# 1nc nu6

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### 1NC – SPEC

#### Interpretation -- In addition to prohibited practices, the aff should specify the agent of antitrust authority and sanctions.

William **KOVACIC** Global Competition Professor of Law and Policy @ George Washington University Law School **’12** “The Institutions of Antitrust Law: How Structure Shapes Substance Substance” 110 MICH. L. REV. 1019 p. 1026

A more complete framework of the institutional elements of antitrust law enforcement might organize the examination of the system around the following questions:

What is the purpose of the statutes? What do the statutes prohibit?

By what means are infringements detected and evidence gathered? Which entities have authority to prosecute violations?

Which body decides guilt or innocence?

What sanctions are imposed for wrongdoers?

A classification scheme cast along these lines would help identify more clearly the volume's examination of the U.S. antitrust system and assist in illuminating connections among its elements.

#### Violation – the plan text does not specify agent, authority, or sanctions.

#### 1 – Negative ground. Institutional structure and agent of implementation key to antitrust outcomes. Any debate over only the preferred outcomes is hopelessly incomplete.

William **KOVACIC** Global Competition Professor of Law and Policy @ George Washington University Law School **’12** “The Institutions of Antitrust Law: How Structure Shapes Substance Substance” 110 MICH. L. REV. 1019 p. 1019-1020

Forty years ago, Graham Allison wrote the Essence of Decision' and transformed the study of foreign policy and public administration.2 Allison's analysis of the Cuban Missile Crisis appeared amid profound concerns about the competence of U.S. government institutions. "Few issues about the American government," he wrote, "are more critical today than the matter of whether the federal government is capable of governing."3 To Allison, better performance required greater insight into how the structure and operations of public institutions shaped policy results. "[B]ureaucracy is indeed the least understood source of unhappy outcomes produced by the U.S. government,"4 Allison wrote. "If analysts and operators are to increase their ability to achieve desired policy outcomes, . . . we shall have to find ways of thinking harder about the problem of 'implementation,' that is, the path between preferred solution and actual performance of the government."5 Essence of Decision quickly appeared on reading lists in political science departments and schools of public administration, and its analytical orientation and vocabulary have become enduring elements of academic discourse.

Daniel Crane's The Institutional Structure of Antitrust Enforcement ("InstitutionalStructure")7 may do for antitrust law what Essence of Decision did for public administration. Unlike most literature on antitrust law, this superb volume does not address pressing issues of substantive analysis (e.g., when can dominant firms offer loyalty discounts?).8 Instead, Institutional Structure studies the design and operation of the institutions of U.S. antitrust enforcement. Professor Crane skillfully advances a basic and powerful proposition: to master analytical principles without deep knowledge of the policy implementation mechanism is dangerously incomplete preparation for understanding the U.S. antitrust system, or any body of competition law. "Institutions," Professor Crane observes, "are a critical and underappreciated driver of an antitrust policy that interacts in many subtle ways with substantive antitrust rules and decisions" (p. xi). Institutional Structure demonstrates that the causes of observed policy outcomes, good and bad, often reside in the institutional framework. Seemingly potent conceptual insights may fizzle, or create mischief, if the institutions that must apply them are deformed. Good policy results depend on the strength of what Allison called "the path between preferred solution and actual performance." In the language of modem technology, one cannot deliver broadband-quality policy outcomes through dial-up institutions.

#### 2 – Voting issue – cross-ex is too late for counterplan competition. 2AC clarification destroys 1NC strategic coherence. Every branch is topical. Rule-making and common law don’t link to any of the same positions and reading both requires contradiction.

### 1NC – DA

#### Ruling sua sponte undermines the judicial process.

Poor & Goldschmidt ’15 [E. King & James E; DRI member and partner in Quarles & Brady LLP’s Chicago office, chair of the firm’s appellate practice, member of the board of directors of the Appellate Lawyers Association, author of two petitions for certiorari granted by the Supreme Court, 25 years of law experience; commercial litigation attorney, associate in Quarles & Brady LLP’s Milwaukee office; October 2015; “Sua Sponte Decisions on Appeal”; <https://www.quarles.com/content/uploads/2015/10/FTD-1510-Poor-Goldschmidt.pdf>; For the Defense, Appellate Advocacy; accessed 4/3/18; TV] \*Edited for reading clarity.

But these permissive exceptions are not consistently applied, and there remain ample examples of courts adhering to the principle of party presentation. See Hartmann v. Prudential Life Ins. Co. of America, 9 F.3d 1207 (7th Cir. 1993) (applying the appellate waiver rule, due to an error by counsel, against orphans whose step- mother killed their father after bribing an insurance agent to defraud the orphans). Commentators agree that such exceptions, together with balancing tests specific to various federal circuits, are susceptible to outcome-oriented application and may just be so many manifestations of the gorilla rule. Miller, supra, at 1279. “No General Rule” This patchwork of rules and exceptions leaves sua sponte decision making without any widely-accepted body of authority that is consistently applied, let alone any controlling authority on this question. As the Supreme Court summed up in Singleton v. Wulff, 428 U.S. 106, 121 (1976), “[t]he matter of what questions may be taken and resolved for the first time on appeal is one left primarily to the discretion of the courts of appeals, to be exercised on the facts of individual cases. We announce no general rule.” If the general rule is really that there is “no general rule,” then where does that leave us? One place to begin is to ask, what happens to our adversary system and the values underlying it when a court resolves a case without hearing from the parties involved? Undermining the Adversarial Process When a court raises an issue on its own and decides it without hearing from the parties involved, it chips away at our adversary system. When a court chooses to treat a case as a vehicle to decide an issue that the court believes is an overlooked, dispositive issue, rather than one addressed by the parties, then the court has ventured away from its role as a neutral decision maker into a subjective realm. In doing so, the court concludes on its own that a particular new question will dispose of the case. It then returns to being a neutral decision maker to decide the very issue which it has selected as dis- positive. A. Milani & M. Smith, Playing God: A Critical Look at Sua Sponte Decisions by Appellate Courts, 69 Tenn. L. Rev. 245, 277–78 (2002). But when a court itself selects new issues—without party participation—and then decides those very same issues, the values underlying our adversary system are compromised. The parties are far more likely than the reviewing court to explore the peculiarities and nuances of the case; after all, they have every incentive to do so. On the other hand, considerations of effciency may cause courts to be more likely to reach conclusions on issues that they them- selves have already identified as resolving the case more directly. Id. Moreover, even if identifying new issues does not actually undermine a court’s impartiality, it may still create that impression: “When [the court] a decision maker becomes an active questioner or otherwise participates in a case, she is likely to be perceived as partisan rather than neutral.” Id. at 280. Decisions reached under a court’s own initiative do not “promote respect either for the Court’s adjudicatory process or for the stability of its decisions,” and other commentators have described such decisions as “unseemly,” “not likely to be regarded favorably,” a breach of the parties’ trust, and a sacrifice of the court’s function as an adjudicator. Id. at 280–81 (quoting Justice Harlan’s dissent in Mapp v. Ohio, 367 U.S. 643, 677 (1960)). Such perceptions work against both litigants’ and society’s acceptance of judicial decisions. Id. at 284. As explained elsewhere, “If the grounds for the decision fall completely outside the framework of the argument, making all that was discussed or proved at the hearing irrelevant... the adjudicative process has become a sham, for the parties’ participation in the decision has lost all meaning.” Id. at 285 (quoting L. Fuller, e Forms and Limits of Adjudication, 92 Harv. L. Rev. 353, 388 (1978)).

#### That corrodes rule of law via abdicating judicial legitimacy.

Donaldson ’17 [Michael J; Partner at Burnet, Duckworth & Palmer, LLP, Master of Laws from Columbia; 2017; “Justice in Full Is Time Well Spent: Why the Supreme Court Should Ban Sua Sponte Dismissals”; http://www.bdplaw.com/publications/justice-in-full-is-time-well-spent-why-the-supreme-court-should-ban-sua-sponte-dismissals/; Quinnipiac Law Review, Vol 36; accessed 9/15/21; TV]

There is a lot wrong with sua sponte dismissals. They are inconsistent with the adversary system, and change the judge's role from referee to contestant.85 They can undermine respect for the legal system. And they increase the likelihood of errors, leading to unnecessary appeals and a waste of judicial resources." But most importantly, they lack the very due process the courts are supposed to safeguard.

A. Failure to Provide Due Process

Sua sponte decisions are inconsistent with due process.89 Period. There is no other way to look at it. 90 Not only does a plaintiff surprised by a sua sponte dismissal not receive "due" process, she receives no process at all.91 She has no idea her lawsuit is in jeopardy of being dismissed, no idea what the reasons for that dismissal might be, and no opportunity to respond. 92 This is the case whether the court's dismissal decision is right or wrong. 93 As Allan Vestal puts it:

When [issues are] considered sua sponte both parties are taken completely by surprise and the court decides the matter on grounds not urged by either. Neither has had any opportunity to consider the matter, and both are now bound by res judicata grounded on considerations which represent not well reasoned positions for the litigants, but rather only the fortuitous decision of a 94 wayward court.

The reference to res judicata here is important. As Milani and Smith point out, the res judicata doctrine requires a party or its privy to be a participant in the former proceeding before the court can bind him to the consequences of that proceeding because, according to the Supreme Court, "The opportunity to be heard is an essential requisite of due process of law in judicial proceedings."95 If this is the standard applied to former proceedings, how can it not apply to proceedings currently before the court? Lon Fuller once wrote of sua sponte decisionmaking:

[I]f the grounds for the decision fall completely outside the framework of the argument, making all that was discussed or proved at the hearing irrelevant ... the adjudicative process has become a sham, for the parties' participation in the decision has lost all meaning.9 6

The situation is even harder to defend when there is no hearing at all. 9

B. Undermining Respect for the Legal System

The perception that the courts are regularly failing to provide due process cannot do anything but undermine respect for the legal system.9 8 Sir Robert Megarry, in the speech quoted at the beginning of this article,99 underlined the importance of sending the unsuccessful litigant away feeling as though he has had a fair hearing.' Justice Harlan was obviously cognizant of this problem in his dissent in Mapp, when he warned that the Court's sua sponte decision in that case was "not likely to promote respect ... for the court's adjudicatory process."o

This is not a farfetched concern. Offenkrantz and Lichter note that in the Second Circuit's high-profile decision to "[sua sponte remove] Judge Shira Scheindlin from further proceedings in two stop-and-frisk cases," an order which left the Judge "completely blindsided," "newspapers were reporting that appellate courts had carte blanche to raise and decide important issues in a case without ever seeking the input of any of the parties to it."' 0 2

Megarry tells a story of a client of his who had a fatal flaw in his case, but insisted on going ahead anyway.10 3 Instead of seizing on the fatal flaw at the outset, the trial judge heard the case all the way through.1 0 4 The client won on his two collateral points, but, as expected, lost on the key issue. o Megarry tells the story of what happened next:

The course taken by the judge must have prolonged the hearing by an hour or two. But the effect on the defeated tenant was striking. True, he had lost the last point and the case as a whole; but he had been victorious on the other two points. All that nonsense about the agent's lack of authority and the letter not having been received in time had been blown away by the judge. It was a pity about the wording of the letter, of course; but he had seen his case being put in full, and none of his grievances had been left unheard or unresolved.

This is as it should be. Courts must not, as Megarry puts it, give in to "the temptation of brevity."'0 o Their very legitimacy hangs in the balance. A loss of respect for the courts marks the beginning of the unraveling of the rule of law. This is simply too high of a price to pay for efficiency.

