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# 1NC

## Off

### 1NC – Solicitor General CP

#### The Solicitor General of the United States should file a formal confession of error suggesting an increase in prohibitions on price fixing by the Chinese private sector by expanding the scope of its core antitrust laws to defer to executive branch interpretations of comity, and ask the justices to grant review, vacate the favorable ruling, and then remand the case.

#### Solicitor general briefs cause judicial follow on – the supreme court affords a high degree of deference to the OSG.

Schoenherr, Jessica A., University of South Carolina, and Nicholas W. Waterbury. WashU St Louis, ’22, "Confessions at the Supreme Court: Judicial Response to Solicitor General Error." Journal of Law and Courts, volume 10, number 1, Spring 2022.

When Solicitor General Charles Fahy appeared before the Supreme Court to defend President Franklin Roosevelt’s exclusion and internment of Japanese Americans duringWorld War II in Korematsu v. United States (323 U.S. 214 [1944]), he provided the justices with an army report that suggested Japanese Americans on theWest Coast threatened national security (Stone 2004). More recent navy intelligence contradicted this finding, but the federal government’s chief litigator decided to violate the custom of providing the justices with all necessary information and offered the Court only documents that favored the president’s preferred outcome (Savage 2011). The justices predictably trusted Fahy and sided with Roosevelt, producing an opinion unanimously described as one of the Court’s worst (Greene 2011; Liptak 2014). With Korematsu still a technically valid precedent in 2011, one of Fahy’s successors, Neal Katyal, decided it was time for the Office of the Solicitor General to address Fahy’s deceit. Using a procedural act called a “confession of error,” Katyal formally admitted that Fahy had suppressed information that, if known, would have changed the outcome in Korematsu (Katyal 2011). He then suggested that the decision might negatively affect future cases and that, in light of this admission, the justices should consider finding a way to overturn it (Katyal 2013), which the Court did 7 years later in Trump v. Hawaii (138 S. Ct. 2392).

As Fahy’s role inthe Korematsu decision suggests, the solicitor general plays an outsized role in the Supreme Court decision-making process. Over the course of 150 years of managing the US government’s appellate litigation, the Office of the Solicitor General has become synonymous with professionalism, independence, and legal excellence (Salokar 1992). As a result, the solicitor general appears before the justices more than any other advocate, and theUS government wins more cases than any other party (Black andOwens 2011). Because the solicitor general produces excellent and legally sound work, Supreme Court justices treat the people who hold the office as trusted legal advisers to whom the justices can turn for advice and assistance regarding their caseload and opinions (Caplan 1987; Perry 1991; Collins 2008). By helping the justices, the solicitor general gains trust and deference that ultimately results in unparalleled success and influence (Black and Owens 2012c). This relationship exists as long as solicitors general avoid leaning into the executive branch policies of the presidents who nominated them, as their influence before the Court suffers when their behavior looks political (Pacelle 2003; Wohlfarth 2009). But what happens to this mutually beneficial relationship when the solicitor general confesses that her office identified an error that resulted in an undeserved win for the government? And what happens to that trust if the “error” is purposeful or politically motivated, as Fahy’s was in Korematsu?

We seek to better understand if and how the justices react to the solicitor general’s decision to file a confession of error. Confessions of error are a quirk of the solicitor general’s relationship with the justices; because the solicitor general and the Supreme Court deal with the long-term development of federal law (Salokar 1992), the solicitor general is the only Supreme Court litigator who is expected to tell the Court that an error resulted in an undeserved win for their client in federal court (Murray 2012). When the US government achieves such a win, the Court expects the solicitor general to formally “confess error” in the case and ask the justices to grant review, vacate the favorable ruling, and then remand the case to the lower court for further proceedings (Bruhl 2009).While this expectation might suggest the justices understand and accept the occasional fallibility of their trusted legal partner, our research suggests this is not always the case. Not allconfessions of error are the same, and some, notably those that ask for reevaluation in light of an executive branch policy change, can look blatantly political. These confessions paint the solicitor general as an executive branch advocate attempting to use the Court as a vehicle for partisan ends (Murray 2012). We consider whether, despite their expectations, the justices might punish the solicitor general for using confessions of error this way.

#### Counterplan solves the case without binding law and maintains stare decisis – key to judicial legitimacy.

Michael R. Dreeben, Law @ Harvard and fmr. US Solicitor General, ’21, Stare Decisis in the Office of the Solicitor General, 130 Yale L.J. F. 541

At least four considerations support a presumption in favor of OSG presenting its current, rather than former, position when it is convinced that its prior view was wrong. These reasons focus on the Solicitor General's institutional role as a litigant and the differences between OSG positions and judicial decisions. First, OSG's function is quite different from that of the courts. The judicial power presupposes adherence to precedent. Quoting Alexander Hamilton, the Chief Justice has observed that "[a] dherence to precedent is necessary to 'avoid an arbitrary discretion in the courts."'70 In that sense, stare decisis is an intrinsic feature of the judicial power under Article III. But no analogous principle of stare decisis is intrinsic to the exercise of executive power under Article II. When OSG speaks to the Court, it presents the litigating position of the executive branch. Of course, OSG should generally represent the interests of the entire government and people of the United States.71 As the Supreme Court has observed, OSG is expected to speak with "a voice that reflects ... the common interests of the Government and therefore of all the people."7 But OSG need not follow its own precedent to speak in that voice and perform its executive-branch function. Instead, OSG plays that role as long as it remains the centralized actor in government litigation before the Court and weighs the interests of the public and the executive branch in taking positions before the Court."1

Second, stare decisis serves an instrumental purpose for the Supreme Court- sustaining public confidence in the integrity of its decisions - that does not have a precise counterpart for the Solicitor General. By adhering to past decisions, the Court reassures the public that the law turns on principle rather than personality.74 This is essential for the Court because, unlike OSG, whose role is to advocate for what the law should be, the Court's constitutional role is to say what the law is.75 And while stare decisis communicates that judicial decisions are not the product of the "proclivities of individuals"76 who are temporary occupants of office, the Solicitor General is a political appointee who is always a temporary occupant of office. The Chief Justice has noted that " [w] e do not have Obama judges or Trump judges, Bush judges or Clinton judges."" But we do have Obama, Trump, Bush, and Clinton Solicitors General. The Solicitor General is appointed in a particular administration and will rarely outlast it. Of course, by tradition and culture, the Solicitor General has a special relationship to the Court and a special obligation to the rule of law.78 But the chain of command-from President to Attorney General to Solicitor General-reinforces an additional institutional reality of the Solicitor General's role. The proclivities of individuals, in a sense, come with the job.

Third, the judicial stare decisis interest in preserving the "stability" of the law79 is absent when speaking from an advocate's position. Binding law produces reliance interests that stare decisis protects. But OSG's views are not binding law. It is true that within the executive branch, sound reason exists to consider OSG's submissions to the Court as stating the position of the United States on issues of constitutional or statutory interpretation. During my time in OSG, I always understood the Solicitor General's submissions to supersede contrary statements of other Justice Department officials. What OSG said to the Court established precedent that executive agencies and Department of Justice (DOJ) -litigating components should follow, unless supplanted by the President, the Attorney General, or OSG itself.

But that effect within the government flowed from the importance of assuring the Supreme Court that when OSG speaks to it, the Court can rely on its statements as the Government's position- not just that of a particular official. As the Court has stated, "[a] mong the reasons for reserving litigation in this Court to the Attorney General and the Solicitor General, is the concern that the United States usually should speak with one voice before this Court."8 0 And the need for the Government to speak with one voice results in extensive interagency processes to ensure that OSG's positions reflect all relevant views and are fashioned with an eye towards establishing internally binding positions. I participated in numerous meetings at which officials hammered out positions and argued over differing views, and Solicitors General displayed one of the most important attributes of the job: to listen. But the Solicitor General then followed with an equally important role: to decide. Agencies and other DOJ components could appeal to the Attorney General (they rarely did and were even less often successful). But if the Solicitor General's position stood, it represented the position of the United States.

Even still, those positions are not "law" in the sense that they can produce true reliance interests. Justice Jackson's view of the Court that "[w] e are not final because we are infallible, but we are infallible only because we are final,"" does not apply to OSG -the Solicitor General is neither infallible nor final. Even if OSG crafts its positions with care, integrity, and dedication to the rule of law, the Supreme Court may (and often does) reject its views.8 2

Finally, when the Court has not resolved an issue - as will be true in the universe of cases under consideration here in which OSG has freedom to revisit its prior view-the Supreme Court is best served by hearing the strongest and best supported arguments from a candid advocate. While the Supreme Court will of course independently evaluate a legal issue, it always benefits from candid advocacy. That duty of candor is amplified for OSG, which has a special relationship to the Court as a coordinate branch of government. Telling the Court what the Government regards as the right answer is an important part of that function, and a candid presentation of its views - even if they depart from a predecessor's (or even the incumbent Solicitor General's own prior views) -furthers OSG's role as counsel, advisor, and exponent of the rule of law in submissions to the Court.

Those considerations support the notion that OSG should approach its task with a much greater openness to abandoning a prior position than a court would have, if the Solicitor General concludes that the position was legally incorrect. It is likely, in fact, that OSG should employ a presumption that it will furnish the Court with a new and revised position if it believes that its prior position was wrong.

#### US judicial restraint gets modeled – solves democratic backsliding, liberal peace, and European war.

Fernanda G. Nicola, Professor of Law, American University Washington College of Law, ’21, “LEGAL DIPLOMACY IN AN AGE OF AUTHORITARIANISM” https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=3004&context=facsch\_lawrev

The EU is facing unprecedented external and internal challenges to its legal and political-economic structure. This includes the need to rethink its global trade and investment agenda that is inevitably tied to migration fluxes and a lack of economic development and political stability in Northern Africa." The EU is also facing an internal rule of law crisis with the rise of authoritarian governments calling themselves "illiberal democracies."18 In these instances, the legal diplomacy of the CJEU initially aimed at strengthening its authority to enforce the rule of law in EU foreign relations is now re-focused to maintain democratic and political stability inside the Union. However, legal diplomacy is not exclusive to supranational Courts. Supreme and constitutional courts, as part of an independent judiciary, also engage in legal diplomacy when intervening in foreign relations crises prompted by military or trade wars. Take for instance the SCOTUS, when soon after the ratification of the United States Constitution, it played a crucial role in foreign policy by preserving the country's neutrality in the war between Britain and France while giving life to the US Constitution.19 Since then, however, the SCOTUS only indirectly exercised its legal diplomacy as its self-preservation was based its "mythical neutrality."20 But the renewed focus of the Rehnquist Court on national security and foreign affairs, particularly through the national combatant cases, prompted a return to a legal diplomatic role of the Court that some viewed as a questionable expansion of the judiciary's role in such issues. 1

The judicial evolution in foreign relations doctrines looks fairly similar in both the SCOTUS and the CJEU. This is despite the very different timeframe and institutional constraints that the two courts operate under, such as the EU's lack of a strong President or national army, and the nomination of the CJEU's twenty-seven judges by the executives of the Member States confirmed by a panel of experts, rather than nine Justices nominated by the President and confirmed by the U.S. Senate. But much like its SCOTUS counterpart, over the past fifty years the CJEU exercised legal diplomacy through activism or judicial restraint in EU foreign relations to establish its own authority in this realm.2 2 Overall, the CJEU shaped important aspects of EU foreign policy 23 by re-defining the nature of its internal and international obligations regarding human rights, 4 international trade,25 investment agreements, 26 and rule of law from the perspective of judicial independence and effective remedies.2 7 Through a functional comparison of legal diplomacy, namely the foreign relations jurisprudence of the SCOTUS and the CJEU, this Article highlights similarities in the use of legal doctrines, policy arguments and legal processes that enhance or discourage the judicialization of foreign relations through judicial activism of deference. In deploying doctrines concerning political questions, separation of powers, and federalism in treaty-making authority, both courts are exerting or retraining their legal diplomatic skills by walking the fine line of law and politics. Even though critics of the CJEU's legal diplomacy call this jurisprudence an inappropriate expansion of judicial power, 28 courts inevitably embed foreign relations into rule of law reasoning and open the debate to a multiplicity of legal and civil society actors to increase their legitimacy. With the rising wave of autocratic leaders and populist political parties advocating for more Brexit, NATO withdrawal, and with tensions rising inside the Union over the entrenchment of a liberal rule of law, the legal diplomacy of the CJEU ought to be reappraised as another legal barrier against the authoritarianism alongside its increasing need of institutional self-preservation evident in the formalism and deference arising from its own reasoning. 29

Part I of this Article addresses literature on the increasing judicialization of politics by focusing on the judicial empowerment of the SCOTUS and the CJEU visa-vis foreign relations. 30 A functional comparison between the SCOTUS and the CJEU elucidates how, despite different historical contexts and federal or supranational constitutional constraints, these two courts use similar doctrinal, interpretative, and legal process tools to engage in or refrain from exercising legal diplomacy "without putting the authority of the concerned court in peril."31 While in the US the notion of foreign relation exceptionalism has displaced the legal diplomacy exercised by the SCOTUS through the prerogative of the executive branch in international relations, in the EU, due to its supranational features including a less rigid separation of powers and federalism doctrines, the CJEU has deployed legal diplomacy not only in its external but increasingly in its internal relations.

