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### t – scope

#### Expanding the scope of antitrust law requires the aff to either expand the definition of “commerce” or limit exemptions/immunities.

Chris Sagers, Prof. of Law @ Cleveland-State, ’21, “Antitrust,” *Third Edition*, Wolters-Kluwer, ISBN 978-1-5437-0762-2

§20.2 THE BASIC SCOPE OF ANTITRUST: THE “COMMERCE” REQUIREMENT, THE INTERSTATE REQUIREMENT, AND THE REACH OF THE CLAYTON AND FTC ACTS

§20.2.1 “Trade or Commerce” in General; Its Exclusion of Charity and Gratuity; and That Awkward Orphan of Antitrust, Professional Baseball

While, again, there are many specific exceptions from the scope of antitrust, it remains the case that where no statutory or case-law exemption is available, . antitrust cuts very, very broadly. The basic ques tion of its scope is to ask where . the boundaries might lie of the “trade or commerce” that occurs ' among the several States, or with foreign nations,” which is explicitly referenced in 1 ■ Sherman Act §1 andt2. ■

First, observe that, by the apparent indication .of the explicit language, the requirement that the conduct occur in interstate or foreign commerce is logically distinct from the requirement that the conduct constitutes “trade or commerce.” The indication seems to be that conduct can be “trade-like” or “commercial” without being in interstate or foreign commerce, and vice ' versa. Fortunately, at least one of these requirements is easy. It is now clear that • domestic conduct is within “interstate” commerce any time it is within the interstate commerce jurisdiction of Congress under the Commerce Clause of the U.S. Constitution. Whether it can be within “foreign” commerce turns out to be a fair bit more complex, but that will be discussed in §20.3.

. Whether conduct is “trade or commerce” raises a different question, and it is the question of whether the conduct is the sort that Congress intended to be subject to mandatory competition. Modern courts define the scope of “trade or commerce” very broadly. Even early decisions defined the “commerce” subject to the statute to include any “purchase, sale, or exchange of commodities,”3 and they said it should be construed liberally, to give the statute its intended effect—it should “not [be treated as] a technical legal conception, but [as] a practical one, drawn from the course of business.”4 More importantly, modern courts have held generally that any exchange of money for a good or service, between any persons, is in “trade or commerce.”5 In one influential case, United States v. Brown Univ., 5 F.3d 658 (3d Cir. 1993), the Third Circuit held that an agreement among nonprofit universities concerning need-based scholarship funds was a contract relating to “trade or commerce.” Despite what might have appeared to be genuine charity, the court had no real trouble with the issue. The defendants conceded that the giving of educational services in exchange for money is “commerce,” regardless of the defendants’ nonprofit form of organization. And, the court wrote,

[t]he amount of financial aid not only impacts, but directly determines the amount that a needy student must pay to receive an education at [the defendant schools]. The financial aid therefore is part of the commercial process of setting tuition

In fact, it is really only in limited, exotic circumstances that modern courts have found conduct simply not within “trade or commerce" for antitrust purposes A leading case is Dedication and Everlasting Love to Animals V. Humane Socy. of the United States, Inc., 50 E3d 710 (9th Cir. 1995). The plaintiff was a California charitable organization devoted to animal welfare. It sued the Humane Society, a national umbrella organization, for nonprofit entities committed to similar purposes. The plaintiff’s theory of liability was in effect that the Humane Society, a “competitor” for the same charitable donations on which the plaintiff relied to fund its operations, had taken various actions to steal away the “market” for donations. While first acknowledging that no conclusion could be drawn from the fact that the parties were organized as nonprofit corporations, the court seemed fairly appalled at the very idea of the plaintiff’s theory of liability. “If statutory language is to be given even a modicum of meaning,” wrote the court, “the solicitation of [charitable] contributions ... is not trade or commerce, and the Sherman Act has no application to such activity.” Id. at 712.

#### Key to limits and ground – expansive definitions of scope allow any rule of reason aff or limitless tinkerings with the antitrust process.

### k – racial capitalism

#### Racial disposability constitutes the competitive global order of market societies. The flip side of the successful entrepreneur is the welfare queen, the super-predator, and the terrorist immigrant.

Arun **KUNDNANI** Media, Culture, and Communication @ NYU & Terrorism Studies @ John Jay **’21** “The racial constitution of neoliberalism” *Race & Class* 63 (1) p. 62-66

Hayek has normally been read by his critics and defenders alike as a theorist of the spontaneous order that only market mechanisms can enable. Actually existing neoliberalisms are then contrasted with the purity of his imagined market utopia. But even Hayek, the greatest market ideologue of the twentieth century, was not a ‘market fundamentalist’ in the sense that market principles supplied the sole grounds for his political philosophy. Brown is right to point to his deployment of traditional morality as a supplementary source of social order within his system. But what even this revision to our reading of Hayek misses is the necessary role that ideas of western culture play in his thinking. In this respect, his philosophy is a product of European colonialism – even though it distances itself from the classical forms of high imperialism. He inherits from this tradition his basic conception of western civilisation as originator of freedom and other cultures as making progress only through imitation of the universal West. While he rejects the concept of race in any physiological sense, his theory of cultural evolution works through ‘the play of substitutions between race, people, culture and nation’.56 It is a form of what Etienne Balibar calls neo-racism, in which ‘culture can also function like a nature, . . . locking individuals and groups a priori into a genealogy, into a determination that is immutable and intangible in origin’, while paradoxically assimilation of the other into western culture is nevertheless possible and desirable.57 Balibar aptly notes that behind this theory lies ‘barely reworked variants of the idea that the historical cultures of humanity can be divided into two main groups, the one assumed to be universalistic and progressive, the other supposed irremediably particularistic and primitive’.58 On the one hand, neo-racism claims that all cultures have their particular, fixed nature; on the other hand, it holds up western culture – presented as open, enterprising, and individualistic – as a universal standard against which others are judged inadequate.59

Hayekian neoliberalism is troubled by the fear that its desired universal market order may be constrained in its application by particular cultures unable to grasp the virtues of competitive society; a neo-racist idea of culture is the necessary means by which this danger is conceptualised and made sense of. Such an idea of culture reconciles two mutually contradictory impulses. First, it enables western culture to be assumed universal: this is what guarantees the viability of its implantation outside the West and therefore underpins a global market order. Second, it enables the limits to the spread of ‘western’ markets to be comprehended as the result of the immutable inadequacies of other cultures and grants the superior West special rights to uphold and defend the market order. Neoracism thus enables neoliberalism to oscillate between thinking the limits it encounters are the necessary consequence of inferior others and thinking they can be overcome by renewed imposition of its market logic.

Neoliberalism and racial capitalism

Other founding neoliberal theorists shared in this civilisational discourse with varying slants. The work of Hayek’s mentor, Ludwig von Mises, is marked by the same tension between universalism and particularism. He advocated for globalist forms of governance to free the market order from mass democratic demands to which nation-states were occasionally responsive, while also believing racial differences meant market liberalism could only be spread outside the West by force.60 Wilhelm Röpke, a central figure in the neoliberal movement, argued that market economies depended upon a ‘moral infrastructure’ that thinned in proportion to one’s cultural distance from the West. Lacking this infrastructure rendered a people culturally unsuited to market competition and therefore unlikely to consent to neoliberalism. He defended apartheid in South Africa as a means to ensure Africans could not jettison the western culture that was, he held, the only basis for stable market orders in the non-western world.61 For similar reasons, Milton Friedman supported white minority rule in Rhodesia in the 1970s and described the imposition of sanctions as ‘the suicide of the West’.62 My argument is not that neoliberals as individuals harboured racial prejudices that led them to distort neoliberalism into a racist form. Rather, the logic of neoliberalism itself draws the project towards a racial-civilisational discourse and an associated structure of globally organised state racism.

While a neo-racist discourse emerges to resolve the tensions in neoliberal ideology, state racism is practised to resolve the tensions in neoliberal political economy. Neoliberal political economy differentiates as much as it homogenises; it seeks a world of universal markets and divides the world through various kinds of boundary making. The concept of racial capitalism is the most productive way to interpret this process.63 Cedric Robinson uses the term to emphasise that each period of the capitalist world system finds a distinctive way to reify regional and cultural differences into races in order to structure social divisions between different forms of labour. Capitalism has not universalised the capital-wage labour relationship described by Karl Marx in Volume 1 of Capital (Marx 1890) – a fact Marx recognised empirically, even if he drew from it different theoretical conclusions.64 Waged labour under capitalism has always been combined with various forms of coerced labour, including today, for example, undocumented migrant labour – as well, of course, as the usually unwaged gendered labour of social reproduction.65 In this view, race is not just a means of dividing waged working classes but also the means by which capitalism codes and manages the contradictions between waged and unwaged, between possessors and dispossessed, between citizens endowed with liberal rights and ‘unfree’ labouring populations – from the enslaved to the undocumented.66 This means that racism is not reducible to a legacy of the past but is continuously regenerated in new forms out of globally dispersed divisions of labour and the struggles against them.

Neoliberalism involves a new iteration of this process. By placing the principle of competition at the centre of its political economy, neoliberalism intensifies differentiation. Market competition requires differences in capacities, resources, and vulnerabilities in order to do its incentivising work: the market game has to punish its ‘losers’. As we have seen, success and failure are understood within neoliberal discourse as judgements not just on the individual but on groups marked by their shared culture understood in neo-racist terms. The emergence of a new global neoliberal regime of capital accumulation from the 1970s went hand in hand with the mass rendering surplus of such racially marked populations across the global South and in the North.67 David Harvey’s use of the Marxist concept of primitive accumulation to describe the processes of privatisation, commodification and financialisation that produce these surplus populations is crucial.68 Indeed, these are ‘the most accelerated and extensive processes of primitive accumulation in world history’.69 However, to characterise neoliberalism’s surplus populations as ‘disposable workers’, to use Harvey’s term, is incomplete.70 Disposability refers to a short-term wage relationship with capital, which is certainly true for a large proportion of workers. But significant sections of neoliberalism’s surplus populations are not engaged as waged labour by capital even for a short period. They ‘are unable to be exploited at all. They are abandoned subjects, relegated to the role of a “superfluous humanity”. Capital hardly needs them anymore to function.’71 Kalyan Sanyal calls them the ‘wasteland’ populations, defined by their being fully excluded from capitalist exploitation, not even able to serve as a reserve army of occasional labour.72

Notions of reserve or disposable labour are also incomplete if they neglect the racial dimensions to the production and management of surplus populations under neoliberalism.73 Race serves as the means by which neoliberalism organises and codes the complex, dispersed boundaries between these populations and others, between the ‘exploitable’ and ‘unexploitable’, the ‘free’ and ‘unfree’, the ‘deserving’ and ‘undeserving’.74 It is a material feature of the global division of labour that neoliberalism generates. Ideologically, neoliberalism is haunted by the existence of these surplus populations. They signify a limit to its reach, a failure to universalise, a space from within which resistance is generated. The tension between the desire for a universal market order and the anxiety that there are limits to market rule is resolved through a racial idea of culture – as Hayek’s theory of cultural evolution exemplifies. Race enables the limits to the universalisation of neoliberalism to be naturalised and dehistoricised: political opposition to market systems mounted by movements of the global South or racialised populations in the North is read by neoliberal ideology as no more than the acting out of cultures inherently lacking in traits of individualism and entrepreneurialism. Neo-racism does its ideological work by displacing the political conflicts generated by neoliberalism onto the more comfortable terrain of clashes of culture.75

In particular, racisms of the border, of law and order, and of counter-terrorism are the arenas within which the complex fears, tensions and anxieties generated by neoliberalism and its discontents are projected and worked through. The surplus dispossessed come to be represented through a series of racist figures – ‘welfare queens’, ‘Muslim extremists’, ‘illegals’, ‘narcos’, ‘super-predators’, and so on – as part of the process of securing neoliberalism in the realm of ideology. These figures of economic dependency, violations of property, and threats to western culture rework older legacies of racism to produce images that are distinctive to the neoliberal era. A full account of this reworking is beyond the scope of this article but what these images have in common is their representing limits to market logic. They serve as displaced signifiers of neoliberalism’s failure to universalise its legitimacy, analogues of the ‘black mugger’ whom Stuart Hall described in the 1970s as a ‘signifier of the crisis in the urban colonies’.76 With this phrase, Hall meant that racist images are not conjured out of nothing in the corridors of power but involve displacement along a signifying chain from actual political insurgencies or social antagonisms to the racist fantasies that fail to represent them. Behind the images of the Black woman on welfare, the radical Muslim and the violent immigrant lie fears of actual Black radicalism, of the actual Palestinian national movement, and of the actual politicisation of working classes induced by migrant workers.

Politically, race offers the neoliberal state organising terms for embedding markets in systems of spatial order and for policing surplus populations. In the state’s practices of ‘law and order’, ‘securing borders’ and ‘national security’, race is, as in Hayek’s philosophy, both concealed and constitutive**.**77 The dramatic increase under neoliberalism in the capacity of states to carry out policing, carceral, border, and military violence, domestically and globally, is linked to the need to manage surplus populations – and it is racially coded.78 A transnational security infrastructure, led by the United States but dispersed globally through the nation-state system, spatially organises the neoliberal order through race. Racist bordering regimes, with their huge death tolls in the seas and deserts to the south of Europe and the United States, and their warehousing of millions of refugees in camps conveniently far from the West; racist projects of broken windows policing and mass incarceration, another form of warehousing of surplus populations; and global infrastructures of counter-insurgency, such as the racist wars on terror and drugs, causing the deaths of hundreds of thousands – all this is inextricable from neoliberalism’s market order.79 The global policing of Blacks, migrants and Muslims thus meshes with and comes to stand in ideologically for the broader problem of policing neoliberalism’s surplus populations, within and without the West. That the think-tank networks involved in promoting neoliberal political economies have typically also been key mobilisers of projects of racist policing, incarceration and counter-terrorism is not coincidental. In the UK, the Institute of Economic Affairs (IEA), the prototypical neoliberal think-tank that was founded in 1955 at the suggestion of Hayek himself, provided a support network for the founder of modern conservative racist politics, Enoch Powell, and later spun off outfits such as Civitas and the Centre for Social Cohesion that have hosted antiimmigrant and anti-Muslim ideologues like Douglas Murray. In the US, for example, the Manhattan Institute, founded, like the IEA, by Antony Fisher, has been a major artery of neoliberal policymaking while also driving the national adoption of the ‘broken windows’ policing methods that have been key to mass incarceration.

#### Economics relies on the Euro-American episteme of bio-economic Man – competition frames the world in Darwinian terms. The aff relies on knowledge produced for the benefit of colonialism’s winners.

Paget **HENRY** Sociology & Africana Studies @ Brown **’18** “Samir Amin and the Future of Caribbean Philosophy” *The CLR James Journal* 24: 1-2 p. 142-144

Second, for Wynter, this global postcolonial crisis, the poverty and social inequalities that persist in our societies, although economic in appearance, are not primarily economic in nature. In her view, these dire economic outcomes are some of the mechanisms through which the unequal imperatives of a deeper order are being dynamically enacted. For Wynter, this deeper order of creative activity is the mode of producing the human. It produces analogically constructed image of the human that is projected by our social imaginary, and is the determinant in the last instance of our forms of sociality, and not the mode of economic production. The founding analogies that constitute this projected image of the human could be with nature, animals, skin color, gender, reason, property, wealth or death. Once established, these systems of analogies provide the key frames within which human subjectivity will grow. These analogical images of the human, Wynter also refers to as the projecting of a “morphogenetic fantasy” (2018), which provides the governing codes or normative templates for the subjectivities its brings into being. From this perspective, capitalism becomes an economic system that enacts the morphogenetic fantasy of a particular group of people (the bourgeoisie) that Wynter calls “classarchy” (2018). It is an imaginative projection similar to that of monarchy or patriarchy. James’s complex of self-organizing activities could be seen as a smaller and less radically poeticist version of Wynter’s morphogenetic fantasy, and thus more compatible with the Marxian framework.

Given this deeper layer of self-constituting activity in which disciplinary knowledge production is rooted, “the disciplinary ‘truths’ of economics” are of a secondary or proximate nature. Thus, she goes on to suggest that third world economists and other intellectuals have employed models of analysis and conceptual systems that depend on the Western mode of the subject and its epistemological order. Like Best, Wynter sees this epistemic entrapment as the reality behind the crisis in the economic thinking of peripheral countries. Going beyond Best, she will articulate more explicitly the semiolinguistic architecture of this epistemic entrapment. As a result, Wynter’s approach to culture, economics and philosophy is also a transcendental one, which reflects not just on a priori categories, but also on the larger transcendental formations she calls epistemes.