#### Extinction.

Davis and Morse ’18 [Christina and Julia; September 19; Professor of Government at Harvard University; Professor of Political Science at the University of California at Santa Barbara; International Studies Quarterly, “Protecting Trade by Legalizing Political Disputes: Why Countries Bring Cases to the International Court of Justice,” vol. 62]

Trade, Conflict, and Adjudication

We argue that countries turn to international adjudication to protect trade flows under conditions of strong economic interdependence. This argument is built on two key assumptions. First, states believe that an international dispute over territory, fishing rights, or another salient issue could harm trade. Second, states view international adjudication as an effective way to end the dispute. Given the risk of harm to economic relations and the potential for courts to contribute to conflict resolution, states with high trade value vested in a relationship will be more willing to undertake costly litigation. This section elaborates on the general conditions of our theory and then explains why the ICJ is a good venue for testing the relationship between economic interdependence and international adjudication. The Adverse Impact of Conflict on Trade The premise that conflict disrupts trade is central to the theory of commercial peace. Russett and Oneal (2001) draw on the work of philosopher Immanuel Kant to argue that interdependence deters conflict by raising its costs. According to this reasoning, war interrupts trade while peace promotes stable commerce, leading states to calculate that the gains of peace are significant compared to the costs of war.4 Other perspectives focus on the informational role of interdependence to lower uncertainty between states (Reed 2003). Gartzke, Li, and Boehmer (2001) contend economic interdependence allows states to signal their resolve through their willingness to bear the economic costs of confrontation.5 A host of empirical studies supports the idea that conflict reduces trade (Keshk, Reuveny, and Pollins 2004; Long 2008). Several potential channels connect trade and conflict, including direct damage to infrastructure and transportation resulting from actual conflict, sanctions policies, and informal discrimination by governments or private actors. Glick and Taylor (2010) find that the effect of war on trade is significant and persistent. At a lower level, political tensions may also suppress trade (Pollins 1989; Fuchs and Klann 2013). Consumer boycotts and financial market reactions in some cases have led to adverse market impact (Fisman, Hamao, and Wang 2014; Heilmann 2016; Pandya 2016). Simmons (2005) finds that territorial disputes have a sizable negative impact on trade even in the absence of militarized action. Others suggest states anticipate the potential adverse impact of conflict on trade, and therefore trade less to begin with if they think that war is likely. In such a scenario, the marginal economic costs of war should be insufficient to change a state's calculation for going to war (Morrow 1999; Barbieri 2002). Gowa and Hicks (2017) contend that trade is largely diverted through third-party channels, which compensate for having less direct trade with the adversary. We assume that leaders and business constituencies on average believe that conflict damages trade relations. Political conflict could lead governments to adopt sanctions against an adversary or to restrict financial flows. Violence likely disrupts trading routes and slows the movement of goods. The potential for adverse financial market reactions and consumer response adds further unpredictability about the risk of spillover from political disagreement into economic harm. Substitution through third parties could alleviate the harm, but this would still increase trade costs. The expected harm to trade motivates states to pursue the resolution of disputes. Adjudication as a Conflict Resolution Mechanism When states want to resolve an interstate dispute, why would they choose adjudication rather than negotiations, economic sanctions, or militarized action? In some cases, the decision follows an episode of military conflict as part of an effort to normalize relations. In other disputes, countries may turn to a legal venue to prevent a problem from ever reaching the stage that could produce serious political tensions or threats of force. The literature offers three broad types of explanations for why states pursue adjudication: legitimacy, informational benefits, and domestic obstacles to settlement. At the systemic level, international norms support peaceful conflict resolution. Some contend that rule of law has come to shape the identities of states, forming norms about appropriate action in both the domestic and international spheres (Finnemore and Sikkink (1998, 902). When international law has been established through fair procedures and offers coherent principles, it forms a legitimate source of authority in international affairs that generates an independent “compliance pull” on state behavior (Franck 1990, 65). International courts combine both legitimacy and authority as they help states solve specific disputes about how to interpret international law; the growing role for international courts in international affairs represents an important trend (Alter 2014; Alter, Helfer, and Madsen 2016). Integration with national courts has reinforced states’ use of the European Court of Justice (ECJ), which stands out for its expansive caseload and impact on state behavior (Alter 1998). The ICJ has achieved a relatively strong record of compliance with rulings (Schulte 2004; Llamzon 2007; Mitchell and Hensel 2007; Johns 2012). Legal settlement can help states coordinate policies through the provision of information. Compared to bilateral negotiations or nonbinding third-party arbitration, adjudication conveys a government's willingness to reach an agreement (Helfer and Slaughter 2005; Gent and Shannon 2010). Having taken the public step to initiate legal action, a government would appear inconsistent and incur a reputational penalty if it also took unilateral measures such as sanctions or military actions before the legal process had reached a conclusion. This shapes the diplomatic context because participants know that the matter will neither escalate into violence nor disappear through neglect. A court ruling offers a focal point amidst uncertainty about how to interpret the terms of an agreement (Ginsburg and McAdams 2004; Huth, Croco, and Appel 2011). As the record-keeper of past actions, courts support systems of tit-for-tat and reputational enforcement (Milgrom, North, and Weingast 1990; Carrubba 2005; Mitchell and Hensel 2007). In these informational theories of courts, states may comply with court rulings in the absence of coercive measures or the threat of sanctions because the reputational costs of noncompliance are too high. Rather than simply interpret law, courts coordinate expectations about enforcement. Johns (2012) models the circumstances whereby mobilization of third-party actions in support of a court ruling generates endogenous enforcement that can affect outcomes. In this way, multilateral enforcement makes an international court different from the pressure available in bilateral negotiations. International courts also offer a way for states to frame settlements to appeal to domestic audiences (Fang 2008). Simmons notes that even when the same deal could be reached in negotiations or through a court decision, a negotiated settlement could be viewed as a sign of weakness while legal resolution would be a positive signal for future cooperation (Simmons 2002, 834). This dynamic occurs because “domestic groups will find it more attractive to make concessions to a disinterested institution than to a political adversary” (Simmons 2002, 834). In research on several prominent ICJ cases, Fischer (1982, 271) emphasizes the court has helped governments to save face. Consequently, those governments unable to reach agreements over domestic opposition may find it easier to do so with the involvement of a third-party ruling. Allee and Huth (2006a) show that governments with higher levels of domestic political constraints are more likely to choose adjudication over negotiation for settling territorial disputes. Domestic political constraints also increase the probability of filing complaints at the WTO (Davis 2012). The mobilization of domestic groups plays a critical role in litigation patterns at the ECJ (Alter and Vargas 2000).

### 1NC – K

#### The 1AC’s construct of the firm as the locus of competitive innovation reproduces neoclassical economic orthodoxy. Antitrust is justified as an intervention to correct “market failures.” Market failure relies on the ideal of perfect competition.

Nathan **TANKUS** Research Director Modern Monetary Network **AND** Luke **HERRINE** PhD Candidate @ Yale Law, JD NYU & Former Clerk Second Circuit of Appeals **’21** “Competition Law as Collective Bargaining Law” <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3847377> p. 1-3

­ “[T]oo often discourse about ‘the market’ conveys the sense of something definite—a space or constitution of exchange...when in fact, sometimes unknown to the term’s user, it is being employed as a metaphor of economic process, or an idealisation or abstraction from that process.” – E.P. Thompson2 Introduction To those who study governance of the labor relationship, it is obvious that the relationship between business and labor must be governed, and that stability in this social relation is something valued by labor, business, and society writ large.3 Strangely, the idea that governance is necessary and price stability is good are both obscure interlopers to the study of competition law. To bridge the gap between these two areas of law--and incidentally give labor a greater role and stature in theorizing competition law--we aim to provide a general “market governance” framework for understanding how markets are governed in the context of the legal rules that allow and disallow certain forms of coordination. This framework draws from multiple heterodox traditions in political economy, but is particularly oriented toward building out the emerging framework of Neochartalist microeconomics.4

[Insert Footnote 4 – Turner]

Neochartalism, or Modern Monetary Theory (MMT), began as a macroeconomic framework for understanding how legal institutions produce and reproduce money and monetary value, particularly the acceptance of monetary objects in payments of taxes and court-ordered obligations. In developing over the last twenty-five years, Neochartalism has become an interdisciplinary perspective for understanding and reinterpreting a variety of social phenomena. Some scholarship, particularly the path-breaking work of the late economist Fred Lee (who we rely on in conceptualizing issues in this chapter) builds up a microeconomic framework that is uniquely consistent with--and reliant on--MMT insights. We hope others choose to follow Lee and ourselves in making contributions to Neochartalist Microeconomics and expanding the reach of Neochartalism in a variety of subfields that remain dominated by mainstream microeconomics.

While it is beyond the scope of the current chapter to identify all the ways in which our current perspective accords with unique insights of Neochartalism, our focus on potential financial and market instability, money prices and money income as a focus of analysis rather than relative prices and “real variables'' reflect our Neochartalist lens. Our focus on the legal construction of markets also adds to Neochartalism’s emphasis on the legal construction of a monetary production economy in general. Our focus on inherent and irreducible mediated social interdependence also accords with the scholarly perspective that Neochartalist humanities scholars bring to Neochartalism e.g. SCOTT FERGUSON, DECLARATIONS OF DEPENDENCE: MONEY, AESTHETICS, AND THE POLITICS OF CARE (2018).

[End footnote 4]

Arriving at a theory of market governance requires rejecting economic common sense. Far too much economics scholarship--both among orthodox scholars and their critics--treats “perfect competition” as the analytical (and often normative) baseline for all markets, including labor markets. Under perfect competition, prices (including wages) are arrived at entirely via the uncoordinated matching of bids and asks, assumed to result in settled equilibriums represented by intersecting supply and demand curves. If all markets are perfectly competitive (and certain other conditions obtain), then each input and output has its proper price which sends “signals” throughout the economy and results in a perfectly “efficient” allocation of resources. From this perspective, coordination, especially coordination over prices (again, including wages), appears as an unnatural intervention, a way for those acting collectively to collect “rents” above the “real” value of their contribution to society. If coordination is to be justified, it is usually to correct for some other deviation from perfect competition: workers might bargain collectively to capture some of a monopsonist's rents, for example. And, indeed, many of those trained in economics who advocate for collective bargaining or other worker-empowerment measures appeal to one or more “market failures”.5 In doing so, they reproduce the idea— intentionally or not—that if competition were finally left to do its work it would reveal the prices that reflect the allocation of goods and services that perfectly matches relative scarcity, that markets would work “better” if they were moved “closer” to (or to “resemble” or “approximate”) the “competitive” ideal.6 Collective bargaining is a distortion, but it is the best we can do in our distorted world.

But here's the rub: collective bargaining is not a distortion of a preexisting “labor market”. More generally, coordination between market participants (over price or other matters) is not in itself a distortion of any market. There is not and has never been a market without coordination, including over prices.

#### Neoclassical paradigm will destroy humanity and the biosphere.

Anne **FREMAUX** PhD Political Ecology & Philosophy @ Grenoble ‘**19** *After the Anthropocene: Green Republicanism in a Post-Capitalist World* p. 1-3

If the main starting point of this book is the severe environmental crisis we are facing and the natural planet-wide collapse toward which we are heading, today’s ecological reality is powerfully connected to other issues such as growing socioeconomic inequalities, the erosion of democratic institutions, the organized apathy of citizens, the loss of power of nation-states in favor of corporations, the progressive disappearance of the notion of common good, and the economic colonization of the social, cultural, and political life by economic objectives. The global ecological crisis reveals these interlinked disasters caused by the core components of capitalism that include: an excessive exploitation of nature, the rise of industrialism, the self-destructive over- confidence in human-technical power, the arrogant anthropocentric mind- set, and denial of ecological limits, as well as the narrow rationalism and materialism that develop within a reductionist predominant form of science.

Neoliberalism as a ‘global system’ threatens societies as a whole and more especially the core values of social communities and democracy, such as justice, ‘common decency,’ civic virtue, or citizenship. In neoliberal patterns, economic efficiency, market values, employability, consumer freedom, and instrumental rationality are favored over democratic participation, civic values, personal autonomy, active citizenship, intellectual development (‘enlightenment’1), and moral rationality (reasonability2). Institutions dedicated to the common good are systematically turned into competitive structures to satisfy the interests of markets and greedy elites. Pluralism is disappearing under the assault of a one-dimensional consumer pattern which treats humans and non-humans as commodities under the hegemony of private interests. Civil society, an essential element of the agonistic and critical democracy defended in this book, is losing out to ‘spectator democracy.’ Indeed, citizens are more and more passive and self-centered in part because existing political and democratic structures leave them with few opportunities to participate and make collective decisions. As a consequence, the link between democratic politics and citizens is being critically weakened. Neoliberal individuals end up being overtaken by lassitude and resignation, indifference, and loss of interest for the shared common world. What defines neoliberal society is, indeed, a widespread disaffection for democracy and social bonds entailed by the loss of political agency and self-determination. In such a system, propaganda is necessary to manufacture consent3 and to shape the fundamental values to ensure that individuals see themselves as consumers, workers, or owners of capital, rather than citizens, spiritual or relational individuals, friends, or members of social and ecological communities. In order to be fully operational, such a system must also rely on high doses of cynicism and the value of relativism cultivated by deconstructive postmodern views.

Neoliberal competitive market-state systems have colonized all aspects of life, but mainly, they have subjugated nature and used it as an ‘unlimited’ spring of profit and resources intended to feed the logic of growth. The globalized neoliberal framework behaves as if nature were only a neutral background for profit-seeking and economic development. In order to push back the ecological limits that are more and more visible, neoliberals argue that those limits can be transcended through decoupling and technological innovations (Chapter 5). Indeed, constructivist neoliberal governments act as if the biosphere were a mere component of the socioeconomic sphere. As an anti-ecological ideology, neoliberalism denies the existence of natural limits and promotes unlimited material wants vs. limited resources, a cult of endless consumption (consumerism), and techno-fixes (techno-optimism) as the solution to social and ecological problems. The appropriation and commodification of nature undertaken by this form of economic ideology and the freedom it enshrines—understood mainly as the legitimate exercise of extractive power—entail that the environment is viewed only as an instrumental source of raw material and sinks of fossil fuels rather than as an ethically valuable physical, biological, and chemical context of life. Inevitably, this type of economy has supported an insatiable extraction that is today overwhelming ecosystemic capacities. Neoclassical economics is certainly the instrumental form of rationality ‘that most actively opposes the ethical valuation of the environment’ (Smith, 2001: 26).

