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### 1NC – Court Clog 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

#### Patents secure US AI leadership.

Bifano et al. ’20 [Larissa S. Bifano, Danny Tobey, Joseph Wolfe; US Chair, Patent Prosecution Practice at DLA Piper, J.D., University of Pittsburgh School of Law; Partner at DLA Piper, J.D., Yale Law School; Associate at DLA Piper; 5/7/20; “Protecting AI technologies through patents: A US guide”; <https://www.dlapiper.com/en/us/insights/publications/2020/04/a-us-guide-to-protecting-ai-based-inventions>; DLA Piper; accessed 9/7/21; TV]

The importance of protecting AI-based inventions

A strong patent portfolio developed around a company’s artificial intelligence innovations is an important asset, both offensively and defensively.

Offensively, a strong patent portfolio can guard and protect the artificial intelligence innovation. Building out a family of patents around the artificial intelligence innovation can discourage competitors from practicing similar processes, while protecting the monetary investment that went into developing the innovation.

Defensively, a strong patent portfolio can be used to discourage other companies from alleging that your practicing of your artificial intelligence innovation violates their patent.

Further, for startups or smaller companies, a strong patent portfolio may be a valuable asset that can be attractive to potential buyers or licensees.

Patenting AI-based innovations

A patent is a form of intellectual property protection that grants an inventor exclusive rights to an innovation for a period of time (eg, about 20 years) in exchange for public disclosure of the innovation. With respect to artificial intelligence, patents may be filed on hardware (eg, improved CPUs, GPUs, quantum computing components) and on algorithms executing the artificial intelligence processes (eg, learning processes, prediction processes).

Because new matter cannot be added to a nonprovisional patent application after it is filed, a prudent inventor strives to ensure that the application covers all current functionality, as well as any planned functionality. As discussed, if an application proceeds to a patent grant, that patent is enforceable for 20 years from the date of filing. Due to the ever-evolving nature of artificial intelligence, a technology that may be cutting edge at the time of filing may be outdated by the time the patent grants. It is important that the application is drafted in a manner that future-proofs the client’s technology.

AI and subject matter eligibility

The US Patent Office dictates the types of inventions that are eligible for patent protection in the United States. Generally, this may include inventions directed to any new and useful process, machine, manufacture or componsition of matter, or any new and useful improvement thereof. For purposes of software-based inventions, including those rooted in artificial intelligence, the state of eligibility is constantly evolving. Over the past several years, software-related applications have been more heavily scrutinized than other applications at the US Patent Office under the standard set forth in Alice Corp. v. CLS Bank International, 573 U.S. 208 (2014). Alice states that merely describing an algorithm at a high level and having that algorithm execute on a generic computing device constitutes an abstract idea and is not eligible for patent protection. Subsequent case law and US Patent Office Guidance have expanded on what constitutes an “abstract idea” for purposes of subject matter eligibility. A claim may constitute an abstract idea if it recites certain groupings of subject matter, such as mathematical concepts, certain methods of organizing human activity, and mental processes. Typically, claims that do not fall within one of these groupings cannot be characterized as an abstract idea. As those experienced in artificial intelligence recognize, artificial intelligence innovations typically utilize mathematical concepts and/or algorithms that underly the artificial intelligence models.

While, on its face, Alice seems troublesome for artificial intelligence innovations, in the years following Alice, subsequent case law and US Patent Office guidance have provided avenues for overcoming such challenges and have made overcoming such rejections easier for certain technologies, including artificial intelligence innovations.

#### AI dominance dampens conflict escalation and quell revisionism globally – extinction.

Dale & Herbeck ’18 [Aryan & Brendon; Air Force Space Operations Officers, Graduate and Instructor of the USAF Weapons School, students in the Multi-Domain Operational Strategist Concentration at Air Command and Staff College, M.B.A. in Aviation from Embry Riddle University, B.S. from Charleston Southern University; 3/26/18; “21st Century Strategic Deterrence: ‘Beyond Nuclear’”; https://othjournal.com/2018/03/26/21st-century-strategic-deterrence-beyond-nuclear/; Over the Horizon; accessed 11/23/18; TV]

Introduction For half of the 20th Century, Warsaw Pact and NATO countries alike wrote the book for how deterrence theory should be applied. In particular, nuclear deterrence played a significant role in the way the U.S. built its national security strategy. Nuclear deterrence was so pervasive that the very word “deterrence” itself became synonymous with nuclear deterrence. However, according to General John Hyten, Commander, U.S. Strategic Command, strategic deterrence in the 21st century does not equate to 20th century deterrence. Strategic deterrence is a multi-polar, multi-domain problem and it is fundamentally different now than it was in last century. The myopic focus on nuclear options in a national deterrence strategy falls short of the critical thinking required to provide U.S. national leaders with the options necessary for effective decision making. Today’s complex social-political environment requires more than just a nuclear element for strategic deterrence to be effective against a diverse set of adversaries. Deterrence today must leverage all six domains of warfare. So what is deterrence? According to DoD Joint Publication 1, deterrence “influences potential adversaries not to take threatening actions” for fear of the overwhelming retaliation from U.S. military might. More simply, deterrence could be any action that convinces an adversary to not act due to perceived unacceptable costs or because “the probability of success [is assessed to be] extremely low.” For an adversary to believe costs will be unacceptable or that there is a low probability of success, it must assess the U.S. threat as credible and capable, regardless of whether it is nuclear or conventional. Deterrence hinges on the adversary’s assessment of credibility and capability. During the Cold War the Soviet Union believed that use of nuclear weapons would lead to an overwhelming retaliation from the U.S.; and therefore, striking any NATO allies with nuclear weapons was not worth the cost. Effects of a Multi-Polar Environment The end of the Cold War brought to a close 50 years of a bi-polar world, and with it the simplicity of employing one strategy to deter a single adversary. The multi-polar world of today brings adversaries who are motivated differently. Both rational and irrational actors must be considered, which also causes national leaders to question the level of success strategic deterrence has on an adversary. Generally, it is believed strategic deterrence is effective only against a rational actor, and not an irrational actor. This is due to the perception that a rational actor will take into account some form of cost-benefit analysis prior to acting versus the irrational actor who might act without any consideration of the losses. Further complicating the world environment is that potential adversaries are watching and learning from U.S actions. This is not a new concept as adversaries have been studying each other for thousands of years to gain advantage. But General Hyten reminded us in a speech last fall that “in a multi-polar world, everybody watches you [the U.S.] everywhere.” His point was to highlight that since the fall of the Soviet Union, the U.S. has had a spotlight on it where adversaries have been studying the asymmetric advantages of the U.S. and creating specific capabilities and methods to counter those advantages. Thus, we must now recognize that a deterrent method of the past may not be viable in the future. The U.S. must seek out new deterrent strategies. Nuclear versus Strategic Deterrence Nuclear deterrence remains the foundation of U.S. deterrence strategy. However, nuclear deterrence cannot be the sole pillar of strategic deterrence since nuclear deterrence is not a one-size-fits-all solution. The most recent National Security Strategy (NSS) reflects this requirement to expand deterrence. As Brian Willis points out in the recent “Multi-domain ops at the Strategic Level” article, the recent NSS and Nuclear Posture Review (NPR) make strides to extend deterrence to the space and cyberspace domains. Creating non-nuclear deterrence options for use against potential adversaries is critical, especially against those actors who do not possess nuclear weapons. Michael Gerson suggests the nuclear taboo reduces the credibility—and therefore the utility—of nuclear weapons, especially against regimes not possessing nuclear weapons or other weapons of mass destruction. This thought process feeds back to the concept of credibility. The adversary must know the capability exists and the U.S. is willing to use it. The U.S. must consider a more balanced approach to deterrence as two of its near-peer adversaries have done. China and Russia are starting to demonstrate new ideas and concepts about strategic deterrence. This new “deterrence” does not solely focus on nuclear weapons or even the military instrument of power. China defines this new way of thinking as “Integrated Strategic Deterrence” while the Russians have called it “Cross-Domain Coercion.” People’s Republic of China Approach to Deterrence The PRC’s approach is not focused on preventing actions in a given domain but about achieving certain political goals. Around 2001, PRC military literature started discussing a concept known as “Integrated Strategic Deterrence” which focuses on nonmilitary aspects of national power—diplomatic, economic, and scientific and technological strength—contributing to strategic deterrence alongside space and cyber capabilities. These actions could include demonstrating new capabilities through tests and exercises where international observers are watching, owning the majority of mineral mines that hold a certain type of element, or working with partner countries to launch a new satellite that helps map future droughts and plots areas that are farmable. In 2007, the PRC tested an antisatellite (ASAT) technology demonstrator against a non-operational weather satellite. This test was publicized as a future scientific technology demonstration. This test demonstrated the PRC had a capability to engage satellites in Low Earth Orbit, which has now been turned over to the People’s Liberation Army (PLA) and is considered an operational military capability. It is also now a credible strategic deterrent in the space domain. Another piece to the PRC’s deterrence is their dam building operations for water control and hydropower. According to open sources, the PRC owns 45% of the world’s dams with its nearest competitors being the United States at 14% and India at 9%. Dams have the potential to turn water into political weapons to be wielded in war, or instruments during peace to influence actions or behaviors of a neighbor. India is currently concerned with a number of China dam projects and their ability to reduce river flows into India. The PRC’s “Integrated Strategic Deterrence” does not come without challenges. Unlike the U.S. who has the Department of Defense and Department of State coordinating different types of deterrent actions, the absence of an entity in the PLA to integrate and coordinate the employment of these capabilities makes it difficult to execute. However, it would come as no surprise to the casual observer to see the PLA start executing military, space, and cyber coercive activities in national level exercises in order to move “Integrated Strategic Deterrence” from theory and conjecture to fully operational in limited regional conflicts. Russia’s Approach to Deterrence The PRC is not the only competitor thinking about strategic deterrence from a non-nuclear perspective. About 30 years ago, Soviet literature introduced a concept we now know as Reflexive Control. This notion centers on the idea of driving your opponent to make decisions that are advantageous to you. This is commonly achieved through misinformation, either via “leaks” or providing a possible explanation to an unrelated event that causes your opponent to divert attention or respond. That concept has now evolved into “Cross-Domain Coercion.” “Cross Domain Coercion” is Russia’s ability to orchestrate non-nuclear and informational influence to coerce an adversary. It maintains opaqueness that clouds the nature of aggression as well as the aggressor’s identity. This informational influence was apparent during both the United States elections in 2016 and Catalonia’s bid for independence from Spain in 2017. Multiple United States intelligence agencies have noted Russian misinformation on social media and mass media outlets. This campaign is a prime example of “Cross Domain Coercion” and used a soft instrument of power, in this case information, as a form of deterrence on a global scale. The purpose of this interference is still clouded but it must have satisfied Russian objectives if it was used in Catalonia months after the United States election. Another form of this type of deterrence is Russia’s cyber-attacks in both Estonia in 2007, and Georgia in 2008. In both cases, the attacks were not solely focused on military targets but against government institutions, banks, ministries, newspapers, and broadcasters. These attacks were meant to confuse the population and drive the government towards compliance with Russian demands. Whatever the objectives, Russia has telegraphed that future attacks will fall under “Cross Domain Coercion”. The threats against financial and economic institutions as well as those of energy sources will be activated in conjunction with the military component of coercion, such as special operations forces and strategic strike systems in order to influence the target country. With both the PRC and Russia, strategic deterrence is no longer monopolized by nuclear weapons. 21st century deterrence is dam building that has regional implications on precious resources and misinformation campaigns such as Deepfakes where machine learning systems can be trained to paste one person’s face onto another person’s body, complete with facial expressions, and could change the outcome of democratic elections. U.S. Multi-Domain Strategic Deterrence Consideration of deterrent effects other than kinetic weapons must be explored. Strategic deterrence “applies to cyber, it applies to missile defense, and it applies to electronic warfare. It applies to every mission in U.S. Strategic Command.” Currently, an adversarial attack can come through any domain, and that is why the U.S. must leverage the multiplicative advantages of all domains. An adversary who is not deterred by a nuclear response may be deterred by fear of a cyber effect which degrades or destroys a country’s economic stability. Or it could be negotiations in the human domain which threaten sanctions against a country’s ability to trade. Maybe it is the threat of an information operations campaign with the goal of removing a governmental regime from power and destabilizing a nation state. Regardless of deterrence method, the adversary must perceive the U.S. as capable and willing to commit to the action for it to be an effective deterrent. The first step for the U.S. is talking about capabilities more openly so adversaries know about our capabilities and the conditions under which they would be employed. This does not mean we share the technical details of a capability, those should remain secret, but a general understanding of the effect created by the capability must be understood. Adversaries are not deterred by a capability if they do not know it exists. Future Technologies and Deterrence Technologies on the horizon have huge implications for the future of strategic deterrence. Hypersonic weapons have the capability of delivering multiple payload types to worldwide targets while rendering missile warning detection and missile defense programs obsolete. Quantum computing has the ability to make encryption unbreakable unless you have quantum technology and increase transmission speeds to levels unheard of in today’s environment. This could deter an adversary from ever trying to break your encryption unless they spend the money to harness quantum computing. Finally, Artificial Intelligence (AI) and “combat cloud” services allow computers to easily share information and make decisions involving civil and economic processes to military tasks without ever needing human interaction. AI comes with colossal opportunities, but also threats that are difficult to predict. According to Putin, whoever becomes the leader in AI will become the ruler of the world. Leading the Target The one commonality in the previous paragraph is that the U.S. is arguably not the leader in any of the technologies listed above. The question is why. The U.S. recognizes the threat but does not seem to recognize deterrence in the same lenses as our adversaries. With all of the historic examples above plus the developing technologies, our adversaries are coming up with new deterrence strategies that go beyond nuclear weapons. If the U.S. wants credible 21st century strategic deterrence, we need to look no further than recent PRC and Russian actions. They have shown us that the blueprint to strategic deterrence lies in economic expansion, information attacks, and future technologies. The U.S. needs to start rewriting the textbooks on what strategic deterrence means and start exploring new technologies such as Quantum Computing and AI and how we can leverage them through all instruments of national power and all domains. If the U.S. does not act soon, we could be deterred from intervening in future conflicts that protects our vital interests or closest allies.

### 1NC – Advantage CP

#### The United States federal government should:

* revoke the ad hoc agriculture subsidies program;
* increase funding for agriculture conservation programs;
* reform traditional commodity farm subsidies programs, by at least imposing a strict means test for small farms;
* expand international food aid, specifically targeted towards farmer cooperatives in rural cities;
* at least double investments in agricultural and food research over the next 10 years;
* and, increase environmental regulations governing chemical use and runoff in the agricultural sector.

#### Planks 1-3 reorients farm subsidies towards small farmers and sustainability.

Schechinger 21 [Anne; Senior Analyst of Economics for EWG; “Farm Subsidies Ballooned Under Trump – President Biden Should Not Make the Same Mistakes”; EWG; Feb 24, 2021; https://www.ewg.org/interactive-maps/2021-farm-subsidies-ballooned-under-trump/]

Taxpayer-funded farm subsidies have long been skewed in favor of the richest farmers and landowners. But under the Trump administration, even more money went to the largest and wealthiest farms, further shortchanging smaller, struggling family farms.

EWG’s analysis of records from the Department of Agriculture finds that subsidy payments to farmers ballooned from just over $4 billion in 2017 to more than $20 billion in 2020 – driven largely by ad hoc programs meant to offset the effects of President Trump’s failed trade war.

Not only did the amount of subsidies skyrocket, but the richest farms also increased their share: In 2016, about 17 percent of total subsidies went to the top 1 percent of farms and about 60 percent to the top 10th. In 2019, the richest 1 percent received almost one-fourth of the total, and the top 10th received almost two-thirds.1

The staggering growth of subsidies and the worsening inequity in distribution underscore the urgency for the Biden administration and the new Congress to enact commonsense farm subsidy reforms that will benefit small, struggling farmers and the environment and make up for the mistakes of the Trump years.

Traditional Subsidies Are Dwarfed by Ad Hoc Programs

The 2014 Farm Bill established two traditional commodity farm subsidy programs that send payouts to farmers every year. These programs, the Agricultural Risk Coverage program, or ARC, and the Price Loss Coverage program, or PLC, are triggered if crop yields or prices are lower than expected. Farmers can choose to take part in either ARC or PLC for the entire length of each farm bill, typically five years. Not every farm receives payments from these programs every year, but many do, and the programs send out billions of dollars annually.

But even though these existing programs pay farmers for reductions in crop prices, the Trump administration established additional multi-billion-dollar ad hoc subsidy programs – subsidies for specific, limited and supposedly temporary purposes.

The Market Facilitation Program, or MFP, paid billions to farmers in 2018 and 2019 for losses driven by tariffs that China placed on agricultural imports from the U.S. in retaliation for Trump’s trade war.

The Coronavirus Food Assistance Program, or CFAP, sent billions to farmers last year. The USDA is still accepting applications for this year, but Biden has ordered a freeze on payments until further notice.

ARC and PLC payments, from their inception in 2014 through 2019, the most recent year of payments, were $32.04 billion. But ad hoc subsidies far exceeded the total payments from those traditional programs in the final two years of the Obama administration and under Trump: a total of $49.08 billion in five years of annual disaster payments, two years of MFP payments and CFAP payments through October of last year.

Altogether, since 2014, ad hoc and traditional subsidy programs cost U.S. taxpayers more than $81.1 billion.

The chart below shows the growth in farm subsidies since 2018, when the MFP began. Since ARC and PLC payments are made in the calendar year after the year the crop was grown, we won’t know the 2020 payments until this fall. So the chart below includes an estimate for 2020 ARC and PLC payments, provided by the Congressional Budget Office.

The majority of payments went to just eight states – Illinois, Iowa, Kansas, Minnesota, Nebraska, North Dakota, South Dakota and Texas. Farmers in those states received more than $41 billion, or 51 percent of the total.

The interactive map below shows annual county-by-county subsidy payments since 2014. The 10 counties that received the highest ad hoc payments together received over $1.6 billion.

The massive outlays of taxpayer dollars aren’t the only cost of wasteful farm subsidies.

Nationwide, nitrate contamination of drinking water – from nitrogen in fertilizer and manure running off farm fields – is a serious and growing health hazard. Analysis of USDA records shows how federal payments are subsidizing farms in counties with severe nitrate contamination.

For example, levels of nitrate in drinking water are especially high in the San Joaquin Valley of California, where communities with majority-Latino populations are the most likely to have high nitrate. Six of the 10 U.S. counties with the highest ad hoc subsidy payments are in the San Joaquin Valley – Fresno, Kern, Kings, Merced, Stanislaus and Tulare, which since 2014 received a total of $1.09 billion from disaster payments, MFP and CFAP.

Yet all of the traditional and ad hoc subsidies outlined above are only a part of the total payments American farmers receive every year. Federal crop insurance – a Depression-era ad hoc program written into law in 1980 – adds billions each year, and tends to pay farmers for the same reductions in crop prices as ARC and PLC. Conservation programs also make payments to farmers every year, but conservation payments are considerably smaller than farm subsidies or crop insurance.

The Largest Farms Get the Most Money

The USDA classifies 98 percent of all U.S. farms as “family farms,” but the top 0.3 percent are considered “very large family farms.” These biggest farms have a gross farm income of at least $5 million and in 2019 provided their operators a median household income of just under $1 million.

As USDA data shows, the great majority of both traditional commodity and ad hoc program payments go to the largest and wealthiest farms, which generally have considerable assets to fall back on in lean years. Small farms that struggle when crop prices are low or during the pandemic-triggered economic crisis get only a small portion of payments. It’s no accident: The programs are designed so that farms with the largest acres or crop production get the highest payments.

For example, through the MFP in 2018 and 2019:

The top 1 percent of recipients received 16 percent of payments, with an average total payment for both years of $524,298 per farm. The top 10 percent received 58 percent of payments, with an average total payment of $185,340.

The bottom 80 percent of recipients received only 23 percent of payments – an average payment for both years of only $9,109 per recipient.

The ARC, PLC and CFAP programs had very similar payment concentrations. But compared to other Americans, do farmers need all this money?

In December, the USDA’s Economic Research Service forecast that when all data for 2020 is in, the median income for all farm households is expected to be $86,992. That’s almost 25 percent more than the 2019 median household income for all U.S. households of $69,703.

Just looking at income from farming, the huge ad hoc payments of recent years have made subsidies a large chunk of total farm income.

Between 2019 and 2020, total direct government payments to farms increased by over 107 percent, bringing the share of farm income from government payments to almost 40 percent. As the graphic below shows, that pushed 2020 farm income levels significantly above the 20-year average.

It’s clear that even most “small” farmers are better off than the average American – in 2019, only 3 percent of all farm households had levels of wealth that were lower than the average U.S. household.

Yet during the pandemic and economic crises of last year, when millions of Americans lost their jobs, had to close their small businesses and struggled to put food on the table, taxpayers sent over $20 billion to farmers through CFAP, plus annual disaster payments. (Like other subsidies, CFAP payments went disproportionately to the largest and richest farms, rather for direct aid to hungry Americans.) And that’s before we know the figure for payments through ARC and PLC.

How To Fix the Broken Farm Subsidy System

The Biden administration and the new Congress have many opportunities to fix the traditional commodity farm subsidy programs of ARC and PLC, and to shift funding for the ad hoc programs into conservation programs that benefit farmers, all Americans and the environment. EWG recommends:

Ending the huge ad hoc subsidy programs of the Trump administration. MFP, which paid out over $23 billion in 2018 and 2019, should not be renewed. CFAP is still making payments to farmers, but when those payments are complete, it should not be renewed unless targeted to small farmers in need.

Increasing funding for conservation programs. Instead of sending billions to the largest and wealthiest farms, funding for existing conservation programs should be increased. These programs still give money to farmers, but they also generate public health and environmental benefits through improved water quality and soil health. These programs also encourage the adoption of conservation practices that may reduce greenhouse gas emissions.

Reforming traditional commodity farm subsidy programs. The ARC and PLC programs need a strict means test to stop most of the payments from going to the largest farms. Currently, farmers can receive payments as long as their income is less than $900,000 a year, or $1.8 million for a farmer and spouse. There is a $125,000 annual payment limit, but a farm can have an unlimited number of “partners” that can each receive up to $125,000, allowing many people who do not live or work on the farm to get a check every year. Restricting farms to just a few eligible managers could greatly reduce the number of city slickers who get payments.

Changing farm subsidy programs to end USDA’s racist legacy. Stricter payment and income limits that would send payments to small farms, instead of the largest farms, would benefit Black, Latino and Asian American farmers, who often own smaller farms than white farmers do.

#### Plank 4 solves food shortages.

Keefe ’15 [Keefe Meagan, assistant director of global agriculture and food at The Chicago Council on Global Affairs, former Mickey Leland International Hunger Fellow at the International Food Policy Research Institute, MS in natural resource management from the University of Minnesota, Associate Director of the Program of African Studies at Northwestern University; May 2015; “Leveraging Innovation to Feed the Future”; <https://www.thechicagocouncil.org/sites/default/files/GlobalAg_ResearchBrief_v4.pdf>; The Chicago Council on Global Affairs; accessed 7/6/18; TV]

The United States should double investments in agricultural and food research over the next 10 years. The United States needs to double investments in agricultural and food research over the next 10 years to help meet these challenges. Research funds should be focused on priorities that will be most important to meeting future demand: equipping agriculture both domestically and in low-income countries to be resilient to climate change and weather variability; aligning agricultural production and nutrition goals; and ensuring agricultural production builds rather than harms the natural resource base. Public agencies— such as USDA, the new Foundation for Food and Agricultural Research, and National Science Foundation— the US Congress, and research universities will be game-changing players in increasing the investment in agricultural research and reshaping national priorities. Given the lag time between the research funding and the eventual uptake of technologies, R&D investment decisions need to be taken with a long-term perspective and a funding horizon of at least a decade. Forge a new science of agriculture Agriculture’s mandate should be expanded beyond simply increasing production. Agriculture must increase production in a way that uses fewer resources and optimizes nutrition outcomes while providing solid incomes to food producers. Experts from all scientific disciplines are needed to increase nutritious food production sustainably. Proven approaches and innovations should be transferred to farmers everywhere, but especially to women and underproducing farmers in Sub-Saharan Africa and South Asia. A new multidisciplinary science of agriculture is needed and should be based on increasing outputs—production, nutrition, and incomes—while using less land and water resources.14 This requires improving human health through accessible nutritious food, improving food safety, and reducing food waste along the supply chain. The US Congress should consider convening a national, bipartisan commission that draws from the policy, university, business, and civil society sectors to develop a research agenda for how to overcome future food challenges sustainably, nutritiously, and economically. Build research capacity Because the challenges facing the food system will be both global and local, international research institutions need increased support. At the same time, there is a need for transforming university and research institutions in developing countries so that they conduct the research that is critical to their location, context, and people. The US government has ramped up this type of training over the past five years, but it is nowhere near the level of support the US provided in the 1970s and ’80s at the height of the Green Revolution.15 These efforts should be expanded to develop local institutions in developing countries. This can be done through public-private partnerships, educational exchanges, and connecting universities around the world. The US university system is well positioned to contribute to this, but increased funding is needed to facilitate partnerships and educational exchanges between universities in the United States and institutions in the developing world. Bolster research on climate change Climate change is already beginning to threaten the global food supply. Recent scientific reports predict that the hotter temperatures and natural disasters already undermining food production will be increasingly common. The effects from climate change are expected to slow the growth of food production by 2 percent each decade for the rest of this century.16 The US government must increase funding for research to build resilience and address the threats to the food system posed by climate change. In order to prepare for climate change, more research is needed on increasing tolerance to higher temperatures, building resilience to extreme weather events, and combating pests and diseases. While it’s becoming increasingly clear that the consequences of climate change will be severe, there are significant gaps in the current understanding of the effects along the value chain, from farmers’ fields to consumers. Better models are needed to help understand the effects of climate change. Food producers cannot prepare effectively and researchers and businesses cannot innovate without better data. Data on weather, water resources, crop performance, land use, and consumer preferences are necessary to adequately prepare. Better models and data are crucial for increasing productivity, enhancing nutrition, and increasing resilience to the effects of climate change.17 Expand nutrition-sensitive agricultural research Malnutrition—from undernourishment to obesity—is already affecting every country on earth and placing nearly one-half of the world’s population at serious health risk.18 Although nutrition interventions such as therapeutic foods to manage severe acute malnutrition and supplements to address micronutrient deficiencies are necessary, good health is driven largely by access to overall nutritious diets.19 The US government should make nutrition a key priority in agricultural research to increase access to healthy foods, drive economic growth in poor countries, and improve the livelihoods of small-scale farmers. The current fruit and vegetable supply is far from sufficient for everyone to meet recommended nutrient intakes, especially in low-income countries. Research across the entire food value chain is critical in order to increase production; reduce costs; and improve the storage, processing, and transport of horticultural crops.20 In addition, food safety is an often neglected but essential component at the nexus between nutrition and agriculture that requires additional research. Aflatoxin contamination is one of the most pressing food safety challenges in developing countries, affecting one-quarter of harvests worldwide. Reduce food waste An estimated one-third of all food produced globally is wasted. In developed countries, consumers throw too much food away. In developing countries, food often rots before it can be processed or brought to market because of poor infrastructure that allows pests and other contaminants to run rampant. Innovations in reducing food waste are desperately needed. Because fruits and vegetables as well as fish spoil more quickly and are more difficult to transport than grains, they are wasted in greater quantities—along with the valuable nutrients they contain.21 In addition, the higher temperatures and humidity brought by climate change will cause even more food to be wasted without innovations in cold storage and transport. Finding innovative ways to reduce food waste and bringing them to scale would help meet the increasing demand for food without necessarily growing more food. Innovation from the private sector could help significantly in addressing this challenge. US leadership is crucial for meeting the challenges to the global food system. As the rate of agricultural productivity growth continues to slow both in the US and globally, it is clear that a change in the global research enterprise is essential to meet the future challenge of feeding two billion more people by 2050. The United States is a global leader in agricultural research, holding almost 15 percent of the world’s public agricultural knowledge stock. US leadership is crucial for revitalizing the research institutions and investments needed to increase productivity, produce more nutritious food, use fewer resources, and adapt to climate change. Investing in agricultural research and taking a more comprehensive approach to utilizing existing knowledge would help safeguard the productivity gains made in the United States over the past century while meeting the future challenges facing the global food system.