By an episteme, Wynter has in mind the organized set of a priori analogies, classificatory systems, categories, concepts and knowledge-constitutive goals that we routinely draw on in our practices of knowledge production. This organized nature of epistemes, Wynter links to the adaptive and survival needs of a particular group and its specific conception of the human subject. In other words, the structure of a particular episteme correlates with the identity, legitimacy and information needs of a particular group of human subjects. In short, all knowledge, economic or otherwise, is produced within such definite epistemes with specific histories.

Wynter’s particular focus is on the semio-linguistic processes by which epistemes are auto-poetically organized and instituted. These processes are similar in nature to those of poetic composition, and are a transcendental subset of the self-organizing capabilities of the human subject. This semiotic dimension imposes a binary structure on the self-organizing and auto-instituting powers of epistemes, giving these knowledge-constitutive formations what Wynter calls their founding and liminal categories. The semiotics of founding categories are such that they over-value and inflate the significance of persons, events, and things placed in them, while liminal categories do the exact opposite. Thus epistemes, because of their binary structures, their adaptive, identity-forming and legitimating functions are systemically error-prone and thus very often compromise the accuracy and objectivity of the knowledge produced within their categoric frameworks.

Further, because of the implicit or deeply submerged status of epistemes, in addition to self-reflection on taken-for-granted categories, Wynter has consistently employed a series of key analogies as a comparative strategy to make the presence and functioning of epistemes more explicit. The most important of these is the analogy between the transition from the medieval Christian episteme to the modern Western one, and the still blocked transition from the latter to a struggling post-colonial episteme. Amin employs a similar comparative strategy with period after the decline of the Roman Empire for understanding contemporary socialist struggles in the period of the early decline of the American Empire. For Wynter, it is from the articulation of the devaluations and under-representations of what is in their liminal categories that epistemes have been critiqued, resisted and overthrown. In the case of the Christian episteme, it was the humanist critiques of the laity that overthrew the theological scholasticism of the voluntarily celibate clergy. The civic humanism of the laity introduced a new episteme, a new order of knowledge in which salvation through the church was replaced by salvation through the state and the market. These are the larger dynamics of epistemic order and change in which Wynter locates the discipline of economics, strongly rejecting the autonomous and self-enclosed view of the field.

#### Innovation under racial capitalism produces ecological crisis.

Christopher **NEWFIELD** English & American Studies @ UC Santa Barbara **’20** *Mutant Neoliberalism: Market Rule and Political Capture* eds .Callison and Manfredi p. 258-263

We might ask ourselves: What if economic change isn’t moving always toward more technology and management, but now is moving away from it? What if history does not side simply with technology, but with more complex forms of sociocultural-technological knowledge?

I’ll posit, to get us thinking more about this, that the Schumpeter- Christensen model of innovation has been revived as a way of returning American business to a more familiar past — one of “manageable” technological change. In this context, Google is more like General Motors than it is like the organizations that will work in the next economy. Partly in response to an industrial model that was being extended digitally, Christensen reconsecrated a managerial class that opposes, as it did in the earlier twentieth century, the democratization of invention. It’s quite likely that none of our current challenges can be faced when the best-educated people with the most access to resources come from a small and narrowly educated elite—not climate change, not expanding refugee populations, not continuous warfare, not hardening inequality.

The blindness of Schumpeter’s model was its elitist notion of invention and innovation alike. Christensen and today’s advanced corporate world—Apple, Amazon, Wall Street—function with the same concentrations of elite professionals set up in contrast to the forms of knowledge in the wider vernacular culture. Christensen’s model is at best indifferent to creative labor on a mass scale and looks to entrepreneurs supported by venture capital. But what if this indifference to labor—in addition to traditional exploitation, racism, and injustice—is precisely what has been eroding Western capitalism?

By contrast, there is the economic (though not the political) success of China. Americans often assume that China offers only a low-wage Western developmental pathway, doing the same kind of production, dark satanic mills style, at a much lower price. In reality, Chinese electronics manufacturing is not the cheapest manufacturing but, in many cases, the best manufacturing in the world.52 The same is true in the crucial area of renewable energy: China rapidly took over the solar photovoltaic manufacturing sector after 2010 with a combination of trade and industrial policy, and the United States will meet its defossilization goals by buying Chinese technology.53 China’s success with scale, scope, and complexity is not a simple question of work- force exploitation, though there is lots of that, but of a rejection of the rules of neoliberalism—indeed, of disruptive innovation—as they are ritualistically applied in the West. The result is that Apple won’t be able to manufacture the iPhone 11, 15, or 20 back in the U.S. at any price. Even Silicon Valley doesn’t have the high-skilled labor, the sophisticated supply chain, the quality transportation infrastructure, the capacity for public-good investment, or the cultural interest in the intelligence of the ensemble. Capitalism needs more intensive social factors of production than ever, and the U.S. simply doesn’t have them at a global level.

There’s a deeper pattern here that to my mind has been best explained by Giovanni Arrighi’s version of world-systems theory. In Adam Smith in Beijing, he argued that the “Western pathway” of capitalist development, which was good at its chosen task for two hundred years, has reached a hard limit.54 His contrast was with East Asia, where there was a kind of market economics that was more successful than the European kind until 1820 or so, when it became less successful than the Western pathway. This “East Asia” pathway was not technology-intensive and did not, to the same extent, replace human labor with machines. It was labor-intensive. Arrighi borrowed from Hayami Akira the term “Industrious Revolution” to label this East Asian path.

Arrighi worked for decades on capitalist accumulation cycles and on the end of “accumulation regimes” that in their time seemed like the end of his- tory. He argued at length that the West has overestimated “large-scale pro- duction and the technical division of labor” and misread as our business or technological genius—whether we were Genoan, Dutch, Victorian, or Bush- era American—the effects of military superiority and resource extraction, slavery very much included. In reality, Arrighi insisted, there is no innate superiority to the Western path of capitalist development. The tide may have been running against the Western model since around 1950. Our period of financialization—from the Savings and Loan crisis of the 1980s through the housing bubble and the financial crisis of the current period—looks like the kind of “belle epoque” that, in Arrighi’s historical studies, signals the decline of a regime of accumulation.

This is not to say that Japan or China has the answers to our economic, environmental, social, or cultural problems. The essential point is that East Asian modernization has been based not so much on the imitation of the Western Industrial Revolution as on the revival of features of the indigenous, skills-based Industrious Revolution.55 The issue is not that it is Chinese or Asian capitalism, but that the next economic order, wherever it appears, rep- resents the overcoming of the limiting features of the Western pathway—its colossal demand for energy, enabled by energy-dense fossil fuels, its dependence on military dominance, and its mass use of coerced wage labor, which, as we have seen, for the great majority of workers, it generally de-skills or replaces with technology.

It’s fairly obvious that ecological survival now depends on the continuous reduction of energy used per unit output.56 But just as profoundly, advanced innovation now depends on labor-intensive complex practices, on up-skilling mass labor rather than de-skilling it**.** All regions could potentially update the “industrious revolution” for our not-yet decarbonizing, climate-changing, permanent war-making times. Northern Europe has a start on this. I think Arrighi is correct that the future’s sustainable economies and stable societies will be those that shift away from the technological replacement of labor toward high-skill labor served by technology. Remember Donna Haraway’s cyborg manifesto.

So a humanities question for our times is: Will the United States manage to achieve this transition? And my answer is, no—absolutely not. Not, that is, unless the humanities—critical theory—can critique and help change macroeconomics with a new militancy about the formation of complex creative skills rooted in uncoerced interpretation.57

How would the humanities break—in both theory and practice—not only with the capitalist university but with Western capitalism in its current form? Of course, we think this is grandiose, and impossible, and ridiculous. And yet the situation has been shifting toward high-skill and new-skill labor for years, with one catch: sustainable high skills will be as interpretative as they are technical. The liberal-arts side of universities hasn’t much thought about and planned enough for a generative role in changes already underway.

In The Undercommons, Stefano Harney and Fred Moten write that our practice must assert “a metapolitical surrealism that sees and sees through the evidence of mass incapacity.”58 This is exactly right, and oddly enough, espe- cially right on the matter of innovation. The humanities offers a surrealism of concepts, found in a mainstream tradition, from Socrates through the Stoics on to Friedrich Schleiermacher, Ida B. Wells, Dewey, C. L. R. James, and Hannah Arendt that has always had a (carefully suppressed) economic destiny.

Table 9-1 depicts a few pieces of a long tradition in a reductive schema. Column 1 is a summary of our post-democratic period in which commod- itized creative labor loses its value and value-added becomes an elite prod- uct. Column 2 is our current innovation culture, with its techno-supremacist tendencies. Column 3 references the strong humanities as a bland inclusive term for critical theory. Column 4 is the institutional body that houses these humanities.

My point about the humanities disciplines as schematized in column 3 is that they contradict the disruptive innovation of capitalism’s “Western path- way” (column 2). They have been doing this at the same time they are providing founding elements of a sustainable postcapitalism. Humanities scholars are familiar with the items in the first and third rows. Our elitism means we will need to do more with pioneer authors over a long historical arc from Frederick Douglass to Jacques Rancière to develop the idea of universal intellectuality. That will be the core feature of a future world that can no longer live by the elite educations of its 1 percent but needs the help of pretty much everybody to solve its problems.

Egalitarianism, row 3, has been the pervasive implication of the humanities renaissance that global academia has induced over the last seventy years. In conjunction with social movements, it has helped produce new forms of criticism through feminism, gender studies, deconstruction, queer theory, social history, and much more. Faculty are not spontaneous egalitarians. But

Table

Description automatically generated

to improve the situation of both the humanities and the transition to a post- Western economic pathway, we will need to act systematically on the basis of the implications of our own research.

Regarding the second row, craft labor is an old-fashioned term; we don’t talk much about craft skills even in writing programs. But we’re moving to- ward this. Doris Sommer’s concept of cultural agency is a huge help; so is Martha Nussbaum on “creative capabilities”; so is John Warner’s idea of writ- ing as the struggle to think; so is Gayatri Chakravorty Spivak’s notion of read- ing as translation and translation as the “trace of the other.”59 So is Badiou’s “third historical sequence of the communist hypothesis” (equality, the poly- morphousness of human labor, politics without a coercive state).60 Whatever terms we use, they won’t change the fact that the acquisition of the ability to do something with thought and language changes the life we’re told that we are born into.

My general claim assumes that Arrighi is correct in seeing a hard limit to the current Western regime of accumulation and in claiming an inevitable transition out of it. Whether the U.S. economy does well or badly in the transition is an open question. In addition, sustainable uses of technology and energy resources will require us to scale up autonomous labor via mass access to self-governed interpretative practices. Large-scale self-management will in this scenario gradually change both manufacturing and service organizations— and will move the economy away from the energy-intensive replacement of people with machines and programming that has been the hallmark of the Western pathway for over two centuries. The current ideology of disruptive innovation impedes this kind of large-scale cultural expansion.

What is the university’s role in this transition out of the current cycle of late finance capitalism? A pivotal one. Autonomous interpretation is both the key to the transition and a key outcome of university practice. The strengths of the Industrious Revolution are specifically the strengths of university knowledge production rooted in combinations of technical and qualitative disciplines.

This all sounds quite pecuniary. In fact, the university’s public good goes far beyond helping the economy. The university’s core role is to cultivate mass intelligence. I have a more limited point here: the interpretative disciplines fight the sense of inevitable defeat at the hands of economics and technology. I’ve used Arrighi to sketch in the most simplistic way the very real possibility of reframing contemporary Western capitalism as a system at its limit. U.S. and similar societies will be asking the university to serve not only as a place of refuge but as a place that imagines an economy after disruptive innovation and provides the hybrid knowledges that can bring that into being.

#### Our alternative: Abolition Democracy. You should abolish competitive racial capitalism with the commitment to cooperative ownership and operation.

Bernard **HARCOURT** Isidor and Seville Sulzbacher Professor of Law and Professor of Political Science @ Columbia ‘**20** *For Coöperation and the Abolition of Capital Or, How to Get Beyond Our Extractive Punitive Society and Achieve a Just Society* p. 6-10

By contrast to Proudhon, I would not draw the line merely at possession. Possession is just another type of property right. It is simply another variety of theft.

No, contra Proudhon, I would abolish a particular kind of property: today, in the United States, it is capital that must be eradicated.

One of the greatest sources of evil in society today is capital, understood as the investor’s alienable stake in an enterprise in which the only true interest is to maximize the return regardless of the wellbeing of others.

What must be abolished today, then, is not property, but the kind of property constituted by capital.

Shares of stock, the transferrable equity of a corporation, the alienable shareholder’s stake of corporate finance: that is a major source of evil in today’s extractive capitalist economy.

Capital elevates selfish profit over human welfare. It detaches the owner of capital from any real investment in the lives of all those who work for or are associated with the enterprise. It turns the possessor of capital into a mere speculator on other people’s lives**.**

The ordinary stockholder has one primary interest: to maximize the return on their capital investment, to draw larger dividends, to sell their stock at a higher value. Their interest is to extract more from the enterprise via their equity stake; to squeeze out more from everyone who is associated with the enterprise; to eke out more from the workers; to manipulate share price through stock buy-backs and other devices; to inflate future prospects—in effect, to make out like a bandit, to make out like a thief!

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Definitions matter. By “capital,” I mean equity, shares of stock, in essence the alienable financial stake in a public corporation or enterprise. Capital is the transferable equity interest in an ongoing publicly traded enterprise.

This differs from other possible definitions of the term “capital.” Thomas Piketty, in his best-selling book, Capital in the Twenty-First Century, defines capital

as any non-human asset. Capital represents, for Piketty, wealth.4 To Katharina Pistor, in The Code of Capital, capital represents only a limited set of assets that are legally privileged: assets become capital when lawyers bestow on them certain attributes of priority, durability, universality, and convertibility.5 Karl Marx, much before them, defined capital specifically as the money received from the sale of commodities that is then used as a mode of production to buy other commodities, equipment, or labor.6

None of that is what I have in mind—though those definitions may well have their place in empirical, legal, or economic analyses. For my purposes, capital is defined in its corporate finance meaning: capital is transferrable ownership shares of publicly traded companies.

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Most people who own stocks today—whether directly or indirectly—hold them as a form of speculation to increase the overall return on their savings and to grow their wealth—if possible, to grow their wealth more than others, and more than the market, since that is the only way effectively to get richer, and richer than others.

But this is nothing more than gambling on other people’s livelihoods—more often than not, today, on other people’s misery. It is nothing more than an effort to extract wealth from an enterprise, from its consumers or workers, from all the people whose livelihoods depend on the business.

This kind of property—capital—has turned into a plague that has transformed ours into an extractive and punitive society. One marked by unconscionable (and growing) wealth inequality; by hyper-militarized policing used to enforce gross property inequalities; by a caste system that subjugates persons of color, building on the harrowing legacy of slavery and Jim Crow, of the genocide of Native peoples, of the age-long exploitation of Hispanic, Asian, and other migrants to this country.

This kind of property, capital, must now be abolished. \*\*\*

Whenever progress toward justice has occurred in history—however precariously—it has been achieved through limitations on kinds of property.

The abolition of slavery put an end to one kind of property: human chattel property.

The emancipation of women put an end to another kind of property: human marital property or coverture, a husband’s property in his wife.

The decline of feudalism, much earlier, put an end to serfdom: property relations that tied humans to land.

It is now time to abolish the kind of property, capital, that effectively ties human livelihood to equity.

Like those other kinds of property that were abolished, capital also bears a reprehensible relationship to human life, insofar as it is a form of speculation on the lives of others that ties their fates to share value.

It is only by decapitating this property that we can end the scourge of extractive capitalism and put in place a new political economic regime of coöperationism.

This ambition must be understood as continuing W.E.B. Du Bois’s project— and the promise—of Abolition Democracy.7

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The only way forward today is through a genuine legal, political, and economic revolution that replaces the logic of capital extraction with coöperative, mutualist, and non-profit enterprises.

The legal structure that grounds the corporation must be replaced with a new framework that equitably circulates the wealth generated from production and consumption.

The many of us who create, invent, produce, work, and serve others need to displace the few who extract and hoard capital, and put in place a new coöperationism that favors the equitable and sustainable distribution of economic growth and wealth creation.

These alternative legal forms have existed for centuries and surround us today. They include worker coöperatives for producing and manufacturing, credit unions for banking, housing coöperatives for living, mutuals for insuring, producer, retailer, and consumer coöperatives for commercial exchange, and non-profit organizations for good works and learning.

