also are present

in Northeast Asia, most notably between the military services of South Korea and Japan and those of South Korea and China. 80 There also are moves toward a working-level hotline between China and ASEAN. Further, there is a South Korea–China coast guard hotline, which soon could be replicated between China and the Philippines. 81 However, hotlines are effective only when both sides agree to use them. There is some evidence that in times of crisis China has not used hotlines effectively. In January 2017, a fleet of Chinese military aircraft entered the South Korean air-defense identification zone. Reports suggest that the Chinese did not answer the hotline when South Korean officials attempted to contact them to clarify the fleet’s intentions. Nevertheless, Japan and China also are in the process of agreeing on a communication mechanism to de-escalate unintended incidents in the East China Sea. 82

This analysis suggests that the fear that escalation will result from an incident at sea is, by and large, overemphasized. Clashes in areas of strategic tension or contested maritime boundaries are to be expected; however, there is little evidence that such clashes lead to escalatory cycles or sustained violence.

This absence of escalatory behavior can be attributed to several factors that maritime strategic geography imposes. Historically, the strategic or political benefits of escalation at sea rarely have outweighed the potential costs. The bottom line is that what happens at sea rarely materially affects populations on land, and therefore a costly war over maritime issues is less likely to occur.

De-escalation after an incident is facilitated by the fact that the sea cannot be controlled permanently, so the costs of withdrawal are reduced, as such a move does not result automatically in the loss of territory. Further, the size of the maritime environment, coupled with the speed of clashes at sea, allows for easier de-escalation, as time is needed to concentrate often-dispersed maritime forces. Organic escalation therefore is less likely to occur, since political and military elites would be required to commit expensive assets intentionally to continue a clash. Equally, information gathering also is hindered by the nature of operations at sea. Time often is required to ascertain facts fully, and this gap allows for political and strategic tensions to cool.

#### Their impact ev is word salad – just that it would be good for the US and China to work together.

# 2NC/1NR

## Adv CP

## Trade Adv

### 2NC – Alt Causes

#### Antitrust not key – other factors matter more

**Brodzicki, 22** – Principal Economist at IHS Markit

[Tomasz Brodzicki, "Global Trade Outlook 2022. High global trade volume growth in 2021 and significant moderation in 2022. Supply chains disruption is likely to continue in the first half of 2022," IHS Markit, 1-12-2022, https://ihsmarkit.com/research-analysis/Global-Trade-Outlook-2022.html, accessed 2-12-2022]

Qualitative factors that could affect global trade in 2022

As of 2 November 2021, the ASEAN Secretariat has received Instruments of Ratification/Acceptance of the Regional Comprehensive Economic Partnership (RCEP) Agreement from six ASEAN Member States - Brunei Darussalam, Cambodia, Lao PDR, Singapore, Thailand, and Vietnam - as well as from four non-ASEAN signatory States - Australia, China, Japan, and New Zealand. South Korea ratified the agreement on 2 December. As provided by the RCEP Agreement, the RCEP enters into force sixty days after the date at which the minimum number of IOR/A is achieved. This means that the RCEP Agreement entered into force on 1 January 2022. Four countries haven't ratified the agreement yet: Indonesia, Malaysia, Myanmar, and the Philippines. RCEP is the world's most significant regional trade agreement regarding GDP & population. RCEP's countries currently account for about 29% (USD 25.8 trillion) of global gross domestic product and approx. 29% (2.3 billion) of the world's population. RCEP can, due to its size and intended scope, create significant quantitative and qualitative effects regionally and globally both in the short and the long run (considerable static and dynamic effects are very likely). It could strengthen the region's economic position as the primary locus of economic activity, spurring the region's growth globally. RCEP increases the likelihood of establishing the world's largest regional value chain with the growing role of intra-regional economic activity.

As was stressed last year, the block's cultural, social, economic, and political heterogeneity will challenge its functioning, and progress will depend on the balance of costs and benefits for all participating states. Realizing the potential benefits of this mega-regional FTA will crucially depend on addressing the significant challenges, in particular, divergent political and economic interests of this diverse group.

As of 15 October 2021, 350 RTAs were in force globally. These corresponded to 568 notifications from WTO members, counting goods, services, and accessions separately. Over several decades, the global trade system is likely to develop into a system of several large RIAs or mega-regional trade agreements (e.g., European, Pan-American & Asian) with a significant role in the global trading system and potentially large tensions between them. The launching of RCEP can be considered an essential step in this process.

It will also be interesting to observe the impact of RCEP and its trade rules on the multilateral system and the potential erosion of the WTO dominance in global trade governance despite the statements made by the signatories of the agreement on the complementarity of both approaches.

Recent years in global trade were affected by rising trade tensions, particularly between the US and China, due to the Trump administration's policies (America First). The new Biden administration modified the course, and in general, the US now pursues a broader, more multilateral trade policy. Nonetheless, a more assertive stance on China remained. The day President Biden took office (20 January 2021), he signed 17 executive orders, reversing many of the most unpopular actions of the Trump administration. The US policy toward China (mainland), however, has not shifted as was expected. The prior tensions have not diminished but instead escalated with more Chinese technology companies placed on the so-called "blacklist" of the US Commerce Department. In October, US Trade Representative Katherine Tai mentioned that only selective and limited in scope rollback in tariffs could be expected. Concerns on the US-China tensions (two key economies of the world are thus growing). The escalating tensions in the Taiwan Strait between China (mainland) and Taiwan, supported by the US, are not helping.

Considering the launch of RCEP, the new US administration's trade agenda is likely to gravitate towards Asia. We can thus expect a shift in US trade policy towards Asia, which is expected to bring effect in the mid to long-term.

Overall, with the arrival of Biden's administration, the US trade policy uncertainty has fallen to a long-term trend characterized by limited uncertainty.

EU-UK Trade and Cooperation Agreement (TCA), negotiated and ratified at the last possible moment, took effect provisionally from 1 January 2021, before formally entering into force on 1 May 2021, after the ratification processes were completed. According to TCA, trade in goods between the EU and UK shall not be subject to tariffs or quotas. Traders can self-certify compliance with agreed rules of origin. However, because the UK left the EU customs area, customs formalities were reintroduced between the two parties, and VAT and specific other duties started to apply upon import. TCA holds provisions intended to limit technical barriers to trade (TBT), building on the WTO TBT Agreement. Special provisions apply for Northern Ireland and Ireland-specific cases. The agreement has many imperfections and could create problems for both parties in the medium to long run.

On 8 December 2021, social Democrat Olaf Scholz was sworn in as Germany's new chancellor, thus ending 16 years of conservative rule under Angela Merkel. It paved the way for a pro-European coalition government that vowed to boost green investment.

Some countries will hold important presidential and parliamentary elections in 2021. From the EU perspective, the elections in France will be of particular significance. The French presidential elections will be held on 10 and 24 April 2022, and legislative elections on 12 and 19 June. The current president Macron is currently indicated as a winner in the polls but only in the second round. A potential loss to Le Pen or Pécresse could constitute a significant shift in French policy with global impact.

The euro-linked ERM II includes the currencies of Bulgaria, Croatia, and Denmark. The Bulgarian lev joined ERM II on 10 July 2020 and observes a central rate of 1.95583 to the euro. Bulgaria also committed unilaterally to continue its currency board arrangement within the ERM II. By mid of 2022, a decision should be made on the potential extension of the eurozone by Croatia by 1 January 2023. Croatia may introduce a double quotation upon the approval to join already in 2022. The above step could affect both the internal trade within the EU but also strengthen the position of the eurozone and EU, weakened after Brexit.

### 2NC – No Trade !

#### No impact – trade and conflict’s relationship is a wash

Goldsmith, 13 – University of Sydney international relations professor

[Benjamin E, "International Trade and The Onset and Escalation of Interstate Conflict: More to Fight About, or More Reasons Not to Fight?," Defence and Peace Economics, 2013, 24.6, t&f, accessed 6-25-2021]

Although study of the relationship between international trade and militarized conflict has become more sophisticated, whether trade reduces the chance of conflict, exacerbates it, or has no effect, remains contested. Integrating expectations from schools of thought often portrayed as incompatible, I consider two aspects of trade – volume and interdependence – and model conflict as a two-stage process involving onset and escalation. This perspective leads to robust statistical findings that trade is Janus-faced, both facilitating and inhibiting conflict at different stages, supporting the conclusion that a focus on international conflict as a communication process promises better theory in international relations.