In Part II, this Article shows how the judicialization of foreign relations arose before the SCOTUS and the CJEU through doctrinal interpretation of separation of powers doctrines with different ideological visions on the role of the judiciary. While the Act of State doctrine constrains the SCOTUS from engaging directly in foreign affairs, the Political Question doctrine allows the SCOTUS to judicialize foreign relations indirectly by shaping the powers of the other political branches. In the EU, a similar tension arose between the judicial avoidance of the CJEU, 32 and its involvement in foreign relations by crafting its autonomy of EU law as a way to preserve its authority rather than openly exercising judicial diplomacy. 33 Part III engages with federalism in foreign relations by comparing the SCOTUS jurisprudence on non-self-executing treaties to the mixed agreements jurisprudence of the CJEU. In both contexts, the courts engage in legal diplomacy by balancing two conflicting considerations leading to deference or activism in foreign relations. In one consideration, the exceptionalism in foreign relations leads to judicial restraint and greater power to the federal/executive branch in foreign relations. Against this, the courts weigh the judicialization of foreign relations and their greater involvement in balancing states versus federal interests in international investments and commercial policies.

Part IV addresses the increasing relevance of judicial independence in an era of crisis of liberal constitutional democracies around the globe.34 The example of Poland provides a perfect case-study to show how capturing the judiciary was at the center of the Polish governing coalition's strategy.35 However, the intervention of the CJEU slowed authoritarian momentum in Poland where the government is using all means to attempt to run afoul of judicial independence. 36 In this struggle the CJEU chose the path of legal diplomacy: rather than engaging politically like the European Parliament or the Commission through art. 7 TEU against Poland and Hungary, it applied new legal doctrines and procedural tools, such as injunctions, to gradually push the government towards compliance with EU standards. The CJEU engaged with the Polish government to entrench the notions of effective judicial remedies and judicial independence in its uniform jurisprudence that constitutes the liberal European rule of law. The increasing tension with the judicial nationalism emerging in the Constitutional Courts of its Member States, 37 has led the CJEU to exercise greater caution and deference to preserve its institutional rile in the Union.

Although the CJEU jurisprudence faced accusations of being too ideological, 38 or not doing enough to curb the autocrats,39 the Court is entrenching a liberal rule of law culture both outside and inside the Union. This Article concludes that, through its legal diplomacy, the CJEU worked towards the gradual entrenchment of rule of law doctrines first established in its foreign relations to then deploy them against the authoritarian threats inside the Union. Additionally, the CJEU adjudication against the autocrats created new important evidence of why and how authoritarian governments are violating EU law that gives the Commission the ability to request interim measures 0 or impose penalties and financial conditionalities to uphold the rule of law standard.41 In an age of authoritarianism, the CJEU is cautiously walking a fine line between law and politics with the certainty that its adjudication despite its formalism and deference is likely to trigger the hermeneutics of suspicion by commentators4 2 and political backlash from its Member States.4 3

PART I. COMPARING LEGAL DIPLOMACY

A. Legal Diplomacy in the ECtHR and the CJEU

Legal diplomacy is a term first coined by Mikael Rask Madsen, describing the work of the European Commission of Human Rights (predecessor of the Court, ECtHR) in the Cyprus case as a very first occurrence of such diplomacy.4 4 Greece brought suit against the United Kingdom concerning the rights of Greek insurgents in Cyprus, which ended with a situation where the settlement of the legal dispute happened via diplomatic means.4 5 In 1955, at the beginning of the European Human Rights system, the Commission took a strategic decision not to take its case before the Committee of Ministers, since this would have had severe negative consequences for the human rights system at large, but instead it chose a "diplomatic agreement" that allowed the preservation of the human rights system in Strasbourg.4 6 Legal diplomacy was a legal, rather than political, strategy used by legal and political European experts and soon became a basic premise in the institutional order laid out in the ECtHR.4 7 The legal strategy used by the Strasbourg Court to build its authority during the early years of its existence was a continuous balancing of the preservation of its institutional role, the tensions between different political powers, and the creation of new judicial doctrines giving life to the European Convention of Human Rights. These doctrines and discourses of a transnational court having to balance its jurisprudence against considerations about its legitimacy and authority in an international, regional and domestic setting constituted its legal diplomacy.

This use of law rather than politics to foster diplomatic relations and continue the judicial dialogue among European and national governments constitutes the legal diplomacy of the ECtHR as well as the CJEU in Luxembourg. These transnational courts do not always operate through a pure form of legal reasoning nor as political institutions, but rather these courts use legal diplomacy to walk a fine line between law and politics.4 8 Here, legal, political, and moral reasoning merge into a unique form of international conflict management.4 9 In action, legal diplomacy is a form of selfreflexive legal reasoning for which courts are responsive to inputs from parties subject to their international or supranational jurisdiction. 50 Because of the gap between the supranational and the domestic legal order, these courts use transnational scaling to leave room for a number of different ways for member states to adapt to international or EU law. For example, leaving a margin of discretion to states for the ECtHR or using proportionality in CJEU judgements on free movement allows these courts to exercise restraint vis-a-vis the decisions made by member state authorities in a way that judiciaries in federal systems are well aware of.51 This shows how legal diplomacy is a careful mix of activism and constraint by courts trying to preserve their authority inside and their legitimacy outside their jurisdiction.

According to Henrik Palmer Olsen, there is a variety of tools through which these actors exercise their legal diplomacy that can be mapped through a plethora of judicial strategies.52 For instance, self-restraint allows courts to build confidence between the member state governments and the ECtHR. This concept of legal diplomacy can be extended also to the ECJ in its internal relation to the EU member states and its very early engagement with international law as part of its foreign relations.5 3 Through autonomous concept formation these courts can assert their legal identity, so that through the well-known cases establishing the supremacy in Costa and the direct effect in Van Gend en Loos of EU law, the CJEU could create a culture of self-identity.54 By using legal precedents and stare decisis, courts refer to prior decisions to support new legal decisions, building consistency and therefore stability and authority.55 Creating greater access for litigants to European courts through rules on standing and thirdparty intervention, and addressing institutional bottlenecks related to caseload, allows parties who have not previously had standing to bring their cases to court.56 By adjudicating questions of individual rights, supranational courts directly impact European citizens' fundamental or mobility rights so that courts' judgements have tangible effects on those who have been mobilized through judicial action.57

### 1NC – Stare Decisis DA

#### Roe will survive now only if the justices maintain a strong standard of stare decisis. Plan’s holding increases judicial comfort with overruling statute .

Ariane De Vogue, Cnn Supreme Court Reporter, 11-30-2021, "Roe v. Wade has been the law of the land for nearly 50 years. Will that matter?," CNN, https://www.cnn.com/2021/11/30/politics/roe-wade-stare-decisis-abortion-supreme-court/index.html

The justices are gathering Wednesday to consider a momentous question that has roiled the political sphere for decades and become a major feature of every modern-day judicial confirmation hearing: should Roe v. Wade be overturned? Front and center at oral arguments will be a Mississippi law that bars abortion after 15 weeks of pregnancy, that has the court considering whether a woman has a constitutional right to end a pregnancy. How the Supreme Court crafted its Roe v. Wade decision and what it means today But lurking behind the law is another question that goes to the stability of the court as an institution. The justices will also weigh in on how seriously they should consider the very fact that Roe has been on the books for nearly a half-century. Put another way: if the court uses cases as building blocks to construct the rule of law, what happens when one block -- put in place in 1973 -- is yanked out? As much as some of the justices might wish they were writing on a blank slate, they cannot pretend they haven't dealt with Roe in numerous cases over the years. Equally important, several of the justices have at various times laid out the factors they weigh when voting to overturn precedent. How the court grapples with that question could illuminate the way forward for the court and its aggressive right flank as it grapples with other divisive topics in the future. Stare decisis In legalese, the doctrine the justices will consider on Wednesday is called stare decisis. It derives from the Latin "stare decisis et non quieta movere" meaning, roughly, to stand by things decided and not disturb the calm. For some, stare decisis is critical because it represents the accumulated wisdom of judges, preserves stability in the law and promotes an evenhanded and consistent development of legal principles. For others, like Justice Clarence Thomas, it is overrated at times, especially as he wrote in 2019, if it gives the "veneer of respectability" to what he called "demonstrably incorrect precedents." Private SCOTUS files that could reveal what happened in Bush v. Gore remain locked up Wednesday's case will bring the debate to a head as the court considers a federal appeals court decision that struck down the Mississippi law. The 5th US Court of Appeals -- one of the most conservative courts in the country -- invalidated the Mississippi law, holding it was in in direct contravention of Roe. "In an unbroken line dating to Roe v. Wade, the Supreme Court's abortion cases have established (and affirmed and re-affirmed) a woman's right to choose an abortion before viability," the court held. Mississippi appealed the decision to the Supreme Court. After the justices agreed to take up the dispute, the state attorney general made the big ask: "This Court should overrule Roe," because the decision has proven "hopelessly unworkable." Roe, and another case called Planned Parenthood v. Casey decided in 1992 have "inflicted profound damage," the state said. "Reliance interests do not support retaining them," the state argued. "And nothing but a full break from those cases can stem the harms they have caused." Supporters of abortion rights, were quick to respond, emphasizing from the start how the country has come to rely on Roe. "Two generations -- spanning almost five decades -- have come to depend on the availability of legal abortion and the right to make this decision has been further cemented as critical to gender equality," Julie Rikelman, a lawyer for Jackson Women's Health Organization, said in briefs. And she took aim at the new conservative majority. She said that if the court were to suddenly overrule Roe, after some 50 years, the new court would be turning its back on its institutional legitimacy. "Unless the Court is to be perceived as representing nothing more than the preferences of its current membership, it is critical that judicial protection hold firm absent the most dramatic and unexpected changes in law or fact," Rikelman wrote. But O. Carter Snead, a Notre Dame Law School professor, believes the court would be repairing its institutional legitimacy by overruling Roe. "The Court's abortion jurisprudence is completely untethered from the Constitution's text, history and tradition," he said in an amicus brief supporting Mississippi. "It has imposed an extreme, incoherent, unworkable, and antidemocratic legal regime for abortion on the nation for several decades." What liberals and conservatives say The justices have not always been consistent when it comes to stare decisis. Breyer made the case for the legal doctrine in the 2019 dissent when the court held that a state could not be sued by a private party in the courts of a different state. He said that stare decisis required the court to follow precedent in the case, not overrule it. In making the point he cited the abortion precedent in Casey -- the 1992 case where the court reaffirmed the core holding of Roe. "Overruling a case always requires special justification," Breyer wrote. "The people of this Nation rely upon stability in the law," Breyer added. "Legal stability allows lawyers to give clients sound advice and allows ordinary citizens to plan their lives," he said. "Each time the Court overrules a case, the Court produces increased uncertainty." The previous year, the court dealt a major blow to public sector unions striking down an Illinois law that required non-union workers to pay fees that go to collective bargaining. In doing so it overturned a 1977 case. Inside the court: A historic three hours that could decide the future of abortion rights Justice Samuel Alito wrote for a 5-4 court. "We will not overturn a past decision unless there are strong grounds for doing so," he said. "But as we have often recognized," stare decisis is not an "inexorable command." Alito laid out factors that he believed should be taken under consideration in deciding whether to overrule a past decision. They include the "quality" of the decision's reasoning, the workability of the rule established by the case, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision. Justice Elena Kagan dissented in that case, joined by liberal Justices Ruth Bader Ginsburg, Breyer and Sonia Sotomayor. Kagan castigated the majority, writing that there were no special justifications for overruling the case and that the decision had "proved workable." She called 1977 decision "deeply entrenched, in both the law and the real world." The precedent at issue wasn't wrong, Kagan wrote, "but even if that were true, it is not enough." In a 2020 case dealing with non-unanimous jury verdicts for serious offenses, Kavanaugh said that the doctrine does "not mean the court should never overrule erroneous precedents," and he listed landmark cases that overruled precedent including Brown v. Board of Education -- the landmark opinion from 1954 that struck down school segregation and the "separate but equal" doctrine. Kavanaugh said one factor the court should consider is whether a prior decision was "not just wrong, but grievously or egregiously wrong." For his part, Chief Justice John Roberts explained his view of stare decisis in Citizens United, the seminal campaign finance case in 2010. Roberts said the doctrine should not be a "mechanical formula of adherence to the latest decision." "When considering whether to reexamine a prior erroneous holding, we must balance the importance of having constitutional questions decided against the importance of having them decided right," he said. "Its greatest purpose is to serve a constitutional ideal -- the rule of law," he wrote. "It follows that in the unusual circumstance when fidelity to any particular precedent does more to damage this constitutional ideal than to advance it, we must be more willing to depart from that precedent."