Coöperationism is also the only way to address head-on the global climate crisis**.** The goal of coöperation is not to maximize the extraction of capital, but to support and maintain all of the participants in the enterprise and to distribute wellbeing, which depends on an ecologically healthy environment. The logic, principles, and values of coöperationist arrangements can serve to slow down our consumption-at-all-cost society.

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A future based on coöperationism is no mere fantasy. Coöperationist enterprises surround us today and thrive. In many respects, they already outperform and outlast conventional publicly traded firms. They also often show themselves to be more resilient during economic downturns.

Existing coöperationist enterprises permeate the economy: Land O’Lakes,8 Sunkist,9 and Ocean Spray are producer coöperatives.10 State Farm and Liberty Mutual are mutual insurance companies.11 R.E.I. is a consumer coöperative, and Ace Hardware a retailer coöperative.12 Isthmus Engineering and Manufacturing in Madison,13 Cooperative Home Care in the Bronx,14 and AK Press in California are worker coöperatives.15 The Navy Federal Credit Union,16 with over $125 billion in assets and 8 million members, is a member credit union. And non-profit educational, cultural, and social institutions surround us.

Existing coöperationist enterprises can be as large as multinationals. The Mondragon coöperative consortium headquartered in Spain—a diversified enterprise manufacturing heavy equipment—employs over 70,000 workers and brings in annual revenues in the billions of euros.17

### cp – aid

#### The United States federal government, in coordination with relevant international actors, should:

#### increase development aid to at least $2.5 trillion per year for relevant developing countries, including in Latin America, the Middle East, and Africa;

#### increase funding for alleviating stress on the environment and global resource production; and

#### expand international food aid and at least double investments in agricultural and food research over the next 10 years.

#### Development aid solves the aff.

Gulati ’21 [Shreya; 4/26/21; Masters in Development Studies @ London School of Economics; “Priming the pump: Is development aid still relevant?”; <https://www.orfonline.org/expert-speak/priming-the-pump-is-development-aid-still-relevant/>; AS]

The past few decades have witnessed a gradual change in the purpose and nature of international development aid and assistance. Unlike in 1970s when the main purpose of aid was to solely foster economic growth, the contemporary polysemous notion of aid aims to accommodate several aspects of human well-being as enshrined in the Sustainable Development Goals (SDG) of the United Nations. The estimated ‘price tag’ for the realisation of these SDGs by 2030 would necessitate the mobilisation of US $2.5 trillion per year through Official Development Assistance (ODA) and private flows. On the other hand, the contending narratives of reducing ‘Aid Dependency’ in the Global South prompts us to evaluate the most fundamental question, ‘Is Development Aid still relevant?’ Thus, an evaluation of aid relevance becomes imperative on four accounts—aid effectiveness in terms of propelling tangible developmental outcomes, emergence of new donors in the Global South, composition of international capital flows, and change in the nature of aid from an economic to a political and security agenda.

An evaluation of the key debates in the international aid landscape

Major shifts in paradigms influence our perspective on development aid and determine its relevance. Tracing the historical evolution of aid suggests that till 1970s, the main purpose of aid was to fill resource and financial gaps and improve infrastructure to foster economic growth. This changed with the advent of the ‘basic needs’ and ‘redistribution with growth’ narratives, which informed the creation of the Millennium Development Goals (MDGs). This narrative viewed ‘human needs’ as ‘human rights’ and replaced the earlier paradigms that emphasised on the means (i.e. growth) rather than the end (i.e. well-being). Successively, the financial crises of 2007 and 2008 initiated attempts to search for a new ‘big idea’ under the umbrella of the ambitious Sustainable Development Goals (SDGs) in 2015. The estimated ‘price tag’ for the realisation of these SDGs by 2030 would necessitate the mobilisation of US $2.5 trillion per year through Official Development Assistance (ODA) and private flows. On the other hand, the contending narratives of reducing ‘Aid Dependency’ in the Global South prompts us to evaluate the most fundamental question, ‘Is Development Aid still relevant?’ This essay attempts to systematically evaluate the debates around four key issues—aid effectiveness, emergence of new donors, composition of aid, and the change in the nature of aid, from an economic to a political and security agenda in order to understand the relevance of aid in contemporary times.

The link between international aid and development

The hot debate between aid optimists and pessimists can provide a framework to evaluate aid effectiveness and relevance. There are several criticisms of aid stemming out of—the faulty architecture, mismanagement, volatile nature, opacity, high selectivity of geo-politically favorable regions, and the top-down hierarchical approach of international aid which result in context blind development projects. It is believed that aid to Africa is characterized by ‘authoritarian paternalism’ and ensures that Africa remains perpetually in an infant-like state. On the contrary, proponents of aid would suggest that aid is instrumental in uplifting the standard of living and setting economic progress into motion. Also, a ‘big-push’ is required to overcome the obstacles of poor agricultural productivity, poor health, and education, etc. to overcome the impediments to growth that capture these countries in a poverty trap. Consider Botswana, Africa’s growth miracle, it has received more aid per person than an average low- income country by eight times. More recently, the income per capita in large recipient countries like Mozambique and Uganda has doubled since 1990s. Moreover, since 1960s, the average real income of Egypt has increased by three times while the infant mortality rate has astonishingly dropped from 189 to 35 per 1,000 live births. This has been corresponded by the doubling of literacy rates in the country. Since ‘evidence beats rhetoric’, it prods us to think that aid is still relevant in terms of its positive effects on growth and poverty reduction.

The emergence of ‘new donors’

The relevance of developmental aid has increased with the emergence of new donors like- Brazil, India, and China outside the Development Assistance Committee (DAC), marking a silent revolution in the arena of development aid and assistance. Debates in this sphere highlight the contending narratives of neo-imperialism of rising powers and South-South cooperation. On one hand, it is noted that aid from new donors like Brazil and China are often decontextualized and propagate a set of alien prescriptions incongruent to the realities. In Africa, Chinese development aid upholds the principle of ‘non-interference’ and ‘non-conditionality’ in the domestic economico-politico affairs of the recipient country. However, it deploys economic restrictions by tying the contract with the exclusive use of Chinese labour and equipment. On the other hand, the misperception of China as a rogue donor stems from the inability to distinguish China’s ODA from Other Official Flows (OOF). While the former is provided at a concessional rate to advance political agendas, the latter is provided at a near market rate to promote economic interests. Moreover, China is merely pursuing a strategy of influence as opposed to conditionality and interference. The emergence of new donors has also enabled developing countries to look beyond the DAC for technical and financial assistance and questioned ideals embodied within the Washington Consensus. Therefore, on balance, the addition of new players in the development field has increased the relevance of aid by causing a shift in the global power structure, reducing dependency, and increasing the amount of aid at the developing countries’ disposal.

Composition of international capital flows

Since 1995, remittances have overtaken ODA as one of the largest sources of capital inflow to developing economies which questions the viability of development aid in light of the enormous availability of remittances (Refer to Figure 1). One school of thought suggests that remittances are more effective in fostering savings and investment, as in the case of Sub- Saharan Africa. Also, unlike remittances, aid has negative effects on growth as it weakens the capacity of the state to collect revenue (the Dutch disease) and dampens the tradable goods manufacturing sector through overvaluation of currency. The other school of thought suggests that official aid is more effective in bolstering economic growth because remittances face the problem of uncertainty due to capital restrictions and are often undocumented. The third camp indicates the complementary nature of the two where an increase in remittances could enhance the growth effect of official aid. It could be said that unlike remittances, aid channelizes funds in priority sectors and is more manageable through bureaucratic administration. It also plays an important role in pulling households above a threshold income level to ensure that additional remittances are invested productively to enhance growth, thus, hinting towards the complementary relationship of aid and remittances. Therefore, the relevance of aid is not challenged by the growing amount of remittances.

Transformation in the nature of aid

Aid is a polysemous term and has transformed from being an economic agenda to a political and security agenda. It is often suggested that economic transformative goals can be realized when seen as being embedded in political realities. However, the post-9/11 declaration of ‘war on terror’ has increasingly linked developmental problems in the Global South to security issues to the Global North, a conceptualization which can have adverse effects on global security and global poverty reduction. While securitisation of aid is highly contentious, it has led to the channelization of 67 percent of ODA to fragile contexts. This is evident from the increase of US aid to Iraq from 5 percent to 25 percent during the war and the deployment of Provincial Reconstruction Teams for improving stability, protection, and security systems. Moreover, aid under the Commander’s Emergency Reconstruction Program was used in 11,000 development projects. Therefore, while there has been a change in the nature of aid from an economic to a political and security agenda, there has also been a corresponding increase in the channelization of ODA to fragile contexts.

Can development aid be ‘made’ relevant?

Development aid can be ‘made’ relevant and effective by undertaking various political, social, and economic measures. This can be understood by the measures taken by Rwanda and South Korea. In Rwanda, the Economic Development and Poverty Reduction Strategy was devised to decrease aid dependency from 86 percent in 2000 to 43 percent in 2012. This was achieved by effective public finance management, accountability of aid use through target setting and result achievement and bureaucratic transparency. Concomitantly, there was a large decline in infant, maternal, and malaria-related mortality and increase in access to health and education.

South Korea also provides a blue-print for effective aid utilisation which led to the rapid economic recovery under the Syngman Rhee regime and modernisation under General Park Chung Hee. About 87 percent of the total aid was channelized towards the industrial sector—particularly mining, transport and manufacturing. State played an important role in the military-industry nexus and military aid encouraged development in conflict-free areas. The South Korean experience resonates with the idea that aid works where there are good policies and institutional quality.

In conclusion, an attempt has been made here to establish the relevance of aid by carefully analysing four factors—aid effectiveness evaluated in terms of propelling economic growth, the emergence of new donors like Brazil, India, and China, the changing composition of international capital flows from the Global North to the Global South and the changing nature of aid- from economic to security and political terms. Aid still seems relevant because—there’s overwhelming evidence of the positive effect of aid on growth; aid from emerging economies changes the global power structure and reduces the dependency of the developing countries on the developed countries. The complementary relationship between aid and remittances can facilitate the achievement of tangible development outcomes and securitisation of aid can be helpful in providing assistance to fragile contexts. Drawing from examples of Rwanda and South Korea, it becomes clear that good policies, institutions as well as bureaucratic accountability and transparency are able to ‘make’ aid relevant and effective.

### da – court politics

#### The court has taken up a challenge to EPA climate authority under the non-delegation doctrine, but will refrain from a broad decision because of fear of public backlash

Smith 21 – Lexi Smith, former advisor to the Mayor of Boston on climate policy, currently JD candidate at Yale Law School, “Supreme Court to weigh EPA authority to regulate greenhouse pollutants,” 11/7/21, https://yaleclimateconnections.org/2021/11/supreme-court-to-weigh-epa-authority-to-regulate-greenhouse-pollutants/

The Supreme Court agreed to hear a case, West Virginia v. EPA, challenging the Environmental Protection Agency’s authority to regulate greenhouse gases as pollutants.

The case presents an opportunity for the Court to overturn key climate precedents and potentially change the relationship between federal agencies and Congress. The decision could have far-reaching consequences for federal climate policy and perhaps even for federal agencies more broadly.

How did we get here, how far might the Court go, and what consequences might the case have for climate change regulation and executive branch authority?

EPA’s authority to regulate greenhouse gases: Massachusetts v. EPA

In a groundbreaking decision in 2007, the Supreme Court held 5-4 that EPA has authority to regulate greenhouse gases under the Clean Air Act. During the Bush administration, environmentalists petitioned the agency to issue a rule on the regulation of greenhouse gases. The Bush EPA denied the petition, and environmental groups, states, and local governments challenged that decision in court. The Supreme Court’s decision turned on whether greenhouse gases like carbon dioxide fall under the definition of “air pollutants,” which the Clean Air Act authorizes EPA to regulate.

The Court concluded that carbon dioxide and other greenhouse gases are air pollutants under the Clean Air Act’s definition, and also noted that the EPA cannot refuse to regulate greenhouse gases for policy reasons outside the Clean Air Act itself, as the Bush administration had done. The Court ordered EPA to either issue a finding that greenhouse gases are dangerous to the public health and welfare, the first step toward regulation, or to give a reasoned explanation for why greenhouse gases do not meet the threshold of endangerment outlined in the Clean Air Act. The agency ultimately found that greenhouse gases are dangerous to the public health and welfare, which formed the foundation for EPA’s regulation of greenhouse gases.

That Supreme Court’s ruling in Massachusetts v. EPA was a 5-4 decision, and environmental advocates leading up to it were not at all certain that they would win the case. In fact, the case was controversial at the time because many environmentalists worried that it would result in a harmful adverse ruling. The four liberals on the Court in 2007, Justices Souter, Ginsburg, Breyer, and Stevens, were joined by Justice Kennedy to form a majority. But Chief Justice Roberts and Justices Thomas, Scalia, and Alito dissented.

Chief Justice Roberts’s dissent (joined by Justices Scalia, Thomas, and Alito) argued that the states, local governments, and environmental groups challenging the EPA should not have been allowed to sue in the first place because they lacked standing: One requirement of standing is a “concrete and particularized” injury. Chief Justice Roberts argued that harms from climate change affect everyone, so the injury in question was not sufficiently individualized and personal to support a lawsuit.

Justice Scalia’s dissent (joined by Chief Justice Roberts and Justices Thomas and Alito) focused on the Clean Air Act and argued that the Act is meant to address conventional air pollutants that harm human health directly through exposure, such as inhalation. He maintained that the Act was not meant to address the broader issue of climate change, and that greenhouse gases therefore did not fall under the definition of “air pollutants.”

Of course, the Supreme Court’s composition has changed significantly since 2007. With a 6-3 conservative-liberal divide, the conservative dissenters’ objections to Massachusetts v. EPA may now represent the majority view.

The ‘worst case scenario’: What could West Virginia v. EPA bring?

There are reasons to expect that the Court will show restraint when it hears the upcoming challenge to EPA’s authority in the West Virginia v. EPA case. But first, let’s walk through the worst potential outcomes from the perspective of climate advocates.

As suggested above, the Court could overturn its decision in Massachusetts v. EPA and effectively take away EPA’s authority to regulate greenhouse gases. With such a ruling, EPA could no longer issue rules directly regulating greenhouse gas emissions, and past greenhouse gas rules issued under its Clean Air Act authority would be invalid.

Richard Lazarus, a Harvard Law School professor who recently wrote a book about Massachusetts v. EPA, called the Court’s decision to hear West Virginia v. EPA “the equivalent of an earthquake around the country for those who care deeply about the climate issue.”

The consequences of the case could even reach far beyond climate regulation. The case presents an opportunity for the Court to revive the “nondelegation doctrine,” a mostly defunct principle that purported to limit Congress’s authority to delegate legislative power to executive branch agencies. The doctrine comes from Article I of the Constitution, which says that “[a]ll legislative powers herein granted shall be vested in a Congress of the United States.” The Supreme Court has not used the nondelegation doctrine to strike down agency action in more than 80 years.

Implications of enforcing nondelegation doctrine

The practical consequences of enforcing the nondelegation doctrine would debilitate the current system of executive branch rulemaking and regulation, subject to judicial review and congressional oversight. If Congress were to do all the rulemaking currently done by EPA, for instance, environmental regulation would become virtually impossible to enact. Congress in that case would have to make thousands of granular and technical decisions about environmental policy, even though we know it can barely pass major legislation as it is.

More broadly, nondelegation could mean that much of the work done by all federal agencies would have to be done instead by a clearly ill-equipped Congress. Even without current gridlock on Capitol Hill, the sheer volume of policy decisions Congress would have to make would be completely unworkable.

While this outcome sounds unlikely and illogical to those who support federal agency regulation, several of the current Justices at various times have expressed interest in weakening the administrative state and deregulating industry. For them, the nondelegation doctrine may be an attractive principle.

Notably, for instance, in a case called Gundy v. United States in 2019, four of the conservatives (Chief Justice Roberts and Justices Gorsuch, Thomas, and Alito) showed a willingness to revisit the nondelegation doctrine. At that time, Justice Kennedy had retired, and Justice Kavanaugh had not yet been confirmed, so the case was 4-4. With Justices Kavanaugh and Barrett now on the court, there appears to be some chance that reviving the nondelegation doctrine would garner the support of five or even six Justices.

