# 1NC

## Off

### 1NC – Court CP

#### The United States federal judiciary should limit the scope of the Establishment Clause to prevent “establishment clause creep” and issue a ruling restricting First Amendment suppression of religious expression for religious congregations.

### 1NC – Politics DA

#### AICOA passes now.

Jake Johnson, staff writer @ common dreams, 1-20-2021, "Senate Panel Approves Antitrust Bill to Rein in Big Tech," https://www.commondreams.org/news/2022/01/20/senate-panel-approves-antitrust-bill-rein-big-tech

The Senate Judiciary Committee on Thursday approved antitrust legislation targeting corporate behemoths such as Google, Apple, and Amazon, a move that anti-monopoly campaigners hailed as a positive step toward reining in Big Tech.

Formally known as the American Innovation and Choice Online Act, the bipartisan legislation cleared the judiciary panel by an overwhelming vote of 16-6 despite fierce lobbying by Google and Apple, whose chief executives personally reached out to lawmakers to express their opposition to the bill.

If passed into law, the measure—sponsored by Sens. Amy Klobuchar (D-Minn.) and Chuck Grassley (R-Iowa)—would prohibit major tech platforms from favoring their own products and services over those of other companies, a practice known as self-preferencing.

The six lawmakers who voted against the bill in committee were all Republicans: Sens. John Cornyn (R-Texas), Mike Lee (R-Utah), Ben Sasse (R-Neb.), Tom Cotton (R-Ark.), Thom Tillis (R-N.C.), and Marsha Blackburn (R-Tenn.).

"This was an even stronger vote than we expected—and notably bodes well about the ability to overcome a filibuster on the floor," said Ginger Quintero-McCall, legal director at Demand Progress. "It will also provide momentum as the debate shifts back to the House."

Sarah Miller, executive director of the American Economic Liberties Project, said in a statement that "despite millions of lobbying dollars by monopolists spent to influence lawmakers, a bipartisan group of senators just stated with a clear voice that Big Tech is too powerful."

"With growing bipartisan appetite to break the power of Big Tech," Miller added, "the Senate should continue to reassert its power over the handful of men whose corporations undermine economic dynamism, eviscerate the free press, and threaten our democracy itself."

While she ultimately voted to advance the legislation, Sen. Dianne Feinstein (D-Calif.)—who represents Silicon Valley—criticized the bill and suggested that Biden administration officials share her concerns.

That prompted a sharp response from Klobuchar, who accused Feinstein of spreading false information about the administration's stance.

#### Plan trades off.

Spencer Weber Waller, Chair of Competition Law @ Loyola University of Chicago, ’19, "Antitrust and Democracy," Florida State University Law Review 46, no. 4 (Summer 2019): 807-860

A legislature can give as much or as little time to competition law and policy as it wishes. In the U.S. Congress, the Senate must devote time to enacting legislation, confirming Presidential nominees, budget appropriations, and conducting oversight hearings. '19 These activities are important in their own right and in ensuring that the agencies fulfill their role as expert, but democratic, institutions. The rest is more or less optional and dependent on any individual Congress's level of interest and the press of other business.

It is disappointing that the U.S. Congress has more often focused on the minutiae of competition law and policy or conducted hearings on high profile mergers that, by design, cannot affect the eventual enforcement actions of the agencies. 160 There have been no major amendments of the antitrust laws since the 1970s. 16 1 Criminal penalties have been increased, but the private treble damage remedies as a whole have been largely left unchanged. 162 Exemptions and immunities have been expanded and contracted at the margins. 16 3 Budgets have been increased and lowered depending on the era and the overall political zeitgeist.

Unfortunately, much of Congressional attention to competition law has involved minor issues and outright petty matters. For example, Congress effectively killed a proposal that would have rationalized cooperation between the Antitrust Division and the FTC because it affected which Congressional committee had "jurisdiction" over the work of these agencies. 164 Even more petty was the unsuccessful effort of one Congressman to force the FTC to vacate its headquarters for an expansion of the national art museum.16

The opportunity costs for each hearing on such marginal issues, for example, whether professional baseball should continue to enjoy a partial exemption from the antitrust laws or grandstanding for constituents over the fate of a particular merger with a pronounced local effect, is high. Congress sacrifices time, money, and attention better used to study more important, broader issues of competition law and policy. Stated enforcement policy over unilateral conduct and merger policy have changed substantially between administrations and over time. Important guidelines and stated enforcement priorities have changed as well with little substantive Congressional involvement. 16 6 Critical decisions by the United States Supreme Court have changed the law in dramatic and subtle ways without significant Congressional input either before or after the decisions. 167

#### Key to prevent digital authoritarinism.

John Koetsier, Senior Contributor @ Forbes, Founder and fmr CEO of Sparkplug, 10-16-21, https://www.forbes.com/sites/johnkoetsier/2021/10/16/china-shows-why-apple-needs-sideloading/?sh=756b2b296614

Apple is complicit in Chinese censorship.

There’s simply no other way to put it.

The big news in tech this week included Apple deleting religious apps from the Chinese App Store at the request of China. Recent apps deleted from the Chinese App Store include Quran Majeed, an app with Muslim scriptures, a Jehovah’s Witness app called Watchtower Library 2021, popular photo and video editor Picsart, the massively popular audio book app from Amazon Audible, and many more including games and social media apps.

Pre-emptively deleted by a publisher was the Olive Tree Bible, because the company does not have a permit to distribute “book or magazine content in mainland China,” Olive Tree Bible Software told the BBC.

“By obeying the Chinese Communist Party's order to remove Bible and Quran apps from its platform in China, Apple is enabling China's religious persecution, including the ongoing genocide of Uyghur Muslims,” says Edward Ahmed Mitch, deputy director of the Council on American-Islamic Relations, or CAIR. “This decision must be reversed. If American corporations don't grow a spine and stand up to China right now, they risk spending the next century subservient to the whims of a fascist superpower."

In its commitment to human rights, the company says “people come first” and that Apple has a “commitment to human rights,” but that “we’re required to comply with local laws, and at times there are complex issues about which we may disagree with governments and other stakeholders on.”

That makes sense.

Companies cannot simply choose which local laws to obey and which to not obey. Doing so puts their local employees at risk — think Russia versus Twitter, or how Russia is bullying employees from Google and Apple — and fails to respect that different countries have the right to have different values and different laws.

The nuclear option is to leave a country with incompatible values, and that’s exactly what Microsoft is doing with LinkedIn. This would be suicidal for Apple, because almost all Apple products are manufactured in China, and China is a huge percentage of Apple’s revenue: over $20 billion in a recent quarter.

Fortunately, there’s an easier option.

And it’s also an option that can make life much more chill for Apple in the face of dozens of global antitrust actions it will continue to face over the next few years.

Simply put, that option is sideloading apps.

Sideloading is the ability to install software on a smartphone that is not from an approved store. On Apple iPhone that would mean apps that don’t come directly from the Apple-controlled iOS App Store. Google’s Android already does this, and computing platforms since the dawn of the electronic age have allowed it, including Apple’s MacBooks and Microsoft Windows-powered laptops and desktops.

Straight-up: this does come with some risks.

They include revenue risks for Apple as the Epic Software’s of the world begin to offer their Fortnite games and Epic App Stores on iOS and take revenue away from Apple. And they include malware, adware, and virus risks for consumers who download apps that have not been fully vetted through the App Store app submission process.

However, sideloading apps on iPhones would satisfy what Apple says is its highest value: human rights.

“We’re deeply committed to respecting internationally recognized human rights in our business operations, as set out in the United Nations International Bill of Human Rights and the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work,” the company’s commitment to human rights says. “In keeping with the UN Guiding Principles, where national law and international human rights standards differ, we follow the higher standard.”

Enabling sideloading probably won’t cost Apple a majority of its in-app purchase revenue or paid app revenue. Most people would still use the iOS App Store because it’s likely to be the safest and most reliable place to get the latest apps.

(And because Apple could pull a trick from the gaming console playbook and license apps for exclusive release on a mobile computing platform, or just on an App Store.)

But it would enable people in repressive regimes to access apps and therefore content that totalitarian or authoritarian local governments decide to prohibit. It would enable freedom. It would lessen censorship. It would respect international law over repressive national regulations.

Clearly, it’s not an easy decision. And it would be costly for Apple.

Allowing sideloading on Apple iPhones would also require some significant security work to make the process as safe as possible, and as free of bad apps as could be. You could even, theoretically, run sideloaded apps in a more secure sandboxed container to minimize risk.

#### Digital authoritarianism causes nuclear miscalc via global-info wars.

Manstead ’20 [Katherine; Non-Resident Fellow @ Alliance for Securing Democracy and Senior Adviser for Public Policy @ Australian National University’s National Security College; “Strong Yet Brittle: The Risks of Digital Authoritarianism”; https://securingdemocracy.gmfus.org/wp-content/uploads/2020/05/Strong-Yet-Brittle-The-Risks-of-Digital-Authoritarianism.pdf]

While digital authoritarianism can enhance regime durability and national power, it also introduces deep-seated vulnerabilities, eight of which are considered below. Significantly, digital authoritarians may find themselves in a state of constant contest with other regime types, trapped in cycles of overreach and backlash, and prone to strategic miscalculations that pull them into interstate conflict. The current turn to digital authoritarianism therefore also has broader implications for international peace and stability.

Brittle Legitimacy

Reliance on information control makes authoritarians brittle. Small chinks in their information control armor could have existential consequences, particularly during political or economic crises (i.e. when the regime needs to rely on control for legitimacy because it is not delivering for citizens). The information and ideas most dangerous to authoritarians include:

• the identity of opposition groups and leaders and their levels of support; 17

• technical means for subverting control of communications and surveillance technologies;18

• ideas about values that transcend state sovereignty, such as liberalism and human rights;19

• evidence that the central government is not delivering efficient outcomes;20 and

• ideas that undermine the myths and narratives used to legitimize authoritarian rule or the power of the ruling elite.21

Constant Contest

Since technologies and ideas are dynamic, the battle for information control is a constant struggle. It can never be ‘won.’ Authoritarians are therefore in a perpetual state of information warfare, inside and outside their regime, and feel perpetually insecure. This dynamic may lead authoritarian governments to assess that it is worth engaging in information or cyberattacks to discredit liberal ideas at their foreign source or to shape or disable systems that jeopardize their information control—despite real risks of conflict escalation and global pushback.

Overreach and Backlash

The fundamental importance of information control to authoritarians increases the likelihood of overreach, leading to cycles of backlash and reprisal. Many perceive China’s heavy-handed narrative warfare in Hong Kong and confrontational efforts to control narratives about coronavirus to be strategic missteps. For example, CCP efforts to stifle dissent by punishing online gaming company Blizzard and the National Basketball Association (NBA) arguably aided Hong Kong protester narratives;22 while CCP obfuscation about coronavirus has prompted unprecedented diplomatic rebukes from world leaders.23 Despite rising international awareness and condemnation of China’s sharp power tactics,24 China is accelerating, not muting, these behaviors.25 One explanation for this is that the CCP calculates that the risks of international backlash (and occasional overreach by its officials) are acceptable, compared with the risk of letting domestic information control falter.

Impaired Feedback Mechanisms

Authoritarians embrace technology to increase the legibility of their societies. But legibility requires cooperation from society. It is facilitated by an open information ecosystem, robust civil society, mechanisms of transparency, and protections for political speech.26 Conversely, information control and technology-enabled systems of surveillance and enforcement discourage accurate reporting and punish whistleblowing, while incentivizing officials to conceal failures and exaggerate successes.27 In 2007, Le Keqiang (before he became China’s premier) described China’s national income figures as “man-made” and unreliable, and noted that more objectively verifiable proxies should be preferred to official statistics collected by provinces.28 Without elections, authoritarians can also struggle to understand public sentiment, a problem highlighted by the Chinese government’s mismanagement of massive ongoing protests in Hong Kong. Party leaders wrongly assessed that the protestors’ grievances were primarily economic rather than political and that they did not enjoy broader public support.29 As Zeynep Tufekci has observed, the costs of China’s “authoritarian blindness” have been immense: a solvable issue (demands to withdraw a relatively unimportant extradition treaty) became “a bigger, durable crisis” with ongoing political consequences.30

China’s delayed reaction to coronavirus is a stark example of the authoritarian legibility and feedback problem. Local officials and hospital administrators in Wuhan suppressed information about the outbreak and punished doctor whistleblowers—depriving other provinces and the central government (not to mention international authorities) of vital signals that would have allowed swifter action to control the pandemic.31 Once authorities acknowledged the pandemic, China deployed the full weight of its digital surveillance capabilities. It was able to implement top-down lockdowns quickly; marshal its tech sector to build health apps; force citizens to download these apps; and access vast commercial holdings of personal data to cross-check compliance. However, it lacked critical bottom-up feedback systems that may have obviated the need for such draconian measures in the first place.32 Indeed, controlling for income and population size, authoritarian regimes appear to be more lethal than democracies during epidemics, arguably because of their closed information ecosystems.33

Overreliance on Technological Systems which ‘Fail Hard’

Many authoritarian governments are embracing AI-driven surveillance and control methods—from ‘smart cities’ to digital currencies, e-payment platforms and social apps. However, when AI systems fail, they tend to fail in unpredictable, often catastrophic ways. While citizens in democracies lament slow adoption of digital governance, authoritarians’ speed comes with the risk that authorities roll out unsafe or vulnerable systems.34 Imagine a critical failure of China’s social credit system—whether by accident or sabotage—which affected the integrity of records. The implications for regime stability could be significant.

AI systems do not need to fail to produce problematic results. They draw insights and make predictions based on correlations in vast datasets but are not good at identifying causal mechanisms. This means that AI systems often produce outcomes which humans cannot reverse engineer or routinely evaluate. Like using asbestos to build a city, AI governance systems might produce good results in the short-term, but inconsistencies or oversights in their approaches could lead to cascading failures that humans struggle to identify, let alone rectify.35

Unintended Consequences from High-Tech Modernism

Fixation by central governments on achieving targets or deploying certain technologies creates incentives for local officials to deploy “technology placebos” that do little to address underlying economic and social concerns. For example, many so-called smart city projects in authoritarian societies have failed to meet development and economic goals. They are fraught with issues such as “unclear strategic goals” (e.g. they often optimize for surveillance, not development) and “inadequate implementation.”36 This problem may be particularly pronounced for less-developed authoritarian governments which have been persuaded, for strategic reasons, to buy Chinese-exported digital surveillance tools that are not customized to local circumstances. These cities may also become locked into unstable or insecure technical architectures37 and economic dependence on China.38

Commitments to targets, and ideological fervor about technology, can also distort commercial decisions and raise unrealistic public expectations. Analysis of China’s AI industry, for example, suggests that companies are eschewing investment in basic research and focusing on quick wins in applied research.39 Additionally, China is already behind on meeting a number of its technology targets40—a lag that will likely be exacerbated by the global economic downturn following the coronavirus pandemic, and rising security fears in foreign markets about the security of Chinese technology and IP theft by its companies.

From a strategic perspective, there are risks that authoritarian governments’ fixation on technology-centric strategies will lead them to overestimate what technology can in fact achieve. For example, Chinese military strategists have posited that AI could lift the ‘fog’ of war and eliminate uncertainty and confusion on the battlefield. This is an ahistorical and unlikely prediction that could inspire miscalculation.41 Russian strategists theorize about how psychological operations might subdue adversaries without a shot being fired—an approach that may overestimate what cognitive warfare can achieve, at least without being combined with other elements of national power.42

Challenges to Social Cohesion

The medium- and long-term social consequences of digital authoritarianism are yet untested. Overreliance on surveillance and enforcement systems could attenuate relationships within a society, exacerbating authoritarians’ underlying low trust problems. Since they tend to reduce citizens to data inputs, these systems may deny citizens’ intrinsic desire for dignity and identity—with unexpected results.43 Information control tactics—such as flooding—can repress opposition, but long-term may exacerbate public uncertainty and decrease business confidence and trust in official information, with implications for social cohesion and economic progress.44

Dysfunctional Innovation Ecosystems

Information control and state-led pushes for technology dominance risk hampering innovation. For example, to achieve Xi Jinping’s ‘Made in China 2025’ goals, the CCP is supporting high-tech monopolies, restricting international collaboration, and yoking the state and market together.45 However, monopolies are notoriously inefficient and cross-border collaboration is an important driver of innovation. Further, innovation works best under free market conditions and in open societies.46 Some analysts argue that China’s success in deploying AI applications is an exception to this rule. However, there is a risk that Chinese companies are prioritizing shortterm breakthroughs (e.g. analyzing existing datasets to find new insights) at the expense of long-term investment in basic research.47 While authoritarians may excel at developing and deploying AI applications, conceptual research is arguably the real engine of AI advancement—and something that will continue to thrive in open societies.

Summary and Further Research

All states face risks in the information age, but the extent to which regime type affects the relative likelihood of these risks materializing, and their magnitude, is understudied. For example, much has been written about liberal democracies’ vulnerabilities to propaganda and foreign interference via social media.48 But while information warfare against open societies is more likely, arguably it is a higher magnitude threat for authoritarians, where control of information is core to regime survival. Similarly, analysts often lament that democratic governments have been slow to digitize governance systems and craft forward-looking technology policy.49 But while digital authoritarians might outcompete democracies in the roll-out of advanced technologies, this creates new vulnerabilities and risks. Inappropriate safeguards and accidents may result in cascading failures, while heavily digitized governance systems may be susceptible to foreign attack. Regime type may also affect the relative ability of authoritarians and democracies to mitigate their information age risks. For example, a democracy can build resilience to cyber and information threats through a variety of civil society and market-based interventions. Digital authoritarians must rely on a more limited set of top-down policy tools. Ultimately, a more systematic effort to map the comparative strengths and vulnerabilities of authoritarians and democracies in the information age could help both to better understand the other’s threat perceptions and manage escalation risks. It might also highlight ways in which democracies can hold digital authoritarians’ core interests at risk, in order to deter authoritarian interference in their own digital environments.

### 1NC – Regulate CP

#### The United States federal government should

substantially increase regulation of restraints on labor markets for religious leaders;

issue a statement in support of religious freedom globally, and tailor foreign aid regimes to promote religious freedom;

increase funding for homeland security and foreign intelligence agencies;

substantially increase emissions regulations and expand the scope of the Clean Air Act;

provide substantial financial incentives through public-private partnerships for US investments in MENA infrastructure.

#### Regulation solves without antitrust or FTC involvement.

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A. Antitrust and Regulation as Policy Alternatives

A variety of institutions can govern economic competition. Decentralized, capitalist economies generally rely on markets themselves to provide the incentives and discipline necessary to keep prices low, output high, and innovation moving forward. 8 But sometimes market forces alone cannot ensure efficiency and economic welfare--for example, when the market structure has changed due to mergers or the rise of a dominant firm, or when the market is an oligopoly susceptible to parallel conduct or collusion. In such cases, governance of competition by a nonmarket institution might be warranted. Because concentrated markets or even monopolies can arise for good reasons related to efficiency, innovation, and consumer preference, the governance of competition more often involves vigilance than liability or injunctions. Then-Judge Stephen Breyer, long [\*1926] a leading scholar of antitrust and regulation, described the best situation as being an unregulated, competitive market in which "antitrust may help maintain competition." 9

Antitrust law aims to prevent the improper creation and exploitation of market power on a case-by-case basis while avoiding the punishment of commercial success justly earned through "skill, foresight and industry." 10 Thus, competition authorities like the FTC and the DOJ's Antitrust Division review mergers, investigate single-firm conduct, and prosecute collusion. 11 Private plaintiffs can pursue civil antitrust liability through suits in the federal courts. 12 To win their claims, enforcement agencies and private plaintiffs bear the burden of showing that the effect of a firm's activity is "substantially to lessen competition, or to tend to create a monopoly," 13 or to constitute a "contract, combination, . . . or conspiracy" in restraint of trade, 14 or to "monopolize, or attempt to monopolize" any line of business. 15

Antitrust is not, however, the only institution through which government addresses competition concerns and market failures. Congress can give regulatory agencies authority to intervene where they see the need to address competition and market structure--and Congress has often done so. With such statutory authority, "[i]n effect, the agency becomes a limited-jurisdiction enforcer of antitrust principles." 16 For example, the Department of Transportation (DOT) has jurisdiction to approve transfers of routes between airlines carriers, giving it a role in reviewing airline mergers. 17 The 1992 Cable Act gave the FCC authority [\*1927] to limit the share of the national cable market that a single operator could serve, thereby giving the agency some control over the industry's market structure. 18 The FCC has long regulated market entry and, through its control over license transfers, reviewed mergers and acquisitions in several sectors of the telecommunications industry. More recently, the FCC issued, 19 and then repealed, 20 "network neutrality" regulations intended to preserve ease of entry and a level playing field for digital services. The Food and Drug Administration (FDA), Securities and Exchange Commission (SEC), Department of Energy, and numerous other federal agencies have various powers that directly affect competition. 21 State regulation can be important as well in governing competition, particularly in the insurance and healthcare industries. 22

In contrast to the case-by-case approach of antitrust, regulation typically imposes ex ante prohibitions or requirements on business conduct. The Telecommunications Act of 1996, for example, required incumbent local telephone companies to grant new competitors access to parts of their networks and prohibited incumbents from refusing to interconnect calls from their customers to customers of competing networks. 23 With the rule in place, the FCC bore no burden of proving that a specific instance of network access was necessary for competition, or that a specific denial of interconnection would harm competition. In contrast [\*1928] to antitrust, where the burden of proving liability is on the agency, under a regulatory regime the burden of seeking a waiver from regulation or challenging an agency's enforcement decision is usually on the regulated party.

Antitrust and regulation therefore present alternative approaches to governing competition and addressing market failures. 24 The government can review individual mergers under the antitrust laws, as it does in most markets, or it can set rules that impose clear, ex ante limits on the extent of concentration, as the FCC did for media ownership under the Communications Act. 25 Government can investigate under the antitrust laws whether a firm has monopoly power that it has "willful[ly]" acquired or maintained other than "as a consequence of a superior product, business acumen, or historic accident." 26 Alternatively, with authority from Congress an agency can regulate how much of a market a single firm can serve, as the FCC tried to do with cable companies, 27 or require firms to dispose of key assets in order to promote competition in a relevant market, as the DOT has done with airline slots. 28

### 1NC – Sunsets CP

#### The Congress of United States should:

#### -impose a general sunset on antitrust exemptions for religious leaders after five years, indexed to begin 4 years and 9 months prior to date.

#### -order the GAO to report on the continuing need for antitrust exemptions for religious leaders.

#### -require the Senate and House Judiciary Committee to hold hearings on the exemption if the GAO finds its continued existence warranted

#### -require that the congress forward a law, signed by the president, to establish that the exemption should be renewed

#### Solves the case and avoids senate DA.

Anne McGinnis, JD Michigan, ’14, "Ridding the Law of Outdated Statutory Exemptions to Antitrust Law: a Proposal for Reform," University of Michigan Journal of Law Reform 47, no. 2 (Winter 2014): 529-[vi]

Once in place, exemptions are rarely revisited,112 and powerful industries continue to lobby for new ones.113 For example, regardless of whether the McCarran-Ferguson Act remains warranted or not, every attempt to repeal the Act has failed. In fact, every recent attempt to reform any current statutory exemption has failed.114 The harm, or, at the very least, the ineffectiveness of many of these statutory exemptions is neither partisan nor heartily contested by antitrust experts.115 But efforts to repeal exemptions rarely gain traction. Interest groups advocating for an exemption may be powerful and strongly motivated, but groups advocating against an exemption are often fragmented and have little stake in pursuing repeal."'1

Any effective solution must do two things. First, it must provide a way to review the statutory exemptions currently in place to determine whether they are still necessary and beneficial to society. Second, it must switch the default from one where a statutory exemption, once enacted, remains on the books until Congress acts affirmatively to repeal it to one where a statutory exemption is presumed to expire after a short period of time unless Congress believes that it is still necessary. Further, any solution must be an efficient use of congressional time and must break the institutional stagnation that has prevented the review and repeal of statutory exemptions to date.

This Note's proposed solution is a federal law containing four provisions. Specifically, this Note urges Congress to adopt legislation that (1) imposes a general sunset on all statutory exemptions after five years, (2) orders the Government Accountability Office (GAO) to prepare a report on the continuing need for each statutory exemption currently in place, (3) requires the Senate and House Judiciary Committees to hold hearings on any exemption that the GAO finds still warranted, and (4) provides that, if the committees find that an exemption should be renewed after the hearings, they forward a law overriding the sunset provision for that exemption to the floor of each house to be voted on, signed by the President, and put into effect.117

A. The Sunset Provision

Perhaps the most critical aspect of this Note's proposed reform is the five-year general sunset provision that would apply to all statutory exemptions currently in place.118 This provision switches the default from one where every exemption remains in effect indefinitely to one where irrelevant and harmful exemptions are automatically stripped from the law absent an affirmative act by Congress. This provision will force the proponents of a statutory exemption to once again make their case for why the exemption is appropriate.

B. The GAO Report

The provision requiring a GAO report on each existing exemption is also critical. Few, if any, hearings have been held on the vast majority of exemptions currently in place. Many exemptions have not been reconsidered in decades, and no one knows how effective most statutory exemptions actually are in accomplishing their stated goals. To reform this area of the law, more information is desperately needed. The purpose of the GAO report is to uncover this information.

The GAO report should ask and answer several questions. First, it should determine whether the conduct immunized by a given statutory exemption could result in antitrust liability today. As explained in Part I, antitrust law has changed immensely over the past sixty years in response to evolving economic theory and market conditions. Many behaviors that were once per se illegal are now firmly analyzed under the rule of reason and rarely, if ever, found to violate antitrust laws." 9 Even many behaviors formerly deemed anticompetitive under the rule of reason are, when explained through modern economic theory, likely to be found legal.120 If the conduct exempted would not actually violate modem antitrust law, then the exemption is unnecessary and should not be renewed.121 Second, the GAO should determine if the behavior covered by the exemption actually occurs today, regardless of whether it would be subject to antitrust liability. Some amendments, like the Anti- Hog Cholera Serum Act'2 2 and parts of the Defense Production Act, 23 are irrelevant today not because the conduct would be permissible under contemporary antitrust laws but because the problem they were designed to address no longer exists. 24 Conduct that does not occur does not deserve an exemption, and any existing exemption should be allowed to lapse. Even if future conduct might warrant an exemption, it is better to repeal the current exemption and require Congress to enact a new one that is tailored to the circumstances at that later date.

Third, the GAO should ask what justifications were given for the exemption's original passage. Was the exemption passed to remedy some apparent market failure? Was it designed to protect conduct that Congress deemed socially desirable, despite its anticompetitive effect? Was it designed to replace antitrust regulation with direct governmental regulation? Was it purely a reaction to an administrative or court decision finding liability where Congress believed the behavior was in fact procompetitive? To appropriately judge the success or failure of any given exemption, it is essential to know the intent behind its enactment.

Fourth, the GAO should ask, in light of the findings made in the third inquiry, whether the exemption has served its intended purpose and whether it is still needed today. Has the exemption successfully achieved the aims that it was ostensibly enacted to achieve? Has it actually fostered the socially desirable behavior that it was designed to encourage? Has the exemption enhanced or harmed consumer welfare? What does the affected market look like today in comparison to when the exemption was passed? If the exemption was enacted to enable direct regulation, is there still a regulatory scheme providing oversight?

C. Hearings and Renewal of Recommended Exemptions Only

The GAO would then compile this information in a report and clearly recommend whether or not to renew the given exemption. This report would be submitted to the Senate and House Judiciary Committees. If the report recommends that a given exemption be extended, then both committees must, under this Note's proposed law, hold a hearing on the exemption. If, after the hearing, the committees find that the exemption should be renewed, then the committees must forward a provision overriding the sunset for the exemption to the floor of each house to be voted on and signed by the President. In contrast, if the report recommends that the statutory exemption be allowed to expire, and Congress does not decide on its own to hold hearings or override the sunset provision, then the exemption will expire at the end of the five-year sunset period.

D. Summary of the Reform Proposal

This reform is not perfect. It requires Congress to act-a requirement not easily fulfilled in today's era of partisan deadlock. Moreover, it places a heavy burden on the GAO and undoubtedly comes with costs, some of which will go toward studying exemptions that, for all practical purposes, cause no harm today. However, many statutory exemptions currently in effect are undermining the competitiveness and efficiency of the United States economy and, to date, no piecemeal reform has worked. Therefore, this Note suggests a bolder, most holistic approach.

This reform allows non-partisan experts in antitrust law to examine existing exemptions and make recommendations regarding their continued utility. It then places the burden on supporters of an exemption to demonstrate, to the GAO and to Congress, why the exemption is still necessary. Because this solution requires minimal congressional action, it will hopefully limit the risk of political deadlock. Further, because it would mandate full committee hearings only on exemptions that remain useful, it would allow the docket of exemptions to be cleared with little wasted congressional time. Additionally, because the solution would require Congress to act affirmatively to retain a statutory exemption, the default would switch from perpetuating every exemption-regardless of effectiveness- to automatic sunset of all exemptions absent clear congressional intent to preserve specified ones.

Overall, this reform is designed to jump start the debate on whether the more-controversial exemptions currently in effect, like the McCarran-Ferguson Act, should be repealed. At the same time, this reform eliminates less controversial, irrelevant exemptions from the United States Code without wasting Congressional time or expense on an exemption-by-exemption repeal.

CONCLUSION

Antitrust law is designed to be an overarching check against anticompetitive conduct that harms the free market system. Statutory exemptions to antitrust laws are supposed to provide some relief from this check in cases where natural monopolies or market failures make the application of antitrust law to a specific industry or to particular conduct harmful to competition, or where Congress has decided that some social policy goal is more important than robust competition. However, many of the statutory exemptions currently on the books no longer serve their intended purpose. Some are merely irrelevant, while others actively harm society by transferring wealth to private individuals and hampering beneficial competition. It is time for holistic reform. If enacted, this Note's four-part legislative solution would make significant progress toward ridding the law of such stale or harmful exemptions, bringing antitrust law back to its bedrock principle of protecting economic liberty by preserving competition.

#### The plan crushes rule of law and democracy promotion, the counterplan revives it – lack of congressional review is nontransparent, unaccountable and technocratic.

Spencer Weber Waller, Chair of Competition Law @ Loyola University of Chicago, ’19, "Antitrust and Democracy," Florida State University Law Review 46, no. 4 (Summer 2019): 807-860

Professor Harry First and I examined the democratic underpinnings of antitrust law in our 2013 article Antitrust's Democracy Deficit.35 In that article, we explained how the dramatic decrease in "antitrust's political salience," until very recently, affected the "antitrust enterprise," and "connect[ed] this shift to our concern for the political values that we believe underlie" all forms of competition law.3 6 "We connect[ed] free markets with free people, favoring open markets, . . . the opportunity to compete, ... [and] ... the connection between free markets and democratic values and institutions."3 7 We also argued that "a balance of institutional power is necessary to advance the goals that free markets embody."3 8

We characterize [d] the result of this shift toward technocracy as antitrust's democracy deficit . . . draw[ing] upon the concept of a democracy deficit from the literature analyzing and critiquing the European Union (EU) and the World Trade Organization (WTO). The term has generally been used to refer to policymaking by unaccountable and nontransparent technocratic institutions far removed from democratic (or national) control.... The concern for democratic decision-making has also been reflected in a new interest in global administrative law and the importance of basic principles of transparency and due process as a way to control the administrative state. This interest in administrative law principles has likewise led to a closer examination of how well antitrust conforms to due process and institutional norms.

Our concern over antitrust's move away from more democratically controlled institutions toward greater reliance on [unaccountable] technical experts [was] not just animated by a theoretical preference for democracy. . . . A preference for democratic institutions implicitly assumes that more democratically arranged institutions will, in general, produce preferable antitrust policies and outcomes. We think this is particularly true today, when the imbalance between democratic control and technocratic control has put antitrust on a thin diet of efficiency, one that has weakened antitrust's ability to control corporate power.39

"[C]oncern about a democracy deficit does not lead to a full-throated embrace of . .. populism" in either its historical or more contemporary form. 4 0 One scholar has recently characterized antitrust populism as emphasizing social divides by using exaggerated claims. 41 He goes on to describe both a historical liberal strain of antitrust populism that is pro small business, and a more recent dominant conservative populist strain that questions the efficacy of antitrust itself.4 2

In Antitrust's Democracy Deficit, Harry First and I express our favoring of antitrust enforcement conducted by knowledgeable and committed public servants deciding cases in accordance with the law and due process, rather than directly by public opinion or the ballot box. 4 3 "Rather, we think that by redressing the democracy deficit we can move the needle back toward policies that reflect more general political understandings and views of antitrust policy." 44 These policies would improve the institutions and outcomes for antitrust law in the process. 45

First and I began our Article, Antitrust's Democracy Deficit, by charting the democracy deficit as shown through the conduct of the major antitrust system institutions, such as the courts, Congress, and public enforcers and by comparing the state of antitrust enforcement in the United States with the evolving enforcement regime found in Europe. 4 6 Second, we examined the link between technocracy and ideology, in particular, how a technocratic approach supports a radical laissez-faire ideology for antitrust enforcement. 47 First and I concluded our article with our thoughts on why antitrust would benefit from increased democracy. 4 8

This article expands on that work in an important way. The question of whether and how the promotion of democracy is an instrumental goal of antitrust law is an important one. There is an equally important issue of how antitrust can be enforced in a democratic manner (reflecting the values of a democratic market based society, as is the case in the countries belonging to the Organization for Economic Co-operation and Development) regardless of which values any particular individual or society believes are paramount in the antitrust laws themselves. That is the issue discussed below.

#### Key to broader participatory democracy and legitimacy.

Harry First, New York University School of Law, and Spencer Weber Waller, Loyola University Chicago, Charles L. Denison Professor of Law, New York University School of Law, ’13, “ANTITRUST’S DEMOCRACY DEFICIT” https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4890&context=flr

Redressing antitrust’s democracy deficit on the procedural side can be done with the tools of administrative law. Administrative law is the body of law that controls the procedures of governmental decision making.151 It allows interested persons to participate in decisions that affect their interests. Normally, it requires appropriate notice, the right to be heard, fair procedures, protection of fundamental rights, and judicial review of the resulting decision. These basic features are present in the administrative laws of most foreign legal systems and are part of a growing international consensus.152 The tradeoff is that the decisions of administrative agencies that properly follow these strictures normally are granted a degree of deference as to the interpretation of the laws they enforce.153 Frequently, but not inevitably, private parties also have the right to proceed with actions for damages against private parties who violate their regulatory obligations and even against the government itself when it acts unlawfully, either substantively or procedurally. These tools of administrative law are available to make antitrust enforcement decisions more transparent and more responsive to the interests that the antitrust laws were meant to serve, thereby promoting both better decision making and greater democratic legitimacy.

CONCLUSION

Free markets and free people cannot be assured by the efforts of technocrats. Ultimately, both come about through the workings of democratic institutions, respectful of the legislature’s goals and constrained from engaging in arbitrary action. Antitrust has moved too far from democratic institutions and toward technocratic control, in service to a laissez-faire approach to antitrust enforcement. We need to move the needle back. Doing so will strengthen the institutions of antitrust, the market economy, and the democratic branches of government themselves.

#### Extinction.

George Eaton 20. Senior online editor of the New Statesman. Citing Noam Chomsky, Laureate professor in the Department of Linguistics at the University of Arizona and professor emeritus at MIT, Ph.D. in linguistics from Penn. “Noam Chomsky: The world is at the most dangerous moment in human history”. The New Statesman. Sept 17 2020. https://www.newstatesman.com/politics/2020/09/noam-chomsky-the-world-is-at-the-most-dangerous-moment-in-human-history

Noam Chomsky has warned that the world is at the most dangerous moment in human history owing to the climate crisis, the threat of nuclear war and rising authoritarianism. In an exclusive interview with the New Statesman, the 91-year-old US linguist and activist said that the current perils exceed those of the 1930s.

“There’s been nothing like it in human history,” Chomsky said. “I’m old enough to remember, very vividly, the threat that Nazism could take over much of Eurasia, that was not an idle concern. US military planners did anticipate that the war would end with a US-dominated region and a German-dominated region… But even that, horrible enough, was not like the end of organised human life on Earth, which is what we’re facing.”

Chomsky was interviewed in advance of the first summit of the Progressive International (18-20 September), a new organisation founded by Bernie Sanders, the former US presidential candidate, and Yanis Varoufakis, the former Greek finance minister, to counter right-wing authoritarianism. In an echo of the movement’s slogan “internationalism or extinction”, Chomsky warned: “We’re at an astonishing confluence of very severe crises. The extent of them was illustrated by the last setting of the famous Doomsday Clock. It’s been set every year since the atom bombing, the minute hand has moved forward and back. But last January, they abandoned minutes and moved to seconds to midnight, which means termination. And that was before the scale of the pandemic.”