#### Modifying antitrust precedent interferes with stare decisis protections.

Barak Orbach, Professor of Law and Director of the Business Law at the University of Arizona, ’15, “Antitrust Stare Decisis” w w w . a n t i t r u s t s o u r c e . c o m O c t o b e r 2 0 1

The Concept of Stare Decisis. Stare decisis is a legal concept the Supreme Court invokes inconsistently and which is not clearly circumscribed. 3 Nevertheless, Justice Cardozo described the concept as “at least the everyday working tool of our law.”4 Justice Brandeis articulated the general criteria guiding the application of stare decisis: Stare decisis is not . . . [an] inexorable command . . . Stare decisis is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right . . . even where the error is a matter of serious concern, provided correction can be had by legislation. But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this court has often overruled its earlier decisions. 5

This classic formulation presents stare decisis as judicial policy and draws a distinction between statutory stare decisis—interpretations of statutes that Congress may amend through legislation—and constitutional precedents that Congress is unlikely to modify. The Sherman and Clayton Acts created a framework for federal common law that develops through precedents. 6 Accordingly, antitrust precedents are not statutory, and the Court is expected to reconsider them. However, it would be an exaggeration to claim that the Supreme Court consistently treats antitrust only as federal common law, because it does not. As explained below, the Court also gives certain antitrust precedents the protection of statutory stare decisis.

Kimble’s Dictum. In Kimble, in a 6–3 decision, the Supreme Court used a challenge to a halfcentury old patent law precedent, known as the Brulotte rule, 7 which has generally been accepted as erroneous, to issue a decision about statutory stare decisis. The majority declined an invitation to overturn the precedent, emphasizing that Congress had chosen not to amend it. In such situations, the Court held, a “superspecial justification” is needed to reverse precedents interpreting statutes. 8 The Brulotte rule built on the old antitrust per se condemnation of leveraging “patent monopoly” through tying.

9 The origins of the rule and the petitioner’s arguments inspired the Kimble Court to make several references to antitrust law. In dictum, the Kimble majority declared that “stare decisis [has] less-than-usual force in cases involving the Sherman Act,”10 which gives courts “exceptional law-shaping authority.”11 The majority further explained: We have . . . felt relatively free to revise our legal analysis as economic understanding evolves and . . . reverse antitrust precedents that misperceived a practice’s competitive consequences. . . . Moreover, because the question in those cases was whether the challenged activity restrained trade, the Court’s rulings necessarily turned on its understanding of economics. 12

Together with this dictum about the relative weakness of antitrust stare decisis, the Kimble majority recognized that the Court may apply statutory stare decisis even to “‘judicially created doctrine[s]’ designed to implement . . . federal statute[s] . . . [since all] interpretive decisions . . . are balls tossed into Congress’s court.”13 Quite a few antitrust doctrines fit this characterization. Kimble was somewhat vague about the relationship between the Court’s willingness to overrule antitrust precedents and its commitment to certain doctrine.

#### Overturning Roe crushes LIO and IHRL leadership – US should not join the company of theocrats and authoritarians.

MARTHA F. DAVIS, Northeastern University School of Law, ’21, BRIEF OF INTERNATIONAL AND COMPARATIVE LEGAL SCHOLARS AS AMICI CURIAE IN SUPPORT OF RESPONDENTS, THOMAS E. DOBBS, M.D., M.P.H., STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL., Petitioner, v. JACKSON WOMEN’S HEALTH ORGANIZATION, ET AL., Respondent https://reproductiverights.org/wp-content/uploads/2021/09/International-and-Comparative-Legal-Scholars-Brief.pdf

E. Overruling Roe and Casey Regresses the Right to Abortion Care in the United States, Placing It in the Company of “Anti-Models.”

In contrast to the global trend towards liberalization, upholding Mississippi’s 15-week ban, and thus overruling Roe and Casey, would constitute a significant regression in the right to abortion care. Instead of “normalizing” U.S. abortion laws compared to in ternational peers, overturning Roe and Casey would put the United States in the company of countries like Poland and Nicaragua, as one of only a few countries moving towards greater restrictions on legal access to abortion in the past twenty years. In Poland, restrictions to legal abortions have appeared alongside increased limitations on democratic freedoms, as well as concerns regarding judicial independence and a breakdown in the rule of law. See Diego García-Sayán (Special Rapporteur on the Independence of Judges and Lawyers), Rep. on His Mission to Poland, U.N. Doc. A/HRC/38/38/Add. 1 (Apr. 5, 2018).

The ECtHR has repeatedly held Poland accountable for its failures to ensure access to legal abortion and other reproductive health services, finding that its laws violate the right to private life in Article 8 of the ECHR. See P. & S. v. Poland, App. No. 57375/08 Eur. Ct. H.R. (2013); R.R. v. Poland, 2011-III Eur. Ct. H.R. 209; Tysiąc v. Poland, 2007-I Eur. Ct. H.R. 219.

In these cases, the court reiterated that states that have signed and ratified the ECHR have positive obligations under Article 8 of the Convention to adopt measures to secure respect for an individual’s private life. See P. & S. ¶ 99; R.R. ¶ 200; Tysiąc ¶ 116 (“[o]nce the legislature decides to allow abortion, it must not structure its legal framework in a way which would limit real possibilities to obtain it”); P. & S. ¶¶ 95–99; R.R. ¶ 200; Tysiąc ¶ 17 (states have “a positive obligation to create a procedural framework enabling a pregnant woman to exercise her right of access to lawful abortion”). In each case, the court concluded that Poland’s failure to ensure practical and enforceable access to legal abortion and prenatal diagnostic testing amounted to violations of the state’s positive obligations under Article 8 of the Convention.48

In 2006, Nicaragua’s National Assembly voted to approve a bill that outlawed abortion without any exceptions pursuant to a campaign led by the Catholic Church, which was supported by current President Daniel Ortega Saavedra during his presidential campaign. 49 Previously, Nicaragua had permitted “therapeutic abortions.” The revised Penal Code now subjects individuals who perform or obtain an abortion to lengthy prison terms. Since 2006, human rights organizations and international legal bodies like the Inter-American Commission on Human Rights have called for Nicaragua to liberalize its abortion laws, finding that its laws “continu[ally] violat[ed] women’s sexual and reproductive rights,” preventing Nicaragua from complying with international human rights obligations.50

The U.S. Department of State has also recognized “significant human rights issues” in Nicaragua under the Ortega presidency, which functions as a “highly centralized, authoritarian political system dominated by [President Ortega].” U.S. Dep’t of State, Nicaragua 2020 Human Rights Report, supra, at 1. Ortega’s Sandinista National Liberation Front party exerts total control over Nicaragua’s executive, legislative, judicial, and electoral functions. Id. In 2015, a “citizens’ initiative” submitted to the National Assembly sought to liberalize abortion when a pregnant person’s health was at risk, including in the case of rape. The initiative was signed by over 6,000 people, but was rejected by the National Assembly without debate in 2017.51 The United States was “one of the first countries to liberalize its abortion laws.” Rachel Govelstein & Rebecca Turkington, Abortion Law: Global Comparisons, Council on Foreign Relations (Oct. 28, 2019, 8:00 AM), https://www.cfr.org/article/abortion-lawglobal-comparisons. However, regressive state legislation like the Mississippi Act, and other efforts to erode and overturn Roe and Casey have led to the United States being recognized as one of the few countries whose abortion laws have become more restrictive in the last few decades. See id.

Further movement in this direction will negate the progress that the United States has made with respect to abortion care—and the rights of women to autonomy, self-determination and equality which access to abortion underpins. In short, finding in favor of Petitioners by upholding the Act, and overruling Roe and Casey, would truly make the United States a global outlier.

#### IHRL credibility solves global war.

Tara Van Ho et al, Lecturer of Law @ Drexel, Rachel López, Professor of Law @ Drexel, Evelyne Schmid, Prof of Ilaw @ Lausanne (Switzerland), 3-8-22, “Deprioritizing Human Rights Will Not Protect Territorial Sovereignty”https://www.justsecurity.org/80571/deprioritizing-human-rights-will-not-protect-territorial-sovereignty/

When the winning powers of World War II established the United Nations (U.N.), they did so with two principal goals in mind: avoid war and ensure respect for human rights.

That those two goals are the core of the preamble to the U.N. Charter is unsurprising. The international community had not only survived a war, it had also endured a genocide that under a previous, positivist approach to law, seemed lawful to commit against a state’s own citizens. Those who survived two global wars in the span of thirty years understood that there is a link between respect for the individual and respect for other nations, one that may not always seem evident but that stems from the impact of a creeping degradation of equality and respect for others. As the Institut de droit international declared in its very first session after the war: “An effective legal order between States is inseparable from respect for the human person in the internal order of each State.” In her recent piece, Professor Ingrid Wuerth undervalues this intrinsic link, advocating that we deprioritize human rights for the sake of world peace.

Wuerth calls for a ‘restrained’ international law that is less concerned with human rights and humanitarian objectives and more narrowly focused on territorial integrity. She argues that the “prohibition on the use of force has been undermined by efforts to pursue other objectives through international law, in particular human rights and humanitarian ends.” By “expanding international law to focus on human rights and humanitarian objectives at the expense of territorial integrity,” she claims international law has been weakened by “credibility and other problems.”

In Wuerth’s telling, inter-state peace and territorial integrity sit at odds with investing in human rights because “international law is not strong enough to do everything well.” As such, it should focus only on what she deems most significant—territorial integrity—while diminishing objectives that would threaten that goal. Humanitarian objectives, she argues, should be pursued through other means while international law’s core function should be to mediate states’ territorial relationships.

Yet even in Ukraine today, we can see the link between respect for the individual and respect for the territory of another state playing out in stark form. The historical lead-in to the current war in Ukraine is deeply linked to the denial of human rights by Russian and past Ukrainian leadership, and their reclamation (albeit with limited success) by the Ukrainian people. The 2014 Euromaidan protests centred on the need to rid Ukraine of corruption and human rights abuses by a Russian-backed government. It was that rejection of Russian-backed corrupt leadership that Russian President Vladimir Putin has responded to, first with the occupations of Crimea, Donetsk, and Luhansk and now with threats to Ukrainian sovereignty itself. That Putin is invoking baseless claims of genocide to try to legitimize and justify his current invasion does not change that reality or the legitimacy of his conduct in Ukraine.

Wuerth’s proposal would have the United Nations disregard one of its two core purposes. It would also empower bad actors (and bad-faith actors) to define international law solely by and through their breaches rather than our communal goals and interests. Over time, this would require a constant narrowing of international law as each new breach or bad-faith argument linked to the disregard of territorial sovereignty would require a recapitulation of international law’s focus solely to preserve its narrowest remit.

We do not believe this path is viable or desirable.

In response, we wish to focus on three related issues: the centrality of human rights to inter-state peace; the use of human rights and humanitarian law as a ‘bogeyman’ of international law; and the significance of human rights as a unique goal within international law.

Human Rights and Inter-state Peace

The language of human rights has been frequently invoked as a pretence for war, currently by Putin regarding Ukraine and previously by western states, inter alia, seeking regime change in Libya and Iraq. But, as Kevin John Heller has explained (and summarized here), human rights and humanitarian concerns are rarely invoked in any real legal sense to justify assaults on territorial integrity, with the UK’s justification of action in Syria in 2018 being a troubling exception. Instead, human rights considerations are often used as political propaganda aimed at garnering popular support for war. That political propaganda should have little place in defining the appropriate relationship in international law between human rights and the prohibition on the use of force or the protection of territorial integrity in article 2(4) of the U.N. Charter.

As lawyers, we must not allow the manipulation of the language of human rights to obscure the connection between the two. Respect for human rights and territorial integrity generally go hand and hand instead of being at odds. The failure to respect human rights can generate significant armed conflicts that cross borders, such as those experienced on the borders between Colombia and Venezuela and Colombia and Peru. And, as the recent examples of North Korea and China show, nations that flout human rights at home are often willing to disrespect the territorial integrity of their neighbours.

Ultimately, a stronger commitment to human rights—rather than a weaker one—is likely to enhance respect for territorial integrity rather than undermine it.

The Mythology of Human Rights Protections

A commitment to human rights takes time and effort. It is much easier to blame human rights for failing to solve the world’s problems—or adding to those problems—than it is to generate real respect for them. A mythology has emerged suggesting human right laws is responsible for, or at least complicit in, the rise of populism or income inequality.

Unfortunately, the protection of human rights law—and its expansion—is not nearly as powerful as their critics would suggest and cannot be blamed for the limits of international law. If only respect for human rights were as central to, and influential within, the international legal system as Wuerth and others suggest, we suspect the world would be a more peaceful place.

Instead, the international community has reserved its weakest enforcement mechanisms for human rights and environmental protection. For international peace and security, the U.N. Charter allows for binding resolutions from the Security Council. For international investment law, arbitration panels can order awards in the billions that are enforceable without appeal in over 180 states and territories. For trade law, WTO panels can order a state’s laws unenforceable. For international criminal law (and indirectly at least parts of international humanitarian law), we have established ad hoc tribunals and now the International Criminal Court.

But, for human rights, the U.N. system only permits non-binding views, opinions, and requests from treaty bodies and special procedure mandate holders. Human rights defenders must hope that the moral power of the claim for human rights will persuade a state to comply—or will compel the international community to act. Because the law itself does not provide for it.

Human rights have not assaulted territorial integrity: human rights law is not that powerful.

Moreover, even if Putin’s claims of genocide were true, nothing in human rights law would justify his war. Even when the most egregious human rights violations occur, international law does not authorize states to unilaterally take action absent self-defence. This is perhaps the greater irony of Wuerth’s argument: the erosion of territorial sovereignty by human rights law is more imagined than real. Even in the case of Russia’s current invasion of Ukraine, it is the expansion of claims of self-defence, a principle meant to protect territorial integrity, that bears most of the blame.