The petitioners – West Virginia and North American Coal Corporation – that brought the appeal in West Virginia v. EPA explicitly suggested that this case could be an opportunity for the Court to reconsider nondelegation: “Nothing in the statute [the Clean Air Act] approaches the clear language Congress must use to assign such vast policymaking authority – assuming, of course, it can delegate enormous powers like these in the first place.”

In short, the worst-case scenario from the perspective of climate action advocates is that the Supreme Court takes away the EPA’s authority to regulate greenhouse gases and also revives the nondelegation doctrine, which would strip most federal agencies of much of their regulatory power.

Reasons for a less sweeping outcome

Let’s now consider some reasons the Court may be unlikely to completely overturn Massachusetts v. EPA or fully embrace the nondelegation doctrine.

First, Chief Justice Roberts, and increasingly Justices Kavanaugh and Gorsuch, appear keenly mindful and protective of the Court’s reputation and legacy. They have tended to look out for the public perception of the Court and avoid decisions that would have provoked especially strong public backlash. Recent examples include upholding the Affordable Care Act and civil rights protections for the LGBT community.

These cautious impulses may be heightened by the looming threat of court reform, which could gain more momentum if a particularly controversial conservative decision were issued. Given the strong public backlash likely to result from a decision taking away EPA authority to regulate greenhouse gases and/or reviving the nondelegation doctrine, the Court may proceed with caution.

#### The plan’s liberal ruling provides breathing room for a conservative decision on non-delegation

Bazelon 15 – Emily Bazelon, staff writer for the New York Times Magazine, Truman Capote Fellow at Yale Law School, “Marriage of Convenience,” 1/27/2015, https://www.nytimes.com/2015/02/01/magazine/marriage-of-convenience.html

More significant, if the court is seen as transcending partisan politics, Roberts will probably have more chances, over time, to accomplish what appears to be his primary long-term goal: to move the court in a more conservative direction on a range of issues. In particular, Roberts's brand of conservatism has manifested itself in two main areas. The first is in decisions that are sympathetic to corporations. A 2013 study found that he had been more likely to side with businesses than any justice in the previous 65 years, except for Samuel Alito. The second is in decisions that are antagonistic toward the idea of taking race into account in shaping law or policy. Roberts has voted repeatedly against affirmative action, writing last year that it was not hard to conclude that racial preferences may ''do more harm than good.'

When Roberts was nominated to be chief justice 10 years ago by President George W. Bush, he exuded calm neutrality at his confirmation hearing, comparing judges to umpires who call balls and strikes. At the end of his first term, he emphasized the importance of the court's ''credibility and legitimacy as an institution,'' in an interview with the George Washington University law professor Jeffrey Rosen.

But in 2010, Roberts supplied the fifth vote for the court's remarkably unpopular ruling in Citizens United. By striking limits that Congress set on campaign spending by corporations, the court was perceived as favoring the interests of the wealthy. The court's approval rating fell 10 percentage points, to barely break even, from 61 percent.

Since then, the court has fared better with the public when it pairs conservative decisions with progressive ones. And same-sex marriage is part of that equation. In 2013, the term ended with a splashy ruling in which five justices -- Roberts not among them -- struck down part of the Defense of Marriage Act, which restricted federal benefits for spouses to male-female couples. This decision came one day after the court gutted a central component of the Voting Rights Act, in a 5-to-4 decision written by Roberts.

#### Domestic U.S. climate regulations are key to avoiding dangerous climate change globally

Friedman 21 – Lisa Friedman, climate and energy reporter for the New York Times, “At Climate Talks, Biden Will Try to Sell American Leadership to Skeptics,” 10/31/21, https://www.nytimes.com/2021/10/31/climate/climate-change-biden-cop26.html

If Mr. Biden lacks a reliable plan for the United States to significantly cut its emissions this decade, it would “send a signal” to other major emitters that America is still not serious, she said. And it would be difficult for Mr. Biden to urge other countries to take more meaningful steps away from fossil fuels, others said.

“Some of these countries are saying, ‘Oh yeah, but look at what you did guys, and now you’re coming back and demanding after you were away for the past four years?’” said Andrea Meza, the environment and energy minister of Costa Rica.

Tensions were already running high ahead of the summit. China, currently the world’s top emitter, announced a new target on Thursday that was supposed to be a more ambitious plan to curb its pollution but is virtually indistinguishable from what it promised six years ago. President Xi Jinping has indicated he will not attend the summit in person, as have presidents of two other top polluting nations, Vladimir V. Putin of Russia and Jair Bolsonaro of Brazil.

Democrats close to President Biden said he is painfully aware that the credibility of the United States is on the line in Glasgow, particularly after a botched withdrawal from Afghanistan this summer and a dust-up with France over a military submarine contract.

Representative Ro Khanna, Democrat of California, met with the president recently to discuss how to salvage Mr. Biden’s legislative climate agenda.

“He indicated that many world leaders like Putin and Xi are questioning the capability of American democracy to deliver, so we need to show them that we can govern,” Mr. Khanna said.

Mr. Biden, who is accompanied in Glasgow by 13 Cabinet members, insists they have a story of success to tell, starting with his decision on his first day on the job to rejoin the 2015 Paris Agreement, an accord of nearly 200 countries to fight climate change, from which Mr. Trump had withdrawn the United States.

Since then, Mr. Biden has taken several steps to cut emissions, including restoring and slightly strengthening auto pollution regulations to levels that existed under President Barack Obama but were weakened by Mr. Trump. He has taken initial steps to allow the development of large-scale wind farms along nearly the entire coastline of the United States, and last month finalized regulations to curb the production and use of potent planet-warming chemicals called hydrofluorocarbons, which are used in air-conditioners and refrigerators.

But Mr. Biden is likely to emphasize the $555 billion that he wants Congress to approve as part of a huge spending bill. The climate provisions would promote wind and solar power, electric vehicles, climate-friendly agriculture and forestry programs, and a host of other clean energy programs. Together, those programs could cut the United States’ emissions up to a quarter from 2005 levels by 2030, analysts say.

That’s about halfway to Mr. Biden’s goal of cutting the country’s emissions 50 to 52 percent below 2005 levels. “We go in with a fact pattern that is pretty remarkable, as well as real momentum,” Ali Zaidi, the deputy White House national climate adviser, told reporters.

Mr. Biden plans to release tough new auto pollution rules designed to compel American automakers to ramp up sales of electric vehicles so that half of all new cars sold in the United States are electric by 2030, up from just 2 percent this year. His top appointees have also promised new restrictions on carbon dioxide emissions from coal and gas-fired power plants. And earlier this year, Biden administration officials said they would roll out a draft rule by September to regulate emissions of methane, a powerful planet-warming gas that leaks from existing oil and natural gas wells.

So far, the administration has not offered drafts of any of those rules. Several administration sources said that delay has been due in part to staff shortages, as well as an effort not to upset any lawmakers before they vote on Mr. Biden’s legislative agenda.

But time is running out. It can take years to complete work on such complex and controversial government policies, and several are likely to face legal challenges. On Friday, the U.S. Supreme Court, which has a conservative majority, said it would review the E.P.A.’s authority to regulate greenhouse gas emissions, potentially complicating Mr. Biden’s plans.

The U.S. track record

For three decades, American politics have complicated global climate efforts.

Former President Bill Clinton, a Democrat, joined the first global effort to tackle climate change, the 1997 Kyoto Protocol. His Republican successor, President George W. Bush, renounced the treaty. Mr. Obama, another Democrat, joined the 2015 Paris Agreement and rolled out dozens of executive orders to help meet his promises to cut emissions. His Republican successor, Mr. Trump, abandoned the accord, repealed more than 100 of Mr. Obama’s regulations and took steps to expand fossil fuel drilling and mining.

Mr. Biden is facing similar resistance. No Republicans in Congress back his current climate effort. Representative Frank Lucas of Oklahoma, the top Republican on the House science committee, said the international community should be skeptical of the Biden administration’s promises. “I think they’ll roll their eyes just as people will continue to do in the United States,” Mr. Lucas said.

The president has also struggled to win over two pivotal players within his own party. Senator Joe Manchin III, Democrat of West Virginia, has been steadfastly opposed to a central feature of Mr. Biden’s climate plan: a program that would have rapidly compelled power plants to switch from burning coal, oil and gas, to using wind, solar and other clean energy. Mr. Manchin’s state is a top coal and gas producer, and he has personal financial ties to the coal industry. He was able to kill the provision. Senator Kyrsten Sinema, Democrat of Arizona, has also withheld her support, saying she wants a more modest spending bill.

Environmental leaders said America’s past inconsistency on climate action makes it more important for Mr. Biden to succeed now.

“The U.S. has had to be dragged kicking and screaming to the climate table and has slowed down action that was needed to tackle the climate crisis,” said Mohamed Adow, director of Power Shift Africa, a Nairobi-based environmental think tank. “That is the legacy Biden has to deal with.”

What’s at stake

Average global temperatures have already risen about 1.1 degrees Celsius (2.7 degrees Fahrenheit), compared with preindustrial levels, locking in an immediate future of rising seas, destructive storms and floods, ferocious fires and more severe drought and heat.

At least 85 percent of the planet’s population has already begun to experience the effects of climate change, according to research published in the journal Nature Climate Change. This summer alone, more than 150 people died in violent flooding in Germany and Belgium. In central China, the worst flooding on record displaced 250,000 people. In Siberia, summer temperatures reached as high as 100 degrees, feeding enormous blazes that thawed what was once permanently frozen ground.

“Clearly, we are in a climate emergency. Clearly, we need to address it,” Patricia Espinosa, head of the U.N. climate agency, said Sunday as she welcomed delegates to Glasgow. “Clearly, we need to support the most vulnerable to cope. To do so successfully, greater ambition is now critical.”

If the planet heats even a half-degree more, it could lead to water and food shortages, mass extinctions of plants and animals, and more deadly heat and storms, scientists say.

#### Unchecked warming causes extinction

Peter Kareiva 18, Ph.D. in ecology and applied mathematics from Cornell University, director of the Institute of the Environment and Sustainability at UCLA, Pritzker Distinguished Professor in Environment & Sustainability at UCLA, et al., September 2018, “Existential risk due to ecosystem collapse: Nature strikes back,” Futures, Vol. 102, p. 39-50

In summary, six of the nine proposed planetary boundaries (phosphorous, nitrogen, biodiversity, land use, atmospheric aerosol loading, and chemical pollution) are unlikely to be associated with existential risks. They all correspond to a degraded environment, but in our assessment do not represent existential risks. However, the three remaining boundaries (climate change, global freshwater cycle, and ocean acidification) do pose existential risks. This is because of intrinsic positive feedback loops, substantial lag times between system change and experiencing the consequences of that change, and the fact these different boundaries interact with one another in ways that yield surprises. In addition, climate, freshwater, and ocean acidification are all directly connected to the provision of food and water, and shortages of food and water can create conflict and social unrest.

Climate change has a long history of disrupting civilizations and sometimes precipitating the collapse of cultures or mass emigrations (McMichael, 2017). For example, the 12th century drought in the North American Southwest is held responsible for the collapse of the Anasazi pueblo culture. More recently, the infamous potato famine of 1846–1849 and the large migration of Irish to the U.S. can be traced to a combination of factors, one of which was climate. Specifically, 1846 was an unusually warm and moist year in Ireland, providing the climatic conditions favorable to the fungus that caused the potato blight. As is so often the case, poor government had a role as well—as the British government forbade the import of grains from outside Britain (imports that could have helped to redress the ravaged potato yields).

Climate change intersects with freshwater resources because it is expected to exacerbate drought and water scarcity, as well as flooding. Climate change can even impair water quality because it is associated with heavy rains that overwhelm sewage treatment facilities, or because it results in higher concentrations of pollutants in groundwater as a result of enhanced evaporation and reduced groundwater recharge. Ample clean water is not a luxury—it is essential for human survival. Consequently, cities, regions and nations that lack clean freshwater are vulnerable to social disruption and disease.

Finally, ocean acidification is linked to climate change because it is driven by CO2 emissions just as global warming is. With close to 20% of the world’s protein coming from oceans (FAO, 2016), the potential for severe impacts due to acidification is obvious. Less obvious, but perhaps more insidious, is the interaction between climate change and the loss of oyster and coral reefs due to acidification. Acidification is known to interfere with oyster reef building and coral reefs. Climate change also increases storm frequency and severity. Coral reefs and oyster reefs provide protection from storm surge because they reduce wave energy (Spalding et al., 2014). If these reefs are lost due to acidification at the same time as storms become more severe and sea level rises, coastal communities will be exposed to unprecedented storm surge—and may be ravaged by recurrent storms.

A key feature of the risk associated with climate change is that mean annual temperature and mean annual rainfall are not the variables of interest. Rather it is extreme episodic events that place nations and entire regions of the world at risk. These extreme events are by definition “rare” (once every hundred years), and changes in their likelihood are challenging to detect because of their rarity, but are exactly the manifestations of climate change that we must get better at anticipating (Diffenbaugh et al., 2017). Society will have a hard time responding to shorter intervals between rare extreme events because in the lifespan of an individual human, a person might experience as few as two or three extreme events. How likely is it that you would notice a change in the interval between events that are separated by decades, especially given that the interval is not regular but varies stochastically? A concrete example of this dilemma can be found in the past and expected future changes in storm-related flooding of New York City. The highly disruptive flooding of New York City associated with Hurricane Sandy represented a flood height that occurred once every 500 years in the 18th century, and that occurs now once every 25 years, but is expected to occur once every 5 years by 2050 (Garner et al., 2017). This change in frequency of extreme floods has profound implications for the measures New York City should take to protect its infrastructure and its population, yet because of the stochastic nature of such events, this shift in flood frequency is an elevated risk that will go unnoticed by most people.

4. The combination of positive feedback loops and societal inertia is fertile ground for global environmental catastrophes.

Humans are remarkably ingenious, and have adapted to crises throughout their history. Our doom has been repeatedly predicted, only to be averted by innovation (Ridley, 2011). However, the many stories of human ingenuity successfully addressing existential risks such as global famine or extreme air pollution represent environmental challenges that are largely linear, have immediate consequences, and operate without positive feedbacks. For example, the fact that food is in short supply does not increase the rate at which humans consume food—thereby increasing the shortage. Similarly, massive air pollution episodes such as the London fog of 1952 that killed 12,000 people did not make future air pollution events more likely. In fact it was just the opposite—the London fog sent such a clear message that Britain quickly enacted pollution control measures (Stradling, 2016). Food shortages, air pollution, water pollution, etc. send immediate signals to society of harm, which then trigger a negative feedback of society seeking to reduce the harm.

In contrast, today’s great environmental crisis of climate change may cause some harm but there are generally long time delays between rising CO2 concentrations and damage to humans. The consequence of these delays are an absence of urgency; thus although 70% of Americans believe global warming is happening, only 40% think it will harm them (http://climatecommunication.yale.edu/visualizations-data/ycom-us-2016/). Secondly, unlike past environmental challenges, the Earth’s climate system is rife with positive feedback loops. In particular, as CO2 increases and the climate warms, that very warming can cause more CO2 release which further increases global warming, and then more CO2, and so on. Table 2 summarizes the best documented positive feedback loops for the Earth’s climate system. These feedbacks can be neatly categorized into carbon cycle, biogeochemical, biogeophysical, cloud, ice-albedo, and water vapor feedbacks. As important as it is to understand these feedbacks individually, it is even more essential to study the interactive nature of these feedbacks. Modeling studies show that when interactions among feedback loops are included, uncertainty increases dramatically and there is a heightened potential for perturbations to be magnified (e.g., Cox, Betts, Jones, Spall, & Totterdell, 2000; Hajima, Tachiiri, Ito, & Kawamiya, 2014; Knutti & Rugenstein, 2015; Rosenfeld, Sherwood, Wood, & Donner, 2014). This produces a wide range of future scenarios.

Positive feedbacks in the carbon cycle involves the enhancement of future carbon contributions to the atmosphere due to some initial increase in atmospheric CO2. This happens because as CO2 accumulates, it reduces the efficiency in which oceans and terrestrial ecosystems sequester carbon, which in return feeds back to exacerbate climate change (Friedlingstein et al., 2001). Warming can also increase the rate at which organic matter decays and carbon is released into the atmosphere, thereby causing more warming (Melillo et al., 2017). Increases in food shortages and lack of water is also of major concern when biogeophysical feedback mechanisms perpetuate drought conditions. The underlying mechanism here is that losses in vegetation increases the surface albedo, which suppresses rainfall, and thus enhances future vegetation loss and more suppression of rainfall—thereby initiating or prolonging a drought (Chamey, Stone, & Quirk, 1975). To top it off, overgrazing depletes the soil, leading to augmented vegetation loss (Anderies, Janssen, & Walker, 2002).