The neoliberal capitalist agenda, associated with an arrogant anthropocentrism and the technological optimism of many political leaders, experts, techno-scientists, academics, and citizens, has transformed nature and people into raw materials (‘natural’ and ‘human resources’). It has replaced democratic and republican institutions—defined by their concern for the common good—by structures aiming at facilitating the activities and profits of corporations and markets. It has deprived Western political structures of substantial democratic energy by turning citizens of wealthy liberal nations into demoralized and nihilist homo oeconomicus (‘neoliberal citizens’), that is, passive consumers as opposed to active citizens. More than that, neoliberalism, through mass media, entertainment, information, and educational systems, has incrementally converted all the spheres, activities, and dimen- sions of life into economic ones (‘economization’ or ‘marketization’ of life). Private and public institutions are used as ways to transmit the values of capitalism.4 As an unethical and unsustainable model of commercialization, ultraliberal capitalism supports crass commodification, intensifies ine-ualities and transforms everything in its way—from non-human nature to human beings—into replaceable, dispensable and disposable products. As a global threat, neoliberalism leads to ‘environmental stresses (water shortages, deforestation, soil erosion or climate change), food and energy insecurity, peak oil, rising poverty and inequalities within and between societies, increasing passivity of citizens within democracies and the inexorable rise of corporate power within and over the democratic state’ (Barry, 2008: 3).

The price we, humans, are socially, politically and ecologically paying and will continue to pay in the future for the triumph of the neoliberal ideology is disproportionate with anything humankind has experienced so far (see Fig. 1.2). However, human relatively recent history already shows that the popular passivity and political apathy (mentioned above) fostered by cynical and disempowering systems of ideas have the potential to favour the rise of dictatorial regimes in which a father figure or ‘strong man’ could take upon the conduct of public affairs. At a time when chauvinistic, racist, anti-elitist, and macho-ist parties are dangerously rising in all Western countries, this fear is taking a serious turn, which includes the risk of an authoritarian ecology.

#### We should use the framework of challenge-driven political economy instead of a competitiveness framework. Using the power of the state to make and shape markets is key to direct policy to solve inequality and climate change.

Mariana **MAZZUCATO** Inst. for Innovation & Public Purpose @ University College (London) **AND** Rainer **KATTEL** Inst. for Innovation & Public Purpose @ University College (London) **’20** “Grand Challenges, Industrial Policy, and Public Value” Non-paginated

Twenty-first-century policymaking is increasingly defined by the need to respond to major social, environmental, and economic challenges. Sometimes referred to as ‘grand challenges’, these include threats like climate change, demographic, health, and well-being concerns, as well as the difficulties of generating sustainable and inclusive growth. Against this background, policymakers are increasingly embracing the idea of using industrial and innovation policy to tackle these ‘grand challenges’. Examples of challenge-led policy frameworks include the United Nation’s Sustainable Development Goals (SDGs; Borras,­­ 2019), the European Union’s Horizon Europe research and development programme (Mazzucato, 2018a), and the UK’s 2017 Industrial Strategy White Paper (HM Government, 2018).

Challenge-driven policy frameworks are emerging in parallel to well-established modernization and competitiveness frameworks**.** While 1 2 modernization, and in particular competitiveness frameworks, rely on the idea that government should first and foremost fix market failures,3 a challenge-driven agenda does not have such clearly defined theoretical origins and analytical lenses. As Richard Nelson argued in 1977 in his seminal book The Moon and the Ghetto, getting man to the moon and back is not the same as solving the problem of ghettos in American cities. Put differently, the nature of our knowledge about socio-economic challenges differs from our perception of strictly technical challenges. We can discover answers to technical puzzles; socio-economic issues do not have a single correct discoverable solution. Such issues require continuous discussion, experimentation, and learning.

We believe challenge-led growth requires a new conceptual and analytical framework that has at its core the idea of confronting the direction of growth with growth that is, for example, more inclusive and sustainable. Such a framework should focus on market shaping and market co-creating (Mazzucato, 2016). This is a question of both theory and policy practice. In theory, challenge-driven innovation policy questions both established neoclassical and evolutionary concepts (Schot and Steinmueller, 2018). In policy practice, directed policies require rethinking what is meant by ‘vertical policies’.

Industrial policies have always been composed of both a horizontal and a vertical element. Horizontal policies have historically been focused on skills, infrastructure, and education, while vertical policies have focused on sectors like transport, health, energy, or technologies. These two traditional approaches roughly embody differing schools of economics: neoclassical economics-inspired horizontal policies focusing on supply-side factors and inputs; and evolutionary economics-inspired policies putting emphasis on demand-side factors and systemic interactions (Nelson and Winter, 1974; Hausmann and Rodrik, 2006 for a synthesis). Although certain sectors might be more suited to sectorspecific vertical strategies, the ‘grand challenges’ expressed in SDGs are cross-sectoral by nature and hence we cannot simply apply a vertical approach to them. Both neoclassical and evolutionary approaches to industrial policy have relied on the idea that the best policy outcome is economy-wide development, without specifying its nature. In policy this has led to managing economies according to GDP growth rates, competitiveness indices and rankings, or other macro indicators (e.g. exports, patents) (Drechsler, 2019). Yet, many SDGs are only indirectly related to the economy and hence many of the key issues around SDGs have not been theorized in the context of innovation and industrial policy (see, e.g., Zehavi and Brenzitz, 2017).

In this chapter we argue that through well-defined goals, or more specifically ‘missions’, that are focused on solving important societal challenges, policymakers have the opportunity to determine the direction of growth by making strategic investments, coordinating actions across many different sectors, and nurturing new industrial landscapes that the private sector can develop further (Mazzucato, 2017; Mazzucato and Penna, 2016). The result would be an increase in cross-sectoral learning and macroeconomic stability. This ‘mission-oriented’ approach to industrial policy is not about top-down planning by an overbearing state; it is about providing a direction for growth, increasing business expectations about future growth areas, and catalysing activity—self-discovery by firms (Hausmann and Rodrik, 2003)—that otherwise would not happen (Mazzucato and Perez, 2015). It is not about de-risking and levelling the playing field, nor about supporting more competitive sectors over less (Aghion et al., 2015), since the market does not always know best, but about tilting the playing field in the direction of the desired societal goals, such as the SDGs. However, we argue, to achieve this requires a new analytical framework based on the idea of public value and a policymaking framework aimed at shaping markets in addition to fixing various existing failures. Indeed, we argue that if we want to take grand challenges such as the SDGs seriously as policy goals, market shaping should become the overarching approach followed in various policy fields.

### 1NC – CP

#### The 50 states and relevant subnational territories should remove regulations creating anticompetitive effects that immunize private actors under *Parker v. Brown*.

### 1NC – DA

#### Federal courts are barely recovering from COVID now.

Morris ’21 [Angela; ALM Media's Texas litigation reporter, internally citing several Texas district court judges; 6/11/21; “'Backlogs Keep Me Up at Night': A look at Cases Clogging Texas Dockets Amid Pandemic”; <https://www.law.com/texaslawyer/2021/06/11/backlogs-keep-me-up-at-night-a-look-at-cases-clogging-texas-dockets-amid-pandemic/?slreturn=20210805152423>; Texas Lawyer; accessed 9/5/21; TV]

Texas Lawyer analyzed case data from the administrative office and found that between 2019 and March of this year, the active criminal docket in district courts swelled by 34% to land at nearly 255,800 cases. The number of active family cases grew by 13% since 2019, ending at just over 370,600 this March. In contrast, there was only 2% growth in the number of active civil cases in the time period. The number of juvenile cases actually shrank by 5%. “Any backlog is always concerning to me, because I know backlogs represent unresolved cases,” said 379th Criminal District Judge Ron Rangel of San Antonio. “Backlogs do keep me up at night.” Criminal docket The pandemic was the hardest on criminal cases. Although district courts had a 94% clearance rate for criminal cases in 2019, it dropped to 70% in 2020. It’s recovered somewhat so far this year at 80%. Case clearance rates represent a comparison between the number of old cases that courts dispose of, and the new cases added to their dockets. The gold standard is a 100% clearance rate, and means courts are getting rid of the same number of old cases as the new cases coming in. If courts have a rate less than 100%, that will lead to a growing case backlog. If a court’s clearance rate is more than 100%, it means the court is shrinking its docket. The result of criminal clearance rates dropping so much during the pandemic was a case backlog that skyrocketed from about 7,600 cases in 2019 to over 55,200 backlogged cases in 2020. The backlog number represents the difference in case numbers at the end of the year compared to the beginning. The backlog would remain the same if a court had disposed of the same number of cases as were filed that year. But if a court was not keeping up, the backlog would grow. Backlogs sometimes shrink if courts are clearing cases faster than they are coming in. Overall, the number of active pending criminal cases on district courts’ dockets grew by 29% between 2019 and 2020, to land at nearly 247,000 cases. The docket’s growth continued at a slower rate of 4% so far in 2021, and as of March 31, there were nearly 255,800 active criminal cases in the district courts. Rangel, who serves as the local administrative judge in Bexar County, said criminal case backlogs grew more during 2020 than other case types because virtual jury trials were not available for criminal matters. The U.S. Constitution gives criminal-defendants the right to confront their accusers, and the Texas Supreme Court did not allow a court to compel a virtual trial in criminal cases, he explained. When the pandemic started, judges across Texas granted large numbers of personal recognizance bonds to get defendants with low-level, non-violent offenses out of jails, where conditions were ripe for infections, added Rangel. Once a defendant gets released from jail, it lowers the motivation to resolve a case, he said. “The lack of a jury trial removes significant incentives for defendants to work their cases out,” said Rangel. The issue will get better as courts resume in-person jury trials. Rangel noted that Bexar County started sending out jury summonses in May and setting cases in preparation for restarting in-person jury trials in June. “Cases started moving a lot faster. In district court, we reduced the backlog by 200 cases since May 17,” Rangel said during a June 7 interview. “I have always recognized that having the loss of an in-person trial available makes it very tough to move cases, because the parties recognize nobody can force anything on them.” Judge Robert Schaffer of Harris County’s 152nd Civil District Court said that courts have already been able to cut into coronavirus case backlogs for one simple reason—they’re starting to seat juries for trials. But those trials won’t happen in great numbers for quite some time. “We can try a maximum in Harris County we can take a maximum of four juries a day,” said Schaffer, who is local administrative judge in his county. “Until there is access to jury trials in larger numbers, I don’t know what you can do to fix the backlog.” He said that criminal-defense attorneys might have advised their clients not to go to trial during the pandemic. “Lawyers today say, ‘This is a horrible situation that we are in right now. You should not be trying your case now, because of the makeup of the juries, because of the COVID mask restrictions—you can’t see people’s faces,’” said Schaffer. “If I were a lawyer, I wouldn’t want to try a case in this environment, especially if I had a substantial case.” Family dockets The same reticence to use virtual proceedings may have contributed to the backlog in family law cases. Slayton, the Texas court administrator, said that he has talked with judges and attorneys who felt that it wasn’t a good time to resolve cases during the upheaval of the pandemic. “Judges and attorneys felt it was best dealt with in-person, in a courtroom, than over Zoom. I think there was more resistance to doing that remotely,” Slayton said. District courts in 2019 had a 100% clearance rate for family cases, which dropped to 80% in 2020, leading to a backlog that mushroomed to just over 46,500 cases. The active pending family docket grew by 14% between 2019 and 2020—when it was more than 374,000 cases. There was a slight 1% dip in the first quarter of 2021, but the district courts still had more than 370,600 family cases on their dockets. Civil dockets Civil case dockets were not as badly impacted by the pandemic–perhaps because judges and lawyers embraced remote court. District courts’ civil case clearance rates stayed the same–90%–in 2019, 2020 and so far in 2021. The number of cases considered to be a backlog actually shrank by just under 700 cases between 2019 and 2020. As a result, the civil active pending case docket only grew by 5% during the pandemic year, going from nearly 382,900 in 2019 to nearly 401,700 in 2020. This number has already dropped by 2% in the first quarter of 2021. Judge Amy Clark Meachum of Travis County’s 201st District Court wrote in an email that judges rose to the challenges of the pandemic by using virtual platforms. Travis County judges ran their usual non-jury dockets and met their normal daily demands, she said.