Human Rights as a Legitimate Means and End

What is missing from Wuerth’s argument is the place where human rights often matter most—within states. Where it is most effective, human rights law helps to prevent states from mistreating their own population and provides greater protections for the most vulnerable among us.

Domestic state officials, local bureaucrats, non-governmental organizations and other “law intermediaries” regularly use human rights conventions in their day-to-day work. Invoking human rights law is rarely a panacea, but painstaking, mundane processes built on human rights law have led to concrete improvements for real people. By defining international legal expectations, the United Nations has provided the foundation for advancing human rights through domestic systems. We have witnessed the prohibition and prosecution of acts of torture and extrajudicial killings, the provision of healthcare and education on non-discriminatory grounds, greater access to public transportation for persons with disabilities, rebukes of unlawful evictions, and the creation of shelters from domestic violence, all built on international legal claims.

Most of the time, these successes occur far outside the radar of the international law literature, but the effects of international human rights law seem strongest in limiting and framing sovereign power within borders rather than between them. To say that international lawyers and the United Nations should deprioritize human rights work because it has been rhetorically misappropriated by states would throw the baby out with the bathwater.

### 1NC – ASPEC

#### Interpretation – the aff should specify the agent of antitrust authority and sanctions.

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

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

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

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

Which body decides guilt or innocence?

What sanctions are imposed for wrongdoers?

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

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

#### Voter for negative ground. Institutional structure and agent of implementation key to antitrust outcomes. Any debate over only the preferred outcomes is hopelessly incomplete. Cross-ex is too late for counterplan competition. 2AC clarification destroys 1NC strategic coherence. Every branch is topical. Rule-making and common law don’t link to any of the same positions and reading both requires contradiction.

### 1NC – China PIC

#### The United States federal government should defer to executive branch interpretations of comity.

### 1NC – ITC CP

**The United States federal government should clarify that 19 U.S.C. § 1337 authorizes remedies against price fixing by the Chinese private sector under subsection (a)(1)(A), irrespective of subsections (a)(2) and (a)(3), and provide all resources necessary for adjudicating and proactively investigating such cases.**

#### It solves enforcement AND deterrence without expanding the scope of antitrust law.

Barry Pupkin 20, practices primarily before the Federal Trade Commission and the US Department of Justice, as well as other regulatory and legislative bodies including the Merger Task Force of the European Commission, US Congress and the Committee on Foreign Investment in the United States, “Beyond IP Rights: Pursuing Antitrust Claims Under Section 337 of the Tariff Act,” Global IP &amp; Technology Law Blog, 4-13-2020, https://www.iptechblog.com/2020/04/beyond-ip-rights-pursuing-antitrust-claims-under-section-337-of-the-tariff-act/

Although investigations under Section 337 of the Tariff Act of 1930 have focused on intellectual property rights involving patents, unregistered trademarks or trade secret claims, the language of Section 337 is much broader.

The provision applies to any “unfair methods of competition and unfair acts in the importation of articles.” That language is similar to the Federal Trade Commission Act, which prohibits “unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce.”

In June 2016, decades after the last Section 337 claim based on an antitrust violation had been filed, U.S. Steel alleged, in part, a conspiracy to “fix prices and control output volumes” in order to “restrain or monopolize trade and commerce in the United States” in violation of Section 337, in Certain Carbon and Alloy Steel Products. The International Trade Commission (ITC or the Commission) dismissed the U.S. Steel complaint because the Commission said that U.S. Steel had not pleaded the requisite “antitrust injury” to proceed. In fact, the Commission stated that U.S. Steel, “if given the opportunity to amend the complaint, [] will not be able to plead or demonstrate antitrust injury.” One commissioner, Meredith M. Broadbent, dissented from the ITC decision, arguing that Section 337 confers broad unfair competition jurisdiction on the ITC, and that the Commission should not be constrained by standing requirements under US antitrust laws. She said that Section 337 was intended “to capture within its scope any nefarious practices that distort domestic competition,” and as such, the U.S. Steel petition would have been sufficient and should not have been dismissed. That said, it soon became clear that the Commission decision against U.S. Steel was not meant to foreclose future Section 337 claims based on antitrust violations. In fact, soon after the Certain Carbon and Alloy Steel decision, the ITC initiated an antitrust investigation in Certain Programmable Logic Controllers pursuant to Section 337.

Where does this leave a company interested in pursuing an antitrust-related Section 337 matter going forward?

In the Carbon and Alloy Steel case, U.S. Steel based its Section 337 claim on a violation of the Sherman Act. That Act prohibits contracts, combinations and conspiracies in restraint of trade, including price fixing and market division. The Sherman Act also prohibits monopolization and attempts to monopolize. Specifically, with regard to the U.S. Steel claims that Chinese steel producers conspired to fix prices at below-market levels and control output and export volumes, the ITC determined that U.S. Steel needed to allege that the Chinese respondents had agreed to set prices below a certain level of their cost and that the Chinese respondents had a dangerous probability of recouping their investment (i.e., their predatory below-cost prices). A private plaintiff bringing a Section 337 case, then, would need to plead and prove the same antitrust injury that courts require of private plaintiffs bringing cases under US antitrust laws.

For predatory pricing claims, antitrust injury is shown by pleading and providing evidence of below-cost pricing and recoupment. These two claims are difficult to prove given the logistical hurdles of conducting discovery and obtaining relevant cost and recoupment information in China from Chinese companies. It might have been possible, though, to plead injury based on the anticompetitive conspiracy among Chinese companies to effect price at a level that would not allow U.S. Steel to invest in new technology or to continue to provide quality service to its customers. Section 337 does not limit antitrust inquiries to predatory pricing claims alone.

In fact, in January 2018, Radwell International filed a Section 337 complaint with the ITC requesting that it institute an investigation into certain alleged unfair methods of competition and unfair acts by Rockwell Automation. In its complaint, Radwell alleged several different antitrust-based claims, which it said would “destroy or substantially injure a domestic industry in the United States” and/or “restrain or monopolize trade and commerce in the United States.” These claims included a conspiracy to fix resale prices; a conspiracy to boycott resellers; and monopolization. Just as these claims are substantially broader than the claims made by U.S. Steel, the ability to demonstrate antitrust injury for each of these claims was correspondingly broadened. On March 23, 2018, the ITC issued a notice of institution of investigation into the antitrust-based Section 337 claims brought by Radwell.[1]

What does this mean for a Section 337 litigant going forward?

It means that antitrust lawyers and trade lawyers need to work closely with one another to figure out the best, most credible claims, as well as the arguments, under both antitrust and trade law that will likely be sustained by the ITC. Given the dearth of precedent in this area, it seems that in pursuing antitrust-related Section 337 actions, it is probably best to plead as broad and as comprehensive a set of antitrust claims as possible. Counsel should assess any and all possible antitrust offenses that might be relevant to the facts, and allege, as well as gather evidence of, antitrust injury for each such offense. Alternatively, because the language of the Tariff Act is so broad, prohibiting unfair methods or acts that may “restrain or monopolize trade or commerce in the United States,” a petitioner might avoid the necessity of showing antitrust injury by grounding its complaint only on the language of Section 337.

We believe that Section 337 can become an even stronger tool to exclude certain imports from sale in the US if antitrust claims become a more routine allegation in future Section 337 actions. If this happens, and more precedent is developed, petitioners will be in a much better position to frame their competitive injury arguments going forward.

### 1NC – Deference PIC

#### The United States federal government should:

* increase prohibitions on price fixing by the Chinese private sector by expanding the scope of its core antitrust laws;
* direct the FTC and DOJ to work together, through rulemaking and prosecutorial discretion, to preserve U.S. tech dominance against European overreach.

### 1NC – DOJ Tradeoff DA

#### DOJ antitrust investigations solve supply chain stability now.

Fishman et al. ‘3/1 [Todd Fishman, Noah Brumfield, Eun Joo Hwang, Elaine Johnston; partners at Allen & Overy, specializing in antitrust; 3/1/22; “U.S. criminal antitrust enforcement priorities take shape through inter-agency and global coordination”; <https://www.allenovery.com/en-gb/global/news-and-insights/publications/us-criminal-antitrust-enforcement-priorities-take-shape-through-inter-agency-and-global-coordination>; Allen & Overy]

The DOJ Antitrust Division is amplifying the Biden Administration’s whole-of-government approach to antitrust enforcement by seeking cooperation from enforcers outside the U.S.

On February 17, 2022, the Antitrust Division of the U.S. Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) announced an initiative to combat collusive schemes designed to exploit supply chain disruptions caused by Covid-19. The agencies intend to work together to prioritize existing investigations and to proactively investigate collusion in industries that have been particularly affected by supply chain disruptions, concerned that the pandemic may have opened up opportunities for competitors to fix prices for illicit gains.

In pursuit of this effort on an international level, the DOJ has assembled a working group of global peers including the Australian Competition and Consumer Commission, the Canadian Competition Bureau, the New Zealand Commerce Commission, and the United Kingdom Competition and Markets Authority. This working group is reportedly sharing intelligence and utilizing international cooperation tools to detect and prevent anticompetitive schemes to fix prices or wages, rig bids, or allocate markets.

Whole of government approach to Procurement Collusion Allegations

The DOJ and FBI have previously joined forces to pursue areas of criminal antitrust enforcement. In November 2019, the DOJ launched the Procurement Collusion Strike Force (PCSF) as a coordinated national response amongst U.S. Attorneys’ Offices, the FBI, and multiple agency inspectors general to combat antitrust schemes in government contracting at federal, state, and local levels. Since its creation, the PCSF has added a number of national partners and even expanded internationally with the Fall 2020 launch of PCSF: Global, which is designed to promote the investigation and prosecution of schemes outside of the U.S.

The PCSF’s public investigations have to date brought scrutiny in the markets for security services, aluminum structures, and concrete construction. These efforts have led to a total of USD22 million paid in criminal fines and multiple guilty pleas by corporations and individuals, including the PCSF’s first international resolution in June 2021 involving a Belgian firm which pled guilty to participating in a conspiracy to rig bids, allocate customers, and fix prices for defense-related security services. Most recently, in February 2022 a former executive of a North Carolina engineering firm was convicted for his participation in a bid-rigging conspiracy for aluminum structure project contracts involving the North Carolina Department of Transportation.

The PCSF, which has been described by its Director Daniel Glad as “a whole-of-government approach to combating a whole-of-government problem,” takes to heart the inter-agency cooperative approach encouraged in President Joe Biden’s July 2021 Executive Order on Promoting Competition in the American Economy. Glad indicated in an October 2021 speech that the DOJ sees an opportunity to “lead the way” in vigorous enforcement of the antitrust laws, and that the PCSF “sets a model” for cooperative government partnerships to aggressively protect competition.

A Spring 2021 update from the DOJ indicated that the agency has “nearly three dozen PCSF-related investigations opened to date,” with this number climbing as PCSF agents uncover additional conduct through its Tip Center, district teams, and the PCSF Data Analytics Project, which uses analytics to identify collusion and target bid rigging.

The recent success of the PCSF and proactive stance of the DOJ in tackling potential collusive behavior in specific markets presage an increase in criminal antitrust enforcement, and confirm that the agency’s reach will be bolstered through collaborations backed by the whole of government.

DOJ Focus on supply chain disruptions

The DOJ’s focus on supply chain collusion may have been born in part out of criticism from legislators and broader dissatisfaction from a public that has seen inflation accelerating to the highest level in decades. On February 8, 2022, Senator Elizabeth Warren (D-Mass.) implored Attorney General Merrick Garland and Deputy Attorney General Lisa Monaco to take more aggressive action against companies engaged in price-fixing. Warren wrote that increased demand coupled with buckling supply chains have allowed companies to grow their market power through anticompetitive means, which she implied is the root of today’s inflation.

The DOJ’s latest initiative expands the scope of its scrutiny into the transportation sector. In July 2021, the DOJ signed the first inter-agency Memorandum of Understanding with the Federal Maritime Commission (FMC) to foster cooperation between the agencies in oversight of the competitive conditions in the ocean liner shipping industry. This partnership was reaffirmed on February 28 through a joint announcement that the agencies would share resources to enhance enforcement in the maritime industry: the DOJ is to provide the FMC with the support of attorneys and economists for enforcement against violations of the Shipping Act, and the FMC has pledged to provide the DOJ with support and industry expertise in relation to antitrust enforcement actions. The DOJ’s most recent endeavor now brings other companies involved in the supply chain – those with trucking, warehousing, third party logistics, and delivery capabilities – into the crosshairs.

Key points

In partnership with the FBI, the DOJ Antitrust Division recently announced an initiative focused on collusive conduct arising from supply chain disruptions caused by Covid-19.

The announcement of this criminal enforcement priority follows on the heels of the Procurement Collusion Strike Force’s active prosecutions in 2020 and 2021, which resulted in a total of USD22 million in criminal fines and multiple guilty pleas.

The DOJ’s proactive posture in terms of criminal antitrust enforcement in recent years suggests an increase in both its activity and the activity of its national partners in the near future, posing a significant threat to those who seek to violate the antitrust laws.