Introduction

In this article, I present evidence that trade is Janus-faced in its relationship to international conflict: different aspects of trade alternately inhibit and exacerbate interstate disputes at different conflict stages. I integrate expectations from schools of thought often portrayed as incompatible, providing a nuanced understanding of trade-conflict dynamics which is strongly supported in empirical tests. My analysis also implies distinct dynamics for large and small states, suggesting that trade interdependence is more important for preventing conflict onset for small-state dyads, while trade volume is more important as a tool for avoiding escalation to war for major-power dyads.

Study of the trade–conflict relationship has made recent strides in analytical sophistication, for example addressing omitted variable bias (Xiang et al., 2007) and simultaneous causation (Keshk et al., 2004). But even with better methods, the debate continues over whether trade is associated with war, or peace, or whether there is no relationship (e.g. Hegre et al., 2010; Keshk et al., 2010; Li and Reuveny 2011). In this article, I suggest a theoretical rethinking by considering the process of international conflict onset and escalation. This general point has been made by others (Bearce and Fisher 2002; Crescenzi 2003; Gartzke et al., 2001), but my approach seeks to clarify the roles of different aspects of dyadic trade in different stages of conflict. The article continues the trend in analytical innovation by accounting for selection effects and examining more serious levels of conflict, including war.

#### Best data confirms

Bell, 16 -- Kansas State University political science department head and professor

[Sam R. and Andrew G. Long, "Trade Interdependence and the Use of Force: Do Issues Matter?," International Interactions, 3-22-2016, 42.5, t&f, accessed 6-25-2021]

In this project, we investigate the relationship between the use of military force and trade interdependence, suggesting that the influence of trade on militarized conflict varies based on the issue under dispute. For some issues, trade is likely to attenuate the chances that states escalate a dispute to the use of military force, while for others trade can intensify disputes so that military conflict is more likely. Specifically, we hypothesize that greater trade interdependence decreases the probability of military conflict over realpolitik issues like territory. On the other hand, greater trade interdependence increases the probability that states use military force when the issue under dispute concerns the regime, policies, and conditions in the target. To test our hypotheses, we employ new data on dyadic uses of force from the International Military Intervention data set that records the initiator’s reason(s) for using force against the target. The statistical tests support our hypotheses; trade decreases the use of force against a target for territorial and military/diplomatic reasons, which is consistent with arguments from the liberal paradigm. However, trade interdependence increases the use of force for humanitarian and economic reasons as well as to affect the regime or policy of the target. Thus, our study improves upon current research about the relationship between economic interdependence and foreign policy by specifying a conditional relationship based on the issues under contention.

Scholars of international politics continue to discuss whether economic interdependence is conducive to peace among states. Existing theoretical and empirical analyses suggest that commercial ties will decrease, increase, or have no effect on political conflict.1 Many of these studies “have an air of universality, applying to all actors in all times and places” (Mansfield and Pollins 2003:7). We propose that the trade-conflict relationship is conditional on the issues at stake between states and investigate whether trade will encourage governments to use military force over certain issues and discourage governments from using force over other issues.

Specifically, we argue that the relationship between trade interdependence and the use of military force can be positive for some issues and negative for others; when a dispute concerns realpolitik issues like territory or military-diplomatic strategy, high levels of trade interdependence decrease the chances that a dispute escalates to the use of force. In contrast, for disputes about the regime, domestic policies, or conditions in one of the states, we expect greater trade to increase the likelihood that a government uses military force against a target. Thus, trade is not an unconditional promoter of peace. Governments are both encouraged to use force to protect trade interests and reluctant to jeopardize trade by using force. Empirically, we separate uses of force by the purpose, or motivation, of the initiator of military action and find that trade is sometimes associated with peace and sometimes associated with conflict.

To evaluate the different effects of trade interdependence on the use of force, we analyze newly expanded data on overt uses of military force by all countries from 1946 to 2000 recorded in the International Military Intervention (IMI) data set (Pearson and Baumann 1993; Pickering and Kisangani 2009). The IMI data records the initiator’s motivation for using force against the target, which we utilize to separate conflicts by the issue under dispute. We find that trade decreases the use of force against a target for territorial and military/diplomatic reasons, which is consistent with arguments from the liberal paradigm. However, trade interdependence increases the use of force for humanitarian and economic reasons and in order to change the regime or key policies of the target. Overall, our results provide evidence that some military uses of force are positively related to trade interdependence and some are negatively related to trade interdependence.

Our research has important implications for those interested in the effects of increasing economic globalization on interstate violence. National governments that promote the benefits of an open global economy also employ political violence, and scholars should seek to explain how those phenomena can coexist with the liberal research paradigm (Schneider 2014). To do so, we build upon previous research that suggests that the relationship between trade and conflict varies depending on the type of conflict behavior one examines (Aydin 2008; Crescenzi 2005; Goldsmith 2013; Pevehouse 2004). In addition, we contribute to a growing body of research on the role of issues in interstate conflict that considers the effect that different issues have on the use of military force (Danilovic 2001; Hensel 2001; Mitchell and Prins 1999; Wright and Rider 2014). While economic interdependence among nation-states may reduce the probability that their disputes will escalate to militarized conflict, it does not always lead to a situation of peaceful noninterference among governments. Greater interdependence through trade may not be as benign a force on international relations as policymakers believe, and policies that promote interdependence among nations should be carefully considered for their full consequences on interstate relations.

## Resources Adv

### 2NC – No REM Shortages

#### Cartels don’t wreck mineral markets

Irena, 19. The International Renewable Energy Agency (IRENA) is an intergovernmental organization. The Commission who created this report is chaired by former President Ólafur Ragnar Grímsson of Iceland, the Commission comprises a diverse group of distinguished leaders from the worlds of politics, energy, economics, trade, environment and development. The Commission is an independent body with members serving in their individual capacity. "A new world: the geopolitics of the energy transformation." (2019). https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2019/Jan/Global\_commission\_geopolitics\_new\_world\_2019.pdf

This view was given credence in 2008 when China restricted the supply of rare earths to foreign buyers. Markets panicked and international prices soared, because China controlled a substantial part of the global supply of rare earth minerals. In fact, most of the 17 rare earth minerals are not geologically rare. They are abundant and widely distributed, though they are expensive and polluting to mine and produce. This is partly why the US has refrained from contesting Chinese predominance over rare earth production since the 1990s. Rare earths were perceived to be scarce partly because, like all commodity markets, rare earth markets are cyclical. When demand rises, supply takes time to respond because new mining projects have long lead times; the time lag causes prices to spike; high prices can lead companies to overinvest, so a boom is followed by a price collapse and a new cycle starts. This is exactly what happened in the wake of China’s export restriction: as prices rose, investment flowed into mining projects, leading prices to collapse in 2012.120 Furthermore, there are alternatives to the use of rare earths and other critical metals in renewable technologies. Efforts are being made to create cobalt-free batteries, and only a small minority of wind turbines (less than 2% in the US) are built with rare earth elements. Some minerals can also be recycled, re-used and stockpiled, thereby further reducing their perceived scarcity.121 These factors combine to make it **unlikely that cartels will emerge to control these critical materials**. Cartels are hard to form and sustain. In the 20th century, oil was the only major commodity whose price did not fall in real terms, even though cartels were active in tin, coffee, sugar, and rubber. **International trade rules also impede cartelization**. In 2014, the US, Japan and the European Union appealed to the WTO and successfully challenged China’s decision to restrict the export of rare earths. In sum, the energy transformation driven by renewables will provide fewer instances of ‘energy statecraft’, the use of energy resources as an instrument of foreign policy. Electricity, biofuels and other materials critical to the new energy system are unlikely to acquire the geopolitical role and weight of oil and gas.