Climate change often also increases the risk of forest fires, as a result of higher temperatures and persistent drought conditions. The expectation is that forest fires will become more frequent and severe with climate warming and drought (Scholze, Knorr, Arnell, & Prentice, 2006), a trend for which we have already seen evidence (Allen et al., 2010). Tragically, the increased severity and risk of Southern California wildfires recently predicted by climate scientists (Jin et al., 2015), was realized in December 2017, with the largest fire in the history of California (the “Thomas fire” that burned 282,000 acres, https://www.vox.com/2017/12/27/16822180/thomas-fire-california-largest-wildfire). This catastrophic fire embodies the sorts of positive feedbacks and interacting factors that could catch humanity off-guard and produce a true apocalyptic event. Record-breaking rains produced an extraordinary flush of new vegetation, that then dried out as record heat waves and dry conditions took hold, coupled with stronger than normal winds, and ignition. Of course the record-fire released CO2 into the atmosphere, thereby contributing to future warming.

Out of all types of feedbacks, water vapor and the ice-albedo feedbacks are the most clearly understood mechanisms. Losses in reflective snow and ice cover drive up surface temperatures, leading to even more melting of snow and ice cover—this is known as the ice-albedo feedback (Curry, Schramm, & Ebert, 1995). As snow and ice continue to melt at a more rapid pace, millions of people may be displaced by flooding risks as a consequence of sea level rise near coastal communities (Biermann & Boas, 2010; Myers, 2002; Nicholls et al., 2011). The water vapor feedback operates when warmer atmospheric conditions strengthen the saturation vapor pressure, which creates a warming effect given water vapor’s strong greenhouse gas properties (Manabe & Wetherald, 1967).

Global warming tends to increase cloud formation because warmer temperatures lead to more evaporation of water into the atmosphere, and warmer temperature also allows the atmosphere to hold more water. The key question is whether this increase in clouds associated with global warming will result in a positive feedback loop (more warming) or a negative feedback loop (less warming). For decades, scientists have sought to answer this question and understand the net role clouds play in future climate projections (Schneider et al., 2017). Clouds are complex because they both have a cooling (reflecting incoming solar radiation) and warming (absorbing incoming solar radiation) effect (Lashof, DeAngelo, Saleska, & Harte, 1997). The type of cloud, altitude, and optical properties combine to determine how these countervailing effects balance out. Although still under debate, it appears that in most circumstances the cloud feedback is likely positive (Boucher et al., 2013). For example, models and observations show that increasing greenhouse gas concentrations reduces the low-level cloud fraction in the Northeast Pacific at decadal time scales. This then has a positive feedback effect and enhances climate warming since less solar radiation is reflected by the atmosphere (Clement, Burgman, & Norris, 2009).

The key lesson from the long list of potentially positive feedbacks and their interactions is that runaway climate change, and runaway perturbations have to be taken as a serious possibility. Table 2 is just a snapshot of the type of feedbacks that have been identified (see Supplementary material for a more thorough explanation of positive feedback loops). However, this list is not exhaustive and the possibility of undiscovered positive feedbacks portends even greater existential risks. The many environmental crises humankind has previously averted (famine, ozone depletion, London fog, water pollution, etc.) were averted because of political will based on solid scientific understanding. We cannot count on complete scientific understanding when it comes to positive feedback loops and climate change.

## development advantage

### development – 1nc

#### Cartels are down.

Alain Verbeke & Caroline Buts 21, – 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, “The Not So Brilliant Future of International Cartels,” Management and Organization Review, Cambridge University Press, 8/17/2021, 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.

1. **Treble damages don’t deter.**

**Connor, 15** -- Purdue University American Antitrust Institute fellow

[John M. Connor, Purdie professor emeritus; and Robert H. Lande, Venable Professor of Law, University of Baltimore School of Law; and a Director of the American Antitrust Institute, "Not Treble Damages: Cartel Recoveries Are Mostly Less Than Single Damages," Iowa Law Review, 100 Iowa L. Rev., 2015, https://ilr.law.uiowa.edu/print/volume-100-issue-5/not-treble-damages-cartel-recoveries-are-mostly-less-than-single-damages/, accessed 10-16-2021]

**Not Treble Damages**: Cartel Recoveries Are Mostly **Less Than Single Damages**

**In theory**, victims of antitrust violations receive treble damages. **In practice**, however, **almost every** successful antitrust damages action settles. Because final verdicts in antitrust cases are exceptional, it may be more accurate to describe the antitrust damages level not as “treble” damages, but as the average or median percentage of damages successful antitrust cases actually settle for.

Until now the actual average or median size of antitrust settlements has only been a matter of speculation. To bring **empirical analysis** to this issue, we assembled a sample of 71 cartels for which we could find the necessary information. We believe that the sample includes **every** completed private U.S. cartel case since 1990. For each cartel a neutral scholar calculated the firms’ United States overcharges. We compared these results to the damages secured in the private cases filed in the United States against these cartels. We find that the victims of only 14 of the 71 cartels (20%) recovered their initial damages (or more) in settlement; of these, only seven (10%) received at least double damages. The rest—the victims in 57 cases—received less than their initial damages. Four received less than 1% of their damages and 12 received less than 10%. Overall, the median average settlement was 37% of single damages. Because the distribution of settlement percentages is so skewed, the weighted mean (a figure that weights settlements according to their sales) is much lower (19%) than the unweighted mean settlement of 66% (which gives equal weights to the cartels that operated in large markets and those that operated in small markets), because plaintiffs tend to be rewarded relatively poorly in the biggest cases.

Our analysis of the “Recovery Ratios” (i.e., size of antitrust settlements relative to damages) will proceed in the following parts. Part II briefly explains why almost every antitrust case settles. Part III analyzes whether these settlements are likely to be at the “right” levels. Part IV analyzes our sample of cartel settlements and the size of the damages recovered by plaintiffs in these cases. Part V shows that both the deterrence and the compensation goals of antitrust **necessitate damages** that **significantly exceed** the **violations**’ actual damages. Finally, in Part VI, we present some conclusions and implications of our work. Throughout this Essay we will use cartels as an example, although we also will discuss how these results might apply to different types of antitrust violations.

II. Almost Every Successful Antitrust Damages Action Settles

Almost every successful antitrust damage action settles. We expect this to happen. We expect that most parties would settle for a sum that might be expressed as the discounted present value of the expected probabilities that various recovery amounts would constitute the final verdict if the case went to trial and survived appeal. Of course, this would be true only if a number of conditions held, including rationality on the parts of both plaintiffs and defendants, adequate and symmetric information, risk neutrality, an equal view of the strength of the plaintiffs’ case, and no compelling short-term need on the part of either party. If these assumptions hold, and if the parties share an assessment of the likely underlying parameters, then—in light of the extreme cost, risk, and time involved in litigation—both parties have a strong incentive to settle.

We know of no reliable data on the percentage of antitrust cases that settle or that go to final verdict, either for cartels or for other types of antitrust cases. We do know, however, that final verdicts in cartel cases are extremely rare. In an earlier study, we searched antitrust cases since 1890 for final verdicts in cartel damages actions that calculated an overcharge amount and were not overturned on appeal. We found only 25. Our search surely missed cases, and final verdicts in other areas of antitrust might well be more common. But we safely can say that final verdicts in damages cases are unusual.

Although we do not know what proportion of private cartel cases go to final verdict, we do know that virtually every filed U.S. criminal cartel case is followed by or accompanied by at least one private damages action. Thus, although we do not know the percentage of filed damages actions litigated to a final verdict, an upper bound on this figure can be calculated very approximately by dividing the number of final victories we found—25—by the number of criminal cartel cases filed during the same time period: 2569. This crude approximation indicates that at most perhaps only 1% of filed cartel damages cases have been litigated to a verdict that stands up on appeal. Because many private damages actions are filed even though no related criminal case is filed, and because often more than one damages case is filed against a cartel, this percentage is a high estimate. Nevertheless, this indicates that, as a very rough approximation, perhaps **99%** of filed damages actions were dismissed or settled.

By contrast, a lower bound on the percentage of cartel damages actions that settle can be computed by dividing the total number of final cartel verdicts by the total number of antitrust cases filed during the same (1890 to 2004) time period: approximately 40,000. This second rough estimate suggests that, if every private case had been a damages action against a cartel, only perhaps .06% of the private cases would result in a final verdict. Interestingly, if cartel cases historically have constituted 16% of all private cases filed, our two approximations would be roughly equivalent. Regardless of the actual percentage, however, it is safe to conclude that final verdicts are a tiny percentage of the total damages actions filed against cartels. The overwhelming majority of damages actions settle or are dismissed.

Even if most of the meritorious damages cases settle, we naturally would not expect many to settle for **even close to treble** damages. The next Part explores whether antitrust settlements are likely to be greater or less than the “right” amount, if they were based only on the merits and plaintiffs’ probability of being awarded various sums.

III. Are Settlements Likely to Be at the “Right” Level?

There is a long-held belief in the antitrust community—one that never was supported with systematic evidence—that “good” antitrust cases settled for single damages. More recently there have been assertions that “[p]ayments well below single damages are now the norm.” Surely victims sometimes recover less than they “should” based only on the merits and the other conditions noted earlier. Surely on other occasions the victims receive more. It seems extraordinarily unlikely that every case would settle for just the “right” amount.

Assuming we knew how much particular cases “should” settle for, should we expect actual settlements to be generally too high, too low, or at the right level? It is important to keep in mind not only the parties’ incentives but also the attorneys’ and judges’ incentives. This applies with particular force to the plaintiffs’ attorneys in class actions, who exercise a great deal of control over litigation and settlement.

Some “characterize class actions in general, and antitrust class actions in particular, as ‘extortionate settlements.’” Some “speculate that[, especially] in class actions[,] the potential for great liability based on the outcome of a single trial can cause even innocent defendants to settle meritless claims [for large sums] rather than risk a catastrophic—and errant—adverse decision.”

Conversely, other “commentators claim that plaintiffs’ class action lawyers have incentive to ‘sell out’ the classes they represent.They note that [plaintiffs’] lawyers generally do best on an hourly basis [if they settle] quickly, even [if they do so] at a steep discount from the expected value of a case.” They also surmise that lawyers shortchange the class by seeking hard cash for legal fees and “a less valuable form of compensation for the class, such as coupons.”

Note the strong tension between these views. The first perspective suggests that plaintiffs are likely to recover too much from defendants, and the second suggests that plaintiffs are likely to recover too little from defendants, especially in class actions. It is difficult to imagine both views generally are correct. How, then, can we know which of these points is likely to predominate in practice?

The relevant empirical evidence is exceedingly thin, although the 60 cases in the Davis/‌Lande study help somewhat. While we cannot know whether those cases settled for the “right” amount, plaintiffs recovered approximately $500 million per case on average. Defendants are unlikely to settle for such large amounts unless there was a significant chance they ultimately would lose on the merits. These cases also suggest that at least some plaintiffs’ attorneys do not sell out their class members entirely. Because the empirical evidence is quite thin, we now turn to an analysis of incentives and legal doctrine.

Professor Hovenkamp notes a key starting point in the analysis: “Most lawsuits settle when each party has some prospect of winning or losing. The settlement discounts these probabilities into a certain agreement immediately rather than an uncertain outcome later.” In addition, it is extremely unlikely for defendants to knowingly pay treble damages because, inter alia, defendants rarely, if ever, pay prejudgment interest in antitrust cases. And given the long delay between a violation and resolution through trial or settlement, the recovery is reduced significantly by this factor. Further, defendants are rarely—if ever—held liable for various kinds of harms their antitrust violations cause, including umbrella effects of market power and allocative inefficiency effects of market power. Of course, often a private action will not make economic sense because the damages are too low and the costs of litigation are too high. Victims in these cases might settle for a fraction of their damages—or might not file at all.

Antitrust defendants likely have a **significant advantage** over plaintiffs in settlement negotiations for other reasons. Plaintiffs may suffer in the short term and defendants may benefit from delay, placing defendants at a significant advantage in the settlement negotiations. Antitrust defendants often are rich and powerful economic actors; they can exploit market power to the detriment of the victims, who usually are in a more vulnerable position. This disparity can affect the litigation and settlement process. Plaintiffs will often lack the resources to tolerate the expense and disruption that litigation entails, and be **forced to settle for less** than if they were able to wait for a final verdict.

There is no doubt that many defendants in antitrust cases are risk-averse, especially when extremely large sums of money are involved. But the same is true for plaintiffs and their attorneys, especially since many plaintiff cases are class actions that are financed by the attorneys involved. Moreover, we might expect that the decisionmakers for the plaintiffs—often their attorneys—are even more risk-averse than defendants. We know of no reason why defendants would be more risk-averse than plaintiffs. Moreover, defense counsel themselves may not be overly risk-averse. They have no direct stake in the outcome of trial and, given the extraordinarily high rate of settlement in class action cases, likely feel comfortable they can settle eventually if their pretrial efforts prove unsuccessful.

The U.S. Supreme Court and lower courts in recent years have also made it easier for defendants to prevail when they move to dismiss, move for summary judgment, and when they oppose class certification. These factors all tend to significantly lower the settlement amount.

One legal settlement principle seems worthy of special mention: the Grinnell doctrine. As Professor Leslie has documented after the U.S. Court of Appeals for the Second Circuit’s 1974 Grinnell opinion, “courts evaluating the reasonableness of a proposed class action settlement almost uniformly decline to consider the trebling of antitrust damages.” However, despite its longevity, “[t]he very origin of the rule to disregard trebling is founded on an apparent misreading of the law.” As Professor Leslie shows:

Despite the fact that trebling is mandatory, federal courts generally refuse to consider the trebling of antitrust damages when evaluating proposed settlements in antitrust class action litigation . . . . The Second Circuit in its influential decision opined that it would be “improper” to consider the fact that any damages following trial would be trebled “when computing a base recovery figure which will be used to measure the adequacy of a settlement offer.” . . .

Subsequent courts followed Grinnell en masse.

Because almost every meritorious damages case settles, Professor Leslie concludes “that courts have already effectively detrebled antitrust damages.”

Perhaps for all these reasons, the courts rarely reject proposed antitrust settlements as being too low. When asked about the court rejecting the proposed $324 million settlement in the recent High-Tech Employee cartel case, Professor Daniel Crane thoughtfully responded: “I cannot recall a judge saying in a class-action case that the amount of settlement is too low and you need to go back and go for broke at trial[] . . . . This is very striking.”

Just because most successful cases settle for relatively low amounts does not mean that plaintiffs rarely recover significant damage amounts. Professor Connor’s analysis of over 100 international cartels prosecuted between 1990 and 2008 found a total of $29 billion in announced private settlements in U.S. cases. The only other aggregate estimate of which we are aware is the Davis/‌Lande study of 60 large private cases that settled after 1990. Twenty-five actions filed against large cartels produced between $9.2 billion and $10.6 billion in cash payments, and all 60 cases together produced cash payments of $33.8 to $35.8 billion.

Are these settlements for “high” or for “low” amounts? The key information that is missing, of course, is the percentage of the violators’ overcharges that these cases settled for. Thanks to Professor Connor’s cartel database we can now test these suppositions.

IV. Analysis of the Settlements: The Recovery Ratio

The Private International Cartels (“PIC”) database contains information on more than 1000 cartels discovered since 1990. We searched it to find cartels for which (1) there was a completed U.S. damages suit; and (2) a disinterested evaluator calculated the cartel’s U.S. overcharges. We did not include any overcharge estimates prepared by parties working on the cases, or their lawyers or economists, or any subsequent estimate that we knew to be published by interested parties. Economists prepared most of the relevant 71 overcharge calculations as part of their scholarly research and published the calculations in peer-reviewed journals, book chapters, or posted working papers.

We limited our sample to cartels for which we could identify the United States sales during the allegedly illegal periods. We only included the damages secured in private cases filed in the United States. We included damages paid to both direct and indirect purchasers (but not criminal fines). We limited our sample to cartels that were originally discovered after January 1990 and all defendants’ settlements amounts were announced. We used nominal dollars: we did not adjust for the fact that the overcharges occur years before payments in damages actions.