#### Resources are finite – the plan forces tradeoffs.

Brian Blais 21. Partner in the litigation and enforcement practice group @ Ropes & Gray LLP and a former federal prosecutor, 3/26/21. “Podcast: 2021 DOJ Enforcement Priorities Under U.S. Attorney General Merrick Garland.” Interview with Lisa Bebchick. https://www.ropesgray.com/en/newsroom/podcasts/2021/March/Podcast-2021-DOJ-Enforcement-Priorities-Under-US-Attorney-General-Merrick-Garland

Brian Blais: Well, as I referenced earlier, I think one real challenge for the Garland DOJ will be the many competing demands on the resources available to DOJ leadership. In addition to the many corporate-related priorities I just discussed, there are a large number of Biden administration priorities that implicate the DOJ, many of which represent a sharp break from the priorities of the Trump Department of Justice—so those include things like environmental justice and the prosecution of environmental cases; civil rights and voting act cases; the ongoing fight against domestic terrorism, including as we talked about earlier, the January 6th Capitol attack; immigration reform and potential shifts in immigration prosecution priorities; potentially heightened antitrust enforcement; and criminal justice reform writ large, just to name a few. And putting aside even all these priorities, there’s a huge backlog of cases in the Department more broadly due to pandemic-related shutdowns, including a substantial trial backlog. So there will be a significant amount of prosecutorial time and effort in the near-term devoted to resolving these already charged matters, as well as moving along already opened investigations, so that leaves reduced prosecutorial bandwidth to advance any new enforcement priorities. So all of that’s to say, one big question for the Garland DOJ is: Can it do it all, or will these various competing demands lead to a natural prioritization of certain enforcement priorities over others? We’ll certainly have a better sense in the coming weeks and months as the remaining DOJ leadership is confirmed, as priorities get communicated, and as the first round of investigations under the new leadership start to launch.

#### Supply chain disruptions cause global war.

Bradley Martin 21, director of the RAND National Security Supply Chain Institute, and a senior policy researcher RAND Corporation, “Supply Chain Disruptions: The Risks and Consequences,” 11/15/21, https://www.rand.org/blog/2021/11/supply-chain-disruptions-the-risks-and-consequences.html

By now the impacts of supply chain disruption are becoming all too familiar: shortages, inflation, factory closures, goods waiting at ports to be unloaded. All these impacts are serious enough, but another more-hidden concern lurks just beneath the surface: the impact of supply chain failure on national security, broadly defined as a nation's ability to protect and ensure the well-being of its population.

This definition of “national security” is broader than just the defense industry or military-related efforts; it also could encompass the very ability of a nation to ensure economic well-being, public health, and protection of a nation's key infrastructure. Supply chain disruptions cause general economic disruption and key commodity shortages, which then in turn can, in fact, drive aggressive national behavior and international instability. And ironically, this reactive aggressive national behavior can happen even if the health of a national economy itself depends upon continued international economic interdependence. Indeed, this very interdependence can create vulnerabilities. So a systematic effort, cutting across agencies and public and private sectors, could be one way to ensure these vulnerabilities are understood and mitigated.

Supply Chain Disruption and Conflict

Dispersed supply chains develop because actors find it's economically advantageous to seek the least-expensive and most-productive sources of supply. These dispersed chains develop for good reasons, but they create complicated interdependencies whose risks and vulnerabilities are sometimes not even understood, let alone mitigated.

While the reasons for creating these chains lie largely with private interest, the effects of disruption—which can come from sources ranging from malign human action to natural disaster—are rarely localized. When shortages occur in one industry, the disruptions in one area nearly always spill into adjacent companies and sectors. Whole economies feel the impact, not isolated actors.

The impact on vulnerable populations may be particularly dire. Supply chain disruptions do not just create higher prices and shortages among high-end consumer products, such as cars. They also affect more-basic commodities such as generic drugs or energy, increasing the cost of living and the provision of basic needs.

This kind of disruption can create instability more generally, promoting conditions for conflict between and within nations. For the most part, nations try to maintain access to markets and resources by peaceful means such as stockpiling, direct investment in partner nations, and use of other financial incentives. However, there is no guarantee that such competition will remain peaceful.

As affluent nations and individuals can find ways to mitigate shortages, they may create blocs of “haves” and “have nots,” where some actors have enough but others cannot meet basic needs. “Haves” may find ways to more directly change distribution, most likely at the expense of other “have nots.” Or “have” nations may try to forcefully safeguard what they have gained and work to exclude competitors. In all these cases, the actors are facing shortages, occasioned by interdependence, and seeking security for themselves in ways that actually promote wider international systemic instability.

Escalation of Conflict

In some cases, supply chain disruptions can have an even more-direct impact than general disruption, causing shortages of commodities the nation must have to ensure national security. This kind of disruption can go beyond matters of justice, equity, and general prosperity to threatening a nation's very ability to defend itself and look after its citizens. Some examples are pharmaceuticals and personal protective equipment, energy, food, raw materials used in manufacturing, and semiconductors used in multiple different systems including military applications. Such shortages can make the need for a national government to act more dire and immediate and thus raise the risk of conflict. In some cases, particular types of raw materials only exist in certain places, so shifting to more-secure sources isn't even possible.

Supply chain disruptions create both leverage for some nations and reasons for other nations to minimize leverage. For example, Taiwan currently dominates the market for semiconductors, which in some respects gives it leverage with other actors, including the mainland People's Republic of China (PRC). Semiconductors are capital-intensive—a new fabrication facility for semiconductors costs approximately $4 billion, with some estimates as high as $12 billion, and can take three or more years to build.

This does not even account for the skilled labor, and points to the difficulty of readily shifting production. As a result, Taiwan gains considerable leverage over the PRC and indeed the world. However, this very dominance, plus its proximity to the PRC and its dependence on the PRC for other commodities, may in fact raise the incentive for the PRC to take aggressive military action to ensure access to a key commodity. Such action could range from a “quarantine” to military threats to an actual invasion.

Aggressive action may stop well short of outright war, yet still be very dangerous for actors in the system. The problem of security vulnerability overall is complicated by the complexity and spread of supply chains across the world. A nation might not be able to successfully secure a commodity just by aggressive action against a single other nation. However, that action against another nation certainly could have the unintended effect of causing supply chains to fail in a more general manner. Aggressiveness, while understandable and probably predictable, might therefore also be extremely dangerous and unproductive.

Conflict and Instability

Nations have gone to war in the past over natural resource shortages or in an effort to secure key markets and labor pools. The need to secure resources and markets was an explicit premise in German and Japanese actions leading to World War II. Such conflict has occurred even during times of significant interdependence between nations, such as in the European system prior to World War I. Historically, nations have not yet resorted to war to ensure supply chain security, but it might be a mistake to assume that such action could never occur when circumstances become sufficiently dire. Interdependence does create incentives to cooperate to avoid disruption, but may offer few alternatives for some desperate nations if some part of the interdependent chain is broken.

## China

### 1NC – AT: China

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

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

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

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

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

#### Circumvention – act of state doctrine.

Qingxiu Bu, Commercial Law @ University of Sussex, formerly professor of transnational business @ Georgetown Law Center, ’20, ‘“Respectful Consideration, but Not Deference: Chinese Sovereign Amici in the US Supreme Court Vitamin C Judgment” Journal of European Competition Law & Practice, Vol. 11, No. 5–6

1. Public actors vis-à-vis private actors

The act of state doctrine refers to a defence designed to avoid judicial inquiry into state officials’ conduct as opposed to private actors.86 The long-standing doctrine precludes courts from ruling on the validity of the public acts of a foreign sovereign within its own territory.87 In Vitamin C, the privately set price does not qualify as state action, and thus the doctrines of act of state should not bar plaintiffs’ suit. It may not meet the test of reasonableness, neither is the decision equitable. Otherwise, the effect would be to substantially impair antitrust enforcement and impose significant costs on US consumers.88 In the case of a foreign government ordering its firms to fix prices, the victims are at the will of the foreigners’ power and have no recourse.89 In order to apply the foreignstate compulsion defence, the Restatement (Fourth) 2018 clarifies that, the sanctions for failing to comply with the foreign law must be severe, and the person in question must have ‘acted in good faith to avoid the conflict’.90 The threshold is unlikely to be met given the intertwining of public and private actions inChina. In terms of the private actors’ price fixing, the defendants in Vitamin C had strong incentive to maximise their profits at the expense of US consumers, who have even benefited from the mandate.91 This happens when Chinese MNCs operating in a hybrid state capitalism pursue conduct in violation of the US antitrust laws.92 Such a scenario takes place more often in some key industries that the Chinese government firmly controls. It is rare in China for the government to use plausibly state-sanctioned coordination.93

Fromthe view of the Second Circuit, foreign sovereign briefs are likely a superior source on foreign law than the Court undertaking its own analysis.94 The overwhelming limitations on the court’s jurisdiction may create a substantial loophole in dealing with foreign deference. With the defendants’ conduct immunised, those Chinese firms’ interests have been outweighed over theirUS counterparts. 95 Requiring absolute deference would virtually allow MOFCOM to shield the Chinese defendants from the reach of US antitrust law.96 In this vein, a conclusive deference standardmakes it easier for defendants to prove foreign sovereign compulsion.97 It would be difficult for the US plaintiffs to gain remedies if a federal court stuck to a ‘bound to deference’ approach.98

#### Chinese price fixing key to economic and political stability. Liberalization is economic shock therapy.

Jake Werner, Postdoctoral Global China Research Fellow at the Boston University Global Development Policy Center, ‘21, "China’s Market Reformers," Dissent Magazine, https://www.dissentmagazine.org/article/chinas-market-reformers

The extended crisis of globalization has led to increased interest in China’s path over the last four decades. China is the only large poor country to achieve a dramatic increase in wealth and status in the neoliberal era, and it did so while maintaining a powerful role for the state in the economy. Its authoritarian political system has been exceptionally resilient. During the upheavals of recent years—from the Great Recession to the eurozone crisis to the emerging markets taper tantrum to the worldwide failure to stem the COVID-19 pandemic—China has seemed to stand outside the chaos.

This apparent strength has provided fodder for a cottage industry on Chinese exceptionalism both inside and outside China. According to these accounts, China is either a sinister autocracy bent on dismantling the liberal international order or an accomplished meritocratic bureaucracy securing the welfare of its people against the implacable hostility of the West. The conviction that China is an outlier has deepened geopolitical tensions, encouraging Chinese nationalists in their demands for greater global influence while galvanizing the defenders of U.S. hegemony determined to prevent such an outcome.

In her new book, How China Escaped Shock Therapy, Isabella M. Weber offers a valuable corrective to such essentializing narratives. She provides a fine-grained account of the contentious economic reform debates that took place in China in the 1980s, and situates them in a larger historical and conceptual context. Unlike most of the former Soviet bloc and the former Third World, China did not suffer the debilitating effects of neoliberal shock therapy—the rapid transformation of a state-led economy to one dominated by market forces—and for Weber, the story of how China avoided this fate is key to what makes it different today.

Shock therapy consists of a set of policies implemented in quick succession: deregulation, privatization, tax cuts, public spending austerity, trade and capital account liberalization, and—particularly important in those countries moving away from a planned economy—a rapid switch from state prices to ones set by the market. In vivid detail, Weber shows how close the Communist Party leadership came in both 1986 and 1988 to unleashing such a storm on Chinese society. In contrast to most of the countries that did implement shock therapy, the Chinese version would have been entirely voluntary. China’s unique trajectory, then, was not predetermined, but came about through the contingent resolution of elite policy debates.

Earlier accounts of this period, like Joseph Fewsmith’s Dilemmas of Reform in China and Barry Naughton’s Growing Out of the Plan, remain essential, yet they are indelibly marked by the moment of neoliberal triumph out of which they arose. Their narrative—still common in the present—is of “reformers” fighting the good fight of freedom and utility-maximization against “conservatives” who protected special interests by veiling their opposition to reform in criticism of rising corruption or economic instability.

Weber’s approach is different. She argues persuasively that every participant in these debates, having fundamentally broken with Maoist orthodoxy, was a reformer. All were contending within a single paradigm that privileged economic development over social equality and asserted impersonal economic laws like the determination of value by the market against mass mobilization and political voluntarism. Despite these shared assumptions, passionate debates raged among different camps on the role of the state in the market, how to understand growth and inflation dynamics, and the right path for price and enterprise reform. The outcome of these debates helped set China on its unusual path.

#### Reforms crush public support – collapses CCP legitimacy.

Kenderdine 20

(Tristan Kenderdine, 2-14-20, Tristan is research director at Future Risk, working on trade, industry and agricultural policy across China, Central Asia and Southeast Asia. He has worked extensively on confidential commissioned research projects on macroeconomics in China, Thailand, Mongolia and Central Asia including as Junior Expert for the European Commission. Tristan worked in Beijing for research and advisory China Policy for three years with work covering China’s agricultural and metals commodities markets; cross‐border e‐commerce, international maritime law and polar policy, fiscal policy and agricultural finance. "China running low on ideas in rural policy," Policy Forum, <https://www.policyforum.net/china-running-low-on-ideas-in-rural-policy/>, JKS)

On 5 February, the Central Committee of the Communist Party of China (CCP) released the latest instalment of the annual rural China policy blueprint. Despite a hoax release in January, the real document, the first central policy document of the year, known as Document Number One, was released, titled Opinions on Prioritising ‘Three Rurals’: Key Work to Achieve a Comprehensive Well-off Society on Schedule.