### 2NC – No Warming !

#### 4 – Even 20°C of warming wouldn’t kill us all.

Ord 20 [Toby Ord, Senior Research Fellow in Philosophy at Oxford University, “The Precipice: Existential Risk and the Future of Humanity,” 2020, Hachette Books, EA]

Warming at such levels would be a global calamity of unprecedented scale. It would be an immense human tragedy, disproportionately impacting the most vulnerable populations. And it would throw civilization into such disarray that we may be much more vulnerable to other existential risks. But the purpose of this chapter is finding and assessing threats that pose a direct existential risk to humanity. Even at such extreme levels of warming, it is difficult to see exactly how climate change could do so. Major effects of climate change include reduced agricultural yields, sea level rises, water scarcity, increased tropical diseases, ocean acidification and the collapse of the Gulf Stream. While extremely important when assessing the overall risks of climate change, **none of these threaten extinction or irrevocable collapse**. Crops are very sensitive to reductions in temperature (due to frosts), but less sensitive to increases. By all appearances we would still have food to support civilization.85 Even if sea levels rose hundreds of meters (over centuries), most of the Earth’s land area would remain. Similarly, while some areas might conceivably become uninhabitable due to water scarcity, other areas will have increased rainfall. More areas may become susceptible to tropical diseases, but we need only look to the tropics to see civilization flourish despite this. The main effect of a collapse of the system of Atlantic Ocean currents that includes the Gulf Stream is a 2°C cooling of Europe—something that poses no permanent threat to global civilization. From an existential risk perspective, a more serious concern is that the high temperatures (and the rapidity of their change) might cause a large loss of biodiversity and subsequent ecosystem collapse. While the pathway is not entirely clear, a large enough collapse of ecosystems across the globe could perhaps threaten human extinction. The idea that climate change could cause widespread extinctions has some good theoretical support.86 Yet the evidence is mixed. For when we look at many of the past cases of extremely high global temperatures or extremely rapid warming we don’t see a corresponding loss of biodiversity.87 So the most important known effect of climate change from the perspective of direct existential risk is probably the most obvious: heat stress. We need an environment cooler than our body temperature to be able to rid ourselves of waste heat and stay alive. More precisely, we need to be able to lose heat by sweating, which depends on the humidity as well as the temperature. A landmark paper by Steven Sherwood and Matthew Huber showed that with sufficient warming there would be parts of the world whose temperature and humidity combine to exceed the level where humans could survive without air conditioning.88 With 12°C of warming, a very large land area—where more than half of all people currently live and where much of our food is grown—would exceed this level at some point during a typical year. Sherwood and Huber suggest that such areas would be uninhabitable. This may not quite be true (particularly if air conditioning is possible during the hottest months), but their habitability is at least in question. However, substantial regions would also remain below this threshold. Even with an extreme 20°C of warming there would be many coastal areas (and some elevated regions) that would have no days above the temperature/humidity threshold.89 So there would remain large areas in which humanity and civilization could continue. A world with 20°C of warming would be an unparalleled human and environmental tragedy, forcing mass migration and perhaps starvation too. This is reason enough to do our utmost to prevent anything like that from ever happening. However, our present task is identifying existential risks to humanity and it is hard to see how any realistic level of heat stress could pose such a risk. So the runaway and moist greenhouse effects remain the only known mechanisms through which climate change could directly cause our extinction or irrevocable collapse. This doesn’t rule out unknown mechanisms. We are considering large changes to the Earth that may even be unprecedented in size or speed. It wouldn’t be astonishing if that directly led to our permanent ruin. The best argument against such unknown mechanisms is probably that **the PETM did not lead to a mass extinction, despite temperatures rapidly rising about 5°C**, to reach a level 14°C above pre-industrial temperatures.90 But this is tempered by the imprecision of paleoclimate data, the sparsity of the fossil record, the smaller size of mammals at the time (making them more heat-tolerant), and a reluctance to rely on a single example. Most importantly, anthropogenic warming could be over a hundred times faster than warming during the PETM, and rapid warming has been suggested as a contributing factor in the end-Permian mass extinction, in which 96 percent of species went extinct.91 In the end, we can say little more than that direct existential risk from climate change appears very small, but cannot yet be ruled out.

## Outreach Adv

### 2NC – No Backlash

#### Countries won’t backlash

---no retaliation---every historical example of the US applying antitrust abroad caused the foreign state to embrace competition and enforcement of international cartels

First 19 [Harry First is the Charles L. Denison Professor of Law, New York University School of Law and Darren Bush is the Leonard B. Rosenberg Professor of Law, University of Houston Law Center, “Antitrust Analysis of NOPEC Legislation”, Volume 32, Issue 1, Article 4 of Loyola Consumer Law Review, https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=2044&context=lclr] IanM

In the past, **foreign countries** have **not always** been **happy** about the **U**nited **S**tates **applying** its **antitrust laws** to **cartels formed** or operated in their **countries**. Early efforts to resist that enforcement, however, have largely given way to foreign countries embracing competition, engaging in law enforcement against international cartels, **and** even **accepting** the **imprisonment** of their **nationals** in **U.S. jails**. While asymmetric **retaliation** from foreign countries outside the competition law system is certainly **possible**, there is no history of such retaliation against U.S. antitrust enforcement, even in the context of the private litigation brought directly against OPEC and state-owned oil companies. Consequently, concerns with **retaliation** as a **result of antitrust action** by the United States are misplaced.

### 2NC – No Modeling

**EU antitrust trumps globally – NOT the US.**

**Bradford and Chilton, 19** [Anu H. Bradford is an author, law professor, and expert in international trade law. Adam Chilton is a Professor of Law and the Walter Mander Research Scholar at the University of Chicago Law School. “The Global Dominance of European Competition Law Over American Antitrust Law”. SSRN. 7/2/2019. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3339626]