This shift, Chomsky said, reflected “the growing threat of nuclear war, which is probably more severe than it was during the Cold War. The growing threat of environmental catastrophe, and the third thing that they’ve been picking up for the last few years is the sharp deterioration of democracy, which sounds at first as if it doesn’t belong but it actually does, because the only hope for dealing with the two existential crises, which do threaten extinction, is to deal with them through a vibrant democracy with engaged, informed citizens who are participating in developing programmes to deal with these crises.”

Chomsky added that “[Donald] Trump has accomplished something quite impressive: he’s succeeded in increasing the threat of each of the three dangers. On nuclear weapons, he’s moved to continue, and essentially bring to an end, the dismantling of the arms control regime, which has offered some protection against terminal disaster. He’s greatly increased the development of new, dangerous, more threatening weapons, which means others do so too, which is increasing the threat to all of us.

“On environmental catastrophe, he’s escalated his effort to maximise the use of fossil fuels and to terminate the regulations that somewhat mitigate the effect of the coming disaster if we proceed on our present course.”

“On the deterioration of democracy, it’s become a joke. The executive branch of [the US] government has been completely purged of any dissident voice. Now it’s left with a group of sycophants.”

Chomsky described Trump as the figurehead of a new “reactionary international” consisting of Brazil, India, the UK, Egypt, Israel and Hungary. “In the western hemisphere the leading candidate is [Jair] Bolsonaro’s Brazil, kind of a small-time clone of President Trump. In the Middle East it will be based on the family dictatorships, the most reactionary states in the world. [Abdel al-]Sisi’s Egypt is the worst dictatorship that Egypt has ever had. Israel has moved so far to the right that you need a telescope to see it, it’s about the only country in the world where young people are even more reactionary than adults.”

He added: “[Narendra] Modi is destroying Indian secular democracy, severely repressing the Muslim population, he’s just vastly extended the terrible Indian occupation of Kashmir. In Europe, the leading candidate is [Viktor] Orbán in Hungary, who is creating a proto-fascist state. There are other figures, like [Matteo] Salvini in Italy, who gets his kicks out of watching refugees drown in the Mediterranean.”

### 1NC – CIL CP

#### The United States federal government should prohibit anticompetitive restraints on labor markets for religious leaders by expanding the scope of its interpretive obligations under customary international law.

#### Competes and solves – it renders the same conduct equally unlawful but expands CIL rather than antitrust statute. That signals U.S. adherence to international economic law.

Banks ’12 [Ted; 2012; Scharf President, Compliance & Competition Consultants; Denver Journal of International Law & Policy, “40th Anniversary Edition: The International Law of Antitrust Compliance,” 368]

Introduction

It was not so long ago that the concept of international criminal law was an idea with which lawyers struggled. In 1987, Ved Nanda and M. Cherif Bassiouni put together what may have been the first one-volume compendium of information on antitrust, securities, extradition, tax, and other subjects that made up the developing area of international criminal law. Today, it is well-accepted that there are certain standards of behavior that are the norm in practically all nations, and through national laws and multinational treaties, these principles are entering the realm of customary international law.

Developments in the area of competition law, or antitrust as it is known in some countries, have been particularly dramatic. Countries understand that the encouragement of competition is a key to economic development, and national laws have been enacted where they did not exist before, along with enforcement cooperation agreements among increasing numbers of countries. 1 Enforcement of criminal antitrust laws takes place against both individuals and businesses, 2 and while it is clear that there are situations where business entities must be held responsible for actions of their employees, there are other situations where the intent of the corporation may be contrary to the actions of the employee. Throughout the world, in competition law, as well as in other areas of law, there is a consensus that it is appropriate for companies to adopt compliance and ethics programs to utilize management techniques to foster compliance with law. So, as standards of corporate [\*369] conduct become more universal, they reflect adherence to what is essentially an international law - the international law of competition. At the same time, more national authorities recognize that companies are expected to have compliance programs, and that a bona fide compliance program reflects a corporate intent not to violate the law, and therefore should be a positive factor in how authorities treat such companies, including as a mitigating factor for any penalty that might be imposed based on the ultra vires act by an employee.

It is well accepted that compliance and ethics programs are an expected part of corporate activity, and while no program can always guarantee human behavior, these programs do work to mitigate violations of law. Indeed, it can be said that it is now a standard for companies to have compliance programs or at least some elements of such programs such as codes of conduct. We submit that this growing recognition of the purpose of compliance and ethics programs has reached broad-based acceptance and should now be recognized in the competition law field by the United States and other governments as a standard of international law.

The Concept of Organizational Liability

Under many legal regimes, a corporation cannot be criminally punished for the actions of its employees, and until relatively recently (at least if you consider a century relatively recent), under the common law, a corporation was viewed as a legal fiction, 3 which could not be held liable for the criminal conduct of its employees. In the United States, it was not until 1909, in New York Central & Hudson River Railroad v. United States, 4 that the Supreme Court ruled that because the great majority of business transactions were conducted by corporations, it was time to abandon the "old and exploded doctrine" that a corporation was not indictable. 5 The Court reasoned that, as a matter of public policy, because a corporation could be held civilly liable, criminal liability should also follow. 6

This concept of corporate liability has been extended to the point where the business is often held liable for acts of employees even if the [\*370] company was not aware of the violation, 7 prohibited the conduct that led to the violation, 8 or there was no actual benefit to the corporation through the acts of the employee. 9 So even if none of the three justifications for corporate liability are present, i.e., knowledge, benefit, or authority, corporate liability for the acts of an employee - in addition to the liability of the employee - may still be found. A number of reasons have been given for this approach, but a consistent argument is that this type of liability will have an in terrorem effect on the corporation and force the entity to make certain that employees obey the law. 10 As a practical matter, it also reflects the reality that employees working through a corporation, whether or not their actions are authorized, can cause harm far beyond the abilities of one person. Therefore, according to this line of reasoning, it is appropriate that the entity be punished criminally (and pay civil damages).

The usual rule in the United States and other common law countries is that a corporation is liable for acts of agents and employees acting within the scope of their employment and, in most cases, with the intent to benefit the company. 11 This approach derives from the common law doctrine of respondeat superior, which held that a master is generally liable for the actions of servants, but may escape liability if the servant acts outside the scope of employment (i.e., takes action for [\*371] which there is no actual or apparent authority). 12 The concept of apparent authority, the authority that outsiders would normally assume the agent to possess judging from his or her position in the company and the circumstances surrounding previous instances of conduct, is often the foundation for a finding of corporate liability. 13 Employees are assumed to be acting within the scope of their employment 14 if they are doing acts on the corporation's behalf in the performance of their general line of work. 15 An agent must be "performing acts of the kind which he is authorized to perform, and those acts must be motivated - at least in part - by an intent to benefit the corporation." 16 It is not necessary that the acts actually benefited the corporation, only that they were intended to do so.

The court decisions and statutes that led to these multiple bases for finding enterprise liability grew up in an era where there was recognition of the power of the "faceless" corporation and the need to control its activities. Courts would impute knowledge or intent to the corporation, even where there was no benefit to the enterprise by the wrongful acts of the employee and the activities did not benefit the corporation, although some courts are willing to consider whether the violation was foreseeable. 17 In other situations, liability might be imputed to a corporate officer or director for failure to exert their authority to ensure that the corporation (i.e., acting through employees) did not do wrong. 18

But it is also an inescapable fact of our human existence that people are fallible, and that in some cases people will ignore instructions and do things that they were expressly forbidden to do. By holding a corporation liable for virtually anything that any employee does, a situation of strict liability is created that may, in fact, be outside the scope of many laws that require an intent to violate the law. [\*372] Notwithstanding the desire to control the power of the corporation, there are limits to what it can do. The efforts of the corporation to control the actions of employees are a valid consideration in determining whether the corporation should be held liable for the actions of an employee, as was noted in the instructions to the jury after the trial of Arthur Andersen in connection with the Enron debacle:

If an agent was acting within the scope of his or her employment, the fact that the agent's act was illegal, contrary to the partnership's instructions, or against the partnership's policies does not relieve the partnership of responsibility for the agent's acts. A partnership may be held responsible for the acts its agents performed within the scope of their employment even though the agent's conduct may be contrary to the partnership's actual instructions or contrary to the partnership's stated policies. You may, however, consider the existence of Andersen's policies and instructions, and the diligence of its efforts to enforce any such policies and instructions, in determining whether the firm's agents were acting within the scope of their employment. 19

The key here is "diligence." Was a compliance program something that existed only on paper, 20 or were there indicia of sincerity on the part of the corporation that showed that it legitimately tried to enforce its policy of compliance? The diligence of the corporation in enforcing its policy should be a key factor in determining if it is the kind of program that should entitle the corporation to some measure of mitigation from legal penalties imposed as a result of the actions of an employee that disobeyed the policy. 21

[\*373] Competition law imposes certain standards of behavior that are accepted because of an understanding that society benefits from competition. Therefore, in most cases, cartels are prohibited, as is abuse of market power or dominance. There is a recognition in many areas of law that transparency is beneficial, and thus bribes or secret rebates are prohibited for their disruptive impact on competition, as well as their inherent corruptness.

But how do these standards become accepted? It is not sufficient only to implement national laws and multinational agreements. Enforcement authorities recognize that there must also be private action to enforce policies within corporations and to demonstrate that noncompliance with law will not be tolerated. As will be discussed below, there are benchmarks of what is an "effective" compliance and ethics program that have received broad-based acceptance. Standards of international competition law cannot have their desired impact without international standards and efforts for compliance. Companies need to be able to know that what they do to implement compliance standards does matter so that they will make a diligent effort to prevent cartel behavior from happening. If a company has taken serious action to enforce its standards, such as by discharge of employees who violate the law, 22 this level of corporate compliance, which is expected by enforcement authorities, should be recognized when deciding how to treat corporations, including charging and penalty decisions.

So, there is a combination of factors at work here. Competition law standards are virtually universal in their acceptance. 23 To get those standards to actually be implemented by corporations, there need to be corporate compliance and ethics programs in place. Standards of culpability recognize that factors such as intent, knowledge, and benefit are relevant to findings of corporate liability. A number of countries do specifically encourage compliance and ethics programs, including in the antitrust area. 24 Therefore, this growing, worldwide acceptance, combined with universal necessity, has established an international law not just for antitrust, but for antitrust compliance. The countries that do not formally recognize the value of bona fide compliance programs as relevant to corporate liability, perhaps seduced by the possibility of collecting huge fines from a corporate piggy-bank, are out-of-step with the reality of what is necessary to truly promote the principles of competition law.

#### U.S. commitment prevents the disintegration of international economic law – extinction.

Arcuri ’20 [Alessandra; 2020; Full Professor of Inclusive Global Law and Governance at the Erasmus School of Law, Journal of International Economic Law, “International Economic Law and Disintegration: Beware the Schmittean Moment,” vol. 23]

Introduction

There was a time when national sovereignty was out of fashion. In the nineties, international lawyers were engaged in imaging the global order beyond the nation-state. Theories to make this order possible were proliferating: from Global Administrative Law to global constitutionalism.1 International Economic Law (IEL) played an important role in the journey toward the global order. Our markets could be integrated through an almost brand new organization, the World Trade Organization (WTO). The WTO was created and endowed with a powerful set of new agreements, promoting the harmonization of health and safety law—through the Sanitary and Phytosanitary (SPS) Agreement—and technical regulation—Technical Barriers to Trade (TBT) Agreement—and establishing (relatively uniform) Intellectual Property Rights regimes worldwide (the TRIPS Agreement). The WTO also included a brand new dispute settlement system, considered by many as a manifestation of the rule of law at the international level. Similarly, organizations such as the World Bank and the International Monetary Fund (IMF) were indirectly spreading (de-)regulatory policies throughout the developing world.2 Globalization, nudged by a global technocratic elite, was alive and kicking, back then.

Today we face a crisis of the regime of international economic law and, more broadly, global economic governance. The system appears broken for its incapacity to face some of the most daunting challenges of our time: the widespread and dramatic process of environmental degradation and the unacceptable inequalities between poor and rich. On its face, the phenomenon of far-right populists, partly reflected in Brexit and Trump politics, and spreading across the Atlantic is shaking the system of international economic law, by hailing nationalist policies. The idea that the nation-state may be a desirable source of disintegration of the global (legal) order is gaining traction across the political spectrum. It appears clear that the answer to the legitimacy crisis of the system of international economic law and governance offered by progressives3 resorts also to entrusting the nation state with more political space—a space that allegedly has been unduly constrained by the global economic order.

Not only politicians but also progressive academicians, such as Professor Dani Rodrik, have defended the importance of national sovereignty,4 as one of the necessary paradigms to fix our broken world order. The gist of the reasoning is simple: global institutions went too far in eroding national sovereignty, which is the real basis for democratic liberal regimes. Without the nation-state, environmental, industrial, and redistributive policies cannot be realized. As Rodrik put it: ‘So, I accept that nation-states are a source of disintegration for the global economy.’5

This article critically engages with the idea that the nation-state is a legitimate force of disintegration of the international economic order, with particular attention to trade and investment agreements. There are disparate circumstances, from the realm of food safety regulation to the regulation of capital flows,6 in which it is arguably desirable that domestic institutions (re-)gain more power. Most importantly, the nation-state is today an important site of democracy and, only for that reason, it is worth defending. Yet, in times of raising authoritarianism, it is crucial to reflect on some of the limits of the nation-state and on the necessity to develop alternative paradigms for integrating economies and societies.

This article presents a two-fold critique of the idea that an expansion of national sovereignty is going to achieve a better socio-economic world order per se. The first critique is internal, showing that the nation-state does not possess intrinsic characteristics to facilitate democracy, equality, and sustainability. The second is external and focuses on the necessity to look reflexively at the goals of the system of international economic law, to re-imagine it as capable to address questions of inequality and environmental degradation.

In a more pragmatic fashion, this article posits that more nation-state may be a misleading and possibly dangerous response to today’s daunting challenges. It is misleading in so far as it promises solutions that nation-states alone cannot deliver. It is dangerous in so far as the rhetoric of the nation-state paradoxically facilitates the turn toward an expansion of the ‘rule of exception’ and, eventually, authoritarianism. Above all, in advocating for disintegration through the nation-state, we need to reckon with our haunting past where economic autarchy has been deeply intertwined with the ascent of fascism and Nazism. If today the nation-state may appear as a beacon of democracy, the role of nationalism in generating the nemesis of democracy should not be neglected. In short, and at the risk of oversimplification, ‘America first’ echoes too closely fascist slogans.7

I. A PROGRESSIVE DEFENSE OF THE NATION-STATE AND THE RISK OF A ‘SCHMITTEAN MOMENT’

Let me start by rehashing the two interconnected and equally formidable challenges we are facing today: the question of environmental degradation and the unacceptable level of inequalities whereby a large part of the population in the world lives in poverty (both in developing and developed countries, but still overwhelmingly concentrated in so-called developing countries) vis-à-vis a small elite enjoying incredible wealth. Economic integration that does not deal with these challenges is not only doomed to fail; it is a type of economic integration that we should not aspire to.

It is plausible that Brexit and the disintegrationist economic policy of Trump have been partly enabled by the growing inequalities in the Anglophone nations. It is no brainer that a large fraction of Brexiteers and Trump voters are the ‘left behind.’8 In wealthy countries, the working class often felt left behind by thriving globalization, which has benefited only the elites. The—often labelled—‘populist turn’ rests on the idea that the ‘other’, the ‘foreigner’ has stolen ‘our’ welfare and a more nationalistic policy is needed to protect the losers of the current state of affairs. This is evident from Trump’s slogan ‘Buy American, Hire American.’ It is worrying how this type of nationalism is entrenched in racism and in the othering of the non-American.

However, as mentioned earlier, the case for more nation-state has also been made by ‘progressive’ politicians and intellectuals. Among progressive economists, Dani Rodrik stands out for having defended the nation-state with compelling arguments. Let me quote him at length: ‘When it comes to providing the arrangements that markets rely on, the nation-state remains the only effective actor, the only game in town. Our elites’ and technocrats’ obsession with globalism weakens citizenship where it is most needed—at home—and makes it more difficult to achieve economic prosperity, financial stability, social inclusion, and other desirable objectives.’9 Not only is the nation-state the only game in town, when it comes to issues of redistribution, social security and safety, the nation-state is also desirable because it can deliver institutional diversity which is needed to realize the social contract: ‘Developing nations have different institutional requirements than rich nations. There are, in short, strong arguments against global institutional harmonization.’10 The nation-states can meet different preferences, and ‘[i]nsufficient appreciation of the value of nation-states leads to dead ends.’ Rodrik also concedes that international market liberalization is the offspring of well-functioning nation-states rather than international institutions: ‘Domestic political bargains, more than GATT rules, sustained the openness that came to prevail.’11 Against this background, Rodrik defends ‘economic populism’ in so far as it constitutes a form of resistance to ‘liberal technocrats’ imposing undue restraints on domestic economic policy.12 The rigid focus on price stability in low-inflation environments is a clear example of global or EU-driven policies largely insensitive to the effects on employment and paradoxically even growth.13

Many of Rodrik’s arguments are compelling, such as his critique of the economic profession’s misleading analysis of trade and investment agreements. Some of his reform proposals, such as the strengthening of green industrial policy,14 are arguably desirable. Most crucially, the nation-state may be at present one of the most developed sites of democracy, albeit an imperfect one. When global institutions constrain nation-state policies formed following democratic decision-making, this may legitimately be seen as a threat to democracy. Rodrik’s work has had a wide echo in legal circles, as evidenced by the publication of a book with the goal of reimagining trade and investment law, 15 which is opened by several chapters all commenting—in overwhelmingly positive terms—on Rodrik’s Straight Talks on Trade. The nation-state and, more generally, sovereignty is (re-)gaining traction also among progressive political theorists. In times of economic and existential uncertainties, sovereignty is there to offer protection ‘from unfettered markets and from permanently incumbent austerity’ and it constitutes a ‘refusal of a “liquid society” and of its very solid … inequalities.’16 Some of the most lucid analyses of the current international economic order point at the dramatic consequences of an increase of capitalist power that has incapacitated states to act in defense of its own people.17 The attention on sovereignty is also partly reflected in recently negotiated provisions of new trade and investment agreements, where states are explicitly endowed with a ‘right to regulate.’ Despite the unclear practical implications of such jargon, its symbolic value is unambiguously bearing witness to the shared view that states ought to maintain (or regain) political space. Against this background, Trump’s claims to defend the Ohio steel workers by whatever trade measures it takes may appear more acceptable. Could we then read in this reinvigorated faith in sovereignty a ‘Grotian moment’?18

Without indulging on this question, this article posits that we should beware the ‘risk’ of entering a ‘Schmittean moment’.19 This term is here used to refer to a major shift toward an ideal of unfettered national sovereignty as the chief paradigm to re-orient the international (economic) order. Under such ideal, any international normative benchmark is brushed away by an allegedly more intellectually honest ‘political’ dimension, which can find its realization only in the decisionist state.20 To understand the risk of a ‘Schmittean moment’, it is important to recognize that the move toward more nation-state is partly animated by the legitimate concerns over the existing international legal order; legitimate concerns, which have eloquently been articulated by Schmitt himself.

Carl Schmitt’s work offers a lucid critique of the ‘exclusionary character of liberal universalism.’21 His critique exposes the hypocrisy underpinning many universalisms, most prominently the legal canon of ‘just’ war.22 In fact, it is the very core of the contemporary international legal project that gets questioned: ‘The concept of humanity is an especially useful ideological instrument of imperialist expansion, and in its ethical-humanitarian form, it is a specific vehicle of economic imperialism. Here, one is reminded of a somewhat modified expression of Proudhon’s: whoever invokes humanity wants to cheat.’23 This argument has direct relevance for the domain of international economic law. In an endnote to this claim—discussing the extermination of Indians in North America—Schmitt explains the danger to use certain moral canons as exclusionary devices: ‘As civilization progresses and morality rises, even less harmless things than devouring human flesh could perhaps qualify as deserving to be outlawed in such a manner. Maybe one day, it will be enough if people were unable to pay its debts.’24 This consideration is of extreme actuality in relation to the current international legal order, which seems to have crystallized structures of annihilation of debt states, and their very peoples.25 In decrying how the economical is rescinded by the political, Schmitt unveils the absent ‘presence’ of (mostly American) politics in the economy. In short, Schmitt’s analysis cogently engages with the problem of depoliticization that the international liberal order yields.26 It is at this juncture that the thoughts of Schmitt and Rodrik may intersect. In some sense, Schmitt’s critique resonates with the critique of ‘hyper-globalization’ articulated by Rodrik:27 ‘one type of failure arose from pushing rule making onto supranational domains too far beyond the reach of political debate and control.’28

Before elaborating on this intersection, it is key to rehash some flaws of Schmitt’s analysis. While he has certainly a point in showing how liberal universalism can be used to arbitrarily exert hegemonic power in the name of humanity (and has so been used in such way by the US and other predominantly Western countries), the alternative he implicitly propounds rests on a nostalgia for a mythical past—a golden age based on the jus publicum Europaeum. Regrettably, this age has been golden only for some; the jus publicum Europaeum for all its glory was made of colonial relations, exploitation, and violence. It has also been noted how Schmitt’s historical analysis, which portrays the times of the jus publicum Europaeum as times where war gets domesticated by the modern state eclipses the fact that the ‘development of the modern state apparatus … helped bring about unprecedented capacities for organized state violence, even if such violence was no longer typically unleashed against fellow Europeans.’29 His conception of sovereignty, which finds essential realization only in the ‘unlimited jurisdictional competence’ normalizes the rule of exception. A related trouble with Schmitt’s core normative ideas is the totalizing enemy-friendship antithesis: ‘the distinction of friend and enemy denotes the utmost degree of intensity of a union or separation, of an association or dissociation.’30 This is particular fatal to an ideal of nonviolent international law, as it denies even the aspiration of solidarity beyond borders.31 In other words, Schmitt conceptualization of the international legal order crystallizes nation-state borders in deeper existential structures, leaving no hope for common projects of different communities inhabiting the earth. In exposing the violence of allegedly humanitarian projects, Schmitt is de facto hollowing out the concept humanity, reducing its essence to violence in potentia: ‘the entire life of a human being is a struggle and every human being symbolically a combatant. The friend, enemy, and combat concepts receive their real meaning precisely because they refer to the real possibility of physical killing.’32 In denouncing the hypocrisy of moralism, Schmitt seems to negate the possibility of morality altogether. The Nomos of the earth, starting with the act of appropriation—nehmen (take)—and continuing with dividing the land—nemein (divide)—does not engage with the morality of the first act of appropriation nor with its division. And this is also what Hanna Arendt contests to Schmitt: ‘to remove justice from the content of the law.’33

### 1NC – T-Prohibit

#### ‘Prohibiting’ a practice requires per se illegality.

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

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

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

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

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

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

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

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

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

#### Limits---many standards, requiring distinct answers, make the topic unmanageable.

#### Ground---fringe standards dodge links and allow bidirectional permissiveness.

### 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.

### 1NC – Biz Con DA

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

Hathout 21 – 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.

#### Extended COVID economic decline causes extinction.

McLennan 21 – Strategic Partners Marsh McLennan SK Group Zurich Insurance Group, Academic Advisers National University of Singapore Oxford Martin School, University of Oxford Wharton Risk Management and Decision Processes Center, University of Pennsylvania, “The Global Risks Report 2021 16th Edition” “http://www3.weforum.org/docs/WEF\_The\_Global\_Risks\_Report\_2021.pdf

Forced to choose sides, governments may face economic or diplomatic consequences, as proxy disputes play out in control over economic or geographic resources. The deepening of geopolitical fault lines and the lack of viable middle power alternatives make it harder for countries to cultivate connective tissue with a diverse set of partner countries based on mutual values and maximizing efficiencies. Instead, networks will become thick in some directions and non-existent in others. The COVID-19 crisis has amplified this dynamic, as digital interactions represent a “huge loss in efficiency for diplomacy” compared with face-to-face discussions.23 With some alliances weakening, diplomatic relationships will become more unstable at points where superpower tectonic plates meet or withdraw.

At the same time, without superpower referees or middle power enforcement, global norms may no longer govern state behaviour. Some governments will thus see the solidification of rival blocs as an opportunity to engage in regional posturing, which will have destabilizing effects.24 Across societies, domestic discord and economic crises will increase the risk of autocracy, with corresponding censorship, surveillance, restriction of movement and abrogation of rights.25 Economic crises will also amplify the challenges for middle powers as they navigate geopolitical competition. ASEAN countries, for example, had offered a potential new manufacturing base as the United States and China decouple, but the pandemic has left these countries strapped for cash to invest in the necessary infrastructure and productive capacity.26 Economic fallout is pushing many countries to debt distress (see Chapter 1, Global Risks 2021). While G20 countries are supporting debt restructure for poorer nations,27 larger economies too may be at risk of default in the longer term;28 this would leave them further stranded—and unable to exercise leadership—on the global stage.

Multilateral meltdown Middle power weaknesses will be reinforced in weakened institutions, which may translate to more uncertainty and lagging progress on shared global challenges such as climate change, health, poverty reduction and technology governance. In the absence of strong regulating institutions, the Arctic and space represent new realms for potential conflict as the superpowers and middle powers alike compete to extract resources and secure strategic advantage.29 If the global superpowers continue to accumulate economic, military and technological power in a zero-sum playing field, some middle powers could increasingly fall behind. Without cooperation nor access to important innovations, middle powers will struggle to define solutions to the world’s problems. In the long term, GRPS respondents forecasted “weapons of mass destruction” and “state collapse” as the two top critical threats: in the absence of strong institutions or clear rules, clashes— such as those in Nagorno-Karabakh or the Galwan Valley—may more frequently flare into full-fledged interstate conflicts,30 which is particularly worrisome where unresolved tensions among nuclear powers are concerned. These conflicts may lead to state collapse, with weakened middle powers less willing or less able to step in to find a peaceful solution.

### 1NC – States CP

#### The fifty states and relevant subnational entities should prohibit anticompetitive restraints on labor markets for religious leaders.

#### 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.

### FTC DA – 1NC

#### Plan trades off with FTC resources in other areas

Reinhart 21 – Tara Reinhart, head of the Antitrust/Competition Group in Skadden’s Washington, D.C. office, “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.

#### Antitrust resources are key to merger enforcement – that’s key to supply chain resilience

Miller 22 – Sarah Miller, Executive Director and Founder of the American Economic Liberties Project, “To Save Jobs and Slow Inequality, Stop the Merger Frenzy,” January 2022, https://www.economicliberties.us/wp-content/uploads/2022/01/Stop-the-Merger-Frenzy\_Quick-Take\_Final\_1.10.pdf

The creation and preservation of good jobs, the revitalization of small and independent

business, and the promotion of competitive markets are essential to a healthy, resilient, and

just economy. However, COVID-19 and policymakers’ response to it have instead facilitated

a rapid economic restructuring that is exacerbating already extreme levels of corporate

concentration across the economy through a massive increase in mergers.

Policymakers must move quickly to put the brakes on corporate consolidation or risk jeopardizing short- and longer-term efforts to strengthen the American economy. Most immediately, rampant consolidation promises to deliver mass layoffs and further drive down wages in communities around the country if policymakers are unable to adequately intervene.

The merger wave also endangers many Biden administration objectives, from addressing economic inequality and insecurity to strengthening supply chain resiliency, rebalancing bargaining power between labor and employers, and promoting business dynamism and innovation.

A RECORD-BREAKING PACE OF MERGERS AND ACQUISITIONS

Ballooning stock prices have driven up company valuations, resulting in more companies willing to sell at today’s high prices. Corporate buyers, armed with their own high valuations, are on the hunt. Incentivized by cheap capital and huge cash reserves, dealmakers have created an unprecedented merger wave, pushing already overtaxed antitrust enforcement capacity to its limit.

#### Supply chain stability solves emergent catastrophes whose cumulative risk profile outweighs all existential threats.

Piekle ’20 [Roger; Professor of Poli Sci @ UC Boulder; “Catastrophes of the 21st Century” https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3660542]

Emergent catastrophes

Some catastrophes are difficult to place into historical context because there is really no such relevant context. Among them are financial crises, supply-chain disruption or epidemics. For instance, the table below comes from Supply Chain Digest and shows (as of 2006) a ranking of top ten “supply chain disasters.”6 These are not disasters caused by extreme events like a flood (e.g., Bangkok 2011) or an earthquake (e.g., Honshu) 2011 which then have knock-on effects to global supply chains, as important as these are. These disasters are caused by the failure of a system created by humans which displays some unanticipated behavior for which decision makers were unprepared.

An “emergent” phenomena, according to one useful definition is “a large scale, group behavior of a system, which doesn’t seem to have any clear explanation in terms of the system’s constituent parts” (Darley, 1994; cf. Homer-Dixon et al. 2015). In other words, you cannot describe the behavior of the system as simply the additive consequence of its elements – hence the notion of emergence. Emergent systems are “complex” in the sense that its behaviors are “the result of interactions between a large number of relatively simple parts, cannot be predicted simply from the rules of those underlying interactions” (Darley, 1994). Such interactions can be simulated but not generally predicted.

Due to their inherent unpredictability, emergent phenomena pose a particular challenge for the use of insurance as a tool of management. Insurance requires that risks be, to some quantifiable degree, in the sense of being able to characterize their statistics of occurrence (e.g., Berliner, 1982). Emergent phenomena do not meet this criterion of insurability. This does not necessarily mean that insurance cannot be used as a response tool, but rather that any such reinsurance will probably need the backstop of a residual market (see Weinkle, 2015).

With respect to catastrophic risks, perhaps the ultimate irony is that efforts to quantify risk, as a mechanism of responding to risk, itself can lead to emergent phenomena with its own considerable risks. Consider the role of so-called “risk models” in finance and their role in the global financial crisis. Risk models can be valuable tools in the financial industry because they allow decision makers to evaluate the consequences of their assumptions in a rigorous manner. But there are two significant problems with their use in financial decision making.

One is that risk models break down in times of crisis. Well before the global financial crisis, Daníelsson (2002) observed that “The basic statistical properties of market data are not the same in crisis as they are during stable periods; therefore, most risk models provide very little guidance during crisis periods." The same models that make sophisticated financial instruments possible during normal times are virtually useless during times of crisis. They can also create emergent behaviors in financial markets.

A second problem is that the use of risk models encourages a herd mentality among firms. According to an Inspector General's report from the US Securities and Exchange Commission released September 25, 2008, "In times of market stress, trading dries up and reliable price information is difficult to obtain. Models therefore become relatively more important than market price in times of market stress than in times when markets are liquid and trading actively. Such stressed circumstances force firms to rely more on models and less on markets for pricing and hedging purposes."7 Daníelsson (2002) observes that the wide reliance on risk models to make decisions in a crisis can lead to perverse outcomes if “identical external regulatory risk constraints are imposed, regulatory demands may perversely lead to the amplification of the crisis by reducing liquidity." To have many large institutions making bad decisions with flawed information is not a recipe for financial stability.

Daníelsson (2008) cites a Lehmann Brothers' modeler commenting on model performance during the summer of 2007: "Events that models predicted would happen only once in 10,000 years happened every day for three days." As the financial crisis unfolded, decision makers suffered from having little experience in using the complex risk assessments. This was revealed dramatically during the spring of 2008, when the Financial Times reported that an error in a model used by Moody's, one of the world's most respected and widely utilized source for credit ratings, research and risk analysis, led to a far higher credit rating than was deserved by a particular complex derivative product. Upon learning of the error, Moody's adjusted the model to reflect the ratings error, rather than admit the initial mistake.8 Because no one had any experience with the sophisticated financial product being modeled, the presence of the error in the rating virtually escaped notice in the marketplace. Efficient? Hardly.

Effectively using models of complex, emergent systems usually means treating them as one of many approaches to assessing risk. The Inspector General of the SEC recommended that the SEC be "more skeptical" of risk models and that firms be required to develop "informal plans" for scenarios that may not be found in their models. In other words, they should use models heuristically and not as comprehensive tools for assessing risks. This implies that the appropriate use of any risk model is contingent on the decision environment – useful in ordinary times, risky in times of crisis. The sets a rather high bar for their effective use, as the existence of a crisis may not be readily apparent.

Risk models are an important tool and no doubt here to stay as a fundamental part of our 21st century global financial system. But wisdom will be found in using them effectively. Daníelsson (2008) explained,

“The current crisis took everybody by surprise in spite of all the sophisticated models, all the stress testing, and all the numbers. The financial institutions that are surviving this crisis best are those with the best management, not those who relied on models to do the management's job. Risk models do have a valuable function in the risk management process so long as their limitations are recognized. They are useful in managing the risk in a particular trading desk, but not in capturing the risk of large divisions, not to mention the entire institution. For the supervisors the problem is even more complicated. They are concerned with systemic risk which means aggregating risk across the financial system. Relying on statistical models to produce such risk assessments is folly. We can get the numbers, but the numbers have no meaning.”

The global financial crisis provides a perfect example of emergent risks and the challenges of preparing for them. More broadly, dealing with emergent phenomena requires attention to what is possible, rather than the probabilities of possibilities, and strategies of resilience, robustness and responsiveness.

Extraordinary Catastrophes

The third category of 21st catastrophes considered here are the extraordinary. Those hazards that may or may not be foreseen or foreseeable, but for which we are wholly unprepared, such as an asteroid impact, massive solar storm, or even fantastic scenarios found only in fiction, such as the consequences of contact with alien life. Perhaps surprisingly, such extraordinary hazards have received some attention in recent years.

For instance, Towers Watson has focused on a category of “extreme risks” which it defines as “potential events that are very unlikely to occur but that could have a significant impact on economic growth and asset returns, should they happen.”9 Towers Watson provided a ranking of what it concluded to be the top 15 “extreme” risks, shown below (cf., Smil 2008). In a somewhat similar exercise, Bostrom (2013) focuses on the concept of “existential risk” defined as “one that threatens the premature extinction of Earth-originating intelligent life or the permanent and drastic destruction of its potential for desirable future development.” Included in this category are things like nanotechnology or artificial intelligence run amok, global pandemic, nuclear terrorism and extreme climate change. Sandberg and Bostrom (2008) surveyed experts and arrived at an estimate of a 19% probability that humanity goes extinct before 2100, a number that they caution to take “with a grain of salt.”

Even while taking that “grain of salt” with respect the specific risk probabilities, the potential risks of large magnitude are nonetheless interesting. The experts that they surveyed provided median estimates of the likelihood of >1 million deaths by 2100 for each of the following threats: molecular nanotech weapons (25%), superintelligent AI (10%), engineered pandemic (30%), nuclear war (30%), nanotech accident (5%), natural pandemic (60%), nuclear terrorism (15%).

These values are remarkably high In another, similar exercise in 2015 the Global Challenges Foundation produced a list of 12 risks that threaten humanity.10 They identify risks described as “infinite” meaning that they could pose an existential threat. There are of course less intense scenarios associated with these risks that do not rise to the level of existential. The table below shows these risks, ranked by the number of times that each appears in a 22 different “global challenge” surveys identified in the report.

Climate change is ranked most commonly, appearing in 21 out of the 22 surveys. By contrast, the impact of a near-earth object (asteroid, comet etc.) presents a risk which is straight-forward and over the longer-term, a certainty. However, it appears in less than 2/3 of the risk surveys. NASA explains that the probabilities of a large impact are small (e.g., on average a 100m object is expected to hit the Earth once every 10,000 years) and with proper monitoring, the world would have several years advance notice of such an approaching object.11

The differential focus is highlighted by Bostrom (2013) who observes, “it is striking how little academic attention these issues have received compared to other topics that are less important.” The Global Challenges foundation points to the fact that there are about 100 times as many academic articles on the “dung beetle” as there are to “human extinction.” Bostrom (2013) suggests that one reason for the apparent disparity is that “the biggest existential risks are not amenable to plug-and-play scientific research methodologies.” Most notably, they are not often amenable to meaningful prediction or risk quantification. Further, none of these issues are politicized in the sense that climate change is, which provides a demand for evermore studies to buttress ongoing policy debates. No one is debating the risks of an asteroid impact. Google Scholar allows for a simple, quantitative investigation of the focus of academic attention on extraordinary catastrophes. The graph below shows a simple ratio of articles on “climate change” listed by Google Scholar to articles on “asteroid impact risk,” “global pandemic,” “super volcano,” and “extraterrestrial life.”12 The differential is stark.

## Case

### 1NC – AT: Religious Freedom

#### Tons of alt causes to religious freedom – most of the Middle East, Pakistan, Bangladesh Indonesia are all Islamic Republics.

#### Their Pompeo card zeroes the case – says religious freeomd is being denied because of Uiyghur camps in China – practice by authoriatairns don’t stop post plan

#### No one models the US – post 9/11 discrimiantion against muslims, Jewish syanongue shootin etc all demonstrate we are total hypocrites.