‘On schedule’ refers to the policy timeline of delivering measurable economic milestones on China’s development trajectory to 2035, with 2020 being the end of 13th five-year plan period and 2021 the beginning of the 14th five-year plan period. 2021 is also the Centenary of the Communist Party of China.

Both dates should represent significant milestones towards the economic development of rural areas, but at the aggregate level, numbers are unlikely to be flattering to the CCP. This partly explains why this year’s document is slightly muted in terms of policy innovation and promises.

Some of the document was released as part of the Central Rural Work Conference, held in Beijing from 20 to 21 December, and its Discussion Draft, in conjunction with 2018’s Rural Revitalisation Five-year Plan, which currently acts as China’s major rural economic blueprint. The rhetoric in this year’s Document Number One, though, has shifted distinctly from environment, rural finance, and land reform to poverty alleviation and rural governance.

Poverty alleviation is core to Xi Jinping’s rhetoric, and achieving lower poverty has been the backbone of the CCP’s legitimacy – although sometimes to the ridicule of outside observers.

If there were voting in China, then this would be the vote-buying policy of rural support and the shoring up of red-voting heartland. As such, it is no surprise that poverty alleviation is crucial to 2020 Document Number One. Disappointingly though, it takes up five full articles, sidelining other important issues.

2020’s Document Number One consists of just 27 articles in five sections, coming in much shorter than recent years. 2020’s document is also shorter on words, coming in at around 9,500 words, whereas 2015 was nearly 15,000 and 2017 was 12,000 words.

#### **Structural factors prevent 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.

#### No war over economic competition.

Henry Bienen and Jeremiah Ostriker 21. Former James S McDonnell Distinguished University Professor and Dean of Woodrow Wilson School at Princeton University, former President of NU. Astrophysicist whose academic positions have been divided among Princeton University, Cambridge University and Columbia University. “How the United States can chart a new path that avoids war with China”. Bureau of Atomic Scientists. Feb 3 2021. <https://thebulletin.org/2021/02/how-the-united-states-can-chart-a-new-path-that-avoids-war-with-china/>

Relations between China and the United States have degenerated so far that some foreign policy experts now believe that war between the countries is possible. While this is a minority view, it is a dangerous one. In the past, a US-China war was often considered unlikely for reasons of mutual economic interdependence and nuclear deterrence, not to mention the huge costs of war. Moreover, it has been said, ideological conflict and regional and international striving for advantage are not reasons enough for war. But now more pessimistic voices are also being heard. Citing pre-World War I analogies, in which it was (quite inaccurately) said that economic interdependence among European powers made war impossible, and noting what Harvard University’s Graham Allison has called the “Thucydides Trap,” in which there is a drift towards war when an emerging power threatens to displace an existing leading power, some believe war between China and the United States is becoming more conceivable and even probable.

We are concerned with the current direction of US-China’s policies, but we believe that the pessimists both overstate the possibility of a US-China war and understate the consequences of possible armed conflict. The production of so-called “small” nuclear weapons is given as a reason for the possibility of war without massive destruction. Nuclear war among nuclear powers has not occurred since the spread of nuclear weapons precisely because destruction would be huge and ghastly. But even lower-yield nuclear weapons nonetheless are quite deadly; each has the destructive potential of thousands of WWII airplane bombs. We cannot tell how limited the use of such weapons would be in advance of armed conflict, and, since Chinese missiles can reach our shores, we do not know if such a conflict could be contained.

There are other reasons for thinking war between China and the United States not only should be but will be avoided. We have past experience to warn us. The United States and China fought in the Korean War when US forces pushed to the Yalu River on China’s border. We know how that turned out. We also note that the United States did not send a land army to North Vietnam after China warned that the first US troops in North Vietnam would be met by Chinese “volunteers.” Lesson learned.

What points of conflict does the United States have with China that could actually lead to war? We can find only one, and it has nothing to do with trade, economic competition, ideology, human rights violations by China, or struggle for relative power in Asia or elsewhere. Taiwan is the critical point of conflict. China asserts its historical right to Taiwan as an integral part of China. The United States is committed to the principle that Taiwan’s relationship with China cannot be changed by force. Thus, how much military assistance to give to Taiwan, if China uses blockades or applies military force, is a critical issue for US policy. How and in what way to defend Taiwan loom as large questions. To do nothing in the face of Chinese military threats would not only call into question US commitments everywhere but might well lead to nuclear proliferation in Asia. What lessons would Japan, the Republic of Korea, Australia, perhaps Vietnam and Indonesia take? Taiwan itself has the capacity to build nuclear weapons and could do so, if the United States made clear that it would not respond to threats against Taiwan.

We do not minimize the difficulty of the Taiwan issue. There needs to be both clarity and ambiguity in how the United States deals with Taiwan. The United States needs to make clear that if China uses force against Taiwan there will be severe consequences. But we cannot in advance specify the consequences. We do not think war with China is probable over Taiwan. But we admit to the difficulties of finding the right policies in this area. We propose the following: As Joseph Nye noted recently in the Wall Street Journal, in consultation with China, the Biden administration should review policies for accident avoidance, crisis management, and high-level communications. Military-to-military relations already exist, and we do not know the details of them. But we suspect that the Trump administration let lapse, or weakened, constant communications and accident-avoidance protocols. These must be maintained and strengthened.

Arms sales to Taiwan are sensitive. Our aim is to avoid an invasion of Taiwan, and thus sales of missiles and technologies for defensive purposes seem right. We must make clear that we would work to circumvent a blockade of Taiwan. But obviously, Taiwan is not Berlin during the Cold War, and airlifts would have limited utility. Thus, it is the avoidance of a blockade that must be worked toward. And here, we need allies and friends in Asia and beyond to support the position that such a blockade would be disastrous for China’s economy and trade worldwide.

We can find no other issues where war could plausibly arise between China and the United States. And we reassert that any armed conflict could lead to a global catastrophe. In a more positive vein, the United States should be finding new paths to both cooperate and compete with China. The demonization of China—as per Donald Trump’s “China virus” and Secretary of State Pompeo’s bellicose language—are misguided and counterproductive. The two countries need to cooperate on climate and environmental issues and on the pandemic and other health matters.

Decoupling the economies of the United States and China would be very difficult, very expensive, and very foolish, as the Trump administration found out. It continued to want to export agricultural goods to China, and where it imposed tariffs, they raised costs to US consumers and manufacturers. We need to challenge China over its trade policies, but the best way to do that is to strengthen the US domestic economy and invest in education and technology innovation and research. So much of our vaunted technological progress has come from government investment. We should renew our government support for advanced research and technology, rather than faulting the Chinese for imitating our past actions. For but one example, consider how the internet was developed in the 1970s.

#### Public pressure and Biden doctrine constrain it.

Jason McCann 12/6/21. PhD in Political Science from Princeton, MA in IR from UChicago, Head of Geopolitical Risk Analysis for Morning Consult. “Cold War or Not, Americans’ Aversion to Direct Military Conflict With China Will Limit the Likelihood of Tensions Boiling Over”. Morning Consult. Dec 6 2021. <https://morningconsult.com/2021/12/06/us-china-cold-war/> [Charts removed.]

Americans’ assessment of U.S.-China relations today relative to U.S.-Soviet relations during the last Cold War tells a similar story: A plurality of voters (30%) put U.S.-China and U.S.-Soviet relations on equal footing, and slightly more Republicans (28%) view U.S.-China relations as worse than U.S.-Soviet relations relative to the share holding the opposite view (26%). The share of voters who think U.S.-China relations are “somewhat better” is a close runner-up across party lines (except among Democrats, where it’s tied for first place). But here too the margins are slim, again pointing to uncertainty among voters.

Americans are more consistently bearish when it comes to the likelihood of rising military tensions with China. Fifty-six percent of voters anticipate that military tensions will increase over the next 12 months. And an even higher share (65%) see tensions escalating over the next five years.

These findings offer a bleak outlook for the trajectory of U.S.-China relations. But Americans’ strong aversion to the chief risk of prolonged cold war-style competition — direct military conflict between two major geopolitical powers — suggests that public sentiment will limit U.S. politicians’ incentive to warmonger if tensions escalate.

In particular, a majority of U.S. voters (59%) feel the United States and China should avoid direct military conflict at all costs. What’s more, under a hypothetical scenario where the U.S. military believes it would win, still only a small share (15%) would favor engaging in such a conflict.

These findings suggest that most U.S. voters are uninterested in gambling on the outcome of direct military conflict with China and are relatively clear-eyed about the potential costs. They also imply broad popular support for Biden’s “guardrails” approach to managing U.S.-China relations, which aims to prevent military conflict amid a period of heightened tensions.

This is good news for multinationals with business interests in the United States and China. Specifically, the data suggests that multinationals can worry less about the havoc that a direct military confrontation would inflict on global trade and supply chains while they manage the current period of pandemic-induced upheaval.

Over the longer term, multinationals deciding whether to reorient supply chains to limit their geopolitical risk exposure have another reason to be optimistic: A plurality of U.S. voters (39%) believe that neither the United States nor China would win a cold war. The finding suggests voters may similarly have a limited appetite for indirect military conflict with China, as well as for the prolonged and potentially more aggressive economic competition that a cold war could entail. Our earlier analysis — which found that U.S. voters want to dial down economic tensions with China and prefer only limited bans on Chinese companies doing business in the United States — reinforces this optimism.

Whether the United States and China are already in a cold war or merely on the doorstep, multinationals with business interests in either country should remain attentive to the underlying geopolitical dynamics. But they do not yet need to run for the exit.

#### Alt causes to coop – travel bans

Al Jazeera 3/21

(3-21-2022, "US hits Chinese officials with travel bans over ‘repressive acts’," No Publication, <https://www.aljazeera.com/news/2022/3/21/us-hits-chinese-officials-with-travel-bans-over-repressive-acts>, JKS)

United States President Joe Biden’s administration is imposing travel bans on Chinese officials whom it accuses of repressing Uighur Muslims, as well as other ethnic and religious minorities. The US State Department announced on Monday that it is barring the officials from travelling to the US because of their involvement in “repressive acts” and crackdowns on freedom of speech and religion in China and abroad. The department did not identify which officials would be subject to the expanded ban, nor say how many would be affected. Secretary of State Antony Blinken said in a statement that the sanctions are being applied to Chinese officials who “are believed to be responsible for, or complicit in, policies or actions aimed at repressing religious and spiritual practitioners, members of ethnic minority groups, dissidents, human rights defenders, journalists, labor organizers, civil society organizers, and peaceful protestors in China and beyond”.

#### Arms control fails.

Dr. Harsh V. Pant 18, PhD, Professor of International Relations at King’s College London, Distinguished Fellow and Head of Strategic Studies at Observer Research Foundation, Nonresident Fellow with the Wadhwani Chair in U.S.-India Policy Studies at the Center for Strategic and International Studies, “Why Arms Control Is Doomed To Failure”, LiveMint, 10/25/2018, https://tinyurl.com/yy56y3re

The global nuclear arms control architecture is crumbling today as it is no longer able to respond to the underlying shift in global power realities. But is the failure of arms control something that should be surprising? Or is it that all arms control must fail?

If arms control is needed in a strategic relationship because the states in question might go to war, it will be impractical for that very reason of need—whereas, if arms control should prove to be available, it will likely be irrelevant. This has been called the arms control paradox. The record of the Cold War shows that both the so-called status quo and revisionist powers, the US and the Soviet Union respectively, were more or less equally responsible for reneging on their arms control promises.

Not only did both of them attempt to gain nuclear superiority during the Cold War despite a plethora of arms control agreements, but they were also equally responsible for encouraging proliferation. As the great powers try to maximize their share of world power, their interests inevitably come into conflict with arms control agreements, making such agreements unravel.

While one can give some credit to arms control for maintaining strategic stability and creating norms of behaviour, the fact remains that even one of the most in-depth agreements in terms of details of provisions, verification measures, and leading to regime strengthening, the Comprehensive Test Ban Treaty, was rejected by the US even when it faced no great power as a rival in the near term. This is significant because if even one of the strongest arms control measures is not deemed worthy of acceptance, then there is some problem with the very idea of arms control rather than its specific provisions.

Indeed, disenchantment with arms control has been growing since the 1980s. After a brief period of détente in the 1970s, the two superpowers again started treating each other as antagonists. This affected all the arms control measures agreed to during détente. The signing of a plethora of arms control agreements during détente was seen as a success of arms control rather than a reflection of the relaxation of tensions during détente. And so, when after détente, the superpowers gave arms control short shrift, there was a lot of disappointment.

Major powers have always viewed arms control measures as a by-product of underlying political realities. There is enough evidence to suggest that while great power attempts at arms control have at best been quite useless, they have deftly used various arms control provisions to constrain the strategic autonomy of other states in the international system.

The Nuclear Non-Proliferation Treaty was one such measure, where the five nuclear powers decided to constrain the behaviour of non-nuclear states. Today, as China’s rise alters the political contours of the global order, the INF Treaty is going to be one of many casualties of the changing power dynamic. With or without Trump, the old arms control architecture was going to collapse. Trump is only hastening the inevitable.