### 1NC – Sua Sponte 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 – FTC Tradeoff DA

#### FTC’s increasing enforcement in privacy now on algorithmic bias.

James V. Fazio 21. Special counsel in the Intellectual Property Practice Group at Sheppard, Mullin, Richter & Hampton LLP, with Liisa M. Thomas, 3/11. “What Is FTC’s Course Under Biden?” https://www.natlawreview.com/article/what-ftc-s-course-under-biden

The new acting FTC chair, Rebecca Kelly Slaughter, recently signaled that the FTC may increase enforcement and penalties in the privacy and data security realm. Slaughter pointed to several areas of focus for the FTC this year, which companies will want to keep in mind: Notifying Consumers About FTC Allegations: Slaughter referred favorably to two recent cases: (1) the Everalbum biometric settlement from earlier this year (which we wrote about at the time); and (2) the Flo Health settlement over alleged deceptive data sharing practices (which we also wrote about at the time). In drawing on these two cases, Slaughter indicated that in future cases the FTC intends to include as part of any settlement a requirement to notify customers of any FTC allegations. This, she said, would allow consumers to “vote with their feet” and help them decide whether to recommend their services to others. FTC Intent to Plead All Relevant Violations: According to Slaughter, another lesson the FTC is taking from the Flo case is to include in the cases it brings all potentially applicable violations of all relevant privacy-related laws. In the Flo case, Slaughter said the FTC should have pleaded a violation of the Health Breach Notification Rule, which requires that vendors of personal health records notify consumers of data breaches. Focus on Ed Tech and COPPA: Given the explosive growth of education technology during COVID-19, the FTC is conducting an industry sweep of the industry. Related to this, the FTC is reviewing its Children’s Online Privacy Protection Act Rule. This goes beyond the refresh the agency did of their FAQs earlier in the pandemic (which we wrote about at the time). For now, Slaughter reminds companies that parental consent is needed before collecting information online from children under the age of 13. Examination of Health Apps: The FTC will take a closer look at health apps, including telehealth and contact tracing apps, as more and more consumers are relying on such apps to manage their health during the pandemic. Overlap Between Competition and Privacy: Slaughter also indicated that it is worth looking at situations where there may be not only privacy concerns, but antitrust as well. Because the FTC has a dual mission (consumer protection and competition) she notes that it has a “structural advantage” over other regulators in that it can look at these issues, especially since -she states- “many of the largest players in digital markets are as powerful as they are because of the breadth of their access to and control over consumer data.” Racial Equality and AI/Biometrics/Geotracking: Slaughter noted that COVID-19 is exacerbating racial inequities. She pointed to the unequal access to technology, as well as algorithmic discrimination (the idea that discrimination offline becomes embedded into algorithmic system logic). The FTC intends to focus on algorithmic discrimination, as well as on the discrimination potentially embedded into facial recognition technologies. (This mirrors concerns that gave rise to the recent Portland facial recognition law, which we recently wrote about). Finally, Slaughter commented on the use of location data to identify characteristics of Black Lives Matter protesters, and said she is concerned about the misuse of location data to track Americans engaged in constitutionally protected speech. Putting it Into Practice: Companies that operate health apps, that are in the education technology space, or that use algorithms or facial recognition tools will want to keep in mind that these are areas of focus for the FTC. And for everyone, keep in mind that the FTC has indicated it will beef up privacy law penalties and will ask for more notification to injured consumers.

#### Antitrust saps FTC resources – trades off with privacy

Tara L. Reinhart, et al. 21. \*\*Head of Skadden, Arps, Slate, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*Steven C. Sunshine, Co-head of Skadden, Arps, Slat, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*David P. Whales, antitrust lawyer with over 25 years of experience in both private and public sectors. \*\*Julia Y. York, partner at Skadden, Arps, Slat, Meagher & Flom LLP. \*\*Bre Jordan, associate at Skadden, Arps, Slat, Meagher & Flom LLP focusing on antitrust law. “Lina Khan’s Appointment as FTC Chair Reflects Biden Administration’s Aggressive Stance on Antitrust Enforcement.” 6/18/21. https://www.skadden.com/insights/publications/2021/06/lina-khans-appointment-as-ftc-chair

Second, like all antitrust enforcers, Ms. Khan and the FTC will face resource constraints. Bringing antitrust litigation is an expensive and laborious process, often requiring millions of dollars for expert fees and a large army of FTC staff attorneys and taking many months or even years to accomplish. Typically, the FTC can only litigate a handful of antitrust matters at a time. It seems likely that Congress will provide more funding to the FTC in the current environment, but even with these extra resources, the FTC will still have to pick its cases carefully and cannot challenge every deal or every instance of alleged unlawful conduct.

#### Unchecked algorithmic bias risks extinction.

Mike Thomas 20. Quoting AI experts including MIT Physics Professors, Senior Features Writer for BuiltIn. THE FUTURE OF ARTIFICIAL INTELLIGENCE: 7 ways AI can change the world for better ... or worse, Updated: April 20, 2020, <https://builtin.com/artificial-intelligence/artificial-intelligence-future>

Klabjan also puts little stock in extreme scenarios — the type involving, say, murderous cyborgs that turn the earth into a smoldering hellscape. He’s much more concerned with machines — war robots, for instance — being fed faulty “incentives” by nefarious humans. As MIT physics professors and leading AI researcher Max Tegmark put it in a 2018 TED Talk, “The real threat from AI isn’t malice, like in silly Hollywood movies, but competence — AI accomplishing goals that just aren’t aligned with ours.” That’s Laird’s take, too. “I definitely don’t see the scenario where something wakes up and decides it wants to take over the world,” he says. “I think that’s science fiction and not the way it’s going to play out.” What Laird worries most about isn’t evil AI, per se, but “evil humans using AI as a sort of false force multiplier” for things like bank robbery and credit card fraud, among many other crimes. And so, while he’s often frustrated with the pace of progress, AI’s slow burn may actually be a blessing. “Time to understand what we’re creating and how we’re going to incorporate it into society,” Laird says, “might be exactly what we need.” But no one knows for sure. “There are several major breakthroughs that have to occur, and those could come very quickly,” Russell said during his Westminster talk. Referencing the rapid transformational effect of nuclear fission (atom splitting) by British physicist Ernest Rutherford in 1917, he added, “It’s very, very hard to predict when these conceptual breakthroughs are going to happen.” But whenever they do, if they do, he emphasized the importance of preparation. That means starting or continuing discussions about the ethical use of A.G.I. and whether it should be regulated. That means working to eliminate data bias, which has a corrupting effect on algorithms and is currently a fat fly in the AI ointment. That means working to invent and augment security measures capable of keeping the technology in check. And it means having the humility to realize that just because we can doesn’t mean we should. “Our situation with technology is complicated, but the big picture is rather simple,” Tegmark said during his TED Talk. “Most AGI researchers expect AGI within decades, and if we just bumble into this unprepared, it will probably be the biggest mistake in human history. It could enable brutal global dictatorship with unprecedented inequality, surveillance, suffering and maybe even human extinction. But if we steer carefully, we could end up in a fantastic future where everybody’s better off—the poor are richer, the rich are richer, everybody’s healthy and free to live out their dreams.”

### 1NC – Biz Con DA

#### The plan creates a chilling effect that crushes business confidence and investment

Hathout 9/23 – Ahmad Hathout, reporter focusing on the tech and telecommunications industries, citing a panel event hosted by the Institute for Policy Innovation, “Washington’s Antitrust Push Could Create ‘Chilling Effect’ on Startups, Observers Say,” 9/23/21, https://broadbandbreakfast.com/2021/09/washingtons-antitrust-push-could-create-chilling-effect-on-startups-observers-say/

WASHINGTON, September 23, 2021 – Advocates for less government encroachment on big technology companies are warning that antitrust is being weaponized for political ends that may end up placing a “chilling effect” on innovative businesses.

The Institute for Policy Innovation held a web event Wednesday to discuss antitrust and the modern economy. Panelists noted their concern that antitrust law may be welded with political aims that will ultimately create a precedent whereby the federal government will stifle innovators who get too big.

Jessica Melugin, the director of the Center for Technology and Innovation, said technology companies could see what’s happening in Washington – with lots of talk of breaking up companies deemed too big – and be uncertain of the future.

She noted that growing companies largely seek one of two things to make it big: grow to file an initial public offering, where the company’s shares are publicly traded, or wait until a large company buys you out. She said talk emanating from the White House and Washington generally about regulating the industry could deter larger companies from acquiring them, and onerous financial regulations could put a damper on IPO dreams.

“If you start robbing companies of other smaller companies they purchased, it’s going to give a lot of entrepreneurs and a lot of funders in Silicon Valley pause,” Melugin said. “If another path to success gets blocked – the IPO is now harder, and now acquisitions are a little bit questionable…that’s a chilling effect.”

President Joe Biden has made a number of appointments to key positions that is bringing more attention on Big Tech, including known Amazon critic Lina Khan to chair the Federal Trade Commission, which recently filed an amended case against Facebook for alleged anticompetitive practices. He also appointed antitrust expert and Google critic Jonathan Kanter as assistant attorney general in the Justice Department’s antitrust division.

FTC could set a bad precedent if focus is ‘big is bad’

Christopher Koopman, the executive director at the Center for Growth and Opportunity at Utah State University, said he’s concerned about the precedent Khan could set for big companies.

He said the odds are that once Khan starts, she will continue down “this path of ‘big is bad’ because that’s a prior that she has and she’s continued to operate on her entire professional career. It just so happens that the focus of this is on tech companies.

“We may be building a regulatory apparatus that will continue to burrow a hole right down the middle of the American economy before we even have a chance to ask if that’s really what we want,” Koopman added. “We just have to recognize that it doesn’t matter, really, who is running the FTC – once we tell the FTC to go break up big companies, they’re going to go break up big companies.”

#### Unpredictable shifts ruin biz con and overall growth

Cambon 21 – Sarah Chaney Cambon, reporter on The Wall Street Journal's Economics Team, “Capital-Spending Surge Further Lifts Economic Recovery”, 6/27/2021, https://www.wsj.com/articles/capital-spending-surge-further-lifts-economic-recovery-11624798800

Business investment is emerging as a powerful source of U.S. economic growth that will likely help sustain the recovery.

Companies are ramping up orders for computers, machinery and software as they grow more confident in the outlook.

Nonresidential fixed investment, a proxy for business spending, rose at a seasonally adjusted annual rate of 11.7% in the first quarter, led by growth in software and tech-equipment spending, according to the Commerce Department. Business investment also logged double-digit gains in the third and fourth quarters last year after falling during pandemic-related shutdowns. It is now higher than its pre-pandemic peak.

Orders for nondefense capital goods excluding aircraft, another measure for business investment, are near the highest levels for records tracing back to the 1990s, separate Commerce Department figures show.

“Business investment has really been an important engine powering the U.S. economic recovery,” said Robert Rosener, senior U.S. economist at Morgan Stanley. “In our outlook for the economy, it’s certainly one of the bright spots.”

Consumer spending, which accounts for about two-thirds of economic output, is driving the early stages of the recovery. Americans, flush with savings and government stimulus checks, are spending more on goods and services, which they shunned for much of the pandemic.

Robust capital investment will be key to ensuring that the recovery maintains strength after the spending boost from fiscal stimulus and business reopenings eventually fades, according to some economists.

Rising business investment helps fuel economic output. It also lifts worker productivity, or output per hour. That metric grew at a sluggish pace throughout the last economic expansion but is now showing signs of resurgence.

The recovery in business investment is shaping up to be much stronger than in the years following the 2007-09 recession. “The events especially in late ’08, early ’09 put a lot of businesses really close to the edge,” said Phil Suttle, founder of Suttle Economics. “I think a lot of them said, ‘We’ve just got to be really cautious for a long while.’”

Businesses appear to be less risk-averse now, he said.

After the financial crisis, businesses grew by adding workers, rather than investing in capital. Hiring was more attractive than capital spending because labor was abundant and relatively cheap. Now the supply of workers is tight. Companies are raising pay to lure employees. As a result, many firms have more incentive to grow by investing in capital.

Economists at Morgan Stanley predict that U.S. capital spending will rise to 116% of prerecession levels after three years. By comparison, investment took 10 years to reach those levels once the 2007-09 recession hit.

Company executives are increasingly confident in the economy’s trajectory. The Business Roundtable’s economic-outlook index—a composite of large companies’ plans for hiring and spending, as well as sales projections—increased by nine points in the second quarter to 116, just below 2018’s record high, according to a survey conducted between May 25 and June 9. In the second quarter, the share of companies planning to boost capital investment increased to 59% from 57% in the first.

“We’re seeing really strong reopening demand, and a lot of times capital investment follows that,” said Joe Song, senior U.S. economist at BofA Securities.

Mr. Song added that less uncertainty regarding trade tensions between the U.S. and China should further underpin business confidence and investment. “At the very least, businesses will understand the strategy that the Biden administration is trying to follow and will be able to plan around that,” he said.

#### Post-COVID economic rebound secures geopolitical dominance – the alternative is global conflict, EU collapse and Chinese authoritarian dominance

Kempe 20, best-selling author, prize-winning journalist and president & CEO of the Atlantic Council, one of the United States’ most influential think tanks on global affairs. He worked at The Wall Street Journal for more than 25 years as a foreign correspondent, assistant managing editor and as the longest-serving editor of the paper’s European edition. (Frederick, “Op-ed: How the US can win the post-coronavirus race for global dominance,” CNBC, https://www.cnbc.com/2020/04/18/op-ed-how-us-can-win-the-post-coronavirus-race-for-global-dominance.html 4-18-20 )

Place your bets for the coming race to growth. It will be an epic contest among the world’s most significant economies, with generational and geopolitical consequences. For context, think back to what the United States accomplished after World War II, when it rose as an economic power to shape a better world. The post-COVID19 race could determine whether the U.S. rebounds in a manner that allows it to retain the mantle of global leadership. More likely for the moment, Beijing could leverage its first-mover advantage – alongside a faster economic recovery across Asian markets – accelerating the trend toward a Chinese-centric globalization. Elsewhere, as President Macron argued this week to the Financial Times, the coming months could determine whether the European Union collapses as a political and economic project. The days ahead also could trigger a dangerous widening of the economic gap between emerging markets and the developed world – with escalating conflict and surging migration. It may seem premature to reflect on which of the globe’s economies is likely to have the most robust and lasting economic comeback – and with what geopolitical impact. After all, this was a week in which the International Monetary Fund projected a 3% contraction in global GDP for 2020, the most dramatic drop since the Great Depression. Yet it is the details behind that dismal forecast that should raise concerns within the U.S. and Europe. Their steeper economic decline and slower recovery could lay the seeds for a long-lasting shift of global tectonic plates to China’s advantage. The IMF projected a U.S. economic decline of about 6% in 2020 and a contraction of the eurozone of 7.5%. That compares to projected Chinese economic growth for 2020 of 1.2% after a first quarter real decline of 6.7% – far less than the 10%-plus dip many experts had expected. The only group of countries in the world projected to be in positive territory are East Asian, at roughly 1%. Even if one accepts that Chinese coronavirus fatalities likely are greater than their public figures and that the growth decline is likely larger, that doesn’t change the potential for a scenario that Deloitte and Salesforce this week referred to as “Sunrise in the East.” Describing this scenario, as one of four possibilities they list, they write, “The global center of power shifts decisively east as China and other East Asian nations take the reigns as primary powers on the world stage and lead global coordination of the health system and other multilateral institutions.” That comes with the broader acceptance of greater surveillance mechanisms as part of the public good, a faster recovery of East Asian countries with less economic impact from COVID19, and a significant ramping up of Chinese foreign direct investment to burnish its global reputation. Still, the U.S. has a host of incumbent advantages that could serve it well if it uses its economic recovery to also strengthen its infrastructure, if it reverses runaway unemployment quickly, if it can tame political polarization and, most significantly, if it rediscovers its taste for collaborative global leadership. In the economic race, no advantage is greater than the dollar. China may be the world’s second largest economy, but the Chinese yuan makes up only 2% of global payments and reserves while the dollar accounts for roughly two thirds of foreign exchange reserves. The dollar underpins four-fifths of global supply chains. The Economist reckons China could chip away at U.S. economic advantages through three underestimated strengths of its own: as a trusted debtor, an attractive creditor, and increasingly as a tech partner. As a debtor, China’s $13 trillion bond market is the world’s second largest and has weathered the crisis well. Chinese debt returned 1.3% in the first quarter, vastly better than the 15.5% decline for other emerging market bonds. Over the same period, the Chinese market added $8.5 billion (60 billion yuan) in net inflows. As a creditor, China has remained willing and generous, an approach that served the U.S. well after World War II. For example, it declared its willingness to back a G20 deal to suspend bilateral loan repayments by poorer countries, a sizable benefit also at its own cost. On the tech front, few countries were as ready as China for money and people to go entirely online. Tencent and Ant Financial have more than a billion users each for their digital wallets, and they are expanding rapidly throughout Asia. OneConnect, an offshoot of China’s largest insurer, provides financial institutions in sixteen Asian countries with cloud-based services. So, what other advantages can the United States leverage in this race? Never underestimate the brittleness of an authoritarian country under stress. Its broad censorship, it’s opaque legal system, and the nature of its surveillance state are hardly models to emulate. Beyond that, Japanese Prime Minister Shinzo Abe is not alone in proposing that his country relocate high-value supply chains from China. If many countries do the same, the manufacturing foundation of China’s economy could erode. The Financial Times’ Gideon Rachman adds that the global trust in the dollar is just one of two built-in U.S. advantages that are difficult to dislodge. The other? “Where, outside your home country, would you most like your children to go to university or to work?” he writes. Most significant in this race would be if the United States regained its appetite for political and economic leadership as the world’s premier “convening power.” That need not be done at the cost of China – or anyone else. The race still can be won if U.S. leaders see it as a marathon and recall that much of the world long embraced their global leadership because partners learned they were more likely to win as American partners. This economic rebound from COVID19 will be patchy and uneven. Being first out the gate will be significant, and that is likely to be China. Yet history has taught the United States that it’s victory will be longest lasting if it can achieved alongside partners and allies.4.

### 1NC – Rulemaking CP

#### The Federal Trade Commission should issue a rule substantially increasing restrictions on anticompetitive mergers, acquisitions, and cooperatives that threaten profit loss in the agricultural sector.

#### Rulemaking solves the case.

Chopra & Khan ’20 [Rohit; Commissioner @ Federal Trade Commission; and Lina; Chairperson @ Federal Trade Commission, JD @ Yale Law School; “The Case for “Unfair Methods of Competition” Rulemaking,” *The University of Chicago Law Review* *87*(2), p. 357-380; AS]

II. THE CASE FOR RULEMAKING UNDER “UNFAIR METHODS OF COMPETITION”

Legislative history is clear that Congress sought to advance competition law outside the courts as well as through them.25 Two decades into enforcement of the federal antitrust laws, Congress was frustrated with the exclusively common law approach to antitrust. In particular, lawmakers worried that the case-by-case approach to enforcement was yielding a body of law that was inconsistent, unpredictable, and unmoored from congressional intent.26 The solution, lawmakers decided, was the creation of a new expert administrative agency: the Federal Trade Commission.

Congress established the FTC to supplement the authority of the Attorney General.27 While both institutions were tasked with enforcing the antitrust laws, lawmakers designed the FTC with two distinct features: (1) delegated authority to interpret and prohibit “unfair methods of competition,” as established by § 5 of the Federal Trade Commission Act28 (FTC Act) and (2) extensive authority to collect confidential business information and conduct industry studies, as established by § 6(b) of the FTC Act.29

By designing the Commission this way, Congress sought to create a regime where the law developed not just through the judiciary but also through an expert agency. Congress envisioned that the Commission’s data collection from market participants would ensure that the agency stayed abreast of evolving business practices and market trends, and that it would use this expertise to establish market-wide standards clarifying what practices constituted an “unfair method of competition,” even as the market evolved. This unique role would complement adjudication pursued by the Attorney General, state attorneys general, and private parties.30 Indeed, Congress expected that federal judges and other policymakers would defer to the Commission on competition matters because it would “serve as an indispensable instrument of information and publicity, as a clearinghouse for the facts by which both the public mind and the managers of great business undertakings should be guided.”31 It would, in other words, be “unusually expert.”32

The Commission, at times, has drawn on its expansive information collection authorities to follow market trends and establish expertise on industry practices. For example, in the 1970s the FTC ordered over 450 of the country’s largest firms to report certain financial information. The Commission used this data to identify uncompetitive areas of the economy and to guide industrywide investigations into potential antitrust violations.33 More recently, the FTC has used this § 6(b) authority to study the business practices of patent assertion entities and data brokers, as well as the efficacy of the FTC’s merger remedies.34

As a whole, however, the Commission has fulfilled its mandate to promote competition by functioning less as an expert agency and more as a generalist enforcer and adjudicator.35 This is not to say the agency lacks expertise; indeed, the Commission’s work with particular markets has provided indispensable insights into the marketplace. But, on competition matters, the agency has rarely used this expertise to affirmatively identify what conduct or practices constitute an “unfair method of competition.” Instead, the Commission has sought to define “unfair methods of competition” on a case-by-case basis.

Former Commissioner Wright and Jan Rybnicek have observed that relying exclusively upon adjudication has “thus far proved incapable of generating any meaningful guidance as to what constitutes an unfair method of competition,” resulting in a “boundless standard.”36 They have described this “failure to identify what precisely comprises an unfair method of competition” as “an unfortunate and persistent black mark on the Commission’s record.”37

We agree that relying solely on adjudication to define the substance of § 5 has generated persistent ambiguity. However, relying on courtroom battles to create precedents that set expectations for the marketplace is not the only vehicle through which the Commission can establish what conduct constitutes an “unfair method of competition.” The Commission has in its arsenal a far more effective tool that would provide greater notice to the marketplace and that is developed through a more transparent and participatory process: rulemaking. Through engaging in rulemaking, the Commission could define “unfair methods of competition” through processes established by the Administrative Procedure Act38 (APA).3

There is an enormous body of literature on the choice between adjudication and rulemaking, and this Essay does not seek to fully address the various trade-offs.40 Instead, our goal is to reflect on the current state of antitrust enforcement and consider ways to address the ambiguity, burdens, and democratic deficiency that we discuss above.

“Rulemaking” often evokes the idea of government imposing some inflexible prescription upon the marketplace. This is not what we are suggesting. As former Commissioner Elman rightly noted, rulemaking can also be related to “standards, guidelines, pointers, criteria, or presumptions.”41 Rules come from courts, legislative bodies, and agencies. While they were not promulgated as agency rules, certain elements of the merger guidelines eventually came to serve as rules once courts adopted them.42 The merger guidelines stipulate the analytical framework that the agencies rely on to enforce the merger law. Agency rulemaking could do the same for “unfair methods of competition.”

We see three major benefits to the FTC engaging in rulemaking under “unfair methods of competition,” even if the conduct could be condemned under other aspects of antitrust laws. As we describe above, the current approach generates ambiguity, is unduly burdensome, and suffers from a democratic participation deficit. Rulemaking can benefit the marketplace and the public on all of these fronts.

First, rulemaking would enable the Commission to issue clear rules to give market participants sufficient notice about what the law is, helping ensure that enforcement is predictable.43 The APA requires agencies engaging in rulemaking to provide the public with adequate notice of a proposed rule. The notice must include the substance of the rule, the legal authority under which the agency has proposed the rule, and the date the rule will come into effect.44 An agency must publish the final rule in the Federal Register at least thirty days before the rule becomes effective.45

These procedural requirements promote clear rules and provide clear notice. As the Supreme Court has stated, a “fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.”46 Clear rules also help deliver consistent enforcement and predictable results. Reducing ambiguity about what the law is will enable market participants to channel their resources and behavior more productively and will allow market entrants and entrepreneurs to compete on more of a level playing field.

Second, establishing rules could help relieve antitrust enforcement of steep costs and prolonged trials. Identifying ex ante what types of conduct constitute “unfair method[s] of competition” would obviate the need to establish the same exclusively through ex post, case-by-case adjudication. Targeting conduct through rulemaking, rather than adjudication, would likely lessen the burden of expert fees or protracted litigation, potentially saving significant resources on a present-value basis.47

Moreover, establishing a rule through APA rulemaking can be faster than litigating multiple cases on a similar subject matter. For taxpayers and market participants, the present value of net benefits through the promulgation of a clear rule that reduces the need for litigation is higher than pursuing multiple, protracted matters through litigation. At the same time, rulemaking is not so fast that it surprises market participants. Establishing a rule through participatory rulemaking can often be far more efficient. This is particularly important in the context of declining government enforcement relative to economic activity, as documented by the ABA.48

And third, rulemaking would enable the Commission to establish rules through a transparent and participatory process, ensuring that everyone who may be affected by a new rule has the opportunity to weigh in on it, granting the rule greater legitimacy.49 APA procedures require that an agency provide the public with meaningful opportunity to comment on the rule’s content through the submission of written “data, views, or arguments.”50 The agency must then consider and address all submitted comments before issuing the final rule. If an agency adopts a rule without observing these procedures, a court may strike down the rule.51

This process is far more participatory than adjudication. Unlike judges, who are confined to the trial record when developing precedent-setting rules and standards, the Commission can put forth rules after considering a comprehensive set of information and analysis.52 Notably, this would also allow the FTC to draw on its own informational advantage—namely, its ability to collect and aggregate information and to study market trends and industry practices over the long term and outside the context of litigation.53 Drawing on this expertise to develop rules will help antitrust enforcement and policymaking better reflect empirical realities and better keep pace with evolving business practices.

#### The CP lets the FTC assert Chevron.

Hurwitz ’14 [Justin; Assistant Professor of Law @ University of Nebraska College of Law; “*Chevron* and the Limits of Administrative Antitrust,” *University of Pittsburgh Law Review* 76, p. 209-275; AS]

A. Section 5 is Precisely the Sort of Statute to Which Chevron Applies

As a threshold matter, Section 5 is precisely the sort of statute to which Chevron deference is meant to apply.167 At a mechanical level, Chevron instructs courts to first ask whether the meaning of the statute is clear.168 Both “unfair methods of competition” and “unfair or deceptive acts or practices” are inherently ambiguous; courts need not turn to historical documents to determine whether a specific meaning was intended by Congress or whether Congress clearly intended to delegate interpretive authority to the FTC. Nearly every word of the statute is rife with ambiguity: What is unfair? Unfair to whom? What is deceptive? What is a method? An act? A practice? What is competition? As the Court has noted, the standard is “by necessity, an elusive one.”169

Absent clarifying language in the statute itself, or in some cases references outside the statute that indicate contrary congressional intent,170 the ambiguity inherent in the language of Section 5 is sufficient to trigger Chevron deference. The sole task of the courts is—or should be—to ensure that, whatever construction the FTC gives to Section 5, that construction is permissible within the boundaries of the statute.171

The argument for deference is even stronger when we consider outside references. The statutory history has consistently demonstrated a congressional intent to grant the FTC broad discretion to define the scope of Section 5 and, in particular, that the scope of Section 5 is broader than that of the antitrust laws.172 Section 5 was enacted in response to concerns that the courts had interpreted the antitrust laws too narrowly;173 it was deliberately drafted with language that had not previously been considered by the courts.174 When the Court imposed an overly narrow construction on the statute in the 1950s, Congress amended the statute to overcome that narrowing interpretation.175

Section 5 is, thus, a case study in each of the four rationales for Chevron deference:176 congressional intent; agency expertise; concern about the courts’ limited political accountability as compared to Congress and its agencies; and the separation of powers—all of which urge deference to the FTC’s interpretation of Section 5. It is hard to imagine a statute better suited to Chevron deference than Section 5.

#### Chevron will die now – the CP’s durable fiat resurrects the doctrine.

Matz ’18 [Joshua; 2018; Specialist in the Constitution; Take Care Blog, “The Imminent Demise of Chevron Deference?” <https://takecareblog.com/blog/the-imminent-demise-of-chevron-deference>]

[TITLE]: The Imminent Demise of Chevron Deference?

Chevron has long been contested. Over time, courts have elaborated a complex series of rules governing when, where, and how it applies. Scholars, in turn, have argued over how many steps there are to Chevron analysis and whether it works properly. I won’t recount the many battles over Chevron’s justifications, history, and practical consequences, but rest assured there are hundreds of articles on the subject.

In recent years, conservative judges and Justices have opened fire on Chevron. Invoking an exceptionally aggressive view of the separation of powers, and decrying the perils of the administrative state, they have pictured Chevron as an open door to judicial abdication and agency lawlessness. Often, they have linked these criticisms to overt hostility to economic regulation and their skepticism of progressive policies. (It may not be a coincidence that some of the most dynamic calls on the Court for overturning Chevron emerged during the Obama Administration.)

Before this Term, Chevron was already under siege. Chief Justice Roberts, as well as Justices Thomas, Scalia, Alito, and Gorsuch, had assailed and narrowed the doctrine in published opinions, concurrences, and dissents. Moreover, in several landmark opinions, the Court either explicitly refused to apply Chevron (e.g., King v. Burwell, the second Obamacare case) or ignored Chevron where the government properly sought to rely on it (e.g., Texas Department of Housing v. Inclusive Communities, which upheld disparate impact liability under the Fair Housing Act).

Things only got worse throughout this Term. Before today, Chevron had been cited by the Court four times:

* Digital Realty Tr., Inc. v. Somers, 138 S. Ct. 767, 772 (2018), where the Court rejected the government’s request for Chevron deference in a case about the scope of Dodd-Frank’s anti-retaliation provisio[n].
* Encino Motorcars, LLC v. Navarro, 138 S. Ct. 1134 (2018), where the Court interpreted the Fair Labor Standards Act without any deference to the Department of Labor (in accordance with a prior [opinion] ~~opinon~~ on that point)
* SAS Inst., Inc. v. Iancu, 138 S. Ct. 1348, 1358 (2018), where the Court rejected the government’s request for Chevron deference to a decision by the Patent & Trademark Office—and where Justice Gorsuch’s majority opinion ominously warned, “Whether Chevron should remain is a question we may leave for another day.”
* Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612, 1629 (2018), where the Court rejected a request for Chevron deference to the National Labor Relation Board’s conclusion that collective bargaining agreements cannot include an arbitration class precluding class actions. In this opinion, too, Justice Gorsuch emphasized that “No party to these cases has asked us to reconsider Chevron deference,” and instead offered a wide array of reasons for refusing to defer to the NLRB’s decision under Chevron.