#### No modeling in religion – no one in Asia or the Middle East cares about US religion – we’re majority Christian versus the Buddhist. Hindu majortiies in those counties

#### Other forms of repression trigger their impact – discimrinatio based on race, thenicity, gender

#### No bioterror impact.

Pinker ’18 [Steven; Canadian-American cognitive psychologist, Professor @ Harvard University; *Enlightenment Now: The Case for Reason, Science, Humanism, and Progress*, Viking, Penguin Group]

Biological agents are particularly ill-suited to terrorists, whose goal, recall, is not damage but theater (chapter 13).58 The biologist Paul Ewald notes that natural selection among pathogens works against the terrorist’s goal of sudden and spectacular devastation. 59 Germs that depend on rapid person-to-person contagion, like the common-cold virus, are selected to keep their hosts alive and ambulatory so they can shake hands with and sneeze on as many people as possible. Germs get greedy and kill their hosts only if they have some other way of getting from body to body, like mosquitoes (for malaria), a contaminable water supply (for cholera), or trenches packed with injured soldiers (for the 1918 Spanish flu). Sexually transmitted pathogens, like HIV and syphilis, are somewhere in between, needing a long and symptomless incubation period during which hosts can infect their partners, after which the germs do their damage. Virulence and contagion thus trade off, and the evolution of germs will frustrate the terrorist’s aspiration to launch a headline-worthy epidemic that is both swift and lethal. Theoretically, a bioterrorist could try to bend the curve with a pathogen that is virulent, contagious, and durable enough to survive outside bodies. But breeding such a fine-tuned germ would require Nazi-like experiments on living humans that even terrorists (to say nothing of teenagers) are unlikely to carry off. It may be more than just luck that the world so far has seen just one successful bioterror attack (the 1984 tainting of salad with salmonella in an Oregon town by the Rajneeshee religious cult, which killed no one) and one spree killing (the 2001 anthrax mailings, which killed five).60 To be sure, advances in synthetic biology, such as the gene-editing technique CRISPR-Cas9, make it easier to tinker with organisms, including pathogens. But it’s difficult to re-engineer a complex evolved trait by inserting a gene or two, since the effects of any gene are intertwined with the rest of the organism’s genome. Ewald notes, “I don’t think that we are close to understanding how to insert combinations of genetic variants in any given pathogen that act in concert to generate high transmissibility and stably high virulence for humans.”61 The biotech expert Robert Carlson adds that “one of the problems with building any flu virus is that you need to keep your production system (cells or eggs) alive long enough to make a useful quantity of something that is trying to kill that production system. . . . Booting up the resulting virus is still very, very difficult. . . . I would not dismiss this threat completely, but frankly I am much more worried about what Mother Nature is throwing at us all the time.”62 And crucially, advances in biology work the other way as well: they also make it easier for the good guys [public protectors] (and there are many more of them) to identify pathogens, invent antibiotics that overcome antibiotic resistance, and rapidly develop vaccines.63 An example is the Ebola vaccine, developed in the waning days of the 2014–15 emergency, after public health efforts had capped the toll at twelve thousand deaths rather than the millions that the media had foreseen. Ebola thus joined a list of other falsely predicted pandemics such as Lassa fever, hantavirus, SARS, mad cow disease, bird flu, and swine flu.64 Some of them never had the potential to go pandemic in the first place because they are contracted from animals or food rather than in an exponential tree of person-to-person infections. Others were nipped by medical and public health interventions. Of course no one knows for sure whether an evil genius will someday overcome the world’s defenses and loose a plague upon the world for fun, vengeance, or a sacred cause. But journalistic habits and the Availability and Negativity biases inflate the odds, which is why I have taken Sir Martin up on his bet. By the time you read this you may know who has won.65

## Adv 2

### AT: MENA War

#### Middle East war is more unlikely than ever

Mara Karlin 19, International Studies Professor at John Hopkins University, Nonresident Senior Fellow at the Brookings Institution, and U.S. Deputy Assistant Secretary of Defense for Strategy and Force Development 2015-2016, & Tamara Cofman Wittes, a Senior Fellow in Foreign Policy at the Brookings Institution and U.S. Deputy Assistant Secretary of State for Near Eastern Affairs from 2009-2012. [America’s Middle East Purgatory: The Case for Doing Less, Foreign Affairs, January/February 2019, 98(1)]

LESS RELEVANT REGION In response to the Iraq war, the United States has aimed to reduce its role in the Middle East. Three factors have made that course both more alluring and more possible. First, interstate conflicts that directly threatened U.S. interests in the past have largely been replaced by substate security threats. Second, other rising regions, especially Asia, have taken on more importance to U.S. global strategy. And third, the diversification of global energy markets has weakened oil as a driver of U.S. policy. During the Cold War, traditional state-based threats pushed the United States to play a major role in the Middle East. That role involved not only ensuring the stable supply of energy to Western markets but also working to prevent the spread of communist influence and tamping down the Arab-Israeli conflict so as to help stabilize friendly states. These efforts were largely successful. Beginning in the 1970s, the United States nudged Egypt out of the pro-Soviet camp, oversaw the first Arab-Israeli peace treaty, and solidified its hegemony in the region. Despite challenges from Iran after its 1979 revolution and from Saddam Hussein’s Iraq throughout the 1990s, U.S. dominance was never seriously in question. The United States contained the Arab-Israeli conflict, countered Saddam’s bid to gain territory through force in the 1990–91 Gulf War, and built a seemingly permanent military presence in the Gulf that deterred Iran and muffled disputes among the Gulf Arab states. Thanks to all these efforts, the chances of deliberate interstate war in the Middle East are perhaps lower now than at any time in the past 50 years.

#### No great power draw in.

Glaser ’17 [John; 1-9-2017; Associate Director of Foreign Policy Studies at the Cato Institute; “Does the U.S. Military Actually Protect Middle East Oil?” National Interest, https://nationalinterest.org/blog/the-skeptics/does-the-us-military-actually-protect-middle-east-oil-18995?page=0%2C1]

In addition, the balance of power globally and in the region today is favorable for energy security. First, an external power gaining a stranglehold over the Persian Gulf region is implausible. The Soviet Union is long gone and today’s Russia suffers from systemic economic problems that hinder its potential to project power in the Middle East. China, while increasingly powerful in its own sphere, lacks the political will to dominate the Gulf.

The regional balance of power is also favorable. According to Joshua Rovner, “the chance that a regional hegemon will emerge in the Persian Gulf during the next twenty years is slim to none. This is true even if the United States withdraws completely.” No state in the region possesses the capabilities necessary to conquer neighboring territories or gain a controlling influence over oil resources, and most are bogged down and distracted by internal problems. Overall the region is in a state of defense dominance: while too weak to project power beyond their borders, the major states do have the capability to deter their neighbors, making the costs of offensive action prohibitively high.

So, three of the major scenarios that have traditionally justified a forward deployed military presence in the Persian Gulf—the entrance of a hostile external power, the rise of a regional hegemon and a military clash among the major states—are exceedingly unlikely even absent the U.S. military presence.

### AT: US-China War

#### No US-China war.

Lei ’20 [Cui; PhD and MA in International Politics, Associate Research Fellow @ China Institute of International Studies; “Despite heated talk, risk of a US-China hot war is small”; 7/24/2020; https://www.scmp.com/comment/opinion/article/3094121/why-risk-us-china-hot-war-small-despite-heated-talk]

Many observers are pessimistic about deteriorating US-China relations and believe the two countries are heading towards a cold war. Even worse, some argue that the situation might be more dangerous than the US-Soviet Union Cold War, and that a hot war might break out between the two. This argument is unconvincing. First of all, deterrents to a flare-up are much stronger in US-China relations than in US-Soviet relations. Although economic and people-to-people ties between China and the US are declining, they are still close compared to US-Soviet ties. It is hard to decouple two closely intertwined economies and societies. Take two examples. China is expected to become the world's largest consumer market, a temptation hard to resist for exporters, including those from the US. And in education, more than 300,000 Chinese students study in the US, bringing in huge revenues for the US education industry. Many universities go to great lengths to woo international students. Recently Harvard and the Massachusetts Institute of Technology even sued the government over its new visa restrictions, now aborted, on international students. Second, even if there is decoupling, the pain would not be too great and can be kept out of the national security sphere if properly handled. In fact, for national security reasons, a modest degree of isolation will make both sides more secure and comfortable. For instance, if China’s information technology equipment cannot capture Western markets, the US will be more relaxed. If China cannot get advanced technologies from the US and its technological progress slows down, the US will be less anxious. In the same vein, China feels assured knowing that if the Trump administration does impose a travel ban on Communist Party members, it would be abandoning one of the tools available to the US to promote “peaceful evolution” in China. Economic decoupling is undeniably more painful for China than for the US. But unlike Japan during WWII, which was hit hard by the US oil embargo because of its lack of natural resources, China has no such problems. Given its large domestic market, losing the US as a major customer is not a disaster for China, and can be compensated through more dynamic economic activities at home. China can also make up for being freezed out of technological exchanges by turning to indigenous innovation. As for the US, it can import goods from other developing countries, albeit less cheaply. The relative loss is acceptable when weighed against the heightened perception of economic independence and security. Third, the ideological confrontation between China and the US is less intense than that during the Cold War. Unlike the obsession with ideology in those days, the line between capitalism and socialism is blurred today. The market economy has become universally recognised as the best way to promote economic growth and, politically, many countries have embraced democracy. Even North Korea calls itself the Democratic People’s Republic of Korea. Although ideological hawks in the US still long for the day when the beacon of freedom will light up the world, after many years of fighting bloody wars overseas, most American people are not interested in promoting democracy abroad. Meanwhile, China just wants to preserve its political system and has no interest in exporting it to other countries, as the Soviet Union did. Thus, ideological antagonism in China-US relations can easily be eased by calculations of realistic interests, which create conditions for compromise and cooperation. Fourth, both China and the US have many options other than war to achieve their policy goals. While they have no allies to serve as a buffer, given the nature of the potential conflict in the South China Sea or Taiwan Strait, both countries are adept at operating in grey zones and fighting psychological, public opinion or diplomatic warfare below the threshold of war. The forced closure of the Chinese consulate in Houston by the US government is just the latest act of brinkmanship. In addition, given China’s huge economic and financial interests in the US, the latter can wield the stick of sanctions when use of force is highly risky or not worth it. When both sides have many tools and options, why would they rush to war to achieve their goals? Last but not least, the imbalance of power will act as a deterrent. Some say the US and Soviet Union did not fight a hot war because they were evenly matched. It was not the case, actually. At the beginning of the Cold War, the Soviet Union was at a relative military disadvantage. Moreover, a country needs the will to fight before going to war, even if it is stronger militarily than its adversary. Having fought years of meaningless wars, the US is weary of war. China, too, abhors war. Having a clear understanding of US strength, especially when its own economy is slowing down and it is facing various domestic challenges, China would not wish to recklessly start a war with the US. In summary, the possibility of a hot war between China and the US is very small. The greatest danger for China is not a cold or hot confrontation with the US, but policymakers’ interpretation of the momentary hostility towards Beijing of a portion of the American population and the larger world. An erroneous interpretation could end China’s march to further opening up, and see it turn instead towards self-isolation.

### AT: Warming

#### Even extreme warming won’t cause extinction

Dr. Toby Ord 20, Senior Research Fellow in Philosophy at Oxford University, DPhil in Philosophy from the University of Oxford, The Precipice: Existential Risk and the Future of Humanity, Hachette Books, Kindle Edition, p. 110-112

But the purpose of this chapter is finding and assessing threats that pose a direct existential risk to humanity. Even at such extreme levels of warming, it is difficult to see exactly how climate change could do so. Major effects of climate change include reduced agricultural yields, sea level rises, water scarcity, increased tropical diseases, ocean acidification and the collapse of the Gulf Stream. While extremely important when assessing the overall risks of climate change, none of these threaten extinction or irrevocable collapse.

Crops are very sensitive to reductions in temperature (due to frosts), but less sensitive to increases. By all appearances we would still have food to support civilization.85 Even if sea levels rose hundreds of meters (over centuries), most of the Earth’s land area would remain. Similarly, while some areas might conceivably become uninhabitable due to water scarcity, other areas will have increased rainfall. More areas may become susceptible to tropical diseases, but we need only look to the tropics to see civilization flourish despite this. The main effect of a collapse of the system of Atlantic Ocean currents that includes the Gulf Stream is a 2°C cooling of Europe—something that poses no permanent threat to global civilization.

From an existential risk perspective, a more serious concern is that the high temperatures (and the rapidity of their change) might cause a large loss of biodiversity and subsequent ecosystem collapse. While the pathway is not entirely clear, a large enough collapse of ecosystems across the globe could perhaps threaten human extinction. The idea that climate change could cause widespread extinctions has some good theoretical support.86 Yet the evidence is mixed. For when we look at many of the past cases of extremely high global temperatures or extremely rapid warming we don’t see a corresponding loss of biodiversity.87

[FOOTNOTE]

We don’t see such biodiversity loss in the 12°C warmer climate of the early Eocene, nor the rapid global change of the PETM, nor in rapid regional changes of climate. Willis et al. (2010) state: “We argue that although the underlying mechanisms responsible for these past changes in climate were very different (i.e. natural processes rather than anthropogenic), the rates and magnitude of climate change are similar to those predicted for the future and therefore potentially relevant to understanding future biotic response. What emerges from these past records is evidence for rapid community turnover, migrations, development of novel ecosystems and thresholds from one stable ecosystem state to another, but there is very little evidence for broad-scale extinctions due to a warming world.” There are similar conclusions in Botkin et al. (2007), Dawson et al. (2011), Hof et al. (2011) and Willis & MacDonald (2011). The best evidence of warming causing extinction may be from the end-Permian mass extinction, which may have been associated with large-scale warming (see note 91 to this chapter).

[END FOOTNOTE]

So the most important known effect of climate change from the perspective of direct existential risk is probably the most obvious: heat stress. We need an environment cooler than our body temperature to be able to rid ourselves of waste heat and stay alive. More precisely, we need to be able to lose heat by sweating, which depends on the humidity as well as the temperature.

A landmark paper by Steven Sherwood and Matthew Huber showed that with sufficient warming there would be parts of the world whose temperature and humidity combine to exceed the level where humans could survive without air conditioning.88 With 12°C of warming, a very large land area—where more than half of all people currently live and where much of our food is grown—would exceed this level at some point during a typical year. Sherwood and Huber suggest that such areas would be uninhabitable. This may not quite be true (particularly if air conditioning is possible during the hottest months), but their habitability is at least in question.

However, substantial regions would also remain below this threshold. Even with an extreme 20°C of warming there would be many coastal areas (and some elevated regions) that would have no days above the temperature/humidity threshold.89 So there would remain large areas in which humanity and civilization could continue. A world with 20°C of warming would be an unparalleled human and environmental tragedy, forcing mass migration and perhaps starvation too. This is reason enough to do our utmost to prevent anything like that from ever happening. However, our present task is identifying existential risks to humanity and it is hard to see how any realistic level of heat stress could pose such a risk. So the runaway and moist greenhouse effects remain the only known mechanisms through which climate change could directly cause our extinction or irrevocable collapse.

This doesn’t rule out unknown mechanisms. We are considering large changes to the Earth that may even be unprecedented in size or speed. It wouldn’t be astonishing if that directly led to our permanent ruin. The best argument against such unknown mechanisms is probably that the PETM did not lead to a mass extinction, despite temperatures rapidly rising about 5°C, to reach a level 14°C above pre-industrial temperatures.90 But this is tempered by the imprecision of paleoclimate data, the sparsity of the fossil record, the smaller size of mammals at the time (making them more heat-tolerant), and a reluctance to rely on a single example. Most importantly, anthropogenic warming could be over a hundred times faster than warming during the PETM, and rapid warming has been suggested as a contributing factor in the end-Permian mass extinction, in which 96 percent of species went extinct.91 In the end, we can say little more than that direct existential risk from climate change appears very small, but cannot yet be ruled out.

# 2NC

## CP – Sunsets

### 2NC – OV

#### Signal of democratic transparency in antirust order key to liberal order.

GANESH SITARAMAN, Law @ Vanderbilt, ’19, “Countering Nationalist Oligarchy” https://democracyjournal.org/magazine/51/countering-nationalist-oligarchy/

International engagement must therefore focus as much—if not more—on rebuilding unions, enforcing antitrust laws, closing tax havens, ensuring transparency, and restricting the ability of money to influence politics as it does on lowering barriers to trade. Without such policies, the pursuit of international economic power—and the building of international economic institutions and agreements—can indirectly undermine democracy. This is one reason why the proposed Trans-Pacific Partnership (TPP) was so problematic. While many of its proponents justified the deal on strategic grounds akin to those offered here, the substance of the agreement was not focused on addressing the grave threats to economic democracy at home—and arguably made some of them worse. For example, one of the sources of our current age of ever-growing monopolies is the “consumer welfare standard,” a weak approach to enforcing antitrust laws that is not part of existing statutory law and is now fiercely contested among antitrust experts. The TPP’s antitrust provisions, however, adopted this approach, which would make it harder to combat monopolies and promote economic competition. International agreements like the TPP, and international institutions more broadly, should not include policies that undermine the effort to advance economic democracy at home. Such actions do not strengthen American national security.

The third strategy is development. Democracies must have a coherent development policy—an internal policy to support and strengthen innovation and industry. This means massive investments in research and development and an active innovation policy that ensures the development of certain industries within the borders of the country, particularly those on the cutting edge of technology. Development increases resilience in the face of economic threats. But it cannot be implemented through a policy focused on supporting national “champions”—the country’s leading megacorporations. Because democracy requires dispersing economic power internally, so too must its strategy for development.

Democracy’s Allies

Democracies that work together will be stronger in the face of nationalist oligarchies. Alliances help us defend our democracy from internal and external threats. Consider NATO. Since its founding, NATO was based on two premises. The first was preserving security and stability in Europe. In the classic formulation by Lord Ismay, following two world wars that started in Europe, NATO’s goal was to “keep the Soviet Union out, the Americans in, and the Germans down.” The second was that NATO was designed on the premise that its member countries shared liberal democratic ideas and practices. In the post-Cold War era, the first premise lost much of its force, leading to endless discussions of whether NATO was still relevant. The second premise, perhaps unsurprisingly given the neoliberal character of the age, turned toward the promotion of a thin notion of electoral democracy combined with neoliberal market economics for the countries of the former Soviet bloc.

But the optimistic policies that followed the end of history are no longer advisable, if they ever were. Over time, three serious problems have become clear. The first, as Celeste Wallander has argued, is that “There is no price for violating NATO’s liberal democratic standards, and some weak links are indeed backsliding.” Countries like Hungary and Turkey are no longer robust liberal democracies, and their links to Russia, in particular, may make it harder for NATO to defend the democratic foundations of its other members. The second problem is that NATO’s vision of liberal democracy became relatively thin. With a goal of democracy promotion and the expansion of capitalism, countries could be admitted for making democratic reforms with respect to elections and political changes, and without regard for their degree of economic equality. The third problem is that the nature of the threat from Russia has changed. During the Cold War, the Soviet Union’s threat to Europe was largely understood to be a military threat—including the risk of invasion. Today, the Russian threat to democracy “operates through shadowy financial flows, corrupt relationships, bribes, kickbacks, and blackmail.” In this system, cronyism and corruption are not a bug but the central feature of the model.

Today, the central purpose of our alliances must be to defend democracy. We must recognize the existential threat to democracy that comes from hacking, election vulnerabilities, social media disinformation, and other forms of electronic and cyberwarfare. These are areas in which democratic countries can help one another by sharing intelligence and learning from attempted attacks across the West. For example, NATO countries that want to meet their 2 percent of GDP spending commitment, as President Trump has undiplomatically asked them to do, should be able to invest in cybersecurity, so long as the benefits can be shared. Our alliances can also do more to prevent the rise of nationalist oligarchs domestically, and the corrupting influence of financial flows internationally. International institutions, from the Organization for Economic Cooperation and Development to the European Union to NATO, should work together to disseminate data and information and to coordinate policies that help fight domestic and international corruption.

The boldest proposal might be to create a new alliance of democracies, something that John McCain once called for. As a path forward for defending democracy, this idea has merit, particularly if the Trump Administration succeeds in weakening the NATO alliance to the point of no return. But for it to work, its goals would have to diverge significantly from those of its original promoters.

Advocates for such an alliance came up with the idea following the 2003 intervention in Iraq. They were largely responding to the failure of the United Nations Security Council to intervene in a variety of conflicts and humanitarian crises with sufficient haste and attention. (And these advocates tended to be supporters of the Iraq War.) While proponents argued that a concert of democracies would cooperate on a wide variety of issues of common concern, they also believed that this new alliance would be able to engage in foreign interventions more easily than the United Nations. And far from being exercises of power by Western elite democracies, the alliance’s military and humanitarian interventions would be seen as more legitimate because the alliance would include upwards of 60 countries. As James Lindsay wrote in 2009, the Concert of Democracies “would be composed of a diverse group of countries from around the globe—small and large, rich and poor, North and South, strong and weak.” Some others, like Anne-Marie Slaughter and John Ikenberry, saw an alliance of democracies as updating the architecture of the international system for a new era, and hoped the alliance would form a bloc that could push for the reform of traditional international institutions, like the UN, World Bank, and IMF. Opponents of the idea primarily worried that an alliance would cause backlash. China, Russia, and other non-democracies would see the alliance as a threat, leading to a downward spiral of mistrust that could potentially end in conflict.

Today, the case for an alliance of democracies is stronger than it was in the post-Iraq context—but for different reasons. By now, it is clear to everyone that we were never at the end of history and that the United States and other democracies never had the time, money, and military power to spend engaging in adventures abroad. Even those who thought we might have been in that place recognize now that the global context has shifted. Today, the primary goal of an alliance of democracies would not be to engage in interventions and democracy promotion. It would not be offensive. It would be defensive. It would be to maintain democracy inside each of a small number of member countries.

An alliance today would also focus on deepening economic cooperation, in order to build collective economic power vis-à-vis nationalist oligarchies. The original proponents of an alliance of democracies argued for “eliminating tariffs and other trade barriers among member countries.” But as Trump’s election, Brexit, and new data on the “China Shock” suggest, a trade policy based on the liberalization of trade barriers without regard to the consequences is destructive for economic democracy and is a threat to social cohesion. Instead, the alliance’s international economic agenda should be to expand economic democracy within member countries: to enforce antitrust and antimonopoly rules across borders, prevent tax havens and simplify the financial system, regulate tech platforms, promote corporate democracy, and reinvigorate worker power. This cooperative effort is critical because, individually, each democracy is vulnerable to lucrative offers from nationalist oligarchs abroad—and from would-be oligarchs within. The enemies of economic democracy can play countries against each other, creating a race to the bottom that ultimately undermines democracy itself. Cooperation is critical to helping solve this problem.

#### LIO solves extinction – US signal of democratic legitimacy key.

HIRSH, senior correspondent and deputy news editor at Foreign Policy, ‘20 DECEMBER 5, 2020, 6:00 Amhttps://foreignpolicy.com/2020/12/05/liberal-internationalism-still-indispensable-fixable-john-ikenberry-book-review/

Joe Biden will enter office as America’s 46th president next month in a spirit of confidence for the future—but also with an almost confessional sense of humility about the past. Because Biden and his top advisors seem acutely aware of just how badly they botched things the last time they were in power. One of their chief manifestos for change, as some of the incoming Bidenites have already privately conceded, will be G. John Ikenberry’s new book, A World Safe for Democracy. It is in some ways the crowning achievement of the Princeton University’s scholar’s decadeslong work explaining and defending the liberal international order. Ikenberry’s research traces the origins of the liberal internationalist project—the idea of building a community of nations based on democracy, cooperation, and the rule of law—going back 200 years. He chronicles it from its inception in the Age of Enlightenment and the American and French revolutions to its near-dissolution in the post-Cold War period under the neonationalist banner of its worst nemesis, President Donald Trump. Ikenberry, in an interview, said that his purpose was to “reframe the debate between nationalism and internationalism” and acknowledge that American policymakers are now dealing with a “liberal internationalism for wintertime rather than a Francis Fukuyama-style liberal internationalism for springtime” of two decades ago. (After the collapse of the Soviet Union, Fukuyama, the Stanford political philosopher, famously suggested that the triumph of democratic liberal capitalism over communism was so complete it could constitute a kind of “end of history.” This did not turn out to be the case.) Ikenberry says that it’s long past time for Biden and the Democrats to acknowledge that rampaging American hubris after the Cold War led to some of the worst mistakes ever made by liberal internationalists of the modern era: from a Pollyannaish Reaganite belief that neoliberalism (or capitalist free markets) would solve most problems to the equally self-deluding notion that democracy would achieve the same, especially in the Arab world (hence the disastrous Iraq War). Along the way, he writes in his book, nations and especially Washington lost the “shared narrative” of being a diverse but connected international community and became more of a U.S.-manufactured “public utility” dominated by the interests of multinational corporations. And the former concept is what it must return to, he says. “The book tries to provide the deeper theory of the liberal project that Biden is going to try to renew,” Ikenberry said. “I think it’s the first book that attempts to look at a whole tradition and cull it for usable knowledge we can apply today. And to make the point that the post-1989 years [after the fall of the Berlin Wall] were very much an anomaly. Two centuries on, it’s much more of a world-weary, contested run of democracies struggling to build order.” According to a senior member of the incoming Biden team, speaking on background, the new administration is paying a great deal of attention to Ikenberry’s ideas about readdressing the problems of the American middle class that were sacrificed to overzealous ideas of globalization.According to a senior member of the incoming Biden team, speaking on background, the new administration is paying a great deal of attention to Ikenberry’s ideas about readdressing the problems of the American middle class that were sacrificed to overzealous ideas of globalization. He also said that reinventing liberal internationalism along the lines Ikenberry recommends will be at the forefront of their efforts. The incoming Biden team has already conceded that both they and the Republicans, pre-Trump, lost their way. They erred badly because they “came to treat international economic issues as somehow separate from everything else,” as Biden’s nominee to be national security advisor, Jake Sullivan, wrote in the Atlantic in early 2019. Under both Democrats and Republicans, “U.S. internationalism became insufficiently attentive to the needs and aspirations of the American middle class.” In a remarkable admission, Sullivan, who served as then-Vice President Biden’s national security advisor, confessed: “During the Obama administration, when the national-security team sat around the Situation Room table, we rarely posed the question What will this mean for the middle class? Many other countries have made economic growth that expands the middle class a key organizing principle of their foreign policy.” The United States suffered a dangerous, society-splitting populist backlash because it did not address that same question, instead recklessly embracing global neoliberalism, and engaging in a confident flinging-open of all borders. The result was the loss of any sense that internationalism was also a way of protecting social and economic equity—the kind of compact that existed after World War II. Another result was a series of policies and trade deals that opened the door to the decimation of the American middle class, particularly to Chinese competition. Beyond that, successive administrations, starting with President Bill Clinton (but in which George W. Bush’s administration was particularly culpable in not punishing Chinese dumping and intellectual property theft under World Trade Organization rules) allowed China to flagrantly violate the rules of the game. The post-Cold War internationalists failed equally in thinking they could easily co-opt major illiberal states such as China and Russia fully into the global system, Ikenberry writes. They did not. The answer may be to make liberal internationalism less “offensive” and intrusive. Instead “it must define itself less as a grand vision of a global march toward an ideal society, and more as a pragmatic, reform-oriented approach to making liberal democracies safe.” China, the major rival to the United States, in particular could at least abide such an approach, Ikenberry argues, because even in its rise to global dominance it is still seeking to work within institutions like the United Nations, the International Monetary Fund, and the WTO. “In effect this strategy calls for making the liberal international order friendly to China and Russia by stepping back from the vision of a one-world liberal order,” he writes. “The emphasis instead would be on coexistence, building on the ‘defensive’ liberal principles of self-determination, tolerance, and ideological pluralism. Liberal internationalism would be made more conservative.” Or, some would say, more realist. There is little doubt about the direction the Bidenites will go, because all of them know—as Ikenberry argues—that in the end there really is no alternative. As Sullivan wrote last year: Trump’s neoisolationist approach “is dangerous, but he has surfaced questions that need clear answers. Those of us who believe that the United States can and should continue to occupy a global leadership role, even if a different role than in the past, have to explain why Trump is wrong—and provide a better strategy for the future. … “This requires domestic renewal above all, with energetic responses at home to the rise of tribalism and the hollowing-out of the middle class.” Ultimately, the challenges of modernity will require a reinvented liberal internationalism because, Ikenberry argues, there really is no other system available for dealing with “the problems of interdependence” other than through international cooperation. Climate change, pandemics like COVID-19, nuclear proliferation—all can only be solved through the established global system. “The pandemic is the poster child of that problem,” he said in the interview. But even here the United States must adopt more realist approaches to liberal internationalism. “The problem of liberal internationalism is about managing interdependence, not globalizing the world,” he said. Ikenberry concludes that liberal internationalism must recreate itself as a more restrained version of President Woodrow Wilson’s original vision of making the world “safe for democracy.” But this, again, is likely to be more a defensive than offensive approach. And at home, Ikenberry says, it means finding a brand-new way of making internationalism work for average Americans, especially with labor and environmental protections. The idea of “protectionism” can no longer simply be anathema. Indeed, Trumpist populism will not disappear under Biden. He has already advocated a $700 billion-plus “Buy American” plan and conditioned his return to the Trans-Pacific Partnership he once advocated on greater worker protections. His political platform sounds a not a little Trumpian as well, declaring he will “ensure the future is ‘made in all of America’ by all of America’s workers.” Biden will also continue a campaign begun by former President Barack Obama—but turned into a strident war by Trump—pressuring European allies to pay their fair share of the Atlantic alliance and NATO. In the end, Biden’s return to liberal internationalism will be real, but more demanding of other nations, as was Trump’s. Above all, his approach will focus first at home, on the pandemic and joblessness. “Looking over 200 years,” Ikenberry said, “one of the things I found and which the Biden administration intuitively understands is that in every period where a golden era of internationalism that lifted America to greater heights existed, it was tied to a progressive agenda.” Restoring this vision means going back to the nationalist origins of internationalism, how it arose out of the wars of the 19th century, the industrial revolution, and, in hands of proto-internationalists such as the British politician Richard Cobden, how it became a means to global hegemony and economic prosperity for its first great practitioner, Britain. Cobden spoke of free trade and peace as “one and the same cause,” and at the same time new forms of social internationalism also sprung up, pushing for equanimity for all social classes. The new concept of Adam Smith-conceived free trade presaged “the dissolution of empire, the ending of territorial annexation and the abandonment of aristocratic militarism,” as the British historian Anthony Howe argues. It presaged the modern world, in other words, culminating, ultimately, in the international community institutions proposed by Wilson and imposed and perfected by President Franklin D. Roosevelt. But institutions that were always meant to benefit all Americans. These changes in the international system are now so entrenched they cannot simply be undone. Yet they remain badly misdirected at present. Somewhere along the line the idea of internationalism became, rather than a means to achieve the end of national prosperity and peace, instead an end in itself. And this is where policymakers went wrong. In Washington, especially, the domestic impact of liberalization was consistently played down by both Republican and Democratic administrations. The post-Cold War globalization of free trade did indeed create, as the economists predicted, more global equality and prosperity overall. But in the past few decades far more of that equality and prosperity has accrued to developing nations than to the working classes of the champions of globalization like the United States and Europe, where growing inequality has engendered a long-term populist reaction, one that is unlikely to disappear any time soon. As a result, Ikenberry said, “I think we’re in for a kind of managed openness that allows us to protect environmental and labor standards, so as to shore up the democracies.”

### 2NC – AT: Lobbying Deficit

#### Turn: Sunsetting reduces lobbyist influence. Congressional oversight deters special interest capture.

JOHN E. FINN, Professor of Government, Wesleyan University. PhD. Princeton University, ’10, “Sunset Clauses and Democratic Deliberation: Assessing the Significance of Sunset Provisions in Antiterrorism Legislation” 48 Colum. J. Transnat'l L. 442 2009-2010

The regulatory reform movement of the 1970s promoted the use of sunset clauses as a mechanism to improve legislative oversight of the bureaucracy and to increase regulatory efficiency. As Christopher Mooney has written, "[t]he contemporary concept of sunsetting dates from the idealistic political reform movement of the 1970s, which sought to transform a U.S. government considered bloated, in-efficient, and beholden to special interests. ' 16 In The End of Liberalism, Theodore J. Lowi favored sunsets as a mechanism to reinvigorate stagnant government bureaucracies. 17 To counteract the problem of interest-group liberalism, in which bureaucratic agencies were often captured by the interests they were meant to regulate, Mooney writes, "Lowi suggested a 'tenure-of-statutes act' that would set a 'Jeffersonian limit of from five to ten years' on the life of every law creating a federal agency."' 18 "The objective," Mooney notes, "was less to make these agencies disappear than to use the termination date to achieve what Lowi called a 'guillotine effect,' sparking effective legislative oversight and possible reorganization of agencies that had grown too big for their britches." 19 On this view, sunsets can advance the public welfare by ensuring that legislation creating regulatory agencies that have outlived their purpose expire or are replaced by more current public policy tools. The impetus behind the sunset movement was to improve democratic accountability by subjecting bureaucratic agencies to periodic legislative oversight and control.

#### Recent empirical evidence disproves proves congress is insulated from lobbying.

Jon Swartz, 1-20-2022, MarketWatch "Senate panel approves antitrust bill targeting Apple, Google and Amazon," MarketWatch, https://www.marketwatch.com/story/senate-panel-approves-antitrust-bill-targeting-apple-google-and-amazon-11642705698

Consumer groups and supporters of antitrust tech legislation hailed the vote as a first step toward reining in the economic power and market dominance of a handful of tech giants that also includes Facebook parent Meta Platforms Inc. FB, -0.95% and Microsoft Corp. MSFT, -0.57%.

“Despite millions of lobbying dollars by monopolists spent to influence lawmakers, a bipartisan group of Senators just stated with a clear voice that Big Tech is too powerful,” Sarah Miller, executive director of the American Economic Liberties Project, said in a statement.

“The bill will stop the largest online platforms from imposing their self-serving rules on markets and society,” Sumit Sharma, senior researcher for tech competition at Consumer Reports, said in a statement. “The bill will benefit consumers by making it easier to install, choose, and use alternative apps and online services. It will remove the roadblocks that the largest online platforms have put up to hinder innovation by competitors.”

#### 5. Info gathering solves and the impact is overstated

Baker 13 – Professor of Law, American University Washington College of Law. (Jonathan, Antitrust Enforcement And Sectoral Regulation: !e Competition Policy Bene"ts Of Concurrent Enforcement In !e Communications Sector, CPI Vol. 9 | Number 1 | Spring 2013 https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2127&context=facsch\_lawrev)//gcd

II. CAPTURE the greater role of politics at the FCC does not necessarily mean that the agency’s performance is better or worse than that of the FTC. It may be sensible use of governmental resources, for example, for Congress in elect to delegate to an agency the identification and ratification of interest group bargains8 ; under such circumstances, the agency itself would be performing as intended, and any concerns about agency outcomes would properly be attributable to the legislature, not the agency.9 As with legislation itself, though, there is no guarantee that outcomes based on interest group bargains will serve the public good – most obviously if some a"ected groups are systematically underrepresented in political processes, but even if all groups are at the table.10 Still, single sector agencies like the FCC are often considered more prone to “capture” by regulated industries than generalist agencies with a broad cross-industry purview like the competition agencies. Agencies are described as “captured” when they appear to favor the interests of the regulated industries over public interest concerns like promoting competition.11 this charge has at times been leveled at the FCC.12 By contrast, when the FTC is criticized, it is generally not for capture but for other occasional failings, like lethargy,13 taking “cheap consents”14 or its general approach to antitrust.15 Agency capture is largely not about direct political in%uence.16 If an agency makes a bad decision because it has little insulation when the a"ected industry complains to Congress, the problem is the capture of the legislature, not the capture of the agency. Capture is also not mainly the product of the “revolving door” (the movement of personnel between regulatory agencies and regulated $rms, in both directions). In my experience, industry jobs go to agency veterans largely because they are seen as e"ective and have developed expertise, not because of the positions they took as agency o&cials.17 Moreover, the revolving door helps bring good people into agencies, both at the start of their careers, when they may value the option of leaving later, and later in their careers, when they can use skills and experience developed outside on behalf of the public interest. My sense is that capture is a threat at the FCC mainly when the regulated industry can manage the agency’s information.18 When an industry speaks with one voice, and has privileged access to the relevant information, it can shape how the agency sees an issue. the FCC’s engineering and economic expertise in critically reviewing the information submitted by industry only goes so far without data. Moreover, the competition agencies typically obtain more information using compulsory processes than the FCC obtains through voluntary submissions and routine data collection from regulated firms, particularly in a political environment in which the latter activity may be questioned as imposing unnecessary burdens on industry. Many FCC decisions are not subject to biases resulting from information asymmetry. In 2011, when the FCC reviewed AT&T’s proposed acquisition of T-Mobile, it was in a strong position to avoid regulatory capture notwithstanding AT&T’s extensive lobbying e"ort:19 the concurrent DOJ review gave it access to the type of information that the antitrust agencies obtain through use of compulsory process, and the industry did not speak with one voice (as one major wireless provider expressed concerns about the acquisition). To the extent capture is nevertheless a concern with the FCC today, it could be addressed in part by expanding the range of information the FCC requires regulated firms to submit on a routine basis. III. TAKING A LONG TERM PERSPECTIVE In the U.S. system, sectoral regulators have an advantage over the competition agencies in protecting potential competition, particularly when dealing with fast-moving markets. It is difficult for the competition agencies to take a long term focus in their enforcement actions because the generalist district court judges they must convince rarely have prior industry expertise and may in consequence tend to view predictions about industry evolution as speculative. By contrast, the FCC is the fact-finder in its decisions and can bring more expertise and sustained attention to understanding industry evolution. As a practical consequence, the FCC can take a longer view than the competition agencies. It has used that power to stop or impose conditions of some mergers that the Justice Department could not easily challenge because the firms involved were potential rivals rather than current competitors. $e FCC stopped the 1997 merger talks between AT&T, then a long distance company, and SBC, a large local telephone service provider and regional Bell operating company.20$e FCC also imposed competition-related conditions on the 1997 merger between Bell Atlantic and NYNEX, two local telephone service providers in adjoining territories, when the Justice Department declined to sue.21 $e Justice Department’s position on that matter was likely colored by the di#culty it would have faced in proving a potential competition case to a federal judge.22 Similarly, it likely would have been more di#cult for the Justice Department to address potential competition issues involving online video distribution raised by the recent Comcast/NBCU transaction had the FCC not also been involved.23 Moreover, the FCC was better situated than an antitrust agency to address the long-term potential competition issues that were the subject of the FCC’s Open Internet (net neutrality) rules.24 $e FCC rejected the alternative of relying solely on ex-post competition review, the approach that competition agencies would have taken,25 on the view that review after problems arise would be ineffective and too late.