#### Antitrust litigation consumes vast judicial resources – causes backlogs.

Fitch et al. ’21 [Lynn Fitch, Krissy C. Nobile, Justin L. Matheny; Attorney General of Mississippi; Deputy Solicitor General for Mississippi; Assistant Solicitor General; 3/1/21; “BRIEF FOR THE STATES OF MISSISSIPPI, ALABAMA, ARIZONA, ARKANSAS, CONNECTICUT, FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA, KENTUCKY, LOUISIANA, MAINE, MICHIGAN, MINNESOTA, MONTANA, NEW JERSEY, OREGON, SOUTH CAROLINA, TEXAS, UTAH, VIRGINIA, AND WEST VIRGINIA AS AMICI CURIAE IN SUPPORT OF PETITIONER”; <https://www.supremecourt.gov/DocketPDF/20/20-1018/170601/20210301174920932_pdf>; Louisiana Real Estate Appraisers Board v. United States Federal Trade Commission; accessed 9/6/21; TV]

The financial costs and burdens of defending antitrust litigation are also extraordinarily high. To mitigate those costs and burdens, which ultimately are borne by state taxpayers and citizens, States and their political subdivisions have a significant interest in dismissal of antitrust claims at the earliest stage possible whenever dismissal is legally appropriate. “Litigation, though necessary to ensure that officials comply with the law, exacts heavy costs in terms of efficiency and expenditure of valuable time and resources that might otherwise be directed to the proper execution of the work of the Government.” Ashcroft v. Iqbal, 556 U.S. 662, 685 (2009).

Immediate appellate review of a denial of a claim of state-action immunity is also efficient. Antitrust litigation is costly for litigants and the judicial system. Antitrust cases are complex and can easily consume judicial time and resources. Fully resolving state-action immunity on the front-end of litigation focuses on a narrow, outcome-determinative issue and can prevent the waste of judicial resources expended in a trial that, at the end, proves to be unwarranted. Courts therefore have a vested interest in early-stage dismissal of antitrust claims that cannot lead to redress.

An appeal from a final judgment cannot adequately safeguard these important state and judicial interests or adequately protect against financial burdens needlessly imposed by forcing a state entity entitled to state-action immunity to litigate antitrust cases to a final judgment. See Commuter Transp. Sys., 801 F.2d at 1289 (“The purpose of the state action doctrine is to avoid needless waste of public time and money.”). Allowing an immediate appeal to avoid an unnecessary trial when a State or state entity is in fact immune will protect significant public interests; obviate, or at least diminish, unnecessary financial expenditure; foster efficiency; and conserve judicial resources.

B. It is widely recognized that antitrust litigation is particularly costly. Indeed, this Court’s decision in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) is predicated in good measure on the fact that antitrust litigation is notoriously expensive. The complex and protracted discovery inherent in the early stages of antitrust litigation accounts for much of that expense. Id. at 558. In fact, that is why Twombly admonished courts not “to forget that proceeding to antitrust discovery can be expensive.” Id. at 558-59 (citing, inter alia, Note, Modeling the Effect of One-Way Fee Shifting on Discovery Abuse in Private Antitrust Litigation, 78 N.Y.U. L. REV. 1887, 1898-99 (2003) (discussing the unusually high cost of discovery in antitrust cases); Manual for Complex Litigation, Fourth, § 30, p. 519 (2004) (describing extensive scope of discovery in antitrust cases); and Memorandum from Hon. Paul V. Niemeyer, Chair, Advisory Committee on Civil Rules, to Hon. Anthony J. Scirica, Chair, Committee on Rules of Practice and Procedure (May 11, 1999), 192 F.R.D. 354, 357 (2000) (reporting that discovery accounts for as much as 90 percent of litigation costs when discovery is actively employed)).

Twombly stands for the general proposition that, when allegations in a complaint, however true, fail to state a claim for relief, the claim should be dealt with “at the point of minimum expenditure of time and money by the parties and the court.” Twombly, 550 U.S. at 558 (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, at 233-234 (3d ed. 2004)). The point of minimum expenditure in an antitrust case, in particular, comes before the case proceeds to discovery. Twombly, 550 U.S. at 568 (citing Car Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1106 (7th Cir. 1984) (“[T]he costs of modern federal antitrust litigation and the increasing caseload of the federal courts counsel against sending the parties into discovery when there is no reasonable likelihood that the plaintiffs can construct a claim from the events related in the complaint.”)).

If a state entity defendant in an antitrust case is entitled to state-action immunity—whether that immunity is deemed immunity from suit or from liability— there is no reasonable likelihood that a plaintiff can raise a claim of entitlement to relief or recovery. There is thus every reason to allow the state-action immunity issue to be appealed before the parties and the court are faced with the costs of discovery and trial—i.e., to deal with the issue “at the point of minimum expenditure of time and money by the parties and the court.”

Antitrust litigation is legally and factually complex, inevitably requires massive discovery, cannot be conducted without a battery of expert witnesses, and is of protracted duration. See, e.g., Corr Wireless Commc’ns v. AT&T, Inc., 893 F. Supp. 2d 789, 809-10 (N.D. Miss. 2012); Nepresso USA, Inc. v. Ethical Coffee Co. SA, 263 F. Supp. 3d 498, 508 (D. Del. 2017) (highlighting “the financial burden of the discovery process in general, but particularly in antitrust cases”). Those concerns counsel in favor of application of the collateral-order doctrine to allow interlocutory appeals of the denial of claims of state-action immunity in antitrust cases.

#### Court clog produces patent delays.

Ball & Kesan ’10 [Gwendolyn G. & Jay P; Research Fellow Business, Economics and Law Group Institute for Genomic Biology and Information Trust Institute University of Illinois; Professor and Mildred Van.Voorhis Jones Faculty Scholar College of Law Business, Economics and Law Group Institute of Genomic Biology University of Illinois; 4/30/10; “Judges, Courts and Economic Development: the Impact of Judicial Human Capital on the Efficiency and Accuracy of the Court System”; <https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=ALEA2010&paper_id=380>; accessed 9/7/21; TV]

While most economic scholarship analyzing the importance of the courts has focused on disputes over real property, the relationship between the court system and investment is no less strong for intellectual property. And to a large extent, the relationship between the courts and the patent system depends on the quality of “judicial human capital.”

In the United States, as in many countries, the courts are a crucial part of the patent system to the extent that the patent system is can be termed a two-stage process. In the first stage, the U.S. Patent and Trademark Office grants property rights to inventors. In the second stage, inventors can protect those rights through patent infringement suits in the courts and alleged infringers have the right to challenge improvidently granted patents and have them declared invalid. As a consequence, some authors have referred to patent rights as being “probabilistic,” depending not only on whether the innovation embodied in the patent has commercial value, but also on the refinement of that patent property right after litigation.15

Just as with real property, the management of the court system has an impact on both patenting behavior and on investment in research and development. While the majority of all patents are not litigated, those that are disputed in the courts are among the most valuable.16 The rules governing the court system may even “feed back” into patenting behavior; some authors have found evidence that the increasingly “patent friendly” rules17 adopted by the courts are a major factor in the surge in patenting since the 1980s.18 Moreover, the ability to define the “probabilistic” property rights is an important element in determining whether patents fulfill their purpose of promoting innovation.19 Finally, the costs associated with the patent systems can be reduced by an efficient court system; firms may hesitate to invest in new products and technologies which may infringe on existing patents, so any additional delay or cost in clarifying existent rights may slow the process of innovation. The more quickly and cheaply these rights are defined, the more beneficial the patent system will be in promoting and not inhibiting innovation and investment.

However, in the United States this second phase in the patent system is managed by a District Court system in which judges with a general legal background preside over cases ranging from drug trials to anti-trust actions. Under such circumstances, patent infringement suites can pose particular challenges. Patent litigation is officially classified by the U.S. Administrative Office of the District Courts as one of several types of “complex litigation” which place special burdens on judges and other court personnel. Not only are technical issues involved, but there are also procedures and rules that are unique to patent law. For example, since the “Markman” ruling of 1995 on “claim construction,” judges in patent cases have been required to examine the claims stated in the patent document, thereby defining the boundaries of the technology.20 This procedure is a potentially lengthy process involving briefs from the plaintiff and defendant, expert opinions and a special claims construction hearing. Such procedures can create difficulties for judges who are not familiar with the intricacies of patent law. And there is evidence suggesting dissatisfaction with the performance of district courts in patent cases at the District level. Approximately 10% of judgments in other areas of the law are appealed, whereas 50% of the judgments in patent cases are appealed.21 As a consequence, intellectual property disputes are included as one of the topical areas warranting a special section in the Federal Judicial Center (FJC)22 Manual for Complex Litigation (2004), along with anti-trust cases, securities cases, employment discrimination, CERCLA (Superfund) and civil RICO. Moreover, in the FJC’s 2003-04 study of the amount of work required for District Court cases, while an “average” case is assigned a weight of 1, patent cases received a weight of 4.72. Only environmental cases (4.79) and death penalty cases (12.89) received higher weights.23 Thus, lack of familiarity with patent law can be a barrier to efficient resolution of patent disputes, and has led to observations like the following24:

Patent litigation stands among the most complex, with disputes about cutting-edge technology muddied with esoteric and arcane language, laws, and customs.

Even with the assistance of legal and technical experts as well as special masters, generalist judges and juries are often at sea almost from the beginning of a patent case. When compared to other adversarial actions, patent cases benefit significantly from having a judge hear the case who is familiar with technical issues.

Most recently, the issue of judicial human capital has been part of a discussion about whether the United States should have a specialized lower-level patent court; several legislative reforms have been proposed in Congress to create opportunities for specialization at the district court level in patent cases.25

While a detailed discussion the arguments for and against specialized courts is beyond the scope of this paper,26 they can large be categorized under four headings: 1) improvements in judicial human capital, 2) uniformity and predictability in the development of legal doctrine, 3) the impact on and influence of the political economy of the judicial system, and 4) the efficiency of the court system. The creation of a specialized appellate court for patent cases27 in 1982 arguably had some success in dealing with the second and fourth criteria; patent law is now applied in a more uniform manner across the circuits and inefficient forum shopping, though still occurring, is not as great as it once was.28 Nonetheless, there is still a belief that a specialized patent trial court is needed, and the primary rationale for this is improvements in judicial human capital. Many scholars and policy makers believe that the average district court judge hears too few patent cases and/or does not have the specialized training to adequately and expeditiously rule on complex issues. Appellate review of claim construction, for example, results in a relatively high reversal rate.29 However, there is little empirical work exploring the relationship between judicial experience-either general or patent specific-and the efficiency and accuracy of the resolution of cases.30

#### Undermines biotech innovation.

Gregory ’18 [Adam; Associate Patent Attorney at Mewburn Ellis LLP; 11/26/18; “The Importance Of Patents To Biotech Start-Ups”; <https://www.biotechconnection-sg.org/the-importance-of-patents-to-biotech-start-ups/>; Biotech Connection; accessed 9/7/21; TV]

Early-stage biotech companies are often founded based on the exciting results of pre-clinical research relating to a new product or treatment. However, due to the need for refinement/development, as well as the extensive work required to demonstrate safety and efficacy in order to obtain regulatory approval, early-stage biotech companies are often a long way away from bringing a new drug or therapy to market.

Unlike in many industries where a new company will have a product/service that can be readily commercialised to generate revenue, early stage biotech companies often find that they have a concept for a new product/treatment that could ultimately generate billions of dollars in sales annually, but have no obvious way to commercialise or finance the technology in the short-term.

This problem is compounded by the very large amount of capital required to advance a new drug or therapy from the pre-clinical stage to treating patients in the clinic. The Tufts Center for the Study of Drug Development (CSDD) estimates that it now costs more than USD 2.5 billion to bring a new drug to market.

The ability to attract investment is therefore critical for an early stage biotech company to thrive. In the absence of a tangible product, would-be investors will look at the potential future commercial revenue if the product or treatment makes it to market. The decision of whether or not to invest, and the scale of any investment, is based on how well the technologies that form the core of a company have been protected. This is where patents come in.

As the actual and potential scope of commercial exclusivity is the basis for the value proposition, investors look very closely at patent portfolios. Essentially, potential investors ask ‘what can this company do that no other company can do without their permission?’ Any serious investor will usually undertake thorough due diligence of the patent portfolio, looking not only the granted patents, but also at the pending patent applications, to understand what protection the company already has, and what they are seeking protection for.

Patents can also be useful for generating revenue in the short-term. Patents and patent applications can be sold, or licensed to other parties that wish to use the invention. Licensing agreements can also form the basis of collaborations with other companies or research institutions, which can in turn lead to improvements to the technology.

Having patent protection, or the opportunity to obtain patent protection, covering the core technology of the company, and being able to present a plan for generating future IP, can be key to the success of a biotech start-up.