#### Extinction – administrative state caps emerging threats.

Bazelon & Posner ’17 [Emily and Eric; 2017; Staff writer and Law Professor at the University of Chicago; New York Tunes, “The Government Gorsuch Wants to Undo,” https://www.nytimes.com/2017/04/01/sunday-review/the-government-gorsuch-wants-to-undo.html]

The 80 years of law that are at stake began with the New Deal. President Franklin D. Roosevelt believed that the Great Depression was caused in part by ruinous competition among companies. In 1933, Congress passed the National Industrial Recovery Act, which allowed the president to approve “fair competition” standards for different trades and industries. The next year, Roosevelt approved a code for the poultry industry, which, among other things, set a minimum wage and maximum hours for workers, and hygiene requirements for slaughterhouses. Such basic workplace protections and constraints on the free market are now taken for granted.

But in 1935, after a New York City slaughterhouse operator was convicted of violating the poultry code, the Supreme Court called into question the whole approach of the New Deal, by holding that the N.I.R.A. was an “unconstitutional delegation by Congress of a legislative power.” Only Congress can create rules like the poultry code, the justices said. Because Congress did not define “fair competition,” leaving the rule-making to the president, the N.I.R.A. violated the Constitution’s separation of powers.

The court’s ruling in Schechter Poultry Corp. v. the United States, along with another case decided the same year, are the only instances in which the Supreme Court has ever struck down a federal statute based on this rationale, known as the “nondelegation doctrine.” Schechter Poultry’s stand against executive-branch rule-making proved to be a legal dead end, and for good reason. As the court has recognized over and over, before and since 1935, Congress is a cumbersome body that moves slowly in the best of times, while the economy is an incredibly dynamic system. For the sake of business as well as labor, the updating of regulations can’t wait for Congress to give highly specific and detailed directions.

The New Deal filled the gap by giving policy-making authority to agencies, including the Securities and Exchange Commission, which protects investors, and the National Labor Relations Board, which oversees collective bargaining between unions and employers. Later came other agencies, including the Environmental Protection Agency, the Occupational Safety and Health Administration (which regulates workplace safety) and the Department of Homeland Security. Still other agencies regulate the broadcast spectrum, keep the national parks open, help farmers and assist Americans who are overseas. Administrative agencies coordinated the response to Sept. 11, kept the Ebola outbreak in check and were instrumental to ending the last financial crisis. They regulate the safety of food, drugs, airplanes and nuclear power plants. The administrative state isn’t optional in our complex society. It’s indispensable.

But if the regulatory power of this arm of government is necessary, it also poses a risk that federal agencies, with their large bureaucracies and potential ties to lobbyists, could abuse their power. Congress sought to address that concern in 1946, by passing the Administrative Procedure Act, which ensured a role for the judiciary in overseeing rule-making by agencies.

The system worked well enough for decades, but questions arose when Ronald Reagan came to power promising to deregulate. His E.P.A. sought to weaken a rule, issued by the Carter administration, which called for regulating “stationary sources” of air pollution — a broad wording that is open to interpretation. When President Reagan’s E.P.A. narrowed the definition of what counted as a “stationary source” to allow plants to emit more pollutants, an environmental group challenged the agency. The Supreme Court held in 1984 in Chevron v. Natural Resources Defense Council that the E.P.A. (and any agency) could determine the meaning of an ambiguous term in the law. The rule came to be known as Chevron deference: When Congress uses ambiguous language in a statute, courts must defer to an agency’s reasonable interpretation of what the words mean.

Chevron was not viewed as a left-leaning decision. The Supreme Court decided in favor of the Reagan administration, after all, voting 6 to 0 (three justices did not take part), and spanning the ideological spectrum. After the conservative icon Justice Antonin Scalia reached the Supreme Court, he declared himself a Chevron fan. “In the long run Chevron will endure,” Justice Scalia wrote in a 1989 article, “because it more accurately reflects the reality of government, and thus more adequately serves its needs.”

### 1NC – States CP

#### The fifty states and relevant subnational entities should substantially increase restrictions on anticompetitive mergers, acquisitions, and cooperatives that threaten profit loss in the agricultural sector.

#### States solve.

Arteaga ’21 [Juan; 1/28/21; Partner @ Crowell & Moring LLP, JD @ Columbia; and Jordan Ludwig; Partner @ Crowell & Moring LLP, JD @ Loyola Law School, Los Angeles; “The Role of US State Antitrust Enforcement,” *Global Competition Review*; https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement; AS]

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints. The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’. No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications. To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.

Since the reawakening of state antitrust enforcement nearly 30 years ago, state attorneys general have continued to play an important role in the enforcement of both state and federal antitrust laws. During periods of lax federal antitrust enforcement, state attorneys general have often ramped up their enforcement activity in order to protect consumers from anticompetitive transactions and business practices. During periods of vigorous federal antitrust enforcement, they have often served as strong partners for the DOJ and FTC by, among other things, offering valuable insights about competitive dynamics in local markets, assisting with obtaining information from key market participants (including state governmental entities that are direct purchasers of goods and services), and helping develop and implement litigation strategies for cases being tried before federal judges presiding in their states.

Since January 2017, state attorneys general have increasingly played a leading and independent antitrust enforcement role. State antitrust enforcers have significantly increased their enforcement activity and willingness to act separately from their federal counterparts because many of them believe that there has been ‘under-enforcement’ by the DOJ and FTC. State antitrust enforcers have also been able to enhance their influence over key competition policy issues and the antitrust enforcement agenda within the United States because there appears to have been a significant decline in the coordination and relationship between the DOJ and FTC.

### 1NC – LPE K

#### The 1AC’s justifies antitrust as an intervention to correct agricultural “market failures” – that relies on 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.

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.

## Consolidation

### 1NC – AT: Consolidation

#### Ag is competitive, with tons of incentive to innovate

Torsten Kurth 20, Managing Director & Senior Partner at the Boston Consulting Group, Berlin, et al., “Reviving Agricultural Innovation in Seeds and Crop Protection”, Boston Consulting Group, 2/24/2020, https://www.bcg.com/publications/2020/reviving-agricultural-innovation-seeds-crop-protection

Increasing Competition from New ­Entrants and Nimble Startups. Thanks to shifts in consumer demand, the advent of several emerging technologies, and the growing attractiveness of the agriculture market, a variety of nimble startups and new competitors from outside the traditional agriculture sector have risen to compete against the big agricultural-­input companies.

Bringing their own expertise in areas such as consumer usability, biotechnology, ­robotics, and data analytics to bear on the challenges the industry faces, numerous ­so-called agtech companies are taking ­advantage of agile product development techniques and new ways of working to focus on specific challenges and bring their innovations to market quickly. As a result, they are threatening to outcompete the big agricultural-input players in several areas.

Investment in these young agricultural-­technology companies has risen rapidly in recent years, with these companies receiving a larger and larger proportion of funding. (See Exhibit 3.) The number of acquisitions in the sector is increasing as well. Just to take one example, Blue River Technology, which uses computer vision and artificial intelligence to apply crop protection products on a plant-by-plant basis, was acquired by John Deere in 2017 for $305 million, one of the largest agtech deals in the past five years.

Several large technology companies have also begun looking carefully at the agriculture industry, bringing their competencies in consumer-facing technology infrastructure and data science to bear. IBM’s Watson Decision Platform for Agriculture, for example, analyzes information gathered by sensors in the field along with weather and other data to optimize farm operations. Similarly, FarmBeats, Microsoft’s IoT platform for agriculture, collects and analyzes data from sensors, cameras, and drones. While these companies lack the deep agronomic experience and access to growers of the traditional players, their track record in disrupting other industries, including retail, transport, travel, and financial services, should be a wake-up call for the entire agriculture sector.

#### Farming is rapidly becoming sustainable---all environmental metrics are improving

Michael Shellenberger 20, Founder and President of Environmental Progress, Former President of the Breakthrough Institute, Apocalypse Never: Why Environmental Alarmism Hurts Us All, ISBN: 0063001705,9780063001701

As farms become more productive, grasslands, forests, and wildlife are returning. Globally, the rate of reforestation is catching up to a slowing rate of deforestation.19

Humankind’s use of wood has peaked and could soon decline significantly.20 And humankind’s use of land for agriculture is likely near its peak and capable of declining soon.21 All of this is wonderful news for everyone who cares about achieving universal prosperity and environmental protection.

The key is producing more food on less land. While the amount of land used for agriculture has increased by 8 percent since 1961, the amount of food produced has grown by an astonishing 300 percent.22

Though pastureland and cropland expanded 5 and 16 percent, between 1961 and 2017, the maximum extent of total agriculture land occurred in the 1990s, and declined significantly since then, led by a 4.5 percent drop in pastureland since 2000.23 Between 2000 and 2017, the production of beef and cow’s milk increased by 19 and 38 percent, respectively, even as total land used globally for pasture shrank.24

The replacement of farm animals with machines massively reduced land required for food production. By moving from horses and mules to tractors and combine harvesters, the United States slashed the amount of land required to produce animal feed by an area the size of California. That land savings constituted an astonishing one-quarter of total U.S. land used for agriculture.25

Today, hundreds of millions of horses, cattle, oxen, and other animals are still being used as draft animals for farming in Asia, Africa, and Latin America. Not having to grow food to feed them could free up significant amounts of land for endangered species, just as it did in Europe and North America.

As technology becomes more available, crop yields will continue to rise, even under higher temperatures. Modernized agricultural techniques and inputs could increase rice, wheat, and corn yields five-fold in sub-Saharan Africa, India, and developing nations.26 Experts say sub-Saharan African farms can increase yields by nearly 100 percent by 2050 simply through access to fertilizer, irrigation, and farm machinery.27

If every nation raised its agricultural productivity to the levels of its most successful farmers, global food yields would rise as much as 70 percent.28 If every nation increased the number of crops per year to its full potential, food crop yields could rise another 50 percent.29

Things are headed in the right direction regarding other environmental measures. Water pollution is declining in relative terms, per unit of production, and in absolute terms in some nations. The use of water per unit of agricultural production has been declining as farmers have become more precise in irrigation methods.

High-yield farming produces far less nitrogen pollution run-off than lowyield farming. While rich nations produce 70 percent higher yields than poor nations, they use just 54 percent more nitrogen.30 Nations get better at using nitrogen fertilizer over time. Since the early 1960s, the Netherlands has doubled its yields while using the same amount of fertilizer.31

High-yield farming is also better for soils. Eighty percent of all degraded soils are in poor and developing nations of Asia, Latin America, and Africa. The rate of soil loss is twice as high in developing nations as in developed ones. Thanks to the use of fertilizer, wealthy European nations and the United States have adopted soil conservation and no-till methods, which prevent erosion. In the United States, soil erosion declined 40 percent in just fifteen years, between 1982 and 1997, while yields rose.32

#### The plan’s uncertainty and disruption to capacity for tech innovation decimates growth of the ag sector

Dr. Don Racheter 17, President of the Public Interest Institute, Master's Degree and Ph.D. in Political Science from the University of Iowa, Taught at the University of Iowa and Central College, “Upcoming Mergers Benefit America's Farmers”, Des Moines Register, 8/6/2017, https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2017/08/06/upcoming-mergers-benefit-americas-farmers/537250001/

America’s farmers are being challenged to prepare for a global, growing population and a robust international trade market.

Not only has every farmer had to increase the number of people that he or she is responsible for feeding by almost 130 people since 1960, but international markets also are eager for Iowa’s soybeans and other agricultural products.

These market-based problems need specific market-centric solutions. By leaning on the power of an innovative and dynamic private sector, we can ensure our farmers have the tools to compete in any economic climate.

Industry leaders such as Bayer, Monsanto, Dow and DuPont are meeting these challenges head-on with a commitment to developing the latest technologies that make America’s farms both more efficient and effective. These efforts have filled the gap in public investment to groundbreaking agricultural research and development. According to the USDA Economic Research Service, government investment in agricultural R&D dropped to just 30 percent of total agricultural R&D funding since 2013.

Today, the private sector is responsible for many of the innovations that are currently shaping the future of farming in America, and more resources in the private sector means farmers can expect these advances in technology faster. The latest breakthroughs in precision farming techniques are helping farmers target their crop treatments, saving small farms money while also limiting their environmental footprint. For example, John Deere tractors use GPS sensors so that farmers don’t cover the same area twice, which can reduce their fuel input by up to 40 percent.

More permanent partnerships, such as the potential merger between Bayer and Monsanto, will ensure that leading ag companies are able to invest additional resources to bring advanced solutions to farmers. Farmers will be able to spend less time and resources on daily challenges, enabling them to meet the international demand for Iowa’s ag products.

As opponents to mergers pop up as frequently as weeds after a strong rain, we should examine what might possibly be driving their motivation. Rather than truly believing that these mergers harm consumers, many are driven by political motivations. Case in point is the July 21 commentary by Austin Frerick ["To save rural Iowa, oppose Monsanto-Bayer mega-merger"], a little-known former U.S. Treasury economist under the Obama Administration. One can’t help but question Mr. Frerick’s perspective given his support for greater government interference in the marketplace while government investment in R&D has continued to decline.

Cloaking a progressive agenda behind a call for consumers to reject private sector investment by two leading ag companies with a stake in America’s farming future is both disingenuous and harmful. Anyone who has spent any real time in a farmer’s field knows that what agriculture really needs is to attract, not reject, more investment in innovative agricultural technologies.

What critics fail to highlight is that the Bayer-Monsanto merger is the perfect example of bringing together two companies that operate in largely complementary fields to develop new tools and products with more capital. In fact, Bayer focuses mostly on crop protection, while Monsanto is known for seeds and traits capabilities. Alone, it can take each company more than a decade to create a new product for farmers, but together, the time could shorten significantly.

In an ever-changing free market, it is natural for businesses to seek to maintain a competitive advantage over their rivals by expanding their offerings to the consumers they serve. Bayer-Monsanto’s focus on finding the next generation of farming technology will spur their competitors to do the same to keep up.

Farmers are constantly battling uncertainty in their line of business and don’t have time for political posturing. The benefits from greater private sector investment in innovation from these upcoming mergers are clear and demonstrable and are necessary for the future of American farming.

#### Transitioning to small farming causes devasting land conversion AND worse fill-in abroad

Ted Nordhaus 21, Founder and Executive Director of the Breakthrough Institute and Co-Author of An Ecomodernist Manifesto, and Dan Blaustein-Rejto, Director of Food and Agriculture at the Breakthrough Institute, Conducted Research with the Environmental Defense Fund, International Center for Tropical Agriculture, and Farmers Market Coalition, “Big Agriculture Is Best”, Foreign Policy, 4/18/2021, https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/

Moreover, organic farms, large and small, don’t actually outperform large conventional farms by many important environmental measures. Scale, technology, and productivity make good environmental sense and economic sense. Because organic farming requires more land for every calorie or pound produced, a large-scale shift to organic farming would entail converting more forest and other land to farming, resulting in greater habitat loss and more greenhouse gas emissions. And while organic farming doesn’t use synthetic pesticides or fertilizers, it often results in greater nitrogen pollution because manure is a highly inefficient way to deliver nutrients to crops.

Another benefit of large-scale U.S. farms is that because they are so efficient, economically and environmentally, they are also able to produce vastly more food than Americans can consume, making the country the world’s largest agricultural exporter as well.

That benefits the U.S. economy, of course, but it also comes with an environmental benefit for the world. In the contemporary environmental imagination, highly productive, globally traded agriculture is a bad thing—poisoning the land at home and undermining food sovereignty abroad. But in reality, a pound of grain or beef exported from the United States almost always displaces a pound that would have been produced with more land and greenhouse gas emissions somewhere else.

#### Plan will be circumvented to continue consolidation

James M. MacDonald 1, Economic Research Service at the USDA, and Marvin Hayenga, Iowa State University, “Concentration, Mergers, and Antitrust”, Economic Research Service Report, https://www.iatp.org/sites/default/files/Concentration\_Mergers\_and\_Antitrust.htm

Prohibit mergers among large agribusiness firms

Some recent Congressional proposals would place temporary or permanent moratoria on mergers between large agribusiness firms. Such actions would eliminate two types of mergers that can bring overall benefits to the economy. First, mergers that allow firms to realize economies of scale would not occur. Second, some mergers effectively allow for the replacement of one poorly performing management team by another. In each case, the merger would allow for lower costs and product prices and expanded output. Expanded output, in turn, would lead to higher demand for agricultural inputs. Merger prohibition could eliminate those gains.

A prohibition on large mergers would also eliminate those mergers that create market power, but that would not have been stopped by antitrust authorities. In those cases, the prohibition will lead to lower product prices to consumers or higher prices paid to farm producers. Finally, some mergers do not lead to market power, but they create no new cost efficiencies--rather, they lead to inefficiency by simply making the merged firm more complicated, without any attendant advantages. An agribusiness merger moratorium might also limit those types of mergers and their attendant costs.

Agribusiness mergers are one strategy for large firms, and they could respond to a ban with other strategic steps. Those seeking scale economies could grow internally, by building bigger facilities instead of merging. Because firms have that alternative, a merger prohibition will not necessarily halt increases in concentration based on scale economies. Second, firms could respond to a prohibition on the purchase of large agribusiness firms by purchasing other large firms in the economy and becoming conglomerates. Such moves might be particularly inefficient (cost-raising).

#### Food security is strong BUT requires maintaining large producers

Ted Nordhaus 21, Founder and Executive Director of the Breakthrough Institute and Co-Author of An Ecomodernist Manifesto, and Dan Blaustein-Rejto, Director of Food and Agriculture at the Breakthrough Institute, Conducted Research with the Environmental Defense Fund, International Center for Tropical Agriculture, and Farmers Market Coalition, “Big Agriculture Is Best”, Foreign Policy, 4/18/2021, https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/

In some ways, it is not surprising that many of the best fed, most food-secure people in the history of the human species are convinced that the food system is broken. Most have never set foot on a farm or, at least, not on the sort of farm that provides the vast majority of food that people in wealthy nations like the United States consume.

In the popular bourgeois imagination, the idealized farm looks something like the ones that sell produce at local farmers markets. But while small farms like these account for close to half of all U.S. farms, they produce less than 10 percent of total output. The largest farms, by contrast, account for about 50 percent of output, relying on simplified production systems and economies of scale to feed a nation of 330 million people, vanishingly few of whom live anywhere near a farm or want to work in agriculture. It is this central role of large, corporate, and industrial-style farms that critics point to as evidence that the food system needs to be transformed.

But U.S. dependence on large farms is not a conspiracy by big corporations. Without question, the U.S. food system has many problems. But persistent misperceptions about it, most especially among affluent consumers, are a function of its spectacular success, not its failure. Any effort to address social and environmental problems associated with food production in the United States will need to first accommodate itself to the reality that, in a modern and affluent economy, the food system could not be anything other than large-scale, intensive, technological, and industrialized.

Not so long ago, farming was the principal occupation of most Americans. More than 70 percent labored in agriculture in 1800. As late as 1900, some 40 percent of the U.S. labor force still worked on farms. Today, that figure is less than 2 percent.

The consolidation of U.S. agriculture has been underway for more than 150 years. First came irrigation and ploughs, then better seeds and fertilizers, and then tractors and pesticides. With each innovation, farmers were able to produce larger harvests with fewer people and work larger plots of land. Better opportunities drew people to cities, where they could get jobs that provided higher wages and, thereby, produced greater economic surplus—that is, profits and ultimately societal wealth. The large-scale migration of labor from farms to cities pushed farmers to invest even more in labor-saving and productivity-enhancing practices and technologies in a virtuous cycle of urbanization, agricultural intensification, and economic growth that is the hallmark of all affluent societies.

It is not a stretch to say that the United States is wealthy today because most of its people work in manufacturing, services, technology, and other sectors of the economy. In this, the country is not alone. No nation has ever succeeded in moving most of its population out of poverty without most of that population leaving agriculture work.

That transition often isn’t easy. Millions of Black Americans made the difficult journey from tenant farming in the South to factory work in the North, where they faced new forms of racism even as they escaped the tyranny of sharecropping. More recently, small farmers have struggled to survive as increasingly high agricultural productivity and falling commodity prices tilted the playing field toward large farms. Rural communities have likewise suffered as dramatic improvements in labor productivity have shrunk employment in agriculture.

But over the long term, the living standards and life opportunities offered in the modern knowledge, service, and manufacturing economies have proved vastly greater than anything possible under the agrarian social and economic arrangements that most Americans over the last two centuries happily abandoned—and that too many Americans today romanticize.

Modern life required not only liberating most Americans from agrarian labor but also the development of a food system capable of getting food from farms to the cities where increasing numbers of Americans lived and worked. A food system that lost much of its harvest to pests and spoilage needed to dramatically cut losses even as its bounty needed to travel farther and farther. For this reason, the rise of modern agriculture is as much a story of railways and highways as combines and tractors, refrigeration and grain elevators as pesticides and fertilizer.

The development and growth of feedlots followed a similar path. As the historian Maureen Ogle recounts in her magnificent history of the beef industry, In Meat We Trust, the first feedlots grew out of the stockyards of Chicago and Kansas City in the late 19th century. The most efficient way to get beef to burgeoning markets in America’s cities was to drive cattle to these new rail centers, where they were finished, slaughtered, and then shipped throughout the country by rail. After World War II, beef production and feedlots expanded massively, driven not so much by corporate greed as by rising demand for beef from the United States’ newly prosperous middle class and by a scarcity of labor as ranch hands returning from the battlefields of Europe and the Pacific chose to pursue better economic opportunities in the postwar economy.

Debates about the social and environmental impacts of America’s food system cannot be disentangled from the basic reality that in a modern industrialized society, most people will live in cities and suburbs and will not work in agriculture. As a result, most food will need to be produced by large farms, with little labor, far away from the people who will consume it.

Many sustainable agriculture advocates tout the recent growth of organic agriculture as proof that an alternative food system is possible. But growing market share vastly overstates how much food is actually produced organically. In reality, organic production accounts for little more than 1 percent of total U.S. agricultural land use. Meanwhile, only a bit more than 5 percent of food sales come from organic producers, mostly because organic sales are overwhelmingly concentrated in high-value sectors of the market, namely produce and dairy, and fetch a premium from well-heeled consumers.

#### No food wars.

Vestby ’18 [Vestby, Ida Rudolfsen, and Halvard Buhaug; 5-18-18; Doctoral Researcher at the Peace Research Institute Oslo; doctoral researcher at the Department of Peace and Conflict Research at Uppsala University and PRIO; Research Professor at the Peace Research Institute Oslo (PRIO); Professor of Political Science at the Norwegian University of Science and Technology (NTNU); and Associate Editor of the Journal of Peace Research and Political Geography; “Does hunger cause conflict?” Prio, https://blogs.prio.org/ClimateAndConflict/2018/05/does-hunger-cause-conflict/]

It is perhaps surprising, then, that there is little scholarly merit in the notion that a short-term reduction in access to food increases the probability that conflict will break out. This is because to start or participate in violent conflict requires people to have both the means and the will. Most people on the brink of starvation are not in the position to resort to violence, whether against the government or other social groups. In fact, the urban middle classes tend to be the most likely to protest against rises in food prices, since they often have the best opportunities, the most energy, and the best skills to coordinate and participate in protests.

Accordingly, there is a widespread misapprehension that social unrest in periods of high food prices relates primarily to food shortages. In reality, the sources of discontent are considerably more complex – linked to political structures, land ownership, corruption, the desire for democratic reforms and general economic problems – where the price of food is seen in the context of general increases in the cost of living. Research has shown that while the international media have a tendency to seek simple resource-related explanations – such as drought or famine – for conflicts in the Global South, debates in the local media are permeated by more complex political relationships.

#### Ag sustainable – genetic diversity is increasing.

Colin Khoury 18, Research Scientist at the International Center for Tropical Agriculture (CIAT), Colombia and at the USDA National Laboratory for Genetic Resources Preservation, “Evaluating Claims GMOs and Modern Agriculture have Led to a 75% Drop in Crop Diversity”, Genetic Literacy Project, 12/14/2018, https://geneticliteracyproject.org/2018/12/14/myth-busting-modern-agriculture-really-led-75-drop-crop-diversity/

One of the central concepts that unifies those concerned with biodiversity is the belief that diversity is being lost, piece by piece, to a greater or lesser degree, globally.

The same goes for the biodiversity of what we eat. Scientists and activists have worried about the loss of crops and their many traditional varieties for at least a hundred years, since botanist N. I. Vavilov traveled the world in search of plants useful for cultivation in his Russian homeland. He noticed that diversity was disappearing in the cradles of agriculture – places where crops had been cultivated continuously for thousands of years. The alarm sounded even louder 50 years ago, during the Green Revolution, when farmers in some of the most diverse regions of the world largely replaced their many locally adapted wheat, rice, and other grain varieties with fewer, more uniform, higher yielding professionally bred varieties.

Economic development, human migration, urbanization, and globalization have further affected the diversity of food crops cultivated and consumed around the world. Most modern farmers seem to want uniform, mechanized production. Most eaters seem to want unblemished vegetables of known shapes and sizes, and inexpensive processed food products. In most of the decisions producers, food distributors, and consumers make, crop diversity inadvertently gets the short end of the stick.

This is ironic, since modern productive crop varieties are bred by wisely mixing and matching diverse genetic resources. The disappearance of old varieties thus reduces the options available to plant breeders, including those working to produce more nutritious and resilient crops. Genebank collections, such as the beans, cassava, and other staples conserved at CIAT, which were originally built to provide access for plant breeders to genetic resources, have therefore taken on increasingly important conservation roles.

In many regions of the world, the loss of crop diversity also has profound cultural and spiritual significance, with seeds no longer handed down through generations and no longer connecting people as closely to the places they call home. What people cultivate and what they eat are important to how they identify themselves, both as cultures and as individuals. “We are what we eat.”

Taking stock

Being a food biodiversity scientist, I grew up (in the professional sense) with the loss of crop diversity looming over my head, providing both a raison d’être and an urgency to my efforts. Somewhere along the line, I became interested in understanding its magnitude. That is, counting how many crops and how many varieties have been lost.

And that’s where it started to become complicated, and also more interesting. Because, when I went looking for signs of the loss of specific crops, I couldn’t find any. Instead, I found evidence of massive global changes in our food diversity that left me worried, but at the same time hopeful.

A bit of background. Most of the numbers seen in the news on how much crop diversity has been lost go back to a handful of reports and books that reference a few studies: for example, the changing number of vegetable varieties for sale in the U.S. over time. The results are estimations for a few crops at local to national levels, but they somehow have been inflated to generalized statements about the global state of crop diversity, the most common of which is some variation of “75% of the diversity in crops has been lost.”

Putting true numbers on diversity loss turns out to be a complicated and contested business, with no shortage of strong opinions. One big part of the problem is that there aren’t many good ways to count the diversity that existed before it disappeared. Researchers have done some work to assess the changes in diversity in crop varieties of Green Revolution cereals, and to some degree on the genetic diversity within those varieties. The results indicate that, although diversity on farms decreased when farmers first replaced traditional varieties with modern types, the more recent trends are not so simple to decipher.

Reviewing what had been researched, it was particularly surprising to me that very little work had been done to understand the changes in what is probably the simplest level to measure: the diversity of crop species in the human diet, that is, how successful is maize versus rice versus potato versus quinoa and so on. I realized that data on the contribution of crops to national food supplies were available for almost all countries worldwide via FAOSTAT, with information for every year since 1961. Perhaps these were the data that could show when a particular grain, or legume, or vegetable, fell off the world map, and just how diverse our global food supply is now compared to half a century ago.

Fast forward through a couple of years of investigation. To my surprise, I found that not a single crop was lost over the past 50 years! There was no evidence for extinction. What was going on? Was I missing something or was the loss of food biodiversity narrative wrong?

It turns out that my failure to see any loss of crops was due in large part to the lack of sufficient resolution in the FAO food supply data. Only 52 meaningful crop species-specific commodities are measured and a number of these are general groupings such as “cereals, other.” Because of this lack of specificity, the data couldn’t comprehensively assess the crops that have been most vulnerable to changes in the global food system over the past 50 years.

Related article: Viewpoint: 'Heritage' of emotional decision-making fuels EU's opposition to biotech crops

In FAO data, these plants are either thrown into the general categories or they aren’t measured at all, especially if they are produced only on a small scale, for local markets or in home gardens. This is, in itself, sign enough that they may be imperiled. We need better statistics about what people eat (and grow) around the world. But, enough is known to be confident that many locally relevant crops are in decline.

But that’s not to say that the data weren’t useful to the question at hand. With some further analysis, they eventually provided what I think is a powerful argument for further concern about the loss of crop diversity globally. Yet, at the same time, they also offer some hope.

Over the past 50 years, almost all countries’ diets actually became more diverse, not less, for the crops that FAO statistics do report. We found that traditional diets that were primarily based on singular staples a half century ago, for instance rice in Southeast Asia, had diversified over time to include other staples such as wheat and potatoes. The same was true for maize-based diets in Latin America, sorghum- and millet-based diets in sub-Saharan Africa, and so on. Diets around the world were balancing out with regard to the contribution of these foods.

Not that there weren’t plant winners and losers. Wheat, rice, and maize, the most dominant crops worldwide 50 years ago, became more important globally. Other crops emerged as widespread staples, particularly oilcrops such as soybean, palm oil, sunflower, and rapeseed oil. And, as the winners came to take more precedence in food supplies around the world, alternative staples such as sorghum, millets, rye, cassava, sweet potato, and yam were marginalized. They haven’t disappeared (at least not yet), but they have become less important to what is eaten every day.