### 2NC – AT: Perm do Both

#### Including the plan’s undemocratic process signal causes a drift away from antitrust’s democratic roots. The process of antitrust reform overdetermines its content – star this card.

Spencer Weber Waller, Chair of Competition Law @ Loyola University of Chicago, ’19, "Antitrust and Democracy," Florida State University Law Review 46, no. 4 (Summer 2019): 807-860

As Professor First and I stated in Antitrust's Democracy Deficit:

The institutional aspects of today's antitrust enterprise . . . are increasingly out of balance, threatening the democratic, economic, and political goals of the antitrust laws. The shift that [Richard] Hofstadter first described has led to an antitrust system captured by lawyers and economists advancing their own self-referential goals, free of political control and economic accountability. Some of this professional control is inevitable, of course, because antitrust is a system of legal ordering of economic relationships. But antitrust is also public law designed to serve public ends. Today's unbalanced system puts too much control in the hands of technical experts, moving antitrust enforcement too far away from its democratic roots.49

In that article, we began the conversation of what an expert, but democratic, form of competition would mean for the main institutional players in our field, namely:

1) the legislatures that enact and oversee the law;

2) the public agencies that investigate and enforce the law;

3) the executive branches that execute the competition laws as

part of a broader array of responsibilities;

4) private litigants and sub-federal enforcement agencies;

5) the judiciary, which decides trials and appeals of both public and private antitrust litigation; and

6) civil society. 0

This article expands that framework with a more in depth analysis of the institutions of competition law from the perspective of how these different institutions support or push back against democratic values. Two caveats before proceeding further. First, while most of the specific examples are drawn from the experience of the United States, and to a lesser extent the EU and its member states, the overarching principles remain applicable to analyzing whether any given jurisdiction's competition law system exhibits a greater or lesser democracy deficit. Second, while my co-author and I both believe that the promotion of democracy should be an express value of competition law, this portion of the article is agnostic to that debate. Whether one believes that democracy, wealth transfer, consumer choice, efficiency, or something else should be the sole goal, the primary goal, one goal among many, or a minor aspect of competition policy, there is a still a pressing need that the resulting law and policy are enforced in a democratic manner that ensures due process, non-discrimination, and transparency.

#### One instance spills over. The plan creates slippery slope for power shifts to democratically unaccountable institutions.

Spencer Weber Waller, Chair of Competition Law @ Loyola University of Chicago, ’19, "Antitrust and Democracy," Florida State University Law Review 46, no. 4 (Summer 2019): 807-860

Perhaps Congress simply does not care about, or actually approves of, the continued evolution of United States antitrust law and policy in all its complexity. However, this silence or indifference has important consequences. It shifts power from the most democratic elected institutions to the more distant, less democratic institutions of agencies and courts to craft fundamental economic policy free from all but the most macro-level interventions or corrections. No legislature can spend all of its time on competition policy. But when it does, one should ask:

Is the legislature addressing fundamental issues or minor matters at the fringe?

Is the legislature addressing matters of national importance or local concern of a small group of members?

Has the legislature proposed or explored actual improvements or is it primarily airing issues for which no action is likely to ensue?

How is the legislature ensuring that power is delegated subject to democratic controls and that the other institutional actors are acting in accordance with democratic norms?

If major changes have occurred elsewhere in the system, had Congress actually approved or merely not paid attention?

What non-mandatory hearings occur, how were they selected, and why do they matter?

Without such inquiries, power naturally migrates from the more democratic institutions to the less democratic portions of the system. If legislatures approve of the course of current competition law and policy, they should say so. If they do not approve, then their silence should not be used to justify self-interested actors shifting power in their favor, while the legislature chooses to turn its attention to other pressing issues and only nibble at the edges of competition policy.

#### The counterplan’s sunset is key to sunshine test legislation. Immediate fiat without public hearing crushes signal of participatory democracy in antitrust.

Steve Delbianco, The Hill, 1-11-2022, "Klobuchar needs to put her antitrust legislation to the sunshine test," TheHill, https://thehill.com/blogs/congress-blog/technology/589293-klobuchar-needs-to-put-her-antitrust-legislation-to-the

Winter is coming for America’s tech industry. Sen. Amy Klobuchar (D-Minn.) is marshaling forces to push antitrust legislation that would put Washington bureaucrats in charge of innovation and business decisions that have made Apple, Amazon, Google, and Microsoft so popular here and around the world. And as with the winter weather here in the capital, the best antidote is sunshine — in the form of an open hearing to air very real concerns about how Klobuchar’s bills would hurt consumers and undermine America’s competitive standing in the world. That kind of sunshine was absent last June when similar antitrust bills were marked-up in a closed House Judiciary Committee meeting that went all night long, without any input or testimony. But that’s the point of going straight to a closed markup — it lets the sponsors avoid a public hearing that puts sunshine on the proposed legislation. Still, that messy markup session tainted those antitrust bills to the point where Speaker Nancy Pelosi (D-Calif.) has held them back from the House calendar so far. But those bills could break loose if the Senate rams related legislation through, again without a hearing. What would we learn at an open hearing on Klobuchar’s antitrust bills, with testimony from economists and internet security and privacy experts? First, her American Innovation and Choice Online Act would prohibit innovation that has given American consumers so many choices online. In her own words, Klobuchar’s bill would “Prevent self-preferencing and discriminatory conduct.” That bars Amazon from showing its generic products as alternatives to products from big name brands. Amazon’s 150 million Prime customers would no longer see a Prime badge signaling next-day shipping, since that would “discriminate” against sellers who don’t have their products shipped from Amazon distribution centers. A hearing on Klobuchar’s bill would also reveal that Google search results may no longer default to showing a Google map and reviews if search results include a nearby destination. Klobuchar says that would be illegal for “biasing search results in favor of the dominant firm.” Perhaps most worrying for bill sponsors is that internet security experts would describe consequences when Klobuchar’s law stops a dominant platform from “preventing another business’s product or service from interoperating.” Apple could be penalized for blocking an app from its App Store, even when Apple believes there are risks of security or privacy breaches, whether from the app provider or from hackers who exploit access granted to the app. At a hearing, we’d learn that the bill’s mandated “interoperability” is precisely how a university researcher allowed Cambridge Analytica to steal the private data of millions of Facebook users. A hearing would give Americans the chance to hear Klobuchar explain how her bill could constrain politically driven prosecution by FTC and DoJ officials demanding that a company do more to stop global warming or to advance economic and social justice for their workers. If we’re lucky, the Senate hearing could also address Klobuchar’s second antitrust bill, the Platform Competition and Opportunity Act. That bill would bar the largest American companies from acquiring related businesses, putting the brakes on growth and innovation at Amazon, Apple and Google. The highlight of the hearing would be Klobuchar explaining why her bill would lock-in those few companies as the enforcement targets, while carving-out Walmart and her home-state retailer Target – even if they later grew beyond the size threshold in the law. Finally, an open Senate hearing puts sunshine on what will alarm Americans whose retirement savings are invested in Apple, Amazon, Google, Meta, and Microsoft. Those companies lead the world in R&D investment and innovation, yet would be prosecuted by a subjective and destructive antitrust regime untethered to traditional standards of consumer welfare. That would reduce America’s technological standing in the world, at a time when other nations are helping their own champions compete with us. Unfortunately, Senate leadership may bow to Klobuchar’s pressure to bypass hearings and move straight to a closed markup in a committee she chairs. All major legislation, particularly when it impacts America's world-leading tech industry, needs to pass the Sunshine Test – a fully open process of probing questions and debate. If there’s no Senate hearing, the concerning consequences discussed above would only be revealed when enforcement of the law begins. And that’s when winter really comes for American consumers.

#### Preventing the plan from happening key to democratic legitimacy. The plan appears as a closed door, backroom dealing because it is immediate and lacks meaningful opportunity for public participation.

Spencer Weber Waller, Chair of Competition Law @ Loyola University of Chicago, ’19, "Antitrust and Democracy," Florida State University Law Review 46, no. 4 (Summer 2019): 807-860

Lastly, Warren cites Sunshine and Sunset legislation as allowing Congress to exercise control over administrative agencies. 87 Sunshine laws "allow the sun to shine" on meetings where important public policy decisions are being made.8 8 Preventing these meetings from happening behind closed doors can make administrative decision making more democratically accountable.8 9 Sunset laws require agency evaluation at set intervals in order to ascertain whether their financial support should be continued.90 This review allows legislators to scrutinize agencies at regular intervals to determine whether the agencies are performing satisfactorily, need to implement changes, or be terminated.9 1

### 2NC – AT: Perm do CP

#### That means the CP PICs out of the plan’s expansion of “scope” of “antitrust laws.”

Spencer Weber Waller, John Paul Stevens Chair in Competition Law, Loyola University Chicago School of Law, ’20, “The Omega Man or the Isolation of U.S. Antitrust Law,” https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1682&context=facpubs

The United States defines the antitrust laws as the substantive provisions of the Sherman, Clayton, and Federal Trade Commission acts along with a small number of subsidiary statutes. This limits the scope of antitrust law to agreements between competitors, monopolization law, and the review of potentially harmful mergers and acquisitions. In contrast, the EU and other jurisdictions have led the world to a broader understanding of the meaning and reach of competition law that is only partially understood or appreciated in the United States.245 This Section explores that broader vision of competition including market studies and investigations; prohibitions against public anticompetitive conduct; state aids; and the use of public interest factors normally not part of the U.S. vision of the antitrust enterprise.

#### Resolved means certain and durable. The counterplan is not durable because the congress could prevent the plan from happening in the counterplan.

Random House Unabridged 6 (http://dictionary.reference.com/search?q=resolved&r=66)

re·solved Audio Help /rɪˈzɒlvd/ Pronunciation Key - Show Spelled Pronunciation[ri-zolvd] –adjective firm in purpose or intent; determined.

#### Should means immediate and certain – the counterplan has the congress review the plan later and lets them decide whether the plan should happen.

Summers ‘94 (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 The legal question to be resolved by the court is whether the word "should"[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn13) in the May 18 order connotes futurity or may be deemed a ruling in praesenti.14 The answer to this query is not to be divined from rules of grammar;[15](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn15) it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.16 [CONTINUES – TO FOOTNOTE] [13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn13) "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation* *and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). [14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn14) *In* praesenti means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or immediately effective, as opposed to something that will or would become effective in the future *[in futurol*]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

#### Substantial means certain.

Words and Phrases ‘64 (40 W&P 759)

The words “outward, open, actual, visible, substantial, and exclusive,” in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; **certain**; absolute; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including admitting, or pertaining to any others; undivided; sole; opposed to inclusive

#### The CP is functionally distinct – sunsetted legislation is substantively different than legislation than permanent legislation.

JOHN E. FINN, Professor of Government, Wesleyan University. PhD. Princeton University, ’10, “Sunset Clauses and Democratic Deliberation: Assessing the Significance of Sunset Provisions in Antiterrorism Legislation” 48 Colum. J. Transnat'l L. 442 2009-2010

In sum, the benefits of sunset clauses as elements of statutory design generally fall into three categories-deliberative, informational and distributive. This suggests strongly we should expect to see sunset clauses in policy environments dominated by informational uncertainty, risk (both social and electoral) and typified by a high potential for political conflict regarding the allocation of power. In addition, because sunset clauses "allocate transaction costs differently than permanent legislation," 29 we should expect sunsetted legislation to be substantively different than legislation that would otherwise result. This is because "legislators perceive (accurately or not) temporary legislation differently. ' 30

#### CP Pics out of USFG – only uses congress. “The” implies all parts

Merriam-Webster's Online Collegiate Dictionary, 5

http://www.m-w.com/cgi-bin/dictionary

the 4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

#### USFG is all the three branches

USLegal 9(definitions.uslegal.com/u/united-states-federal-government, September 23 2009, DA 6/21/11,)

The United States Federal Government is established by the US Constitution. The Federal Government shares sovereignty over the United Sates with the individual governments of the States of US. The Federal government has three branches: i) the legislature, which is the US Congress, ii) Executive, comprised of the President and Vice president of the US and iii) Judiciary. The US Constitution prescribes a system of separation of powers and ‘checks and balances’ for the smooth functioning of all the three branches of the Federal Government. The US Constitution limits the powers of the Federal Government to the powers assigned to it; all powers not expressly assigned to the Federal Government are reserved to the States or to the people

#### Prohibitions must have no exceptions. The counterplan excludes the instance where the congress votes to retain it.

Justice White, ’87, California v. Cabazon Band of Mission Indians, 480 US 202 - Supreme Court 1987

Following its earlier decision in Barona Group of Capitan Grande Band of Mission Indians, San Diego County, Cal. v. Duffy, 694 F. 2d 1185 (1982), cert. denied, 461 U. S. 929 (1983), which also involved the applicability of § 326.5 of the California Penal Code to Indian reservations, the Court of Appeals rejected this submission. 783 F. 2d, at 901-903. In Barona, applying what it thought to be the civil/criminal dichotomy drawn in Bryan v. Itasca County, the Court of Appeals drew a distinction between state "criminal/prohibitory" laws and state "civil/regulatory" laws: if the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub. L. 280 does not authorize its enforcement on an Indian reservation. The shorthand test is whether the conduct at issue violates the State's public policy. Inquiring into the nature of § 326.5, the Court of Appeals held that it was regulatory rather than prohibitory.[8] This was the analysis employed, with similar results, 210\*210 by the Court of Appeals for the Fifth Circuit in Seminole Tribe of Florida v. Butterworth, 658 F. 2d 310 (1981), cert. denied, 455 U. S. 1020 (1982), which the Ninth Circuit found persuasive.[9]

We are persuaded that the prohibitory/regulatory distinction is consistent with Bryan's construction of Pub. L. 280. It is not a bright-line rule, however; and as the Ninth Circuit itself observed, an argument of some weight may be made that the bingo statute is prohibitory rather than regulatory. But in the present case, the court reexamined the state law and reaffirmed its holding in Barona, and we are reluctant to disagree with that court's view of the nature and intent of the state law at issue here.

There is surely a fair basis for its conclusion. California does not prohibit all forms of gambling. California itself operates a state lottery, Cal. Govt. Code Ann. § 8880 et seq. (West Supp. 1987), and daily encourages its citizens to participate in this state-run gambling. California also permits parimutuel horse-race betting. Cal. Bus. & Prof. Code Ann. §§ 19400-19667 (West 1964 and Supp. 1987). Although certain enumerated gambling games are prohibited under Cal. Penal Code Ann. § 330 (West Supp. 1987), games not enumerated, including the card games played in the Cabazon card club, are permissible. The Tribes assert that more than 400 card rooms similar to the Cabazon card club flourish in California, and the State does not dispute this fact. Brief for 211\*211 Appellees 47-48. Also, as the Court of Appeals noted, bingo is legally sponsored by many different organizations and is widely played in California. There is no effort to forbid the playing of bingo by any member of the public over the age of 18. Indeed, the permitted bingo games must be open to the general public. Nor is there any limit on the number of games which eligible organizations may operate, the receipts which they may obtain from the games, the number of games which a participant may play, or the amount of money which a participant may spend, either per game or in total. In light of the fact that California permits a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery, we must conclude that California regulates rather than prohibits gambling in general and bingo in particular.[10]

### 2NC – S – General

#### The counterplan can solve *any* antitrust exemption written into law by congress.

Anne McGinnis, JD Michigan, ’14, "Ridding the Law of Outdated Statutory Exemptions to Antitrust Law: a Proposal for Reform," University of Michigan Journal of Law Reform 47, no. 2 (Winter 2014): 529-[vi]

Together, the Sherman Act, the Clayton Act, and the Federal Trade Commission Act bar anticompetitive behavior involving trade or commerce. Because modern courts construe trade or commerce broadly, almost any conduct that involves an exchange of money or bartering for a good or service is subject to antitrust law.37 To prevent antitrust law's broad application in areas where they have felt it unwarranted, the courts and Congress have read and written numerous exemptions into antitrust law over the past eighty years.38 For example, the Supreme Court created Noerr-Pennington immunity to protect political lobbying efforts from antitrust challenge,39 Parker immunity to immunize state regulatory action from scrutiny, 40 and Koegh immunity to prohibit private treble damages suits where the plaintiff claims that a rate submitted to and approved by a regulator violated antitrust law.4'

The majority of antitrust exemptions, however, were written into law by Congress. A leading Monograph by the American Bar Association Section of Antitrust Law organizes these statutory exemptions into three general categories.42 For the sake of simplicity, this Note will use that organizational system.

The first category consists of exemptions for an entire industry or type of activity in favor of state or national regulation. For example, the Shipping Act of 1916 exempted the ocean shipping industry from antitrust scrutiny,4 and the Transportation Act of 1920 immunized railroad mergers and other agreements.4 4 In 1945, Congress passed the McCarran-Ferguson Act, immunizing the "business of insurance" from federal antitrust scrutiny and leaving regulation to the states.45 Congress enacted the last broad statutory exemptions in the mid-1940s.46 As the era of deregulation took hold in the 1950s and 1960s, most of the exemptions in this category were repealed or substantially modified. Today, only five such exemptions remain.47 Each remaining exemption provides for oversight of an industry through regulation in theory, although in practice oversight is often limited.48

The second category consists of exemptions for specific transactions, practices, or events that are thought to be socially desirable or economically beneficial. As of 2006, nineteen exemptions fell into this category.49 Some authorize naked price fixing or market allocation, 50 while others allow joint ventures or sales agreements that would otherwise be illegal.51 Two immunize a specific merger or types of mergers. 52 Some of the exemptions in this category replace antitrust liability with regulatory oversight,53 while others do not.5 4 Some of these exemptions, like the Anti-Hog Cholera Serum Act,5 5 appear to have little relevance today; however, this category of exemptions is the only one that continues to expand.56 One frequently cited example of an exemption that falls into this category is the Newspaper Preservation Act.5 7 The Act immunizes joint ventures between newspapers that contain otherwise unlawful price-fixing agreements, market allocations, and revenue pooling, provided that one of the newspapers in the joint venture is failing. The Act was passed because legislators believed that it was important for society to have a large number of local newspapers with different editorial viewpoints, and many had begun to fail.58 The third category of statutory exemptions includes limited modifications of antitrust law for the benefit of some class of activity.59 The exemptions in this category often modify the remedy that a plaintiff may seek or the substantive standard the plaintiff must meet in order to prove a breach of antitrust law.60 Sometimes, the substantive standard ordered by Congress effectively operates as complete immunity. For example, the Soft Drink Interbrand Competition Act required courts to examine horizontal market division agreements between soft drink bottlers and producers using a rule of reason-like analysis. 61 But, because the Act also requires plaintiffs to show a lack of "substantial and effective competition" among bottlers, courts have determined that this additional requirement creates effective immunity for soft drink trademark holders and their bottlers. 62

### 2NC – AT: Links to Senate DA

#### CP creates sophisticated review – avoids bickering that links to the DA.

Bobak Razavi, Attorney, Briggs and Morgan, P.A., Minneapolis, MN, ‘9, “HARMONIZING ANTITRUST EXEMPTION LAW: A HYBRID APPROACH TO STATE ACTION AND IMPLIED REPEAL” Journal of Business & Securities Law [Vol. 9 Fall]

Finally, Stage 5 advocates sunsetting of all immunities, as well as periodic review to ensure they are acting as they were intended to act.78 This stage takes into account the dynamic nature of the economy.79 Because an immunity could be socially-beneficial in X year but socially-harmful in Y year, policymakers should provide a built-in guarantee that archaic and outmoded exemptions will not fly under the radar screen.80 Periodic afterthe- fact review is the only reliable way to fine-tune the policy judgments made at the time the immunity was initially granted.81 Periodic reviews also have the advantage of allowing policymakers to review past legislation with a deeper level of sophistication (presuming that the policymakers track the successes and failures of the exemption during its existence).82

### 2NC – AT: No Spillover

#### Sunsets reinvigorate Congressional oversight of enforcement agencies. Key to democratize antitrust.

Harry First, New York University School of Law, and Spencer Weber Waller, Loyola University Chicago, Charles L. Denison Professor of Law, New York University School of Law, ’13, “ANTITRUST’S DEMOCRACY DEFICIT” https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4890&context=flr

This raises two different questions. Why is Congress afraid of antitrust and so focused on trivia, and why is the antitrust community afraid of Congress? One possible answer to the first question is that the technocratic wall that antitrust professionals have built around antitrust has simply scared Congress away from the area. In turn, the answer to the second question may be that the antitrust professional community fears that a breach of this wall could only lead to mischief, with untutored “business interest” legislators trying to dismantle antitrust law while “populist” legislators try to impose excessive restrictions on economic activity. Of course, it is possible that Congress has not been scared off, but is simply disinterested in antitrust or content with the status quo. The most jaded public choice advocates would contend that there is not enough payoff in the form of either electoral support or financial campaign support to justify more investment in the field versus other areas of the law. Under this theory the disinterest is perfectly rational. All we are left with, then, is an effort by the different congressional committees to protect their turf for self-aggrandizing reasons, an effort most on display in the “outrage” over the agencies’ efforts to fix the merger clearance process.

Putting such cynical explanations aside, as an institutional matter we should not assume that Congress is simply content with the status quo. The historic delegation of authority to the courts to develop a common law of antitrust never included carte blanche authority to make fundamental economic public policy in the guise of case decisions. Nor did it encompass the right for the agencies to increasingly make law in house through unreviewable decisions not to enforce the law, decisions to settle without effective relief, the issuance of advisory opinions, and the issuance of guidelines which effectively change the law, all without even resorting to the courts or Congress.88

The sad fact is, however, that Congress has acquiesced in its own marginalization. There is certainly a limit to the amount of attention that Congress can pay to any area of the law, and we do not claim that antitrust should be a top national priority. This trend is compounded by the judiciary, which has made antitrust overly technical and primarily dependent on economics in such a way that it is hard to discern whether or not an area of the law or an individual decision is consistent with the statutory scheme and current congressional desire.

Congressional distance from core antitrust policy is further compounded by the Court’s tendency to simply ignore the work of Congress even when it has expressed a view on any of these issues. For example, in the Leegin case, the Supreme Court gave no significance to Congress’s awareness of a consistent judicial interpretation of the per se illegality of resale price maintenance at the federal level, a repeal of the statutes that allowed states to form a contrary policy under certain circumstances, and a budget rider that came in response to an expressed goal of the Justice Department to change the law in the 1980s.89 Congressional failure to respond to the Court then just confirms the judiciary’s view that it can act free from democratic control.

Congress should be able to do better. As in other areas of the law, Congress tends to focus on short-term, partisan, and publicity driven activity that often results in gridlock and focuses on the minutiae. Instead of substantive legislation that would expand or restrict the antitrust laws in accordance with the will of the majority of the legislature, we are treated to the spectacle of sideshows like multiple hearings over the antitrust status of baseball,90 browbeating agency nominees over the perceived failures of the agencies in individual matters,91 and other oversight hearings about a particular merger (Universal-EMI) or high-profile industries (Google) that are newsworthy.92 In contrast, Congress remained entirely silent when (1) the 2008 Department of Justice report on unilateral conduct made important and wide sweeping changes to the interpretation and enforcement of section 2;93 (2) the Federal Trade Commission (FTC) refused to sign the report and issued policy statements in response;94 and (3) the Department of Justice (DOJ) report was withdrawn by the subsequent Administration.95

As a result, both agencies and courts have the best of both worlds and would oppose any change where Congress reasserts its fundamental role in setting the public policy to be enforced by the other branches of government. Agencies can proceed with fewer constraints in setting the agenda rather than executing one set by others. Most of their work can proceed behind closed doors and by negotiation with affected parties without external review.96 When the courts become involved because of settlement break down, they can establish their own view of sound public policy largely unconstrained by their coequal branches of government.97 A realistic and more democratic role for Congress in the formulation of competition policy, as a fundamental part of national economic policy, would involve a number of relatively small changes. The first principle should be establishing a norm of statutory interpretation that silence after a Court decision does not mean acquiescence. The fact that Congress does not specifically tee up a bill or resolution in each legislative session does not mean it has changed its mind on a particular subject or approves of a particular development in the antitrust world. Second, Congress should require the agencies periodically to report changes in enforcement or budget priorities and judicial changes in established precedent. Third, exemptions and immunities should be retrofitted to include sunset provisions so that Congress is required to take some action to preserve the status quo.98 Fourth, if Congress outsources big-picture studies to blue ribbon commissions, such action should be accompanied by a provision that the recommendations of the commission be introduced in the following legislative session. Fifth, nomination, oversight, and budget hearings should be better focused on the major themes of what agencies do and don’t do, rather than the minutiae of the moment.

The recommendation that Congress shift its focus to major issues is particularly critical to reinvigorating Congress’s role in antitrust policy. It is simply more important to probe whether merger enforcement has now been virtually limited to mergers to monopoly than to hold hearings into whether a particular merger in a particular industry is a good idea. Similarly, reasonable people can differ over whether a particular antitrust provision should be enforced more vigorously, less vigorously, or simply repealed, but we doubt any Congress since the passage of the Sherman Act would simply say, “We don’t care, do whatever you want.” We may not like the results of what Congress says on any particular issue, but it remains the only directly democratically accountable branch of government and the one most clearly charged with setting the broad parameters of fundamental public policy. It should speak, as it does in most other areas of our complex economy, and not have its silence used as an excuse for self-interested actors to shift power in their favor when the legislature chooses to turn to other pressing issues of the day.

#### Using the [plan’s immunity] as a guinea pig for sunsets greenlights for applications of sunset.

Bobak Razavi, Attorney, Briggs and Morgan, P.A., Minneapolis, MN, ‘9, “HARMONIZING ANTITRUST EXEMPTION LAW: A HYBRID APPROACH TO STATE ACTION AND IMPLIED REPEAL” Journal of Business & Securities Law [Vol. 9 Fall]

D. Plan A: Towards a Legislative Framework

The glaring lack of clarity in the law of implied antitrust exemptions underscores the absolutely critical importance of developing a coherent and straightforward front-end roadmap for legislators. In a perfect world, all policymakers would draw upon a shared set of principles in generating authorizations to behave anticompetitively without the risk of antitrust liability. Such a group would also discuss and debate the contours of what would constitute meaningful active supervision. This would theoretically lead to less litigation. The Antitrust Modernization Commission (AMC), led by Professors Darren Bush, Stephen F. Ross, and economist Gregory K. Leonard, set out to provide a set of such principles for policymakers involved in developing potential antitrust immunities (as well as reviewing existing ones).49

1. General Goals

The AMC Report recognized the inherent dangers of subjecting competition policy to legislative development.50 Naturally, some special interest groups will curry more favor with legislators than others.51 If a benefit is conferred upon one group of private actors, policymakers must make diligent efforts to ensure that benefit is not outweighed by various negative effects upon the rest of the public.52 Otherwise, protective legislation may result that helps the few while harming the many.53 The AMC Report has three main aims: (1) it advocates a transparent and inclusive process for implementing such safeguards; (2) it suggests that those people seeking the immunity should have the burden of showing its necessity; and (3) it provides that when immunities are conferred, they should feature sunset provisions to control against “unintended consequences.”54

First, a transparent and inclusive process entails gathering information from a wide cross-section of people and sources, including public hearings.55 Once the information is gathered, it should be widely disseminated so that all interested parties are adequately informed and engaged.56 Second, placing the burden of proof on the proponent of the immunity requires an explanation of (1) why the contemplated conduct is “both prohibited and unduly inhibited” by antitrust, and why the conduct is in the public interest; (2) what the effects of the proposed immunity will be aside from its intended effect; and (3) how the requested immunity is “necessary to achieve the desired policy outcome.”57 Third, sunsetting provisions facilitate intelligent and informed periodic review of conferred immunities so that policymakers can fine-tune the ever-changing balance of social benefits and harms.58

2. Specific Stages

The AMC Report breaks its framework down further into five specific stages: (1) initial information gathering, (2) identification and analysis of justifications, (3) balancing costs and benefits, (4) tailoring the immunity to minimize anticompetitive effect, and (5) optional consideration for renewal.59

Stage 1 encourages policymakers to gather information “regarding the immunity and its effects” from a broad range of sources, including proponents of the immunity, relevant government entities, opponents, and other interested parties.60 This serves to make the ultimate decision-making process as thoroughly informed as possible.61 Whenever parties to the proposed immunity make formal filings, the public should have open access to them.62 This ensures thorough scrutiny and input from scholars, independent researchers, and the public at large.63 It also expands the volume of information available and guarantees that a diverse array of viewpoints could be presented in the lead-up to the policymakers’ final decision.64 Armed with this information, the policymakers are in a better position to make an informed judgment regarding the merits of the proposed immunity.65 Moreover, it is important that the reviewing powers subject the legislation to a hearing.66 This additional step has the benefit of clarifying the arguments for and against the immunity.67

Stage 2 advocates a focus on how the conduct being considered for antitrust immunity serves the public interest, and why immunity is necessary to facilitate it.68 Absent any justifications, immunity should be flatly rejected.69 In identifying and analyzing the justifications, the policymaker must examine “the tradeoff between the social goal achieved by the immunity and other economic or social goals.”70 Essentially, one should ask if there are less restrictive ways of achieving the desired social goal: namely, ways that do not entail an antitrust immunity.71

Stage 3 demands a cost-benefit analysis based on a robust body of information.72 This helps policymakers make good decisions because it makes it more likely that only immunities that have a net social benefit will be granted.73 Importantly, the key goal of transparency is served because “[o]utsiders to the decision-making process will be able to understand which benefits and costs were considered and how they were weighed in order to come up with the final determination.”74

Stage 4 entails tailoring an immunity so as to minimize anticompetitive effect.75 Policymakers should consider whether they could achieve the immunity’s asserted benefits by means that are less costly than conferral of antitrust immunity.76 If some other solution would alleviate the concern for the same cost but with added benefits, then the proposed immunity should not be adopted in its proposed form without embarking upon at least some degree of tailoring.77

Finally, Stage 5 advocates sunsetting of all immunities, as well as periodic review to ensure they are acting as they were intended to act.78 This stage takes into account the dynamic nature of the economy.79 Because an immunity could be socially-beneficial in X year but socially-harmful in Y year, policymakers should provide a built-in guarantee that archaic and outmoded exemptions will not fly under the radar screen.80 Periodic afterthe- fact review is the only reliable way to fine-tune the policy judgments made at the time the immunity was initially granted.81 Periodic reviews also have the advantage of allowing policymakers to review past legislation with a deeper level of sophistication (presuming that the policymakers track the successes and failures of the exemption during its existence).82

Thus, because the law of implied antitrust exemptions is short on clarity, a front-end legislative roadmap could prove extremely prudent. A transparent and inclusive process for implementing safeguards is critical, combined with a burden-of-necessity placed upon the advocate of the potentially-anticompetitive restraint. Ideally, all policymakers would draw upon a shared set of principles in generating authorizations to behave anticompetitively without the risk of antitrust liability. The authorizations could be either express or implied, depending on how the given unit of government’s review process comes out. In sum, the key is simply that an informed group of people get together to collectively decide what procedural requirements are necessary in terms of both authorization and active supervision of the proposed arrangement.

#### Sunsets key to democratic deliberation and rule of law.

JOHN E. FINN, Professor of Government, Wesleyan University. PhD. Princeton University, ’10, “Sunset Clauses and Democratic Deliberation: Assessing the Significance of Sunset Provisions in Antiterrorism Legislation” 48 Colum. J. Transnat'l L. 442 2009-2010

The regulatory reform movement of the 1970s promoted the use of sunset clauses as a mechanism to improve legislative oversight of the bureaucracy and to increase regulatory efficiency. As Christopher Mooney has written, "[t]he contemporary concept of sunsetting dates from the idealistic political reform movement of the 1970s, which sought to transform a U.S. government considered bloated, in-efficient, and beholden to special interests. ' 16 In The End of Liberalism, Theodore J. Lowi favored sunsets as a mechanism to reinvigorate stagnant government bureaucracies. 17 To counteract the problem of interest-group liberalism, in which bureaucratic agencies were often captured by the interests they were meant to regulate, Mooney writes, "Lowi suggested a 'tenure-of-statutes act' that would set a 'Jeffersonian limit of from five to ten years' on the life of every law creating a federal agency."' 18 "The objective," Mooney notes, "was less to make these agencies disappear than to use the termination date to achieve what Lowi called a 'guillotine effect,' sparking effective legislative oversight and possible reorganization of agencies that had grown too big for their britches." 19 On this view, sunsets can advance the public welfare by ensuring that legislation creating regulatory agencies that have outlived their purpose expire or are replaced by more current public policy tools. The impetus behind the sunset movement was to improve democratic accountability by subjecting bureaucratic agencies to periodic legislative oversight and control.

Sunset clauses can also improve public policy by increasing opportunities for, and by improving the quality of, legislative decision- making. Sunset clauses promote democratic oversight and accountability by providing the legislature with periodic opportunities to revisit questions with the additional information or experience necessary to adjust or to recalibrate public policy. Sunsets can also encourage policy innovation and legislative learning by creating incentives for policy makers to develop mechanisms for policy implementation and assessment. Moreover, sunsets may provide legislators with an institutional imperative to seek and develop improved informational resources. Some students of sunsets refer to these as "deliberative" benefits, which are elements or characteristics that improve second stage legislative decision-making by improving the quality and functioning of the deliberative process. 20

There are also "informational" and "distributive" advantages to temporary legislation.21 "From an informational perspective, temporary legislation provides .... windows of opportunity for policymakers to incorporate a greater quantity and quality of information into legislative judgments. By redistributing the decision costs of producing legislation [often by transferring or delaying costs to another time], temporary measures also facilitate experimentation and adjustment in public policy. '22 Sunset clauses are thus attractive in conditions where initial policy judgments are likely to be inaccurate and where those policy judgments may be expected to be informed by or revised when more or better information becomes available. 23 Consequently, sunsets are an especially useful tool when legislatures must act in conditions where information is limited or uncertain, but the perceived need for action is high.

## CP – Courts

## Advantage One

### 2NC – Logic

#### 2. Their Pompeo card – gives Uyghurs as an alt cause – plan can’t solve this – also like… the bottom of the card?

Mike Pompeo 21. Former Secretary of State; currently a distinguished fellow at the Hudson Institute. “America’s Heritage of Religious Freedom Matters to the World”. https://www.standingforfreedom.com/2021/04/americas-heritage-of-religious-freedom-matters-to-the-world/

And no person can ever be true to any faith that believes in the dignity of all human life if they do not act out of concern for those whose dignity is assailed because of their faith. Sadly, our religious freedoms are being eroded here at home.

Our preservation of religious freedom has crucial implications for our foreign policy, because whether we are committed to our founding principles at home affects our ability to engage with and lead our allies and partners around the world — our ability to be that “shining city on a hill.”