#### Otherwise, ABR causes extinction.

Sachs ’14 (Jeffery; Professor of Sustainable Development, Health Policy and Management at Columbia University, Director of the Earth Institute at Columbia University and Special adviser to the United Nations Secretary-General on the Millennium Development Goals; 8/17/14; “Important lessons from Ebola outbreak”; http://tinyurl.com/kjgvyro; Business World Online)

Ebola **is the latest of many** recent **epidemics**, also **including** AIDS, SARS, H1N1 **flu, H7N9 flu**, and others. AIDS is the deadliest of these killers, claiming nearly 36 million lives since 1981. Of course, even larger **and more** sudden epidemics are possible, such as the 1918 influenza during World War I, which claimed50-100 million lives (far more than the war itself). And, though the 2003 SARS outbreak was contained, causing fewer than 1,000 deaths, the disease was on the verge of deeply disrupting several East Asian economies including China’s. **There are four crucial facts to understand about** Ebola and the other **epidemics**. First, **most emerging infectious diseases** are zoonoses, meaning that they **start in animal populations**, sometimes **with a genetic mutation that enables the jump to humans**. Ebola may have been transmitted from bats; HIV/AIDS emerged from chimpanzees; SARS most likely came from civets traded in animal markets in southern China; and influenza strains such as H1N1 and H7N9 arose from genetic re-combinations of viruses among wild and farm animals. New zoonotic diseases are inevitable as humanity pushes into new ecosystems (such as formerly remote forest regions); th**e** food industry creates **more** conditions for genetic recombination; and climate change scrambles natural habitats **and species interactions**. Second, **once a new infectious disease appears, its** spread through airlines, ships, megacities, and trade in animal products is likely to be extremely rapid. **These epidemic diseases are new markers of globalization, revealing** through their chain of death how **vulnerable the world has become** from the pervasive movement of people and goods. Third, the poor are **the first to suffer and** the worst affected. **The** rural **poor live closest to the infected animals that first transmit the disease**. They often hunt and eat bushmeat, leaving them vulnerable to infection. **Poor**, often illiterate, **individuals are generally unaware of how infectious diseases** -- especially unfamiliar diseases -- are transmitted, making them much more likely to become infected and to infect others. Moreover, given poor nutrition and lack of **access to basic** health services, their weakened **immune** systems are **easily** overcome by infections **that better nourished** and treated individuals **can survive**. And “de-medicalized” conditions -- with few if any professional health workers to ensure an appropriate public-health response to an epidemic (such as isolation of infected individuals, tracing of contacts, surveillance, and so forth) -- make initial outbreaks more severe. Finally, **the required** medicalresponses, including diagnostic tools and effective medications and vaccines, inevitably lag behind the emerging diseases. In any event, such tools must be continually replenished. This requires cutting-edge biotech**nology, immunology, and** ultimately **bioengineering** to create **large-scale** industrial responses (such as millions of doses of vaccines or medicines in the case of large epidemics). The AIDS crisis, for example, called forth tens of billions of dollars for research and development -- and similarly substantial commitments by the pharmaceutical industry -- to produce lifesaving antiretroviral drugs at global scale. Yet each breakthrough **inevitably** leads to **the** pathogen’s mutation, rendering previous treatments less effective. There is no ultimate victory, only a constant arms race **between humanity and disease-causing agents**.

### 1NC – DA

#### Budget passes now – leadership and base pressure get moderate Dems in line.

Alexander Bolton 9/9/21. Senior reporter. “Democratic leaders betting Manchin will back down in spending fight”. The Hill. Sept 9 2021. https://thehill.com/homenews/senate/571421-democratic-leaders-betting-manchin-will-back-down-in-spending-fight

Democrats are racing ahead with a $3.5 trillion spending package that would boost funding for social programs and raise taxes despite rumblings from Sen. Joe Manchin (D-W.Va.) that he might not support legislation with that price tag.

Democratic leaders are betting they can pressure Manchin to back down on his push for spending that’s closer to $1.5 trillion or $2 trillion.

In doing so, they’re essentially daring Manchin and other moderates like Sen. Kyrsten Sinema (D-Ariz.) to vote against the eventual budget reconciliation package, knowing that the base would erupt in anger over any Democratic lawmakers who buck the party on such a high-profile vote.

Senate and House committees are scrambling to reach consensus on sections of the so-called human infrastructure bill under their jurisdictions by Friday, and Democratic staff working on the legislation haven’t received any indication that it will be pared back to appease Manchin.

Progressive activists warn that if the bill falls well below the $3.5 trillion target set by Senate and House leaders, there will be significant backlash.

Manchin warned in a Wall Street Journal op-ed last week that he won’t vote for a $3.5 trillion reconciliation bill — putting President Biden’s agenda in peril since Democrats can’t afford a single defection in the 50-50 Senate — but his shot across the bow isn’t deterring fellow Democrats.

Axios reported Tuesday evening that Manchin won’t support a package that exceeds $1.5 trillion, a number the West Virginia Democrat floated earlier this year as a potential spending target.

Manchin’s office on Wednesday declined to confirm that $1.5 trillion is a red line for him. But the figure is in line with previous comments.

Manchin told ABC News’s “This Week” in June that he wouldn’t support a large spending package if Congress could only come up with enough revenue and savings to offset the cost of a $1.5 trillion or $2 trillion bill.

In last week’s Wall Street Journal op-ed, Manchin wrote that “ignoring the fiscal consequences of our policy choices will create a disastrous future for the next generation of Americans.”

But those warnings are falling on deaf ears in the Democratic leadership and the broader Democratic caucuses.

Senate Majority Leader Charles Schumer (D-N.Y.) on Wednesday brushed off Manchin’s threat and told reporters that negotiators are still planning to unveil a bold and ambitious proposal.

“In our caucus — there are some in my caucus who believe $3.5 trillion is too much, there are some in my caucus who believe it’s too little,” Schumer said on a press call Wednesday morning. “I can tell you this: In reconciliation we’re all going to come together to get something big done and, second, it’s our intention to have every part of the Biden plan in a big and robust way.”

Asked about Manchin’s call for a “strategic pause,” Schumer insisted “we’re moving full speed ahead.”

“We want to keep going forward. We think getting this done is so important to the American people for all the reasons we have outlined,” he said. “We are moving forward on this bill.”

Speaker Nancy Pelosi (D-Calif.) told reporters Wednesday that colleagues putting together the legislation will stick with the $3.5 trillion goal, though she acknowledged the final number might be different.

“I don’t know what the number will be. We are marking at $3.5 trillion,” she said.

A senior Democratic staffer said Senate and House committees, which face an end-of-week deadline to finish their elements of the reconciliation package by the end of this week, haven’t received any indication the final version will be pared down from the $3.5 trillion top-line spending goal laid out in the budget resolutions passed last month by each chamber.

“We’re working our asses off,” said the aide. “All we’re doing is working. We have been under orders to get to agreement with our House counterparts by close-of-business Friday.”

Senate Budget Committee Chairman Bernie Sanders (I-Vt.), who has primary jurisdiction over the reconciliation process, says the spending target agreed to by congressional Democrats already represents a significant compromise with moderates.

“The overwhelming majority of members of the budget committee — and I think a good 80 or more percent of Democratic members of the Senate — supported a $6 trillion bill,” Sanders said of the spending number he originally floated ahead of the budget debate.

Sanders argues that $3.5 trillion is what needs to be spent on transforming the nation’s energy economy to address climate change and “dealing with the needs of the working class.”

“To my mind, this bill at $3.5 trillion is already a major, major compromise. And at the very least this bill should be $3.5 trillion,” he said Wednesday.

Democratic strategists warn of a backlash from the party’s base if the legislation — which includes substantial spending on long-term care for the elderly and disabled, an extension of the child tax credit, funding for expanded child care and significant investments in renewable energy sources — falls well below $3.5 trillion.

“The reaction from progressives, which is already being indicated, would be very bad. People would be very disappointed,” said Mike Lux, a Democratic strategist.

But Lux said the threats from moderates should be viewed more as bargaining positions.

“People are doing a lot of posturing right now and throwing out broad numbers and broad statements. The fact is that Joe Manchin and other Democrats in the House and Senate voted for the $3.5 trillion budget outline,” he said. “We’re going to have to work very hard to get everybody on board with the budget plan again.

“There are going to be a lot of changes, a lot of compromises that everybody is going to have to make. The most important thing is to stay calm and keep talking to each other. Sooner or later we’ll get to a package that both Joe Manchin and [Rep. Alexandria Ocasio Cortez] can embrace because we need everybody,” he added. “I think it will work itself out in the end.”

#### Antitrust action saps finite capital, imperils rest of agenda

Karaim 21

(Reed, <http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2021050705>, 5-7)

Stucke, the former U.S. Justice Department antitrust official, says that despite Wu and Khan's credentials and reputation, changing antitrust policy will require a concerted effort. With Biden having an ambitious overall agenda and his Democratic Party holding the slimmest possible majority in the Senate, Stucke says, the question is “to what extent will the Biden administration want to expend political capital on this. They've got some bipartisan support for antitrust reform, but to what extent are they going to mobilize that?”

#### Budget key to solve climate change.

Dino Grandoni and Brady Dennis 8/11/21. Reporter covering energy and environmental policy. Reporter focusing on environmental policy and public health issues. “Biden aims for sweeping climate action as infrastructure, budget bills advance”. Washington Post. Aug 11 2021. https://www.washingtonpost.com/climate-environment/2021/08/10/biden-climate-congress/

After years of dragging their feet, lawmakers in Washington advanced a pair of major bills this week that include significant provisions for tackling climate change as scientists continue to ring alarm bells about the state of the planet.

The Senate approved on Tuesday a sweeping bipartisan $1.2 trillion infrastructure bill with funding for many public works meant to cut climate-warning emissions. A day later, Democrats in the chamber took a major step to adopt an even bigger, $3.5 trillion budget bill supporting yet more programs for cleaning up power plants and cars.

Each, if passed, would invest billions of dollars in the sort of clean energy transition the United States must make to have any chance of hitting the goal set by President Biden to cut the nation’s emissions by at least 50 percent by the end of this decade.

“This was one of the most significant legislative days we’ve had in a long time here,” Senate Majority Leader Charles E. Schumer (D-N.Y.) told reporters Wednesday.

But both bills face a potentially bumpy road ahead. Democrats still need to draft in committees the details of their massive budget reconciliation package over the coming weeks, with not a single vote to spare in the 50-50 split Senate. The bipartisan public-works bill, meanwhile, still needs approval from the House, where progressive Democrats hold significant sway.

The moves on Capitol Hill come as hundreds of scientists detailed this week the intensifying fires, floods and other catastrophes that will continue to worsen until humans dramatically scale back greenhouse gas emissions.

Scientists assembled by the United Nations made clear in a landmark report Monday that time is running out for the world to make immediate and dramatic cuts to emissions produced by the burning of fossil fuels and other human activities. U.N. Secretary General António Guterres called the sobering, sprawling report from the Intergovernmental Panel on Climate Change a “code red for humanity.”

But it remains unclear whether the new findings alone will be enough to spur new action in a Washington as politically divided as ever.

Climate change remains a distinctly fraught issue in the United States compared with many other countries, with the de facto leader of one of the two major parties — former president Donald Trump — dismissing the scientific consensus about human-caused climate change and downplaying its risks throughout his term.

Even if Congress passes bills with big climate provisions, regulations from the Biden administration are vulnerable to being reined in by federal court judges appointed by Trump and the most conservative Supreme Court in a generation. And the fate of many of the administration’s climate initiatives could depend on the Democratic Party retaining control of Congress — and on how Biden himself fares if he runs again in 2024.

If Biden and his Democratic allies in Congress succeed in shifting the nation rapidly toward a greener future, the math of climate change means that the rest of the world would have to follow suit, and quickly. The United States accounts for only about one-seventh of global emissions. The rest of the world — particularly the world’s largest emitter, China — would need to set more aggressive goals for reducing footprints as well.

Other countries have taken steps to do that. The European Union, for instance, agreed earlier this year to cut carbon emissions as a bloc by at least 55 percent by 2030. But how aggressively China, India, Russia and other nations will move in the years ahead remains an open question.

World leaders already faced mounting pressure to arrive at a major U.N. climate conference scheduled this fall in Scotland with more ambitious, concrete plans to slow greenhouse gas pollution. That pressure grew only more intense after Monday’s IPCC assessment, which found that the world is quickly running out of time to meet the goals of the 2015 Paris agreement.

The report found that humans can only unleash less than 500 additional gigatons of carbon dioxide — the equivalent of about 10 years of current global emissions — to have an even chance of limiting warming to 1.5 degrees Celsius (2.7 Fahrenheit) above preindustrial levels.

The hopes of hitting that target, the most aspirational goal outlined in the Paris accord, will soon slip away without rapid action, the report made clear. After all, the world has already warmed more than 1 degree Celsius (1.8 degrees Fahrenheit), with few signs of slowing unless nations begin to cut emissions at a rate unprecedented in history.