We combined multiple suits by different victims or classes of victims of the same cartel, including opt-out cases, into one “case.” Indeed, even the definition of a “cartel” is open to dispute or judgment. For example, was the international Vitamins cartel one huge interconnected “super cartel,” was it three large cartels that affected a differing array of vitamins and formed and waned over time (because there were three separate damages cases filed), or was it actually 16 separate cartels as the European Commission and economists would prefer to treat them? There is no easy way to resolve these issues and reasonable people could differ as to the answer. Counting the 16 vitamins cartels as one observation or “case,” we identified 71 cartel cases for which we could find the necessary information.

To summarize the results, we present data on the Recovery Ratio, the amount recovered by plaintiffs divided by the amount overcharged. A Recovery Ratio of 1.0 (or 100%) would indicate full disgorgement of the cartel’s illegal profits, a Ratio of 3.0 **(300%)** would signal treble damages recovered, and so forth.

A Recovery Ratio Example: Lysine

The global Lysine cartel operated in the United States from 1992 to 1995, generating affected sales of $495 million. A posted economic study concluded that overcharges were $80 million. Direct purchasers recovered $55 million and indirect purchasers recovered $27.5 million.

The Recovery Ratio = ($55 + $27.5)/‌$80 = 1.03

Our analysis of the 71 cartel cases shows that the victims of only 14 cartels enjoyed Recovery Ratios of 100% or higher, and only seven received more than 200%. The rest—the victims in 57 cases—failed to recover the amount the cartels initially overcharged them.

Overall, the average (i.e., the simple arithmetic mean average) Recovery Ratio is 66%. However, when one plots the probability densities of the settlement/‌overcharges percentages, it is immediately apparent that these ratios look nothing like the usual bell-shaped curve of a “normal” distribution. In fact, the distribution is highly skewed, with the number of very small percentages much greater than the number of large percentages (see Appendix). Under such circumstances, the median average is a better representation of central tendency than is the mean average. And the median Recovery Ratio is considerably lower, 37%.

We note that the 71 cartels vary greatly in size, both in terms of sales and dollar overcharges. The mean and median averages treat each cartel observation as though they are of equal size. A third representation of central tendency—and the one we prefer—is the weighted average. The weighted average Recovery Ratio (a figure that weights the settlement/‌overcharges percentages according to their dollar overcharges) is **19%.**

Private damages cases are believed to be on a surer footing if they are preceded by criminal convictions. Plaintiffs in civil cases can introduce these convictions as prima facie evidence of collusion. Moreover, evidence gleaned from the earlier cases provides details about cartel conduct that helps build superior empirical models to estimate damages. Finally, the Department of Justice (“DOJ”) may tend to prosecute cartels with the highest damages. Thus, followership advantages ought to confer higher Recovery Ratios ceteris paribus. To see whether followership explains the height of average Recovery Ratios, we divided the 71 cartel cases into three groups: (1) 36 suits that followed successful U.S. government convictions; (2) six that followed findings of price-fixing violations by civil European Union (“EU”) administrative antitrust authorities, and (3) 29 non-follow-on damages suits. As expected, the mean and median average Recovery Ratios are highest for the follow-on suits, where the cartels were previously convicted by the U.S. antitrust authorities (81.2% and 52.4%, respectively). The average Recovery Ratios are much lower for the non-follow-on suits (54.8% and 22.7%). Prior adverse EU decisions provided the least assistance by far: the mean and median Recovery Ratios are 26.8% and 8.7%.

The figures presented in this Part are subject to the caveats noted throughout this Essay, and the “true” figures could be different for many reasons. For example, although we attempted to include every opt-out case, surely we missed some, especially smaller opt-out cases. Unless we had reason to disbelieve the parties’ information, we accepted their statements about the settlements’ value. Similarly, some cases yielded products, coupons, or discounts that were too difficult for us to quantify easily, so we ignored their possible value. And, of course, some of these products or discounts had different values to the plaintiffs than to the defendants, and reasonable people could differ about which is the best measure of value. Similarly, some settlements had non-monetary value, such as injunctive relief. And, fundamentally, we relied upon the overcharge estimate of the neutral scholar who studied the case. The only exceptions were when a judge or jury made a finding that, for example, accepted the estimate of plaintiffs’ expert. On the rare occasion that this happened, we allowed court decisions to trump economists’ findings.

The highest Recovery Ratio (expressed in nominal dollars) in our sample was secured in the EPDM cartel case: 365%. It is of course puzzling why a cartel would ever settle for treble damages, let alone for a higher sum. There are several possible explanations. First, the calculations shown in this Essay make no adjustments for the time value of money. Since the overcharges often arise many years before the payouts in the private cases, adjusting the payment using net present value to the year the settlement was made will result in a smaller payment number. Consequently, the final payment/‌overcharge ratio will be smaller. Both the settlement amount and the damages ought to be expressed in the dollars of the same year. To take the EPDM example, adjusting the 365% Recovery Ratio for the time value of money reduces the ratio to 165.5%—well below treble damages. Adjusting all the other cartels’ ratios would result in smaller ratios as well.

Second, the statutory **maximum** actually is treble damages, plus reasonable attorneys’ fees, plus reasonable expert witness costs. Perhaps the legal and expert witness fees, in addition to treble damages, could total 365% of the overcharges. Or, it is possible the parties involved in the case miscalculated the cartel’s actual damages, or disagreed with the case evaluation overcharge results in the report we utilized in our calculations.

Conversely, in four of the 71 cartel cases the Recovery Ratios were less than 1%, in 12 they were less than 10%, and another eight were between 10% and 20%. Although there are many reasons for such low settlements, some that might make us sympathetic to plaintiffs and others that might make us sympathetic to defendants, these results certainly are grounds for reflection.

It should be stressed that these results apply only to overcharges and sales made in the United States. Most of these cartels operated worldwide. Thus, for example, we calculated that the U.S. Recovery Ratio of the Vitamins “super cartel” is 246% (expressed in dollars not adjusted for inflation). Our calculations did not, however, consider the Vitamin cartel’s overcharges or sales outside of the United States. If this cartel were evaluated on a worldwide basis, when all of its payments in private suits are added to the fines it paid worldwide, and this total is compared to the collusive overcharges it was able to enjoy worldwide during the period of the alleged conspiracy, overall the Vitamins cartel still made a profit.

One caveat is that the affected sales data were estimated by the first author. Some of the sales figures are exceedingly precise and most are based on reliable base numbers, but some rely on the best available resources on market sales found in business libraries. As an example of a precise estimate, plaintiffs’ counsel in the Private Equity Buyouts case provided the transaction values of the nine leveraged buyouts at issue in the case; these data are fully public figures. The more reliable sales data began with the cartel’s sales as revealed by government prosecutors for one or a few years; then total sales were estimated with a reasonable growth rate over the collusive years. However, the Private International Cartels (“PIC”) data takes note of sales estimates that are judged to be less reliable.

Of the 71 observations, 30 were flagged as having less reliable sales estimates. For example, in Refrigerant Compressors, sales data was obtained for all such compressors, but the private suit limited sales to only compressors of one horsepower or less, and the latter was not available. Thus, sales for this cartel may be overestimated, so a dollar overcharge figure will underestimate the settlement percentage. To investigate the extent of the bias created by unsure sales data, we recalculated the average Recovery Ratio for the remaining 42 cartels. The median average rises to 42%, the weighted mean average rises to 31%, and the simple mean average falls to 62%. Because the differences in averages between the two samples are small, the less reliable sales estimates did not significantly bias our results.

Notwithstanding the fact that the Vitamins defendants were large and paid high overcharge amounts in the cases filed against them, on average plaintiffs tend to be rewarded relatively poorly in the biggest cases. For example, the cartels with the ten smallest U.S. sales have median overcharges of 81% of affected sales; examples of highly successful cases in the group are PVC Window Coverings,Nitrile Butadiene Rubber, and Buspirone. By contrast, the ten largest cartels have median settlement of 11% of sales. Correlation analysis confirms the inverse relationship.

V. Antitrust’s Need For Multiple Damages

The antitrust statutes provide that violations give rise to automatic treble damages plus “reasonable attorney’s fee[s].” The legislative history and case law indicate that compensation is a goal, perhaps the dominant goal, of antitrust’s damages remedy. In addition, the statutes were primarily aimed at avoiding wealth transfers from purchasers to firms with market power caused by this market power—which is analogous to a compensation goal. The congressional decision to award treble damages certainly could lead one to conclude that two-thirds of antitrust damages were meant for some purpose other than compensation, such as deterrence. However, it is possible that even the “extra” damages were intended to compensate victims for such unawarded items as prejudgment interest, or damages that are difficult to measure, such as umbrella effects of market power or the victims’ time spent pursuing a remedy.

Indeed, when these factors are considered, antitrust’s nominal “treble damages” probably are only approximately single damages.

Although it is possible that compensation is the only goal of the antitrust damages remedy, “[v]irtually every analysis of antitrust damages issues assumes that . . . [at least a purpose, and perhaps] the entire purpose . . . is deterrence.” Many scholars believe that the primary purpose of the underlying substantive provisions is to enhance economic efficiency, which typically is the goal of optimal-deterrence approaches.

The antitrust community usually uses the deterrence framework developed by Professor William Landes. Landes showed that, to achieve optimal deterrence, the damages should be equal to the violation’s expected “net harm to others” divided by the probability of detection and proof of the violation. As an example of how this approach would operate in practice, one should multiply the “net harm to others” by the inverse of the probability of detection and conviction. Despite government efforts to eliminate cartels, evidence continues to show that many cartels are still in operation. For ideal deterrence, sanctions should be more than a cartel’s “net harms to others” in order to account for this less than 100% probability that the government will find a cartel and that the cartel will be later convicted. If a cartel expected to overcharge by $100 but only had a 33% chance it would be discovered and then convicted, the sanctions should slightly exceed $300. Without multiplying a firm’s “net harm to others” by the likelihood that the firm will actually pay for that harm, **firms will not be deterred** from violating antitrust law.

For cartels, the relevant literature indicates there is a 20% to 25% probability that they will be detected and convicted. Most analysts of both the Chicago and post-Chicago schools of antitrust accept these principles.

From a compensation perspective, these damages should of course be awarded to the victims of the anticompetitive behavior. From a deterrence perspective, however, these damages could instead be awarded to the state as fines. The United States has of course chosen a mixed antitrust remedies system, one that awards nominally trebled damages (which, as noted earlier, do not account for all of the losses) to victims, and also imposes fines and other sanctions. As the authors have shown, however, the totality of the current remedies system is inadequate to achieve optimal deterrence, at least for cartels.

The precise optimal multiplier certainly might well be different for different types of antitrust offenses. For example, cartels are hidden because price fixing is per se illegal, and in part for this reason a large multiplier is necessary. Moreover, there is general agreement that collusion is anticompetitive, and there is less fear that high cartel fines could deter procompetitive behavior that is close to the margin of legality. However, cartels can also be the subject of corporate fines as well as fines and prison for the executives involved, so the damages in private cases do not have to provide all the necessary deterrence.

By contrast, many other types of antitrust violations involve relatively public conduct, so detection can be relatively easy. Even in monopolization cases, however, many of the issues crucial to liability—did the defendant price above or below average variable cost? What is the relevant market? Does the defendant have monopoly power?—are difficult to ascertain. In fact, these issues often are more difficult for plaintiffs to prove than many of the most important questions at issue in the liability stage of most collusion cases, including the crucial issue of whether defendants fixed prices. It is much easier to show that a discovered cartel has violated the antitrust laws than a discovered monopoly, so an extremely high multiplier might be appropriate for these cases as well.

Thus, the optimal damages multipliers will be different for different types of offenses. Nevertheless, because even relatively public violations are difficult to prove, from a compensation or—especially—from a deterrence perspective, antitrust violations should give rise to a damages multiplier that is greater than one. As our calculations in Part IV have shown, however, **few antitrust settlements achieve this** goal.

VI. Conclusions

Victims of only 14 of the 71 cartels (20%) we studied had Recovery Ratios above 100%. Of these, **only** seven (**10%**) received at least double damages. The rest—the victims in 57 cases—received less than their initial damages, and 12 received less than 10% of their damages. Three averages may be calculated. First, the median Recovery Ratio is 37%. However, because the distribution of the Recovery Ratio is so skewed, the weighted mean (a figure that weights the settlements according to their overcharges) is much lower (19%) than the unweighted mean Ratio of 66% (which gives equal weights to the cartels that operated in large markets and those that operated in small markets). Plaintiffs are generally rewarded relatively poorly in the biggest cases.

Not surprisingly, damages actions that follow adverse legal enforcement by the DOJ or the Federal Trade Commission result in higher average Recovery Ratios than non-follow-on settlements. The variation in the ratios among cartels is large, but we do not fully understand the reasons for the disparities in recoveries. Future empirical studies might investigate whether the number and types of defendants, the size of fines imposed, the presence of an immunized amnesty applicant, the length of the civil proceedings, or other measurable factors can explain the variation in Recovery Ratios. Other determinants of variation in Recovery Ratios (e.g., changes in the stringency of class certification rules, sweetheart deals by plaintiffs’ lawyers) may be more difficult to measure.

As Part III showed, antitrust damage awards should be significantly greater than the actual damages caused by violations. In an earlier article, one of the authors showed that even on those relatively unusual occasions where the parties do not settle and the victims do receive nominal treble damages, due to the absence of prejudgment interest and a number of other factors, they are likely to receive only an amount that is close to single damages. This Essay in many ways takes that conclusion further by demonstrating that most cartel damages cases settle for significantly less than single damages. Several important policy implications follow from this.

First, judges should realize that antitrust settlements can be for almost any percentage of the damages caused by the underlying cartel. As noted in Part IV, several Recovery Ratios are less than 1%, and 12 are under 10%. By contrast, a small number of settlements were for more than actual or double damages. Of course, the “just,” “reasonable,” or “fair” percentage will vary according to the relative strength of the case, and will depend on many other factors.

Although this point might seem obvious, in court decisions the parties tend to discuss the settlement/‌sales ratio, which is an inappropriate measure of victim’s welfare. Moreover, parties sometimes agree to settle for very low percentages of sales (e.g., less than 10%), and then represent to the court that it should accept their low proposed settlements because these ratios are what actually occur in private class action cases.

Of course, sometimes very low settlements are indeed appropriate. Nevertheless, courts should ignore the parties’ assertions as to what typically, often, or usually happens in settlements. Most of these submissions are neither reliable nor as relevant as the Recovery Ratio. We instead urge courts to evaluate each settlement on its merits. If necessary, courts should follow the lead of the wise and courageous judge in the High-Tech Employee cartel case and reject a proposed settlement as being too low, even if it would have returned $324 million to the victims.

Second, judges should realize that awarded antitrust damages are usually much less than actual damages, so they should fight any conscious or unconscious tendency they might have to award defendants close factual or legal decisions out of a fear that the action will lead to true treble damages that will “over-punish” defendants and/‌or “over-reward” plaintiffs. Because awarded damages are not as a practical matter even close to true treble damages, judges should also refrain from being ungenerous to victims when they decide standing issues or compute the amounts of damages to award.

Third, Illinois Brick repealers make more sense. The specter of six-fold or higher damages for civil antitrust violations seems remote. If federal or state Illinois Brick repealers led to effective double damages for antitrust violations, this would almost certainly be more nearly optimal than the current situation. Moreover, Illinois Brick repealers are almost certainly the best way to compensate consumers who are indirect purchasers of supracompetitively priced items. Potentially overlapping state antitrust and tort laws are also more likely to be in the public interest, because their combined effects are likely only to increase awarded damages to the two-fold level, rather than the six-fold level.

Fourth, the Grinnell doctrine, which measures the adequacy of antitrust settlements as compared to single damages, should be abolished. Professor Leslie’s analysis of why this doctrine is unsound and should be overturned is compelling. His conclusions are made even stronger by this Essay’s conclusion that few cases settle for even single damages. The Grinnell doctrine could, moreover, be a large part of the reason why antitrust settlements are so low.

Fifth, the antitrust community should seriously explore the possibility that criminal antitrust fines should be raised. As the authors have shown elsewhere, overall cartels are **not** adequately **deterred** by the current combination of private and public remedies. Higher criminal fines would help provide more nearly optimal deterrence in the cartel area although not, of course, for other areas of antitrust. This Essay has shown that the contribution of private cases to cartel deterrence, while certainly important and significant, is not nearly as large as it would be if private cases usually did secure treble damages.

#### U.S. antitrust does *not* cause development. Developing countries want monopolies.

Waisberg, Ivo, Professor @ Catholic University of Sao Paolo, ’19, "International Antitrust Approaches and Developing Countries." Available at SSRN 3424274 (2019).