As countries’ food supplies became more diverse in the winner crops reported by FAO, and the relative abundance of these crops within diets became more even, food supplies worldwide became much more similar. If we are what we eat, then it seems that we are quickly becoming very much the same type of human being ‒ modern people eating globalized food crops.

The publication of our findings of increasing homogeneity in global food supplies generated substantial scientific and public interest. This wasn’t, I think, because the main finding was a big shocker. It’s easy to see how pizza is now available in Tokyo, bread available in traditional maize and potato regions of Latin America, and McDonalds, Subway, and Starbucks available, well, almost everywhere. Rather, I think it’s because we were able to examine the food supplies of virtually all the countries of the world, over a relatively long time period, and put some real numbers to the change we saw. On average, for instance, the amount of variation between food supplies in different countries decreased by 68.8% from 1961 to 2009.

This is why, although we could see no absolute loss in crops consumed over the past 50 years, I am concerned. For even in the relatively small list of crops reported in the FAO national food supply data, . That doesn’t seem like a good thing for the long-term resilience of our agricultural areas, nor for human health, although it’s important to remember that such changes are the collateral damage resulting from the creation of highly productive mega-crop farming systems, which have increased the affordability of these foods worldwide, leading to less stunting and other effects of undernutrition worldwide. On the other hand, global dependence on a few select crops equates to expansive monocultures, with more lives riding on the outcome of the game of cat and mouse between pestilence and uniform varieties grown over large areas. Moreover, cheaply available macronutrients sourcing from these crops have contributed to the negative effects of the nutrition transition, including obesity, heart disease, and diabetes.

So why then am I hopeful? Because the data, and some literature, and my own direct experience also indicate that diets in recent years, in some countries, are beginning to move in different directions, reducing the excessive use of animal products and other energy-dense and environmentally expensive foods, and becoming more diverse, particularly with regard to fruits and vegetables, and even healthy grains. This seems good, both for human health and for the sustainability of agricultural production. Change is still occurring, and the future does not appear to be fixed. What better evidence than quinoa, which was relatively unknown outside the Andes a couple of decades ago, and is now cultivated in 100 countries and consumed in even more?

## Cooperatives

### 1NC – AT: Cooperatives

#### Their Barnes and Levine internal link article is absolutely a neg card – it says that ag cooperatives are growing now internationally, but the plan undermines them by destroying their ability to leverage market power

Barnes and Levine 21, Donald, JD from George Washington University; JD from Fordham University, and former Vice-Chair of the ABA Antitrust Section’s Joint Conduct Committee; Jay, co-chair of the Porter Wright Morris & Arthur Antitrust and Consumer Protection Practice Group, “Farmer Cooperatives "Take Cover": The Capper-Volstead Exemption is Under Siege”. Arkansas Law Review, Volume 74, Number 1. April 2021, Accessed 11/10/21, https://scholarworks.uark.edu/cgi/viewcontent.cgi?article=1127&context=alrAH

The United States is not the only country to have adopted an agricultural policy designed to afford certain protection to farmers; under the European Union’s common agricultural policy, certain behavior and practices by agricultural producer organizations, which might otherwise be considered as anticompetitive, are excluded from the scope of the European Union’s competition rules.188 It is not surprising, therefore, that current attempts to undermine and weaken the American farmers’ antitrust exemption could easily have international implications. Numerous foreign countries already use the United States’ antitrust law as a model, and several have adopted antitrust exemptions for agricultural cooperatives similar to the CapperVolstead Act.189 Farmers in developing economies have faced or will eventually face the same challenges as those that confronted American farmers at the time the Capper-Volstead Act was passed.190 They deserve the same protection. Their governments could easily adopt restrictive rulings from United States courts,191 which could keep their farmers from achieving effective collective bargaining power.

International efforts have been underway to aid the development of farmer cooperatives and the laws that protect their activities. In a May 2012 report, the European Competition Network (“ECN”) noted concerns about price volatility and competitiveness in food production and distribution.192 Some national competition authorities believe that cooperation among producers and the creation of cooperatives would increase competition in the food sector.193 By 2013 these concerns led to the European Union’s adoption of significant reforms to its Common Agricultural Policy (the “CAP”) that set new rules for allowing joint-selling by producers in the agricultural sector.194 In November 2015, the European Commission adopted guidelines on potential competition issues arising in the implementation of these new rules as they pertain to the olive oil, beef and veal, and arable crops sectors.195 CAP reform removed production restraints to encourage farmers to base their production decisions on market signals.196 The legal framework under CAP reform also “extend[ed] the possibility for collective bargaining (in some [agricultural] sectors) and delivery contracts (for all [agricultural] sectors) to [p]roducer [o]rganisations, their [a]ssociations and Inter Branch Organisations.”197

The U.S. Overseas Cooperative Development Council (funded by USAID) is conducting a major initiative called the “Cooperative Law and Regulation Initiative” (“CLARITY”).198 Part of that initiative involves providing assistance to help national cooperative movements organize themselves, and helping to evaluate and improve their cooperative laws.199 CLARITY points to the Capper-Volstead Act as an exemplar for implementing exemptions from competition law that would otherwise prohibit certain joint action between businesses for cooperatives.200

VI. CONCLUSION

The more things change, the more they stay the same. As true now as it was in the 1920s, the number of farms continues to decline. Farmers and their cooperatives are still at the mercy of power buyers, Mother Nature, and the international marketplace. There is still a large imbalance of bargaining power. In short, the same conditions and concerns that existed at the time the CapperVolstead Act was passed continue to this day.

As the Supreme Court stated in Maryland and Virginia Milk Producers Association v. United States:

We believe it is reasonably clear from the very language of the Capper-Volstead Act, as it was in § 6 of the Clayton Act, that the general philosophy of both was simply that individual farmers should be given, through agricultural cooperatives acting as entities, the same unified competitive advantage–and responsibility–available to businessmen acting through corporations as entities.201

That rationale continues to apply today. Nevertheless, power buyers and other opportunistic interests continue to enlist the courts in eroding the basic foundations of the exemption, and the implications will have far reaching effects. The bargaining power and economic viability of farmers and their cooperatives will be undermined here and abroad as foreign governments and their courts follow the lead of the United States. Aggressive legal attacks on the very foundations of cooperatives themselves are being waged and hope now rests with the higher courts or Congress.

#### Alt causes to modeling – anti-American sentiment, domestic opposition in other countries.

#### Global food supply strong

Indur Goklany 15, PhD from Michigan State, Assistant Director of Programs, Science and Technology Policy at the DOI, represented the United States at the Intergovernmental Panel on Climate Change (IPCC) and during the negotiations that led to the United Nations Framework Convention on Climate Change, “CARBON DIOXIDE: The good news”, The Global Warming Policy Foundation, GWPF Report 18

Crop yields have increased (see Figure 3) and global food production, far from declining, has actually increased in recent decades. Between 1990–92 and 2011–13, although global population increased by 31% to 7.1 billion, available food supplies increased by 44%. Consequently, the population suffering from chronic hunger declined by 173 million despite a population increase of 1.7 billion.112 This occurred despite the diversion of land and crops from production of food to the production of biofuels. According to one estimate, in 2008 such activities helped push 130–155 million people into absolute poverty, exacerbating hunger in this most marginal of populations. This may in turn have led to 190,000 premature deaths worldwide in 2010 alone.113 Thus, ironically, a policy purporting to reduce AGW in order to reduce future poverty and hunger only magnified these problems in the present day.

#### No internal link between modeling and megacities impact – the former is about the UK and Israel modeling the US, megacities impacts are about developing countries.

#### Megacities and urbanization are sustainable.

Sanderson et al 18 – Eric W. Sanderson is a landscape ecologist for the Wildlife Conservation Society at the Bronx Zoo, director of the Mannahatta Project and the author of Mannahatta: A Natural History of New York City. John G. Robinson is Senior Vice-President and Director of the International Conservation programs of Wildlife Conservation Society. Joe Walston · Senior Vice President at Wildlife Conservation Society (From Bottleneck to Breakthrough: Urbanization and the Future of Biodiversity Conservation. Bioscience. 2018 Jun 1;68(6):412-426. doi: 10.1093/biosci/biy039. Epub 2018 Apr 22. PMID: 29867252; PMCID: PMC5972570)//gcd

At the core of our argument is the seemingly contradictory statement that the mechanisms that are destroying nature are laying the foundation for its long-term recovery. Passing through the bottleneck is necessary to reach the breakthrough. The conservationist’s paradox is that the same forces that are destroying nature now are also creating the circumstances for long-term success. The conservationist’s challenge is to keep the bottleneck open wide enough so that nature can survive to a breakthrough. Achieving a stable human population will require a net increase in total consumption as all people move out of poverty and follow the common trajectory of investing more in smaller families, for which they have greater security. Reaching a world with 6 billion people and vast natural expanses necessitates investing to make cities healthy, safe, and amenable for people, not just because they concentrate people into a smaller space, but also because of the ways in which urbanization influences social mobility, wealth creation, female empowerment, and ultimately, fertility. Developing a broadly shared environmental consciousness about nature is predicated on an unimpoverished, largely urbanized world that shares the positive externalities of education, technology, and, indeed, nature conservation. The profound danger is that by the time the foundations of recovery are in place, little of wildlife and wild places will be left. If society focuses only on economic development and technological innovation as a mechanism to pass through the bottleneck as fast as possible (sensu Brand 2010), then what remains of nature could well be sacrificed. If society were to focus only on limiting economic growth to protect nature (sensu Meadows et  al. 2004), then terrible poverty and population growth could overwhelm what remains. Either extreme risks narrowing the bottleneck to such an extent that our world passes through without its tigers, elephants, rainforests, coral reefs, or a life-sustaining climate. Therefore, the only sensible path for conservation is to continue its efforts to protect biodiversity while engaging in cities to build the foundations for a lasting recovery of nature. To illustrate some of implications of this theory, we contrast conservation during the bottleneck to conservation after a breakthrough (table 3). A country or a region can be said to be caught in the bottleneck for as long as its population is growing and rates of total natural-resource extraction and pollution are increasing. Analogously, a country or region begins the breakthrough when populations stabilize and natural-resource extraction and pollution rates begin to decline in absolute terms. During bottleneck periods, conservation needs to continue to identify and protect threatened elements of biodiversity (Soulé 2013). The most effective tool in our toolkit remains well-funded, socially inclusive, competently managed protected areas, which place legal limits on destructive activities. Breakthrough conservation suggests over time adjusting the management of protected areas, conceiving of these areas less as bastions against ever-mounting threats and more as source sites (sensu Walston et  al. 2010) for restoring and rewilding continents and oceans. The expansion of large wildlife in Europe provides a trenchant example (Chapron et al. 2014). Rural-to-urban migration presents a dilemma for conservation. Because many protected areas are in less-populated, low-governance areas that are important for conservation, rural residents and indigenous groups are often the only bulwark against destructive actors (e.g., industrial logging, large-scale agriculture, and criminal activity). But for many rural people, a route out of poverty may be to move to nearby towns or distant cities and away from remote parks and reserves. Where local people are the best stewards of nature, conservationists should continue to rely on community-based approaches to deliver benefits for nature and people (Naughton-Treves et al. 2005). In other circumstances, recognizing that people living in remote regions dependent on natural resources are often among the world’s poorest, most politically marginalized, and most market isolated, conservation organizations may need to assist with voluntary relocations (Karanth 2007) that in the long run are better for people and nature and employ other forms of pragmatic conservation management (Robinson 2011). Cities must be central to any global conservation strategy, because urbanization is the only lever that that simultaneously shifts populations, alleviates poverty, and spurs innovation, which individually and in combination have the potential to alter resource extraction and pollution, as we discussed above. The tremendous demographic and economic effects of urbanization have been demonstrated in all regions of the world except sub-Saharan Africa, which may be the exception that proves the rule. Improving the governance and functioning of African urban areas while simultaneously protecting Africa’s unique wildlife is arguably the most urgent need in conservation today, because it is the fastest path to global population stabilization. Moreover, well-governed, inclusive, livable cities in Africa and elsewhere give conservationists the potent platform we need to activate new, broad-based conservation movements (e.g., Asafu-Adjaye et al. 2015)—what Nordhaus and Shellenberger (2007) have called a politics of possibilities. Conservation needs cities to work for nature. But nature also needs to work for cities. Highlighting the role of cities in biodiversity conservation may seem counterintuitive, even ironic, because the expansion of built-up areas itself is a significant ecological concern (McDonald RI et al. 2008, Güneralp and Seto 2013). Urban development disrupts hydrological and nutrient cycles, destroys and fragments habitat, concentrates pollution, and provides portals for the introduction of invasive species (Grimm et al. 2008). Recognizing these impacts, many efforts are underway to mitigate them through green infrastructure, land-use planning, restoration, and place-based education. Increasingly, these activities are informed by new developments in urban ecology, conservation biology, and resilience science (Pickett et al. 2011). Urban conservation activities make towns and cities not only less destructive to nature locally but also more attractive to immigrants and residents, who will appreciate the benefits of local nature and whose lifestyle choices can provide benefits to nature elsewhere. Because urbanization creates and relies on a global market economy, the best way to influence urban consumption and innovation is through economic decision-making (i.e., prices). Directly costing in negative environmental externalities (sensu Pigou 1920) will force markets to address them in all phases of production, from resource extraction through transport and production of finished goods to release of pollution and wastes back into the environment. Because nature does not charge for the ecosystem services it provides, pricing these externalities is a matter of public policy, which can be addressed through a wide variety of financial as well as regulatory mechanisms, such as carbon taxes, land-value assessments, and/or various forms of ecological-use fees (Sanderson 2013). Finally, our theory suggests a new way to articulate the future of conservation and attract more of society to the cause. The immediacy of the threats encapsulated by “planetary boundaries” and related lines of catastrophic thinking are not only devastating to contemplate but may also be shortsighted. The world does not end in 2050, as too many data graphs do. Nor is environmentalism dead, despite claims to the contrary. Rather, if the demographic and economic phenomena that we discuss here do come to pass, it means that conservation faces another 30–50 years of extreme difficulty, when more losses can be expected. However, if we can sustain enough nature through the bottleneck—despite climate change, growth in the population and economy, and urban expansion—then we can see the future of nature in a dramatically more positive light. Much as the eighteenth-century Enlightenment created the conditions for our world, we need a twenty-first-century Renaissance of wisdom, founded on the belief that our role as human beings is to restore, steward, and celebrate the Earth’s unique and immanent nature. Conclusions Thinking about the future of conservation is both humbling and challenging, especially as it has been formulated in the Anthropocene. The underlying demographic processes, although massive, are slow moving compared with the cycles of government, funding, and careers in conservation. To be seen clearly, these trends require a historical perspective that is difficult to adopt if one is focused on immediate threats and captivated by apocalyptic futures. But there is hope. Like in London during the Blitz, vigilance and exertion are required, but we need not panic or despair because the weight of history is on our side.

#### Urbanization inevitable – trajectory of development means countries inevitably build more megacities.

#### Ag not key to global growth – lack of tech, infrastructure, inequality, resources etc all thump

# 2NC

## CP

### 2NC – OV

#### 3. Subsidies alone are a massive alt cause to the case. Only the counterplan directly finances sustainability, rather than leaving agriculture practices to be determined by the free hand of the market.

Edwards 18 [Chris; MA in economics from GMU; “Agricultural Subsidies,” Downsizing the Federal Government, April 16, 2018; https://www.downsizinggovernment.org/agriculture/subsidies]

Subsidies Harm the Environment. Federal farm policies damage the natural environment in a number of ways. Subsidies cause overproduction, which draws lower-quality farmlands into active production. Areas that might have been used for parks, forests, grasslands, and wetlands get locked into agricultural use. AEI scholars note that subsidizing crop insurance encourages farmers "to expand crop production on highly erodible land."47 Lands that would have been used for pasture or grazing have been shifted into crop production.

Subsidies may induce excessive use of fertilizers and pesticides. Producers on marginal lands that have poorer soils and climates tend to use more fertilizers and pesticides, which can cause water contamination problems. Sugar cane production has expanded in Florida because of the federal sugar program, for example, and the phosphorous in fertilizers used by the growers causes damage to the Everglades.

Finally, subsidies may discourage crop rotation in favor of planting only a subsidized crop, which in turn can lead to increased use of fertilizers. The boom in corn production driven by subsidies and the ethanol mandate is apparently generating pollution problems in the Mississippi River and Gulf of Mexico.48

### 2NC – Subsidies

#### It’s as effective as antitrust without the plan’s economic costs

Dr. Philip Watson 21, PhD in Agricultural Economics from Colorado State University, Professor at the University of Idaho, and Jason Winfree, Professor of Agricultural Economics and Rural Sociology at the University of Idaho, PhD in Economics from Washington State University, “Should We Use Antitrust Policies On Big Agriculture?”, Applied Economic Perspectives & Policy, 5/31/2021, p. 10-11

ALTERNATIVE POLICIES TO ASSIST SMALL FARMS

Antitrust-related policies should not be geared towards protectionism of small firms; however, there may be potential ways to help small farmers without potentially increasing food prices. This section is not meant to be a full accounting of the benefits and costs of these alternatives, but rather shows that there are alternatives that may achieve these goals without driving up food costs for consumers. At the crux of antitrust policy is getting rid of any barriers to entry, which can at times be a barrier to small farmers. However, some policies that the USDA has pursued have the unintended consequence of creating barriers, increasing the fixed costs of production, and exacerbating consolidation in agriculture, further putting small farms in a competitive disadvantage. These policies include food standard regulations and output restrictions. Relaxing and reducing these restrictions, while potentially creating other problems, would likely help small farmers.

Subsidize small and beginning farmers

There are currently a large number policies that the USDA and other agencies are pursing to encourage small and medium-sized producers12 as well as new farmers13. Some groups support the expansion of these types of programs to assist small and beginning farmers because they feel that US agricultural policy has unduly subsidized big commodity agriculture for years at the expense of small farms. Conversely, others argue that subsidizing small farms disproportionately benefits rich consumers who are able to afford the price premium on niche foods. However, irrespective of the relative efficacy of programs and subsidies to support small farms, these efforts will not likely lead to higher prices for basic food products, which should be central to the agricultural policy. The same cannot be said for using antitrust policies to break up “big ag”.

#### It effectively redirects billions of dollars to much smaller farms AND incentivizes diverse, environmentally friendly practices

William S. Eubanks 13 II, Summer Faculty Member at the Vermont Law School, Adjunct Associate Professor of Law at the American University Washington College of Law, and Partner at Meyer Glitzenstein & Crystal, Conference on Agriculture and Food Systems: September 28, 2012: “The Future of Federal Farm Policy: Steps for Achieving a More Sustainable Food System”, Vermont Law Review, 37 Vt. L. Rev. 957, Summer 2013, Lexis

Therefore, instead of immediately eliminating the farm bill subsidies on which many farms now rely for survival, Congress should instead shift a substantial portion of these subsidies-in phases-to farmers implementing sustainable agricultural methods. Past and current conservation programs often had a major flaw: they target only large commodity crop growers. A more workable policy would be to offer a predetermined share of subsidy incentives to all farmers based on their farming practices, irrespective of crops cultivated or farm size. This would create a more just system than the current subsidy framework that excludes 60% of American farmers from any subsidies whatsoever.

Farmers who never see farm bill subsidies in our current system are typically those who grow crops using environmentally sustainable agricultural methods and those who grow most of the nation's fruits, vegetables, and nuts, which are called "specialty crops" in the farm bill, but are critical for good health. It should be noted that the two sets of farmers are not necessarily the same. Growers in California provide a vivid example of the current failures of the farm bill's subsidy program to reward farmers for growing healthy food for our nation. With nearly 81,500 farms, and nearly $ 43.5 billion in annual on-farm revenues, California is the leading [\*961] state in annual agricultural sales. Despite this, more than 90% of California's farmers receive no agricultural subsidies. Of the few Californian farmers that do receive farm bill subsidies, most are cotton and rice farmers. Yet these subsidy-neglected California farmers are invaluable to our nation's agricultural system because the state contributes more than 15% of the total U.S. agricultural market value and nearly half of all fruits, nuts, and vegetables. By ignoring these farmers and precluding them from receiving farm bill subsidies, Congress is prioritizing monocultures of corn, soybean, wheat, cotton, and rice at the expense of sound agricultural, nutritional, and environmental practices.

Sustainable agriculture, however, can serve as a first step in changing these policies for the better. What is "sustainable agriculture"? According to the scholar James Horne, sustainable agriculture "encompasses a variety of philosophies and farming techniques . . . [that] are low chemical, resource and energy conserving, and resource efficient." Ironically (because it did little to encourage such agriculture), the 1990 farm bill defined sustainable agriculture as:

an integrated system of plant and animal production practices having a site- specific application that will, over the long term, satisfy human food and fiber needs; enhance environmental quality and the natural resources base upon which the agricultural economy depends; make the most efficient use of nonrenewable resources and on-farm/ranch resources; and integrate, where appropriate, natural biological cycles and controls; sustain the economic viability of farm/ranch operations; and enhance the quality of life for farmers/ranchers and society as a whole.

As most agricultural experts note, it is important to understand that "[s]ustainable agriculture does not mandate a specific set of farming [\*962] practices." Rather, sustainable practices vary from place to place depending on the ecosystem, climate, and other factors, but "[t]here are myriad approaches to farming that may be sustainable." The more important overarching goal of sustainable agriculture is the "stewardship of both natural and human resources . . . includ[ing] concern over the living and working conditions of farm laborers, consumer health and safety, and the needs of rural communities."

#### Farmers will follow the money, rapidly adopting sustainable techniques to capture the subsidy AND corresponding market growth

William S. Eubanks 9 II, Associate Attorney at Meyer Glitzenstein & Crystal, LL.M. in Environmental Law, Summa Cum Laude, Vermont Law School, J.D., Magna Cum Laude, North Carolina Central University School of Law, “A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation's Tax Dollars”, Stanford Environmental Law Journal, June 2009, 28 Stan. Envtl. L.J. 213, Lexis

B. Expected Success of Scaling Up Sustainable Agriculture with Farm Bill Subsidies

By moving away from corn and commodity crop subsidies in favor of paying farmers for employing some of the sustainable agricultural methods enumerated above, Congress will foster a much more effective piece of legislation that is more aligned with the original goals of the Farm Bill. As seen with our nation's massive corn production tied solely to subsidies, farmers will farm wherever the money is. If sustainable agriculture is what results in subsidies, sustainable agriculture will likely be what farmers undertake on their farms in order to survive. Further, all available data indicates that many farmers genuinely want to grow healthier foods, maintain their communities, and conserve their natural ecosystems, but they have been pressured to farm corn and other commodity crops because that is where past profits could be garnered. Although most farmers in the United States do not [\*305] want Farm Bill subsidies eliminated or phased out, farmers "show[] strong support for programs focused on conservation" and seem very concerned about the status of the natural environment. This is not surprising considering the interdependent relationship between healthy farms and a healthy environment: long-term farm health requires a high functioning local ecosystem that can sufficiently supply all of a farm's needs. To prevent degradation of this important ecosystem, which suffers from "the tragedy of the commons" under the current Farm Bill subsidy regime, the proposed sustainable agriculture subsidy system will pay farmers to protect this common pool resource.

A related issue is whether farmers are willing to transition from solely growing corn or other commodity crops to planting a diversity of healthier crops under a sustainable agriculture subsidy program. It seems that farmers would be willing to do so both financially and for the viability of their farms and families. Financially speaking, every consumer dollar spent on a corn-based product in the supermarket results in only four cents reaching the farmer that produced that corn because of the large number of middlemen such as Cargill, ADM, Coca-Cola, and PepsiCo. This is starkly different for whole foods such as green vegetables, fruits, and eggs, where the respective farmer receives forty cents for every supermarket dollar spent. Thus, it makes financial sense for farmers to indulge in the cultivation of healthier produce and whole foods once sustainable agriculture subsidies are put into place because these farmers will receive a significantly higher percentage of supermarket sales and because of the offsetting economic effect of being able to feed one's family with the farm's nutritious and diverse crops.

[\*306] Shifting to anticipated environmental impacts, sustainable agriculture will greatly help to repair local ecosystems, boost farmers' yields as the ecosystem improves, and mitigate the degradation caused by decades of mechanized agriculture under the Farm Bill. As farmers well know, sustainable agriculture includes polycultures and crop rotations that are essential to protect soils from erosion and streambeds from sedimentation. Farmers have long recognized the need for better farming practices to enhance environmental protection. When the USDA has given farmers flexibility to diversify their crops into polycultures and yet retain their full commodity subsidies, many farmers have taken advantage of this flexibility and planted non-commodity crops on nearly half of the land available for diversification. Additionally, sustainable agricultural systems do not rely on harmful chemical inputs of fertilizers or toxic pesticides that pose serious threats to both humans and wildlife. Further, studies indicate that sustainable farming systems "use 30% to 70% less energy per unit of land than conventional systems, a critical factor in terms of global warming and eventual fossil fuel shortages." Since subsidizing sustainable agriculture will result in more polyculture and thus more robust and diverse local food supplies, less transportation will be needed and will result in "reduced energy consumption, less processing and packaging, and higher nutritional values" which are lost during storage and transportation.

#### The CP solves innovation – revoking subsidy causes growing and land use changes.

Edwards 18 [Chris; MA in economics from GMU; “Agricultural Subsidies,” Downsizing the Federal Government, April 16, 2018; https://www.downsizinggovernment.org/agriculture/subsidies]

Farmers Would Thrive Without Subsidies. If U.S. farm subsidies were ended and agricultural markets deregulated, farming would change. Different crops might be planted, land use might change, and some farm businesses might contract while others expanded. Farm businesses would rely on market-based risk-reduction methods, such as saving and diversification. A stronger and more innovative industry would emerge that had greater resilience to market fluctuations.

An interesting example of farmers prospering without subsidies is New Zealand. In 1984 that nation ended its farm subsidies, which was a bold stroke because New Zealand is four times more dependent on farming than is the United States. The changes were initially met with resistance, but New Zealand farm productivity, earnings, and output rose in the years after reform. New Zealand farmers cut costs, diversified land use, sought nonfarm income, and developed niche markets such as kiwi fruit.

The Federated Farmers of New Zealand argues that New Zealand's experience "thoroughly debunked the myth that the farming sector cannot prosper without government subsidies."73 That myth needs to be debunked in the United States as well.

A number of major farm programs expire at the end of September 2018, which provides Congress a chance to rethink its costly farm policies. Policymakers should look to the Trump administration's 2019 budget, which includes a number of sensible reforms to farm programs.

For Republicans in Congress, farm subsidy cuts would signal that the party is concerned about fiscal responsibility at a time of rising budget deficits. The GOP has sought cuts to low-income welfare programs, and it makes sense to combine those with cuts to farm subsidies, which are welfare for the well-to-do.

As the Heritage Foundation has argued, Congress this year should at least repeal the crop subsidy programs added in the last farm bill, ARC and PLC.74 Over the longer term, all farm subsidies should be ended. American farmers should stand on their own two feet in the marketplace, as do businesses in nearly all other industries.

## Advantage One

### XT 1-3 – Ag Innovation Turn

#### 4. Turns the environment – industrial-scale production unlocks precision farming---empirics prove that’s the best way to cut pollution.

Dan Blaustein-Rejto 18, Director of the Food and Agriculture Program at the Breakthrough Institute, Masters of Public Policy from University of California, Berkeley, BA in Environmental Studies from Brown University, “Eating Environmentally Requires Embracing Technology and Industry”, The Breakthrough Institute, 5/1/2018, https://thebreakthrough.org/issues/food/eating-environmentally-requires-embracing-technology-and-industry

Since then, thought leaders such as writer Michael Pollan and chef Alice Waters have carried the torch forward, diagnosing the ills of our food system. US agriculture generates as much greenhouse gas as all of Britain. Excess farm nutrients pollute rivers, lakes, and coastal areas such as the Gulf of Mexico to the point that fish can’t survive. And pesticide use harms farmworkers, children, and wildlife.

The solutions, according to many advocates, lie in cutting back on modern indulgences and supporting alternatives to the conventional food system. These include buying food from local farmers, shopping organic, eating less meat or at least eating free-range meat, and avoiding processed foods. One of the most well-known rules of thumb in this school of thought is, as Pollan writes, to eat only what your great-grandmother would recognize as food.

While these recommendations have merit, and certainly intuitive appeal for many, the reality of sustainability is far more complicated. For instance, locally produced food often has a greater environmental footprint than imported food. Organic farming typically requires more land use and contributes more to nutrient pollution of water bodies. Most free-range beef emits substantially more greenhouse gas emissions than beef from a feedlot, or factory farm as it’s commonly called. And many types of food processing have reduced food waste by increasing shelf life — just think of how long a bag of frozen fruit or loaf of sliced bread lasts.

Recent research into sustainable agriculture has given rise to a new paradigm. I call it Ecomodern Eating. Ecomodern Eating challenges many widespread assumptions, highlighting the importance of agricultural productivity and innovation in building an eco-friendly and delicious food future.

Historically, increasing agricultural productivity has been key to growing more environmentally friendly food. Advances in livestock production, such as nutritionally-optimized feed, have enabled North American chicken, beef, and dairy producers to emit less greenhouse gas emissions per pound of meat, eggs, or milk produced than most other regions in the world.