#### The Chinese pharma impact is just a CRISPR impact – that’s inevitable globally and China isn’t key to it

#### The Chinese pharma impact is fearmongering – they’re restricting CRISPR and have regulated new biotech

Song 21 – Lingqiao Song, Academic Associate at the Centre of Genomics and Policy, “After He Jianku: China's biotechnology regulation reforms,” *Medical Law International*, 2/16/21, https://doi.org/10.1177/0968533221993504

Although the worldwide bioethics community had achieved a consensus to postpone clinical germline gene editing on scientific, social and ethical grounds, the Chinese professor He Jiankui ignored all ethical norms including his own.1 He claims that ‘gene surgery is only permissible when the risks of the procedure are outweighed by a serious medical need’.2 However, He created two genetically altered babies, neglecting the ‘off-target’ risks of the CRISPR-Cas 9 mechanism 3 that may impair the function of normal genes.4 His announcement created an uproar in the Chinese scientific and bioethical expert community. One hundred and twenty-two Chinese scientists, some from renowned institutions such as Stanford University, MIT and the German Cancer Research Centre, fiercely condemned He’s behaviour.5 Concerned that his endeavour might hamper Chinese biomedical research and damage the reputation of other Chinese scientists, they urged authorities to adopt relevant regulations and undertake an inquiry of He’s actions.6

In an official statement, the Ministry of Science and Technology (MoST) and the National Health Committee (NHC) stressed that genetically modifying a human embryo for reproductive purposes is explicitly prohibited in China. They said that He had severely violated ethical morality, scientific integrity and relevant regulations.7 Xu Nanping, the Vice Minister of the MoST, states that according to Article 6 of the Ethical Guiding Principles for Research on the Human Embryonic Stem Cells Research (2003)(人胚胎干细胞研究伦理指导原则), China prohibits human cloning, research on human embryos 14 days after fertilisation and genetic manipulation of human gametes, zygotes and embryos for reproductive purposes.8 However, the MoST and the NHC did not release the investigation report for He’s case, which prompted criticism from Chinese bioethicists regarding the inadequacy and transparency of investigation.9

On 30 December 2019, He and his accomplices were convicted by the Nanshan District Court of ‘illegal medical practice’ for gene editing human embryos for reproductive purposes and for carrying out illegal reproductive medical activity.10 He was sentenced to 3 years’ imprisonment and a fine of 3 million RMB (around US$450,000).11

Beyond the criminal sanctions, the NHC gave He, Qin Jinzhou and Zhang Renli a life ban on conducting assisted reproductive technology-related services.12 The MoST prohibited them from applying for any administrative permit relating to research with human genetic resources and from applying for all research funds under their purview.13 The China Association for Science and Technology also revoked He’s award for the 15th ‘Chinese Youth Science and Technology Prize’.14 No civil punishment was imposed because the babies’ parents did not file a civil litigation against He.

He’s case also underscored systemic problems of ethics and governance in Chinese private hospitals. In recent years, the Putian Medical Group, which runs 80% of private hospitals in China, has developed an infamous reputation for false advertisements and an excessively commercial ethos.15,16 It was therefore unsurprising to learn that a Putian hospital, Shezhen Harmonicare, seemed to be implicated in the ethics approval for He’s gene editing project. Although the Harmonicare hospital denied responsibility, the Chinese Clinical Trial Registry attested that it had approved the ethics application related to He’s research.17

He’s case is not the only one that has caught the attention of the international community in recent years. The integrity of some Chinese scientists has also been generally criticised for recurring issues involving plagiarism in scientific publications.18 These scandals have substantially and unfairly overshadowed Chinese scientists’ contribution to biomedical research.

In response to He Jiankui’s case and broader bioethical issues, the Chinese government introduced a series of regulatory reforms that are discussed in the following sections: the first section discusses laws approved by the National People’s Congress and its Standing Committee; the second section touches on department regulations; the third section introduces the conceptual plan of constituting a National Medical Ethics Committee and the fourth section explores questions of legal liability raised by He Jiankui’s case going beyond the court’s decision. Our article anticipates the possible next steps in the reform programme. We conclude with some important considerations for these reforms to succeed in the fifth section.

## Chevron

### 1NC – AT: Chevron

#### American tech dominance is high.

Abbott ’21 [Alden Abbott, Paul Redmond Michel, Adam Mossoff, Kristen Jakobsen Osenga, and Brian O’Shaughnessy; March 10; the Federal Trade Commission’s General Counsel (2018-2021), adjunct professor at George Mason University, J.D. from Harvard Law School, M.A. in economics from Georgetown University; Retired Chief Judge and United States Circuit Judge of the United States Court of Appeals for the Federal Circuit; Law Professor at George Mason University; Law Professor at the University of Richmond; chair of Dinsmore’s IP Transactions and Licensing Group; the Regulatory Transparency Project, “Aligning Intellectual Property, Antitrust, and National Security Policy,” https://regproject.org/wp-content/uploads/Paper-Aligning-Intellectual-Property-Antitrust-and-National-Security-Policy.pdf]

The U.S. government has recognized that “5G is a critical strategic technology [such that] nations that master advanced communications technologies and ubiquitous connectivity will have a long-term economic and military advantage.”8 The U.S. has had a substantial technological edge over our military and intelligence rivals in foundational R&D for 5G and other next-generation technologies. U.S. companies have long been leaders in the development of previous generations of core mobile standards (2G, 3G, 4G, and LTE). This technological leadership has made it possible for U.S. companies to ensure the security and integrity of the hardware and software products that make up the backbone of the U.S. telecommunication systems. This leadership must continue for the U.S. government to more effectively anticipate potential security risks and take the necessary steps to protect national security.9

Despite this history of clear technological leadership, there are causes for concern. First, a very small number of U.S. companies have made the investments in the overwhelming majority of the R&D necessary to develop 5G.10 Historically, U.S. companies have heavily invested in R&D, which has propelled the U.S. into leadership positions in critical standard development organizations working on foundational next-generation technologies like 5G.11 U.S. companies like Qualcomm play a significant and important role in this process through innovation, patenting, and standard setting, but they are not alone in the global community of high-tech companies.12 Backed by their nations’ leadership, Chinese and Korean companies have also invested heavily in developing the core technologies for 5G.13

The willingness of U.S. companies to invest in R&D is threatened, however. The development of 5G is a bit like a race, with the companies who develop the best technology coming out ahead. While U.S. companies are savvy and talented competitors in this race, aggressive and unwarranted use of antitrust law by U.S. regulators, as well as by foreign antitrust authorities, threatens to put obstacles in these companies’ paths and hinder their ability to lead.

#### Biden's proactive investments and partnerships check.

Kharpal '21 [Arjun; 4/28/21; senior technology correspondent for CNBC; "First 100 days: Biden keeps Trump-era sanctions in tech battle with China, looks to friends for help," https://www.cnbc.com/2021/04/29/biden-100-days-china-tech-battle-sees-sanctions-remain-alliances-made.html/]

In his first 100 days as president, Joe Biden has made one thing clear — he wants to make sure the U.S. outcompetes China on a number of fronts, with technology being front and center.

His policies continue the Trump-era hardline on export controls to Chinese technology companies but adds some new elements — collaboration with allies in areas seen as critical, such as semiconductors and a focus on beefing up domestic capabilities.

“The priority is on domestic innovation and forging technology alliances to coordinate confrontation against China in the tech domain,” Paul Triolo, head of the geo-technology practice at Eurasia Group, said.

What has Biden done so far?

The Biden administration has kept some Trump-era export bans on Chinese companies. Under Trump, telecommunication equipment maker Huawei and China’s largest chipmaker SMIC were put on the so-called “entity list,” which restricts American firms from exporting technology to companies on this blacklist.

Last year, the Trump administration introduced a rule that effectively cut Huawei off from critical semiconductor supplies, a move which has hurt the technology giant’s smartphone business. The U.S. maintains Huawei is a national security threat, a claim the Chinese firm has repeatedly denied.

For Trump, ensuring U.S. technology did not make it into the hands of Chinese companies was key, especially in critical areas like chips.

While Biden has kept these rules in place, he has also announced policies aimed at boosting American innovation.

“Where the Trump administration tended to focus on defensive measures (e.g., restrictions on Chinese military companies), early messaging about Biden’s approach suggests that it pairs those with more offensive, or proactive ones — investments, for example, in alternatives to China,” said Emily de La Bruyere, co-founder of consultancy Horizon Advisory.

In his American Jobs Plan, Biden calls on Congress to make a $180 billion investment in advancing “U.S. leadership in critical technologies and upgrade America’s research infrastructure.” There is also a call to invest $50 billion in manufacturing and research, via the bipartisan CHIPS Act.

Earlier this month, a number of Democrat and Republican lawmakers reintroduced the Endless Frontier Act to the legislative process. This proposes changing the name of the U.S. National Science Foundation (NSF) to the National Science and Technology Foundation (NSTF). This is an independent agency of the U.S. government aimed at advancing scientific research.

A technology directorate would be set up under the newly-named NSTF and would be given $100 billion over five years to “reinvigorate American leadership in the discovery and application of key technologies that will define global competitiveness.”

The directorate would fund research in 10 key areas including artificial intelligence, semiconductors, robotics, materials sciences, advanced communications technologies, among others.

The focus on domestic investment but also maintaining export controls is “primarily driven by the perceived need to protect the U.S. company technology leadership in key areas such as semiconductor manufacturing,” Triolo said.

But “raising new barriers around U.S. technologies and essentially weaponizing key supply chains as part of an effort to contain China’s rise are (also) part of the Biden strategy,” he added.

#### No spillover – one antitrust action does not reinvigorate all of Chevron.

#### Executive power cauess next-gen, smaller, more rapid conflicts.

Waxman ’19 [Matthew C; Liviu Librescu Professor of Law at Columbia Law School and an adjunct senior fellow for Law and Foreign Policy at the Council on Foreign Relations; 11/14/19; “War Powers Oversight, Not Reform”; <https://tnsr.org/roundtable/policy-roundtable-the-war-powers-resolution/>; Texas National Security Review; accessed 1/16/21; TV]

Military conflicts and interventions arise in too many ways and forms to regulate them effectively with a single statutory scheme or a single form of authorization. For the existing War Powers Resolution and some of the proposals to strengthen it, relatively clear lines are often seen as a virtue, because they reduce — though don’t eliminate — opportunities to interpret away requirements. However, trying to draw statutory lines at specific thresholds like armed “hostilities” (as in the War Powers Resolution) or “significant armed conflicts” (as in the proposed War Powers Consultation Act) is a poor way of deciding which types of conflicts should require formal congressional approval.

From the earliest days of the republic, the United States faced varied military contingencies for which neither war declarations nor simple congressional force authorizations were well suited. In the modern era, American conflicts and security crises are even more diverse. They could begin because of a U.S. first strike or an enemy first strike, an attack by or against a U.S. ally, or a breakdown in deterrence or a miscalculation. They might include large-scale ground wars, one-off airstrikes, or a combination of the two, and increasingly they feature cyber operations as well. They can be overt or covert, or both. They may be geographically confined or global, or expected to be short or long. They are waged against states or nonstate groups, with or against a state’s proxy forces, and with or without the help of allies.

Recent controversies over war powers illustrate this point. In 2019, concerns about insufficiently checked presidential war powers have arisen in three vastly different contexts: continuation of a geographically sprawling and indefinite war against terrorist groups, support for a Saudi war in Yemen, and the possibility of a major U.S. war with Iran. The first began after a direct attack on the U.S. homeland, the second is a regional proxy war, and the third could arise through deliberate preemptive U.S. action, a miscalculated spiral of violence, or some other way. Stepping back, the key policy questions about force in each case differ widely. The first is mostly about where and what type of force is used, the second has to do with whether to cut off operational support to a partner, and the third is about how to wield threats of force for deterrence and coercive diplomacy.

Although recent war powers debates have sometimes focused on regional conflicts in which the United States does not put many troops directly in harm’s way (at least not initially), a key aim of war powers reform is often said to be making sure that “big” wars — those that put many vulnerable American boots on the ground — are formally authorized by Congress. Historically, however, the Korean War stands out as the only exception to the tendency of presidents to seek congressional authorization in advance of large ground wars. In any event, these are the types of conflicts for which political checks often work most effectively.

Smaller-scale and less visible conflicts attract less public attention, but their consequences can be significant. “As a matter of democratic principle,” Jack Goldsmith and I have argued, treating low-intensity warfare waged stealthily and from a distance (or in cyberspace) as more appropriately conducted unilaterally than large-scale ground campaigns “probably has matters backwards”:

Light-footprint warfare is still lethal and very consequential warfare, and the lightness of the tools make them relatively easy for a President to deploy extensively. Light-footprint warfare thus has large foreign policy, strategic, and reputational consequences for the United States, akin to much heavier deployments, yet much less public examination. The President’s legal theories treat this as a feature of such warfare. But it is also a bug for U.S. democracy, since the stealthy features mean that public debate and political checks—which reduce error as well as excess, and promote legitimacy—function ineffectively.28

This arguably indicates the need to expand or clarify the War Powers Resolution’s definition of the situations requiring explicit congressional approval. But any politically plausible attempts to delineate with bright-line rules which types of military action require specific forms of congressional authorization will probably function poorly in practice, where contextual variables are complex and fast-moving. Such attempts may also still exclude those conflicts for which stronger congressional scrutiny is appropriate. Alternatively, a more flexible legal standard would likely be even easier for the executive branch to bypass. A wide range of military conflicts and challenges warrant a wide range of congressional oversight tools. Moreover, as explained below, requiring congressional approval at the beginning of a military intervention often fails to encourage the right kind of congressional scrutiny.29

#### Next generation war faster, more deadly, and more likely than 20th century territorial incursion. Unhinged self defense plunges the earth into endless war.