For Biden to live up to his promises to reduce U.S. emissions sharply in coming years, transition to electric vehicles and eliminate the carbon footprint of the power sector by 2035, his administration needs a helping hand from Congress.

The infrastructure package, which the Senate approved in a 69-to-30 vote with the support of 19 Senate Republicans, apportions billions of dollars for building new transmission lines, public transit and electric-car charging stations.

Meanwhile, the separate $3.5 trillion budget reconciliation bill, which Democrats plan to pass on their own, includes more far-reaching provisions for tackling climate change.

That measure would impose new import fees on polluters and give tax breaks for wind turbines, solar panels and electric vehicles. It would also seek to electrify vehicles used by the U.S. Postal Service and other federal agencies and create a new Civilian Climate Corps to enlist young people in planting trees and other conservation work.

Perhaps most crucially, the legislation would put new requirements on electricity providers to use cleaner forms of energy — something President Barack Obama’s administration tried but failed to do.

Dan Lashof, U.S. director of the World Resources Institute, called Tuesday’s bipartisan infrastructure package “a down payment” on the fight against climate change but not nearly enough going forward. He said it is essential for the Senate to also pass the budget-reconciliation package that funds a broader array of climate-focused measures to create jobs and shift the nation’s infrastructure toward one no longer reliant on fossil fuels.

“The forthcoming reconciliation package could be our best opportunity for advancing climate action this decade,” he said. “Kicking the can down the road is no longer an option as extreme weather wreaks havoc across our nation and around the world.”

Passing both bills, along with tighter regulations from the Environmental Protection Agency, “puts us within shooting distance” reducing emissions by 50 percent by 2030, according to Collin O’Mara, president of the National Wildlife Federation.

#### Warming causes extinction – global nuclear conflagration.

Michael Klare 20. The Nation’s defense correspondent, professor emeritus of peace and world-security studies at Hampshire College, senior visiting fellow at the Arms Control Association in Washington, DC. “How Rising Temperatures Increase the Likelihood of Nuclear War”. The Nation. Jan 13 2020. https://www.thenation.com/article/archive/nuclear-defense-climate-change/

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On the other side of the equation, an intensifying arms race will block progress against climate change by siphoning resources needed for a global energy transition and by poisoning the relations among the great powers, impeding joint efforts to slow the warming.

With the signing of the Paris Agreement, it appeared that the great powers might unite in a global effort to slash greenhouse gas emissions quickly enough to avoid catastrophe, but those hopes have since receded. At the time, Obama emphasized that limiting global warming would require nations to work together in an environment of trust and peaceful cooperation. Instead of leading the global transition to a postcarbon energy system, however, the major powers are spending massively to enhance their military capabilities and engaging in conflict-provoking behaviors.

Since fiscal year 2016, the annual budget of the US Department of Defense has risen from $580 billion to $738 billion in fiscal year 2020. When the budget increases for each fiscal year since 2016 are combined, the United States will have spent an additional $380 billion on military programs by the end of this fiscal year—more than enough to jump-start the transition to a carbon-​free economy. If the Pentagon budget rises as planned to $747 billion in fiscal year 2024, a total of $989 billion in additional spending will have been devoted to military operations and procurement over this period, leaving precious little money for a Green New Deal or any other scheme for systemic decarbonization.

Meanwhile, policy-makers in Washington, Beijing, and Moscow increasingly regard one another as implacable and dangerous adversaries. “As China and Russia seek to expand their global influence,” then–Director of National Intelligence Dan Coats informed Congress in a January 2019 report, “they are eroding once well-established security norms and increasing the risk of regional conflicts.” Chinese and Russian officials have been making similar statements about the United States. Secondary powers like India, Pakistan, and Turkey are also assuming increasingly militaristic postures, facilitating the potential spread of nuclear weapons and exacerbating regional tensions. In this environment, it is almost impossible to imagine future climate negotiations at which the great powers agree on concrete measures for a rapid transition to a clean energy economy.

In a world constantly poised for nuclear war while facing widespread state decay from climate disruption, these twin threats would intermingle and intensify each other. Climate-​related resource stresses and disputes would increase the level of global discord and the risk of nuclear escalation; the nuclear arms race would poison relations between states and make a global energy transition impossible.

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#### These debates are the core of antitrust. The economic concepts and worldviews embedded in antitrust advocacy should be evaluated upstream of specific cost-benefit comparison of implementation.

Sabel **RAHMAN** Law @ Brooklyn **’20** “Structuralist Regulation” Prepared for NYU Law School Public Law Colloquium, September 2020

Second, this concept of structuralist regulation helps provide a policy framework for understanding and engaging some of the structuralist claims made by grassroots reform movements especially in this moment. We are in a unique moment of resurgent grassroots activism, and as scholars of social movements have argued, many of these movements are advancing structural, transformative visions of public policy and legal-institutional change.20 But these claims are often seen as outside the scope of more traditional modes of policy debate and analysis. Building a conceptual framework of what we mean by ‘structural’ reform can help bridge the reform ideas being generated by grassroots movements on the one hand, and those arising from policymakers and academics on the other. More broadly, we might even say we are on the cusp of a revival of interest in structuralist policy solutions in response to the deeper problems of economic inequality,21 racial subordination,22 power in public law,23 and political economy approaches to law and public policy.24 A clearer understanding of structuralist policy design will be important to inform the kind of inclusionary policy agenda needed to remedy these inequities.

The rest of the paper proceeds as follows. Part I provides a conceptualization of ‘structuralist’ policymaking, identifying the underlying assumptions that animate structuralism as a regulatory strategy. This Part also notes that this concept of regulatory strategy (or what I call “regulatory logic”, as defined below) should be understood as a distinct way of unpacking and analyzing the patterns of policymaking judgment distinct from other modes of analysis like cost-benefit analysis or the rules-versus-standards debate. Part II then looks at examples of structuralist policy proposals in recent economic policy debates: the debate over tech platforms, the debate over too-big-to-fail financial firms and systemic risk, and the renewed interest in anti-trust and anti-monopoly law. These examples help illustrate structuralist regulatory logics in action, and their distinctive assumptions and potential benefits over more conventional regulatory approaches. The purpose of this Part is not to offer a full-throated defense of structuralist policies in each of these sectors (although I am perhaps unsurprisingly sympathetic to the arguments on the merits); rather the purpose here is simply to illustrate structuralism as a distinct mode of thinking about policymaking. Part III articulates some broader implications for how to implement and institutionalize structuralist policies. Part IV concludes with some closing thoughts on how structuralism as a way of thinking about regulation connects to this broader moment of intense political and scholarly interest in inequality and racial (in)justice.

I. Structure as regulatory subject and strategy

Regulatory logics

The task of creating an effective and responsive regulatory system is often thought of in terms of questions of institutional design the balance of responsibilities between legislatures, agencies, and judges; how agencies should be structured; how agency heads should be appointed; how agencies can generate sufficient expertise to regulate effectively without falling prey to industry capture. But part of the challenge in ensuring effective and responsive regulation lies within the ways in which regulators and policymakers more broadly think about their task—the concepts and worldviews that operate within the ‘black box’ of policy decisionmaking and judgment.

However stringently we might read the external legal constraints on regulatory action— whether through judicial review or command—the fact of regulator discretion and judgment is inescapable.25 So how then should we think about the analytical methods or frameworks employed by regulators themselves? Regulators and legislators are not merely technical automatons executing the public will or legislative command. Nor are they simply political ideologues. Rather, policymakers are necessarily making decisions that involve degrees of subjective, normative, and policy judgments. The ways in which that judgment is exercised has an impact on the dynamics of regulatory policy.

Embedded in these judgments are a range of assumptions, values, and concerns. How are policymakers understanding the purposes of regulation in a given domain? Do they see their enterprise as complementary to existing private parties and practices? Or as fundamentally critical and oppositional? How do regulators view their own capacities and institutional competency—particularly relative to other private or governmental actors? Do they see themselves as outgunned and undermanned? Or well-informed and capable? What is their analysis of the systems and causes that drive the problems they are trying to solve—and which of those causes are, in their view, most amenable to the tools they have on hand? These are the kinds of underlying questions that operate upstream from a discrete policy issue or costbenefit analysis inquiry.

These questions often aggregate into distinctive patterns of judgment, consistent regulatory strategies, or what I call in this paper “regulatory logics”. Regulatory logics live squarely in the midst of the black box of regulatory judgment; they are more reasoned and grounded in understandings of the empirical nature of the world than pure political ideology, but at the same time they also share some degree of normative, subjective judgment beyond merely technical calculations of risk, costs, and benefits. We can think of “regulatory logics” as analogous to canons and methods of statutory interpretation in the judiciary. Just as canons offer a conceptual framework and method of reasoning forjudges seeking to fill in the gaps between statutory text and a new fact situation, regulatory logics can be thought of as a bundle of presumptions about the social goals of regulation, about the relative institutional competency of regulators in comparison to private actors, and about the appropriate methods of analysis required in formulating rules responding to new circumstances. And, like modes of interpretive reasoning, regulatory logics do not predetermine a specific outcome—though they may shade in some directions making some policy determinations and outcomes more likely than others. Nor are the same logics necessarily appropriate in all circumstances; different conditions may demand different regulatory logics.

#### Plan focus relies on separation between fact and value. Consequences of advocacy include the policy stories that institutionalize a theoretical understanding of the problem area.

Ole **SENDING** Research Fellow @ Norweigan Inst. of Int’l Affairs **‘4** in *Global Institutions & Development* eds. Morten Boas and Desmond McNeil p. 58-59

Granted that the objectification and definition of a given phenomenon is open to a variety of normative and political considerations, it becomes interesting to explore how scientific knowledge constitutes a symbolic resource used by politically motivated actors. **In order to justify** and legitimize **certain courses of action**, and to render these possible and effective, scientific knowledge forms an important component both for efforts of persuading and mobilizing different groups, and for formulating and establishing policy practices. This can he grasped through the concept of poli1y stories. A policy story can be defined as follows: A set of factual, causal claims, normative principles and a desired objective, all of which are constructed as a more or less coherent argument a story which points to a problem to be addressed and the desirability and adequacy of adopting a specific policy approach to resolve it.

This conceptualization incorporates how politically motivated actors integrate scientifically produced imowledge in the form of facts, concepts or theories in order to i) convince others that a certain phenomenon is a problem, (ii) demonstrate that this problem is best understood in a certain way as shown by the facts presented, and (iii) link these factual claims to normative principles giving moral force to the argument that it should be resolved. This perspective thus subjects the factual dimensions of political processes to the interests and normative commitments of actors, in the sense that knowledge is used to justify and legitimize calls for adopting certain policies to resolve what is seen to be a problem that 'ought' to be resolved. The formulation is partly inspired by Rein and Schuss (1991. 265), who refer to problem-setting stories that 'link causal accounts of policy problems to particular proposals for action and facilitate the normative leap from "is" to 'ought"'. We depart from Rein and Schon's conception somewhat by emphasizing more strongly the factual claims (the characteristics of a phenomenon and normative principles (the morally' grounded principles used to legitimize the policy formulation invoked by actors as they define a problem and argue for a specific policy approach. The concept of policy stories seeks to capture how actors integrate knowledge claims into their politically charged arguments so as to 'frame' the issue under discussion. Because of the interlocking of the factual and normative dimension of policy making, a policy story, can be seen to create space for political agency. That is: a policy story serves by creating an argument grounded in a body of scientifically produced knowledge, to persuade and mobilize different groups as it represents a complete package: an authoritative problem-definition and a concomitant policy solution that is legitimized in both factual and normative terms. A policy story- that **wins acceptance at the discursive level** can be seen to **define the terms of the debate** for the establishment of policy and to **de- legitimize competing** conceptualizations and **policy approaches**. Through the political agency performed through a policy story it may come to dominate the policy field as it forms the central cognitive-normative organising device for specific formulation and establishment of policy within different organizations. In this way, the policy story' may over time attain a 'taken for granted' char- acter as it comes to structure, and reflect, policy practice. This process of stabilization is best described as a process of institutionalization. Following Scott, we can define institutionalization as a 'process by which a given set of units and a pattern of activities come so be normatively' and cognitively held in place, and practically taken for granted as lawful' Scott at al. 1994: 10). This latter feature is critical to the argument presented here. In the change from an argument for a specific policy approach to the establishment of that policy in practice, the policy story comes to define the cognitive-normative outlook of a policy regime. This can he defined as an interlock between the knowledge which underwrites the policy story, and the establishment in practice of the policy advocated in a policy story: That is: the **knowledge that once formed part of an argument for a policy** is now an **integral part** of the very rationality and identity' of the organization involved with managing this policy in practice. As such it becomes pact of the bundle of routines, rules, priorities and rationality of the organizations in the policy field see Douglas 1986; March and Olsen 1989: Scott and Meyer. 1994).