The same is true in crop production: the high levels of productivity and efficiency often derisively likened to industrial production has enabled North American crop production to emit less greenhouse gases per unit calorie than any other part of the world.

Agricultural productivity continues to advance and drive sustainability forward. A suite of new “precision agriculture” technologies such as GPS-driven tractors and drone imagery enable farmers to grow more food while using less fertilizer and pesticides. And advances in indoor farming are enabling companies like Plenty and AeroFarms to grow many times more food than traditional farms while using a fraction of the water and land.

In addition, we also need substitutes for foods with the largest environmental footprints. Many of the greatest environmental successes of the past have involved finding replacements for ecologically harmful practices. For instance, when wild sturgeon were on the precipice of extinction, the caviar industry found ways to raise and harvest farmed fish instead. And today, plant-based and cultured meat start-ups are developing hamburgers, fish, and other animal products that taste like the original thing, but with fewer of some important environmental impacts (especially compared to beef).

#### 5. It's net-offense---productivity is the biggest variable for conservation AND trends solve their internal link

Alex Smith 20, Food and Agriculture Analyst at the Breakthrough Institute, MA/MSc in International and World History from Columbia University and the London School of Economics and Political Science, “To Combat Pandemics, Intensify Agriculture”, The Breakthrough Institute, 4/13/2020, https://thebreakthrough.org/issues/food/zoonosis

Alongside reducing deforestation and land-use change and improving food access and security, sustainably intensifying agriculture across the globe would benefit biodiversity by protecting habitats and keeping them from agricultural development. While monoculture means less biodiversity on farmland, the productivity gains of monocropping — and other intensive agricultural practices — allow for the sparing of far greater land that can be used as habitat for wild flora and fauna. Certainly, agricultural intensification alone is not enough to maximize land-sparing benefits, as improved conservation and land policy is needed to minimize rebound effects. But greater productivity is likely the longest lever for achieving ambitious conservation goals.

The spread of intensive agriculture has come with rising nitrogen run-off, methane emissions, and other environmental impacts. These are real problems, but their solution is the continued improvement of intensive systems. In fact, we are already seeing reductions in many environmental impacts from agriculture in countries where intensive agriculture is prevalent, such as the US.

### XT 4 – No Impact to Big Farms

#### 2. Sustainability is increasing

Alison McGrew 20, Writer for Illinois Farm Families, “3 Myths About Sustainable Agriculture”, March 2020, https://www.watchusgrow.org/2020/03/02/3-myths-about-sustainable-agriculture/

Myth #1: Today’s farms are less sustainable than they used to be.

Fact: Simply put, farmers today are doing more with less. Here are a few examples:

* Compared to 1977, today’s beef farmers produce the same amount of beef with 33% fewer cattle.
* Pig farms now use 75.9% less land than in 1960.
* Over the last 40 years, soybean farmers have nearly doubled how much they grow while using 8% less energy.
* Dairy farmers have reduced greenhouse gas (GHG) emissions by 63% over the past 60 years.
* Corn farmers have increased yields while reducing pesticide and fertilizer use, thanks in part to biotechnology.

Sustainable agriculture may look different on each farm, but the goal is always the same: make the farm better for tomorrow and for future generations while providing a safe, sustainable food supply.

#### 3. Monocultures are efficient AND easily managed---no mass crop failure

Andrew Porterfield 18, MS in Biotechnology from the University of Maryland, BA from the University of Pennsylvania, Owner of Porterfield Marketing and Communications, Writer, Editor and Communications Consultant for Academic Institutions, Companies and Non-Profits in the Life Sciences, “Is monoculture a bad thing? It’s time to revise simplistic ideological narrative”, Genetic Literacy Project, 5/4/2018, https://geneticliteracyproject.org/2018/05/04/is-monoculture-a-bad-thing-its-time-to-revise-simplistic-ideological-narrative/

In a Nebraska field, thousands of acres of winter wheat stretch to the horizon. In California, workers pick strawberries in a field that has grown no other crop for the past eight years. And in Maryland, a single tomato plant grows in a single pot.

What do these have in common?

They could all fall under the phrase “monoculture.” Okay, that last one with the tomato is a bit of a stretch, but it’s an example that underscores how simplistic this discussion often plays out. Many critics of modern agriculture, including anti-GMO activists, point to monoculture as what Michael Pollan calls the “great evil of modern agriculture” and a major reason for the loss of biodiversity in agriculture. They say that biotech crops encourage monocultural farming.

So, what is “monoculture” and is it bad or is the issue more complicated?

Andrew Kniss, a plant scientist and weed expert at the University of Wyoming, is one of many scientists who think that the word doesn’t do the practices justice. On the surface, all monoculture means is that a farmer is growing just one crop in an area. By that definition, all crops are grown in monocultures except for those grown in the tiniest of farms or home gardens.

So, how big an area defines what is “monoculture”? And how many years must a crop be grown in a given field before it’s considered “monoculture”? Does monoculture actually reduce biodiversity?

What does the science say?

Most critics appear to use the term to suggest that something bad happens in single crop areas: blight, crop failure, or loss of biodiversity (in the form of native plants, pollinating insects, or microorganisms).

The Union of Concerned Scientists, under the leadership of its prior agricultural sciences director Doug Gurian-Sherman—who left UCS two years ago and now lobbies against crop biotechnology for the Center of Food Safety [read GLP profile of Gurian-Sherman here]—has argued in a post entitled “Expanding Monoculture: 8 Ways Monsanto Falls at Sustainable Agriculture”, that monoculture reduces diversity and leads to a host of other problems.

Monsanto’s emphasis on limited varieties of a few commodity crops contributes to reduced biodiversity and, as a consequence, to increased pesticide use and fertilizer pollution. Large-acreage field crops—corn, cotton, soybeans, canola, and now alfalfa—make up the bulk of Monsanto’s products, in part because of the high cost of developing engineered traits. And the approach to agriculture that this product line encourages—monoculture, the production of only one crop in a field year after year—is not a sustainable one.

The piece is short of an understanding of the basic science of farming and long on ideology, say agricultural experts.

Consider crop rotation. Most organic food supporters point to crop rotations, which are required for organic certification, as an alternative to the ‘dangers’ of monoculture. But that’s a deceptive argument. Most large farms now rotate their crops as well, so rotating in an of itself does not address the question of the impact of monoculture. And just switching between crops in alternate years doesn’t bring the kind of genetic diversity that can prevent the downsides of mechanized farming.

Monoculture, incorporating crop rotation, can also have positive impacts. Just having one crop in the field allows mechanization of agriculture. Mechanized farming allows faster, efficient planting, weeding, and harvesting, which reduces the destruction of habitats–organic and agro-ecological farming has a yield lag averaging 15-45%. Scaled up to meet the growing global demand for food, smaller scare farming would result in clear cutting of forests and dramatically reduce biodiversity, leading to a sharp increase in greenhouse gases. Intensive farming also frees humans to discover other ways to spend our time and make a living.

Kniss also has made the point that a focus on genetic biodiversity in farming can help reduce the problems of monoculture while preserving its benefits. Examples such as the Irish Potato Famine shows what can happen when farmers depend not only on just one crop but on a crop that is genetically very, very narrow; they are vulnerable to disease. Planting genetically diverse potatoes (or any other crop) can help protect against the potentially negative impact of monoculture. And newly developed genetically modified crops, such as the Simplot Innate potato, have been specifically engineered to protect against the genetically narrowly focused potato blight. Other conventional and organically-grown potatoes are still vulnerable to the blight.

#### 4. U.S. farm emissions are a drop in the bucket AND already declining---other GHGs thump

Dr. Frank Mitloehner 19, PhD, Professor and Air Quality Specialist in Cooperative Extension in the Department of Animal Science at UC Davis, “It’s Time to Stop Comparing Meat Emissions to Flying”, 11/13/2019, https://ghgguru.faculty.ucdavis.edu/2019/11/13/its-time-to-stop-comparing-meat-emissions-to-flying/

I can appreciate how having a sound bite is tempting and even useful like the recent Bloomberg assertion “… that the humble hamburger is a bigger contributor to the warming of the planet than the jumbo jet,” for example. The problem is, it’s not as simple as all that. Animal agriculture’s impact is overstated when speaking to an American audience, and aviation’s effect is understated when speaking to any audience.

U.S. livestock farmers have – and continue to – reduce GHGs

Globally, animal agriculture accounts for 14.5 percent of GHG emissions, the number that tends to be used to support the claim that eating meat is a bigger planetary enemy than the combustion of the fossil fuels used in aviation. But in the United States, isn’t it more helpful to look at U.S. animal agriculture statistics, especially when they’re vastly different from the global picture?

Here in the U.S., animal agriculture makes up a far smaller percentage of total GHG emissions than worldwide: 3.9 percent, according to the U.S. Environmental Protection Agency (EPA). Granted, the lower U.S. percentage is due in some part to the fact that the United States is highly industrialized and wealthy, and we are major users of energy, fossil fuels and transportation. So as those percentages swell, animal agriculture takes up a smaller piece of the pie.

Even so, our farmers are the most efficient in the world. Case in point: In Mexico, it takes up to five cows to produce the same amount of milk as one U.S. cow, and in India, it takes up to 20. These statistics point to the United States having the lowest GHG emissions per unit of milk of any country in the world. It’s a similar story for other ruminant and non-ruminant animals that produce meat in the United States. In fact, emissions from all U.S. livestock species are much lower than those in Brazil, China, India and countries in the European Union, among others.

Americans fly more – much more – than people in any other country

Consistent with using a global number for animal agriculture is the tendency to do the same thing with the GHG emissions of air travel, and that likewise distorts the picture for the United States. Whereas the global animal agriculture figure is inflated for a U.S. audience, the global aviation figure downplays the role air travel plays in the United States’ GHG emissions.

That’s because Americans fly much more than people in other countries, including China, the United Kingdom, Germany and Japan, other top consumers of air travel. According to Bureau of Transportation Statistics, there were 1 billion passengers on U.S. airlines and foreign airlines serving the U.S. in 2019, a record and yet another year-over-year increase since the global recession of 2008-2009.

Aviation is two to three times more damaging to the environment than is often reported

In our hamburger-airplane example, aviation is assigned a GHG emissions number of 2 percent, giving most readers reason to have a clear conscience when boarding a plane. But that number doesn’t capture a plane’s full emissions footprint.

A 2 percent “GHG emissions” figure for aviation accounts only for the amount of carbon dioxide (CO2) air travels puts in the atmosphere. It ignores, the other GHGs that come from planes (for example, nitrous gases, water vapor, soot, particles and sulphates).

In addition, the 2 percent number is a tailpipe assessment, meaning what is being measured are the direct CO2 emissions from the jet fuel that is combusted in the planes’ turbines. The figure fails to consider things such as the manufacture of materials for parts used in the aircraft, the transportation of materials and parts to factories where planes are made, wear and tear on roads and runways, and many more.

Life-cycle assessments and tailpipe emissions are GHGs’ apples and oranges

When we look at our metaphorical burger, we’re taking into account pretty much every GHG that is emitted by the activities and processes required to get the proverbial burger on a dinner table. Called a life-cycle assessment (LCA), it provides a more accurate and total picture of GHG emissions than does a direct (tailpipe) assessment.

In the same example, air travel gets a huge break by being subjected only to a measurement of its (direct (i.e. tailpipe) emissions. To make a fair comparison, the same system of quantification must be used for both the burger and the airplane ride, and ideally, a life-cycle assessment would provide the figures. The thing is, we don’t have life-cycle assessment numbers for planes, or other parts of the transportation sector.

Methane is a short-lived GHG; carbon dioxide might be forever

When we talk about the GHG emissions of livestock or the carbon footprint of meat, methane is often at the heart of the matter. Ruminant animals such as cows emit methane. As far as global warming potential, methane is a powerful GHG, with about 28 times the warming potential of carbon dioxide over a period of 100 years.

But methane doesn’t hang around for a century; it’s a short-lived GHG. In about a decade’s time, it’s converted to water vapor and carbon dioxide, which is part of the cycle whereby plants take CO2 out of the atmosphere and convert it into feed via photosynthesis. Animals eat the non-human edible vegetation and upcycle it to meat and dairy products that provide efficient sources of protein and other essential nutrients to humans. It’s a cyclical process, also referred to as the biogenic carbon cycle, that’s been around as long as life itself.

Given the advances American farmers have made in animal agriculture, today we are producing as much food as we did 50 years ago from cattle herds that are far smaller. All told, the U.S. herd is contributing *less methane* to the environment as a result.

On the other hand, our voracious appetite for fossil fuels has resulted in an enormous glut of carbon dioxide in the atmosphere. According to the EPA’s GHG inventory, CO2 accounted for 82 percent of GHGs in 2017, with industry, transportation and electricity contributing nearly 80 percent of the total. It’s so much more emissions than oceans, rainforests and plants can absorb, by conservative accounts, it will hang over the planet for a thousand years. Realistically, it could be forever.

#### 5. Transitioning to small farming causes devasting land conversion AND worse fill-in abroad

Ted Nordhaus 21, Founder and Executive Director of the Breakthrough Institute and Co-Author of An Ecomodernist Manifesto, and Dan Blaustein-Rejto, Director of Food and Agriculture at the Breakthrough Institute, Conducted Research with the Environmental Defense Fund, International Center for Tropical Agriculture, and Farmers Market Coalition, “Big Agriculture Is Best”, Foreign Policy, 4/18/2021, https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/

Moreover, organic farms, large and small, don’t actually outperform large conventional farms by many important environmental measures. Scale, technology, and productivity make good environmental sense and economic sense. Because organic farming requires more land for every calorie or pound produced, a large-scale shift to organic farming would entail converting more forest and other land to farming, resulting in greater habitat loss and more greenhouse gas emissions. And while organic farming doesn’t use synthetic pesticides or fertilizers, it often results in greater nitrogen pollution because manure is a highly inefficient way to deliver nutrients to crops.

Another benefit of large-scale U.S. farms is that because they are so efficient, economically and environmentally, they are also able to produce vastly more food than Americans can consume, making the country the world’s largest agricultural exporter as well.

That benefits the U.S. economy, of course, but it also comes with an environmental benefit for the world. In the contemporary environmental imagination, highly productive, globally traded agriculture is a bad thing—poisoning the land at home and undermining food sovereignty abroad. But in reality, a pound of grain or beef exported from the United States almost always displaces a pound that would have been produced with more land and greenhouse gas emissions somewhere else.

### XT 5 – Circumvention

#### Courts will always read regulatory statutes down – regulatory capture

Crane 21 – Frederick Paul Furth Sr. Professor of Law at UMich (Daniel, Antitrust Antitextualism, 96 Notre Dame L. Rev. 1205 (2021). Available at: <https://scholarship.law.nd.edu/ndlr/vol96/iss3/7>

But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in one consistent direction—toward reading down the antitrust statutes in favor of big business. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and continues to this day. In brief: within their first decade of antitrust jurisprudence, the courts read an atextual rule of reason into section 1 of the Sherman Act to transform an absolute prohibition on agreements restraining trade into a flexible standard often invoked to bless large business combinations; after Congress passed two reform statutes in 1914, the courts incrementally read much of the textual distinctiveness out of the statutes to lessen their anticorporate bite; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that not one of the principal substantive antitrust statutes has been consistently interpreted by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has bent always in favor of capital. Unlike in many debates over statutory interpretation, the issue in antitrust is not a contest between strict textualism and purposivism, including resort to legislative history.6 This Article uses “antitextualism” as a shorthand for the phenomenon of ignoring any bona fide construction of what a statute means, whether in the plain meaning of its words, linguistic or substantive interpretive canons, legislative history, or other ordinary markers of legislative meaning. Uninterested in these methods, the courts have treated the antitrust laws as a virtually unbounded delegation of common-law powers when, in important ways, the statutes quite clearly say something other than that. Inquiring into the nature and implications of antitrust antitextualism is particularly salient at the present when, for the first time in a generation, there is widespread dissatisfaction with antitrust enforcement and impetus for potential reform legislation.7 As was true at each of the prior moments of reformist sentiment, the call is for statutory reforms to curb the power of big business.8 We have seen this play before, and also its sequel. In the play, Congress announces that the antitrust laws are too weak and that reforms are necessary to protect the nation from the power of big capital. In the sequel, the courts (often abetted by the antitrust agencies and other antitrust elites) read down the statutes to accomplish less than their texts suggest or Congress meant. Will anything be different this time around, or are the legislative reforms currently on the table predestined to a similar fate?

### XT 6 – Food Security High

#### 2. Farmers will adapt AND the COVID shock spurred preparedness and redundancy

David Green 20, Director of the U.S. Sustainability Alliance, “How Innovation is Helping U.S. Farmers Rise to the Challenges of COVID-19”, Open Access Government, 9/18/2020, https://www.openaccessgovernment.org/how-innovation-is-helping-u-s-farmers-rise-to-the-challenges-of-covid-19/94589/

Consumers are used to buying the food they want, where and when they want it. So, imagine their shock and distress when, in the early days of the COVID-19 pandemic, they were confronted with aisles of empty shelves at their local supermarket or grocery store.

Equally shocking were the scenes of vegetable farmers ploughing surplus produce back into the ground while dairy farmers poured milk on their fields.

This is what unprecedented supply chain disruption looks like. When consumers panic buy, and schools, offices and foodservice businesses close, where and how food is bought and consumed – and the type of food consumed – changes and the food system is forced to play catch up.

Despite the upheaval, U.S. farmers have managed to adapt and find ways to keep putting food on our tables while protecting their own livelihoods. Innovation is one such way.

Labour shortages

In the United States, and elsewhere, one of the biggest challenges for the food supply chain has been the availability of labour. Like many industries, farming and food production need people – skill and dexterity are important for picking and preparing certain produce. However, virus outbreaks among workers and a reduced seasonal workforce due to travel restrictions and COVID fears have depleted resources.

Meat and poultry processing plants have been particularly hard hit. According to the U.S. Centers for Disease Control and Prevention, among 23 states reporting COVID-19 in April and May 2020, 16,233 cases in 239 facilities occurred, including 86 COVID-19–related deaths. Temporary closures and meat shortages ensued – at one point fast-food chain Wendy’s ran out of hamburgers at some of its restaurants.

Nor are farmworkers immune. Initially, the concern was that not enough seasonal workers would be able to travel to farms to harvest the fruit and vegetable crops. Now that harvest is underway, the virus continues to spread despite safety precautions. The risk is that crops won’t get picked, leading to wastage, shortages and higher prices for consumers.

The robots are coming

Some U.S. farmers are using technology to plug gaps in the workforce. American farmers have been early adopters of AgTech, from variable rate technologies that enable them to manage the inputs for their crops more accurately to GM crops that mean less herbicide and insecticide, but better yields, and they have made substantial sustainability and productivity gains as a result. So, it is hardly surprising that they should turn to the latest innovations to create efficiencies at a critical time such as this.

FarmWise, a San Francisco company that makes robots to help with farming tasks such as picking weeds and harvesting vegetables, reports seeing increased demand from farmers in California and Arizona for robotic helpers to maintain production levels.

And dispelling the myth that machines can’t mimic human skill, this summer, some U.S. farmers have been using the new Virgo harvesting robot from Somerville, Massachusetts, start-up Root AI, which the company claims is capable of doing anything a person can. Leveraging artificial intelligence (AI) and an advanced 3D vision system, Virgo automates the picking of tomatoes – and could potentially be used for other delicate produce.

Meeting future food demand

Could technology play an even greater role in helping farmers meet future food demand?

Arzum Akkas, a professor of operations and technology management at Boston University and an expert in food supply chain management, believes that a trend for automation and mechanisation was already in motion even before the pandemic “and the extra labour shortage risks due to COVID-19 will accelerate automation adoption.”

Increased automation is something food company Tyson Foods, a processor and marketer of chicken, beef, and pork has been working on at its Manufacturing Automation Centre in Springdale, Arkansas.

Over the past three years, the company has invested $500 million in tech and automation. One innovation in progress is an automated deboning system that will be able to handle the millions of chickens processed at its facilities every week. Meat giants JBS US Holdings and Cargill are also working on robotic technologies. They aren’t quite there yet, but the pandemic has served to speed up their development.

According to Erik Pekkeriet, Programme Manager Agro Food Robotics at Wageningen University, in the Netherlands, robots are set to become even more commonplace, performing all of the menial, repetitive work in farming 10 to 20 years from now.

An automated future

So, yes, the future could well be innovation-driven. Science and technology innovations are already helping farmers create efficiencies, helping them to reduce their inputs, boost yields and conserve natural resources such as land and water. Why shouldn’t other areas of the supply chain benefit, too?

The ability for farmers and producers to cut their reliance on manual labour, which is hard to come by at the best of times, is pretty compelling.

Up until now, the costs of robotics and automation have been prohibitive for some, but Root AI co-founder and CEO John Lessing believes this is changing: “The underlying costs of building a robot have massively dropped. We’re now able to deploy these systems for growers in a way that their cost structure doesn’t go up.”

The pandemic has also opened people’s eyes to the importance of science and technology and removed the stigma of something new often being viewed as ‘scary’ or mystifying.

This is good news for farmers. With the right innovations in place, they are better equipped than ever to respond to future crises to maintain a sustainable, future food supply.

#### 3. Supply is structurally decentralized and resilient

Saktipada Maity 18, Practice Head of Engineering & Operations Analytics at Cap Gemini, MTech from the Indian Statistical Institute, BE from Jadavpur University, “Debunking the Myths—the MNC Monopoly”, Cap Gemini, 3/30/2018, https://www.capgemini.com/2018/03/debunking-the-myths-the-mnc-monopoly/

The Digital Agriculture and Smart Farming trend continues to thrive in this age of technology transformation and disruption. With every passing month, we read news like the Bayers and the Monsantos of the world merging, or cooperatives like FrieslandCampina going bold with acquisitions. While consolidation of some parts of the food chain is certainly happening, such news tends to paint an inaccurate picture of food being a global, highly consolidated business. Misconstrued perceptions lead to different myths and, food being controlled by multinational giants, is one such myth.

Perception though, is not always reality. Food, unlike many other industries, is a very local and extremely fragmented business. Food production involves stakeholders sitting in plush offices at multi-billion dollar conglomerates, down to local operating small landholders. Consolidation isn’t consistent across all segments and in all geographies of the agricultural industry. In fact, while grain trading represents only a relatively limited part of the whole value chain, it’s interesting to watch four giant transnational companies dominate this global grain trade. The four companies account to an indicative and staggering 75% to 90% of the global grain trade. It is this extraordinary concentration of money and power that is a structural flaw in the system. Large players automatically extract as much value possible, but transfer as much of the cost and risk onto the weakest links—the farmers and laborers —in this food chain. Currently, the Fairtrade movement is working on resolving this problem. France has taken a legal stance wherein French law prohibits food waste by supermarkets. The rationale behind is that, this will have a positive effect on the economic position of the farmers.

The fragmentation of the agricultural industry stems from constraints resulting from food security. Control over one’s land and food security is enough for any government to get finicky over allowing MNCs to exert control over their food chains. In developing countries, agriculture is still the primary driver of the economy, and agriculture results in jobs for several hundred thousand people. Governments constantly need to balance the move to disenfranchise such a large segment, and not in the process, risk political turmoil. Land ownership is a sovereign function, and corporates cannot win this battle any time soon. With anti-monopoly regulations, with registration rules of the land, and with strict monitoring of water and types of crops grown in an area, food production is unlikely to be a consolidated industry in the near future.

### XT 7 – No Food Wars

#### Non-resource factors and costs of war.

Baryamov ’18 [Agha; PhD candidate and lecturer in the department of International Relations and International Organization @ University of Groningen; “Review: Dubious nexus between natural resources and conflict,” *Journal of Eurasian Studies* 9(1): 72-81]

First, function of natural resources in conflict is narrowly explained. Less research has been devoted to non-resource factors of conflicts and their connection with resources. Conflict is composed of multiple dimensions (political, economic, historical, cultural, ethnic and geographical etc.) rather than single factor. It is not clear how non-resource dimensions o1f conflict interact with natural resources, namely poor performance of state institutions or scarcity of state capacity One may understand how natural resources influence non-resource dimensions but one may not find how and whether non-resource dimensions affect scarcity or abundancy of natural resources. In this regard, it is not sufficient to simply propose scarcity or abundancy of natural resources as the fundamental reason for conflicts. Second, less research has scrutinized political and economic costs of resources wars, namely occupation cost, international cost and investment costs (e.g. Meierding, 2016). The existing works give a misleading impression that resource incomes can cover easily invasion, investment and international costs of wars.

## Advantage Two

### 2NC – Top Level

#### Vertically integrated cooperatives need exemptions because buyers and grocers (outside the ag industry) are even more consolidated – 1AC modelling author concludes neg. They need protection because they’re bargaining with more consolidated buyers.

**1AC Barnes and Levine 21**, Donald, JD from George Washington University; JD from Fordham University, and former Vice-Chair of the ABA Antitrust Section’s Joint Conduct Committee; Jay, co-chair of the Porter Wright Morris & Arthur Antitrust and Consumer Protection Practice Group, “Farmer Cooperatives "Take Cover": The Capper-Volstead Exemption is Under Siege”. Arkansas Law Review, Volume 74, Number 1. April 2021, Accessed 11/10/21, <https://scholarworks.uark.edu/cgi/viewcontent.cgi?article=1127&context=alrAH> p. 24-27

The question can fairly be asked: Has the Capper-Volstead Act outlived its usefulness? After all, many agricultural cooperatives are big businesses nowadays.165 Indeed, plaintiffs in the cases challenging the application of the Capper-Volstead Act make this argument, both implicitly and explicitly.166

The fact remains that agriculture is different from other industries. Production of agricultural products has a far longer lead time than its manufactured counterparts, due to the need for planting and harvesting, in the case of crops, or birthing and rearing animals, in the case of livestock.167 Additionally, Mother Nature, always a fickle variable, plays a huge role in the success or failure of any year’s yield. And, of course, these products are generally perishable. Given that these products form the very basis of the foodstuffs we consume daily, agriculture has always enjoyed special legislative protection.

Nevertheless, it was the imbalance in bargaining power between the buyers of the agricultural products and the individual farmers who produced them that spurred the passage of the Capper-Volstead Act. And, though agricultural producers have grown in size, so have their customers, resulting in the same relative imbalance today.

In the early 1920s, when the Capper-Volstead Act was under consideration, there were approximately 6,448,000 farms in the United States.168 These were small farms that often found themselves at the mercy of middlemen and buyers due to a lack of bargaining power and the perishable nature of their products.169 As farm prices became depressed, farmers were abandoning their farms to move to cities. Consumers and legislators were concerned about potential food shortages. The power of the buyers over the individual farmers impelled the passage of the Act.170

The modern era has been marked by the consolidation of buyers and farm units alike. As the Department of Justice was conducting a series of workshops into antitrust issues affecting agriculture, food retail, and processing companies continued along a path of rapid consolidation.171 By 2009, the top food retailers—Wal-Mart, Kroger, Costco, and Supervalu—controlled more than half of all grocery sales in the United States.172 Consolidation has thus given top retailers considerable purchasing power as wholesale buyers of groceries, and many food-processing firms justify their mergers as an effort to create stronger bargaining power with these large retailers.173 The number of farmers has declined by over two-thirds, from nearly 6.5 million in the 1920s, to 2.06 million in 2016.174 At the same time, cooperatives have consolidated into larger units and their customers have become national and international enterprises.175

In 2010, the U.S. Department of Agriculture (“USDA”) and Department of Justice held a series of workshops (“Workshops”) around the country entitled “Exploring Competition Issues in Agriculture.”176 At the June 25, 2010 Workshop in Madison, Wisconsin, Robert Cropp, Professor Emeritus of Agriculture and Applied Science at the University of Wisconsin, presented data indicating that the bargaining power imbalance that the Capper- Volstead Act was designed to correct is just as prevalent today, if not more so**.**177 For example, in 2010, Wal-Mart topped the Fortune 500 list with food revenues of approximately $230 billion.178 By contrast, total revenue of all dairy cooperatives in the country was less than $40 billion, with the largest dairy cooperative having sales of $10 billion.179 In 2010, the largest agricultural cooperative, CHS, Inc., had revenues of $26 billion.180 A number of their customers are on the Fortune 500 list, including Kroger, SuperValu, and Kraft. Each of these entities have revenues that are large multiples of those of the largest cooperatives.181

Furthermore, there has been a great deal of consolidation in the retail grocery industry. Progressive Grocer’s Super 50 list of the largest grocery chains does not include membership clubs suchasSam’s,Costco,andBJ’s.182 Yet,asreportedinMay2018, the combined annual sales of the Super 50 grocers still tops $580 billion.183 The top ten, which includes Wal-Mart, Kroger, and Safeway, accounts for more than seventy-seven percent of those sales, or approximately $450 billion.184 Similarly, Associated Wholesale Grocers, a buying group not even included in the Super 50, had revenues of approximately $9.2 billion in 2016.185

In comparison, according to a study by the USDA, combined revenues of all United States agricultural cooperatives topped $212 billion and the one hundred largest agricultural cooperatives in the United States reported combined revenues of $146 billion in 2015—a fraction of the combined revenue of just the top ten retail grocers.186 Just as they were ninety-nine years ago, today’s farmers are still confronted with the disproportionate bargaining power of their huge customers. 187 Consequently, the very conditions that compelled passage of the Capper-Volstead Act back in 1922 prevail today.