The EU and the US not only have their regulatory differences, but they also want the rest of the world to follow their respective regulatory models. Both jurisdictions have actively promoted their competition laws as “best practices” abroad, urging developed and developing countries alike to adopt domestic competition laws and build institutions to enforce them (Kovacic 2015; Tappan and Byers 2013; Kovacic 2008; Fox 1997). They promote their models through a specialized network of competition regulators—the International Competition Network (ICN)—and also more general bodies—notably the Organization for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD) (Tritell and Kraus 2018). They also employ bilateral tools in their promotion effort—including offering technical assistance to emerging competition law jurisdictions (Tritell and Kraus 2018). In its trade agreements, the EU also explicitly conditions access to its markets on the adoption of a competition law, exporting its own law in the process (Bradford and Chilton 2019), while the US relies primarily in its persuasive powers rather than on formal treaties in exporting its laws (Kovacic 2015). There are multiple motivations for states to seek export their laws abroad. For one, having the rest of the world replicate one’s regulatory framework lowers the costs of entering foreign markets. The regulatory similarity with the EU is expected to lower the entry costs for EU companies to those third markets given that the EU companies already comply with similar standards at home. For the same reason, the US prefers to export its model and hence avoid adjustment costs that its companies may face when confronted with regulatory differences. For another, exporting one’s rules ensures that competition takes place on “optimal,” “efficient,” or “fair” terms across the global markets—as defined by the jurisdiction that successfully exports its laws. Finally, the winner of the regulatory race is able to export its economic philosophy to third countries, which serves as a testament to the appeal of that jurisdiction’s value system. In case of competition law, the countries’ choice of aligning themselves with the EU or the US reflects a more fundamental choice between an ideology that either places greater trust in the governments’ ability to improve outcomes through intervention (EU model) or, alternatively, trust in the markets’ ability to self-correct (US model). These efforts to globalize competition law appear, at first glance, largely successful: today, over 130 jurisdictions have a domestic competition law, making competition law one of the most widespread forms of economic regulation around the world. But, because the EU and US competition laws differ in key respects, understanding the type of competition law a country has adopted is critical to understanding which country is having greater influence. For example, whereas promoting consumer welfare is the goal of US antitrust law, EU competition law has historically allowed additional goals to enter the analysis, including the protection of small and medium enterprises, employment, regional development, and, most critically, market integration. Moreover, the EU is generally more likely to find that a company is abusing its dominant position in a market and to challenge vertical and conglomerate mergers. In addition, the EU and US competition enforcement institutions differ dramatically: EU law is dominated by administrative actions and US law is dominated by private litigants. And whereas the EU relies on administrative fines, US antitrust law is also backed by criminal sanctions. While competition law scholars are familiar with the major differences between the EU and US regimes, and with individual examples of countries emulating the EU or the US, the relative influence of each regime has not been studied quantitatively. By leveraging a novel and highly detailed data coding of competition statutes around the world, this article is the first systematic study the relative influence of EU and US competition regimes in shaping the global regulatory landscape. Using data on dozens of competition law provisions from 126 countries, we trace the evolution of competition regimes for over a half a century of lawmaking, from when the EU joined the US as another major competition regulator in the world in 1957 to 2010. Our analyses reveal that the majority of jurisdictions with competition law regimes have laws that **more closely resemble the European Union’s competition laws** than the United States’ antitrust laws. Moreover, our detailed data allows us to trace the evolution of EU and US influence over time. This analysis reveals that the European model of competition became more emulated than United States’ model in the 1990s, and the EU’s “sphere of influence” in the domain of competition regulation has continued to increase ever since. Thus, the significant diffusion of competition rules we have witnessed over the past three decades has not only led to a globalization of competition law, but also to a notable **“Europeanization” of competition regulation across the world markets.** The Europeanization, rather the Americanization, of global competition law is notable because the US has a considerably longer history of using competition law. Indeed, the United States the Sherman Act long before the EU and its competition laws were conceived. The US has also been an influential leader in competition economics and law alike, spearheading early efforts to adopt competition law regimes in many parts of the world—including in the EU. However, after the EU adopted its own competition law, it eventually eclipsed the US as the leader in providing the template for the global expansion of competition laws, marginalizing the US’s global influence in the decades that followed. In other fields, such as corporate law, thousands of articles have been devoted to debating whether there’s a race to the top or the bottom, what mechanisms drive the race, whether shareholders or managers benefit, and more (e.g., Romano 1987; Roe 2003).11 However, because the literature on the world’s competition regimes is in its infancy, a key contribution of this article is to document that there exists a global regulatory race in the area of competition law, and that **the EU is clearly winning it**. We also advance a set of explanations for why the European model has come to predominate. First, a set of “push factors” explains the EU’s ability to effectively externalize its laws. The EU’s competition law dominance can be partially traced to the EU’s conscious efforts to expand its regulations through a myriad of trade, association, and other political agreements. The EU has required many countries seeking greater market access or closer political association to adopt competition laws. In addition, as Bradford (2012) outlines in “The Brussels Effect,” the EU has the greatest ability to shape foreign jurisdictions’ laws given that the companies often apply the most stringent regulatory standard—typically the EU standard—across their global operations to capture the benefits of uniform production while maintaining compliance worldwide. Second, the EU competition law model also spreads due to strong “pull factors.” In many countries, domestic politics are more conducive to EU-style competition laws, which accommodate more diverse policy goals and defer less to markets and more to governments’ ability to correct market failures. Another major pull factor is the EU’s tendency to promulgate more precise and detailed rules, making them easier to copy in the absence of technical expertise in the adopting country. Our findings have several implications. First, our results offer evidence of the EU’s outsized influence in regulating global markets. This narrative stands in contrast to many critics who have declared the end of the EU’s influence and ability to shape outcomes globally as its relative economic and political power wanes. Second, our results suggest that, although the law and economics movement may have had a large influence on the development of America’s antitrust law and policy, it may have had a more modest influence on the development of competition policy in the rest of the world (Bradford et al. 2020). Third, and more generally, our analysis illustrates the ability of a single jurisdiction to attract countries with starkly different characteristics into its orbit, vesting it with a sizable regulatory influence that spans economic, linguistic, and political boundaries. Out of this dynamic, a new form of globalization of norms emerges—globalization emerging as a result of EU’s unilateralism as opposed to multilateralism. Finally, beyond illuminating the regulatory influence in the competition law context, our results speak more broadly to the literature on regulatory competition, diffusion of norms, and legal transplants. Competition between the European and US regulatory schemes has been prominent in many areas, ranging from privacy (Schwartz 2013; Schwartz and Peifer 2017), to chemicals (Scott 2009), to finance (Gadinis 2010), to discrimination law (Linos 2010), to name but a few. Documenting the specific pathways through which the EU has succeeded in externalizing its models thus contributes to a broad range of fields and advances the diffusion literature, which to date has primarily focused on countries receiving foreign models and not on the entities promoting them.

### 2NC – No ASEAN !

#### ASEAN decision making ineffective – requires lengthy consultation and consensus.

Maizland '20 [Lindsay; 11/24/20; editor at the Council on Foreign Relations, covering Asia; "What Is ASEAN?" https://www.cfr.org/backgrounder/what-asean]

ASEAN is headed by a chair—a position that rotates annually among member states—and is assisted by a secretariat based in Jakarta, Indonesia. Important decisions are usually reached through consultation and consensus guided by the principles of noninterference in internal affairs and peaceful resolution of conflicts. Some experts see this approach to decision-making as a chief drawback for the organization. “These norms of consensus and noninterference have increasingly become outdated, and they have hindered ASEAN’s influence on issues ranging from dealing with China and crises in particular ASEAN states,” says CFR’s Joshua Kurlantzick.

#### Completely ineffective – slow and requires unanimity.

Buendia '20 [Rizal; 7/21/20; PhD., is an Independent Political Analyst in Southeast Asian Politics and International Development based in England and Wales, former Chair of the Political Science Department; "ASEAN ‘Cohesiveness and Responsiveness’ and Peace and Stability in Southeast Asia," https://www.e-ir.info/2020/07/21/can-asean-cohesiveness-and-responsiveness-secure-peace-and-stability-in-southeast-asia/]

The norm and value of non-interference into the affairs of another country in the region, known as the ASEAN Way, is one of the fundamental and binding principles of ASEAN that underpins the concept of comprehensive security and the APSC Blueprint. It is a concept of inter-state relation and regional cooperation that consists of avoidance of formal mechanisms and legalistic procedures for decision-making, and reliance on musyawarah (consultation) and mufakat (consensus) to achieve collective goals (Acharya 1997). This is the general mode by which AMS conducts their work. It requires a great deal of tolerance and patience among the member states. Consequently, the decision-making process in the ASEAN is lengthy and protracted

Where decisions are made on the basis of unanimity, decision-making in ASEAN takes a long time with no fixed time-table, and negotiations are undertaken until all parties have reached an agreement (Mak 1995). There is minimal use of institutions and mechanism in the legal sense to instill regional cooperation and resolve trans-boundary issues and problems. They further argue that the ASEAN Way standardizes behaviour of states through the doctrine of non-use of force or threat of force in dealing with disputes, and respects sovereignty and territorial integrity of nations (Acharya 2004; Katsumata 2011). The ASEAN Way is claimed to have been responsible for thwarting inter-state armed conflict for nearly half-a-century.

### 2NC – No East Asian War !

#### Doctrines and incentives check

Stashwick 20 [Steven Stashwick, completed graduate study in International Relations at the University of Chicago, “Chinese Military Told to Prevent Escalation in Interactions With US,” 08/14/20, *The Diplomat*, https://thediplomat.com/2020/08/chinese-military-told-to-prevent-escalation-in-interactions-with-us/, Accessed: 04/30/21, EA]

China’s military has reportedly been instructed to deescalate incidents with the U.S. military to prevent potential undesired clashes as tensions rise between the two countries in the Western Pacific.

The South China Morning Post quotes Chinese sources claiming that pilots and ship captains have been told “not to fire the first shot” in potential incidents with U.S. ships or planes.

The reported order follows several months of increased U.S. naval and air operations in and around the South China Sea and years of dangerous and provocative responses by Chinese ships and planes.

The United States conducted prolonged “dual carrier operations” in the South China Sea and Western Pacific this summer and for a period three carriers were operating in the region simultaneously following increased Chinese military activity as the world reeled from the coronavirus pandemic in the spring. In June the United States appeared to significantly increase the number of surveillance flights according to private flight tracking services and Chinese think tanks.

These apparently private efforts by the Chinese military to prevent unintended escalation with United States contrast with China’s bombastic public narrative about the U.S. Navy’s presence in the region.

A July article in the Chinese state-affiliated Global Times tabloid carried an implied warning against the presence of U.S. aircraft carriers in the South China Sea: “The South China Sea is fully within the grasp of the Chinese People’s Liberation Army (PLA), and any U.S. aircraft carrier movement in the region is solely at the pleasure of the PLA, which has a wide selection of anti-aircraft carrier weapons like the DF-21D and DF-26 ‘aircraft carrier killer’ missiles.”