As Secretary, I formed the Commission on Unalienable Rights to examine just this connection. I asked a diverse set of scholars who agreed to serve on the Commission, led by Mary Ann Glendon, to furnish advice on human rights policy grounded in both our nation’s founding principles as well as the 1948 Universal Declaration of Human Rights. The Commission’s final report reminded Americans of what is best in our country’s traditions, while also inviting other peoples and nations to draw on their own heritages in order to renew a shared dedication to human rights. Just months after the Commission’s report was published, I traveled to Indonesia and met with Nahdlatul Ulama, the largest independent Muslim organization in the world, to discuss with them the common ground of the report’s findings.

Unfortunately, today there are numerous authoritarian governments that violate their people’s rights to religious liberty. In China, under the rule of the Chinese Communist Party, we see a modern-day example of a government that cares little for the inherent freedoms of its people and dismisses their unique dignity. Thin claims of religious extremism have been invoked by the CCP to justify the oppression of religious and ethnic minorities among their own people. The most egregious example is the ongoing, shocking, and horrifying treatment of the Uighur population in Xinjiang that has included, among other atrocities, slave labor, and forced sterilization.

During my tenure as Secretary of State, the State Department designated CCP activity in Xinjiang as genocide. It is a good thing that the current administration has confirmed this important designation. What we see in Xinjiang today echoes the tyranny and persecution the CCP inflicts on the province of Tibet and what we also have seen from them in Hong Kong.

Christians throughout China continue to suffer under the CCP’s rule as well. Congregations that are not sanctioned and monitored by the CCP are outlawed and any scripture not approved by the party is deemed illegal. China’s example should clarify for all that a society that lacks regard for religious liberty will soon see its political liberties disappear.

To address the assault on religious freedom both in China and around the world, I convened the Ministerial to Advance Religious Freedom for three straight years. These were the largest human rights events ever held at the State Department. The Ministerial brought together leaders from every corner of the globe to discuss the issues threatening religious freedom and to find solutions together. It proved that religious liberty matters to so many around the world and that it is an issue where America can and must lead.

President Reagan once said, “If we lose freedom here, there is no place to escape. This is the last stand on earth.” I saw that as your Secretary of State around the globe. I am confident that the American star will shine across the heavens so long as we keep a proper understanding of our God-given right

#### US contraventions crossed the point of no return.

Patrick C. R. Terry, dean of the faculty of law at the University of Public Administration in Kohl, ’19, "The Return of Gunboat Diplomacy: How the West Has Undermined the Ban on the Use of Force," Harvard National Security Journal 10, no. 1 (2019): 75-147

This article explores how the "West," the main creator of modem international law after WWII, is now, nevertheless, steadily undermining it. While purporting to be reemphasizing each state's right to defend itself and elevating the protection of human rights, the West is, in truth, rendering the far-reaching ban on the use of force envisaged in the U.N. Charter ineffective, thereby paving the ground for a return to 19 th century gunboat diplomacy.1 This new age of international law is marked by the use of force no longer being governed by the rule of law, but rather almost exclusively by the raw power of states-a fact western politicians attempt to conceal by issuing dubious, often hypocritical, but wellsounding statements. These states have abandoned the-perhaps utopian-goal of realizing the principle of sovereign equality and are increasingly replacing it with an aggressively hierarchical order of states reminiscent of the colonial era of the 19 th century.

Seemingly disparate western forces are eroding the ban on the use of force: right-wing interventionists-predominantly, but not exclusively-to be found in the United States, and so-called liberals spread across the West. Common to both approaches is the argument that international law is steadily and necessarily evolving to adapt to developments in the modem world.

There are supposedly stark differences between right wing and liberal approaches to international law. Right-wing interventionists tend to be quite open about their disdain for international law, sometimes even claiming that law does not and/or has never governed international relations and that outcomes are ultimately the result of the involved states' relative power.2 Others, such as Michael Glennon, do accept that international law has a role to play in foreign affairs, but argue that its rules should flexibly adjust to the major powers' relative strength.3 Furthermore, right-wing interventionists tend to focus their arguments on the rules governing the use of force while the liberals' reforming zeal is generally broader. The liberal approach tends to emphasize its strict adherence to the rule of law in international affairs. Liberals, however, often argue that international law, especially customary international law, is evolving under the influence of international human rights law. It is no longer the state, but the individual human being that is becoming and should become the focus of international law.4 This has allegedly led to the emergence of a right to intervene abroad on humanitarian grounds. More extreme advocates of the liberal strand of thought have even justified interventions in order to install/reinstate a "democratic" government. At this point, some liberal and right-wing scholars have in fact found limited common ground, as this argument can readily serve to justify the right-wing interventionists' general "regime change" agenda in "rogue states."

This article will show both strands of thought to be similarly harmful to the international rule of law. Both necessarily require the acceptance of a hierarchy of states, based on their relative power, and both rely on the United States' alleged exceptionalism as leader of the Free World and the West's unparalleled strength following the Eastern Bloc's collapse in the early 1990s. Since then, the widespread assumption has been that only the United States and its close allies could retain the capabilities to rely on more generous rules permitting the use of force.

As we near the end of the second decade of the 2 1 st century, this blase attitude towards the rest of the world has turned out to be misplaced. Rather, countries as diverse as Russia, Saudi Arabia, Colombia, and Turkey have increasingly come to rely on ever-expanding exceptions to the ban on the use of force first advocated by the West. Consequently, we are witnessing a return to gunboat diplomacy: states that feel powerful enough to intervene forcefully in another state's internal affairs will do so and claim justification based on the often ill-defined and ill-advised rules that right-wing interventionists and liberals have tried to impose. The rule of law is thus again being replaced by the Darwinian principle of the "survival of the fittest." Meanwhile, we are steadily approaching the point Glennon claims we have already passed,5 whereby the jus ad bellum has become indeterminate, meaning that few, if any, constraining rules on the use of force remain.

#### No impact to “religious divisions” or civil war.

Richard Hanania 20, research fellow at Defense Priorities, and a postdoctoral research fellow at the Saltzman Institute of War and Peace Studies at Columbia University, “Americans hate each other. But we aren’t headed for civil war,” The Washington Post, https://www.washingtonpost.com/outlook/civil-war-united-states-unlikely-violence/2020/10/29/3a143936-0f0f-11eb-8074-0e943a91bf08\_story.html

The men arrested in early October and charged with plotting to kidnap Michigan Gov. Gretchen Whitmer (D) apparently hoped that doing so might help set off a civil war — pitting lovers of liberty like themselves against treasonous statists. The goal may sound outlandish, but fringe militia members aren’t the only ones who think a second civil war could occur in the United States. Recently, New York Times columnist Thomas Friedman said that the situation in this country reminded him of his time in Lebanon, where in the mid-1970s street clashes between sectarian militias erupted into multifaceted strife that lasted a decade and a half. David Kilcullen, an Australian scholar and adviser to the U.S. Army, described America in June as being at the point of “incipient insurgency,” while the academic Peter Turchin recently wrote — pointing to riots and rising economic inequality — that “we are getting awfully close to the point where a civil war or revolution becomes probable.”

The logic underlying most of these predictions is consistent and straightforward. Americans are more divided on social and political issues than in previous decades, and they hate each other more. Violence is boiling over: Armed right-wing militants traveled to sites of left-wing protests this summer, supposedly to enforce order, and deadly clashes occurred. If tensions continue to grow, these isolated incidents could become more common — and the United States might follow the path of other nations that have experienced full-blown armed conflict in recent decades.

Despite its appeal, this view betrays a fundamental misunderstanding of political violence. Historically, the academic literature on the causes of civil war was divided into two categories: Some scholars viewed such conflicts as a predictable outcome whenever there were deep grievances within national populations, while others stressed the importance of citizens having an opportunity to act on those resentments. Much of the discussion about violence in the United States today centers, implicitly, on the grievance model, holding that if we know how much different tribes of Americans hate each other, we can predict the likelihood of fighting in the streets.

But scholars now prefer the opportunity model, thanks to large-scale studies that examine political violence worldwide with cutting-edge statistical methods. Grievances and societal cleavages exist everywhere, waiting to be exploited. What distinguishes the countries that descend into civil war from those that do not is the lack of state capacity to put down rebellion — for reasons rooted in politics, economics or geography.

You might expect, for instance, states that lack democracy, that have diverse populations or that discriminate against minorities would be at the highest risk of internal conflict, because such conditions foment bitter grievances. But in fact, those qualities are at most loosely correlated with civil war, as scholars like the Stanford University political scientists James Fearon and David Laitin and the University of California at San Diego’s Barbara F. Walter have shown.

Rather, civil wars happen where the state is weak. Lower levels of wealth predict civil war, because poor countries lack the law enforcement and military capability to put down armed rebellions. That helps to explain recent conflicts in such varied countries as Yemen and Congo. Power vacuums, as occurred during and after decolonization, after American regime-change wars and after the collapse of the Soviet Union, create uncertainty about who is in charge and can inspire those who seek power to take up arms. There are other factors, too: States that are rich in oil see more civil war because the potential payoffs of a successful rebellion are higher — but this applies only up to a certain level of income, after which point the government is often able to buy off or destroy any potential challengers.

The Balkans offer a ready example of how grievance based on ethnic tension must be intertwined with the collapse of order for groups to take up arms against one another. While various ethnolinguistic communities there long eyed each other with suspicion, going back to the days of the Ottoman and Austro-Hungarian empires, those tensions did not lead to violence for most of the region’s history, including during the nearly half-century of communist rule. But when the Soviet empire fell and communist governments were discredited, parts of Yugoslavia began to declare independence. Serbs, Bosnians, Croats and Albanians, incited by political opportunists and demagogues, fought wars against one another for a decade, drawing in the international community, until sovereign states emerged with new, widely accepted borders.

In one influential 2006 study representative of the new school of thought — one that examined 172 countries from 1945 to 2000 — the political scientists Havard Hegre, of the Center for the Study of Civil War, and Nicholas Sambanis, of Yale University, used advanced statistical tools to determine which of 88 factors most consistently predicted civil war. Grievance-based measures like authoritarian government and ethnolinguistic diversity ranked low or had no discernible effect (although the latter did predict internal conflict when the analysis included the lowest level of conflict measured, defined as 25 or more deaths in a year). In contrast, Hegre and Sambanis found that measures of opportunity like a small military establishment and rough terrain — which offers a base from which rebels can strike — had a much stronger and more consistent effect.

Geography is a surprisingly potent variable in predicting civil war — and can confound even moderately strong states. During such conflicts, governments usually control the cities, and rebels form bases in relatively inaccessible regions like mountains, forests and swamps. Countries that have had problems with mountain-based minorities include Russia, which has confronted rebels in Chechnya, and Turkey, which is still fighting Kurds in the southeast of the country. (Until the 1990s, the Turkish government even referred to Kurds as “Mountain Turks,” denying their identity while acknowledging the geographical nature of the problem.)

Even with the most difficult geographic conditions, however, wealth and government power tend to erase opportunities for rebellion. Consider that in 1948 and 1949, South Korea faced a communist-led uprising on Jeju Island — which lies in the Korea Strait, about 60 miles from the mainland — in a conflict that cost as many as 30,000 lives, mostly civilian. A poor, newly independent South Korea had difficulty bringing that island under control and relied on brutal tactics to do so, including summary executions. But now that South Korea has joined the club of modern, industrialized states with advanced militaries, the idea of a region like Jeju rebelling has become unthinkable.

Wealth and military power explain why, in the United States, civil war is likely to remain a metaphor. Its per capita gross domestic product is about $62,000 a year, among the highest in the world, and its military is clearly capable of wiping out any challenges to state power. (The U.S. Civil War occurred when the nation had a per capita GDP comparable to that of a developing nation today, and when military technology was limited to rifles and cannon.) The Pentagon has 1.3 million active-duty personnel, can find terrorists on the other side of the world and wipe them out with the push of a button, and boasts a command-and-control structure with no recent history of factionalization. There is no swamp or mountain peak that is beyond the easy reach of the U.S. military.

A recent survey by Nationscape revealed that 36 percent of Republicans and 33 percent of Democrats thought that violence was at least somewhat justified to accomplish political goals. The opportunity model suggests that while a survey result like this reveals disturbing things about our political culture, it does not presage civil war.

To be sure, riots and general discord can happen as long as leaders lack the political will to respond (or if, as today, leaders disagree about the line dividing peaceful protest from lawlessness). But as soon as the authorities perceive a serious enough problem, they can move quickly and decisively, a lesson learned by the anarchists who recently took over part of Seattle, declaring it the Capitol Hill Autonomous Zone. They were tolerated for just over three weeks until they were cleared out by local police in partnership with the FBI. Law enforcement at the local and national levels, from police to the military, remains united and under civilian control, willing and able to put down potential threats to our governing system or territorial integrity.

### XT – AT: Bioterror

#### Terrorists aren’t smart enough.

Pinker ’18 [Steven; Canadian-American cognitive psychologist, Professor @ Harvard University; *Enlightenment Now: The Case for Reason, Science, Humanism, and Progress*, Viking, Penguin Group]

Start with the number of maniacs. Does the modern world harbor a significant number of people who want to visit murder and mayhem on strangers? If it did, life would be unrecognizable. They could go on stabbing rampages, spray gunfire into crowds, mow down pedestrians with cars, set off pressure-cooker bombs, and shove people off sidewalks and subway platforms into the path of hurtling vehicles. The researcher Gwern Branwen has calculated that a disciplined sniper or serial killer could murder hundreds of people without getting caught.42 A saboteur with a thirst for havoc could tamper with supermarket products, lace some pesticide into a feedlot or water supply, or even just make an anonymous call claiming to have done so, and it could cost a company hundreds of millions of dollars in recalls, and a country billions in lost exports.43 Such attacks could take place in every city in the world many times a day, but in fact take place somewhere or other every few years (leading the security expert Bruce Schneier to ask, “Where are all the terrorist attacks?”).44 Despite all the terror generated by terrorism, there must be very few individuals out there waiting for an opportunity to wreak wanton destruction. Among these depraved individuals, how large is the subset with the intelligence and discipline to develop an effective cyber- or bioweapon? Far from being criminal masterminds, most terrorists are bumbling schlemiels.45 Typical specimens include the Shoe Bomber, who unsuccessfully tried to down an airliner by igniting explosives in his shoe; the Underwear Bomber, who unsuccessfully tried to down an airliner by detonating explosives in his underwear; the ISIS trainer who demonstrated an explosive vest to his class of aspiring suicide terrorists and blew himself and all twenty-one of them to bits; the Tsarnaev brothers, who followed up on their bombing of the Boston Marathon by murdering a police officer in an unsuccessful attempt to steal his gun, and then embarked on a carjacking, a robbery, and a Hollywood-style car chase during which one brother ran over the other; and Abdullah al-Asiri, who tried to assassinate a Saudi deputy minister with an improvised explosive device hidden in his anus and succeeded only in obliterating himself.46 (An intelligence analysis firm reported that the event “signals a paradigm shift in suicide bombing tactics.”)47 Occasionally, as on September 11, 2001, a team of clever and disciplined terrorists gets lucky, but most successful plots are low-tech attacks on target-rich gatherings, and (as we saw in chapter 13) kill very few people. Indeed, I venture that the proportion of brilliant terrorists in a population is even smaller than the proportion of terrorists multiplied by the proportion of brilliant people. Terrorism is a demonstrably ineffective tactic, and a mind that delights in senseless mayhem for its own sake is probably not the brightest bulb in the box.48 Now take the small number of brilliant weaponeers and cut it down still further by the proportion with the cunning and luck to outsmart the world’s police, security experts, and counterterrorism forces. The number may not be zero, but it surely isn’t high. As with all complex undertakings, many heads are better than one, and an organization of bio- or cyberterrorists could be more effective than a lone mastermind. But that’s where Kelly’s observation kicks in: the leader would have to recruit and manage a team of co-conspirators who exercised perfect secrecy, competence, and loyalty to the depraved cause. As the size of the team increases, so do the odds of detection, betrayal, infiltrators, blunders, and stings.49 Serious threats to the integrity of a country’s infrastructure are likely to require the resources of a state. 50 Software hacking is not enough; the hacker needs detailed knowledge about the physical construction of the systems he hopes to sabotage. When the Iranian nuclear centrifuges were compromised in 2010 by the Stuxnet worm, it required a coordinated effort by two technologically sophisticated nations, the United States and Israel. State-based cyber-sabotage escalates the malevolence from terrorism to a kind of warfare, where the constraints of international relations, such as norms, treaties, sanctions, retaliation, and military deterrence, inhibit aggressive attacks, as they do in conventional “kinetic” warfare. As we saw in chapter 11, these constraints have become increasingly effective at preventing interstate war. Nonetheless, American military officials have warned of a “digital Pearl Harbor” and a “Cyber-Armageddon” in which foreign states or sophisticated terrorist organizations would hack into American sites to crash planes, open floodgates, melt down nuclear power plants, black out power grids, and take down the financial system. Most cybersecurity experts consider the threats to be inflated—a pretext for more military funding, power, and restrictions on Internet privacy and freedom.51 The reality is that so far, not a single person has ever been injured by a cyberattack. The strikes have mostly been nuisances such as doxing, namely leaking confidential documents or e-mail (as in the Russian meddling in the 2016 American election), and distributed denial-of-service attacks, where a botnet (an array of hacked computers) floods a site with traffic. Schneier explains, “A real-world comparison might be if an army invaded a country, then all got in line in front of people at the Department of Motor Vehicles so they couldn’t renew their licenses. If that’s what war looks like in the 21st century, we have little to fear.”52 For the techno-doomsters, though, tiny probabilities are no comfort. All it will take, they say, is for one hacker or terrorist or rogue state to get lucky, and it’s game over. That’s why the word threat is preceded with existential, giving the adjective its biggest workout since the heyday of Sartre and Camus. In 2001 the chairman of the Joint Chiefs of Staff warned that “the biggest existential threat out there is cyber” (prompting John Mueller to comment, “As opposed to small existential threats, presumably”). This existentialism depends on a casual slide from nuisance to adversity to tragedy to disaster to annihilation. Suppose there was an episode of bioterror or bioterror that killed a million people. Suppose a hacker did manage to take down the Internet. Would the country literally cease to exist? Would civilization collapse? Would the human species go extinct? A little proportion, please—even Hiroshima continues to exist! The assumption is that modern people are so helpless that if the Internet ever went down, farmers would stand by and watch their crops rot while dazed city-dwellers starved. But disaster sociology (yes, there is such a field) has shown that people are highly resilient in the face of catastrophe.53 Far from looting, panicking, or sinking into paralysis, they spontaneously cooperate to restore order and improvise networks for distributing goods and services. Enrico Quarantelli noted that within minutes of the Hiroshima nuclear blast, survivors engaged in search and rescue, helped one another in whatever ways they could, and withdrew in controlled flight from burning areas. Within a day, apart from the planning undertaken by the government and military organizations that partly survived, other groups partially restored electric power to some areas, a steel company with 20 percent of workers attending began operations again, employees of the 12 banks in Hiroshima assembled in the Hiroshima branch in the city and began making payments, and trolley lines leading into the city were completely cleared with partial traffic restored the following day.54

#### No nuclear terror.

Mueller ’20 [John; Professor of Political Science and Senior Research Scientist with the Mershon Center for International Security Studies @ Ohio State University, Senior Fellow @ Cato Institute, PhD @ University of California, Los Angeles; “Nuclear Alarmism: Proliferation and Terrorism”; June 24th, 2020; https://www.cato.org/publications/publications/nuclear-alarmism-proliferation-terrorism]

Building a Bomb of One’s Own

Because they are unlikely to be able to buy or steal a usable bomb and because they are further unlikely to have one handed off to them by an established nuclear state, the most plausible route for terrorists would be to manufacture the device themselves from purloined materials. That is the course identified by a majority of leading experts as the one most likely to lead to nuclear terrorism.44

The simplest design is a “gun” type of device in which masses of highly enriched uranium are hurled at each other within a tube. Such a device would be, as Allison acknowledges, “large, cumbersome, unsafe, unreliable, unpredictable, and inefficient.“45

The process of making such a weapon is daunting even in this minimal case. In particular, the task requires that a considerable series of difficult hurdles be conquered and in sequence.

To begin with, now and likely for the foreseeable future, stateless groups are incapable of manufacturing the requisite weapons‐​grade uranium themselves because the process requires an effort on an industrial scale. Moreover, they are unlikely to be supplied with the material by a state for the same reasons a state is unlikely to give them a workable bomb.46 Thus, they would need to steal or illicitly purchase the crucial material.

A successful armed theft is exceedingly unlikely, not only because of the resistance of guards but also because chase would be immediate. A more plausible route would be to corrupt insiders to smuggle out the necessary fissile material. However, that approach requires the terrorists to pay off a host of greedy confederates, including brokers and money transmitters, any one of whom could turn on them or — either out of guile or incompetence — furnish them with stuff that is useless.47 Moreover, because of improved safeguards and accounting practices, it is decreasingly likely that the theft would remain undetected.48 That development is important because if any missing uranium is noticed, the authorities would investigate the few people who might have been able to assist the thieves, and one who seems suddenly to have become prosperous is likely to arrest their attention right from the start. Even one initially tempted by, seduced by, or sympathetic to, the blandishments of the smooth‐​talking foreign terrorists might soon develop sobering second thoughts and go to the authorities. Insiders tempted to assist terrorists might also come to ruminate over the fact that, once the heist was accomplished, the terrorists would, as analyst Brian Jenkins puts it none too delicately, “have every incentive to cover their trail, beginning with eliminating their confederates.“49

It is also relevant to note that over the years, known thefts of highly enriched uranium have totaled fewer than 16 pounds. That amount is far less than that required for an atomic explosion: for a crude bomb, more than 100 pounds are necessary to produce a likely yield of one kiloton. Moreover, none of those thieves was connected to al Qaeda, and, most arrestingly, none had buyers lined up — nearly all were caught while trying to peddle their wares. Indeed, concludes analyst Robin Frost, “There appears to be no true demand, except where the buyers were government agents running a sting.” Because there appears to be no commercial market for fissile material, each sale would be a one‐​time affair, not a continuing source of profit such as drugs, and there is no evidence of established underworld commercial trade in this illicit commodity.50

If terrorists were somehow successful in obtaining a sufficient mass of relevant material, they would then have to transport it out of the country over unfamiliar terrain, probably while being pursued by security forces. Then, they would need to set up a large and well‐​equipped machine shop to manufacture a bomb and populate it with a select team of highly skilled scientists, technicians, and machinists. The process would also require good managers and organizers. The group would have to be assembled and retained for the monumental task without generating consequential suspicions among friends, family, and police about their curious and sudden absence from normal pursuits back home. Pakistan, for example, maintains a strict watch on many of its nuclear scientists even after retirement.51

Some observers have insisted that it would be “easy” for terrorists to assemble a crude bomb if they could get enough fissile material.52 However, Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland’s Spiez Laboratory, conclude that the task “could hardly be accomplished by a subnational group.” They point out that precise blueprints are required, not just sketches and general ideas, and that even with a good blueprint, the terrorist group “would most certainly be forced to redesign.” They also stress that the work, far from being “easy,” is difficult, dangerous, and extremely exacting and that the technical requirements “in several fields verge on the unfeasible.“53

Los Alamos research director Younger makes a similar argument, expressing his amazement at “self‐​declared ‘nuclear weapons experts,’ many of whom have never seen a real nuclear weapon,” who “hold forth on how easy it is to make a functioning nuclear explosive.” Information is available for getting the general idea behind a rudimentary nuclear explosive, but none is detailed enough for “the confident assembly of a real nuclear explosive.” Younger concludes, “To think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is far‐​fetched at best.“54

Under the best of circumstances, the process could take months or even a year or more, and it would all, of course, have to be carried out in utter secret even while local and international security police are likely to be on the intense prowl. In addition, people, or criminal gangs, in the area may observe with increasing curiosity and puzzlement the constant comings and goings of technicians unlikely to be locals.

The process of fabricating a nuclear device requires, then, the effective recruitment of people who at once have great technical skills and will remain completely devoted to the cause. In addition, a host of corrupted coconspirators

, many of them foreign, must remain utterly reliable; international and local security services must be kept perpetually in the dark; and no curious outsider must get wind of the project over the months, or even years, it takes to pull off.

The finished product could weigh a ton or more. Encased in lead shielding to mask radioactive emissions, it would then have to be transported to, as well as smuggled into, the relevant target country. Then, the enormous package would have to be received within the target country by a group of collaborators who are at once totally dedicated and technically proficient at handling, maintaining, and perhaps assembling the weapon. Then, they would have to detonate it somewhere under the fervent hope that the machine shop work has been proficient, that no significant shakeups occurred in the treacherous process of transportation, and that the thing — after all that effort — doesn’t prove to be a dud.

The financial costs of the extended operation in its cumulating entirety could become monumental. There would be expensive equipment to buy, smuggle, and set up, as well as people to pay — or pay off. Some operatives might work for free out of dedication, but the vast conspiracy also requires the subversion of an array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals who are competent and capable enough to be an effective ally in the project are likely to be both smart enough to see opportunities for extortion and psychologically equipped by their profession to be willing to exploit them.

#### 3. Technical barriers prevent synthetic pathogens.

Eckard Wimmer 18. Prof @ Stony Brook University. 2018. “Synthetic Biology, Dual Use Research, and Possibilities for Control.” Defence Against Bioterrorism, Springer, Dordrecht, pp. 7–11. link.springer.com, doi:10.1007/978-94-024-1263-5\_2.

Listed below are some constraints that show how in the US the development of dangerous infectious agents, referred to as “select agents”, is controlled – perhaps misuse even prevented – through technical and administrative hurdles: I. Re-creating an already existing dangerous virus for malicious intent is a complex scientific endeavor. (i) It requires considerable scientific knowledge and experience and, more importantly, considerable financial support. That support usually comes from government and private agencies (NIH, NAF, etc.), organizations that carefully screen at multiple levels all applications for funding of ALL biological research. (ii) It requires an environment suitable for experimenting with dangerous infectious agents (containment facilities). Any work in containment facilities is also carefully regulated. II. Genetic engineering to synthesize or modify organisms relies on chemical synthesis of DNA. Synthesizing DNA is automated and carried out with sophisticated, expensive instruments. The major problem of DNA synthesis, however, is that the product is not error-free. Any single mistake in the sequence of small DNA segments (30–60 nucleotides) or large segments (>500 nucleotides) can ruin the experiment. Companies have developed strategies to produce and deliver error free, synthetic DNA, which investigators can order electronically from vendors, such as Integrated DNA Technologies (US), GenScript (US) or GeneArt (Germany). This offers a superb and easy way to control experimental procedures carried out in any laboratory: the companies will automatically scan ordered sequences in extensive data banks to monitor relationship to sequences of a select agent. If so, the order will be stalled until sufficient evidence has been provided by the investigator that she/he is carrying out experiments approved by the authorities. The entire complex issue of protecting society from the misuse of select agents has been discussed in two outstanding studies [11, 12]. III. Engineering a virus such that it will be more harmful (more contagious, more pathogenic) is generally difficult because, in principle, viruses have evolved to proliferating maximally in their natural environment. That is, genetic manipulations of a virus often lead to loss of fitness that, in turn, is unwanted in the bioterrorist agent.

#### No bioweapons

Filippa Lentzos 17. Senior research fellow jointly appointed in the Departments of War Studies and of Global Health and Social Medicine at King’s College London. 07-03-17. "Ignore Bill Gates: Where bioweapons focus really belongs." Bulletin of the Atomic Scientists. http://thebulletin.org/ignore-bill-gates-where-bioweapons-focus-really-belongs10876

I disagree. At a stretch, terrorists taking advantage of advances in biology might be able to create a viable pathogen. That does not mean they could create a sophisticated biological weapon, and certainly not a weapon that could kill 30 million people. Terrorists in any event tend to be conservative. They use readily available weapons that have a proven track record—not unconventional weapons that are more difficult to develop and deploy. Available evidence shows that few terrorists have ever even contemplated using biological agents, and the extremely small number of bioterrorism incidents in the historical record shows that biological agents are difficult to use as weapons. The skills required to undertake even the most basic of bioterrorism attacks are more demanding than often assumed. These technical barriers are likely to persist in the near- and medium-term future. Gates does a disservice to the global health security community when he draws media and policy attention to amateurs such as terrorists. Where biological weapons are concerned, the focus should remain on national militaries and state-sponsored groups. These are the entities that might have the capability, now or in the near future, to develop dangerous biological weapons. The real threat is that sophisticated biological weapons will be used by state actors—or by financially, scientifically, and militarily well-resourced groups sponsored by states. So far, state-level use of biology to deliberately inflict disease or disrupt human functions has been limited by the strong international norm against biological weapons enshrined in the 1925 Geneva Protocol and the 1972 Biological and Toxin Weapons Convention. These two biological cornerstones of the rules of war uphold the international prohibition against the development, production, stockpiling, and use of biological weapons. But this norm may not survive indefinitely.

#### CRISPR doesn’t overcome barriers

Revill ’17 [Dr. James Revill, Research Fellow with the Harvard Sussex Program at SPRU, Past as Prologue? The Risk of Adoption of Chemical and Biological Weapons by Non-State Actors in the EU, European Journal of Risk Regulation, 8 (2017), pp. 626–642, https://www.cambridge.org/core/services/aop-cambridge-core/content/view/6B824CDE0E25FD86AC3D0BD07822A743/S1867299X17000356a.pdf/div-class-title-past-as-prologue-the-risk-of-adoption-of-chemical-and-biological-weapons-by-non-state-actors-in-the-eu-div.pdf]

In many cases a degree of determination and dedication will be required merely to separate online fantasy from fact and identify operationally useful information (of relevance to the European context) from nonsense (or information pertinent to contexts other than Europe). Second, with new technologies there is the potential for such tools to enable some, but certainly not all, actors, and even then new technologies bring new challenges. CRISPR, gene editing technology is currently seen as a particular source of promise and peril, which purportedly enables “even largely untrained people to manipulate the very essence of life”.63 As much may be technically true, yet “untrained people” would nonetheless require some guidance in identifying suitable areas of genetic structures to manipulate. Moreover, CRISPR would only get aspiring weaponeers so far, with the process of culturing, scaling-up and weaponisation still requiring considerable attention and interdisciplinary skills, typically generated through “large interdisciplinary teams of scientists, engineers, and technicians”,64 in order to be effective. Indeed, for all the progress in science and technology, biological weapons are still not used, in part, because of the complexity of such weapons; and the chemical weapons that are used today are largely the same as the chemical weapons of 100 years ago. As Robinson noted “It remains the case today that, in the design of CBW, increasingly severe technological constraint sets in as the mass-destruction end of the spectrum is approached: the greater and more assured the area-effectiveness sought for the weapon, the greater the practical difficulties of achieving it”.65

## Advantage Two

### XT – AT: US-China War

#### Deterrence checks.

Zhang ’19 [Ketian; Postdoctoral Fellow in the Shorenstein Asia-Pacific Research Center @ Stanford University; “Cautious Bully: Reputation, Resolve, and Beijing's Use of Coercion in the South China Sea,” *International Security* 44(1), p. 117-159]