#### Vertical integration under Capper-Volstead doesn’t produce market power for any one cooperative. It secures bargaining power for farmers overall, which is key to bargain with integrated buyers.

Bob **CROPP** Prf. Emeritus of Agriculture and Applied Economics @ Wisconsin ‘**10**

UNITED STATES DEPARTMENT OF JUSTICE UNITED STATES DEPARTMENT OF AGRICULTURE Public Workshops Exploring Competition Issues in Agriculture DAIRY WORKSHOP A Dialogue on Competition Issues Facing Farmers in Today's Agricultural Marketplace University of Wisconsin-Madison Union Theater p. 191-194

MR. CROPP: Well, I don't think we need a great change in regulation. The Capper-Volstead Act passed way back in 1922 and the purpose was to try to equal out the end balance of economic power between farmers and their buyers and that's just -- all the Capper-Volstead Act does is give limited exemption to antitrust, not total. They're still subject to any predatory practices and basically it allows farmers to organize, to bargain, process and market on their behalf to try to bring some balance of economic power.

And there’s been a lot of consolidation through time and the reason that has happened is, well, farmers have changed, modern transportation, processing markets have changed. The size of processing plants has changed, so the board of directors of co-ops have been responsible to change their structure to respond to the changes in the market conditions.

The thing is, that the concentration of the food industry has been much greater beyond the farm and co-op level, so really, the imbalance today between say farmers and their buyers is probably greater than it was back in 1922. So **they still need a protection**, **the right to organize and bargain**.

There was talk this morning about what's big, you know, co-ops are small business. There is about 155 co-ops in existence today and of those 155, 109 are pure bargaining, relatively small bargaining co-ops. There's only 25 that actually operate processing facilities and they don't dominate any real aspect of the dairy industry. I mean, they have about 71 percent of the butter and 96 percent of the powder, but when it comes to the cheese, we heard about that drives milk prices, actually, their marketshare has declined to about 26 percent back in 2002, about 34 percent.

So if you compare dairy cooperatives to their customers or their customers' customers, they're really small businesses. We mentioned the Wal\*Mart, you know, business this morning, number one on Fortune 500 company. They have about 230 or so billion dollars on the food side, but if you take our largest agriculture co-ops, there's only two that ppear on Fortune 500 lists. One is CHS, the argest co-op, number 91, with sales of about $26 billion, but that's a diversified farm supply petroleum.

One in dairy, and that's Land O' Lakes, about $10 billion. They list 226, but I think dairy, as Pete Kappelman said, is only about $4 billion of that. So you can look at Kroger's and Super Value, Kraft, everybody is on Fortune 500 with revenues much greater. If I take all the dairy co-ops and add the total revenue together, t's less than $40 billion, all of them together. And one way like to measure concentration is what And one way like to measure concentration is what does the top four do.

If I take the top four dairy co-ops and the top four market a little over 6 billion pounds of million a year annually. That's a lot of milk, but not a lot. There's another range between three to six billion, but over half market less than 500 billion pounds of milk in a year. Take the 10 largest dairy co-ops thrown together, they'd have about 57 percent marketshare. If you take, you know, DFA, which is the largest co-op, has around 20 percent of the market.

California dairies, number two drops down about nine percent, Land O' Lakes is about seven percent of the total market, so pretty small. Any one co-op by themselves do not have the sufficient market power to really influence that market and so under the Capper-Volstead Act we allow market agency in common, where co-ops go together and bargain together to have an influence on that market. And that's been successful.

#### Ag exemption from antitrust is key to R&D and food security in developing countries

Kachel 9 – Yael Kachel, Department of Agricultural Economics and Management, The Hebrew University of Jerusalem, “The Agricultural Exemption from Antitrust Regulation: A License for Cartel or a Necessary Evil for Cooperation?” 2009 is last date cited, https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.511.7013&rep=rep1&type=pdf

The application of antitrust regulation recognizes that cooperation between firms may also have beneficial effects, in particular efficiency gains (OECD, 2004). The trade-off between the exercising of market power, which decreases welfare, and efficiency gains associated with lower cost of production is acknowledged by antitrust legislation. Merger decisions or decisions about restrictive arrangements which do not involve hard-core cartel provisions require an economic analysis of the impact on competition and welfare. In addition, antitrust regulations include exemptions for restrictive arrangements which are generally recognized as economically beneficial.

In many countries, the agricultural sector enjoys a limited exemption from antitrust regulation. Agricultural production is characterized by biological production processes, which are influenced by the weather. As a result, it is impossible to completely control production quantity and quality, and production is often seasonal while demand is generally distributed more evenly throughout the year. The structure of agricultural production is atomistic (many small farmers), while farmers in many countries are faced with a relatively concentrated marketing sector. In addition, many agricultural products are highly perishable. These characteristics lead to large fluctuations in supply and prices, hamper rapid adjustment of production to demand changes, and decrease farmers' bargaining power.

Agricultural products produced by many farmers often enjoy a collective reputation. This may lead to market failure because of externalities of farmers’ actions. For example, some farmers sell unripe fruit at the beginning of the season. These farmers enjoy high prices but may cause a decline in demand. More generally, without enforcement of quality standards, farmers have an incentive to exploit a joint reputation if they can save costs by producing a lower quality. Additionally, because of the small size of most farming operations, it is difficult for farmers to differentiate higher quality products without cooperation, which may lead to an undersupply of desirable goods. Cooperation of farmers in the setting of quality standards and their enforcement or in the establishment of a collective brand is justified to prevent these market failures (OECD, 2004).

The small size of farming operations and the public goods character of agricultural research will cause an underinvestment in research if there is no cooperation of farmers or government intervention.

These market failures, caused by the special characteristics of agricultural production, are the main justification for a limited antitrust exemption of the agricultural sector. Because of the small size of most farming operations, collaboration enables farmers to exploit size economies and save costs, e.g. by establishing joint packing and storage facilities, joint research and promotion. Without the possibility of farmers' cooperation in the marketing of agricultural products, marketing firms may exploit market power to the detriment of farmers and consumers. Economic theory shows that the outcome of bargaining between two firms can be preferable to the equilibrium of an oligopsonistic market from a welfare point of view (Nash, 1950)3 . Farmers’ cooperation in R&D, production and marketing, facilitated by the antitrust exemption, may be welfare-enhancing, not just for farmers but for the economy as a whole.

### XT 3 – Food Security High

#### Every output is improving

Ted Nordhaus 15, Founder and Executive Director of the Breakthrough Institute and Co-Author of An Ecomodernist Manifesto, Michael Shellenberger, Founder and President of Environmental Progress, Former President of the Breakthrough Institute, and Linus Blomqvist, PhD Student in Environmental Economics and Science at UC Santa Barbara, Former Director of the Conservation and Food & Agriculture programs at the Breakthrough Institute, “George Monbiot is Wrong to Suggest Small Farms Are Best for Humans and Nature”, The Guardian, 9/25/2015, https://www.theguardian.com/environment/2015/sep/25/george-monbiot-is-wrong-to-suggest-small-farms-are-best-for-humans-and-nature

Without question, the journey from subsistence economies to modern livelihoods is not an easy one and moving from the farm to the city does not guarantee a better life, at least in the short term. But the last two centuries offer ample evidence that by just about every metric of human health, freedom, and material well-being, urbanisation, industrialisation, and agricultural modernisation are processes that have been overwhelmingly positive for humans.

Moreover, as a leading proponent of rewilding, we hope that Monbiot will think a bit harder about where all those rewilded landscapes in which, he hopes “nature is allowed to do its own thing, in which it can be to some extent self-willed, driven by its own dynamic processes” are likely to come from. On a planet of 7, going on 9 billion people, agricultural modernisation and intensification are clearly the most plausible path to leaving more of the Earth to nature.

#### All metrics are improving

Dr. Alex Berezow 19, PhD in Microbiology from the University of Washington, Vice President of Scientific Communication at the American Council on Science and Health, Non-Resident Fellow at The Council on Strategic Risks, Speaker at The Insight Bureau, Former Adjunct Faculty Member at Northwest University, “The Environment: Getting Better All The Time”, American Council on Science and Health, 7/23/2019, https://www.acsh.org/news/2019/07/23/environment-getting-better-all-time-14176

In 1967, the Beatles released Sgt. Pepper's Lonely Hearts Club Band, one of the best albums ever made. One of its hit songs was titled "Getting Better," and part of the chorus goes like this:

I've got to admit it's getting better

A little better all the time

The song was about life in general, but it could have been dedicated to the environment. Contrary to what you see reported in the news, the environment is, bit by bit, getting better.

The Environment: Getting Better All the Time

The latest evidence for this comes from France, which is becoming heavily re-forested. According to The Economist:

Since 1990, thanks to better protection as well as to a decline in farming, France’s overall wooded or forested areas have increased by nearly 7%. And France is far from being alone. Across the EU, between 1990 and 2015, the total forested and wooded area grew by 90,000 square kilometres—an area roughly the size of Portugal. Almost every country has seen its forests grow over the period.

Believe it or not, Europe is not an outlier. The United States has more trees now than it did 100 years ago. A study in Nature concluded that there is more tree cover on Earth now than 35 years ago1.

Why? Because of technology and wealth. Technology, including agricultural technology, helps decouple the economy from natural resources. In other words, we humans are becoming less reliant on Mother Nature for our well-being. We can grow more food on less land, for instance. Soon, using hydroponics, we may be able to grow food in skyscrapers.

Wealth is the other major driver. When a poor country becomes wealthier, it usually does so at the expense of the environment. (That's why China is belching out pollution and Brazil is destroying the Amazon rain forest.) The primary concern of these countries is to escape poverty. But as countries become even richer, they decide to use some of that wealth to benefit the environment. Green spaces and parks are often seen as a luxury that only the wealthy can afford.

This concept is neither new nor a myth propagated by industry. It's known as the environmental Kuznets curve. (Source: Govinddelhi via Wikipedia.) A textbook co-authored by Paul Krugman (yes, that Paul Krugman) called International Economics: Theory and Policy said that the relevance of the environmental Kuznets curve "has been confirmed by a great deal of further research."2

None of this is meant to suggest that there are no environmental problems. Poor regions really are doing some very bad things to the planet. Asia and Africa, for example, are primarily responsible for dumping plastic into the ocean3.

As is often the case, the cure is wealth. If we want these countries to treat the planet well, we should do whatever we can to help make them richer. Incidentally, they'll also have fewer kids.

Notes

(1) Naysayers, pessimists, and Debbie Downers will note that biodiversity is lower in new forests than in old-growth forests. That's probably true but have patience. Biodiversity will return. The Demilitarized Zone (DMZ) between North and South Korea has become a haven for wildlife, including endangered species.

### XT – Megacities

#### Megacities and urbanization are sustainable.

Sanderson et al 18 – Eric W. Sanderson is a landscape ecologist for the Wildlife Conservation Society at the Bronx Zoo, director of the Mannahatta Project and the author of Mannahatta: A Natural History of New York City. John G. Robinson is Senior Vice-President and Director of the International Conservation programs of Wildlife Conservation Society. Joe Walston · Senior Vice President at Wildlife Conservation Society (From Bottleneck to Breakthrough: Urbanization and the Future of Biodiversity Conservation. Bioscience. 2018 Jun 1;68(6):412-426. doi: 10.1093/biosci/biy039. Epub 2018 Apr 22. PMID: 29867252; PMCID: PMC5972570)//gcd

At the core of our argument is the seemingly contradictory statement that the mechanisms that are destroying nature are laying the foundation for its long-term recovery. Passing through the bottleneck is necessary to reach the breakthrough. The conservationist’s paradox is that the same forces that are destroying nature now are also creating the circumstances for long-term success. The conservationist’s challenge is to keep the bottleneck open wide enough so that nature can survive to a breakthrough. Achieving a stable human population will require a net increase in total consumption as all people move out of poverty and follow the common trajectory of investing more in smaller families, for which they have greater security. Reaching a world with 6 billion people and vast natural expanses necessitates investing to make cities healthy, safe, and amenable for people, not just because they concentrate people into a smaller space, but also because of the ways in which urbanization influences social mobility, wealth creation, female empowerment, and ultimately, fertility. Developing a broadly shared environmental consciousness about nature is predicated on an unimpoverished, largely urbanized world that shares the positive externalities of education, technology, and, indeed, nature conservation. The profound danger is that by the time the foundations of recovery are in place, little of wildlife and wild places will be left. If society focuses only on economic development and technological innovation as a mechanism to pass through the bottleneck as fast as possible (sensu Brand 2010), then what remains of nature could well be sacrificed. If society were to focus only on limiting economic growth to protect nature (sensu Meadows et  al. 2004), then terrible poverty and population growth could overwhelm what remains. Either extreme risks narrowing the bottleneck to such an extent that our world passes through without its tigers, elephants, rainforests, coral reefs, or a life-sustaining climate. Therefore, the only sensible path for conservation is to continue its efforts to protect biodiversity while engaging in cities to build the foundations for a lasting recovery of nature. To illustrate some of implications of this theory, we contrast conservation during the bottleneck to conservation after a breakthrough (table 3). A country or a region can be said to be caught in the bottleneck for as long as its population is growing and rates of total natural-resource extraction and pollution are increasing. Analogously, a country or region begins the breakthrough when populations stabilize and natural-resource extraction and pollution rates begin to decline in absolute terms. During bottleneck periods, conservation needs to continue to identify and protect threatened elements of biodiversity (Soulé 2013). The most effective tool in our toolkit remains well-funded, socially inclusive, competently managed protected areas, which place legal limits on destructive activities. Breakthrough conservation suggests over time adjusting the management of protected areas, conceiving of these areas less as bastions against ever-mounting threats and more as source sites (sensu Walston et  al. 2010) for restoring and rewilding continents and oceans. The expansion of large wildlife in Europe provides a trenchant example (Chapron et al. 2014). Rural-to-urban migration presents a dilemma for conservation. Because many protected areas are in less-populated, low-governance areas that are important for conservation, rural residents and indigenous groups are often the only bulwark against destructive actors (e.g., industrial logging, large-scale agriculture, and criminal activity). But for many rural people, a route out of poverty may be to move to nearby towns or distant cities and away from remote parks and reserves. Where local people are the best stewards of nature, conservationists should continue to rely on community-based approaches to deliver benefits for nature and people (Naughton-Treves et al. 2005). In other circumstances, recognizing that people living in remote regions dependent on natural resources are often among the world’s poorest, most politically marginalized, and most market isolated, conservation organizations may need to assist with voluntary relocations (Karanth 2007) that in the long run are better for people and nature and employ other forms of pragmatic conservation management (Robinson 2011). Cities must be central to any global conservation strategy, because urbanization is the only lever that that simultaneously shifts populations, alleviates poverty, and spurs innovation, which individually and in combination have the potential to alter resource extraction and pollution, as we discussed above. The tremendous demographic and economic effects of urbanization have been demonstrated in all regions of the world except sub-Saharan Africa, which may be the exception that proves the rule. Improving the governance and functioning of African urban areas while simultaneously protecting Africa’s unique wildlife is arguably the most urgent need in conservation today, because it is the fastest path to global population stabilization. Moreover, well-governed, inclusive, livable cities in Africa and elsewhere give conservationists the potent platform we need to activate new, broad-based conservation movements (e.g., Asafu-Adjaye et al. 2015)—what Nordhaus and Shellenberger (2007) have called a politics of possibilities. Conservation needs cities to work for nature. But nature also needs to work for cities. Highlighting the role of cities in biodiversity conservation may seem counterintuitive, even ironic, because the expansion of built-up areas itself is a significant ecological concern (McDonald RI et al. 2008, Güneralp and Seto 2013). Urban development disrupts hydrological and nutrient cycles, destroys and fragments habitat, concentrates pollution, and provides portals for the introduction of invasive species (Grimm et al. 2008). Recognizing these impacts, many efforts are underway to mitigate them through green infrastructure, land-use planning, restoration, and place-based education. Increasingly, these activities are informed by new developments in urban ecology, conservation biology, and resilience science (Pickett et al. 2011). Urban conservation activities make towns and cities not only less destructive to nature locally but also more attractive to immigrants and residents, who will appreciate the benefits of local nature and whose lifestyle choices can provide benefits to nature elsewhere. Because urbanization creates and relies on a global market economy, the best way to influence urban consumption and innovation is through economic decision-making (i.e., prices). Directly costing in negative environmental externalities (sensu Pigou 1920) will force markets to address them in all phases of production, from resource extraction through transport and production of finished goods to release of pollution and wastes back into the environment. Because nature does not charge for the ecosystem services it provides, pricing these externalities is a matter of public policy, which can be addressed through a wide variety of financial as well as regulatory mechanisms, such as carbon taxes, land-value assessments, and/or various forms of ecological-use fees (Sanderson 2013). Finally, our theory suggests a new way to articulate the future of conservation and attract more of society to the cause. The immediacy of the threats encapsulated by “planetary boundaries” and related lines of catastrophic thinking are not only devastating to contemplate but may also be shortsighted. The world does not end in 2050, as too many data graphs do. Nor is environmentalism dead, despite claims to the contrary. Rather, if the demographic and economic phenomena that we discuss here do come to pass, it means that conservation faces another 30–50 years of extreme difficulty, when more losses can be expected. However, if we can sustain enough nature through the bottleneck—despite climate change, growth in the population and economy, and urban expansion—then we can see the future of nature in a dramatically more positive light. Much as the eighteenth-century Enlightenment created the conditions for our world, we need a twenty-first-century Renaissance of wisdom, founded on the belief that our role as human beings is to restore, steward, and celebrate the Earth’s unique and immanent nature. Conclusions Thinking about the future of conservation is both humbling and challenging, especially as it has been formulated in the Anthropocene. The underlying demographic processes, although massive, are slow moving compared with the cycles of government, funding, and careers in conservation. To be seen clearly, these trends require a historical perspective that is difficult to adopt if one is focused on immediate threats and captivated by apocalyptic futures. But there is hope. Like in London during the Blitz, vigilance and exertion are required, but we need not panic or despair because the weight of history is on our side.

# 1NR Round 5

## Biz Con DA

### 1NR – O/V

#### Turns case – it cascades across global systems.

Maavak 21 – Mathew Maavak, PhD in Risk Foresight from the Universiti Teknologi Malaysia, External Researcher (PLATBIDAFO) at the Kazimieras Simonavicius University, Expert and Regular Commentator on Risk-Related Geostrategic Issues at the Russian International Affairs Council, “Horizon 2030: Will Emerging Risks Unravel Our Global Systems?”, Salus Journal – The Australian Journal for Law Enforcement, Security and Intelligence Professionals, Volume 9, Number 1, p. 2-8

Various scholars and institutions regard global social instability as the greatest threat facing this decade. The catalyst has been postulated to be a Second Great Depression which, in turn, will have profound implications for global security and national integrity. This paper, written from a broad systems perspective, illustrates how emerging risks are getting more complex and intertwined; blurring boundaries between the economic, environmental, geopolitical, societal and technological taxonomy used by the World Economic Forum for its annual global risk forecasts. Tight couplings in our global systems have also enabled risks accrued in one area to snowball into a full-blown crisis elsewhere. The COVID-19 pandemic and its socioeconomic fallouts exemplify this systemic chain-reaction. Onceinexorable forces of globalization are rupturing as the current global system can no longer be sustained due to poor governance and runaway wealth fractionation. The coronavirus pandemic is also enabling Big Tech to expropriate the levers of governments and mass communications worldwide. This paper concludes by highlighting how this development poses a dilemma for security professionals.

Key Words: Global Systems, Emergence, VUCA, COVID-9, Social Instability, Big Tech, Great Reset

INTRODUCTION

The new decade is witnessing rising volatility across global systems. Pick any random “system” today and chart out its trajectory: Are our education systems becoming more robust and affordable? What about food security? Are our healthcare systems improving? Are our pension systems sound? Wherever one looks, there are dark clouds gathering on a global horizon marked by volatility, uncertainty, complexity and ambiguity (VUCA).

But what exactly is a global system? Our planet itself is an autonomous and selfsustaining mega-system, marked by periodic cycles and elemental vagaries. Human activities within however are not system isolates as our banking, utility, farming, healthcare and retail sectors etc. are increasingly entwined. Risks accrued in one system may cascade into an unforeseen crisis within and/or without (Choo, Smith & McCusker, 2007). Scholars call this phenomenon “emergence”; one where the behaviour of intersecting systems is determined by complex and largely invisible interactions at the substratum (Goldstein, 1999; Holland, 1998).

The ongoing COVID-19 pandemic is a case in point. While experts remain divided over the source and morphology of the virus, the contagion has ramified into a global health crisis and supply chain nightmare. It is also tilting the geopolitical balance. China is the largest exporter of intermediate products, and had generated nearly 20% of global imports in 2015 alone (Cousin, 2020). The pharmaceutical sector is particularly vulnerable. Nearly “85% of medicines in the U.S. strategic national stockpile” sources components from China (Owens, 2020).

An initial run on respiratory masks has now been eclipsed by rowdy queues at supermarkets and the bankruptcy of small businesses. The entire global population – save for major pockets such as Sweden, Belarus, Taiwan and Japan – have been subjected to cyclical lockdowns and quarantines. Never before in history have humans faced such a systemic, borderless calamity.

COVID-19 represents a classic emergent crisis that necessitates real-time response and adaptivity in a real-time world, particularly since the global Just-in-Time (JIT) production and delivery system serves as both an enabler and vector for transboundary risks. From a systems thinking perspective, emerging risk management should therefore address a whole spectrum of activity across the economic, environmental, geopolitical, societal and technological (EEGST) taxonomy. Every emerging threat can be slotted into this taxonomy – a reason why it is used by the World Economic Forum (WEF) for its annual global risk exercises (Maavak, 2019a). As traditional forces of globalization unravel, security professionals should take cognizance of emerging threats through a systems thinking approach.

METHODOLOGY

An EEGST sectional breakdown was adopted to illustrate a sampling of extreme risks facing the world for the 2020-2030 decade. The transcendental quality of emerging risks, as outlined on Figure 1, below, was primarily informed by the following pillars of systems thinking (Rickards, 2020):

• Diminishing diversity (or increasing homogeneity) of actors in the global system (Boli & Thomas, 1997; Meyer, 2000; Young et al, 2006);

• Interconnections in the global system (Homer-Dixon et al, 2015; Lee & Preston, 2012);

• Interactions of actors, events and components in the global system (Buldyrev et al, 2010; Bashan et al, 2013; Homer-Dixon et al, 2015); and

• Adaptive qualities in particular systems (Bodin & Norberg, 2005; Scheffer et al, 2012) Since scholastic material on this topic remains somewhat inchoate, this paper buttresses many of its contentions through secondary (i.e. news/institutional) sources.

ECONOMY

According to Professor Stanislaw Drozdz (2018) of the Polish Academy of Sciences, “a global financial crash of a previously unprecedented scale is highly probable” by the mid- 2020s. This will lead to a trickle-down meltdown, impacting all areas of human activity.

The economist John Mauldin (2018) similarly warns that the “2020s might be the worst decade in US history” and may lead to a Second Great Depression. Other forecasts are equally alarming. According to the International Institute of Finance, global debt may have surpassed $255 trillion by 2020 (IIF, 2019). Yet another study revealed that global debts and liabilities amounted to a staggering $2.5 quadrillion (Ausman, 2018). The reader should note that these figures were tabulated before the COVID-19 outbreak.

The IMF singles out widening income inequality as the trigger for the next Great Depression (Georgieva, 2020). The wealthiest 1% now own more than twice as much wealth as 6.9 billion people (Coffey et al, 2020) and this chasm is widening with each passing month. COVID-19 had, in fact, boosted global billionaire wealth to an unprecedented $10.2 trillion by July 2020 (UBS-PWC, 2020). Global GDP, worth $88 trillion in 2019, may have contracted by 5.2% in 2020 (World Bank, 2020).

As the Greek historian Plutarch warned in the 1st century AD: “An imbalance between rich and poor is the oldest and most fatal ailment of all republics” (Mauldin, 2014). The stability of a society, as Aristotle argued even earlier, depends on a robust middle element or middle class. At the rate the global middle class is facing catastrophic debt and unemployment levels, widespread social disaffection may morph into outright anarchy (Maavak, 2012; DCDC, 2007).

Economic stressors, in transcendent VUCA fashion, may also induce radical geopolitical realignments. Bullions now carry more weight than NATO’s security guarantees in Eastern Europe. After Poland repatriated 100 tons of gold from the Bank of England in 2019, Slovakia, Serbia and Hungary quickly followed suit.

According to former Slovak Premier Robert Fico, this erosion in regional trust was based on historical precedents – in particular the 1938 Munich Agreement which ceded Czechoslovakia’s Sudetenland to Nazi Germany. As Fico reiterated (Dudik & Tomek, 2019):

“You can hardly trust even the closest allies after the Munich Agreement… I guarantee that if something happens, we won’t see a single gram of this (offshore-held) gold. Let’s do it (repatriation) as quickly as possible.” (Parenthesis added by author).

President Aleksandar Vucic of Serbia (a non-NATO nation) justified his central bank’s gold-repatriation program by hinting at economic headwinds ahead: “We see in which direction the crisis in the world is moving” (Dudik & Tomek, 2019). Indeed, with two global Titanics – the United States and China – set on a collision course with a quadrillions-denominated iceberg in the middle, and a viral outbreak on its tip, the seismic ripples will be felt far, wide and for a considerable period.

A reality check is nonetheless needed here: Can additional bullions realistically circumvallate the economies of 80 million plus peoples in these Eastern European nations, worth a collective $1.8 trillion by purchasing power parity? Gold however is a potent psychological symbol as it represents national sovereignty and economic reassurance in a potentially hyperinflationary world. The portents are clear: The current global economic system will be weakened by rising nationalism and autarkic demands. Much uncertainty remains ahead. Mauldin (2018) proposes the introduction of Old Testament-style debt jubilees to facilitate gradual national recoveries. The World Economic Forum, on the other hand, has long proposed a “Great Reset” by 2030; a socialist utopia where “you’ll own nothing and you’ll be happy” (WEF, 2016).

In the final analysis, COVID-19 is not the root cause of the current global economic turmoil; it is merely an accelerant to a burning house of cards that was left smouldering since the 2008 Great Recession (Maavak, 2020a). We also see how the four main pillars of systems thinking (diversity, interconnectivity, interactivity and “adaptivity”) form the mise en scene in a VUCA decade.

ENVIRONMENTAL

What happens to the environment when our economies implode? Think of a debt-laden workforce at sensitive nuclear and chemical plants, along with a concomitant surge in industrial accidents? Economic stressors, workforce demoralization and rampant profiteering – rather than manmade climate change – arguably pose the biggest threats to the environment. In a WEF report, Buehler et al (2017) made the following pre-COVID-19 observation:

The ILO estimates that the annual cost to the global economy from accidents and work-related diseases alone is a staggering $3 trillion. Moreover, a recent report suggests the world’s 3.2 billion workers are increasingly unwell, with the vast majority facing significant economic insecurity: 77% work in part-time, temporary, “vulnerable” or unpaid jobs.

Shouldn’t this phenomenon be better categorized as a societal or economic risk rather than an environmental one? In line with the systems thinking approach, however, global risks can no longer be boxed into a taxonomical silo. Frazzled workforces may precipitate another Bhopal (1984), Chernobyl (1986), Deepwater Horizon (2010) or Flint water crisis (2014). These disasters were notably not the result of manmade climate change. Neither was the Fukushima nuclear disaster (2011) nor the Indian Ocean tsunami (2004). Indeed, the combustion of a long-overlooked cargo of 2,750 tonnes of ammonium nitrate had nearly levelled the city of Beirut, Lebanon, on Aug 4 2020. The explosion left 204 dead; 7,500 injured; US$15 billion in property damages; and an estimated 300,000 people homeless (Urbina, 2020). The environmental costs have yet to be adequately tabulated.

Environmental disasters are more attributable to Black Swan events, systems breakdowns and corporate greed rather than to mundane human activity.

Our JIT world aggravates the cascading potential of risks (Korowicz, 2012). Production and delivery delays, caused by the COVID-19 outbreak, will eventually require industrial overcompensation. This will further stress senior executives, workers, machines and a variety of computerized systems. The trickle-down effects will likely include substandard products, contaminated food and a general lowering in health and safety standards (Maavak, 2019a). Unpaid or demoralized sanitation workers may also resort to indiscriminate waste dumping. Many cities across the United States (and elsewhere in the world) are no longer recycling wastes due to prohibitive costs in the global corona-economy (Liacko, 2021).

Even in good times, strict protocols on waste disposals were routinely ignored. While Sweden championed the global climate change narrative, its clothing flagship H&M was busy covering up toxic effluences disgorged by vendors along the Citarum River in Java, Indonesia. As a result, countless children among 14 million Indonesians straddling the “world’s most polluted river” began to suffer from dermatitis, intestinal problems, developmental disorders, renal failure, chronic bronchitis and cancer (DW, 2020). It is also in cauldrons like the Citarum River where pathogens may mutate with emergent ramifications.

On an equally alarming note, depressed economic conditions have traditionally provided a waste disposal boon for organized crime elements. Throughout 1980s, the Calabriabased ‘Ndrangheta mafia – in collusion with governments in Europe and North America – began to dump radioactive wastes along the coast of Somalia. Reeling from pollution and revenue loss, Somali fisherman eventually resorted to mass piracy (Knaup, 2008).