Last week the U.S. secretary of defense and China’s minister of defense held a phone conference in the midst of deteriorating relations between the two powers. The Pentagon readout said that Secretary Mark Esper told his counterpart that he was focused on “preventing and managing crises,” and that both leaders agreed on the importance of improving mechanisms for crisis communications and risk reduction. China’s readout of the conversation emphasized China’s position that the United States should itself “enhance maritime risk control and prevent dangerous actions that may further tense the situation.”

Despite widespread concern that incidents between military units might spark an accidental clash, the potential for an unintended escalation of violence at sea or in the air is probably quite low. In the U.S. military, commanders are permitted to use force only in proportional self-defense against hostile acts. They cannot initiate hostilities without express orders and authorization. If China’s officers are operating under similar orders, then escalation risks are low since both sides are proscribed from firing first. Even dangerous maneuvers would not justify the first use of force without an apparent intent and capability to cause deadly harm to the other unit.

## FTC DA

### 2NC – ! OV

#### Subroutines, mind crime, and misalignment are suffering-risks

Sotala 17 [Kaj Sotala and Lukas Gloor, researchers, Foundational Research Institute, “Superintelligence as a cause or cure for risks of astronomical suffering,” 2017, *Informatica*, Vol. 41, No. 4, http://www.informatica.si/index.php/informatica/article/view/1877, Accessed: 03/10/21, EA]

Superintelligence is related to three categories of suffering risk: suffering subroutines (Tomasik 2017), mind crime (Bostrom 2014) and flawed realization (Bostrom 2013).

5.1 Suffering subroutines

Humans have evolved to be capable of suffering, and while the question of which other animals are conscious or capable of suffering is controversial, pain analogues are present in a wide variety of animals. The U.S. National Research Council’s Committee on Recognition and Alleviation of Pain in Laboratory Animals (2004) argues that, based on the state of existing evidence, at least all vertebrates should be considered capable of experiencing pain.

Pain seems to have evolved because it has a functional purpose in guiding behavior: evolution having found it suggests that pain might be the simplest solution for achieving its purpose. A superintelligence which was building subagents, such as worker robots or disembodied cognitive agents, might then also construct them in such a way that they were capable of feeling pain—and thus possibly suffering (Metzinger 2015)—if that was the most efficient way of making them behave in a way that achieved the superintelligence’s goals.

Humans have also evolved to experience empathy towards each other, but the evolutionary reasons which cause humans to have empathy (Singer 1981) may not be relevant for a superintelligent singleton which had no game-theoretical reason to empathize with others. In such a case, a superintelligence which had no disincentive to create suffering but did have an incentive to create whatever furthered its goals, could create vast populations of agents which sometimes suffered while carrying out the superintelligence’s goals. Because of the ruling superintelligence’s indifference towards suffering, the amount of suffering experienced by this population could be vastly higher than it would be in e.g. an advanced human civilization, where humans had an interest in helping out their fellow humans.

Depending on the functional purpose of positive mental states such as happiness, the subagents might or might not be built to experience them. For example, Fredrickson (1998) suggests that positive and negative emotions have differing functions. Negative emotions bias an individual’s thoughts and actions towards some relatively specific response that has been evolutionarily adaptive: fear causes an urge to escape, anger causes an urge to attack, disgust an urge to be rid of the disgusting thing, and so on. In contrast, positive emotions bias thought-action tendencies in a much less specific direction. For example, joy creates an urge to play and be playful, but “play” includes a very wide range of behaviors, including physical, social, intellectual, and artistic play. All of these behaviors have the effect of developing the individual’s skills in whatever the domain. The overall effect of experiencing positive emotions is to build an individual’s resources—be those resources physical, intellectual, or social.

To the extent that this hypothesis were true, a superintelligence might design its subagents in such a way that they had pre-determined response patterns for undesirable situations, so exhibited negative emotions. However, if it was constructing a kind of a command economy in which it desired to remain in control, it might not put a high value on any subagent accumulating individual resources. Intellectual resources would be valued to the extent that they contributed to the subagent doing its job, but physical and social resources could be irrelevant, if the subagents were provided with whatever resources necessary for doing their tasks. In such a case, the end result could be a world whose inhabitants experienced very little if any in the way of positive emotions, but did experience negative emotions. This could qualify as any one of the suffering outcomes we’ve considered (astronomical, net, pan-generational net).

One central and unresolved problem of suffering subroutines is the requirements for consciousness (Muehlhauser 2017) and suffering (Metzinger 2016, Tomasik 2017). The simpler the algorithms that can suffer, the more likely it is that an entity with no regard for minimizing it would happen to instantiate large numbers of them. If suffering has narrow requirements such as a specific kind of self-model (Metzinger 2016), then suffering subroutines may become less common.

Below are some pathways that could lead to the instantiation of large numbers of suffering subroutines (Gloor 2016):

Anthropocentrism. If the superintelligence were programmed to only care about humans, or by minds that were sufficiently human-like by some criteria, then it could end up being indifferent to the suffering of any other minds, including subroutines.

Indifference. If attempts to align the superintelligence with human values failed, it might not put any intrinsic value on avoiding suffering, so it may create large numbers of suffering subroutines.

Uncooperativeness. The superintelligence’s goal is something like classical utilitarianism, with no additional regards for cooperating with other value systems. As previously discussed, classical utilitarianism would prefer to avoid suffering, all else being equal. However, this concern could be overridden by opportunity costs. For example, Bostrom (2003a) suggests that every second of delayed space colonization corresponds to a loss equal to 10^14 potential lives. A classical utilitarian superintelligence that took this estimate literally might choose to build colonization robots that used suffering subroutines, if this was the easiest way and developing alternative cognitive architectures capable of doing the job would take more time.

5.2 Mind crime

A superintelligence might run simulations of sentient beings for a variety of purposes. Bostrom (2014, p. 152) discusses the specific possibility of an AI creating simulations of human beings which were detailed enough to be conscious. These simulations could then be placed in a variety of situations in order to study things such as human psychology and sociology, and be destroyed afterwards.

The AI could also run simulations that modeled the evolutionary history of life on Earth in order to obtain various kinds of scientific information, or to help estimate the likely location of the “Great Filter” (Hanson 1998) and whether it should expect to encounter other intelligent civilizations. This could repeat the wild-animal suffering (Tomasik 2015, Dorado 2015) experienced in Earth’s evolutionary history. The AI could also create and mistreat, or threaten to mistreat, various minds as a way to blackmail other agents.

As it is possible that minds in simulations could one day compose the majority of all existing minds (Bostrom 2003b)—and that, with sufficient technology, there could be astronomical numbers of them—then depending on the nature of the simulations and the net amount of happiness and suffering, mind crime could possibly lead to any one of the three suffering outcomes.

Below are some pathways that could lead to mind crime (Gloor 2016):

Anthropocentrism. Again, if the superintelligence were programmed to only care about humans, or about minds that were sufficiently human-like by some criteria, then it could be indifferent to the suffering experienced by non-humans in its simulations.

Indifference. If attempts to align the superintelligence with human values failed, it might not put any intrinsic value on avoiding suffering, and may thus create large numbers of simulations with sentient minds if that furthered its objectives.

Extortion. The superintelligence comes into conflict with another actor that disvalues suffering, so the superintelligence instantiates large numbers of suffering minds as a way of extorting the other entity.

Libertarianism regarding computations: the creators of the first superintelligence instruct the AI to give every human alive at the time control of a planet or galaxy, with no additional rules to govern what goes on within those territories. This would practically guarantee that some humans would use this opportunity for inflicting widespread cruelty (see the previous section).

5.3 Flawed realization

A superintelligence with human-aligned values might aim to convert the resources in its reach into clusters of utopia, and seek to colonize the universe in order to maximize the value of the world (Bostrom 2003a), filling the universe with new minds and valuable experiences and resources. At the same time, if the superintelligence had the wrong goals, this could result in a universe filled by vast amounts of disvalue.

While some mistakes in value loading may result in a superintelligence whose goal is completely unlike what people value, certain mistakes could result in flawed realization (Bostrom 2013). In this outcome, the superintelligence’s goal gets human values mostly right, in the sense of sharing many similarities with what we value, but also contains a flaw that drastically changes the intended outcome. 11

For example, value-extrapolation (Yudkowsky 2004) and value-learning (Soares 2016, Sotala 2016) approaches attempt to learn human values in order to create a world that is in accordance with those values. There have been occasions in history when circumstances that cause suffering have been defended by appealing to values which seem pointless to modern sensibilities, but which were nonetheless a part of the prevailing values at the time. In Victorian London, the use of anesthesia in childbirth was opposed on the grounds that being under the partial influence of anesthetics may cause “improper” and “lascivious” sexual dreams (Farr 1980), with this being considered more important to avoid than the pain of childbirth.