Identifying and explaining broad patterns regarding when and how China [End Page 117] coerces other states in the South China Sea has both theoretical and policy relevance. First, although the literature on coercion is vast, the focus has been on evaluating its effectiveness.1 There is, therefore, ample room to theorize when states decide to use coercion and what influences their choice of coercive tools, especially for rising powers such as China.2 Moreover, the literature examines the effectiveness of individual coercive tools, yet the question of when and why states choose one coercive measure over another has been understudied.3 Second, explaining Chinese coercive behavior has policy implications for managing China's rise and maintaining peace in the Asia Pacific. It sheds light on how contemporary rising powers try to translate their power into influence and on their choice of policy instruments.4 It also illuminates how decision-makers in Beijing craft security policies for a state likely to become one of the most significant great powers in the twenty-first century. Moreover, experts [End Page 118] on Chinese foreign policy have hotly debated whether China is becoming more assertive. To date, this debate has lacked systematic coding of how to measure assertiveness.5 Third, the literature on rising powers has not examined the question of how they use coercion, focusing instead on theories of war and peace.6 China's increasing power offers an intuitive explanation for its use of coercion—that is, when states are more powerful, they become more coercive—but the evidence suggests otherwise. China used military coercion in the 1990s, when it was weaker than in other periods, but chose not to use military coercion when it grew stronger. Fourth, this article examines disputes in the South China Sea. Those disputes are potential threats to regional security, because they increase the risk of armed conflict between China and the United States while endangering U.S. national interests, including freedom of navigation and the credibility of U.S. treaty commitments to allies in the region. In this article, I develop a theory of coercion that emphasizes the expected costs and benefits to the state in choosing to coerce or not coerce and in choosing one coercive tool over another in response to national security threats. This "cost-balancing theory" helps explain, first, when and why China coerces one target to deter other potential challengers. Second, it suggests that China is more likely to use coercion when the need to establish a reputation for resolve is high and the economic cost is low. "Economic cost" here refers to the extent to which China needs the target state for markets or supply. A reputation for resolve is the resolve a state demonstrates for defending its national security interests. Third, my theory posits that China prefers to use nonmilitarized coercive tools when the geopolitical backlash cost is high. The term "geopolitical backlash" as used in this article refers to concerns of the coercing state that the target state might balance against it. My study yields three key findings. First, contrary to the conventional wisdom, China is a cautious bully. Second, China employs coercion only infrequently. Third, when it becomes stronger, it uses military coercion less often, instead resorting to mostly nonmilitarized tools. Therefore, decisions about when to pursue coercion and which tools to use cannot be explained by focusing on material capabilities. My theory highlights the centrality of the need to [End Page 119] establish resolve and concerns about economic cost. China coerces one target to deter others. In the next section, I describe the full spectrum of coercive tools available to states. In the second section, I develop my cost-balancing theory of coercive behavior and describe my research design and measurement of the variables. In the third section, I conduct a congruence test to explain Chinese coercive patterns in the South China Sea from 1990 to 2015, introducing original data on maritime disputes and Chinese coercive behavior. The fourth section presents a case study of the 2012 Scarborough Shoal incident, drawing on exclusive interviews with Chinese officials and internal Chinese documents to illustrate the causal mechanisms at work in my theory. I conclude with a discussion of some of the implications of my study for researchers and policymakers concerned with the role of coercion in international relations and rising powers, as well as with U.S.-China relations in the South China Sea. Full Spectrum of Coercive Measures The classic definition of coercion comes from Thomas Schelling, who uses the term "compellence" when describing a strategy designed to make an adversary act in a particular way; the strategy usually involves the use of punishment until the enemy acts in the desired manner.7 Robert Art and Patrick Cronin further specify that in coercive diplomacy, the coercer compels the adversary either to start doing something it is not doing or to stop doing something it is doing.8 Strictly speaking, the concept of interest here is compellence, but the term "coercive diplomacy" has become the convention.9 Therefore, I use the term "coercion," not "compellence," but broaden the scope of compellence to include military and nonmilitary coercive tools. Following the literature, I define "coercion" as the threat or use of negative actions by a state to demand a change in the behavior of another state. I consider both physical actions and threats, yet maintain that all else being equal, physical actions should signal resolve more credibly than threats of action. Coercion has two goals: to make the target either stop action it is taking or to take new action. An attempt to coerce an adversary should make clear the kind [End Page 120] of action the coercer wants the target to take. Aggression or brute force, whose end goal is to take a piece of land rather than make the target state do something, is not coercion.10 In this article, coercion falls along a spectrum. At one end is inaction: the decision by a state not to take physical action, even when it has the ability to do so. Instead, it may resort to rhetorical protest or remain silent, both of which constitute inaction. Inaction is forbearance. At the other end of the spectrum is military coercion. Diplomatic sanctions constitute the coercer's deliberate interruption of its relations with the target state. Tara Maller codes the following as diplomatic sanctions: the short, temporary recall of the ambassador to the target state, a downgrade in diplomatic status, and closure of the embassy—the first being the least severe and the last being the severest.11 The complete break of bilateral relations, however, affects the ability to gather intelligence and the ease of communication.12 As such, states may choose to maintain some level of relations—for example, closing consulates, canceling important meetings, or terminating senior-level communications. "Economic sanctions" refer to instructions by the government to certain actors to withdraw from trade or financial relations so as to force the target to change a foreign policy the coercer dislikes.13 Trade sanctions include embargos, increases in tariffs, withdrawal of most-favored-nation status, quotas, blacklisting, denial of licenses, preclusive buying, and other discriminatory actions. Financial sanctions include the freezing of assets, aid suspension, expropriation, unfavorable taxation, and the imposition of controls on the import or export of capital.14 Being strictly nonmilitary, diplomatic and economic sanctions can be used to send signals to the target state while minimizing the risk of escalation. Another form of coercion—so-called gray-zone coercion—straddles nonmilitary and military coercion and has attracted growing attention in recent years.15 According to Michael Mazarr, states involved in gray-zone conflict employ "civilian instruments to achieve objectives sometimes reserved for military [End Page 121] capabilities."16 Like others, however, Mazarr's conceptualization is too expansive and includes military force.17 Some military actions might be non-kinetic, but they are still militarized. Emphasizing the civilian aspect, I define gray-zone coercion as physical violence by government agencies to force the target state to change its behavior. Similar to military coercion, gray-zone coercion can cause tangible damage to the target. Covert actions conducted by the Central Intelligence Agency during the Cold War are examples of gray-zone coercion. Also, gray-zone coercion is analytically distinct from military coercion, because it is imposed by civilians and the instruments involve much smaller capabilities than those available to the military. Being nonmilitarized, gray-zone coercion is useful for escalation control, because it allows states to claim plausible deniability: states can deny that they are using military force, thus reducing the likelihood of military escalation triggered by defense treaty commitments. Finally, if the coercer can prevail with gray-zone coercion, its incentives to use military force are reduced. Military coercion represents the most escalatory level of coercion. Chas Freeman divides military coercion into two categories: (1) the nonviolent use of military power and (2) the use of force.18 Following Freeman, I define "military coercion" as consisting of the display, threat, and use of force short of war. Nonviolent military actions include shows of force, such as temporary deployments, military exercises, and naval visits.19 Such displays of force could emphasize the possibility of escalated and intensified confrontation.20 Acts of military coercion are "physical and so menacing that the threat of hostile intent is implicit in their use."21 They also risk escalation into militarized conflicts. The Cost-Balancing Theory In this section, I describe the cost-balancing theory and how it explains when and why states use coercion. The core benefit of coercion is that it demonstrates the coercing state's reputation for resolve: other states view it as credible. The costs can be economic—the loss of markets or supply—or [End Page 122] geopolitical—balancing behavior by the target or other states against the coercer (i.e., geopolitical backlash). ISSUE IMPORTANCE When devising national security policies, states weigh the importance of the issues at hand. Taylor Fravel notes that states are more likely to escalate to the use of force when the conflict involves territory they value highly.22 Vesna Danilovic emphasizes the relevance of stakes—the importance of the issue—in states' use of deterrence.23 As the crisis bargaining literature suggests, an actor will be resolved about certain issues when the stakes are high.24 States' logic for choosing coercion is similar. Threats to national security are, by definition, high-stakes issues. Not every national security issue, however, is weighted equally. As such, states use coercion for issues they consider to have high importance and not for issues they consider of less importance.25 When the state considers the issue to be of the highest importance, it may resort to coercion. Thus, when the need to establish a reputation for resolve and economic cost are both high, states use coercion only for issues of the highest importance. Nevertheless, there are still temporal and cross-national variations as to when and against whom a state uses coercion, even for the same issue. That is, issue importance does not dictate when states decide to use coercion: the importance of the issue varies across issues but remains constant for the same issue. Even for the same issue, the state chooses to coerce in certain periods and target certain countries, but not others. This is when the specific benefits and costs of coercion become critical. BENEFITS OF COERCION: THE NEED TO ESTABLISH A REPUTATION FOR RESOLVE The intended benefit of coercion is external; that is, other states view the coercer as having resolve. States take coercive measures to achieve specific goals, yet I argue that they do so not just to influence the target. States fear that [End Page 123] if they do not use coercion, other states might not consider them credible, instead viewing them as weak, which might lead to failure in deterring future aggression. In Joshua Kertzer's words, resolve is "a state of firmness or steadfastness of purpose."26 Reputation, according to Jonathan Mercer, involves a "judgment of someone's character (or disposition) that is then used to predict or explain future behavior"; a reputation is formed when an observer uses "dispositional or character-based attributions" and "past behavior to explain or predict another's behavior."27 This focus on past behavior is found in the work of Schelling, who argues that to be convincing, commitments should be backed by precedents.28 In addition, actions are more credible and less ambiguous than rhetoric.29 Robert Jervis similarly notes that issues of little intrinsic value can become indices of resolve.30 In this sense, both Schelling and Jervis suggest that states use coercion to signal their commitment to defend their national security.31 This logic of establishing a reputation for resolve is in line with recent scholarship. Nicholas Miller argues that economic sanctions imposed by the United States on some of its allies that were pursuing nuclear proliferation deterred other potential proliferants.32 In explaining why states tend to be sincere when engaging in diplomacy rather than resort to bluffing, Anne Sartori argues that a state that has a reputation for bluffing will experience reduced credibility when it issues future deterrent threats.33 In an experiment, Dustin Tingley and Barbara Walter find that the majority of their participants "invest more heavily in reputation building if they believe a game will be repeated many times."34 [End Page 124] Todd Sechser notes that compliance with a coercive threat entails reputation costs for the target: it raises the possibility that the coercer will make additional demands in the future, thus leading to compellence failure.35 Although Sechser focuses on explaining when compellent threats are ineffective, one can also apply the logic of reputation costs to the coercer. Indeed, Walter finds that governments might fight civil wars against secessionist groups to look tough and discourage other rebel groups from making demands.36 As such, empirical evidence suggests that the logic of establishing a reputation for resolve manifests itself in international relations. In sum, a state's need to establish a reputation for resolve goes beyond a particular incident. It has implications for other issues and for the state's reputation vis-à-vis other states more generally. States use coercion to deter other states from engaging in undesired activity. However, just because states perceive the need to establish resolve does not mean that they will automatically gain resolve when they engage in coercive behavior.37 My article focuses on explaining states' coercion decisions, not on whether states gain resolve based on these decisions.38 ECONOMIC COST OF COERCION Potential coercers may worry about incurring domestic economic costs resulting from economic dependence on the target state or the loss of markets. Coercion may generate economic costs for both the coercer and the target, affecting their bilateral trade or capital flows. Albert Hirschman argues that commerce can be an alternative to war only when it is "extremely difficult" for the target to replace the coercer as a market and a source of supply with other countries; that is, it has no "exit options."39 If the coercer has exit options but its target [End Page 125] does not, then it has leverage. Building on this argument, Robert Keohane and Joseph Nye use vulnerability dependence to indicate the "costliness of making effective adjustments to a changed environment."40 In other words, how costly is it for the coercer to find exit options? A state is less likely to take coercive measures if it is dependent on the target for markets or supply or if it is concerned about losing important markets, even if it does not depend on the target. Like war, coercion can be economically costly.41 As Scott Kastner notes, political conflicts short of war have an impact on economic relations, the Cold War being one example.42 State leaders may place restrictions on foreign economic ties in the face of political conflict, and conflicts could make it riskier for firms to operate in affected countries.43 Coercion is a form of political conflict. There is no theoretical expectation that the target state will respond to political conflicts "in kind"—that is, diplomatic measures for diplomatic coercion and military measures for military coercion. For example, diplomatic sanctions might stall bilateral economic relations, especially if both sides rely on bilateral meetings of senior government officials to negotiate significant purchases (e.g., aircraft) or investment deals. Military coercion may reduce the incentive for companies in the target state to invest in the coercing state. Therefore, if a state needs the target state for markets or critical supply, it will consider the potential economic cost of using coercion. GEOPOLITICAL BACKLASH COST OF COERCION Threats and negative actions can be self-defeating if they elicit counteraction from the other side, thereby setting in motion a costly cycle.44 One such cost could be a geopolitical backlash, in which the target state seeks to balance the coercer by creating or aggregating military power through internal mobilization or the formation of alliances.45 Stephen Walt argues that states tend to balance [End Page 126] against threats rather than bandwagon and that larger states balance more often than smaller ones.46 Therefore, if a state is aware that acts of coercion may be interpreted as threats, it will be concerned about geopolitical backlash—the target might side with other states to balance the coercer. The reason why geopolitical backlash cost influences the state's choice of coercive tools is that greater geopolitical pressure could potentially trigger a military alliance. What I mean by economic cost influencing coercion decisions and geopolitical backlash cost affecting coercive tools is that, theoretically, economic cost should be the most critical factor for whether a state uses coercion, if at all, whereas geopolitical cost is most relevant for what coercive tools states choose. SYNTHESIS AND PREDICTIONS—A COST-BALANCING THEORY In an ideal world without economic or geopolitical constraints, a state could take coercive action to increase its reputation for resolve any time it faces a challenge. In reality, however, states face economic and geopolitical constraints that force them to balance the costs of coercion against the need to establish resolve. This calculation accords with Kertzer's argument that "risk aversion increases sensitivity to both the costs of fighting and the costs of backing down."47 Sometimes, states have to take the middle path and make cost-balancing calculations. THE DECISION TO PURSUE COERCION States will refrain from using coercion when the need to establish a reputation for resolve is low. For issues of similar importance, states engage in coercion when that need is high and when the economic cost is low. In circumstances when both the need to establish resolve and the economic cost are high, states will engage in coercive behavior only when the issue is of the highest importance. This article focuses only on the South China Sea, where issue importance is held constant.48 MILITARY VERSUS NONMILITARY COERCION In theory, military coercion is more escalatory than are other forms of coercion. I hypothesize that states will be cost conscious and optimizing; that is, they will maximize the utility of coercion while minimizing the cost. States tend to prefer to use nonmilitarized tools of coercion, especially when the geopolitical backlash cost is high. [End Page 127] WEIGHING THE COSTS AND BENEFITS OF COERCION The cost-balancing theory identifies a state's need to establish a reputation for resolve and the potential costs and benefits that may be involved. First, although changing the behavior of the target state is a benefit of coercion, as the signaling and reputation literature indicates, the expected benefit of coercion centers on the reputation for resolve; an example is U.S. concern about the credibility of its resolve during the Cold War.49 Second, although states may benefit from using coercion to increase their domestic legitimacy, their concern for legitimacy is not an independent factor influencing when and why they pursue coercion. Rather, the need to establish resolve precedes concerns about domestic legitimacy: it is sometimes through foreign media exposure (which first increases the coercer's need to establish resolve) that the domestic public begins to be informed about issues threatening its state's national security. Third, economic costs influence when states decide to engage in coercion, because economic indicators are crucial in determining whether leaders will remain in office. The logic of this relationship between economic costs and leadership longevity applies to authoritarian and democratic states alike.50 Calculations of geopolitical costs influence decisions to escalate to military coercion, because high geopolitical costs could push the target state to call on its allies to provide military assistance, which could lead to a military confrontation with the coercer. Moderate use of economic sanctions, in contrast, is unlikely to trigger defense treaty obligations. MEASURING THE VARIABLES In my study, all variables are binary. I do not treat the costs and benefits as low, medium, or high, because decisionmakers are not mathematicians. With many decisions to make on a daily basis, they simplify their decision-making process.51 THE NEED TO ESTABLISH A REPUTATION FOR RESOLVE In addition to speech evidence in which officials stressed the need to show resolve and expressed [End Page 128] concerns about appearing weak, I use two objective indicators for purposes of cross-checking: (1) the number of incidents (i.e., challenges from other states that threaten the coercer's national security) and (2) the visibility and salience of the incidents in question. It is important to note that I am measuring the level of the state's need to establish resolve, not the level of resolve that the state already has.52 Thus, the focus is on the coercer, not on how resolved other states view the coercer. When the visibility and salience of the target state's action are high, the coercing state might fear that potential challengers will observe this action and that if the state does not use coercion, other states may take similar actions in the future (or the target may continue its action or escalate), in the belief that the state will not be willing to use coercion. I measure visibility with the level of media coverage—that is, whether the issue threatening the coercer's national security receives lots of coverage, especially in highly influential media outlets such as Agence France-Presse, the Associated Press, and Reuters. From the perspective of the coercer, the visibility of national security issues through media reports is one indicator it uses to measure the need to establish resolve, because coercion is not only about the challenger. The challenger might have excellent intelligence regarding the issue at stake, but other states might not accord it the same level of attention. For example, not all states use their intelligence services to track when a particular government will receive the Dalai Lama, or foreign fishermen fishing in waters claimed by China, if English-language news sources do not report them. The greater the media visibility, the more likely it is that other states or potential challengers might be watching the coercer's response. All else being equal, the lack of a response in the face of high-visibility incidents might make other states view the coercer as less resolved than if the incidents have lower visibility. If the coercer does not respond despite the incidents' high level of visibility, other states might think that it will similarly refrain from using coercion in the future. If the incident is not highly visible, other states might think that the coercer and the challenger have a private arrangement. In measuring status-altering events, Jonathan Renshon similarly notes that such events should be highly visible and salient, because "leaders and their advisors face severe constraints on their time and attention" and therefore "cannot pay attention to everything that happens in the world."53 Theoretical and empirical studies in international relations, sociology, criminology, and economics likewise show that an increase in the visibility [End Page 129] of rule-breaking behavior may strengthen the propensity of individuals to break social norms, laws, or regulations;54 that is, increased publicity of a particular behavior may lead others to follow suit. These studies suggest that visibility and salience have external validity and are not ad hoc measures. As for the number of incidents, when there is more than one challenger threatening a state's national security or when one challenger engages in the same action multiple times—especially during a concentrated period and when the perpetrators are smaller states—the state uses coercion to avoid being seen as weak and unwilling to defend its interests. Other states may be watching the state's reaction, so if it does not take action to halt repeated transgressions, other states may take this as a green light to undertake similar transgressions in the future. As such, the higher the visibility of the issue and the greater the number of perpetrators, the more pressure there is on the state to establish a reputation for resolve. This is not to say that reputation concerns disappear when visibility of the issue is low and when there are fewer challengers. States do not have unlimited resources to respond to every challenge and therefore have to rank order when the need to establish resolve is high. ECONOMIC COST Economic cost is measured in terms of the economic relations between the coercer and the target, as well as the economic relations between the coercer and states in the region where the target is located. When the economic cost is high, one should first notice that objective economic relations indicate an asymmetry favorable to the target state. Indicators of bilateral economic relations include trade dependency and levels of foreign direct investment. Second, one should also observe government policy analysts and officials talking about such asymmetry, including how the state needs the target state for markets or supply. Government analysts and officials should note the existence of alternative markets and supply when they decide to apply coercive measures. GEOPOLITICAL BACKLASH COST I measure the geopolitical backlash cost as the capability of the target state to balance against the coercer. This capability includes both immediate military retaliation (from allies or neighbors of the target state) and long-term balancing, which is the target's forming or strengthening of alliances with its neighbors or great powers, especially the United States. I use two kinds of indicators. The first kind consists of official threat assessments [End Page 130] and threat assessments of government policy analysts affiliated with the coercing state. When the geopolitical backlash cost is high, one should first observe government officials and analysts making threat assessments, including analysis of the potential target state's bilateral relations with other states. If they perceive competition between the target and other states and are confident that the target will be unable to balance against the state, the state will use military coercion. Official assessments of other states' past and current policies, past crisis behavior, and statements—prior to the decision of whether to coerce—are therefore crucial. In cases where states do not use military coercion, one should see statements by government officials and scholars about their concerns of a geopolitical backlash from the target state, such as immediate military retaliation based on existing alliances or the formation of a long-term alliance. I also use U.S. national security documents, including the National Security Strategy, for cross-checking purposes.55 RESEARCH DESIGN AND SOURCES I first use congruence tests to demonstrate that temporal variation in Chinese coercion in the South China Sea is in line with the cost-balancing theory. I then process trace the 2012 Scarborough Shoal incident to indicate that the causal mechanisms of the theory hold in this case. Below, I list the materials used and cross-check them against one another. PRIMARY WRITTEN MATERIALS I used three kinds of sources, categorized by their level of authority (i.e., whether they are official sources). The most authoritative evidence is official government documents, including the annual book (Zhongguo Waijiao) from China's Ministry of Foreign Affairs (MFA), the biannual defense white paper from China's Ministry of Defense, China's State Council's annual government work report, and annual maritime development reports published by China's State Oceanic Administration (SOA). I also used official chronologies of Chinese leaders and statements from the MFA, the People's Daily, and the SOA. Finally, I used data from China's Customs and Ministry of Commerce. I also used semi-official documents and reports written by government think tanks, as well as articles written by zhongsheng in the People's Daily. An apparent homophone for "the voice of China," zhongsheng is written by the editorial staff of the People's Daily International Department.56 I used the following [End Page 131] semi-official reports, some of which are for internal use only: the annual Yellow Book of International Politics, published by the Chinese Academy of Social Sciences (CASS); the annual Strategic and Security Review, published by the China Institute of Contemporary International Relations (CICIR); internal reports by the National Institute of South China Sea Studies (NISCSS); the annual Bluebook of International Situation and China's Foreign Affairs, published by the China Institute of International Studies (CIIS); and the annual Strategic Assessment from the Chinese Academy of Military Science (AMS).57 I also used memoirs of Chinese leaders. Finally, I used scholarly writings, which are not authoritative and provide the least strong evidence. INTERVIEW DATA I first interviewed former Chinese and foreign officials, who provide the strongest evidence in the interview category. I also interviewed government policy analysts with access to internal government information. Finally, I interviewed a variety of Chinese and foreign scholars. Interviews took place in Beijing, Guangzhou, Haikou, Nanjing, Shanghai, Wuhan, Xiamen, and Washington, D.C. By diversifying the geographical locations and kinds of interviewees, I reduce organizational, geographical, and occupational biases. SECONDARY SOURCES When constructing the dataset, I used both Chinese and foreign accounts of particular incidents, to avoid bias. I also used secondary sources to triangulate the measurements of the costs and benefits in my theory. China's Use of Coercion in the South China Sea over Time As mentioned, China has maritime territorial disputes with Brunei, Malaysia, the Philippines, and Vietnam in the South China Sea. Figure 1 shows opportunities for and instances of China's use of coercion in these disputes from 1990 to 2015. The vertical axis indicates the number of incidents or cases of Chinese coercion. The dark gray bars denote the total number of incidents—actions taken by other South China Sea disputants to which China could react by pursuing or not pursuing coercion. These incidents, which are not cases of coercion, fall into two categories: (1) other disputants' control of land features in [End Page 132] Opportunities for and Instances of Chinese Coercion regarding Maritime Disputes in the South China Sea, 1990–2015 the South China Sea and (2) energy exploration in disputed waters.58 Specifically, incidents regarding control over land features include other claimants seizing and building infrastructure on land features—for example, Vietnam's seizure of a land feature in the Spratly Islands in 1991. Incidents regarding resource exploration include oil and gas exploration activities and the signing of production-sharing contracts with foreign companies—for example, the Philippines signing such contracts with foreign oil companies. By reactive, I do not mean that China is the victim in maritime disputes. Of course, China is not always reactive and has used proactive coercion, including land reclamation in the South China Sea, especially in 2015.59 [End Page 133] As the light gray bars in figure 1 show, China's use of coercion from 1990 to 2015 exhibits both temporal variation and variation in its use of coercive instruments. China pursued coercion against South China Sea disputants in the mid-1990s, taking a more dramatic, sometimes militarized, form from 1994 to 1996. In the early 2000s, however, China refrained from using coercion. Starting in 2007, China greatly increased its use of coercion, especially gray-zone coercion.60 Yet, unlike the early 1990s, these were all cases of nonmilitary coercion, including diplomatic and economic sanctions and gray-zone coercion.61 Gray-zone coercion included the use of civilian law-enforcement ships to ram the vessels of other South China disputants as well as the blocking of foreign ships from conducting oil and gas exploration (e.g., throwing dried tree branches in their way to interrupt seismic surveys).62 Since the 1990s, China has not used brute force in any of its territorial disputes in the South China Sea. If the cost-balancing theory is correct, China should use coercion when its need to establish a reputation for resolve is high and the economic cost is low. It should choose nonmilitarized coercive tools when the geopolitical backlash cost is high. THE NEED TO ESTABLISH A REPUTATION FOR RESOLVE China's need to establish a reputation for resolve was high in the 1990s, declined between 2000 and 2006, and rose after 2007. Figure 2 shows the number of challenges to Chinese sovereign claims from 1990 to 2015.63 As the figure demonstrates, the mid-1990s witnessed a surge in claimants' challenges to China in the South China Sea, though these declined dramatically from 2000 to 2006. None of the challenges in this latter period were particularly concerning to China. The claimants seized land features in the 1990s but focused more on building infrastructure on land features they had already taken. The slight bump in 2003 had more to do with officials of other claimants visiting land features they had taken in the 1990s.64 The post-2007 period witnessed a resurgence of actions. These trends are corroborated by the amount of exposure they received in the People's Daily and international media. Figure 3 presents the results of my Factiva search of Agence France-Presse, the Associated Press, and Reuters reports that mention either "South China Sea" or "Spratlys" disputes.65 These three are the most influential English-language news agencies in the world. Reporting by them would increase the salience of the South China Sea issue and the pressure on China to establish resolve I read every report to exclude those with topics that have no relevance to this study; the topics include typhoons, positive developments in the South China Sea, and use of Chinese coercion. In so doing, I am not capturing the dependent variable itself. In line with the findings in figure 2, international media exposure was high in the 1990s, contracted from 2000 to 2006, and picked up again starting in 2009.66 China's Ministry of Foreign Affairs was keenly aware of the concentrated activities of South China Sea claimants in the 1990s (especially in the early to mid-1990s) and was quick not only to respond to them, but to take steps to prevent their recurrence.67 Internal CASS publications in 1993 and 1994 also documented such behavior by South China Sea claimants, reflecting concerns about the growing trend of "internationalization"—that is, the increasing salience of and international attention paid to these disputes.68 Internal CASS reports in the early 1990s asserted that other claimants had begun to "carve up" the Spratly Islands, because China had not taken measures to assert its sovereign rights since 1988.69 SOA's internal publication in March 1992 reasoned that only by showing more resolve would China be able to make great powers stop investing in Vietnam for oil exploration in China's waters.70 Thus, the need to establish resolve was high. From 2000 to 2006, official and semi-official government threat assessments noted the reduced pressure on China to establish resolve. For example, China's official defense white papers indicated in 2000 and 2002 that the situation in the South China Sea was "basically stable"; in 2004 the South China Sea was not even mentioned.71 The China Institute for Maritime Affairs, a government institute under the SOA, indicated in its 2004 and 2005 reports that the situation in the South China Sea was relaxed.72 Similarly, the internal 2003 and 2004 reports from the NISCSS described the general situation in the South China Sea as "overall stable."73 Interviews with current government officials and government policy analysts were in line with the above assessments.74 In the post-2007 period, increasing actions by other claimants in the South China Sea heightened Chinese concerns about growing international attention. Starting in 2008, internal NISCSS assessments reported that the situation in the South China Sea had become complicated and that disputes were becoming "salient."75 An internal NISCSS report published in 2008 suggested that China strengthen its regular patrolling of the Spratlys and "selectively disrupt and stop" other claimants' actions.76 China's 2010 defense white paper stated that pressure on China to defend its maritime rights had increased.77 Semi-official documents shared this assessment. One internal CASS report indicated [End Page 137] in 2011 that China's maritime security environment had worsened in 2010 and that China would face "regularized" pressure in the maritime realm, observations echoed in CICIR reports.78 Furthermore, the publicity and salience of the South China Sea issue added to China's need to establish resolve. For example, the 2008 NISCSS report expressed particular concern about Vietnam and the Philippines because of their attempts to publicize the South China Sea issue.79 As such, the deputy chief of staff of China's People's Liberation Army (PLA) stated in early 2010 that "we are against actions of drastically publicizing the South China Sea issue."80 Interviews with officials and government analysts in various parts of China also confirm the logic of using coercion to establish a reputation for resolve and avoid being seen as weak.81 Government policy analysts and scholars stated that China used coercion to "kill the chicken to scare the monkey" (shaji jinghou), warning all claimants against taking action in the future.82 Chinese coercion thus aimed at deterring any future encroachment of China's sovereign rights in the South China Sea.83 As an official from the maritime surveillance team of the SOA indicated, China needed to show its resolve that it would not lose any island or maritime area.84 [End Page 138] In short, China's need to establish resolve was high in the 1990s, low from 2000 to 2006, and high after 2007. CHINA'S ECONOMIC COST The economic cost for China to pursue coercion was low in the 1990s, rose briefly from 2000 to 2006, and fell again in the post-2007 period. Turning first to objective indicators, China's exports to the Association of Southeast Asian Nations (ASEAN) paled in comparison to its exports to Japan, the European Union (EU), and the United States, especially in the 1990s (see figure 4).85 Even though Chinese exports to ASEAN grew continuously as a share of total Chinese exports in the late 2000s, they were still far below the level of Chinese exports to the EU and the United States, each constituting an average of 15 percent [End Page 139] of Chinese exports. Since the mid-2000s, however, Sino-ASEAN trade has increasingly become an important component of ASEAN's overall trade relations (see figure 5).86 In line with objective indicators, Chinese government policy analysts indicated that China sought to attract investment from Japan and the United States in the 1990s.87 Of course, China would have liked to expand its economic ties with Southeast Asian countries, but at the time, this was not a priority. Interestingly, the objective data do not show the nuances: there was a brief period from 2000 to 2006 when the economic cost for China to coerce ASEAN countries was high. From the early 2000s, China began to increase its economic cooperation with ASEAN (e.g., creating the ASEAN-China free trade zone [FTZ]). According to Zhang Yunling, a senior government policy analyst involved in the FTZ negotiations, China initiated the talks for economic reasons.88 China, in the 1990s, was focused on gaining membership to the World Trade Organization (WTO), which it did in 2001. [End Page 140] One of China's economic strategies following its accession to the WTO was to find ways to increase regional economic cooperation.89 ASEAN was an ideal starting place given its concerns about the implications of China's membership in the WTO for competition of market share and foreign direct investment.90 Zhang Yunling indicated that China was aware of these concerns and wanted to lower them.91 For example, in November 2000, Premier Zhu Rongji suggested that China and ASEAN begin discussions involving free trade.92 Also, China considered ASEAN more likely than more advanced trading blocs to negotiate an FTZ.93 In other words, China had no exit options regarding an FTZ, whereas ASEAN did with, for example, Japan, the United States, and the EU.94 To improve Sino-ASEAN economic relations, China refrained from taking coercive action, as noted in interviews and internal SOA reports in 2002.95 Over time, China's economic cost associated with the FTZ gradually began to decline. Increasingly, China came to believe that ASEAN depends more on China than vice versa. For example, the 2009 NISCSS report noted that as a result of the global financial crisis, ASEAN countries would need China's markets for a long period.96 Because the Chinese economy was in better shape compared to advanced economies, China believed that it could stand firm on the issue of coercion.97 Also, after 2007 the Chinese government began the transition from an export-oriented to a consumption-oriented economy, reducing the importance of the China-ASEAN FTZ.98 Further, by April 2009, [End Page 141] China had completed negotiations with ASEAN regarding all aspects of the FTZ.99 In sum, China's economic cost of using coercion was low in the 1990s, high from roughly 2000 to 2006, and low in the post-2007 period. CHINA'S GEOPOLITICAL BACKLASH COST The geopolitical backlash cost to China of pursuing coercion was low in the 1990s but rose in the post-2000 period. I turn first to official Chinese and U.S. documents, including the MFA's annual China's Foreign Affairs and the U.S. National Security Strategy (see table 1). Whether and how China's MFA used the word "multipolarity" in China's Foreign Affairs is an important indicator of the geopolitical pressure that China felt coming from the United States. In the Chinese political context, multipolarity means greater flexibility for China in the international system and less geopolitical pressure from the United States, the hegemon. The more optimistic China was in its description of multipolarity, the less unipolar China's perception of the international balance of power became and the less pressure China felt from the United States. MFA assessments appeared confident about the progress of multipolarity in the 1990s (see table 1). Beginning in the early 2000s, however, the number of times they mentioned multipolarity decreased.100 Second, despite the conventional wisdom that China was concerned about a geopolitical backlash as a result of the 1989 Tiananmen incident and the end of the Cold War, the geopolitical backlash cost regarding the Spratly disputes was low in the 1990s. MFA assessments maintained that the United States and Russia had decreased their presence in Southeast Asia. The 1993 issue of China's Foreign Affairs Overview noted that the United States had withdrawn its forces from the Subic Bay Naval Base in the Philippines.101 The 1997 issue of [End Page 142] China's Official Assessments of Geopolitical Costs MFA stands for Ministry of Foreign Affairs. China's Foreign Affairs is published annually by the MFA. China's Foreign Affairs claimed that Europe was the priority of U.S. global strategy, a view the MFA held until 2000.102 Official Chinese national defense white papers made similar threat assessments.103 This position was corroborated by the U.S. National Security Strategy, which treated Europe as the vital interest until 2000.104 Unlike the 1990s, China's concerns about a geopolitical backlash have grown serious since the 2000s. Official Chinese threat assessments in the post-2000 period expressed worry about the United States returning to Southeast Asia. The 2001 issue of China's Foreign Affairs stressed that the United States had reinstated joint military exercises with the Philippines and that its secretary of defense had visited Vietnam for the first time since the Vietnam War.105 The 2002 issue of China's Foreign Affairs stated that after the terrorist attacks of [End Page 143] September 11, 2001, the United States had sought greater counterterrorism cooperation with ASEAN countries in response to rampant terrorist activity in Southeast Asia.106 An internally circulated document on great power issues, classified as "secret," from the Central International Liaison Department of the Chinese Communist Party declared in 2004 that the United States had begun to establish counterterrorism battlegrounds in Southeast Asia.107 Finally, every issue of China's Foreign Affairs from 2007 to 2014 cited U.S. efforts to strengthen relations with ASEAN. China's national defense white papers made similar observations.108 Shifts in geopolitical costs were also evident in internal reports and interviews with government policy analysts.109 Several interviewees explicitly indicated that Chinese military coercion in the South China Sea during the mid-1990s was related to the U.S. withdrawal from Subic Bay, which had created a "geopolitical power vacuum" that China was eager to fill.110 CICIR noted, however, that after 2000 the United States sought to develop alliance or quasi-alliance relations with ASEAN countries.111 CASS, the AMS, and the CIIS issued similar assessments.112 An internal CASS report indicated in 2011 that the United States viewed ASEAN's role in the Asia Pacific as critical.113 In sum, the geopolitical backlash cost of coercion for China was low in the 1990s and high in the post-2000 period. [End Page 144] Cost Balancing and China's Use/Nonuse of Coercion TEMPORAL VARIATION IN CHINESE COERCION AND CHOICE OF COERCIVE TOOLS Table 2 offers a summary of changes in China's need to establish resolve, the associated economic and geopolitical backlash costs, and patterns of Chinese coercion. It demonstrates that variations in these variables are in line with the cost-balancing theory. The China-Philippines Scarborough Shoal Incident of 2012 The Scarborough Shoal (Huangyandao) is located in the Macclesfield Bank in the South China Sea. On April 10, 2012, a Philippine naval ship tried to arrest Chinese fishermen for fishing illegally around the disputed shoal.114 In previous years, China had used diplomatic channels to secure the release of such fishermen.115 April 10 marked the first time in the post-2000s that China used multiple coercive tools to take the shoal. Offensive realists would predict that China would adopt militarized coercive measures in the Scarborough case. Jervis's deterrence model, however, would argue that, in light of the decision by the United States to "rebalance" to Asia in 2011, China should be deterred from taking such measures. As my theory predicts, China used coercion in this case because the need to establish a reputation for resolve was high and the economic cost was low. Given concerns about the geopolitical backlash cost, it restricted itself to using nonmilitary coercion. [End Page 145] THE MAGNITUDE AND GOALS OF COERCION China engaged in three forms of nonmilitarized coercion against the Philippines. First, using gray-zone coercion, the head of the South China Sea section of the SOA immediately ordered two maritime surveillance ships to rescue the Chinese fishermen on April 10.116 A fishery administration ship arrived at the Scarborough Shoal on April 11.117 On April 17, the Philippines urged China to bring the dispute to the International Tribunal on the Law of the Sea, but China refused.118 On May 2, China dispatched four more maritime surveillance ships.119 By May 9, China had blocked Filipino fishermen from entering the shoal and forced them to leave.120 Afterward, China maintained regular patrols around the shoal.121 The Philippines eventually withdrew, although China did not.122 Second, China imposed economic sanctions beginning in early May 2012, quarantining Philippine fruits. Beginning on May 11, China ultimately prevented 1,500 containers of bananas from the Philippines from entering Chinese ports, citing "pest infestation."123 Philippine media estimated that the ban, which lasted for about a month, led to the loss of 1 billion Philippine pesos (about $23 million).124 Third, China imposed diplomatic sanctions on the Philippines. According to government policy analysts, China terminated all senior-level (ministerial-level and above) bilateral visits. From [End Page 146] 2013 to 2015, no formal meetings were held between the foreign ministers of the two states.125 Chinese behavior in the Scarborough Shoal case constitutes coercion because it involved the following factors: state action; clearly identified targets; the threat/use of coercion to inflict pain; and, most importantly, clear goals. China's direct goal was to stop the Philippines from controlling the shoal: the Chinese MFA repeatedly demanded that Philippine vessels withdraw.126 Further, the Chinese MFA called on the Philippines to return to bilateral talks and respect Chinese sovereignty claims.127 The broader goal was to stop other states from viewing China as weak and engaging in actions that threatened Chinese interests in the South China Sea.128 WHY CHINA USED COERCION China's need to establish a reputation for resolve was high in the Scarborough Shoal case. Chinese policy analysts believed that the Philippines had been trying to increase the international salience and exposure of South China Sea disputes, especially through media reports and its government officials' call for using the UN and ASEAN to resolve the disputes.129 Prior to the 2012 incident, the Philippines had also increased the frequency of its small challenges to the Chinese in the South China Sea. In May 2011, the Philippine navy removed three markers that China had placed on reefs and banks in the Spratlys.130 In June, it announced plans to award offshore gas and oil drilling rights to foreign [End Page 147] companies in the Spratlys. China claimed that two of the three blocks lay within its nine-dash line.131 In July, China announced plans to build a loading ramp and upgrade a runway on Thitu Island.132 Additionally, the number of Philippine media reports on the South China Sea increased sharply in 2011, more than doubling in number from 2008.133 This media exposure increased pressure on China to establish resolve. In addition, despite Beijing's rejection of Manila's request for UN arbitration, the president of the Philippines told Reuters in September 2011 that his government was seeking other options,134 including a push by the Philippines for a joint statement on the South China Sea during the ASEAN leaders' meeting in November 2011.135 In particular, the Philippines publicized the arrest of the Chinese fishermen, prior to China's decision to take coercive action. The Philippine navy and foreign ministry released photos of the arrested Chinese fishermen, with an armed Filipino naval officer standing behind them.136 Reuters reported on these photos before China responded.137 None of the Philippine actions above was enough to tilt the balance of power in the South China Sea. Still, the Chinese government was unhappy. As early as August 2, 2011, zhongsheng had noted that a Philippines infrastructure project on Flat Island would soon be completed.138 Zhongsheng continued that China's principle of "shelving disputes for joint development" did not mean that China would let the Philippines take this as an opportunity to encroach upon China's territory and that if the Philippines made a serious strategic miscalculation, it would "pay the price."139 Similarly, another semi-official government [End Page 148] source—a regional security assessment of CASS published in January 2012—noted the above-mentioned Philippine actions in 2011.140 On February 28, 2012, a Chinese MFA spokesperson warned that the Philippines should not "take actions that further complicate and expand the South China Sea disputes."141 The following day, in response to the Philippines bidding on energy contracts in exclusive economic zone blocks claimed by China, zhongsheng blamed the Philippines for "instigating trouble" in the South China Sea,142 stating that the Philippines would be wrong to view China's efforts to push for cooperation among South China Sea claimants as "a sign of weakness."143 Zhongsheng further emphasized that "China was resolute in defending its sovereignty and would take necessary measures."144 A comprehensive search of the People's Daily for the words "weakness" or "weak and bulliable" from 1990 to 2017 indicates that China used this wording only infrequently to describe its foreign affairs.145 In fact, this zhongsheng statement was the first time China ever used such wording vis-à-vis the Philippines. During the standoff, China's deputy foreign minister, Fu Ying, summoned Philippine diplomats on May 7 to tell them that, in the past month, the Philippines had failed to realize its grave mistake and instead had made matters worse: he urged the Philippines to withdraw its ships.146 Fu emphasized that the Philippines should avoid miscalculation and that China was prepared to take action.147 Fu's statement demonstrates that China did not want the Philippines to think that Beijing lacked resolve in this situation. On May 8, the People's Daily underscored China's position: "The Philippines thought that China wanted to avoid trouble … Yet the Philippines did not [End Page 149] see things clearly—China would not give in to issues of sovereignty, the Philippines should not view China's friendliness as weak and susceptible to bullying … China would not mind creating a 'Scarborough model' to stop the opponent and to deter any transgression."148 The same statement appeared on the front page of the overseas edition of the People's Daily, intended for an international audience. On May 15, Dai Bingguo, a state councilor and one of the highest-ranking figures in Chinese foreign policy, reaffirmed that being modest did not mean that China would stand being bullied by other countries, "especially small countries like the Philippines."149 Chinese officials' statements before and during the Scarborough incident showed consistency and were not post hoc justifications. Interviews with government policy analysts, former government officials, and scholars confirm China's need to establish resolve. One former senior SOA official who was involved in the Scarborough incident stated bluntly that China took measures in 2012 because the Philippines "had done too much in the past."150 Another former official agreed that China was pressured to establish resolve to defend its rights in this incident.151 One former diplomat explained that China thought that if it withdrew, the Philippines would believe that China would compromise yet again.152 Other government policy analysts noted that if China did not take coercive measures, it would signal a green light to the Philippines and Vietnam, thereby encouraging more states to encroach on China's sovereignty.153 A senior government policy analyst stressed that China needed to "achieve a deterrent effect on surrounding countries," termed explicitly by another scholar as "establishing resolve" (li wei).154 One former government analyst even noted that during the Scarborough Shoal incident, China was also thinking about Japan, as their dispute over the Senkaku Islands had begun to heat up around roughly the same time as the Scarborough incident, a point corroborated by a Japanese diplomat.155 The economic cost of coercing the Philippines was low in this case. In 2010, [End Page 150] China was the Philippines' third largest trading partner.156 By 2011, China had become its third largest export destination.157 China is the second largest export destination for the member companies of the Pilipino Banana Growers and Exporters Association (PBGEA), constituting about 25 percent of PBGEA's annual exports. China is also the largest export market for non-PBGEA member companies (i.e., independent growers and cooperatives).158 In contrast, the Philippines was China's sixth largest trading partner in bilateral trade with ASEAN countries.159 This asymmetry gave China leverage during the dispute. Speech evidence concurs with objective measures of economic costs, which were low for China in this case. Chinese government officials and policy analysts had noted China's economic importance to the Philippines long before the Scarborough incident.160 Bai Ming, an official in China's Ministry of Commerce, stated that Chinese-Philippine trade was asymmetrical, with bilateral trade constituting 30 percent of total Philippine trade but only 0.89 percent for China.161 Bai emphasized that China "could impose economic sanctions and isolate the Philippines," while strengthening economic relations with other ASEAN countries.162 Former government officials also stated that using coercion would hurt the Philippines much more than it would China, given the size of the Chinese economy and the Philippines's greater reliance on China.163 The geopolitical backlash cost for China was high in this case, which limited China's choice of coercive tools. Concerned about a potential backlash, especially immediate escalation, China chose nonmilitarized coercive tools.164 Chinese government policy analysts believed that it was fine to use coercive [End Page 151] measures, but that militarization would escalate the disputes and push ASEAN countries closer to the United States.165 Indeed, the United States was the most critical factor in restraining China's choice of coercive tools. In internal conferences and internal publications, Chinese government policy analysts, fearing U.S. military containment, stressed that China needed to avoid direct confrontation with the United States in the South China Sea.166 One former official in the PLA Navy was particularly concerned that if China used military coercion, the U.S. Navy might become directly involved; he admitted that the United States was still "no. 1."167 In short, China believed that military means were too costly to use in South China Sea disputes and peace remained the priority.168 Semi-official Chinese assessments made before China used coercion in the Scarborough incident indicated U.S. unwillingness to use force to intervene in territorial disputes in the South China Sea.169 Government policy analysts and scholars emphasized that the United States would not start a "backlash" against China, especially when the Philippines had lost legitimacy by sending in naval vessels.170 In an internal conference, one government policy analyst noted that on June 23, 2011, when U.S. Secretary of State Hillary Clinton met with Philippine Foreign Minister Albert del Rosario, "Clinton avoided promising to unconditionally support the Philippines in South China Sea disputes."171 Despite del Rosario's demand, Clinton did not explicitly state that the U.S.-Philippine Mutual Defense Treaty was applicable to South China Sea issues.172 The analyst concluded that the United States did not want direct conflict with China.173 Scholars and government policy analysts indicated that China's rationale in the Scarborough incident was that as long as Chinese action [End Page 152] remained controlled and nonmilitarized, the United States would not get involved.174 Chinese analysts were probably right in this assessment. On April 22, 2012, U.S. Lt. Gen. Duane Thiessen took a Filipino reporter's question about the applicability of the U.S.-Philippines defense treaty to the Scarborough Shoal. The general answered ambiguously that the treaty "guarantees that we get involved in each other's defense and that is self-explanatory."175 He did not elaborate on what kind of assistance the United States would provide, stating that "there is no tie between Scarborough Shoal and U.S. movement in the Pacific."176 Similarly, when the U.S. secretary of defense and secretary of state met with their Philippine counterparts on April 30, they did not clarify whether the treaty covered the Philippines' offshore claims, nor did they promise direct U.S. intervention.177 Alternative Explanations for China's Use of Coercion There are several alternative hypotheses regarding when and why a state decides to use coercion against other states. First, as the sanctions literature suggests, powerful domestic lobbies can pressure their governments to take such action. Official documents suggest, however, that Chinese coercion in the South China Sea is both regularized and centralized. Detailed and modularized plans describe how crews on maritime surveillance and fishery administration ships should behave when dealing with foreign counterparts. In Guangdong Province, when foreign fishing vessels engage in illegal fishing in Chinese EEZs or when foreign administrative ships attempt to harass Chinese fishermen, fishery administration ships are instructed to report the incident to the command center of the fishery administration.178 Measures such as expelling foreign ships have to be approved by sub-bureaus of the SOA.179 [End Page 153] Additionally, interviews with former Chinese officials indicate that the central government decides when to take coercive measures.180 According to one scholar, every South China Sea incident involving China and another country is reported to the central government.181 Citing internal seminars with officials from the SOA, the Coast Guard, and the Maritime Surveillance Agency, several government analysts indicated that Chinese administrative patrol ships strictly adhere to instructions and follow orders from the center.182 A former PLA Navy colonel who once participated in patrols in the South China Sea stated that there are institutionalized plans about how ships' crews should act when encountering foreign vessels.183 Local governments similarly do not have much leeway about what to do in these situations.184 The second alternative explanation for when and why a state decides to use coercion against other states involves domestic politics. According to this argument, faced with elite power struggles, domestic social issues, and popular nationalistic sentiments, leaders will pursue coercion against other countries to increase their domestic legitimacy. Since the 1990s, however, Chinese leaders have constantly had to deal with elite power struggles and myriad social issues. Yet, during this period, there was noticeable variation in when and how China has used coercion. In the 1990s, for example, China experienced intense elite power struggles during leadership transitions and periods of high inflation.185 In the 2000s, when inflation began to slow, the number of social protests—some of which turned violent—increased significantly.186 Of course, the cost-balancing theory can be falsified and does not claim to explain all cases of Chinese coercion. Nevertheless, as Chinese government policy analysts pointed out, legitimacy concerns do not drive coercion decisions.187 In addition, China experienced critical leadership transitions in 1997, 2002, [End Page 154] and 2012. None of these transitions, however, accords with the temporal variation in China's use of coercion. Among Jiang Zemin, Hu Jintao, and Xi Jinping, Hu is said to have been the weakest leader and Xi the most assertive.188 If individual leaders are critical, then instances of Xi leading coercive efforts against other countries should have been more numerous than for Jiang or Hu. Yet, China used coercion (sometimes militarized coercion) seven times in the 1990s during Jiang's rule. China again began taking coercive measures in 2007, during Hu's term. Despite his supposed weakness, Hu pursued coercion more than Jiang—ten times in all. In an internal speech during the Central Foreign Affairs Conference in August 2006, Hu stated that "China needed to be more proactive in foreign affairs," which undermines the notion that Xi championed greater proactive action.189 Thus far, Xi has used coercion six times, none with a militarized component. One of Xi's former political secretaries revealed that Xi's viewpoints are closely in line with those of the center.190 Interviews with Chinese government analysts also confirm that individual leadership does not dictate coercion decisions.191 In particular, decisions to use coercion during the Scarborough Shoal incident were made collectively by the Politburo Standing Committee, China's highest decisionmaking body.192 Regarding popular nationalist sentiment, as Jessica Weiss points out, the Chinese government uses nationalism instrumentally, as it did in the 2012 Scarborough Shoal incident.193 A search for the word Huangyandao (Scarborough Shoal) on the highly nationalistic Tiexue website reveals that heated discussions started only after the Chinese official media released news about what was happening on April 12 (two days after the incident began). From January 1, 1990, to April 11, 2012, there were only twenty-five pages on the Tiexue website that included the word huangyandao; between April 12 and June 1, 2012, after People's Daily released the news, the number increased to seventy-six pages—a clear indication that the government controls how nationalistic the Chinese public should be regarding maritime disputes. Finally, [End Page 155] empirical studies have shown that nationalism has only a moderate impact on China's foreign policy.194 A third alternative explanation for China's use of coercion focuses on the power variable, be it relative power, overall power, or the balance of power. The "relative power" argument follows a preventative logic. According to Fravel, states are more likely to use force in territorial disputes when their claims of strength are declining, which is partly a function of their power projection capability. Yet, in the post-1990s, China's projection capability consistently dwarfed that of other South China Sea claimants. If the relative power argument is correct, China should have relied on coercion less often when its relative power position had improved—a pattern that is not supported by the empirical evidence.195 As for the "overall power" argument, offensive realists predict that as its power grows, China will become more aggressive, possibly using of force. Again, the trend does not support this argument. China used military coercion when it was weak in the 1990s, refrained from taking coercive measures in the early 2000s, and resorted to nonmilitarized coercion beginning in 2007. In fact, the ratio of instances of Chinese coercion to number of incidents (actions taken by other states that challenge Chinese claims in the South China Sea) has remained low. Even the highest ratio of Chinese coercion to incidents has remained under 40 percent since 1990. China's use of coercion does not demonstrate a linear increase: China has not become more militarily aggressive over time. One could argue that as overall Chinese capability grows, China will rely on gray-zone tools.196 China did, however, use militarized coercion in its border disputes with India in 2017, despite having gray-zone coercive tools at its disposal. Finally, the "balance of power" argument suggests that China uses coercion to balance against the more powerful state (i.e., the United States). There is scant empirical evidence, however, to indicate that China is balancing the [End Page 156] United States in the South China Sea. If it were, then it would puzzling why China uses coercion in some cases, but not others. Conclusion This article has presented a theory—the "cost-balancing theory"—to explain when, why, and how China uses coercion in disputes in the South China Sea. I argue that the need to establish a reputation for resolve while considering the economic and geopolitical costs associated with coercive action are central to China's calculus. When the need to establish a reputation for resolve exceeds economic cost, China uses coercion. When the likelihood of a geopolitical backlash is high, it prefers to use nonmilitarized coercion. China believes that having capabilities but not demonstrating the willingness to use them may lead to deterrence failure. In a sense, China uses coercion for purposes of deterrence, blurring the line between the two.197 These findings contribute to the coercion, signaling, and credibility literature in several ways. The article demonstrates that China's decisions to use coercion extend beyond trying to change the behavior of target states. Signaling resolve to deter other states is central to China's rationale for using coercion. For rising powers such as China, coercion can be a cost-effective way to stop a target state from taking undesired actions while deterring other states from taking similar actions in the future. I also show that China weighs its need to establish resolve against the economic and geopolitical costs of coercion. Asymmetric economic interdependence provides China coercive leverage, but at the same time, military coercion may lead to conflicts and instability that could adversely affect China's economic growth. As such, rising powers such as China pursue coercion, but at the nonmilitarized level, when the geopolitical cost is high. China has always been a risk-averse bully and is less belligerent than previous rising powers: the United States in the late nineteenth and early twentieth centuries, Germany under Otto von Bismarck, Wilhelmine Germany, and interwar Japan tended to use force against other powers.198 But given today's globalized production and supply chains, contemporary rising powers may face a dilemma [End Page 157] that these earlier powers did not—showing resolve while minimizing the economic and geopolitical costs.199 This research thus complements a growing literature that links international security and political economy in calling for scholarly work that compares the coercive behavior of historical and contemporary rising powers.200 There is a rich literature on audience costs as a form of costly signals.201 Yet, my research reinforces Schelling's notion that states need to show physical evidence of resolve. China mostly engages in coercive action, as opposed to making coercive threats; the rationale is that physical actions increase China's reputation for resolve, especially if other states are watching and if the purpose of Chinese coercion is deterrence. This article therefore builds on the argument that military action sends strong signals because they are physical, and it expands that argument to suggest that nonmilitary physical signals can also be costly signals.202 Relatedly, the manner in which China pursues coercion is significant. Unlike the United States, when China threatens or imposes economic sanctions, it rarely makes a public announcement.203 One explanation for this is that the lack of publicity helps China eschew WTO rules; in a way, China can plausibly deny that it has explicitly imposed economic sanctions. Empirically, in contrast to historical rising powers, China is a cautious coercer; it does not coerce frequently; and it relies on military coercion less often the stronger it becomes, instead employing unconventional tools such as [End Page 158] gray-zone coercion.204 China's use of coercion in maritime disputes thus challenges the notion that China suddenly became assertive in the wake of U.S. decline following the 2009 global financial crisis. Moreover, this study shows that China uses the United States' statements and past actions in assessing U.S. alliance commitments in the Asia Pacific. Whether and how the United States gets involved in South China Sea disputes significantly affects China's decisions regarding the use of coercion. China's use of military coercion in the 1990s against the Philippines and Vietnam after the U.S. withdrawal from the Subic Bay provides a useful example.