The coast of Somalia is now a maritime hotspot, and exemplifies an entwined form of economic-environmental-geopolitical-societal emergence. In a VUCA world, indiscriminate waste dumping can unexpectedly morph into a Black Hawk Down incident. The laws of unintended consequences are governed by actors, interconnections, interactions and adaptations in a system under study – as outlined in the methodology section.

Environmentally-devastating industrial sabotages – whether by disgruntled workers, industrial competitors, ideological maniacs or terrorist groups – cannot be discounted in a VUCA world. Immiserated societies, in stark defiance of climate change diktats, may resort to dirty coal plants and wood stoves for survival. Interlinked ecosystems, particularly water resources, may be hijacked by nationalist sentiments. The environmental fallouts of critical infrastructure (CI) breakdowns loom like a Sword of Damocles over this decade.

GEOPOLITICAL

The primary catalyst behind WWII was the Great Depression. Since history often repeats itself, expect familiar bogeymen to reappear in societies roiling with impoverishment and ideological clefts. Anti-Semitism – a societal risk on its own – may reach alarming proportions in the West (Reuters, 2019), possibly forcing Israel to undertake reprisal operations inside allied nations. If that happens, how will affected nations react? Will security resources be reallocated to protect certain minorities (or the Top 1%) while larger segments of society are exposed to restive forces? Balloon effects like these present a classic VUCA problematic.

Contemporary geopolitical risks include a possible Iran-Israel war; US-China military confrontation over Taiwan or the South China Sea; North Korean proliferation of nuclear and missile technologies; an India-Pakistan nuclear war; an Iranian closure of the Straits of Hormuz; fundamentalist-driven implosion in the Islamic world; or a nuclear confrontation between NATO and Russia. Fears that the Jan 3 2020 assassination of Iranian Maj. Gen. Qasem Soleimani might lead to WWIII were grossly overblown. From a systems perspective, the killing of Soleimani did not fundamentally change the actor-interconnection-interaction adaptivity equation in the Middle East. Soleimani was simply a cog who got replaced.

### 1NR – AT: Thumpers

#### Congress and the courts prevent Biden’s XO from accomplishing anything

McGinnis 21 – John O. McGinnis, George C. Dix Professor in Constitutional Law at Northwestern University, “Abandoning the Consumer Welfare Standard,” 8/26/21, https://lawliberty.org/abandoning-the-consumer-welfare-standard/

The Executive Order, however ill-conceived the specifics are, will do the most damage if it changes antitrust law fundamentally. And here the Biden administration happily faces problems. We have had forty years of bipartisan competition policy focused generally on consumer welfare. The President does not have a political eraser to wipe that away.

One possibility is for the Biden administration to persuade Congress to enact major changes in antitrust law. The House Judiciary Committee has passed a few bills that would make is harder for tech companies to merge with other companies. But these measures are not yet going anywhere on the House floor, and it will be difficult, if not impossible, to get any substantial changes in antitrust law through the evenly divided Senate.

Thus, the administration has pinned its strategy on transformation through administrative fiat. To that end, it appointed Lina Khan, a 32-year-old associate law professor to become Chairman of the FTC. Khan may be the single most radical appointment in the Biden administration. She opposed Amazon’s acquisition of Whole Foods, although Amazon and Whole Foods together constitute a very small part of the grocery market, and no other company in the history of the United States has been more innovative than Amazon.

Khan has begun by voting along with her Democratic colleagues on the commission to revoke a policy of the FTC supported by both Democratic and Republican administrations that essentially defined “unfair method of competition” by reference to methods that undermined consumer welfare. The idea no doubt is to write a regulation that would provide a more open-ended approach, perhaps taking into account other values like democracy and decentralization, even if these are at the expense of consumer welfare.

But it is not at all clear Khan can succeed. On such a central question as the definition of competition, courts may not give her agency much deference now that the Roberts Court appears to have stopped applying Chevron—the quintessential modern case for agency deference—to major questions raised by a statute. The meaning of competition is obviously the major question for competition law, and courts are likely to determine that for themselves, influenced by decades of their own consumer welfare jurisprudence.

Beyond that technical obstacle, Khan may be a poor choice for overhauling antitrust law because of her lack of practical experience in litigation or administration. She has already alienated her agency staff by refusing to let them speak at professional panels, as they have for years. That is a rookie mistake. Moreover, she has been so strident in her attacks as an activist against companies like Google and Amazon that the courts are likely to look at her enforcement actions with suspicion, even if the companies do not get her recused for her past opinions.

Even if the Biden administration is unlikely to succeed in the near term in transforming antitrust, it has put on the table a new vision, however amorphous, that may well influence the approach of Democratic administrations and legislators for years to come. We are moving from an era of bipartisan consensus around a constrained and economically focused antitrust law to an era of fundamental partisan disagreement. In that sense, antitrust law will become—like many other areas of our law—a reflection of polarization and a source of instability. But here the folly and instability will make us poorer.

#### Court opposition and low resources prevent expanded antitrust enforcement now – the plan is the new bolt from the blue

Rivero 21 – Nicholas Rivero, tech reporter for Quartz, “Biden’s antitrust crusaders can’t crusade without Congress,” 3/11/21, https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/

US president Joe Biden is poised to promote two of the country’s most prominent anti-monopoly crusaders to top jobs in his administration. The moves signal that Biden is serious about cracking down on dominant companies that include Facebook, Google, Amazon, and Apple. But for the president’s trustbusting champions to make a real impact, they’ll need support from Congress.

Biden appointed Columbia law professor Tim Wu to the National Economic Council (NEC) as his top advisor on technology and competition on March 5. Politico reports that Biden will soon follow up by nominating Lina Khan, also a Columbia law professor, to the Federal Trade Commission (FTC). (Before she can take her seat as one of the antitrust agency’s five commissioners, Khan must be confirmed by the Senate.)

Khan and Wu are two of the leading voices in a new movement of legal thought that argues the US should fundamentally overhaul the way it approaches antitrust. The crux of their argument is that courts should broaden the values they consider when deciding whether to block a merger or break up a dominant company. Rather than focus narrowly on the impact a company has on consumer prices, they argue that judges should also think about a company’s impact on small businesses, labor rights, and the health of democracy.

Khan and Wu have already secured a win for their cause just by being appointed—essentially a White House stamp of approval on their viewpoints. But despite much handwringing from industry groups, neither appointee will be able to single-handedly remake American antitrust in their image.

How the FTC can tackle antitrust

To be sure, Wu can advocate loudly for his preferred policies from his perch at the NEC, which advises the president on economic policy. And if Khan makes it to the FTC, which is the top US antitrust enforcement agency, she’ll have direct influence over which investigations the agency prioritizes, which lawsuits it brings, and whether its prosecutors will ask judges to impose fines, break up dominant firms, or require them to change their business practices.

But there are clear limits to their power. The most the FTC can do is bring more antitrust cases that ask courts for more aggressive remedies, like breakups. That would allow the agency to make a point about what it considers acceptable business behavior. But many of those lawsuits would be bound to lose in front of judges who have grown far more skeptical of antitrust cases over the past four decades and far more conservative over the past four years.

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

The FTC could also decide to dust off its rarely used rule-making power and declare certain anticompetitive business practices illegal. But any new rule would almost certainly trigger legal challenges, which would spark a long, expensive court battle in front of judges who aren’t likely to be sympathetic. Kovacic estimates the process could take four or five years—and in the end, judges might just strike the rule down.

How Congress can tackle antitrust

The best hope for stricter antitrust enforcement lies in Congress. Lawmakers could pass bills, like one recently proposed by Minnesota senator Amy Klobuchar, that would make it easier for enforcement agencies to challenge mergers and acquisitions. They could even go a step further and draft an updated set of antitrust laws, perhaps following the blueprint laid out in last year’s antitrust report from the House of Representatives (which was co-authored by Khan). Armed with new laws clearly banning specific behaviors, prosecutors at the Department of Justice and the FTC would stand a better chance winning cases against well-funded adversaries like Facebook and Google.

Those steps wouldn’t hinge on heroics from antitrust hardliners like Khan and Wu. Instead, their success would depend on the whims of Senate centrists like West Virginia’s Joe Manchin, who has lately been flexing his power to derail the chamber’s democratic majority in opposition to left-wing priorities like a $15 minimum wage.

#### That provides uniqueness for our business perception arguments – losses in court increase business confidence and make the FTC look weak

McLaughlin 21 – David McLaughlin, economics and antitrust reporter for Bloomberg, “Antitrust Crusader Lina Khan Faces a Big Obstacle: The Courts,” 6/23/21, https://www.bloomberg.com/news/articles/2021-06-23/tech-antitrust-lina-khan-faces-courts-as-challenge-to-ftc-s-progressive-agenda?sref=iKB6XOvf

Instead, hours after the Senate confirmed her, Biden put the 32-year-old Khan—one of the most prominent antagonists of big business—in charge of the agency, where she’ll be responsible for challenging mergers and taking on companies when they use their market muscle to snuff out competition.

Now comes the hard part: putting her agenda into action. The biggest hurdle, say antitrust experts, is a judiciary that has made it very difficult for competition watchdogs to win ambitious cases. And to make any change of consequence, whether breaking up a monopoly or stopping a takeover, enforcers must prevail in court.

“None of that is easy, and it’s particularly not easy when courts are very conservative, as they are today,” says Stephen Calkins, a law professor at Wayne State University and a former general counsel at the FTC. “She’s certainly talked about breaking up companies but, my golly, that’s incredibly hard to do.”

Khan made her mark in 2017, with a law review article she wrote while still a student at Yale Law School. Titled “Amazon’s Antitrust Paradox,” it traced how the online retailer came to control key infrastructure of the digital economy and how traditional antitrust analysis fails to consider the danger to competition the company poses. The paper was widely talked about in antitrust circles and was read by senior enforcement officials.

U.S. tech titans are at the center of the antitrust debate in Washington. They are ever more powerful, with Apple Inc., Amazon.com Inc., Alphabet Inc., and Facebook Inc. among the top 10 largest companies in the world, by market value. A House of Representatives investigation last year accused the companies of abusing their dominance to thwart competition, and lawmakers are considering a raft of bills to impose new rules on how the companies operate. Federal antitrust enforcers and state attorneys general have sued Google and Facebook for what authorities say are monopoly abuses.

Khan, who was counsel to the House antitrust committee during its probe, was one of the main authors of the House report. It recommended a series of reforms to antitrust laws that she and anti-monopoly activists have long championed, like restricting which markets the companies can operate in and requiring them to treat other businesses on their platforms fairly and without favoritism.

Khan’s work helped revolutionize competition-policy debates and shift support for a more forceful approach that abandoned the playbook inspired decades ago by Robert Bork, the conservative legal scholar and judge. That framework came to be known as the consumer welfare standard and relies on price effects as the measure of competitive harm. Khan argued in her paper for a new approach, focused on the competitive process and the structure of markets, that she said would more fully capture harms that the consumer welfare standard misses.

Once considered on the fringes of antitrust thinking, Khan and her acolytes—often dubbed the New Brandeis School, after Supreme Court Justice Louis Brandeis—are now firmly mainstream with Khan’s appointment as FTC chairwoman.

The FTC has suffered some stinging defeats recently. Last year, the agency lost a major monopoly case filed against chipmaker Qualcomm. In April, a unanimous Supreme Court eliminated a tool used by the FTC to recover money for defrauded consumers. Later this month, a federal judge in Washington is expected to rule on whether the agency’s monopoly lawsuit against Facebook can proceed.

Still, there’s widespread agreement that the status quo is no longer tenable. Over the last two decades, concentration has risen in industries across the economy. Some economists say dominant companies can use their market power to suppress wages, for example, exacerbating inequality. The worries are bipartisan. Republicans and Democrats alike are pushing for antitrust reforms to rein in the biggest tech platforms, and Khan was confirmed by the Senate with significant Republican support.

Big losses in the courts would eventually hurt Khan’s authority and demoralize her staff, says William Kovacic, a former FTC chairman who now teaches at George Washington University Law School. “You become like a sports team that is known to its opponents as unable to win,” he says. But defeats also could provide the foundation for the kind of sweeping antitrust legislation that Khan and her supporters want.

“If you want to change the world, at some point it goes to the courts or it goes to the legislature,” Kovacic says. “But you can’t do it by yourself.”

#### Limited FTC resources prevent large antitrust actions now

Chakravorti 21 – Bhaskar Chakravorti, dean of global business at Tufts University’s Fletcher School of Law and Diplomacy, “Lina Khan Has Her Own Antitrust Paradox,” 9/7/21, https://foreignpolicy.com/2021/07/07/ftc-lina-khan-regulate-tech-congress/

Since Khan has written forcefully about revisiting antitrust standards, it is natural to expect this case would be her chance to rewrite not only the charge against Facebook but to change those standards more broadly. There is little doubt this is where her mind is. The FTC under her leadership voted to revoke a 2015 policy statement that limited the agency’s reach, giving it room to frame cases beyond the two foundational boundaries of antitrust in the United States: the Sherman Antitrust Act and the Clayton Antitrust Act.

But the FTC’s levers are limited.

Although Khan can reframe the fundamentals of the antitrust complaint, without adequate regulatory infrastructure—something only Congress can provide—there are likely to be unsurmountable obstacles as the chess game between the law and Facebook unfolds. No matter how brilliantly Khan’s FTC rewrites the case against Facebook, the agency’s powers, budget, and resources are still limited. Ad hoc adjustments to the FTC’s budget, as envisioned in one of the bills in Congress, and stopgap measures to expand its powers do not get around the fundamental fact that the FTC was not set up to pursue the breadth of novel issues and policy trade-offs that digital industries create.

Antitrust in digital industries cannot be considered in isolation. It is also quite different from antitrust in other industries because there are issues unique to the industry. A holistic view of digital antitrust means tying antitrust concerns with numerous broader questions, such as securing users’ data rights, the responsibilities platforms ought to have for the content they host, and criteria that helps demarcate the benefits of network effects from the abuses of network power. The FTC is too much of a general purpose entity to dive into these complexities. As former Federal Communications Commission chair Tom Wheeler observed: “The vast scope of the FTC’s present responsibilities—as diverse as funeral director practices, robocalls, and labeling hockey pucks—means that the oversight of digital platform regulation must compete with the agency’s existing diverse responsibilities and limited resources.”

#### No major antitrust actions coming now – it’s all tinkering around the edges

Wright 21 – Joshua D. Wright, Executive Director of the Global Antitrust Institute at the Antonin Scalia Law School, former commissioner of the U.S. Federal Trade Commission from 2013 to 2015, interviewed by James Pethokoukis, senior fellow at AEI, “Will US antitrust law break up Big Tech? My long-read Q&A with Joshua D. Wright,” 2/9/21, <https://www.aei.org/economics/will-us-antitrust-law-break-up-big-tech-my-long-read-qa-with-joshua-d-wright/>

[Italics denote questions from Pethokoukis]

*Do you think that, if we have this conversation in four years, we will have seen any major action against any of the largest technology companies that involves them selling off a significant business?*

That’s a great question. I bet the under, and here’s why. The US antitrust doctrine is what it is right now, and we still have meaningful judicial review. And on the left and the right, you see all of the attention paid to legislative change — they’re not going to win in the court. The DOJ will bring its case against Google, the FTC has a Facebook case where they might be able to convince a court to spin off WhatsApp or Instagram. I’m skeptical that those are good cases, but neither of them are the big-breakup, affect-the-business-model case that proponents of a new antitrust are looking for. For what it’s worth, my money is that the government loses both of those cases, but those cases exist. But overall, I think that the hope for the antitrust reformers lies, not in the courts, but in Congress.

Maybe I’ve been in DC too long, but I always bet the under if someone tells me that the revolution is coming from Congress. I don’t think we’re going to see legislation that undoes the consumer welfare standard. I do think that you’ll see some antitrust legislation. You’ll get bigger budgets for the agencies, and maybe you’ll get tinkering around the margins with the presumption here or presumption there. But I don’t think that you’re going to see a regulatory antitrust revolution via Congress.

I think it’s going to have to be done through the courts, and I’m skeptical. My silver lining of hope when watching some of these discussions happen is that you’ve got to win in the Article III courts, and that means you’ve got to have proof, not just political grievances. I don’t think they’ve got that.

#### Any new antitrust will be tiny tweaks rather than the aff’s substantial change

Hirsh 21 – Michael Hirsh, senior correspondent at Foreign Policy, “Big Talk on Big Tech—but Little Action,” 4/6/21, https://foreignpolicy.com/2021/04/06/big-tech-regulation-facebook-google-amazon-us-eu/

Problem is, that’s just about where the consensus ends. And even if you add more lawyers, antitrust cases move glacially, and federal judges are extremely cautious about punishing behavior deemed anti-competitive, especially in an era when antitrust experts disagree vehemently about remedies. Plus, now every case faces the prospect of being squelched by a very conservative Supreme Court.

Despite the documented actions of Facebook and other companies in crushing would-be competitors, there is also good reason for judicial caution. Consider the irony that Microsoft—itself the target of a major antitrust action a quarter century ago—now considers itself the aggrieved party in the recent Department of Justice case against Google, since it is trying to raise the profile of its Bing search engine, which has a meager 2.5 percent of the market. Or that Facebook’s own dominance may someday fall victim—without any help from government at all—to new blockchain technology that could allow users to run their own web services and applications. (Ironically, among the key innovators pushing for that are Zuckerberg’s old antagonists from Harvard University, Tyler and Cameron Winklevoss, who famously claimed that he stole the social network idea from them.) Even today, many antitrust experts say it’s probably a judicial and legislative bridge too far for the government to try to proactively promote competition in the tech world; let the markets take care of that instead.

But so changed is the political environment that U.S. President Joe Biden and some of his top regulators, such as Lina Khan, a Yale Law School wunderkind who was recently nominated to the FTC, might seek to break up the big tech firms. Biden, on the campaign trail, said that breaking up tech quasi-monopolies such as Facebook is “something we should take a really hard look at.”

That is almost certainly not going to happen: The political will simply isn’t there, even among many Democratic legislators influenced by Khan and other progressive thinkers.

“I don’t think Biden has the stomach for that,” said Herbert Hovenkamp, an antitrust expert at the University of Pennsylvania. The reason is simple: Today’s monopolistic abuses are quite unlike the monopoly power of old, when big cartels like John D. Rockefeller’s Standard Oil inflicted predatory high prices on consumers and political will was high to “bust trusts.” On the contrary: Most consumers love the fact that they can buy all kinds of inexpensive stuff on Amazon and have it delivered the next day, and that Facebook doesn’t charge them a cent, even as it makes a mint selling their private information to advertisers and market manipulators.

“The Democrats need to be cautious here,” Hovenkamp said. “Consumers are their constituency. And these companies are among the biggest producers of growth in the U.S. Biden certainly doesn’t want to ruin that.” Instead, the administration may well decide to focus more on smaller fish in other industries, as the FTC did last week by challenging Illumina’s $7 billion purchase of cancer test developer Grail. In a sign of how aggressive the FTC might be under Biden, it was the first time in decades that the commission sought to block a so-called vertical merger, alleging that ownership of Grail would incentivize Illumina, a gene-sequencing company, to raise costs on Grail’s competitors.

Indeed, though the United States and the European Union agree that new solutions are needed to curtail the dominance of Big Tech, the approaches remain very different. For years, the EU has led the way in filing antitrust cases, but late last year it did an about-face—deciding on a regulatory rather than lawsuit-based approach. After Brussels released a draft of its Digital Markets Act, EU competition minister Margrethe Vestager tweeted that the new rules would establish “do’s & don’t to gatekeepers” of our digital world. If passed, the act could levy stiffer penalties than ever before, including a demand for a percentage of earnings.

On the other side of the Atlantic, the FTC is also mulling ways to amp up its regulatory power. Khan and other progressives advocate rules that prevent a tech platform from favoring its own products in search results or pressing its own technologies on users, as Google allegedly does with Android, a mobile operating system. Violation of such rules could subject companies to substantial fines. According to a report last fall by Democratic members of the House Subcommittee on Antitrust—and partially written by Khan—Google has used “a series of anti-competitive contracts” that pushed Google search for users of Android phones.

Yet in many areas huge disagreement remains about how to contain Big Tech. Republicans and Democrats both want to do so, for different reasons; the former believe that Silicon Valley is biased against the right politically, while the latter tend to worry about anti-competitive behavior. Klobuchar has sponsored a monster bill, the Competition and Antitrust Law Enforcement Reform Act, which is intended not only to give federal enforcers more resources but also to strengthen prohibitions on anti-competitive conduct and mergers, among other reforms. As yet, however, she has no Republican co-sponsors, and Democrats in the House are leery of going the same route with a sprawling omnibus bill, according to a legislative aide with knowledge of the process. “If you have a big bill it creates a honey pot” for opponents, he said, noting that Big Tech’s pockets are much deeper than those of their antitrust counterparts. House leaders will instead try to introduce a slew of specifically targeted separate bills.

### 1NR – AT: Growth Low

#### Delta has reduced the pace of the recovery, but the economy is still growing substantially

Egan 9/27 – Matt Egan, reporter for CNN Business, “Economists slash their forecasts for America's growth,” 9/27/21, https://www.cnn.com/2021/09/27/economy/gdp-forecast-nabe/index.html

Business economists are marking down their forecasts for US growth this year as the Delta variant takes a toll on the recovery, according to a survey released Monday.

The National Association for Business Economists said the panel of 47 economists it surveyed now expects US GDP growth of 5.6%. Although that's still strong, it marks a downgrade from May when business economists anticipated 6.7% growth. Economists also sharply cut their call for third-quarter growth to an annualized pace of 4%, down from 6.6% in May.

The downgrades reflect the damage from the Delta variant, which has slowed air travel, hotel reservations and office reopenings.

At the same time, economists are bracing for price spikes to continue at the end of this year. Consumer prices are expected to surge by 5.1% during the fourth quarter on a year-over-year basis, according to NABE. That's up sharply from a forecast for 2.8% inflation as of May and underscores the sticker shock Americans are experiencing in everything from used cars and gasoline to meat.

The good news is that business economists share the Federal Reserve's view that high inflation will prove to be temporary as the economy continues to adjust to Covid. Consumer prices inflation is expected to moderate to 2.4% by the fourth quarter of next year, NABE said.

#### Rising vaccinations stop Delta from killing the economy

Reilly 9/23 – Devon Reilly, assistant editor at S&P Global, “Economic Outlook U.S. Q4 2021: The Rocket Is Leveling Off,” 9/23/21, https://www.spglobal.com/ratings/en/research/articles/210923-economic-outlook-u-s-q4-2021-the-rocket-is-leveling-off-12120697

In this light, we revised our forecasts of real GDP growth for 2021 and 2022 to 5.7% and 4.1%, respectively, from 6.7% and 3.7% in our June report, with our new 2021 GDP forecast down a whopping 1 percentage point from June. Still, the near-term health of the U.S. economy remains strong and our current GDP forecast, if correct, is still the highest reading since 1984. The number of new cases fell in the first week of September, for the first time since late June. The delta variant and FDA approval of the Pfizer vaccine are encouraging more people to get vaccinated, bringing the country closer to herd immunity with 55% of Americans fully vaccinated as of Sept. 20. Moreover, the U.S. economy has felt less impact with each wave of the virus and has been able to withstand the damage. We maintain our assessment of U.S. recession risk over the next 12 months at 10%-15%--our lowest assessment in six years.

#### No supply chain shocks.

Barnes 9/29 – Mitchell Barnes, research analyst for the Hamilton Project, part of the Brookings Institution, “11 facts on the economic recovery from the COVID-19 pandemic,” 9/29/21, https://www.brookings.edu/research/11-facts-on-the-economic-recovery-from-the-covid-19-pandemic/

Overall, the pandemic continues to weigh on aggregate demand for goods and services. In addition, bottlenecks and supply shortages have created challenges for businesses to meet consumer demand for some products, particularly as consumer demand has shifted wildly. Also, the pace of hiring has not kept up with the pace of labor demand, as job matching has been held back by a number of factors described below.

Those developments have led to a notable increase in inflation. Because prices fell in 2020, one-year changes from August 2020 to August 2021 overstate the increase in inflation since the pandemic began. Instead, focusing on the annualized rate of inflation since February 2020 shows that inflation through August 2021 (as measured by the core consumer price index) was 3.1 percent, substantially lower than the one-year trend but still higher than any annual increase since the early 1990s.

There are two primary reasons why the rise in inflation is unlikely to persist. First, the significant shifts in demand and bottlenecks are a function of the recent, temporary pace of economic activity. For example, demand for automobiles recovered quickly during the pandemic to high levels even as production was curtailed, in part due to disruptions in the supply chain for critical semiconductors. The result has been a sharp increase in prices for new and used vehicles. Second, as production is increased (with normalization of global supply chains) and growth in demand abates, inflation should slow overall.

#### Growth is strong – most recent CBO projections

Barnes 9/29 – Mitchell Barnes, research analyst for the Hamilton Project, part of the Brookings Institution, “11 facts on the economic recovery from the COVID-19 pandemic,” 9/29/21, https://www.brookings.edu/research/11-facts-on-the-economic-recovery-from-the-covid-19-pandemic/

With the ongoing effects of fiscal support, pent-up demand from consumers for face-to-face services, and the strength in labor markets and asset prices, economic growth is poised to be strong for the remainder of 2021. Indeed, the Congressional Budget Office (CBO) projects that real GDP will grow 7.4 percent from the fourth quarter of 2020 to the fourth quarter of 2021 (CBO 2021c). Moreover, CBO predicts that, by the middle of 2022, real GDP will exceed its sustainable level by 2.5 percent. The sustainable level of GDP, also known as potential output, is not a ceiling. Instead, it is the estimated level of output, given current laws and underlying structural factors, that the economy can achieve without putting upward pressure on inflation. As the factors boosting growth in the short term begin to wane, real GDP growth is expected to slow significantly.

CBO’s projection is subject to a great deal of uncertainty. In particular, the resurgence in the pandemic stemming from the Delta variant, vaccine hesitancy, and the slowness in vaccinating children ages 12 and younger appear to have dampened the growth of consumer demand and employment. Recent data suggest that the latest COVID-19 wave might be waning. However, if the Delta variant—or others that take its place—continue to affect consumer behavior and supply chains, the economic recovery will be notably slower.

#### Economic growth is stable but new shocks could derail the recovery

Irwin 9/27 – Neil Irwin, economics correspondent for the New York Times, “The Economy Looks Solid. But These Are the Big Risks Ahead.” 9/27/21, https://www.nytimes.com/2021/09/27/upshot/economy-risk-analysis.html

The Organization for Economic Cooperation and Development last week projected that the world economy would grow 4.5 percent in 2022, downshifting from an expected 5.7 percent expansion in 2021. Its forecast for the United States shows an even steeper slowdown, from 6 percent growth this year to 3.9 percent next.

Of course, a year of 3.9 percent G.D.P. growth would be nothing to scoff at — that would be much faster growth than the United States has experienced for most of the 21st century. But it would represent a resetting of the economy.

“We’ve had liftoff, and now we’re at cruising altitude,” said Beth Ann Bovino, chief U.S. economist at S&P Global.

After the global financial crisis of 2008-9, the great challenge for the recovery was a shortfall of demand. Workers and productive capacity were abundant, but there was inadequate spending in the economy to put that capacity to work. The post-reopening stage of this recovery is the opposite image.

Now there is plenty of demand — thanks to pent-up savings, trillions of dollars in federal stimulus dollars, and rapidly rising wages — but companies report struggles to find enough workers and raw materials to meet that demand.

Dozens of container ships are backed up at Southern California ports, waiting their turn to unload products meant to fill American store shelves through the holiday season. Automakers have had to idle plants for want of semiconductors. Builders have had a hard time obtaining windows, appliances and other key products needed to complete new homes. And restaurants have cut back hours for lack of kitchen help.

These strains are, in effect, acting as a brake that slows the expansion. The question is how much, and for how long, that brake will be applied.

“The kinds of growth rates we are seeing were a bounce-back from a really severe recession, so it’s no surprise that won’t continue,” said Jennifer McKeown, head of the global economics service at Capital Economics. “The risk is that this becomes less about a natural cooling and more about the supply shortages that we’re seeing really starting to bite. That may mean that economic activity doesn’t continue to grow as we’re expecting it to, as instead there is a stalling of activity and price pressures starting to rise.”

The problem is that the supply shortages have many causes, and it is not obvious when they will all diminish. Spending worldwide, and especially in the United States, shifted toward physical goods over services during the pandemic, more quickly than productive capacity could adjust. The Delta variant and continued spread of Covid has caused restrictions on production in some countries. And the lagged effects of production shutdowns in 2020 are still being felt.

Then there are the risks that lurk in the background — the kinds of things that aren’t widely forecast to be a source of economic distress, but could unspool in unpredictable ways.

#### The economy is stable and growing, but Delta makes it fragile

Bachman 9/16 – Daniel Bachman, senior manager with Deloitte Services LP, in charge of US economic forecasting for Deloitte’s Eminence and Strategy functions, “United States Economic Forecast: 3rd Quarter 2021,” 9/16/21, https://www2.deloitte.com/us/en/insights/economy/us-economic-forecast/united-states-outlook-analysis.html

The SARS-COV-2 virus surprised us once again. The economic impact, however, is likely to be much less dramatic than the initial phase of the pandemic.