A flawed value-loading process might give disproportionate weight to historical, existing, or incorrectly extrapolated future values whose realization then becomes more important than the avoidance of suffering. Besides merely considering the avoidance of suffering less important than the enabling of other values, a flawed process might also tap into various human tendencies for endorsing or celebrating cruelty (see the discussion in section 4), or outright glorifying suffering. Small changes to a recipe for utopia may lead to a future with much more suffering than one shaped by a superintelligence whose goals were completely different from ours.

#### Outweighs extinction.

Sotala 17 [Kaj Sotala and Lukas Gloor, researchers, Foundational Research Institute, “Superintelligence as a cause or cure for risks of astronomical suffering,” 2017, *Informatica*, Vol. 41, No. 4, http://www.informatica.si/index.php/informatica/article/view/1877, Accessed: 03/10/21, EA]

As already noted, the main focus in discussion of risks from superintelligent AI has been either literal extinction, with the AI killing humans as a side-effect of pursuing some other goal (Yudkowsky 2008), or a value extinction. In value extinction, some form of humanity may survive, but the future is controlled by an AI operating according to values which all current-day humans would consider worthless (Yudkowsky 2011). In either scenario, it is thought that the resulting future would have no value.

In this section, we will argue that besides futures that have no value, according to many different value systems it is possible to have futures with negative value. These would count as the worst category of existential risks. In addition, there are adverse outcomes of a lesser severity, which depending on one’s value systems may not necessarily count as worse than extinction. Regardless, making these outcomes less likely is a high priority and a common interest of many different value systems.

Bostrom (2002) frames his definition of extinction risks with a discussion which characterizes a single person’s death as being a risk of terminal intensity and personal scope, with existential risks being risks of terminal intensity and global scope - one person’s death versus the death of all humans. However, it is commonly thought that there are “fates worse than death”: at one extreme, being tortured for an extended time (with no chance of rescue), and then killed.

#### Probability – highest existential risk chance.

Ord 20 [Toby Ord, Senior Research Fellow in Philosophy at Oxford University, “The Precipice: Existential Risk and the Future of Humanity,” 2020, Hachette Books, EA]

In my view, the greatest risk to humanity’s potential in the next hundred years comes from unaligned artificial intelligence, which I put at one in ten. One might be surprised to see such a high number for such a speculative risk, so it warrants some explanation.

A common approach to estimating the chance of an unprecedented event with earth-shaking consequences is to take a skeptical stance: to start with an extremely small probability and only raise it from there when a large amount of hard evidence is presented. But I disagree. Instead, I think the right method is to start with a probability that reflects our overall impressions, then adjust this in light of the scientific evidence.7 When there is a lot of evidence, these approaches converge. But when there isn’t, the starting point can matter.

In the case of artificial intelligence, everyone agrees the evidence and arguments are far from watertight, but the question is where does this leave us? Very roughly, my approach is to start with the overall view of the expert community that there is something like a one in two chance that AI agents capable of outperforming humans in almost every task will be developed in the coming century. And conditional on that happening, we shouldn’t be shocked if these agents that outperform us across the board were to inherit our future. Especially if when looking into the details, we see great challenges in aligning these agents with our values.

Some of my colleagues give higher chances than me, and some lower. But for many purposes our numbers are similar. Suppose you were more skeptical of the risk and thought it to be one in 100. From an informational perspective, that is actually not so far apart: it doesn’t take all that much evidence to shift someone from one to the other. And it might not be that far apart in terms of practical action either—an existential risk of either probability would be a key global priority.

I sometimes think about this landscape in terms of five big risks: those around nuclear war, climate change, other environmental damage, engineered pandemics and unaligned AI. While I see the final two as especially important, I think they all pose at least a one in 1,000 risk of destroying humanity’s potential this century, and so all warrant major global efforts on the grounds of their contribution to existential risk (in addition to the other compelling reasons).

Overall, I think the chance of an existential catastrophe striking humanity in the next hundred years is about one in six. This is not a small statistical probability that we must diligently bear in mind, like the chance of dying in a car crash, but something that could readily occur, like the roll of a die, or Russian roulette.

### 2NC – Link T/C

#### Link alone takes-out solvency – overload collapses FTC effectiveness

Kovacic, 13 – Professor of Law at George Washington University

[William E. Kovacic & David A. Hyman, "Competition Agencies with Complex Policy Portfolios: Divide or Conquer?" GW Law Faculty Publications, 2013, <https://scholarship.law.gwu.edu/faculty_publications/631>, accessed 7-4-21]

Agencies seldom will receive the resources needed to fulfill all the regulatory commands assigned to them. This is the case of the modern FTC. In many instances, such as the automobile credit sales provision of Dodd Frank, Congress assigns major new responsibilities without providing resources to carry them out. The legislative process that generates new substantive legislation is detached from the process that appropriates funds. Thus, Congress rarely considers the resource implications of requirements that the agency enforce new laws, issue new rules, or prepare reports.

Agencies respond to these imperatives in one of two ways, both of which undermine agency effectiveness. The first is to undertake programs that exceed the agency’s ability to execute them effectively. The agency will be tempted to cut corners by weakening internal quality control measures, understaffing ambitious projects, or assigning difficult litigation or rulemaking tasks to relatively inexperienced personnel. Even though senior personnel may recognize how much resource constraints limit agency capacity, they may still acquiesce in Congressional demands for the initiation of new projects. A short term political appointee may regard the initiation of a new measure as a credit-claiming event and may see the risk that an improvidently conceived project may fail as a cost that will be borne by future agency leaders and will not be attributed fully, or at all, to the appointee who originated it. Without an effective feedback mechanism that forces the incumbent appointee to internalize such costs, it is easy to begin such projects, even when they outrun the agency’s capacity.

#### Empirics prove

Kovacic, 19 – Global Competition Professor of Law and Policy at George Washington University Law School

[William E. Kovacic, “Competition Policy in Its Broadest Sense: Michael Pertschuk’s Chairmanship of the Federal Trade Commission 1977-1981,” William & Mary Law Review, Vol. 60, Iss. 4, 2019, <https://scholarship.law.wm.edu/wmlr/vol60/iss4/6>, accessed 8-12-2021]

The experience of Michael Pertschuk’s FTC chairmanship, and the experience of the FTC in the 1970s more generally, suggests what the newly transformed FTC might expect as it attempts to roll out the new policy agenda.440 One certainty is the difficulty of policy implementation.441 The types of cases contemplated by the program outlined above will elicit strong resistance from the affected firms, which will amass large teams of accomplished lawyers and economic advisors to assist them.442 How long will it take the newly reoriented federal agencies to develop litigation teams to match the skills that the defendants will bring to the case—not just for one or a few cases, but the many high-stakes cases that the new program will call for?443 The political overseers and public interest community are likely to brush aside excuses about implementation difficulties.444 The pressures to deliver the new agenda will create serious dangers of a mismatch between commitments and capabilities—the same condition that befell the FTC in the 1970s and caused many of its flagship cases and rules to perish.445

### 2NC – AT: Thumpers

#### Deadlock prevents antitrust enforcement

Doesn’t interfere with privacy enforcement because there’s consensus. The plan changes this by FIAT

Eleanor Tyler 10/7/21. Legal Analyst on the Litigation team, with a focus on antitrust, at Bloomberg Law. “ANALYSIS: FTC May Be Headed Into Deadlock, Delaying Big Deals.” https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-ftc-may-be-headed-into-deadlock-delaying-big-deals

The Federal Trade Commission may be about to pause, unable to act on antitrust enforcement and policy until President Biden’s nominee can be confirmed and seated.

On Oct. 8, Federal Trade Commissioner Rohit Chopra is stepping down to take up his new position as head of the Consumer Financial Protection Bureau. Because it takes a majority among the Commissioners present to conduct business, and because the remaining commissioners will be split 2-2 between Democrat and Republican appointees, the Commission may find itself sitting on its hands until an equally divided Senate can approve privacy expert Alvaro Bedoya, whom Biden nominated Sept. 20 for Chopra’s seat.