#### Structural factors.

Shifrinson ’19 [Joshua; Assistant Professor of IR @ Boston University; “The ‘new Cold War’ with China is way overblown. Here’s why”; 2/8/19; https://www.washingtonpost.com/news/monkey-cage/wp/2019/02/08/there-isnt-a-new-cold-war-with-china-for-these-4-reasons/?noredirect=on&utm\_term=.2f92e43bb9f3]

Is a new Cold War looming — or already present — between the United States and China? Many analysts argue that a combination of geopolitics, ideology and competing visions of “global order” are driving the two countries toward emulating the Soviet-U.S. rivalry that dominated world politics from 1947 through 1990.

But such concerns are overblown. Here are four big reasons why.

1. The historical backdrops of the two relationships are very different

When the Cold War began, the U.S.-Soviet relationship was fragile and tenuous. Bilateral diplomatic relations were barely a decade old, U.S. intervention in the Russian Revolution was a recent memory, and the Soviet Union had called for the overthrow of capitalist governments into the 1940s. Despite their Grand Alliance against Nazi Germany, the two countries shared few meaningful diplomatic, economic or institutional links.

In 2019, the situation between the United States and China is very different. Since the 1970s, diplomatic interactions, institutional ties and economic flows have all exploded. Although each side has criticized the other for domestic interference (such as U.S. demands for journalist access to Tibet and China’s espionage against U.S. corporations), these issues did not prevent cooperation on a host of other issues. Yes, there were tensions over the past decade, but these occurred against a generally cooperative backdrop.

2. Geography and powers’ nuclear postures suggest East Asia is more stable than Cold War-era Europe

The Cold War was shaped by an intense arms race, nuclear posturing and crises, especially in continental Europe. Given Europe’s political geography, the United States feared a “bolt from the blue” attack would allow the Soviet Union to conquer the continent. Accordingly, the United States prepared to defend Europe with conventional forces, and to deter Soviet aggrandizement using nuclear weapons.

Unsurprisingly, the Soviet Union also feared that the United States might attack and wanted to deter U.S. adventurism. Concerns that the other superpower might use force and that crises could quickly escalate colored Cold War politics.

Today, the United States and China spend proportionally far less on their militaries than the United States and the Soviet Union did. Though an arms race may be emerging, U.S. and Chinese nuclear postures are not nearly as large or threatening: Arsenals remain far below the size and scope witnessed in the Cold War, and are kept at a lower state of alert.

As for geography, East Asia is not primed for tensions akin to those in Cold War Europe. China can threaten to coerce its neighbors, but the water barriers separating China from most of Asia’s strategically important states make outright conquest significantly harder. Of course, as scholars such as Caitlin Talmadge and Avery Goldstein note, crises may still erupt, and each side may face pressures to escalate. Unlike the Cold War, however, U.S.-Chinese confrontations occur at sea with relatively limited forces and without clear territorial boundaries. This suggests there are countervailing factors that may give the two sides room to negotiate — and limit the speed with which a crisis unfolds.

3. The Cold War had just two major powers

The Cold War took place in a bipolar system, with the United States and Soviet Union uniquely powerful, compared with other nations. This dynamic often pushed the United States and the U.S.S.R. toward confrontation and contributed to more or less fixed alliances; moreover, it encouraged efforts to suppress prospective great powers, such as Germany.

In 2019, it’s not at all clear we are back to bipolarity. Analysts remain divided over whether the U.S. unipolar era is waning (or is already over) — and, if so, whether we are heading for a new period of bipolarity, modern-day multipolarity or something else. Regardless, most analysts accept that other countries will play a central role in East Asian security affairs.

Russia, for example, still benefits from legacy military investments, India is developing economically and militarily, and Japan is beginning to build highly capable military forces to complement its still-significant economic might. Even if these nations aren’t as powerful as the United States or China, their presence makes for more fluid diplomatic arrangements and more diffuse security concerns than during the U.S.-Soviet competition. The resulting security dynamics are therefore likely to look very different.

4. Ideology plays less of a role in U.S.-Chinese relations

Many people see the Cold War as an ideological contest between U.S.-backed liberalism and Soviet-backed communism. But that’s not the whole story.

The early 20th century saw liberalism, communism and fascism vie for ideological preeminence. With fascism defeated alongside Nazi Germany, the postwar stage was set for a struggle between communism and liberalism to reinforce the U.S.-Soviet contest. That each ideology claimed universal scope ensured that the ideologies served as rallying cries for Third World conflicts, which were subsequently associated with the U.S.-Soviet struggle.

The respective “ideologies” of the United States and China do not favor this type of contest today. Indeed, analysts calling for a hard-line stance against China have faced difficulties even identifying a coherent Chinese ideological alternative. And while some researchers claim that a nascent ideological contest pitting an “autocratic” China against the “liberal” United States is emerging, this narrative ignores the political contests that shape Chinese politics (and have parallels in U.S. politics). Autocracies and democracies often cooperate. And on one important ideological issue — how they organize their economic lives — China and the United States have both embraced economic growth via trade, the private sector and semi-free markets.

Likewise, while a clearer Chinese ideological “brand” may eventually emerge, it is unclear whether the ideology would claim universal applicability.

This is not to deny that there are tensions between the United States and China. What we are seeing, however, is not a new cold war but a reversion to a pre-1945 form of great power politics. What changed? Put simply, the United States no longer enjoys preeminence as the only superpower, as it did in the immediate post-Cold War era.

The ideological, historical and geopolitical differences between today and the Cold War years far outweigh the similarities. As David Edelstein notes, at times it’s hard to understand what the United States and China are competing over. If that’s true, then there’s reason to believe there are more nuanced ways of understanding the tensions — and options for managing great power politics — than a Cold War reboot.

### XT – AT: Warming

#### Warming doesn’t rise to extinction – new studies.

Nordhaus ’20 Ted Nordhaus, an American author, environmental policy expert, and the director of research at The Breakthrough Institute, citing new climate change forecasts. [Ignore the Fake Climate Debate, 1-23-2020, https://www.wsj.com/articles/ignore-the-fake-climate-debate-11579795816]

Beyond the headlines and social media, where Greta Thunberg, Donald Trump and the online armies of climate “alarmists” and “deniers” do battle, there is a real climate debate bubbling along in scientific journals, conferences and, occasionally, even in the halls of Congress. It gets a lot less attention than the boisterous and fake debate that dominates our public discourse, but it is much more relevant to how the world might actually address the problem. In the real climate debate, no one denies the relationship between human emissions of greenhouse gases and a warming climate. Instead, the disagreement comes down to different views of climate risk in the face of multiple, cascading uncertainties. On one side of the debate are optimists, who believe that, with improving technology and greater affluence, our societies will prove quite adaptable to a changing climate. On the other side are pessimists, who are more concerned about the risks associated with rapid, large-scale and poorly understood transformations of the climate system. But most pessimists do not believe that runaway climate change or a hothouse earth are plausible scenarios, much less that human extinction is imminent. And most optimists recognize a need for policies to address climate change, even if they don’t support the radical measures that Ms. Thunberg and others have demanded. In the fake climate debate, both sides agree that economic growth and reduced emissions vary inversely; it’s a zero-sum game. In the real debate, the relationship is much more complicated. Long-term economic growth is associated with both rising per capita energy consumption and slower population growth. For this reason, as the world continues to get richer, higher per capita energy consumption is likely to be offset by a lower population. A richer world will also likely be more technologically advanced, which means that energy consumption should be less carbon-intensive than it would be in a poorer, less technologically advanced future. In fact, a number of the high-emissions scenarios produced by the United Nations Intergovernmental Panel on Climate Change involve futures in which the world is relatively poor and populous and less technologically advanced. Affluent, developed societies are also much better equipped to respond to climate extremes and natural disasters. That’s why natural disasters kill and displace many more people in poor societies than in rich ones. It’s not just seawalls and flood channels that make us resilient; it’s air conditioning and refrigeration, modern transportation and communications networks, early warning systems, first responders and public health bureaucracies. New research published in the journal Global Environmental Change finds that global economic growth over the last decade has reduced climate mortality by a factor of five, with the greatest benefits documented in the poorest nations. In low-lying Bangladesh, 300,000 people died in Cyclone Bhola in 1970, when 80% of the population lived in extreme poverty. In 2019, with less than 20% of the population living in extreme poverty, Cyclone Fani killed just five people. “Poor nations are most vulnerable to a changing climate. The fastest way to reduce that vulnerability is through economic development.” So while it is true that poor nations are most vulnerable to a changing climate, it is also true that the fastest way to reduce that vulnerability is through economic development, which requires infrastructure and industrialization. Those activities, in turn, require cement, steel, process heat and chemical inputs, all of which are impossible to produce today without fossil fuels. For this and other reasons, the world is unlikely to cut emissions fast enough to stabilize global temperatures at less than 2 degrees above pre-industrial levels, the long-standing international target, much less 1.5 degrees, as many activists now demand. But recent forecasts also suggest that many of the worst-case climate scenarios produced in the last decade, which assumed unbounded economic growth and fossil-fuel development, are also very unlikely. There is still substantial uncertainty about how sensitive global temperatures will be to higher emissions over the long-term. But the best estimates now suggest that the world is on track for 3 degrees of warming by the end of this century, not 4 or 5 degrees as was once feared. That is due in part to slower economic growth in the wake of the global financial crisis, but also to decades of technology policy and energy-modernization efforts. “We have better and cleaner technologies available today because policy-makers in the U.S. and elsewhere set out to develop those technologies.” The energy intensity of the global economy continues to fall. Lower-carbon natural gas has displaced coal as the primary source of new fossil energy. The falling cost of wind and solar energy has begun to have an effect on the growth of fossil fuels. Even nuclear energy has made a modest comeback in Asia.

#### No climate impact.

Michael Shellenberger 20, Founder and President of Environmental Progress and Co-Founder of the Breakthrough Institute, “Why I Believe Climate Change Is Not the End of the World”, Quillette, 7/8/2020, https://quillette.com/2020/07/08/why-i-believe-climate-change-is-not-the-end-of-the-world/

What the IPCC had actually written in its 2018 report and press release was that in order to have a good chance of limiting warming to 1.5 degrees Celsius from preindustrial times, carbon emissions needed to decline 45 percent by 2030. The IPCC did not say the world would end, nor that civilization would collapse, if temperatures rose above 1.5 degrees Celsius.

Scientists had a similarly negative reaction to the extreme claims made by Extinction Rebellion. Stanford University atmospheric scientist Ken Caldeira, one of the first scientists to raise the alarm about ocean acidification, stressed that “while many species are threatened with extinction, climate change does not threaten human extinction.” MIT climate scientist Kerry Emanuel told me, “I don’t have much patience for the apocalypse criers. I don’t think it’s helpful to describe it as an apocalypse.”

An AOC spokesperson told Axios, “We can quibble about the phraseology, whether it’s existential or cataclysmic.” But, he added, “We’re seeing lots of [climate change–related] problems that are already impacting lives.”

But if that’s the case, the impact is dwarfed by the 92 percent decline in the decadal death toll from natural disasters since its peak in the 1920s. In that decade, 5.4 million people died from natural disasters. In the 2010s, just 0.4 million did. Moreover, that decline occurred during a period when the global population nearly quadrupled.

In fact, both rich and poor societies have become far less vulnerable to extreme weather events in recent decades. In 2019, the journal Global En­vironmental Change published a major study that found death rates and economic damage dropped by 80 to 90 percent during the last four decades, from the 1980s to the present.

While global sea levels rose 7.5 inches (0.19 meters) between 1901 and 2010, the IPCC estimates sea levels will rise as much as 2.2 feet (0.66 meters) by 2100 in its medium scenario, and by 2.7 feet (0.83 meters) in its high-end scenario. Even if these predictions prove to be significant underestimates, the slow pace of sea level rise will likely allow societies ample time for adaptation.

We have good examples of successful adaptation to sea level rise. The Netherlands, for instance, became a wealthy nation despite having one-third of its landmass below sea level, including areas a full seven meters below sea level, as a result of the gradual sinking of its landscapes.

And today, our capability for modifying environments is far greater than ever before. Dutch experts today are already working with the government of Bangladesh to prepare for rising sea levels.

What about fires? Dr. Jon Keeley, a US Geological Survey scientist in California who has researched the topic for 40 years, told me, “We’ve looked at the history of climate and fire throughout the whole state, and through much of the state, particularly the western half of the state, we don’t see any relationship between past climates and the amount of area burned in any given year.”

In 2017, Keeley and a team of scientists modeled 37 different regions across the United States and found that “humans may not only influence fire regimes but their presence can actually override, or swamp out, the effects of climate.” Keeley’s team found that the only statistically significant factors for the frequency and severity of fires on an annual basis were population and proximity to development.

As for the Amazon, the New York Times reported, correctly, that “[the 2019] fires were not caused by climate change.”

In early 2020, scientists challenged the notion that rising carbon dioxide levels in the ocean were making coral reef fish species oblivious to predators. The seven scientists who published their study in the journal Nature had, three years earlier, raised questions about the marine biologist who had made such claims in the journal Science in 2016. After an investigation, James Cook University in Australia concluded that the biologist had fabricated her data.

When it comes to food production, the Food and Agriculture Organization of the United Nations (FAO) concludes that crop yields will increase significantly, under a wide range of climate change scenarios. Humans today produce enough food for ten billion people, a 25 percent surplus, and experts believe we will produce even more despite climate change.

Food production, the FAO finds, will depend more on access to tractors, irrigation, and fertilizer than on climate change, just as it did in the last century. The FAO projects that even farmers in the poorest regions today, like sub-Saharan Africa, may see 40 percent crop yield increases from technological improvements alone.

In its fourth assessment report, the IPCC projected that by 2100, the global economy would be three to six times larger than it is today, and that the costs of adapting to a high (4 degrees Celsius) temperature rise would reduce gross domestic product (GDP) just 4.5 percent.

Does any of that really sound like the end of the world?

The apocalypse now

Anyone interested in seeing the end of the world up close and in person could do little worse than to visit the Democratic Republic of the Congo in central Africa. The Congo has a way of putting first-world prophecies of climate apocalypse into perspective. I traveled there in December 2014 to study the impact of widespread wood fuel use on people and wildlife, particularly on the fabled mountain gorillas.

Within minutes of crossing from the neighboring country of Rwanda into the Congolese city of Goma, I was taken aback by the extreme poverty and chaos: children as young as two years old perched on the handlebars of motorcycles flying past us on roads pockmarked with giant potholes; tin-roofed shanties as homes; people crammed like prisoners into tiny buses with bars over the windows; trash everywhere; giant mounds of cooled lava on the sides of the road, reminders of the volcanic anger just beneath the Earth’s surface.

In the 1990s and again in the early 2000s, Congo was the epicenter of the Great African War, the deadliest conflict since World War II, which involved nine African countries and resulted in the deaths of three to five million people, mostly because of disease and starvation. Another two million people were displaced from their homes or sought asylum in neighboring countries. Hundreds of thousands of people, women, and men, adults, and children, were raped, sometimes more than once, by different armed groups.

During our time in the Congo, armed militias roaming the countryside had been killing villagers, including children, with machetes. Some blamed Al-Shabaab terrorists coming in from Uganda, but nobody took credit for the attacks. The violence appeared unconnected to any military or strategic objective. The national military, police, and United Nations Peacekeeping Forces, about 6,000 soldiers, were either unable or unwilling to do anything about the terrorist attacks.

“Do not travel,” the United States Department of State said, bluntly, of the Congo on its website. “Violent crime, such as armed robbery, armed home invasion, and assault, while rare compared to petty crime, is not uncommon, and local police lack the resources to respond effectively to serious crime. Assailants may pose as police or security agents.”

One reason I felt safe traveling to the eastern Congo and bringing my wife, Helen, was that the actor Ben Affleck had visited several times and even started a charity there to support economic development. If the eastern Congo was safe enough for a Hollywood celebrity, I reasoned, it would be safe enough for Helen and me.

To make sure, I hired Affleck’s guide, translator, and “fixer,” Caleb Kabanda, a Congolese man with a reputation for keeping his clients safe. We spoke on the telephone before I arrived. I told Caleb I wanted to study the relationship between energy scarcity and conservation. Referring to the North Kivu province capital of Goma, the sixth most populated city in the Congo, Caleb asked, “Can you imagine a city of nearly two million people relying on wood for energy? It’s crazy!”

Ninety-eight percent of people in eastern Congo rely on wood and charcoal as their primary energy for cooking. In the Congo as a whole, nine out of 10 of its nearly 92 million people do, while just one out of five has any access to electricity. The entire country relies on just 1,500 megawatts of electricity, which is about as much as a city of one million requires in developed nations.

The main road Caleb and I used to travel from Goma to the communities around Virunga Park had recently been paved, but there was little else in the way of infrastructure. Most roads were dirt roads. When it rained, both the paved and unpaved roads and the surrounding homes were flooded because there was no flood control system. I was reminded of how much we take for granted in developed nations. We practically forget that the gutters, canals, and culverts, which capture and divert water away from our homes, even exist.

Is climate change playing a role in Congo’s ongoing instability? If it is, it’s outweighed by other factors. Climate change, noted a large team of researchers in 2019, “has affected organized armed conflict within countries. However, other drivers, such as low socioeconomic development and low capabilities of the state, are judged to be substantially more influential.”

There is only a barely functioning government in the Congo. When it comes to security and development, people are mostly on their own. Depending on the season, farmers suffer too much rain or not enough. Recently, there has been flooding once every two or three years. Floods regularly destroy homes and farms.

Researchers with the Peace Research Institute Oslo note, “Demographic and environmental variables have a very moderate effect on the risk of civil conflict.” The IPCC agrees. “There is robust evidence of disasters displacing people worldwide, but limited evidence that climate change or sea-level rise is the direct cause.”

Lack of infrastructure plus scarcity of clean water brings disease. As a result, Congo suffers some of the highest rates of cholera, malaria, yellow fever, and other preventable diseases in the world.

“Lower levels of GDP are the most important predictor of armed conflict,” write the Oslo researchers, who add, “Our results show that resource scarcity affects the risk of conflict less in low-income states than in wealthier states.”

If resources determined a nation’s fate, then resource-scarce Japan would be poor and at war while the Congo would be rich and at peace. Congo is astonishingly rich when it comes to its lands, minerals, forests, oil, and gas.

There are many reasons why the Congo is so dysfunctional. It is massive—it is the second largest African nation in area, behind only Algeria—and difficult to govern as a single country. It was colonized by the Belgians, who fled the country in the early 1960s without establishing strong government institutions, like an independent judiciary and a military.

Is it overpopulated? The population of Eastern Congo has doubled since the 1950s and 1960s. But the main factor is technological: the same area could produce much more food and support many more people if there were roads, fertilizers, and tractors.

The Congo is a victim of geography, colonialism, and terrible post-colonial governments. Its economy grew from $7.4 billion in 2001 to $38 billion in 2017, but the annual per capita income of $561 is one of the lowest in the world, leading many to conclude that much of the money that should flow to the people is being stolen.

For the last 20 years, the Rwandan government has been taking minerals from its neighbor and exporting them as its own. To protect and obscure its activities, Rwanda has financed and overseen the low-intensity conflict in Eastern Congo, according to experts.

There were free elections in 2006 and optimism around the new president, Joseph Kabila, but he proved as corrupt as past leaders. After being re-elected in 2011, he stayed in power until 2018, when he installed a candidate who won just 19 percent of the vote as compared to the opposition candidate, who won 59 percent. As such, Kabila and his allies in the legislature appear to be governing behind the scenes.

Low levels of GDP, not climate change, are correlated with armed conflict, such as in the Congo

Billions won’t die

#### It won’t cause extinction

Shannon Osaka 20, MPhil in Nature, Society and Environmental Governance from the University of Oxford, AB in Environmental Science from Princeton University, Reporter at Grist, and Kate Yoder, Associate Editor at Grist, Former Publishing Fellow at Goshen College, “Climate change Is A Catastrophe. But Is It An ‘Existential Threat’?”, Grist Magazine, 3/3/2020, https://grist.org/climate/is-the-climate-crisis-an-existential-threat-scientists-weigh-in/

That’s part of the reason that climate scientists have criticized activist rhetoric that humans have until 2030 to stop dangerous climate change. Sure, it might soon be too late to meet some of our most ambitious climate goals, such as keeping warming to 1.5 degrees Celsius, yet any amount of action in the present will help create a less overheated planet in the future.

So is climate change an existential threat? According to the scientific definition, likely not. As far as scientists can predict, a warming planet won’t cause changes so severe that they threaten the survival of the entire human species. And there is evidence that some of our most pessimistic projections may be exaggerated (though a Hothouse Earth wouldn’t be so fun).

That’s the sort-of good news. The bad news is that saying climate change won’t kill all of humanity is … pretty much the lowest bar possible.

In the meantime, politicians should be careful not to deploy the term “existential threat” too loosely. In all likelihood, they don’t mean that human life on the planet will go extinct. They mean that climate change is a really, really big deal and must be taken seriously. That should be sufficient reason to act.

# 1NR

## Politics

### 2NC – O/V

#### It’s external – Chinese tech causes a far wrose nucelar war.

Kroenig ’18 [Matthew; 11/12/18; Deputy Director for Strategy @ Scowcroft Center for Strategy and Security, Associate Professor of Government and Foreign Service @ Georgetown University; “Will disruptive technology cause nuclear war?”; https://thebulletin.org/2018/11/will-disruptive-technology-cause-nuclear-war/]

Recently, analysts have argued that emerging technologies with military applications may undermine nuclear stability (see here, here, and here), but the logic of these arguments is debatable and overlooks a more straightforward reason why new technology might cause nuclear conflict: by upending the existing balance of power among nuclear-armed states. This latter concern is more probable and dangerous and demands an immediate policy response.

For more than 70 years, the world has avoided major power conflict, and many attribute this era of peace to nuclear weapons. In situations of mutually assured destruction (MAD), neither side has an incentive to start a conflict because doing so will only result in its own annihilation. The key to this model of deterrence is the maintenance of secure second-strike capabilities—the ability to absorb an enemy nuclear attack and respond with a devastating counterattack.

Recently analysts have begun to worry, however, that new strategic military technologies may make it possible for a state to conduct a successful first strike on an enemy. For example, Chinese colleagues have complained to me in Track II dialogues that the United States may decide to launch a sophisticated cyberattack against Chinese nuclear command and control, essentially turning off China’s nuclear forces. Then, Washington will follow up with a massive strike with conventional cruise and hypersonic missiles to destroy China’s nuclear weapons. Finally, if any Chinese forces happen to survive, the United States can simply mop up China’s ragged retaliatory strike with advanced missile defenses. China will be disarmed and US nuclear weapons will still be sitting on the shelf, untouched.

If the United States, or any other state acquires such a first-strike capability, then the logic of MAD would be undermined. Washington may be tempted to launch a nuclear first strike. Or China may choose instead to use its nuclear weapons early in a conflict before they can be wiped out—the so-called “use ‘em or lose ‘em” problem.

According to this logic, therefore, the appropriate policy response would be to ban outright or control any new weapon systems that might threaten second-strike capabilities.

This way of thinking about new technology and stability, however, is open to question. Would any US president truly decide to launch a massive, bolt-out-of-the-blue nuclear attack because he or she thought s/he could get away with it? And why does it make sense for the country in the inferior position, in this case China, to intentionally start a nuclear war that it will almost certainly lose? More important, this conceptualization of how new technology affects stability is too narrow, focused exclusively on how new military technologies might be used against nuclear forces directly.

Rather, we should think more broadly about how new technology might affect global politics, and, for this, it is helpful to turn to scholarly international relations theory. The dominant theory of the causes of war in the academy is the “bargaining model of war.” This theory identifies rapid shifts in the balance of power as a primary cause of conflict.

International politics often presents states with conflicts that they can settle through peaceful bargaining, but when bargaining breaks down, war results. Shifts in the balance of power are problematic because they undermine effective bargaining. After all, why agree to a deal today if your bargaining position will be stronger tomorrow? And, a clear understanding of the military balance of power can contribute to peace. (Why start a war you are likely to lose?) But shifts in the balance of power muddy understandings of which states have the advantage.

You may see where this is going. New technologies threaten to create potentially destabilizing shifts in the balance of power.