Vaccines work against the Delta variant, but with an asterisk. Breakthrough infections (affecting vaccinated people) are possible. And the half of the US population that was unvaccinated in the middle of the summer has proven to be extremely vulnerable to the more highly transmissible Delta variant. Masks are back, and with them is, once again, some reluctance to participate in activities that might be thought “risky.”

By early August, indicators in pandemic-sensitive sectors such as restaurant reservations and air travel were trending down. Spending on consumer services is decelerating, and spending on goods is unlikely to replace it. But the economy isn’t shutting down like it did in March 2020. Sporting events are still taking place, religious services are happening, and while the number of air travelers may be falling, people haven’t stopped flying. In short, the Delta variant is not going to derail the economic recovery. But Delta definitely clouds the near-term outlook and serves as a reminder that our low-growth scenarios are a real possibility.

Meanwhile, economic fundamentals remain strong. Household and business balance sheets are still in good shape, and consumers are sitting on piles of savings. GDP is now above the prepandemic level, even though employment is 4.4% below the fourth-quarter average. That’s not good for the people still not working—but the strong growth in productivity (output per worker) is a positive sign. And continued government action in the form of the bipartisan infrastructure agreement should support the economy in the short term and foster even greater productivity growth in the long run.

Deloitte’s five-year baseline remains, therefore, quite positive (although slightly less so in the very near term). We expect GDP to remain above the prepandemic baseline level for the entire forecast horizon. That’s a surprising prospect and doesn’t alter the damage that the pandemic has done. The US economy’s ability to bounce back from such a sudden, damaging shock, is amazing. But don’t forget that alternative scenarios are a key part of our forecast. We continue to place a relatively high probability on our “Side effects in post-op” scenario, and the Delta variant could—if things get worse—easily lead there.

#### Business investment rising – generates longer-term growth

Ro 21 – Sam Ro, Markets Correspondent for Axios, “The "remarkable" business investment recovery,” 7/28/21, <https://www.axios.com/business-investment-recovery-0f7e7080-269e-4838-976a-fc91debb8d4f.html>

[Capex = capital expenditure]

Businesses are investing in themselves.

Why it matters: Core capital goods orders, or those for durable goods that aren’t aircraft or defense-related, are a proxy for business investment.

These equipment orders will get fulfilled in the months ahead, so they reflect businesses’ expectations for the future.

Continued growth in this measure suggests the economic growth we’re experiencing today may not be the peak.

By the numbers: Core capital goods orders increased by 0.5% in June to $76.1 billion, up from an upwardly revised $75.7 billion in May. Year-over-year, this measure is up 16.7%.

What they’re saying: Pantheon Macroeconomics’ Ian Shepherdson says the elevated levels of these orders is “remarkable.”

“A combination of rebounding earnings and support from the federal government, coupled recently with clear evidence of acute labor shortages, is pushing companies into raising capex in order to expand capacity and remain competitive,” he writes.

“If you aren't spending but your competitors are, you'll lose market share," Shepherdson adds.

The big picture: “These data points provide insight into businesses’ plans for investment in the third quarter,” Grant Thornton chief economist Diane Swonk writes.

“Continued strength in computers and electronics offset a small drop in orders in the vehicle sector, which has suffered some of the biggest supply-chain problems due to a shortage of computer chips,” Swonk says.

What to watch: These mounting orders for new capital equipment should translate to higher growth expectations from businesses.

Meanwhile, the monthly durable goods reports bear watching to see if these core capital goods orders continue to rise.

“Companies in aggregate are cash-rich, but they remain asset-constrained after a decade of under-investment following the financial crisis,” Shepherdson said. “Accordingly, we expect capex to continue rising at a rapid pace for the foreseeable future.”

The bottom line: Orders for business equipment represent companies putting their money where their mouths are. Whether or not you believe economic activity has peaked, it is the case that businesses are positioning themselves for more growth.

#### The economy is growing and recovering now – that’s key to global growth

Lynch 21 – David J Lynch, global economics correspondent for the Washington Post, “With stimulus cash and jobs spike, U.S. emerges as main engine for global economic recovery,” 4/4/21, https://www.washingtonpost.com/business/2021/04/04/us-economy-global-recovery/

The robust U.S. economic recovery this year is expected to be good news for factory workers, freight handlers and farmers.

Factory workers in China. Freight handlers in the Netherlands. And farmers in Germany.

Amid steady progress with coronavirus vaccinations, the U.S. economy is gathering so much steam that its gains will not stay at home. Demand for goods and services this year is expected to spill well beyond U.S. borders, making the United States the largest single contributor to global growth for the first time since 2005, according to Oxford Economics.

The U.S. ascent ends — at least for now — China’s long reign as the principal engine powering the $90 trillion global economy.

Free spending by the Biden administration — coupled with the Federal Reserve’s ultralow interest rates — is driving the nascent U.S. boom and lifting other countries, where governments have not responded as aggressively to the pandemic. As Americans spent their $600 government stimulus checks in January on furniture, laptops and clothing, the U.S. imported a record $221 billion worth of goods. And that was before a round of $1,400 checks in March.

“We are ahead of the world,” said Kristin Forbes, who was one of President George W. Bush’s White House economic advisers. “And a meaningful share of the stimulus is likely to leak abroad.”

Fresh evidence of the U.S. outperformance appeared on Friday as the Labor Department reported that the economy had gained 916,000 new jobs in March and that the unemployment rate fell to a post-recession low of 6 percent. The Institute for Supply Management’s gauge of manufacturing activity released on Thursday hit its highest mark since December 1983.

These signs of U.S. strength came as Europe’s economic rebound stalled amid surging coronavirus case totals. France last week announced its third national lockdown; Germany and Italy have imposed partial restrictions on activities.

Accelerating progress in vaccinating people against the coronavirus, plus more generous government spending, explains the U.S. edge. As of the end of March, the United States had vaccinated more than twice as large a share of its population as had the European Union.

Most economists expect China this year to grow at a faster annual rate than the United States. But since the $21 trillion U.S. economy is still significantly larger than China’s, measured in dollars, the American contribution to global growth will be slightly larger, according to Oxford Economics.

To be sure, the U.S. outlook is far from worry-free. Some economists, such as Lawrence Summers, once President Barack Obama’s top economic adviser, say the administration has done too much to spur the economy and is inviting an inflationary price spiral.

The recovery from the pandemic shock also is incomplete: More than 8 million Americans who were working in early 2020 are unemployed and an additional 4 million have quit the labor market.

A strengthening U.S. economy, however, is welcome after a year of pandemic gloom. But as expectations of strong growth drive up long-term interest rates, investors are pulling money out of emerging markets to earn higher returns in the United States. More than $5 billion left developing countries in March, which some analysts worry could herald larger outflows to come and undermine recovery prospects in poor and middle-income nations.

“It’s a double-edged sword,” said Maurice Obstfeld, an economics professor at the University of California at Berkeley. “The effect of higher U.S. demand is spilling over to imports from other countries. But as U.S. growth leads to higher long-term interest rates, that’s a big negative for these countries.”

Kristalina Georgieva, managing director of the International Monetary Fund, warned in a speech last week that the U.S. and Chinese economies could leave behind poorer nations in a “multispeed recovery.” By next year, emerging markets are likely to have suffered a 20 percent loss in per-person income, almost twice the figure in the industrial world, according to IMF data.

“Prospects are diverging dangerously not only within nations but also across countries and regions,” she said.

On Monday, global finance officials and central bank chiefs are scheduled to kick off the annual spring meetings of the IMF and World Bank, where Georgieva plans to release a rosier 2021 forecast.

The U.S. role in leading the global economy this year contrasts with the aftermath of the 2008 financial crisis, when China unleashed a massive stimulus program that funded new railroads, airports, roads and public housing programs. The construction splurge rained money on commodity-producing countries, helping avert a more punishing global downturn.

In the United States, a fierce debate about the rising federal budget deficit short-circuited stimulus spending and left the U.S. share of global growth by 2010 at just half of this year’s forecast of 28 percent, according to Oxford Economics.

Congress in March approved the Biden administration’s $1.9 trillion American Rescue Plan. Together with a $900 billion bill in December, it will add almost 1.5 percent to the global economy’s growth rate this year, according to the Organization for Economic Cooperation and Development.

“This will not only benefit the U.S. economy, but it will fuel global growth,” Laurence Boone, the OECD’s chief economist, said last month.

The impact of the U.S. government rescue plan will be felt in India, Australia, South Korea, the United Kingdom, Canada and elsewhere, the OECD said.

#### Start-ups and innovation are high.

Atkinson 21 – Robert D. Atkinson, founder and president of the Information Technology and Innovation Foundation, “How Progressives Have Spun Dubious Theories and Faulty Research Into a Harmful New Antitrust Doctrine,” 3/10/21, https://itif.org/publications/2021/03/10/how-progressives-have-spun-dubious-theories-and-faulty-research-harmful-new

Neo-Brandeisians have argued that market concentration has grown, and that this has caused a precipitous decline in the number of business start-ups. In this narrative, “monopoly” is a sclerotic scourge, robbing the economy of its traditional dynamism—which is largely wrong.

This claim is based on correlation. Concentration has increased while the number of start-ups has fallen; therefore, they argue, concentration caused the decline. In fact, there is no statistical relationship between changes in concentration and changes in new firm formation. Moreover, all the net decline in new firm formation is in one major sector—retail—wherein the results of increasing retail firm size have been superior productivity growth, higher wages for workers in larger stores, and significant consumer benefit in the form of lower prices and broader selection. (See figure 3.)

And when it comes to the most important kind of start-ups—potentially high-growth start-ups, especially in technology sectors—there has been no decline. When MIT professors Jorge Guzman and Scott Stern looked at trends in high-growth entrepreneurship for 15 large states from 1988 to 2014, they found that even after controlling for the size of the U.S. economy, the second-highest rate of high-growth entrepreneurship occurred in 2014.21

### 1NR – AT: No Link

#### the plan creates an abrupt shift and doctrinal instability in antitrust that spills over throughout the economy---it’s impossible to distinguish specific industries because, unlike regulation, it’s enforced in generalist common law

Rogerson 20 – William Rogerson, Charles E. and Emma H. Morrison Professor of Economics at Northwestern University, Ph.D. in Social Sciences from the California Institute of Technology, and Dr. Howard Shelanski, Ph.D. in Economics from University of California, Berkeley, Professor of Law at Georgetown University and Partner at Davis Polk & Wardwell LLP, JD from the UC Berkeley School of Law, BA from Haverford College, Former Clerk for Judge Stephen F. Williams of the U.S. Court of Appeals for the D.C. Circuit and Justice Antonin Scalia of the United States Supreme Court, Former Administrator of the White House Office of Information and Regulatory Affairs and Director of the Bureau of Economics at the Federal Trade Commission, Former Chief Economist of the Federal Communications Commission and Senior Economist for the President’s Council of Economic Advisers at the White House, “Antitrust Enforcement, Regulation, and Digital Platforms”, University of Pennsylvania Law Review, 168 U. Pa. L. Rev. 1911, June 2020, Lexis

I. GOING BEYOND ADJUDICATION FOR ANTITRUST ENFORCEMENT

Antitrust statutes are primarily enforced in court, usually through the adjudication of specific cases or settlement against the backdrop of court-made antitrust doctrine. Indeed, despite statutory authority for the FTC to issue competition rules, and despite the technical complexity of many antitrust cases, antitrust enforcement and policy in the United States has evolved primarily through precedent developed by generalist courts, not specialized agencies. 18To be sure, the Department of Justice and the FTC influence policy through the investigations they pursue and the consent decrees they reach with parties. The FTC itself adjudicates some cases, although it does so largely according to law developed in the federal courts, to which parties can appeal any FTC decision. 19Academics and other commentators have also affected the evolution of antitrust in the United States, from supporting an economic, notably price-focused framework for U.S. competition policy to sparking a rethinking of that framework in contemporary debates. As the courts have absorbed such learning, antitrust doctrine has evolved over the decades through the push and pull of precedent across the United States judicial circuits, with the Supreme Court periodically stepping in to correct, clarify, or resolve differences among the lower federal courts. Commentators often cite antitrust as a rare example of "federal common law" in the U.S. system. 20

The adjudicatory model for implementing antitrust enforcement has several key attributes, which in turn have both advantages and disadvantages. We put aside for now the question of who is adjudicating--whether it be an expert tribunal or a court of general jurisdiction, for example--and focus on three characteristics of antitrust adjudication itself.

A. Case-by-Case, Fact-Specific Approach

Complexity of underlying issues aside, adjudication is well suited to settings in which applicability of the law is contingent on case-specific facts. With the exception of the limited conduct that the antitrust laws prohibit per se, courts review most business activities through a rule of reason, under which some conduct that is illegal in one set of circumstances is allowable in [\*1918] another. 21The inquiry into liability goes beyond whether particular conduct in fact occurred (which is the extent of the inquiry into conduct that is illegal per se) and extends into a balancing of the conduct's likely effects on competition. 22The more that liability is contingent on such case-specific facts, the more difficult it is to determine liability in advance of the conduct's having taken place. Adjudication typically occurs when conduct either is imminent or has already occurred, at which point the relevant facts as to the effects of the conduct are, in principle, more readily measured. 23Such "ex post" mechanisms of enforcement can reduce the risk of over-enforcement when compared to alternative approaches, like some forms of regulation, that spell out more comprehensively in advance what conduct is illegal. 24Reducing false positives, however, may or may not be a virtue--that calculation depends on the extent to which particular adjudicative institutions and processes under-enforce by allowing harmful conduct or transactions to slip through the liability screen.

B. Slow, Usually Predictable Doctrinal Development

A second attribute of the American adjudicatory process for antitrust is stability. While antitrust doctrine has occasionally swerved abruptly over the past century, the common-law process through which antitrust law has developed usually provides clear notice that a change is coming. As a recent example, the Supreme Court's shift in *Leegin Creative Leather Products, Inc. v. PSKS. Inc*. 25from per se liability to a rule of reason for resale price maintenance likely caught few observers by surprise. 26

Antitrust adjudication's stability, like its suitability for fact-dependent situations, is potentially double-edged. Antitrust jurisprudence can be slow to adjust to changes in economic learning or changes in the underlying economy that alter the effects of a particular kind of business conduct. For [\*1919] example, nearly thirty years ago the Supreme Court in Brooke Group v. Brown & Williamson Tobacco Corp. 27required that plaintiffs claiming predatory pricing show not only prices below some measure of incremental cost, but also that the defendant could recoup its losses. 28No plaintiff has prevailed in a predatory pricing case in a U.S. federal court since. 29That outcome might not be of concern were it the case that the Supreme Court's test accurately captures the incidence of predatory pricing. 30Economic research demonstrates, however, that predatory conduct does occur and does not depend on either below-cost pricing or recoupment. 31Predation is just one area in which court-made doctrine appears out of step with relevant economic facts and knowledge. To be sure, other forces could accelerate the common-law process of doctrinal development. For example, Congress could legislate changes to the scope, presumptions, and other parameters of antitrust law in ways that would immediately alter precedent and bind the courts going forward. 32 In practice, however, such intervention is rare and unlikely, making significant lags in doctrine a reality of antitrust adjudication in the courts.

C. Market-Driven Case Selection

In the United States, most adjudicative bodies do not select the cases that come before them. To be sure, courts have jurisdictional limitations that prevent them from hearing certain kinds of cases, and doctrines exist that allow courts to reject weak or poorly conceived complaints. Beyond those mechanisms, however, independent parties decide when and whether to pursue litigation as method of relief. One potential virtue of this separation between decisionmaking and case selection is that the market can drive the focus of judicial attention. Assuming the most widespread and most troublesome anticompetitive conduct will receive the greatest investment of litigation resources, that conduct will in turn receive the most adjudication and doctrinal development.

[\*1920] Unfortunately, the separation between adjudication and case selection will not necessarily lead to an efficient match between judicial attention and the most pressing antitrust violations. In practice, even conduct that is clearly prohibited can persist when offenders think detection is difficult; one only has to look at the consistently high number of civil and criminal price fixing cases that wind up in court, even though that conduct has clearly been illegal per se for nearly a century. 33The most widespread anticompetitive conduct might not therefore be the conduct most in need of doctrinal development--it can be just the opposite, as the persistence of cartels demonstrates. 34Moreover, if the courts develop doctrine that needs revisiting, but that deters the government or private plaintiffs from filing cases, 35then the market for judicial attention to antitrust conduct will not work well dynamically; once doctrine is settled, there may be no mechanism outside of legislation or regulatory intervention to drive doctrinal change. We return to this issue below.

D. Generalists versus Industry Experts

Returning to an issue we put aside earlier, who is doing the adjudication can matter for substantive outcomes. In U.S. antitrust law, that adjudication has occurred, at least ultimately, in generalist federal courts. That institutional locus might well make sense given the wide variety of conduct, industries, and factual circumstances that antitrust cases present. However, as specific industries come to pose particular challenges for antitrust enforcement, the case for more specialized enforcement decisionmakers becomes stronger. Traditionally, where detailed, industry-specific knowledge is required to make sound competition policy decisions, Congress has assigned authority over those decisions, at least in part, to industry-specific regulatory agencies. Thus, the Securities and Exchange Commission has authority over competitive conduct in key financial sectors. 36The FCC has parallel authority with the Department of Justice (DOJ) over telecommunications mergers and sole authority to establish terms for competitive entry into various telecommunications markets. 37State [\*1921] regulators govern entry into hospital markets through Certifications of Public Need. 38The federal courts have increasingly safeguarded the domain of industry specific regulators over competition issues even when agency decisions might be in tension with antitrust law. 39

As antitrust enforcement focuses on distinct challenges posed by a particular industry, whether digital platforms, pharmaceuticals, or something else, expert and specialized knowledge becomes even more essential to making good enforcement decisions. Under current law and enforcement frameworks, there is no systematic way to bring such specialization into the ultimate adjudication of antitrust cases in industries not already covered by specific, competition-related, regulatory statutes. To be sure, the FTC and DOJ have divisions that specialize in various industrial sectors in which they have considerable expertise. Those divisions bring that expertise into their review of conduct and transactions, but neither the FTC nor DOJ has ultimate adjudicative authority over the cases they choose to litigate. The DOJ must go to federal court to seek enforcement. The FTC can opt for an administrative enforcement mechanism with the Commission itself sitting in appellate review of initial adjudication by an administrative law judge. The Commission's decision is, however, subject to review by federal appellate courts, which have not hesitated to reverse the agency's decisions. 40 The result is that, even when agencies have brought specific industry expertise into antitrust enforcement, doctrinal application and resolution still proceeds through the common-law process of adjudication by generalist judges.

E. Tradeoffs Inherent in the Adjudicatory Approach to Antitrust

As the foregoing discussion suggests, the ex post case-by-case approach, slow doctrinal evolution, and case selection mechanism of antitrust adjudication have potential advantages and disadvantages. The tradeoffs become particularly clear through the interaction of those three characteristics.

[\*1922] Adjudication may mitigate the rate of false positives or false negatives obtained through enforcement, as proceeding case-by-case is less likely to bring about those results than are general rules that impose limits on business conduct in advance, regardless of specific circumstances. Broad ex ante specifications could prohibit beneficial or harmless conduct, and narrow ex ante specifications could fail to prevent anticompetitive practices. As a decisionmaking process moves from strict ex ante prescription to pure case-by-case adjudication, particular facts and circumstances increasingly predominate over generic categorization of conduct. 41In principle, the movement along that spectrum enables the decisionmaker to avoid under-inclusiveness or over-inclusiveness of categorical rules. 42

The extent to which an adjudicator actually succeeds in reducing enforcement errors in either direction depends on the doctrine and precedent through which it evaluates the case-specific evidence. Doctrine and precedent will determine how a court allocates burdens, prioritizes facts, and weighs presumptions in evaluating the legality of conduct. If precedent provides mistaken guidance on those factors, case-specific adjudication might do no better a job than ex ante prohibitions in avoiding errors or bias toward either under or over-enforcement. For this reason, the evolutionary pace of doctrinal development through antitrust adjudication is very important. Where that evolution has been toward convergence with state-of-the-art analysis and evidence as to the effects of conduct, doctrinal stability is a virtue. Reasonable people disagree over the Supreme Court's movement from per se illegality to rule of reason treatment of vertical price restraints, as Justice Breyer's dissent in Leegin demonstrates. 43 The decision in that case nonetheless drew on a body of legal and economic analysis that, over decades, had continually narrowed the application of per se rules to vertical conduct and led logically (even if some might argue incorrectly) to the majority's conclusion. 44Many commentators might therefore say Leegin is a good example of where the evolution of doctrine through adjudication worked well: stakeholders had notice and the doctrine moved in an internally consistent direction. While it is debatable whether the per se rule against restraints on [\*1923] intra-brand competition has in recent years led to over-enforcement, there is a good case that it had done so in the past, 45so that the doctrine plausibly moved in an error-reducing direction.

However, where doctrine gets on the wrong track, the application of precedent will perpetuate rather than reduce enforcement errors. In the case of predation, for example, there is a good argument that, in the light of current economic knowledge, the Brooke Group decision has led to underenforcement. 46The potential case-by-case advantages of adjudication are lost where judicial precedent renders important facts and circumstances irrelevant. In such cases, the relatively slow process of doctrinal correction through common law evolution is harmful to sound antitrust enforcement.

The discussion above shows that the error-reducing potential of a case-by-case, adjudicatory approach to antitrust enforcement depends heavily on the actual doctrine courts apply and on the process by which that doctrine evolves. Similarly, whether case selection in an adjudicatory approach in fact directs judicial attention to the conduct that most warrants oversight depends on existing doctrine and precedent. It may well be that the conduct doing the most harm is also the conduct for which the courts impose the highest burdens of proof on plaintiffs. The deterrent effect of those burdens likely leads to fewer cases than the conduct's actual effects warrant. 47Similarly, doctrine that too readily imposes liability could have the opposite effect: lower barriers for plaintiffs would lead to too many cases and more devotion of judicial resources than the conduct deserves. 48Like error-reduction, the distribution of antitrust cases brought for adjudication depends heavily on the state of the doctrine and on the ability of the common law process to correct course where necessary.

The potential disadvantages of antitrust adjudication by generalist courts raise the question of whether a different approach might be preferable, specifically with regard to digital platforms. Digital platforms present relatively novel challenges. Considering the tenuous fit between some [\*1924] potential theories of harm and current antitrust doctrine, the complexity of the underlying technical issues in antitrust cases, and the interrelatedness of those issues and adjacent policy goals, a more informed, comprehensive approach coordinated by an expert regulatory agency might foster more advantages than does the exclusive resort to traditional antitrust adjudication. However, before we turn to the form such regulation might take, we briefly identify some general principles for such regulation.

#### Limiting mergers crushes the economy – the recovery is being fueled by mergers and acquisitions which incentivize innovation

Rybnicek 21 – Jan Rybnicek, Counsel in the antitrust practice of Freshfields Bruckhaus Deringer and a Senior Fellow at the Global Antitrust Institute at Antonin Scalia Law School at George Mason University, “Op-ed: Recent antitrust proposals could ‘throw sand in the gears’ of economic recovery by stalling M&A,” 2/12/21, https://www.cnbc.com/2021/02/12/op-ed-recent-antitrust-proposals-add-friction-to-ma-at-wrong-time.html

There is growing hostility to mergers and acquisitions (M&A) among an increasing number of policymakers in Washington, D.C.

Last year, some in Congress called for a merger moratorium banning all M&A during the pandemic. Then, in a surprise announcement, the FTC — over the objection of two commissioners — said it would no longer quickly approve the vast majority of transactions notified to the government that cannot plausibly reduce competition. Most recently, Senator Amy Klobuchar, D-Minn., introduced antitrust reform legislation that would give the government even greater power to block M&A it deems problematic.

While these proposals are well-intentioned, they threaten to throw sand in the gears of the economy and to do far more harm than good. Adding friction to M&A activity has the potential to stall capital markets, reduce innovation and investment, and frustrate economic growth. And it does so at precisely the wrong time — when the nation is attempting an economic recovery during an ongoing global pandemic that has upended how we work.

Antitrust has seized lawmakers’ interest like no other time in modern memory. Senator Klobuchar’s legislation is the most ambitious attempt to reform the antitrust laws in nearly half a century. A key focus of the bill is to make it even easier for the federal antitrust authorities — the Federal Trade Commission (FTC) and the Department of Justice (DOJ) — to intervene in private parties’ dealings by blocking M&A that they decide will harm competition.

Under existing law, the antitrust agencies must convince a judge that a deal is likely to substantially lessen competition in order to obtain an injunction preventing the transaction. The agencies bear the burden in proving their case. That typically has not been too tall an order. While reviewing a government challenge to a small grocery store merger and lamenting the internal contradictions in antitrust law, Supreme Court Justice Potter Stewart once observed that the only thing consistent about merger litigation is that the government always wins.

Over the last several decades, antitrust has become a more principled body of law through the incorporation of economics and a focus on promoting consumer welfare, but one thing has not changed: the government still nearly always wins.

Reform advocates would have you believe that the FTC and DOJ show up in court on a wing and a prayer and rarely are able to convert the power and credibility of the federal government into merger litigation victories. But reality is far different. The government has no problem blocking mergers it believes are problematic. Over the last 20 years the DOJ and FTC have prevailed in nearly 85% of merger challenges. That is a record any litigator would envy. And the government’s win-rate only improves when looking at more recent cases. In fact, after the DOJ or FTC challenge a merger, companies more often than not abandon their deal before trial because the legal standard is so favorable to the government. This even includes successful challenges against deals involving the acquisition of a nascent firm that does not compete against the acquirer today but, in the government’s view, could in the future, such as the DOJ’s recent success in blocking Visa’s purchase of fintech upstart Plaid.

Senator Klobuchar’s legislation would put the thumb on the scale even more in favor of the government. It would lower the legal standard and allow the government to stop any deal that raises even an “appreciable risk of materially lessening competition.” It also would create presumptions against large deals that do not even involve competitors. Most significantly, the legislation flips the traditional burdens of proof on their head and requires defendants to prove that their deal should be allowed to close. In light of the disadvantages companies already face when confronted with government opposition, such changes are unwarranted, unless you believe the government is infallible and should win 100% of its cases.

Giving the government greater discretion to intervene in deals would add unnecessary friction to the M&A market and reduce the types of investments that have fueled U.S. economic growth, including in the many startups whose founders and investors develop new and innovative products in part due to the prospect of exit through M&A.

#### The threat created by the plan will be perceived as encouraging over-caution in other industries

Crews 19 – Clyde Wayne Crews, VP for policy & director of technology studies at the Competitive Enterprise Institute, “The Case against Antitrust Law,” 4/16/19, https://cei.org/studies/the-case-against-antitrust-law/

The issue has taken on greater urgency, as populist politicians from both left and right push for more aggressive antitrust enforcement. Regulators in the United States and the European Union have expressed an interest in pursuing antitrust actions against tech giants known as the FAANG companies— Facebook, Apple, Amazon, Netflix, and Google. President Trump has specifically singled out Facebook, Google, and Amazon as antitrust targets. Entire business models, such as franchising, are at risk from potential antitrust regulation.

The mere threat of legal penalties—and the environment of over-caution it engenders—also has a chilling effect on entrepreneurs who want to try new business practices and innovate. Such opportunity costs are impossible to measure.

Few large antitrust cases have been brought in the United States recently, and overall enforcement activity has been slower than in previous eras, but there is a large pool of potential cases that populist politicians are interested in pursuing.

#### Err neg – enforcement actions have subtle over-deterrence effects and it’s better to err on the side of less regulation

Auer 18 – Dick Auer, Senior Fellow, International Center for Law & Economics, “Comments of the International Center for Law & Economics: Topic 4: Antitrust law and the consumer welfare standard,” FTC Hearings on Competition & Consumer Protection in the 21st Century, https://www.ftc.gov/system/files/documents/public\_comments/2018/10/ftc-2018-0074-d-0071-155999.pdf

One of the important lessons of economics in antitrust is that economic tools are uniquely capable (although still imperfectly so) of distinguishing competitive from anticompetitive conduct — the perennial challenge of (non-cartel) antitrust enforcement and adjudication. Non-economic evidence (so-called “hot docs,” for example) can be counter-productive and can obscure rather than illuminate the competitive significance of challenged conduct. A rigorous adherence to economic principles and economic reasoning is essential if antitrust enforcers are to ensure that their interventions actu-ally benefit consumers.

Thus, a necessary corollary to reliance on the consumer welfare standard in antitrust cases is that an evidence-based approach rooted in error-cost analysis is crucial. Particularly in innovative markets where unfamiliar business strategies are attempted, and the relative knowledge of regulators and enforcers is low, it is critical to hew to an evidence-led, error-cost approach to antitrust evaluation.57

The error-cost framework in antitrust originates with Easterbrook’s seminal analysis,58 itself built on twin premises: first, that false positives in enforcement are more costly than false negatives because self-correction mechanisms mitigate the latter but not the former; and second, that errors of both types are inevitable, because distinguishing procompetitive conduct from anticompetitive conduct is an inherently difficult task.59

A key virtue of employing the error-cost framework is that it helps to avoid the bias of economists, who frequently fail to conduct their analyses in a realistic institutional setting and avoid incorporating the social costs of erroneous enforcement decisions into their recommendations for legal rules.

Antitrust over-deterrence is not costless — the losses from erroneously deterred innovative business practices may be unseen, but they function as a drag on society nonetheless. The goal of the error-cost approach is optimal enforcement that errs on the side of permitting innovative practices that might otherwise be difficult to square under existing antitrust rules.