In the past, the Commission has typically managed to continue making decisions and bringing cases while short a member (or several). These aren’t normal times, however. Many actions could be easily conducted on a bipartisan basis, but decisions about antitrust policy—and, potentially, antitrust enforcement—have proven contentious. That poses a potential obstacle for deals currently under investigation at the FTC, which tend to be large deals and those with market overlap between the parties.

#### Khan hasn’t brought cases.

Gold 12/20 [Ashley Gold “Six months with Lina Khan's FTC,” 12/20/21, *Axios*, https://www.axios.com/lina-khan-ftc-six-months-4a5c4ba6-cef1-4a1f-b1dc-a528b2b41471.html, EA]

The big picture: Khan's tenure so far has seen more table-setting for future actions than major high-profile antitrust cases.

• Those who want to see Big Tech taken to task hope to see Khan bring major cases that would spin off prior acquisitions and block proposed mergers. And the clock is ticking.

#### Other enforcement is all talk

Graham 9/18 [Jed Graham, citing William Kovacic, antitrust deity and former FTC chair; Writes about economic policy for Investor's Business Daily, “FTC, Biden Antitrust Enforcement Push Takes On Amazon, Google — And The Supreme Court,” 09/18/21, Investor's Business Daily, https://www.investors.com/news/antitrust-enforcement-push-by-ftc-biden-takes-on-amazon-google-supreme-court/, EA]

Khan is clearly using her bully pulpit to the utmost, trying to dissuade merger talks from reaching fruition.

But right now it's all talk. She has turned a few heads, but the S&P 500 and Big Tech leaders have kept cruising. Facebook stock is up 11% since Khan took the FTC's helm on June 15, while Apple has climbed 15% and Google stock 18%. That's despite reports that the Justice Department is preparing to file a second Google antitrust suit over its ad dominance.

The new antitrust enforcement regime may not change all that much "until they show that they can sue and win," Kovacic said.

#### XO is a toothless suggestion- doesn’t trigger the link

Nylen, 21 -- Politico antitrust reporter

[Leah Nylen, "Biden launches assault on monopolies," Politico, 7-8-2021, https://www.politico.com/news/2021/07/08/biden-assault-monopolies-498876, accessed 7-23-2021]

The new order is the product of months of negotiations among White House officials, particularly Tim Wu — who served on Obama’s National Economic Council and is now a Biden aide focused on technology and competition policy — along with the Justice Department, Federal Trade Commission and other federal agencies.

While the White House can command executive branch agencies like the departments of Transportation and Agriculture to take action, the order styles its directions as “suggestions” to avoid the appearance the administration is inappropriately seeking to direct independent agencies like the FCC or FTC. That could avoid the kind of blowback that Trump faced when he pressed both agencies to crack down on social media companies.

### AT: No Link

#### 2 – Settlements – limited resources means FTC doesn’t pursue privacy cases.

Chin 19 [Caitlin Chin and Marla Odell, \* Research Analyst, Center for Technology Innovation - The Brookings Institution, \*\* Research Intern - Center for Technology Innovation, “Highlights: Commissioners discuss the future of the FTC’s role in privacy” 11/05/19, Brookings, https://www.brookings.edu/blog/techtank/2019/11/05/highlights-commissioners-discuss-the-future-of-the-ftcs-role-in-privacy/]

Against a backdrop of high-profile data breaches and abuses, the Federal Trade Commission (FTC) has taken center stage. On October 28, FTC Commissioners Rebecca Kelly Slaughter and Christine Wilson joined Brookings Distinguished Fellow Cameron Kerry for a fireside chat to discuss the agency’s mandate to protect consumer privacy in an increasingly data-driven world—and how federal privacy legislation could help the agency carry out its mission.

Over the past few months, the FTC has announced several settlements in major cases. These include a $575 million settlement with Equifax following a wide-reaching data breach, a $170 million settlement with YouTube due to alleged COPPA violations, and a $5 billion settlement with Facebook—the largest privacy fine recorded to date—stemming from alleged deceptive data sharing practices with third-parties, including Cambridge Analytica. To supporters of these settlements, these record-breaking fines and new oversight requirements bring immediate corporate change and consumer remedies. To critics, however, the settlements do not sufficiently deter future violations and instead reflect the FTC’s constant internal trade-off to settle privacy cases, rather than litigate or push for tougher penalties, in the face of limited agency resources and capacity.

#### 3 – Cash – FTC has limited funding for limited areas.

Rivero, 21 -- Quartz tech reporter

[Nicolás, "Biden’s antitrust crusaders can’t crusade without Congress," Quartz, 3-11-2021, https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/, accessed 8-12-2021]

A larger caseload would also require Congress to approve more funding for the cash-strapped agency, which is already struggling to pay for its current docket. “The agencies have been asked on many occasions to do a lot with relatively little…but it’s not for free,” says former FTC chair and George Washington University law professor Bill Kovacic. If the FTC wants to pursue more large cases without a bigger budget, “they’ll have to make choices, and those choices will involve backing off of other areas of enforcement.”

### AT: No Link

#### FTC enforces federal antitrust laws

Jarod Bona 21. Bona Law PC. "Five U.S. Antitrust Law Tips for Foreign Companies". Antitrust Attorney Blog. 1-16-2021. https://www.theantitrustattorney.com/five-u-s-antitrust-tips-foreign-companies/

1. Two federal and many state agencies enforce antitrust laws in the United States

The United States government has two separate antitrust agencies—the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ). The FTC is an independent federal agency controlled by several Commissioners, while the Antitrust Division of the DOJ is part of the Executive Branch, under the President.

Both of them enforce federal antitrust laws (among other laws). Their jurisdictions technically overlaps, but they tend to have informal agreements between each other for one or the other to handle certain industries or subjects. If you are part of a major industry, your antitrust lawyer may be able to tell you whether the DOJ or FTC is likely to oversee competition issues in your field.

### AT: Fiat Solves

By indicates the way the aff increases prohibitions on anticompetitive practices

**Collins Dictionary** [COBUILD English Usage © HarperCollins Publishers 1992, 2004, 2011, 2012]

**4. saying how something is done**

**By** can be used with some nouns to say how something is done. You don't usually put a determiner in front of the noun.

*Can I pay by credit card?*

*I always go to work by bus.*

*He sent the form by email.*

However, if you want to say that something is done using a particular object or tool, you often use **with**, rather than 'by'. **With** is followed by a determiner.

*Clean the mirrors with a soft cloth.*

*He brushed back his hair with his hand.*

You can use **by** with an *-ing* form to say how something is achieved.

*Make the sauce by boiling the cream and stock together in a pan.*

*We saved a lot of money by booking our holiday online.*

#### No funding – firms will lobby Congress to withdraw support from enforcement agencies

**Jones and Kovacic, 20** – Professor of Law at King’s and a solicitor at Freshfields Bruckhaus Deringer LLP; Professor at George Washington University Law School and director of their Competition Law Center

[Alison Jones and William E. Kovacic, "Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy," SAGE Journals, 3-20-2020, https://journals.sagepub.com/doi/full/10.1177/0003603X20912884, accessed 7-7-2021]

D. Political Backlash

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125

The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

Imagine, for a moment, that the DOJ and the FTC launch monopolization cases against each of the GAFA giants. Among other grounds, these cases might be premised on the theory that the firms used mergers to accumulate and protect positions of dominance. The GAFA firms have received unfavorable scrutiny from legislators from both political parties over the past few years, but the current wave of political opprobrium is unlikely to discourage the firms from bringing their formidable lobbying resources to bear upon the Congress. It would be hazardous for the enforcement agencies to assume that a sustained, well-financed lobbying campaign will be ineffective. At a minimum, the agencies would need to consider how many battles they can fight at one time, and how to foster a countervailing coalition of business interests to oppose the defendants.