If the comity to respect or analyze the interests of other nations was an important ingredient in the extraterritorial application of antitrust laws, the harms caused by this system could be mitigated. Because of the little weight given to comity in the US, and in large extent in the EU, developing countries must seek alternative frameworks to mitigate extraterritoriality. Conversely, countries that can impose their interests through an efficient application of their laws in relation to conducts occurring elsewhere are not supporters of comity principles. This is the reason why American scholars argue in favor of abandoning comity and increasing extraterritoriality based purely on American interests.39 This makes sense from a purely unilateral point of view.

The point is that the current unilateral enforcement system, from a developing country perspective, is a one-way street. Powerful antitrust agencies can decide to enforce their laws whenever they see fit, and, like many trade measures, antitrust enforcement can be strongly influenced by political decisions. For the developing country, this will represent an overenforcement by the developed country agency. On the other hand, if the developed country underenforces its law for its national, there is nothing the developing country can do. Of course, it can be argued that underenforcement of antitrust laws by a developing country creates the need for extraterritorial measures by other agencies. Even if we agree that an underenforcement problem exists in most developing countries, it would be useful for them to fight for an international system that enables them to contest developed countries for both overenforcement and underenforcement, which is something they cannot do in the unilateral system unless a developed country decides to show some goodwill.

#### No development impact – “armed conflict” does not equal “great power war” – their internal link is about countries that do not have nuclear weapons.

#### No civil war impact.

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In truth, while failed states may be worthy of America’s attention on humanitarian and development grounds, most of them are **irrelevant** to U.S. national security. The risks they pose are mainly to their own inhabitants. Sweeping claims to the contrary are not only inaccurate but **distracting and unhelpful**, providing little guidance to policymakers seeking to prioritize scarce attention and resources. In 2008, I collaborated with Brookings Institution senior fellow Susan E. Rice, now President Obama’s permanent representative to the United Nations, on an index of state weakness in developing countries. The study ranked all 141 developing nations on 20 indicators of state strength, such as the government’s ability to provide basic services. More recently, I’ve examined whether these rankings reveal anything about each nation’s role in major global threats: transnational terrorism, proliferation of weapons of mass destruction, international crime and infectious disease. The findings are startlingly clear. **Only a handful** of the world’s failed states pose security concerns to the United States. Far greater dangers emerge from stronger developing countries that may suffer from corruption and lack of government accountability but come nowhere near qualifying as failed states. The link between failed states and transnational terrorism, for instance, is **tenuous**. Al-Qaeda franchises are concentrated in South Asia, North Africa, the Middle East and Southeast Asia but are **markedly** **absent** in most failed states, including in sub-Saharan Africa. Why? From a terrorist’s perspective, the notion of finding haven in a failed state is an oxymoron. Al-Qaeda discovered this in the 1990s when seeking a foothold in anarchic Somalia. In intercepted cables, operatives bemoaned the insuperable difficulties of working under chaos, given their need for security and for access to the global financial and communications infrastructure. Al-Qaeda has generally found it easier to maneuver in corrupt but functional states, such as Kenya, where sovereignty provides some protection from outside interdiction. Pakistan and Yemen became sanctuaries for terrorism not only because they are weak but because their governments lack the will to launch sustained counterterrorism operations against militants whom they value for other purposes. Terrorists also need support from local power brokers and populations. Along the Afghanistan-Pakistan border, al-Qaeda finds succor in the Pashtun code of pashtunwali, which requires hospitality to strangers, and in the severe brand of Sunni Islam practiced locally. Likewise in Yemen, al-Qaeda in the Arabian Peninsula has found sympathetic tribal hosts who have long welcomed mujaheddin back from jihadist struggles. Al-Qaeda has met less success in northern Africa’s Sahel region, where a moderate, Sufi version of Islam dominates. But as the organization evolves from a centrally directed network to a diffuse movement with autonomous cells in dozens of countries, it is as likely to find haven in the banlieues of Paris or high-rises of Minneapolis as in remote Pakistani valleys. What about failed states and weapons of mass destruction? Many U.S. analysts worry that poorly governed countries will pursue nuclear, biological, chemical or radiological weapons; be unable to control existing weapons; or decide to share WMD materials. These **fears are misplaced**. With two notable exceptions — North Korea and Pakistan — the world’s weakest states pose **minimal proliferation risks**, since they have limited stocks of fissile or other WMD material and are **unlikely to pursue** **them**. Far more threatening are capable countries (say, Iran and Syria) intent on pursuing WMD, corrupt nations (such as Russia) that possess loosely secured nuclear arsenals and poorly policed nations (try Georgia) through which proliferators can smuggle illicit materials or weapons. When it comes to crime, the story is more complex. Failed states do dominate production of some narcotics: Afghanistan cultivates the lion’s share of global opium, and war-torn Colombia rules coca production. The tiny African failed state of Guinea-Bissau has become a transshipment point for cocaine bound for Europe. (At one point, the contraband transiting through the country each month was equal to the nation’s gross domestic product.) And Somalia, of course, has seen an explosion of maritime piracy. Yet failed states have little or **no connection with** other categories of **transnational** **crime**, from human trafficking to money laundering, intellectual property theft, cyber-crime or counterfeiting of manufactured goods. Criminal networks typically **prefer** operating in **functional countries** that provide baseline political order as well as opportunities to corrupt authorities. They also accept higher risks to work in nations straddling major commercial routes. Thus narco-trafficking has exploded in Mexico, which has far stronger institutions than many developing nations but borders the United States. South Africa presents its own advantages. It is a country where “the first and the developing worlds exist side by side,” author Misha Glenny writes. “The first world provides good roads, 728 airports . . . the largest cargo port in Africa, and an efficient banking system. . . . The developing world accounts for the low tax revenue, overstretched social services, high levels of corruption throughout the administration, and 7,600 kilometers of land and sea borders that have more holes than a second-hand dartboard.” Weak and failing African states, such as Niger, simply cannot compete. Nor do failed states pose the greatest threats of pandemic disease. Over the past decade, outbreaks of SARS, avian influenza and swine flu have raised the specter that fast-moving pandemics could kill tens of millions worldwide. Failed states, in this regard, might seem easy incubators of deadly viruses. In fact, recent fast-onset pandemics have bypassed most failed states, which are relatively **isolated from the global trade** **and transportation** links needed to spread disease rapidly. Certainly, the world’s weakest states — particularly in sub-Saharan Africa — suffer disproportionately from disease, with infection rates higher than in the rest of the world. But their principal health challenges are endemic diseases with **local effects**, such as malaria, measles and tuberculosis. While U.S. national security officials and Hollywood screenwriters obsess over the gruesome Ebola and Marburg viruses, outbreaks of these hemorrhagic fevers are **rare and self-contained**. I do not counsel complacency. The world’s richest nations have a moral obligation to bolster health systems in Africa, as the Obama administration is doing through its Global Health Initiative. And they have a duty to ameliorate the challenges posed by HIV/AIDS, which continues to ravage many of the world’s weakest states. But poor performance by developing countries in preventing, detecting and responding to infectious disease is often shaped less by budgetary and infrastructure constraints than by conscious decisions by unaccountable or unresponsive regimes. Such deliberate inaction has occurred not only in the world’s weakest states but also in stronger developing countries, even in promising democracies. The list is long. It includes Nigeria’s feckless response to a 2003-05 polio epidemic, China’s lack of candor about the 2003 SARS outbreak, Indonesia’s obstructionist attitude to addressing bird flu in 2008 and South Africa’s denial for many years about the causes of HIV/AIDS. Unfortunately, misperceptions about the dangers of failed states have transformed budgets and bureaucracies. U.S. intelligence agencies are mapping the world’s “ungoverned spaces.” The Pentagon has turned its regional Combatant Commands into platforms to head off state failure and address its spillover effects. The new Quadrennial Diplomacy and Development Review completed by the State Department and the U.S. Agency for International Development depicts fragile and conflict-riddled states as epicenters of terrorism, proliferation, crime and disease. Yet such preoccupations reflect **more hype than analysis**. U.S. national security officials would be better served — and would serve all of us better — if they turned their strategic lens toward stronger developing countries, from which transnational threats are more likely to emanate.

#### There is quite literally no warrant for civil wars causing disease or terror in the Krasner card – they cannot explain one in the 2AC.

#### No disease.

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

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

#### No terror impact – statistically, the biggest threat is domestic. The aff is fearmongering.

Seth Jones et al 20. Harold Brown Chair and director of the Transnational Threats Project at the Center for Strategic and International Studies (CSIS) in Washington, D.C.; Catrina Doxsee is a program manager and research associate with the Transnational Threats Project at CSIS; Nicholas Harrington is a research associate for the Transnational Threats Project at CSIS. “The Escalating Terrorism Problem in the United States”. CSIS. June 2020. <https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/200612_Jones_DomesticTerrorism_v6.pdf>. wms-hhb.

This section analyzes the data in two parts: terrorist incidents and fatalities. The data show three notable trends. First, right-wing attacks and plots accounted for the majority of all terrorist incidents in the United States since 1994. In particular, they made up a large percentage of incidents in the 1990s and 2010s. Second, the total number of right-wing attacks and plots has grown substantially during the past six years. In 2019, for example, right-wing extremists perpetrated nearly two-thirds of the terrorist attacks and plots in the United States, and they committed over 90 percent of the attacks and plots between January 1 and May 8, 2020. Third, although religious extremists were responsible for the most fatalities because of the 9/11 attacks, right-wing perpetrators were responsible for more than half of all annual fatalities in 14 of the 21 years during which fatal attacks occurred.

ATTACKS AND PLOTS

Between 1994 and 2020, there were 893 terrorist attacks and plots in the United States. Overall, right-wing terrorists perpetrated the majority—57 percent—of all attacks and plots during this period, compared to 25 percent committed by left-wing terrorists, 15 percent by religious terrorists, 3 percent by ethnonationalists, and 0.7 percent by terrorists with other motives.

Figure 1 shows the proportion of attacks and plots attributed to the perpetrator ideologies each year during this period. Right- wing attacks and plots were predominant from 1994 to 1999 and accounted for more than half of all incidents in 2008 as well as every year since 2011, with the exception of 2013. Most right-wing attacks in the 1990s targeted abortion clinics, while most right-wing attacks since 2014 focused on individuals (often targeted because of religion, race, or ethnicity) and religious institutions. Facilities and individuals related to the government and police have also been consistent right-wing targets throughout the period, particularly for attacks by militia and sovereign citizen groups.

The decrease in right-wing activity in the early-2000s coincided with an increase in left-wing activity from 2000 to 2005. Most of these left-wing attacks targeted property associated with animal research, farming, or construction and were claimed by the Animal Liberation Front or the Earth Liberation Front.

As shown in Figure 2, data on the number of terrorist attacks and plots by perpetrator orientation indicate that right-wing terrorism not only accounts for the majority of incidents but has also grown in quantity over the past six years. This increase is reminiscent of the wave of right- wing activity in the 1990s that peaked with 43 right-wing incidents in 1995. The Oklahoma City bombing, which occurred on April 19, 1995, was the second-most deadly terrorist attack in U.S. history, after September 11, 2001. In three recent years—2016, 2017, and 2019—the number of right-wing terrorist events matched or exceeded the number in 1995, including a recent high of 53 right-wing terrorist incidents in 2017. Despite a moderate decrease in 2018 to 29 incidents, right-wing activity again increased in 2019 to 44 incidents. Religious attacks and plots have also shown some increases during this period—notably in 2015, 2017, and 2019—but at a significantly smaller magnitude than right-wing events.

FATALITIES

In analyzing fatalities from terrorist attacks, religious terrorism has killed the largest number of individuals—3,086 people—primarily due to the attacks on September 11, 2001, which caused 2,977 deaths.10 The magnitude of this death toll fundamentally shaped U.S. counterterrorism policy over the past two decades. In comparison, right-wing terrorist attacks caused 335 deaths, left-wing attacks caused 22 deaths, and ethnonationalist terrorists caused 5 deaths.

To evaluate the ongoing threat from different types of terrorists, however, it is useful to consider the proportion of fatalities attributed to each type of perpetrator annually. In 14 of the 21 years between 1994 and 2019 in which fatal terrorist attacks occurred, the majority of deaths resulted from right-wing attacks. In eight of these years, right-wing attackers caused all of the fatalities, and in three more—including 2018 and 2019—they were responsible for more than 90 percent of annual fatalities.11 Therefore, while religious terrorists caused the largest number of total fatalities, right-wing attackers were most likely to cause more deaths in a given year.

TYPES OF TERRORISM

This section outlines the threat from right-wing, left- wing, and religious networks. In particular, it focuses on the threat from right-wing extremists because of the high number of incidents and fatalities they perpetrated, as highlighted in the previous section. It does not cover ethnonationalist networks, which are not a major threat in the United States today.

RIGHT-WING TERRORISM

There are three broad types of right-wing terrorist individuals and networks in the United States: white supremacists, anti-government extremists, and incels. There are numerous differences between (and even within) these types, such as ideology, capabilities, tactics, and level of threat. Adherents also tend to blend elements from each category. But there are some commonalities. First, terrorists in all of these categories operate under a decentralized model. The threats from these networks comes from individuals, not groups.12 For example, anti- government activist and white supremacist Louis Beam advocated for an organizational structure that he termed “leaderless resistance” to target the U.S. government.13

Second, these networks operate and organize to a great extent online, challenging law enforcement efforts to identify potential attackers.14 Right-wing terrorists have used various combinations of Facebook, Twitter, YouTube, Gab, Reddit, 4Chan, 8kun (formerly 8Chan), Endchan, Telegram, Vkontakte, MeWe, Discord, Wire, Twitch, and other online communication platforms. Internet and social media sites continue to host right-wing extremist ideas such as the Fourteen Words (also referred to as the 14 or 14/88) coined by white supremacist David Lane, a founding member of the group the Order. The Fourteen Words includes variations like: “We must secure the existence of our people and a future for white children.”15 Far-right perpetrators also use computer games and forums to recruit.16

Third, right-wing extremists have adopted some foreign terrorist organization tactics, though al-Qaeda and other groups have also adopted tactics developed by right-wing movements.17 In a June 2019 online post, a member of the Atomwaffen Division (AWD) stated, “the culture of martyrdom and insurgency within groups like the Taliban and ISIS is something to admire and reproduce in the neo-Nazi terror movement.”18 Similarly, the Base—a loosely organized neo-Nazi accelerationist movement which shares the English-language name for al-Qaeda—uses a vetting process to screen potential recruits, similar to the methods of al-Qaeda.19

This rise in right-wing activity is of national concern; it is not isolated to one region and affects cities of varying sizes. Figure 3 shows the locations of right-wing terror attacks and plots in the United States over the past six years. These incidents occurred in 42 states, Washington, DC, and Puerto Rico.