#### Combining new norms for antitrust with the baseline of competition co-opts transformation.

Sanjukta **PAUL** Law @ Wayne State **’19** “Antitrust as Allocator of Coordination Rights” https://www.gwern.net/docs/economics/2019-paul.pdf p. 3-4

The reigning antitrust paradigm authorizes large, powerful firms as the primary mechanisms of economic and market coordination, while largely undermining all others: from workers’ organizations to small business cooperation to democratic regulation of markets. This paper argues that rather than promoting competition, as conventionally understood, antitrust’s basic function is to allocate coordination rights. While deploying the notion of competition to undermine its disfavored forms of economic coordination, antitrust law also relies upon conceptually unrelated “efficiencies” to quietly underwrite a major exception to its principles of competition: the business firm itself. By surfacing what I call antitrust’s firm exemption, I reveal the contingency of the law’s choices about permissible economic coordination—and bring the possibility of making different choices closer.

Proposals to reform antitrust have generally stopped short of questioning the basic understanding that its primary function is to promote competition. To be sure, many posit that antitrust performs this stated function badly.1 And some have begun the critical work of re-introducing other, older normative benchmarks to antitrust analysis,2 whose memory a minor strain of earlier scholars had kept alive.3 To varying degrees, this work still regards antitrust primarily in terms of promoting competition. Meanwhile, more mainstream antitrust scholarship’s official consensus position is that the ideal competitive market is the only appropriate normative benchmark for decision-making.4 At least officially, if increasingly uneasily, competition is still king.

#### 3. Even ambitious reforms relying on the normative framework of competition as the baseline for economic coordination should be rejected.

Sanjukta **PAUL** Law @ Wayne State **’19** “Fissuring and the Firm Exemption” *Law and Contemporary Problems* 82:65 p. 85-87

Instead, we might consider allocating coordination rights on the basis of power and social benefit. Importantly, to guide the application of these concepts, we must first discard the ideal-state competitive order as the default normative framework for antitrust and for economic regulation more generally. This is not to say that competition as a social process, referring to healthy business rivalry, is not important to antitrust law: it is, and ought to be balanced with appropriate and socially beneficial coordination. However, once we realize that the idealstate concept of competition that is currently presumed to form the basis for antitrust law is contributing very little—except as a smokescreen for other normative choices—then we need no longer view economic coordination as a special exception to the order of things. Thus, we need not look for conditions of deprivation, or powerlessness, as constituting the sole basis—aside from the firm exemption—for the appropriate exercise of coordination rights because they are an exception to an otherwise perfect order. That is what our current framework does, and it is also the assumption on which even the most ambitious reform proposals proceed.77

#### Change in policy without change in framework is less likely to solve.

Frank **PASQUALE** Law @ Maryland **’16** “Two Narratives of Platform Capitalism” *Yale Law & Policy Review* 35(1) p. 310-312

One may challenge the narratives of conventional, neoliberal economics by contesting the empirical validity of the factual foundations of its narratives. Such an empirical approach is one way of pursuing a fruitful hermeneutics of suspicion. But it is not sufficient to dislodge conventional narratives from the heuristics so often resorted to by policymaker**s**. Rather, just as it "takes a theory to beat a theory," a plausible counternarrative is far more likely to displace a conventional narrative than isolated empirical challenges to the conventional narrative's factual foundation**s**. This essay develops a counternarrative to dominant approaches to platform capitalism, schematically presented below.

[INFOGRAPH TABLE OMITTED – TURNER]

While science aspires to convergence on settled truths and natural laws, narrative is often plural: there can be more than one side to a story. For positivists, science is a more solid and reliable form of knowledge (and foundation for judgment) than storytelling. However, the free will of humans, plasticity of our institutions, and opacity of our thoughts recurrently frustrate social scientists who aspire to the type of prediction and control regularly achieved by natural scientists and engineers in the world of things and non-human animals. If we are to better understand the most important economic phenomena of our day, we must reveal the stories about competition, desert, and regulation that both animate and undermine the models and empirical analyses in mathematicized and quantitative social science.

#### Private markets are not more efficient than public provisioning. Comprehensive studies prove.

Michael **BERNSTEIN** John Christie Barr Prf. of History and Economics @ Tulane **’18** “Reconstructing a public economics: markets, states and societies” *Real-World Economics Review* 84 p. 14

In thralldom to the dominant catechism of neoclassical economic theory, the vast majority of investigators assume that private markets, if “perfectly” structured and operationalized, will always generate more efficient outcomes than public provision. Yet empirical evidence, drawn from an array of national and regional examples, proves otherwise. David Hall (“The Relative Efficiency of Public Provision of Public Services”) is able to demonstrate this fact with remarkable clarity – and with large stores of data drawn from both highly developed and currently emergent economies. His are a particularly striking set of findings insofar as they strike at the heart of the unsubstantiated pronouncements of orthodox theory regarding the alleged virtues of unfettered markets – in both “private” and “public” settings.

# 1NR

#### Inducements with threat of prohibitions solves best – no need for new laws

De Stefano 18 – (Gianni, Compliance as Antitrust Cooperation: An Incentive for Cartel Enforcement, Journal of European Competition Law & Practice, Volume 9, Issue 10, December 2018, Pages 617–618, <https://doi.org/10.1093/jeclap/lpy080>)//gcd

It is a tale of incentives and future enforcement, really. It started with deterrence: the sweet carrots of compliance can happen because of the hard sticks of penalties and damages. For example, AkzoNobel introduced in 2000 an Internal Amnesty Programme after having expanded through a series of acquisitions and having been caught in a number of cartels through its relatively autonomous divisions. Can deterrence be the only response? Future cartel enforcement will actually be about incentives from both sides. Leniency programmes are not as effective as they used to be. In Europe, statistics show that leniency applications have declined by half, compared to the past few years. And it is not a given that ex officio investigations will compensate for this decline. Companies need to receive more incentives to blow the whistle and, more generally, cooperate with enforcers. A proposal is that the European Commission and, more generally, authorities, use their current tools to foster cooperation and thus enforcement. In recent year, for example, the European Commission has been using the so-called Antitrust Cooperation Procedure (as it has been referred to in recent speeches). See, for instance, the ARA case in 2016, where the company found guilty of an abuse was granted a 30 per cent reduction for its cooperation in the proceedings and in devising a remedy. Or the Facebook/WhatsApp case in 2017, where the cooperation of a merging party (that had been fined for having provided misleading information) was recognised as a mitigating circumstance. Or the Consumer Electronics or the Guess cases in 2018, where manufacturers fined for their behaviour in vertical relations (including RPM and territorial restrictions) obtained significant reductions (from 40 to 50 per cent) for their cooperation. The Commission recognised their disclosure of an infringement not yet known to the Authority, acknowledgement of facts and liability, evidence collection and procedural rights’ waiving. What the company gets in return is a case-specific recognition of their cooperation. A win-win, especially in the current times. If all those non-cartel cases can constitute cooperation that is relevant for fine-reduction purposes, a compliance programme can, too. What is more, the legislative framework is already in place: the EU Fining Guidelines. It is proposed that authorities give credit to a particular compliance programme, not any compliance programmes. Not the ‘mere existence of a compliance programme’ (as per policy statements), and no ‘obligation to grant a reduction’ (as per the case law). But the effective cooperation in a specific case which helps enforcement move forward and is in the public interest. That would constitute a recognition that incentives matter in cartel enforcement. For leniency programmes. For compliance programmes. As that is where actual enforcement is heading.

#### New regulations cause a chilling effecting on prosocial collaboration

Balmer 20 –(Paul, "Colluding to Save the World: How Antitrust Laws Discourage Corporations from Taking Action on Climate Change," Ecology Law Quarterly, <https://www.ecologylawquarterly.org/currents/colluding-to-save-the-world-how-antitrust-laws-discourage-corporations-from-taking-action-on-climate-change/> 7-27-2020)//gcd

II. ANTITRUST SCRUTINY OF CORPORATE COLLABORATION As corporations pursue socially responsible strategies—whether on climate change or other social causes—the threat of antitrust enforcement looms. This threat discourages collaboration among competitors, even to meet goals that are objectively positive for society.30 Much of this chilling effect comes from the inconsistent and evolving nature of antitrust enforcement and a general lack of bright-line rules. Section 1 of the Sherman Act, the 1890 seminal antitrust law, prohibits “[e]very contract, combination, . . . or conspiracy in restraint of trade or commerce.”31 Although every competitive action, and certainly every contract and agreement, restrains trade in some manner, courts have enforced section 1 to prevent “unreasonably restrictive” contracts, combinations, and conspiracies.32 Unreasonable restraints on trade, in turn, include those that “reduce output, raise price, or diminish competition with respect to quality, innovation, or consumer choice.”33 But how those various bad outcomes interact, or when to prioritize lower prices over other antitrust goals, is unsettled and subject to frequent debate.

#### Exemptions key.

Koga 20 – J.D. Candidate, University of Washington School of Law, Class of 2021 (Dailey, Comment, Teamwork or Collusion? Changing Antitrust Law to Permit Corporate Action on Climate Change, 95 Wash. L. Rev. 1989 (2020). Available at: <https://digitalcommons.law.uw.edu/wlr/vol95/iss4/8>)//gcd

The automobile industry is one industry that could be transformed if antitrust regulations were relaxed even slightly. Auto emissions were the largest contributor to greenhouse gas pollution in the United States in 2017.292 This is true despite efforts by lawmakers and the EPA over the last half-century to curb auto emissions.293 Further, the frequent change in administration in the US means regulatory standards are constantly shifting. This makes it difficult for industries like the automobile industry to predict future needs and invest in environmentally friendly innovations.294 In the case of the automakers in California, an antitrust exemption for agreements with positive environmental effects may have persuaded more than four automakers to join the agreement. But there is, of course, a downside to this type of agreement in the auto industry: higher emissions standards could reduce consumer choice and increase the cost of purchasing a vehicle. This may leave some consumers unable to afford their preferred car. But given the existential threat of climate change, perhaps the long-term benefits outweigh these short-term costs. Our understanding of both economics and climate change continues to develop. The Chicago School vision of the rational person and self-correcting markets has started to give way to the study of behavioral economics.295 Even more importantly, climate change continues to worsen, and people generally agree that it poses an existential threat to our planet.296 Allowing for some cooperation among competitors could help address some of our climate change concerns. IV. SUSTAINABILITY AGREEMENTS WITH OR WITHOUT AN EXEMPTION Congress has the ability to codify exemptions to antitrust laws and has done so numerous times in the past.297 Congress should pass an exemption to antitrust law for sustainability agreements using the Dutch Guidelines as a model. This would allow companies to enter into agreements addressing climate change without fear of antitrust litigation. While this type of exemption may increase the risk of cartel behavior, keeping the exemption narrowly tailored and requiring quantitative evidence of sustainability benefits can mitigate those anticompetitive concerns. In the meantime, litigants should frame sustainability agreements in economic terms to survive antitrust scrutiny and can use past precedent as a model to do so. A. Congress Should Pass a Sustainability Exemption Congress should adopt an antitrust exemption for sustainability agreements similar to that proposed in the Netherlands.298 For agreements that have anticompetitive effects, Congress can require companies to meet the four main requirements suggested by the Dutch: (1) the agreement must have sustainability benefits, (2) the ultimate consumer must receive “a fair share of those benefits,” (3) the restraint on competition must not be greater than necessary to achieve those benefits, and (4) the agreement must not eliminate “a substantial part of the products/services in question.”299 While the broad proposal from the Netherlands represents the most ideal solution, Congress could change the exemption in two ways that would be more consistent with current precedent and also limit the risk of cartel behavior. First, the exception could require companies to always have quantitative data showing a certain threshold of environmental benefits, regardless of market share. Requiring quantitative data that shows benefits to a certain threshold could reduce arbitrary results. It could also help to partially ensure that the agreement is not a cover for a cartel in that the environmental impacts would have to be real, not just suggested or purported. Second, Congress could limit the sustainability benefits analysis to the industry in question. This type of limitation may severely limit the types of agreements companies are permitted to enter into because the agreements would have to have an impact on the specific industry. But it would be closer in line with Supreme Court precedent disallowing procompetitive justifications outside of the industry in question.300 Take the automakers’ agreement as an example of how this kind of analysis could work. Imagine that the four car manufacturers had agreed amongst themselves to increase emissions standards rather than each independently conferring with California. Under current antitrust law, it is unlikely that this agreement would be illegal per se because it does not explicitly fix prices or reduce quantity. But under a rule of reason or quick look analysis, the agreement would almost certainly fail. Courts would first examine whether the automakers have market power and whether the agreement has anticompetitive effects. The four automakers at issue here likely have market power,301 and it would be fairly simple for the government to argue that the agreement would have anticompetitive effects—the agreement could increase the price of automobiles and reduce the number of options on the market. Assuming the court found anticompetitive effects, the automakers would then have the opportunity to put forth procompetitive justifications. Under current antitrust law, it is hard to imagine what those procompetitive justifications could be. Increased innovation may represent the most effective argument, but because the automakers would not actually add a new type of product to the market, that argument would likely be unsuccessful. In contrast, if Congress granted an exemption similar to the Dutch guidelines, such an agreement could survive antitrust scrutiny if it met the four requirements. First, the companies would have to show, quantitatively, that the agreement would result in lower CO2 emissions. Given the evidence of vehicles’ sizeable contribution to CO2 emissions,302 that data likely exists. Second, the automakers would have to show that their consumers would equitably share in the benefits. Consumers would certainly stand to benefit from this agreement. Not only could reduced auto emissions improve air quality and help slow climate change,303 but car consumers could save money on gas.304 Third, as in current rule of reason analysis, the companies would have to show that the agreement was no more restrictive than necessary to achieve the benefits in question. This may be a fact-specific inquiry, but with some further guidance, companies could narrowly tailor their agreements to satisfy the third factor. The fourth factor—whether a substantial number of products would be eliminated—would likely be the most difficult for the automakers to meet. Analyzing this factor may depend on the specific terms of the agreement. But, again, companies may be able to craft agreements to satisfy this factor. For example, if the concern was that increasing auto emissions standards would eliminate nearly all pickup trucks from the market, the agreement could be crafted with different emission standards for sedans, SUVs, vans, and pickup trucks. Having guidelines like those proposed in the Netherlands would allow companies to craft their agreements to meet the four required factors while still allowing them to work together to address climate change. The most complicated part of implementing this exemption would be the way in which courts could weigh “public interest” factors with economic ones. The benefit of the Dutch model is that it builds in less arbitrary standards than those in the South African and Australian models because of its focus on quantitative data. In fact, the Dutch model fits quite well within the rule of reason analysis currently used by American courts because it could function as a burden-shifting analysis just like the rule of reason. To further address the arbitrariness problem, the exemption could require the sustainability benefits to meet a certain threshold, such as reducing carbon emissions by a certain percentage. In contrast, a simple public interest test would force judges to weigh sustainability against one of the main purposes of antitrust law—preventing unfair competition. Using the Dutch model avoids some of the arbitrariness inherent in the public interest test analysis. Not only could this exemption fit cleanly into current antitrust law, but it also could be crafted to comply with the American Bar Association’s guidelines for creating antitrust exemptions.305 First, Congress could effectively consider the potential impact of the exemption on consumer welfare given the wealth of information on the effects of carbon emissions.306 Second, by including the two alterations mentioned above, Congress could craft a narrow exemption to provide that “competition is reduced only to the minimum extent necessary.”307 Third, the goals of the exemption—curbing climate change—almost certainly outweigh the goals of antitrust law because climate change amounts to an existential crisis that will annihilate the planet if left unaddressed. And finally, Congress could easily include a sunset provision in the exemption. Although addressing climate change is vital to the future of the world as we know it, some will likely argue that antitrust law is not the appropriate avenue for tackling the problem. While companies could plausibly make substantial progress in the climate crisis if allowed to enter into agreements such as the one entered into by the automakers in California, permitting agreements among competitors comes with a risk of increased cartel behavior.308 But if we fail to curb climate change, industry will cease to exist altogether, along with the rest of our planet.