### AT: FTC Overwhelmed

#### FTC announcements, fact-finding, and PrivacyCon all prove it’s a top priority.

Northouse 11/28 [Clayton G. Northouse, Lauren Kitces and Alexandra Mushka, \* partner in Sidley Austin LLP's Privacy and Cybersecurity practice, “FTC Announces it May Pursue Rulemaking to Combat Discrimination in AI,” 11/28/21, *Lexology*, https://www.lexology.com/library/detail.aspx?g=bfdcb7e5-2c67-4478-8c85-622581d37b8f, EA]

On December 10, the Federal Trade Commission (FTC) announced it is considering a rulemaking on commercial Artificial Intelligence (AI). The purpose of the rulemaking, according to an advanced notice of proposed rulemaking (ANPRM) titled “Trade Regulation in Commercial Surveillance,” would be “to curb lax security practices, limit privacy abuses, and ensure that algorithmic decision-making does not result in unlawful discrimination.”

While not formally part of the rulemaking process mandated by the Administrative Procedure Act, advanced notices allow agencies to solicit public comment before drafting more specific proposals. The FTC has not yet issued privacy or artificial intelligence rules, though it has indicated that such rulemaking is on the horizon. The December 10 ANPRM is another signal that the FTC is gearing up to develop substantive privacy guidelines.

The anti-discriminatory focus of the notice reflects concern reflected in a variety of policy papers, research and media coverage over whether commercial AI has the potential to deliver biased outcomes. The movement towards official rulemaking also aligns with the AI fact-finding efforts and interests that the FTC has demonstrated at its last two PrivacyCon events, including a specific focus on advertising, fairness, and transparency in AI and algorithms at the summer 2020 PrivacyCon.

The language of the ANPRM is broad, and could cover a variety of commercial practices. Earlier statements, however, may provide insight into the FTC’s thought-process. The Commission has previously pointed to protected-class bias in healthcare delivery and consumer credit as prime examples of algorithmic discrimination. See Jillson, E., Aiming for truth, fairness, and equity in your company’s use of AI, FTC Business Blog (April 19, 2021). Additionally, in a recent semiannual Statement of Regulatory Priorities, the FTC expressed that, among the many pressing issues confronted by consumers in the modern economy, “abuses stemming from surveillance-based business models are particularly alarming.” Therefore, the FTC may also target algorithms that drive behavioral ad-based ecosystems.

As we have highlighted in our prior posts, the FTC recently updated its rulemaking procedures. The ANPRM contemplates rulemaking under section 18 of the FTC Act, which authorizes the FTC to promulgate “rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. Sec. 57a. The FTC’s process for issuing section 18 rules, also known as “Trade Regulation Rules,” or “Magnuson-Moss Rules,” has recently been streamlined in order to facilitate the FTC’s renewed efforts to create substantive guidelines for the modern economy.

While the FTC must still take several steps before any rules become final, categorizing certain uses of commercial AI as unfair or deceptive under the FTC Act could be a further step towards the creation of uniform federal privacy standards.

Interested parties should expect the comment period under either the ANPRM or a more formal rulemaking to begin in February 2022.

#### New guidance and Slaughter remarks prove

Cohen 21 [Bret Cohen, W. James Denvil, and Filippo Raso, \* Partner, Hogan Lovells; J.D., The George Washington University Law School, with high honors, “AI & Algorithms (Part 4): The FTC’s Guidance on AI,” 06/10/21, *JDSupra*, https://www.jdsupra.com/legalnews/ai-algorithms-part-4-the-ftc-s-guidance-3717327/, EA]

Although the U.S. has no federal law that specifically regulates artificial intelligence (AI), the Federal Trade Commission (FTC) has indicated that it may be preparing to exercise its consumer protection authority with respect to AI deployment. In May, the FTC issued new guidance for the use of AI, building upon its 2020 AI guidance and its 2016 report on big data. And FTC Acting Chair Kelley Slaughter has stated in public remarks that the Commission will be exploring concerns relating to algorithmic harms, including bias and discrimination. Organizations deploying AI systems in the U.S. are advised to familiarize themselves with the FTC guidance in order to make sure that their uses of AI are in compliance with U.S. consumer protection requirements.

#### It’s their #1 agenda item for February

O'Sullivan 1/3 [Liz O'Sullivan, Surveillance Technology Oversight Project's technology director; co-founder and vice president of commercial operations at Arthur AI, an AI explainability and bias monitoring startup, “2022 promises to bring massive change to AI regulation,” 01/03/22, *Fast Company*, https://www.fastcompany.com/90707807/2022-promises-to-bring-massive-change-to-ai-regulation, EA]

9. THE FTC WILL SET NEW RULES THAT GOVERN MOST CONSUMER-FACING AI.

Proponents of AI oversight rules have long discussed the FTC as the most appropriate (and empowered) regulator to take up the fight for consumers’ rights. With broad rulemaking powers and a progressive, expert staff, the FTC’s February 2022 agenda item signals change is coming, and fast. This will be one to watch, as it’s unclear whether February’s time slot will simply open up a period of public comment, or whether they already have draft rules in mind. Our money is on the latter.

### AT: Private Suits

#### Normal means includes federal agencies starting investigations

**PLI, 15** [Practising Law Institute, "Overview of the U.S. Antitrust Laws," Antitrust Law Answer Book, 2015, https://legacy.pli.edu/product\_files/Titles/4153/58678\_sample01\_20141108153021.pdf, accessed 7-16-2021]

In most other areas—such as horizontal or vertical agreements to restrain trade, monopolization, unfair methods of competition, or mergers that were not subject to HSR notification—the decision to start an investigation is frequently prompted by complaints from concerned or interested parties, such as competitors, consumers, or whistleblowers. In fact, the Antitrust Division has established the Citizen Complaint Center to field reports of possible antitrust violations. The government also sometimes initiates investigations of more serious antitrust violations, such as price fixing or bid rigging, after one of the participants seeks immunity from prosecution under the DOJ’s amnesty program. Foreign antitrust authorities might spur investigations of international antitrust violations with an impact on U.S. consumers by providing leads to the U.S. authorities. Finally, an agency will periodically conduct a self-initiated inquiry into a particular industry or practice based on information it obtains in another matter, or on a concern about specific practices that have somehow come to its attention.

Agencies are involved in criminal investigations, even in cases with private prosecution

**DFEACC 15.** Directorate for Financial and Enterprise Affairs Competition Committee - Working Party No. 3 on Co-operation and Enforcement. “Relationship Between Public and Private Antitrust Enforcement.” Organization for Economic Cooperation and Development June 15, 2015. <https://www.justice.gov/atr/file/823166/download>

Federal courts actively supervise the timing of discovery in private damages actions. Cartel damages actions commonly are filed while the Antitrust Division’s criminal investigation of the conduct is ongoing. The Antitrust Division evaluates on a case-by-case basis whether certain types of private discovery are likely to interfere with its criminal investigation and, if so, whether to seek a stay of civil discovery in the private action, or limitations on its scope. Antitrust Division attorneys are frequently in contact with the attorneys in private cartel cases, and receive status updates on the progress of the private litigation and information regarding the effect of any stays as the private cases progress.

Supreme Court decision almost eliminates possibility for private enforcement

**Rajabiun 12** [Reza Rajabiun – Visiting Scholar, Ted Rogers School of Information Technology Management, Ryerson University, Toronto, Canada. "Private enforcement and judicial discretion in the evolution of antitrust in the United States." *Journal of Competition Law and Economics* 8.1 (2012): 187-230]

The 1977 Illinois Brick decision limited rights of standing in civil cases to direct purchasers, excluding a wide range of possible private entities with information about illegal acts from employing civil litigation.133 In restricting the statutory rights of action to “any person” to file a claim under the Sherman Act, this decision aimed to mitigate the potential for multiple claims on alleged offenders that had “passed-on” overcharges from an illegal act to other parties. The Court held that if defendants cannot use the passing-on theory as a defensive tool in private claims by a direct purchaser, indirect purchasers should also not be able to use the same theory as an offensive instrument to recover damages.134 While narrowing the scope of standing rights may have reduced the costs of multiple recoveries faced by defendants, the decision neglected to consider the possibility that direct purchasers do not always have strong incentives to take legal action. In particular, direct purchasers that resell a product might themselves be parties to the conspiracy and benefit from sustaining it. In this case, the direct purchaser downstream would have limited incentives to reveal private information it has about anticompetitive agreements by their upstream suppliers.135 Actions by indirect purchasers might be the only option for imposing legal constraints on this class of anticompetitive arrangements. The attempt in Illinois Brick to mitigate false positive errors can explain part of the rapid decline in the level of private cases in the 1980s.