For decades, stability in Europe and Asia has been supported by US military power. In recent years, however, the balance of power in Asia has begun to shift, as China has increased its military capabilities. Already, Beijing has become more assertive in the region, claiming contested territory in the South China Sea. And the results of Russia’s military modernization have been on full display in its ongoing intervention in Ukraine.

Moreover, China may have the lead over the United States in emerging technologies that could be decisive for the future of military acquisitions and warfare, including 3D printing, hypersonic missiles, quantum computing, 5G wireless connectivity, and artificial intelligence (AI). And Russian President Vladimir Putin is building new unmanned vehicles while ominously declaring, “Whoever leads in AI will rule the world.”

If China or Russia are able to incorporate new technologies into their militaries before the United States, then this could lead to the kind of rapid shift in the balance of power that often causes war.

If Beijing believes emerging technologies provide it with a newfound, local military advantage over the United States, for example, it may be more willing than previously to initiate conflict over Taiwan. And if Putin thinks new tech has strengthened his hand, he may be more tempted to launch a Ukraine-style invasion of a NATO member.

Either scenario could bring these nuclear powers into direct conflict with the United States, and once nuclear armed states are at war, there is an inherent risk of nuclear conflict through limited nuclear war strategies, nuclear brinkmanship, or simple accident or inadvertent escalation.

This framing of the problem leads to a different set of policy implications. The concern is not simply technologies that threaten to undermine nuclear second-strike capabilities directly, but, rather, any technologies that can result in a meaningful shift in the broader balance of power. And the solution is not to preserve second-strike capabilities, but to preserve prevailing power balances more broadly.

When it comes to new technology, this means that the United States should seek to maintain an innovation edge. Washington should also work with other states, including its nuclear-armed rivals, to develop a new set of arms control and nonproliferation agreements and export controls to deny these newer and potentially destabilizing technologies to potentially hostile states.

These are no easy tasks, but the consequences of Washington losing the race for technological superiority to its autocratic challengers just might mean nuclear Armageddon.

#### 1NC ev says its solves Nagorno Karabakh – draws in every great power.

Gen. Philip Breedlove, four-star general of the U.S. Air Force and a former NATO supreme commander in Europe (ret), 10-24-2020, "Opinion: The U.S. Can't Afford To Ignore The Nagorno-Karabakh Conflict," NPR.org, https://www.npr.org/2020/10/24/927219056/opinion-the-u-s-cant-afford-to-ignore-the-nagorno-karabakh-conflict

Other, potentially even more concerning scenarios could unfold as well. Should the conflict escalate further, it is likely to invite Russian military engagement and could have ripple effects for the wider region. So far, Russia, which has a large military presence and a binding military agreement with Armenia, has refrained from getting involved in the conflict directly, instead calling twice for a cease-fire, although both attempts failed almost immediately.

Turkey has thrown its support behind its ethnic kinsmen in Azerbaijan, providing military support to Baku and transporting Syrian mercenaries to the front line.

And finally, Iran, which shares borders with both Armenia and Azerbaijan, and is home to many millions of ethnic Azerbaijanis that live in its northern provinces, could easily get pulled into the fray as well. The possibility of three major regional powers incrementally drifting into the conflict seems more likely than we should accept. The potential risks of a wider regional conflict are simply too high.

The West has been slow to respond and is only lethargically engaged. Russia, France and the United States — all part of the Minsk Group created by the Organization for Security and Cooperation in Europe in 1992 to work toward resolving the Nagorno-Karabakh dispute — have jointly called for a cease-fire. Yet the U.S. remains diplomatically disengaged from the region, weakening its position and limiting its ability to make real headway in dealing with this ongoing conflict.

The South Caucasus has been one of the most volatile regions of the former Soviet Union and looks likely to remain so in the near future. Three conflicts — Nagorno-Karabakh, Abkhazia and South Ossetia — had been dormant, but the latest fighting makes clear that tensions can erupt at any time.

#### Nagorno-Karabakh outweighs everything – draws in every major power.

Korybko ’14 [Andrew; American Political Correspondent @ Voice of Russia; “Nagorno-Karabakh and the Domino Destabilization of Disaster (II)”; http://orientalreview.org/2014/08/08/nagorno-karabakh-and-the-domino-destabilization-of-disaster-ii/]

There are three major events that are guaranteed to escalate an Armenian-Azeri continuation war into a direct regional ruckus. They are all extremely significant, and in no particular order they are: Azerbaijan Attacking Armenia Proper: If Azerbaijan directly attacks Armenia, this would instantly result in Armenia activating its mutual defense treaty with Russia and calling in Moscow’s military might to defend it. This could happen if Azerbaijan is on the offensive on Nagorno-Karabakh and decides to take the war into Armenia to finish its military off ‘once and for all’, or if it engages in a provocation from Nakhchivan as a rear or flank attack to relieve pressure from the Karabakh front or bring Turkey into the war. Georgia Blockading Armenia: Blockades are acts of war, and if Georgia de-facto blockades Armenia during a continuation war in Karabakh, this would certainly result in a Russian intervention. The reasoning is two-fold. First, Armenia would be placed in an even more dire economic position than it is now if war with Azerbaijan breaks out, making it all the more dependent on Georgia for the transit of goods. Iran does not have the required infrastructure and logistical networks to immediately compensate for any loss in Georgian-transited trade, and Russia will not allow Yerevan to suffer a war of attrition similar to what happened to Leningrad during World War II. Additionally, it was earlier mentioned that Russian forces may request immediate transit rights through Georgia to resupply their base in Armenia, but it is uncertain how Tbilisi would respond. Although it is in their best and most peaceful interests to accede to this, they may look at it as a ‘shadow intervention’ or ‘occupation’, and the US and NATO may once more falsely assure Georgia that they would militarily support its anti-Russian political decisions. Even more likely, they would actively make sure that Georgia does not agree to Russia’s request and would pressure it behind the scenes. If Russia sees the need to reinforce its Armenian base, especially if Armenia itself is under Azeri attack, then it would transit its forces through Georgian territory with or without permission, with all of the resultant consequences thereof. Turkey Entering the War: This event would be momentous since it would open the door for official NATO intervention in the conflict and its direct confrontation with Russia. Turkey would most likely use the pretext of a Nakhchivan provocation in order to enter the war. To remind the reader, Turkey is responsible for ensuring Nakhchivan’s territorial integrity per the 1921 Treaty of Kars and publicly reaffirmed this commitment in 2010. Azerbaijan may either create a provocation with Armenia through Nakhchivan to goad it into militarily responding or would simply directly attack it from this location. If the provocation scenario plays out, then Turkey would rush to Azerbaijan’s side in order to fulfill its legal obligation in defending against Armenian ‘aggression’. Such cunning of this caliber has been conspired by Turkey before, most recently in the Suleiman Shah Tomb false-flag plan. It is therefore not beyond Ankara to stage a similar setup with Azerbaijan in Nakhchivan to provoke a (NATO) war with Armenia. Stage Five: The Caucasian Conflagration This is the final step of the continuation war. By this stage, at least one of the previously mentioned escalations has occurred and the Karabakh conflict has become a larger war. At the worst, it could see Russia storming through a recalcitrant Georgia to resupply its Armenian base, Azerbaijan bringing the war into Armenia proper, and Turkey moving to capture Yerevan in a swift offensive while being blocked by Russia’s nearby units. As this is occurring, Iran could find itself in the same quagmire in its north that Kiev is currently experiencing in its east, albeit for completely different reasons and purposes. All the while, the US/NATO and Russia would face off in the closest they have ever come to conventional or nuclear war as a result of the Russia-Armenia and Turkey-NATO treaty interplay, with the future of the world hanging in the balance.

### 2NC – Link

#### Congressional attention is limited and finite.

Harry First, New York University School of Law, and Spencer Weber Waller, Loyola University Chicago, Charles L. Denison Professor of Law, New York University School of Law, ’13, “ANTITRUST’S DEMOCRACY DEFICIT” https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4890&context=flr

The sad fact is, however, that Congress has acquiesced in its own marginalization. There is certainly a limit to the amount of attention that Congress can pay to any area of the law, and we do not claim that antitrust should be a top national priority. This trend is compounded by the judiciary, which has made antitrust overly technical and primarily dependent on economics in such a way that it is hard to discern whether or not an area of the law or an individual decision is consistent with the statutory scheme and current congressional desire.

#### It will only pass the senate if they keep it a legislative priority.

Feiner 1/20/22 (Lauren, News Associate @ CNBC, “Senate committee votes to advance major tech antitrust bill”, <https://www.cnbc.com/2022/01/20/senate-committee-votes-to-advance-major-tech-antitrust-bill.html>, January 20, 2022)

The Senate Judiciary Committee voted 16-6 Thursday to advance a major tech competition bill, which some experts consider legislators’ best shot at making substantial reform to laws that govern the industry. The American Innovation and Choice Online Act passed in a bipartisan manner, setting it on a path to potentially be adopted by the full Senate. Five Republicans did vote with the Democrats to advance the bill out of the committee: Sen. Chuck Grassley, R-Iowa, the ranking member and co-sponsor alongside antitrust subcommittee Chair Amy Klobuchar, D-Minn., Sens. Lindsey Graham, R-S.C., Ted Cruz, R-Texas, Josh Hawley, R-Mo. and John Kennedy, R-La. The committee’s House counterpart has advanced a similar bill and the Senate action could spur a further move on that front. While the White House has not yet weighed in on whether it will support this particular legislation, it has generally supported efforts to increase competition and President Joe Biden has installed progressive leaders at the antitrust agencies. The bill has significant implications for Amazon, Apple and Google in particular, though as it’s currently written it would also apply to other large platforms like Facebook-owner Meta and TikTok. The bill prohibits dominant platforms, defined by criteria including how many users they have and their market cap, from discriminating against other businesses that rely on its services, in what’s sometimes referred to as self-preferencing. That means, for example, Amazon could not simply decide to list its own private label products higher in its search ranking than third-party rivals’ listings. And, similarly, Apple and Google could not unfairly rank their own apps higher than rivals in their own mobile app stores. The same principle would apply to results from Google’s general search engine. Senators offered over 100 amendments to the bill by the start of Thursday’s markup, but only a handful were debated, as Klobuchar urged efficiency and promised to continue working on lingering concerns. Only one of the amendments debated Thursday was adopted, with a change suggested by Klobuchar and Grassley. The amendment, introduced by Sen. John Cornyn, R-Texas, was intended to make it more difficult for foreign adversaries like China to access American user data based on the bill’s requirement for dominant platforms to allow other services to interoperate with them. Klobuchar expressed concerns that the initial language in the amendment would give tech platforms more room to get out of liability under the statute. That change narrowed Cornyn’s language to expressly cover data transfers to the People’s Republic of China or governments of other adversaries and companies controlled by them. Still, some senators noted that it would still be worth discussing more amendments after Thursday, though they conceded to move along to a vote. Some who voted in favor of the bill said they hoped to see more changes to gain their approval in a floor vote. The markup lasted notably less time than that of the House’s summer marathon, a nearly daylong session which considered six total bills. Thursday’s Senate markup took just about three hours of discussion on the single bill. Several senators on both sides of the aisle lamented the relatively short time the bill took from introduction to markup and took issue with the fact that the legislation alone did not receive a full hearing before the Senate Judiciary Committee. Klobuchar shot back that she and Grassley had spoken with dozens of stakeholders about the legislation, engaged with many lawmakers and their staff and discussed the bill in antitrust subcommittee hearings relevant to its contents. Two California Democrats, Sens. Dianne Feinstein and Alex Padilla, ultimately voted in favor of advancing the bill, after first expressing some opposition. Both voiced concerns that the bill seems to target firms headquartered in their home state, though Klobuchar made clear the bill purposefully defines covered platforms in a way that means those liable under the statute could change over time. The bill’s path to approval by the full Senate is still murky and relies on leadership making time for it among many other legislative priorities. But Thursday’s vote is a promising step for those hoping to see reforms, including Big Tech rivals like Yelp and Sonos, which met with White House officials about barriers to competition in the industry on Wednesday. Meanwhile, Big Tech platforms are mounting massive lobbying and PR campaigns as a measure of how seriously they are taking the threat of the bill’s passage. For example, Cruz, who voted to advance the bill, said at Thursday’s markup that he had a 40-minute phone call with Apple CEO Tim Cook to discuss the topic. Cruz said Cook raised the concern that the bill could make it harder for Apple to let consumers opt out of monitoring from apps. But Cruz said he doesn’t interpret the bill would have that effect. Apple declined to comment on the call. Industry groups decried the bill’s advancement Thursday while reform activist organizations cheered it. “We heard enough reservations from senators to make clear that this legislation is not ready for the Senate floor,” said Adam Kovacevich, CEO of tech-funded Chamber of Progress, in a statement following the vote. “The problems that Democrats are raising aren’t just tweaks – they are fundamental issues with how the bill could impact consumers, competitiveness and security.” “Despite millions of lobbying dollars by monopolists spent to influence lawmakers, a bipartisan group of senators just stated with a clear voice that Big Tech is too powerful,” Sarah Miller, executive director of the American Economic Liberties Project, said in a statement.

#### Senate passage requires avoidance of distraction.

Cat Zakrzewski, technology policy reporter, 1-17, 2022 “Big Tech foes launch ‘campaign-style’ initiative to push for antitrust legislation” https://www.washingtonpost.com/people/cat-zakrzewski/

Haworth, a veteran of Democratic politics, said she wants to bring the “aggressiveness” and single-minded focus of a campaign to the fight to regulate Big Tech. The project’s first target will be pressuring senators to pass the American Innovation and Choice Online Act, a bipartisan bill that would prevent Amazon, Apple, Facebook and Google from favoring their own products over those of their rivals. The bill could be considered before a Senate committee as early as this week. (Amazon founder Jeff Bezos owns The Washington Post.)

“Pouncing upon this moment right now is critical,” Haworth said, noting that Congress may only have a small window to pass competition legislation, as it is uncertain that Democrats will be able to retain control of the House and Senate following this year’s midterm elections.

The biggest threat to lawmakers’ Big Tech antitrust agenda: Time

The group’s initial focus only on competition policy sets it apart from many of the other organizations working on tech policy in Washington.

Many lawmakers and advocates concerned about the tech industry’s growing power have also suggested that it may be time to reform Section 230 of the Communications Decency Act, a decades-old legal shield that protects tech companies from lawsuits over the content people post on their services. But Haworth said the Tech Oversight Project views that debate as “a distraction” and a “red herring.” Democrats have said the companies are too hands-off when it comes to harmful posts. Republicans, meanwhile, have accused the companies of censorship for removing rule-breaking content, which the companies have denied.

“Ultimately, we’re never going to get bipartisan agreement on it,” she said. “Republicans want less oversight over content, and Democrats want more oversight over the content. … We’re at an impasse.”

#### Agenda time is key to passage.

Chris Mills, The Hill, 1-20-2022, "Senate panel advances bill blocking tech giants from favoring own products," TheHill, https://thehill.com/policy/technology/590659-senate-panel-advances-bill-blocking-tech-giants-from-favoring-own-products

A Senate panel advanced a bill Thursday aimed at blocking the biggest technology platforms from giving preferential treatment to their own products, a proposal that has deeply divided the industry. While the Senate Judiciary Committee’s favorable reporting of the legislation is a major step toward moving forward a revamp of antitrust laws, time remains a major stumbling block as other items on President Biden’s agenda dominate Congress’s time. And although the American Innovation and Choice Online Act was approved by a 16-6 margin, many supporters expressed reservations about its current composition and the bill may undergo major changes before reaching the Senate floor. “We haven’t meaningfully updated our antitrust laws since the birth of the internet,” said Sen. Amy Klobuchar (D-Minn.), one of the bill’s lead co-sponsors along with Judiciary ranking member Sen. Chuck Grassley (R-Iowa). “For the time, the monopoly power is going to be challenged in what I consider to be a smart way.”

#### Prioritization – the president can only throw his weight behind a certain number of items. Plan saps presidential backing.

Feiner ’21 (Lauren, “2022 will be the ‘do or die’ moment for Congress to take action against Big Tech”, <https://www.cnbc.com/2021/12/31/2022-will-be-the-do-or-die-moment-for-congress-to-take-action-against-big-tech.html>, December 31, 2021)

There’s a lot going on in antitrust that could come to a head in 2022. That spans legislation, as well as possible regulations and enforcement actions from the Federal Trade Commission and Department of Justice Antitrust Division. “The likely Republican takeover next fall means 2022 is do or die for tech antitrust legislation,” said Paul Gallant, managing director of Cowen’s Washington Research Group. “That’s the biggest risk for the companies in Washington. If they can manage to ward that off, we probably won’t see it reemerge until 2025.” A package of tech-focused antitrust bills has already crossed a major hurdle in the House, advancing with bipartisan votes out of the Judiciary committee. But even then, lawmakers expressed reservations about the bills, and companion legislation in the Senate must still clear that initial hurdle. Rep. David Cicilline, D-R.I., who chairs the Judiciary subcommittee on antitrust and spearheaded the package, told CNBC in a phone interview in mid-December that his staff has been working to bring other members up to speed on the legislation. The bills were born out of a 16-month investigation by the subcommittee into the competitive practices of Amazon, Apple, Facebook and Google, which found each wields monopoly power and recommended legislative changes to promote competition in digital markets. Cicilline said while some of his colleagues may have voiced hesitancy around the bills at first, “When people study the bills and are briefed by my staff, there is tremendous support for the entire package.” He said he was optimistic the bills will ultimately “enjoy strong bipartisan support when they are brought to the floor either as a group or in two groups, say.” “I have great confidence that we’ll pass them,” he said. That makes timing a key remaining obstacle for the bills as Congress continues to focus on the impact of the coronavirus pandemic and Biden’s social infrastructure package, which the Senate has not passed. “The window for passing tech antitrust legislation is open until Labor Day. And that’s it,” Gallant said. “I think the key is whether Biden gets involved,” he added. “If Biden decides it’s important for the party to pass tech antitrust legislation, he can give it the momentum to get it across the finish line.” Cicilline said administration officials “worked closely with us” as the bills came together and said they remain “in very regular contact with all the key players in the administration who are in charge of competition policy.” Still, the White House will have to decide which legislative priorities to throw its weight behind ahead of a midterm season that will determine how much of Biden’s agenda can be carried out before the end of his term. Gallant said that among the many priorities “tech antitrust is on the list.” But whether it makes the final cut is still “TBD,” he said. Among the proposed bills, the American Innovation and Choice Online Act, introduced by Sens. Amy Klobuchar, D-Minn., and Chuck Grassley, R-Iowa, in the Senate as a companion to Cicilline’s bill in the House, has gained significant traction. Grassley’s support, among with several other Republicans, shows promise for the proposal, which would prohibit dominant platforms from discriminating against businesses that rely on their services.

#### Passes senate now but the coalition is fragile.

Benjamin Kahn, 1-21-22 “American Innovation and Choice Online Act Advances to Senate Floor With Bipartisan Alliance” https://broadbandbreakfast.com/2022/01/american-innovation-and-choice-online-act-advances-to-senate-floor-with-bipartisan-alliance/

Senators on the Senate Judiciary Committee have formed a tenuous, bipartisan alliance to curb allegedly anticompetitive behavior by large tech companies.

During a Thursday markup, the Senate Judiciary Committee voted 16-6 to send the American Innovation and Choice Online Act, S. 2992, to the Senate floor. The bill would prohibit certain companies with online platforms from engaging in behavior that discriminates against their competitors.

There is a laundry list of violations and unlawful behaviors enumerated in the bill, including unfairly preferencing products, limiting another business’ ability to operate on a platform, or discriminating against competing products and services.

This bill would only apply to companies with online platforms that meet one of the following criteria:

Has at least 50,000,000 United States-based monthly active users on the online platform or 100,000 United States-based monthly active business users on the online platform

Is owned or controlled by a person with United States net annual sales or a market capitalization greater than $550,000,000,000, adjusted for inflation on the basis of the Consumer Price Index and is a critical trading partner for the sale or provision of any product or service offered on or directly related to the online platform

Sen. Amy Klobuchar, D-Minn., the sponsor of the bill, referred to the bipartisan effort as “the Ocean’s 11 of co-sponsors,” featuring a diverse line-up of legislators, from Sen. Josh Hawley, R-Miss., and Sen. John Kennedy, R-La., to Sen. Dick Durban, D-Ill., and Sen. Richard Blumenthal, D-Conn.

Senators embrace specific and direct targeting of Big Tech

Klobuchar spoke directly about the need to target large companies, “We have to look at this differently that just startup in a garage – that is not what they are anymore. They may have started small, but they are [now] dominant platforms,” she said. “For the first time, the monopoly power is going to be challenged in what I consider to be a smart way.”

At the outset of the meeting, there were more than 100 amendments proposed by members of the committee, but by its conclusion, more than 80 of them had been withdrawn.

One of the amendments that worked its way into the bill was a markup that exempted subscription-based services from complying with the legislation, allowing services like Amazon Prime and Netflix to promote their own content above others’.

“The bill strikes the right balance between preventing the conduct that hurts competition, while also ensuring that platforms can continue to provide privacy and data security features to their users, compete against rivals in the United States and abroad, and maintain services that benefit consumers,” Klobuchar said.

A fragile alliance between read-meat Republicans and progressive Democrats

Though there were big names on both sides of the aisle supporting the bill, the alliance seemed fraught. Despite being supportive of the bill, Kennedy made it clear that his support was conditional. “I am a co-sponsor of this bill, but this bill is going to change – it is going to change dramatically,” he said. “I hope to be in the room when those changes are made, otherwise I will be off this bill faster than you can say ‘Big Tech.’”

Some of Kennedy’s criticisms harkened back to Section 230 issues raised by former President Donald Trump – calling some of the targeted companies “killing fields for the truth,” and stating that “their censorship is a threat to the first amendment.”

Despite his criticisms, Kennedy echoed other senators, both Republican and Democrat, who emphasized that they did not want the perfect to become the enemy of the good. “All we have done [for five years] is strut around, issue press releases, hold hearings, and do nothing. So, this is a start.”

Klobuchar also received push-back from members of her own party, with Sen. Dianne Feinstein, D-Calif., stating that she was critical of the bill because it is designed to specifically target large tech companies, many of which are based out of California (though she ultimately voted to advance the bill to the Senate floor).

Hawley rebuffed Feinstein in his comments, stating that he supports the bill for the same reason Feinstein refuses to. “[Feinstein] pointed out – I think rightly – that this bill is very specific and does target specific behavior – anti-competitive behavior – in a specific set of markets. I think that that’s a virtue and not a vice.”

The measure must be passed by the full Senate, as well as the House, before it goes to the president for his signature.

### 2NC – AT: Doesn’t Solve

#### Ending self-preferencing is key to sideloading – apple privileges its app store with all its censorship in it. Allowing third party app stores that don’t cow to authoritarians is key.

Michael W. Scarborough, Partner @ Sheppard Mullin, 1-21-2022, “The National Law Review,” https://www.natlawreview.com/article/senate-zeros-big-tech-latest-antitrust-reform-bill

The bill also designates seven specific business practices by which big tech firms leverage covered platforms for competitive advantage as “unlawful conduct.” Perhaps most significant among these is the prohibition against restricting a competitor’s ability to “access or interoperate with the same platform, operating system, hardware or software features that are available to the covered platform operator’s own products, services, or lines of business that compete or would compete with products or services offered by business users on the covered platform.” This would directly impact companies like Apple, which prohibit “sideloading” and exert tight control over the programs and applications that can run on the their operating systems. Additionally, the bill restricts tech companies from “treat[ing their] own products, services, or lines of business more favorably relative to those of another business user than they would be treated under standards mandating the neutral, fair, and non-discriminatory treatment of all business users,” including in “search or ranking functionality offered by the covered platform.” This prohibition appears to implicate Google, whose competitors have long accused it of biasing search results to favor its own products and services.

#### Sideloading key to stop apple censorship – key to global religious freedom and democracy.

William Gallagher, 30+ years in journalism, formerly @ BBC, 9-17-21, “Apple, Google drop Russian opposition app ahead of election” https://appleinsider.com/articles/21/09/17/apple-google-drop-russian-opposition-app-ahead-of-election

Following Russia's demand that Apple and Google remove the tactical voting app, and then threats of fines, Apple and Google have dropped the "Smart Voting" app in the country.

The app, devised by imprisoned opposition leader Alexei Navalny, was intended to boost candidates with the best chance of succeeding against incumbents. Apple and Google's removal came just hours before election voting was due to begin.

Russian watchdog group Roskomnadzor claims that the app promotes extremist activity by the Anti-Corruption Foundation (FBK). Developer Ivan Zhdanov announced the removal on Twitter, and (in translation), described it as a "mockery of common sense."

"Formal reason for removing applications: recognition of FBK [as] an extremist organization," continues the developer's tweet. "The way the FBK was recognized as an extremist organization was not a court, but by mockery of common sense. Google, Apple, make a huge mistake."

"The decision to remove Navalny's app from Google Play... and App Store... is a huge disappointment," tweeted a spokeswoman. "This is an act of political censorship and it can't be justified."

Apple's message to the developer says that "Smart Voting" will no longer be on the App Store in the country "because it includes content that is illegal in Russia."

#### Breaking China’s stranglehold on US tech key to prevent digital authoritarianism.

Sitaraman ’20 [Ganesh; Co-founder and Director of Policy @ Great Democracy Initiative; Professor of Law @ Vanderbilt University; “The National Security Case for Breaking Up Big Tech,” *Knight First Amendment Institute at Columbia*; AS]

BIG TECH, GLOBAL ENTANGLEMENTS, AND GREAT POWER COMPETITION

At a time of resurgent great power competition, claims that big tech companies are assisting that competition are superficially appealing, but they largely do not hold up to scrutiny. Many of the biggest tech companies are global players, operating in China, working with that government (knowingly or unknowingly), and seeking to expand their footprint. This not only means that their work abroad assists technological development in China but also that the Chinese government has increased leverage over those companies and the United States. Breaking up these companies would create a domestic technological ecosystem in which a more significant part of the marketplace is not dependent on Chinese markets, thereby making the United States more resilient.

How Big Tech Helps Strengthen China

The claim that big American tech companies are somehow an alternative to Chinese dominance—or, in the more extreme form, that they are competing with China on behalf of the United States—is largely backwards. In fact, many big American tech companies are operating in China, working with Chinese companies, and seeking to expand. Because markets and the state are intertwined in China, interactions with Chinese companies and investments in China are likely to pass along operational and technological developments to the Chinese government and military, including in ways that advance its emerging surveillance state—and accelerate its ability to spread its model of digital authoritarianism around the world. In short, big tech companies that operate in China are likely assisting the rise of China, not acting as a hedge against it.

Rather than competing with China, many big tech companies are integrating with China or attempting to deepen their integration with China. Google has announced an AI center in Beijing,8 and it is exploring a partnership with Tencent that involves using the Chinese tech giant’s cloud service as an alternative to Google Cloud.9 In 2018, the company also proposed Project Dragonfly, which would have created a search engine that would be in compliance with Chinese censorship regulations behind the Great Firewall.10 That endeavor created controversy within the firm and criticism from human rights groups.11

Other companies also operate in China or are seeking to do so. Microsoft is expanding data centers

in China and has built an operating system, “Windows 10 China Government Edition,” for the Chinese government.12 After Alibaba, Amazon provides the largest cloud service in China, and its Amazon Web Services division works with local companies and is expanding its data centers.13 Apple, of course, famously designs its phones in California but makes them in China.14 In 2017, Apple announced a partnership with a Chinese firm with close ties to the government and a year later moved its Chinese iCloud and iCloud encryption services to China.15 Notably, Facebook isn’t operating in China—but not for lack of trying. The company has repeatedly attempted to gain access but has been blocked by government officials.16

Merely operating in China might not seem like it undermines the claim of U.S.-Chinese competition. After all, it might be that American companies are seeking to steal market share from Chinese companies in China. Global dominance requires, unsurprisingly, dominance around the globe, including in the world’s biggest markets. The problem is that, according to scholars, U.S. government officials, and even American business associations, any U.S. company that is developing AI in China, making significant technological investments in China, or simply operating in China is likely supporting the Chinese government and military.

Chinese companies are often state-run, partly owned by the state, or have informal ties to state and Communist Party officials, as scholars have documented.17 Formal and informal ties allow the government to have influence over many companies, and they create an incentive for companies to comply with party preferences preemptively even without formal government pressure.18 Cooperation and partnerships with these companies therefore mean cooperation with state-directed aims. “No major Chinese company,” Senator Mark Warner has noted, “is independent of the Chinese government and Communist Party.”19 An official at the U.S. Chamber of Commerce goes even further, arguing that American firms going to China have “to please the Chinese government and the Communist Party.”20

Moreover, because artificial intelligence is a dual-use technology, ostensibly commercial innovations can also have military implications. China’s stated doctrine of “civil-military fusion” thus virtually guarantees that companies are indirectly assisting the military if they are working with Chinese entities.21 Under that doctrine, “any technologies held by the private or academic sectors—whether imported or developed in-house—must be shared with the Chinese military.”22 When combined with the corporate-state relationship in China, this means the technological innovations in the private sector are likely being shared with the government for military purposes. As former defense secretary Ash Carter has noted, “If you’re working in China, you don’t know whether you’re working on a project for the military or not.”23

The fact that Chinese companies and the state are intertwined means that American companies working in China are potentially helping accelerate the adoption of digital authoritarianism within China and its spread abroad. In general, the development of artificial intelligence “offers a plausible way for big, economically advanced countries to make their citizens rich while maintaining control over them.”24 Big data, combined with AI, enables governments and big tech companies not only to predict but also to shape what individuals will do.l Politically, this means that governments will have the power to preempt dissenters to a far greater degree than authoritarian regimes of the past.25 Economically, it means that centralized economic planning might find greater success than in the past, because governments and companies can shape the behavior of individuals.26 And over time, behavioral changes shape beliefs, potentially building support for the regime itself.27 These dynamics suggest that the new “digital authoritarianism” may have greater staying power than its low-tech precursors.28

At home, China has long been concerned about domestic disharmony and has pursued a policy of “social management” to achieve “holistic” security—not just national security but party organization and the management of the social order.29 The Chinese State Council sees AI as “irreplaceable” in ensuring social harmony in the future.30 China has taken steps to develop a “social credit system,” in which individuals are assessed in every interaction to determine their trustworthiness, their compliance with laws and social norms, and the degree to which their social networks are also compliant. Chinese tech companies have reportedly agreed to share data with the government in support of this project.31 Local governments and tech companies are cooperating to develop “credit cities,” the local counterpart to a full-on national system.32 Chinese companies are also already exporting surveillance technologies abroad, including biometric censors and facial recognition software.33

Given that many big American tech companies are operating in China or seeking to do so and that engagement with Chinese entities likely means information is transferred to the government, the idea that big American tech companies are helping the United States vis-à-vis China in some kind of Cold War-style technology arms race makes little sense. It is just as likely, if not much more so, that firms operating in China are directly or indirectly furthering China’s emergent domestic surveillance capabilities, its military use of those technologies, and its spread of digital authoritarianism abroad as well.34

### 2NC – AT: PC

#### Voting rights is definitively dead..

Carl Hulse, NYT, 1-19-22 “After a day of debate, the voting rights bill is blocked in the Senate,”, 7:44 p.m. ET

Democrats failed to secure enough votes to pass the voting rights legislation that they say would counter widespread voter suppression efforts.CreditCredit...Sarahbeth Maney/The New York Times WASHINGTON — Senate Democrats made an impassioned case on Wednesday for legislation to counter an onslaught of new voting restrictions around the country, but they failed to overcome a Republican blockade or unite their own members behind a change in filibuster rules to pass it. Though the twin defeats were never in doubt, Democrats pushed forward in an effort to highlight what they called a crisis in voting rights and to underscore the refusal of Republicans to confront it. They did succeed in forcing the Senate for the first time to debate the bill, leading to hours of raw and emotional arguments on the floor over civil rights, racism and how elections are conducted. “The people of this country will not tolerate silencing,” said Senator Amy Klobuchar, Democrat of Minnesota and a chief author of the voting bill. “I think by voting this down, by not allowing us even to debate this, to get to the conclusion of a vote, that is silencing the people of America, all in the name of an archaic Senate rule that isn’t even in the Constitution. That’s just wrong.” After Republicans stymied action on the legislation on Wednesday night, Democrats made a last-ditch bid to alter the Senate’s filibuster rules and allow the voting rights measure to move forward with a simple majority. But that effort also fell flat because they lacked the support in their own ranks to change the rules. “This party-line push has never been about securing citizens’ rights,” said Senator Mitch McConnell, Republican of Kentucky and the minority leader. “It’s about expanding politicians’ power.” The back-to-back losses amounted to a major setback for President Biden, who used a White House news conference during the Senate debate to lament Republicans’ success at thwarting his domestic agenda, including the voting rights measure. And it was a disheartening moment for Senate Democrats, who put the full force of their majority behind the issue despite the long odds of success.

#### Only antitrust will make it to the senate floor as of last Wednesday – dems have given up on more controversial agenda items and will only push bills with significant GOP support. Star this card.

Everett and Levine 1/21/22 (Burgess and Marianne, Politico, “Democrats slim down ambitions after back-to-back failures”, politico.com/news/2022/01/21/democrats-back-to-back-failures-ambitions-527514, January 21, 2022)

After two strikeouts, don't expect Senate Democrats to immediately swing for the fences again. There’s little appetite in the Democratic majority to publicly fall short on high-profile priorities so soon after the party’s failures to both weaken the filibuster to pass election reform and to approve President Joe Biden’s $1.7 trillion social spending bill. Instead, many Democrats are itching to get back to voting on bills that have plenty of GOP support, such as a new deal to fund the government or changing antitrust laws. Sure, Democrats will try to revive their signature domestic spending bill, and they say they will keep fighting for election reform. They might even change the Electoral Count Act. None of that, however, is expected to play out on the Senate floor anytime soon. “My advice to leadership is to find those things where we really have a solid amount of momentum, where you clearly have 10 or more Republicans,” said Sen. Martin Heinrich (D-N.M.), who is working on a bill to protect wildlife that has more than a dozen GOP co-sponsors. In interviews with Democrats across the ideological spectrum, senators largely described wanting to put some points on the board within the confines of the chamber’s supermajority requirement. But it’s also fair to say the party is not entirely united on the path forward.

#### Prefer recency – it’s already up for a senate vote.

Makenzie Holland, 1-21-2022, "Senate antitrust legislation targeting big tech advances," SearchCIO, https://searchcio.techtarget.com/news/252512336/Senate-antitrust-legislation-targeting-big-tech-advances

Bipartisan antitrust legislation that could limit tech giants' ability to preference their own products over competitors on online platforms has advanced to the U.S. Senate floor. If passed, some say the bill could do more harm than good.

The American Innovation and Choice Online Act sponsored by Sen. Amy Klobuchar, D-Minn. and Sen. Chuck Grassley, R-Iowa, would prohibit online platform operators like Apple, Google and Amazon from unfairly limiting other businesses' operations on the platforms those companies operate, like Amazon's marketplace or Apple and Google's app stores.

The U.S. Senate Committee on the Judiciary advanced the bill Thursday to the Senate floor in a 16-6 vote after senators proposed numerous amendments to the antitrust legislation, which would apply to platforms with at least 50 million monthly active users or at least 100,000 active business users.

"We've got to have fair competition in this country," Klobuchar said during the Senate judiciary committee's markup of the bill. She said that Google, for instance, controls more than 90% of the online search market.

A similar bill introduced by U.S. House of Representatives members advanced to the House floor last year. Congressional leaders and federal regulators alike are zeroing in on the chokehold they believe tech giants have on digital platforms and have attempted to address the issues through new laws and lawsuits. President Joe Biden issued an executive order last year tasking the Federal Trade Commission with creating rules for competition in online marketplaces.\

#### AND a house vote.

Taylor Hatmaker 1-20-2022, "The first big tech antitrust bill lumbers toward reality – TechCrunch," TechCrunch, https://techcrunch.com/2022/01/20/tech-antitrust-self-preferencing-bill-american-innovation-and-choice-online-act/

Regulating the tech industry is a rare issue that inspires bipartisan cooperation in Congress — another sign that the tech industry should expect new restrictions on its business, even if those proposals still progress at a crawl.

The bill was introduced by by Senators Amy Klobuchar (D-MN) and Chuck Grassley (R-IA) and is co-sponsored by Dick Durbin (D-IL), Lindsey Graham (R-SC), Richard Blumenthal (D-CT), John Kennedy (R-LA), Cory Booker (D-NJ), Cynthia Lummis (R-WY), Mark Warner (D-VA), Mazie Hirono (D-HI), Josh Hawley (R-MO), Sheldon Whitehouse (D-RI) and Steve Daines (R-MT).

The House version of the bill, led by House Antitrust Subcommittee Chairman David N. Cicilline (D-RI) and Ranking Member Ken Buck (R-CO), is already out of committee and ready for a vote.