White Supremacists: White supremacist networks are highly decentralized. Most believe that whites have their own culture that is superior to other cultures, are genetically superior to other peoples, and should exert dominance over others. Many white supremacists also adhere, in varying degrees, to the Great Replacement conspiracy. The conspiracy claims that whites are being eradicated by ethnic and racial minorities—including Jews and immigrants.20 Brenton Tarrant, the Christchurch shooter in New Zealand, and Patrick Crusius, the El Paso Walmart shooter, espoused the most radical view of the Great Replacement conspiracy, known as Accelerationism. As advocated by Tarrant and Crusius, violent accelerationists claim that the demise of Western governments should be accelerated to create radical social change and establish a whites-only ethnostate.21

White supremacists draw inspiration from individuals abroad and at home. Tarrant, for example, drew inspiration from Anders Breivik, who conducted the 2011 terrorist attack in Norway that killed 77 people, and Dylan Roof, who was responsible for the 2015 Charleston Church shooting that killed 9 people in South Carolina.22 Tarrant’s Christchurch attack then inspired terrorist attacks in the United States by John Earnest in California and Patrick Crusius in Texas.23 White supremacist actors have also travelled abroad seeking paramilitary training and networking opportunities. In Spring 2018, for example, members of the Rise Above Movement (RAM) travelled to Ukraine to celebrate Hitler’s birthday and train with the Azov Battalion, a paramilitary unit of the Ukrainian National Guard, which the FBI says is associated with neo-Nazi ideology.24

White supremacist neo-Nazi organizations, such as the Nationalist Socialist Movement, American Nazi Party, Vanguard America, and others often adhere to the Zionist Occupied Government (ZOG) conspiracy theory—that Jews secretly control the U.S. government, the media, banks, and the United Nations. Of particular concern is the emergence of the Atomwaffen Division (AWD), a U.S.-based neo-Nazi hate group with branches in the United Kingdom, Germany, and the Baltics.25 In January 2018, Brandon Russell, founder of the AWD was arrested and sentenced for possessing a destructive device and explosive material.26 Despite similar arrests, the AWD continues to plot, conduct attacks, and recruit. In February, four AWD members—including Cameron Shea, a high-level member and recruiter of the AWD—were arrested for conspiring to targets journalists and activists. They used encrypted chat platforms, distributed threatening posters, and wore disguises.27 Other arrests have been made under non-terrorism-related charges.28

The AWD continues to train and arm their members similar to international terrorist organizations. In January 2018, the AWD hosted a “Death Valley Hate Camp” in Las Vegas, Nevada, where members trained in hand-to-hand combat, firearms, and the creation of neo-Nazi propaganda videos and pictures. In August 2019, leadership members of the AWD attended a “Nuclear Congress” in Las Vegas, Nevada.29 Other white supremacist movements include the Base, the Patriot Front, and the Rise Above Movement.30

Anti-government Extremists: The right-wing terrorist threat also includes anti-government extremists, including militias and the sovereign citizen movement. Most militia extremists view the U.S. government as corrupt and a threat to freedom and rights.31 Other far-right anti-government groups mobilized to protect a perceived threat to individual gun ownership rights. Modern militias are organized as paramilitaries that conduct weapons training and other field exercises.32 The Three Percenters are a far-right paramilitary group that advocates gun rights and seeks to limit U.S. government authorities. In August 2017, Jerry Varnell, a 23-year-old who identified as holding the “III% ideology” and wanted to “start the next revolution” attempted to detonate a bomb outside of an Oklahoma bank, similar to the 1995 Oklahoma City bombing.33 Also, in January 2017, Marq Perez, who discussed the attack in Three Percenter channels on Facebook, burglarized and burned down a mosque in Texas.34

Anti-government extremists, which sometimes blend with white supremacist movements, have used the slang word “boogaloo” as a shorthand for a coming civil war. Several popular Facebook groups and Instagram pages, such as Thicc Boog Line, P A T R I O T Wave, and Boogaloo Nation, have emerged spreading the boogaloo conspiracy. Police in Texas arrested 36-year-old Aaron Swenson in April after he attempted to livestream his search for a police officer that he could ambush and execute.35 Prior to his arrest, Swenson had shared memes extensively from boogaloo pages.

Incels: Involuntary celibates, or incels, conduct acts of violence against women. The incel movement is composed of a loosely organized virtual community of young males. Incels believe that one’s place in society is determined by physical characteristics and that women are responsible for this hierarchy. Incels identify with the writings of Elliot Rodger, who published a 133-page manifesto, titled “My Twisted World.”36 In October 2015, Christopher Harper-Mercer, inspired by Rodger, killed nine people at a community college in Oregon.37 In November 2018, 40-year- old Scott Beierle killed two women in a yoga studio in Tallahassee, Florida, before committing suicide.38

LEFT-WING TERRORISM

The far-left includes a decentralized mix of actors. Anarchists are fundamentally opposed to a centralized government and capitalism, and they have organized plots and attacks against government, capitalist, and globalization targets.39 Environmental and animal rights groups, such as the Earth Liberation Front and Animal Liberation Front, have conducted small-scale attacks against businesses they perceive as exploiting the environment.40

In addition, the far-left includes Antifa, which is a contraction of the phrase “anti-fascist.” It refers to a decentralized network of far-left militants that oppose what they believe are fascist, racist, or otherwise right- wing extremists. While some consider Antifa a sub-set of anarchists, adherents frequently blend anarchist and communist views. One of the most common symbols used by Antifa combines the red flag of the 1917 Russian Revolution and the black flag of nineteenth-century anarchists. Antifa groups frequently conduct counter- protests to disrupt far-right gatherings and rallies. They often organize in black blocs (ad hoc gatherings of individuals that wear black clothing, ski masks, scarves, sunglasses, and other material to conceal their faces), use improvised explosive devices and other homemade weapons, and resort to vandalism. In addition, Antifa members organize their activities through social media, encrypted peer-to-peer networks, and encrypted messaging services such as Signal.

Antifa groups have been increasingly active in protests and rallies over the past few years, especially ones that include far-right participants.41 In June 2016, for example, Antifa and other protestors confronted a neo-Nazi rally in Sacramento, CA, where at least five people were stabbed. In February, March, and April 2017, Antifa members attacked alt-right demonstrators at the University of California, Berkeley, using bricks, pipes, hammers, and homemade incendiary devices.42 In July 2019, William Van Spronsen, a self-proclaimed Antifa, attempted to bomb the U.S. Immigration and Customs Enforcement detention facility in Tacoma, Washington, using a propane tank but was killed by police.43

RELIGIOUS TERRORISM

While religious terrorism is concerning, the United States does not face the same level of threat today from religious extremists—particularly those inspired by Salafi-jihadist groups such as the Islamic State and al-Qaeda—as some European countries.44 But Salafi-jihadists still pose a limited threat. In December 2019, Second Lieutenant Mohammed Saeed Alshamrani, a Saudi air force cadet training with the American military in Pensacola, Florida, killed three men and injured three others. He was inspired by al-Qaeda’s ideology, communicated with leaders of al-Qaeda in the Arabian Peninsula up until the attack, and joined the Saudi military in part to carry out a “special operation.”45

In addition, leaders of al-Qaeda and the Islamic State continue to encourage individuals in the West—including the United States—to conduct attacks.46 There are still perhaps 20,000 to 25,000 jihadist fighters in Syria and Iraq from the Islamic State and another 15,000 to 20,000 fighters from two al-Qaeda-linked groups: Hay’at Tahrir al-Sham and Tanzim Hurras al-Din.47 Over the next several months, more jihadists may enter the battlefield after escaping—or being released—from prisons run by the Syrian Democratic Forces in areas such as al-Hol, located in eastern Syria near the border with Iraq.48 In addition, there are still concerns about al-Qaeda and Islamic State groups operating in Yemen, Nigeria and neighboring countries, Somalia, Afghanistan, and other countries. In a May 2020 report, the United Nations concluded that al-Qaeda remains a serious threat and that the “senior leadership of Al-Qaida remains present in Afghanistan, as well as hundreds of armed operatives, Al-Qaida in the Indian Subcontinent, and groups of foreign terrorist fighters aligned with the Taliban.”49

THE RISING SPECTER OF TERRORISM

Our data suggest that right-wing extremists pose the most significant terrorism threat to the United States, based on annual terrorist events and fatalities. Over the next year, the threat of terrorism in the United States will likely increase based on several factors, such as the November 2020 presidential election and the response to the Covid-19 crisis. These factors are not the cause of terrorism, but they are events and developments likely to fuel anger and be co-opted by a small minority of extremists as a pretext for violence.

First, the November 2020 presidential election will likely be a significant source of anger and polarization that increases the possibility of terrorism. Some—though not all—far-right extremists associate themselves with President Trump and may resort to violence before or after the election. As U.S. Department of Justice documents have highlighted, some far-right extremists have referred to themselves as “Trumpenkriegers”—or “fighters for Trump.”50 If President Trump loses the election, some extremists may use violence because they believe—however incorrectly—that there was fraud or that the election of Democratic candidate Joe Biden will undermine their extremist objectives. Alternatively, some on the far left could resort to terrorism if President Trump is re-elected. In June 14, 2017, James Hodgkinson—a left-wing extremist—shot U.S. House Majority Whip Steve Scalise, U.S. Capitol Police officer Crystal Griner, congressional aide Zack Barth, and lobbyist Matt Mika in Alexandria, VA. A few months earlier, Hodgkinson wrote in a Facebook post that “Trump is a Traitor. Trump Has Destroyed Our Democracy. It’s Time to Destroy Trump & Co.”51 Tension on both the far right and far left has dramatically risen over the past several years.

Second, developments associated with Covid-19—such as prolonged unemployment or government attempts to close “non-essential” businesses in response to a second or third wave—could increase the possibility of terrorism. Some far- right extremists, for example, have threatened violence and railed against federal, state, and local efforts to take away their freedoms by requiring face coverings in public indoor settings, closing businesses, and prohibiting large gatherings to curb the spread of the virus. In March 2020, Timothy Wilson, who had ties to neo-Nazi groups, was killed in a shootout with FBI agents who were attempting to arrest him for planning to bomb a hospital in Missouri. Though he had been planning the attack for some time and had considered a variety of targets, he used the outbreak of Covid-19 to target a hospital in order to gain additional publicity. On the far left and far right, some anti-vaxxers—who oppose vaccines as a conspiracy by the government and pharmaceutical companies—have threatened violence in response to Covid-19 response efforts.52

Third, a polarizing event other than the presidential election—such as a school shooting or racially-motivated killing—could spark protests that extremists attempt to hijack. As highlighted in the introduction, extremists from all sides attempted to hijack the May and June 2020 protests in the United States as an excuse to commit acts of terrorism. In addition, far-right and far-left networks have used violence against each other at protests—such as in Berkeley, CA and Charlottesville, VA in 2017—raising concerns about escalating violence.

All parts of U.S. society have an important role to play in countering terrorism. Politicians need to encourage greater civility and refrain from incendiary language. Social media companies need to continue sustained efforts to fight hatred and terrorism on their platforms. Facebook, Google, Twitter, and other companies are already doing this. But the struggle will only get more difficult as the United States approaches the November 2020 presidential election—and even in its aftermath. Finally, the U.S. population needs to be more alert to disinformation, double-check their sources of information, and curb incendiary language.

## growth advantage

### growth – 1nc

#### Advantages are redundant – this also relies on development – all defense from other page applies.

#### No enforcement – no mechanism, countries won’t cooperate, and impossible to discover evidence of collusion.

Weimin Shen, L.L.M, J.S.D., Washington University School of Law, ’20, "The Role of Transnational Legal Process in Enforcing WTO Law and Competition Policy," Journal of Transnational Law & Policy 30 (2020-2021): 59-118

Concerns, however, may arise in the case of export cartels with similar effects. For example, suppose authorities in these importing jurisdictions are unable to cooperate effectively in investigating cartels. In that case, their investigative efforts may not easily yield necessary evidence on the producers' conduct in exporting jurisdictions. 60 Multiple jurisdictions may repeat the same investigative steps, resulting in extra costs for business subject to investigations. 61 Meanwhile, cooperation with the authorities of those jurisdictions may be hampered by the fact that they may not perceive an immediate interest in tackling the cartel if it does not create harmful effects for the national economy. 62 Some countries specifically exempt "export cartels" from competition law, while many others will only investigate cartels if there are adverse effects within their jurisdictions. 63 Some international cartels may be beyond the effective reach of the laws in the countries where they have their most pernicious effects.64 According to the Organization for Economic Co-operation and Development ("OECD") report, most countries in which violations occur may not have access to the evidence necessary to determine the guilt or innocence of the parties involved. 65 Therefore, cartels may at times remain undiscovered due to lack of cooperation. Harmful cartel activity could go unpunished in these importing jurisdictions when enforcing national competition law against such cartels.

Also, the extraterritorial reach of competition law, the "effect doctrine," is a sensitive issue and jurisdictional conflicts may occur. For example, two different countries may assert their own jurisdiction in the same case, leading to potential divergent assessments. 66 In such circumstances, "positive comity" provisions are now included in many bilateral cooperation agreements between countries, whereby competition authorities can request another jurisdiction to address anti-competitive conduct that might best be fixed with an enforcement action in the country that is the recipient of the request.67 However, as I will illustrated in the following Chapter, international cartels could in theory be carried out either by the State or by State controlled firms. In examining their legitimacy both under WTO treaty obligations and under antitrust laws, there could be opportunities for nations to play one system against the other.

In sum, numerous changes in enforcement activity against international cartels have occurred over the past two decades: the adoption of antitrust policies prohibiting hardcore cartels by countries around the globe, vastly increased enforcement against international cartels by antitrust authorities, increased use of leniency policies, application of extraterritoriality, and a slow but growing trend toward criminalization of price-fixing. The net effect of these changes is that numerous competition policy agencies now vigorously pursue and successfully prosecute international cartels, levying increasingly large fines. However, even where international cartel activity can be tackled effectively by national competition laws, inefficiencies may occur during the investigation of international cartels and lead to underenforcement of competition policy and laws. In the absence of well-functioning and institutionalized cooperation mechanisms, multiple jurisdictions may repeat the same investigative steps, resulting in extra costs related to the investigations for business and costs to competition authorities from unnecessary duplication. As a result, harmful cartel activity could go unpunished, consumers would be harmed, and future harmful behavior will not be deterred.

#### No impact – Oppenheimer evidence is about U.S. economic strength and hegemony, which global growth isn’t key to.

#### COVID and land war in Europe disprove the impact.

#### No econ decline impact.

**Walt 20** [Stephen M. Walt is the Robert and Renée Belfer professor of international relations at Harvard University. “Will a Global Depression Trigger Another World War?”, May 13th, https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/]

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

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

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

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

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

#### No populism impact

James **Miller 18**, professor of liberal studies and politics, and faculty director of creative publishing and critical journalism at the New School in New York, 10/11/18, “Could populism actually be good for democracy?”, https://www.theguardian.com/news/2018/oct/11/could-populism-actually-be-good-for-democracy

Current affairs may seem especially bleak, but fears about democracy are **nothing** **new**. At the zenith of direct democracy in ancient Athens, in the fifth century BC, one critic called it a **“patent absurdity”** – and so it seemed to most political experts from Aristotle to Edmund Burke, who considered democracy “the most shameless thing in the world”. As the American founding father John Adams warned, “there never was a democracy yet that did not commit suicide”.

For almost 2,000 years, most western political theorists agreed with Aristotle, Burke and Adams: nobody could imagine seriously advocating democracy as an ideal form of government. It was only at the end of the 18th century that democracy reappeared as a modern political ideal, during the French Revolution.

Ever since, popular insurrections and revolts in the name of democracy have become a recurrent feature of global politics. It needs to be stressed: these revolts are not an unfortunate blemish on the peaceful forward march toward a more just society; they form the heart and soul of modern democracy as a living reality.

It is a familiar story: out of the blue, it seems, a crowd pours into a city square or gathers at a barnstorming rally held by a spellbinding orator, to protest against hated institutions, to express rage at the betrayals of the ruling class, to seize control of public spaces. To label these frequently **disquieting moments** of **collective freedom** **“populist**”, in a pejorative sense, is to misunderstand a **constitutive feature** of the **modern** **democratic project**.

Yet these episodes of collective self-assertion are invariably fleeting, and often provoke a political backlash in turn. The political disorder they create stands in tension with the need for a more stable, peaceful form of collective participation. That is one reason why many modern democrats have tried to create representative institutions that can – through liberal protections for the freedom of religion, and of the press, and the civil rights of minorities – both express, and tame, the will of a sovereign people.

Thus the great French philosopher Condorcet in 1793 proposed creating a new, indirect form of self-rule, linking local assemblies to a national government. “By ingrafting representation upon democracy,” as Condorcet’s friend Tom Paine put it, the people could exercise their power both directly, in local assemblies, and indirectly, by provisionally entrusting some of their powers to elected representatives.

Under the pressure of events, another ardent French democrat, Robespierre, went further and defended the need, amid a civil war, for a temporary dictatorship – precisely to preserve the possibility of building a more enduring form of representative democracy, once its enemies had been defeated and law and order could be restored.

But there was a problem with these efforts to establish a modern democracy at scale. Especially in a large nation such as France or the US, representative institutions – and, even worse, dictatorial regimes claiming a popular mandate – inevitably risk frustrating anyone hoping to play a more direct role in political decision-making.

This means that the democratic project, both ancient and modern, is **inherently unstable**. The modern promise of **popular sovereignty**, repeatedly frustrated, produces recurrent efforts at asserting the collective power of a people. If observers like the apparent result of such an effort, they may hail it as a renaissance of the democratic spirit; if they do not, they are liable to dismiss these episodes of collective self-assertion as mob rule, or populism run amok.

No matter. Even though the post-second world war consensus over the meaning and value of liberal democratic institutions seems more fragile than ever – polls show that trust in elected representatives has rarely been lower – democracy as furious dissent flourishes, in vivid and vehement outbursts of anger at remote elites and shadowy enemies.

#### No internal link to China war – Talmadge is writing about Taiwan, which is a sacred commitment external to economic factors.

#### EU impact card is ten years old – Brexit and wave of far-right leaders should have fractured it.

#### ILO impact is about multilateral cooperation, which is explicitly at odds with the internal link about hegemony and unipolarity – it’s a double turn!