#### Corporate social governance is necessary to societal stability and avert existential climate change

Balmer 20 –(Paul, "Colluding to Save the World: How Antitrust Laws Discourage Corporations from Taking Action on Climate Change," Ecology Law Quarterly, <https://www.ecologylawquarterly.org/currents/colluding-to-save-the-world-how-antitrust-laws-discourage-corporations-from-taking-action-on-climate-change/> 7-27-2020)//gcd

The growth of corporate activism can be traced to broader societal changes, such as the increased connectivity of people and markets in the Internet age.19 At the same time, governmental gridlock and increasing political polarization have undermined the capacity of government institutions to function efficiently and greatly weakened public trust in government.20 Corporations are filling this gap as traditional government services become increasingly privatized.21 The growing corporate role in society has fed on itself, with increased stakes and visibility of corporate activism resulting in outsized political power and legal rights. Corporate-associated spending on politics has reached unprecedented, jaw-dropping levels.22 It is increasingly clear that America cannot address the existential reality of climate change without corporate buy-in, if not corporate leadership. It is beyond the scope of this Article to discuss the extent of the climate crisis or the necessary corporate response; it is enough to say that each passing week brings bad news about the extent of already irreversible damage from climate change.23 While the future costs of climate change will be immense, the costs of acting now to limit warming to habitable levels are also significant, on the measure of $3.5 trillion a year.24 While governments around the world are expected to lead the necessary spending, a large portion of those costs will inevitably fall on companies, either through direct taxes like a carbon tax or increased costs of compliance, such as ending reliance on coal.25 Even as global governmental efforts falter,26 corporations are committing to act, both together27 and independently. 28 The high costs of corporate climate engagement, both to the companies themselves and to our society,29 have to be worth the last best chance to mitigate catastrophic climate change.

### AT: impact D – 1nr

#### Try-or-die in 2021. Even if the terminal is a bit further off, the path to extinction will be permanently set this year

Rowlatt 21 (Justin, “Why 2021 could be turning point for tackling climate change,” *BBC*, https://www.bbc.com/news/science-environment-55498657)

Countries only have only a limited time in which to act if the world is to stave off the worst effects of climate change. Here are five reasons why 2021 could be a crucial year in the fight against global warming. Covid-19 was the big issue of 2020, there is no question about that. But I'm hoping that, by the end of 2021, the vaccines will have kicked in and we'll be talking more about climate than the coronavirus. 2021 will certainly be a crunch year for tackling climate change. Antonio Guterres, the UN Secretary General, told me he thinks it is a "make or break" moment for the issue.

#### AND, it’s a conflict multiplier

Jürgen Scheffran 16, Professor at the Institute for Geography at the University of Hamburg and head of the Research Group Climate Change and Security in the CliSAP Cluster of Excellence and the Center for Earth System Research and Sustainability, et al., April 2016, “The Climate-Nuclear Nexus: Exploring the linkages between climate change and nuclear threats,” http://www.worldfuturecouncil.org/file/2016/01/WFC\_2015\_The\_Climate-Nuclear\_Nexus.pdf

Climate change and nuclear weapons represent two key threats of our time. Climate change endangers ecosystems and social systems all over the world. The degradation of natural resources, the decline of water and food supplies, forced migration, and more frequent and intense disasters will greatly affect population clusters, big and small. Climate-related shocks will add stress to the world’s existing conflicts and act as a “threat multiplier” in already fragile regions. This could contribute to a decline of international stability and trigger hostility between people and nations. Meanwhile, the 15,500 nuclear weapons that remain in the arsenals of only a few states possess the destructive force to destroy life on Earth as we know multiple times over. With nuclear deterrence strategies still in place, and hundreds of weapons on ‘hair trigger alert’, the risks of nuclear war caused by accident, miscalculation or intent remain plentiful and imminent.

Despite growing recognition that climate change and nuclear weapons pose critical security risks, the linkages between both threats are largely ignored. However, nuclear and climate risks interfere with each other in a mutually enforcing way.

Conflicts induced by climate change could contribute to global insecurity, which, in turn, could enhance the chance of a nuclear weapon being used, could create more fertile breeding grounds for terrorism, including nuclear terrorism, and could feed the ambitions among some states to acquire nuclear arms. Furthermore, as evidenced by a series of incidents in recent years, extreme weather events, environmental degradation and major seismic events can directly impact the safety and security of nuclear installations. Moreover, a nuclear war could lead to a rapid and prolonged drop in average global temperatures and significantly disrupt the global climate for years to come, which would have disastrous implications for agriculture, threatening the food supply for most of the world. Finally, climate change, nuclear weapons and nuclear energy pose threats of intergenerational harm, as evidenced by the transgenerational effects of nuclear testing and nuclear power accidents and the lasting impacts on the climate, environment and public health by carbon emissions.

#### Climate change creates multiple scenarios for extinction – every degree matters

Pachauri & Meyer 15 (Rajendra K., Chairman of the IPCC, Leo, Head, Technical Support Unit of the IPCC, were the editors for this IPCC report, “Climate Change 2014 Synthesis Report,” IPCC, pg. 151, http://epic.awi.de/37530/1/IPCC\_AR5\_SYR\_Final.pdf IPCC, Geneva, Switzerland)

Risk of climate-related impacts results from the interaction of climate-related hazards (including hazardous events and trends) with the vulnerability and exposure of human and natural systems, including their ability to adapt. Rising rates and magnitudes of warming and other changes in the climate system, accompanied by ocean acidification, increase the risk of severe, pervasive and in some cases irreversible detrimental impacts. Some risks are particularly relevant for individual regions (Figure SPM.8), while others are global. The overall risks of future climate change impacts can be reduced by limiting the rate and magnitude of climate change, including ocean acidification. The precise levels of climate change sufficient to trigger abrupt and irreversible change remain uncertain, but the risk associated with crossing such thresholds increases with rising temperature (medium confidence). For risk assessment, it is important to evaluate the widest possible range of impacts, including low-probability outcomes with large consequences. {1.5, 2.3, 2.4, 3.3, Box Introduction.1, Box 2.3, Box 2.4} A large fraction of species faces increased extinction risk due to climate change during and beyond the 21st century, especially as climate change interacts with other stressors (high confidence). Most plant species cannot naturally shift their geographical ranges sufficiently fast to keep up with current and high projected rates of climate change in most landscapes; most small mammals and freshwater molluscs will not be able to keep up at the rates projected under RCP4.5 and above in flat landscapes in this century (high confidence). Future risk is indicated to be high by the observation that natural global climate change at rates lower than current anthropogenic climate change caused significant ecosystem shifts and species extinctions during the past millions of years. Marine organisms will face progressively lower oxygen levels and high rates and magnitudes of ocean acidification (high confidence), with associated risks exacerbated by rising ocean temperature extremes (medium confidence). Coral reefs and polar ecosystems are highly vulnerable. Coastal systems and low-lying areas are at risk from sea level rise, which will continue for centuries even if the global mean temperature is stabilized (high confidence). {2.3, 2.4, Figure 2.5} Climate change is projected to undermine food security (Figure SPM.9). Due to projected climate change by the mid-21st century and beyond, global marine species redistribution and marine biodiversity reduction in sensitive regions will challenge the sustained provision of fisheries productivity and other ecosystem services (high confidence). For wheat, rice and maize in tropical and temperate regions, climate change without adaptation is projected to negatively impact production for local temperature increases of 2°C or more above late 20th century levels, although individual locations may benefit (medium confidence). Global temperature increases of ~4°C or more 13 above late 20th century levels, combined with increasing food demand, would pose large risks to food security globally (high confidence). Climate change is projected to reduce renewable surface water and groundwater resources in most dry subtropical regions (robust evidence, high agreement), intensifying competition for water among sectors (limited evidence, medium agreement). {2.3.1, 2.3.2} Until mid-century, projected climate change will impact human health mainly by exacerbating health problems that already exist (very high confidence). Throughout the 21st century, climate change is expected to lead to increases in ill-health in many regions and especially in developing countries with low income, as compared to a baseline without climate change (high confidence). By 2100 for RCP8.5, the combination of high temperature and humidity in some areas for parts of the year is expected to compromise common human activities, including growing food and working outdoors (high confidence). {2.3.2} In urban areas climate change is projected to increase risks for people, assets, economies and ecosystems, including risks from heat stress, storms and extreme precipitation, inland and coastal flooding, landslides, air pollution, drought, water scarcity, sea level rise and storm surges (very high confidence). These risks are amplified for those lacking essential infrastructure and services or living in exposed areas. {2.3.2} Rural areas are expected to experience major impacts on water availability and supply, food security, infrastructure and agricultural incomes, including shifts in the production areas of food and non-food crops around the world (high confidence). {2.3.2} Aggregate economic losses accelerate with increasing temperature (limited evidence, high agreement), but global economic impacts from climate change are currently difficult to estimate. From a poverty perspective, climate change impacts are projected to slow down economic growth, make poverty reduction more difficult, further erode food security and prolong existing and create new poverty traps, the latter particularly in urban areas and emerging hotspots of hunger (medium confidence). International dimensions such as trade and relations among states are also important for understanding the risks of climate change at regional scales. {2.3.2} Climate change is projected to increase displacement of people (medium evidence, high agreement). Populations that lack the resources for planned migration experience higher exposure to extreme weather events, particularly in developing countries with low income. Climate change can indirectly increase risks of violent conflicts by amplifying well-documented drivers of these conflicts such as poverty and economic shocks (medium confidence). {2.3.2}

## health adv

#### Burnout and geographic dispersion check 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