Brooks 14 – Rosa, Professor of Law, Georgetown University Law Center. ( “Duck-Rabbits and Drones: Legal Indeterminacy in the War on Terror” 25 Stanford. L. & Pol'y Rev. 301-316 (2014)) RMT

All of this has institutional consequences as well as legal consequences. As our national leaders frequently remind us, the United States now faces a wide range of unconventional, asymmetric threats from an ever-changing enemy who will try to fight us in ways not traditionally recognizable as warfare. The enemy’s weapons, we are told, will range from suicide bombs and cyberattacks to economic warfare and bio-engineered viruses. If this is so, then anything that helps us counter the enemy’s activities can also be construed as part of warfare, and as appropriate activities for the U.S. military. 31

As our understanding of what constitutes warfare expands, our understanding of what constitutes the appropriate role of the U.S. military has expanded correspondingly. Today, the U.S. military engages in everything from spying and Internet data collection to health care, economic development, and governance reform programs.

But this in turn means that we lose any clarity about what a military is for, and what, if anything, makes it distinct from other institutions. In the post-9/11 world, what is it that distinguishes the military from the intelligence community (which has itself become increasingly paramilitary in its structure and activities since 9/11)? What distinguishes the military from the State Department or USAID? When intelligence agencies carry out drone strikes and the military collects cell phone metadata of U.S. citizens and operates agricultural reform programs in Afghanistan, do we have any basis at all for drawing lines between “civilian” and “military” tasks and institutions? What will this blurring of institutional lines mean for the military itself, and for its role in domestic politics? How do we make sense of—and apply—notions of civilian control of the military when the military’s role and mission has become so blurred?

It’s possible, of course, that many of these changes would have occurred even without 9/11 and the unique constellation of personalities and ideologies that made up the Bush Administration. After all, the 9/11 attacks didn’t come out of nowhere: the technological and political shifts that enabled them had been decades in the making.

Indeed, a small number of scholars and military thinkers had begun to speculate about the changing nature of warfare well before 9/11. In 1999, for instance, Qiao Liang and Wang Xiangsui, both colonels in China’s People’s Liberation Army, published a slender little book called Unrestricted Warfare. 32 Historically, wrote Qiao and Wang, “the three indispensable ‘hardware’ elements of any war” have been “soldiers, weapons and a battlefield.”33 But, they warned, humanity is on the verge of an era in which all these elements will be transformed beyond recognition: in this brave new world, soldiers will be computer hackers, financiers, terrorists, drug smugglers, and agents of private corporations as well as members of organized state militaries, and weapons will range from “airplanes, cannons, poison gas, bombs [and] biochemical agents” to “computer viruses, net browsers, and financial derivative tools.”34 Soon, warned Qiao and Wang, warfare will “transcend[] all boundaries and limits . . . . [T]he battlefield will be everywhere . . . [and] all the boundaries lying between the two worlds of war and non-war, of military and non-military, will be totally destroyed.” In consequence, “visible national boundaries, invisible internet space, international law, national law, behavioral norms, and ethical principles [will] have absolutely no restraining effects.”35 Outside of some narrow military and intelligence circles, Unrestricted Warfare attracted very little attention at the time of its publication. Today, it looks prophetic.

As Qiao and Wang warned, when the boundaries between war and nonwar, military and non-military have eroded, both law and morality begin to lose their force. The boundaries between war and non-war are no less vital for being socially constructed, for if we can’t figure out whether or not there’s a war—or where the war is located, or who’s a combatant in that war and who’s a civilian—we have no way of deciding whether, where, or to whom the law of war applies.

Yet if we can’t figure out what rules apply, we lose any principled basis for making the most vital decisions a democracy can make: what is the appropriate sphere for the military? When can lethal force be used inside the borders of a foreign country? Which communications and activities can be monitored, and which should be free of government eavesdropping? What matters can the courts decide, and what matters should be beyond the scope of judicial review? When can a government have “secret laws,” and when must government decisions and their basis be submitted to public scrutiny? Who can be imprisoned, for how long, and with what degree, if any, of due process? Who is a duck, and who is a rabbit? Ultimately: Who lives, and who dies?

#### AI fails – developing standards is impossible.

Abhishek Gupta and Victoria Heath 20, Abhishek Gupta is the founder of the Montreal AI Ethics Institute and a machine-learning engineer at Microsoft, where he serves on the CSE Responsible AI Board. Victoria Heath is a researcher at the Montreal AI Ethics Institute and a senior research fellow at the NATO Association of Canada. 9-14-2020, "AI ethics groups are repeating one of society’s classic mistakes," MIT Technology Review, https://www.technologyreview.com/2020/09/14/1008323/ai-ethics-representation-artificial-intelligence-opinion/

International organizations and corporations are racing to develop global guidelines for the ethical use of artificial intelligence. Declarations, manifestos, and recommendations are flooding the internet. But these efforts will be futile if they fail to account for the cultural and regional contexts in which AI operates.

AI systems have repeatedly been shown to cause problems that disproportionately affect marginalized groups while benefiting a privileged few. The global AI ethics efforts under way today—of which there are dozens—aim to help everyone benefit from this technology, and to prevent it from causing harm. Generally speaking, they do this by creating guidelines and principles for developers, funders, and regulators to follow. They might, for example, recommend routine internal audits or require protections for users’ personally identifiable information.

We believe these groups are well-intentioned and are doing worthwhile work. The AI community should, indeed, agree on a set of international definitions and concepts for ethical AI. But without more geographic representation, they’ll produce a global vision for AI ethics that reflects the perspectives of people in only a few regions of the world, particularly North America and northwestern Europe.

This work is not easy or straightforward. “Fairness,” “privacy,” and “bias” mean different things (pdf) in different places. People also have disparate expectations of these concepts depending on their own political, social, and economic realities. The challenges and risks posed by AI also differ depending on one’s locale.

If organizations working on global AI ethics fail to acknowledge this, they risk developing standards that are, at best, meaningless and ineffective across all the world’s regions. At worst, these flawed standards will lead to more AI systems and tools that perpetuate existing biases and are insensitive to local cultures.

In 2018, for example, Facebook was slow to act on misinformation spreading in Myanmar that ultimately led to human rights abuses. An assessment (pdf) paid for by the company found that this oversight was due in part to Facebook’s community guidelines and content moderation policies, which failed to address the country’s political and social realities.

There’s a clear lack of regional diversity in many AI advisory boards, expert panels, and councils.

To prevent such abuses, companies working on ethical guidelines for AI-powered systems and tools need to engage users from around the world to help create appropriate standards to govern these systems. They must also be aware of how their policies apply in different contexts.

Despite the risks, there’s a clear lack of regional diversity in many AI advisory boards, expert panels, and councils appointed by leading international organizations. The expert advisory group for Unicef’s AI for Children project, for example, has no representatives from regions with the highest concentration of children and young adults, including the Middle East, Africa, and Asia.

Unfortunately, as it stands today, the entire field of AI ethics is at grave risk of limiting itself to languages, ideas, theories, and challenges from a handful of regions—primarily North America, Western Europe, and East Asia.

This lack of regional diversity reflects the current concentration of AI research (pdf): 86% of papers published at AI conferences in 2018 were attributed to authors in East Asia, North America, or Europe. And fewer than 10% of references listed in AI papers published in these regions are to papers from another region. Patents are also highly concentrated: 51% of AI patents published in 2018 were attributed to North America.

Those of us working in AI ethics will do more harm than good if we allow the field’s lack of geographic diversity to define our own efforts. If we’re not careful, we could wind up codifying AI’s historic biases into guidelines that warp the technology for generations to come. We must start to prioritize voices from low- and middle-income countries (especially those in the “Global South”) and those from historically marginalized communities.

#### Extraterritorial governance fails – leaders can’t agree and too slow.

Ross ’19 [Tim, Leading UK politics coverage & lobby team for Bloomberg, Co-author of Betting the House, 8/22/19, “Multilateralism Is Dead. Long Live the G-7”, https://www.bloomberg.com/news/articles/2019-08-22/multilateralism-is-dead-long-live-the-g-7]

Forums such as the G-20 and the upcoming Group of Seven meeting in France Aug. 24-26 were first dreamed up in the 1970s as a place for foreign officials to come together, fight, disagree, but ultimately resolve issues that go beyond borders. At first the discussion was primarily on economics, but the agendas quickly grew to encompass human rights, international security, global health, and climate change. The joint statement of values typically produced at one of these gatherings, known as the summit communiqué, lacks the force of law, or really any force beyond symbolism. But what it signifies—multilateralism, globalization, international understanding—has formed the foundation of the world order in what we like to think of as the modern era.

That foundation is beginning to crack. In the age of the strongman leader embodied by Vladimir Putin of Russia and Turkey’s Recep Tayyip Erdogan, and especially since the election of U.S. President Donald Trump, disrupting international norms has become a norm in itself. After last year’s G-7 meeting in Canada, Trump blew up the communiqué he’d agreed to mere hours earlier, reacting to a perceived slight from Prime Minister Justin Trudeau. Despite their valiant effort, the Sherpas at this year’s G-20 failed to craft language that all of the assembled leaders could agree to and had to insert a special section for the U.S. position on climate change.

If the era of agreement is over, what will the future look like? French President Emmanuel Macron has been grappling with that question as his country prepares to host this year’s G-7 in Biarritz. “I have battled at the G-20 and ended up at 19,” he said at the end of the G-20, “and I have battled at the G-7 to be all seven together and then have the U.S. pull out.” Desperate to avoid a repeat of the summit in Canada, Macron decided to abandon the communiqué all together. “We are living through a very deep crisis of democracy,” Macron said on Wednesday. “No one reads the communiqués, let’s be honest. And in recent times you read the communiqués only to find disagreements.”

These are hardly abstract concerns. While Macron and others have framed their search for solutions in terms of improved protocol, disagreements that begin at international meetings have a way of rippling into far less rarefied circles, and vice versa. Trump’s pique at Trudeau concerned the latter’s attempt to retaliate against tariffs the U.S. had applied to Canadian steel and aluminum weeks before. The Iran nuclear deal and the Paris climate accord were both reached through carefully orchestrated international discussions—and both were shredded  
  
  
 single-handedly by Trump.

Yet even on the question of how to achieve unity, there’s disagreement. According to a high-ranking German official, Chancellor Angela Merkel also left the Osaka G-20 summit frustrated that once again a major gathering of world leaders had been hijacked by Trump. In her view, these events were turning into opportunities for the U.S. president to put on a show and boost his ego. But Merkel also insisted that reaching a common final declaration still ought to be paramount, however weak the language might be.

“Size will matter, the weakest will get picked off, and with that way forward lies more conflict, more confrontation, and greater risks”

Trump isn’t alone in turning international diplomacy into a stage for political posturing, complete with a global audience and background leaders to populate the scenery. Chinese leaders, for instance, have been frequent spoilers. Since Trump took office, however, his bilateral meetings have occupied center stage. Before the G-20, his anticipated meeting with China’s Xi Jinping dominated press coverage. In all, Trump held eight one-on-one meetings in Osaka, including with Saudi Crown Prince Mohammed bin Salman, still under a cloud after having been accused of orchestrating the murder of critic Jamal Khashoggi; Brazilian President Jair Bolsonaro, a gun-loving ex-military leader regarded as the Trump of South America; Erdogan; and Putin.

In Biarritz, the marquee event will be Trump’s meeting with the group’s latest populist entrant, Boris Johnson. Since he became Britain’s prime minister in July, Johnson has shown no interest in compromising on Brexit policy with his critics in London, let alone with his European counterparts; he waited nearly a month after taking office to travel for talks with the European Union’s two most powerful leaders, finally making a last-minute dash to Paris and Berlin in the days before heading to Biarritz.

As a former foreign secretary, Johnson is well aware of the diplomatic conventions he’s defying. The danger, says Alistair Burt, a Conservative member of Parliament who served with Johnson in the Foreign Office, is that the rest of the world shifts to accommodate that defiance rather than challenge it. “If you revert to a foreign policy where ‘my country comes first and stuff the rest of you,’ ” Burt says, global leaders risk contributing to the appeal of those who’ve succeeded at home by looking tough and standing alone on the world stage. “Size will matter, the weakest will get picked off, and with that way forward lies more conflict, more confrontation, and greater risks.”

Not that the global leadership has ever been entirely without conflict, even in the days when cooperation was a given. The G-7 used to be the G-8, of course, until 2014, when a U.S.-led coalition moved to suspend Russia from the group over its annexation of Crimea. Later that year, Australia’s then-Prime Minister Tony Abbott borrowed a term for an aggressive challenge in Australian football and vowed to “shirtfront” Putin at that year’s G-20, after pro-Russian rebels in Crimea had shot down a Malaysia Airlines plane carrying some Australian citizens. (He didn’t, but Putin nevertheless found himself isolated.) Years earlier, in 2009, Italy so bungled preparations for the G-8 that some were already questioning its continued relevance.

Innovation aside, some realpolitik ways to limit dissent already exist. According to an Italian official, G-7 diplomats expect the French to announce which foreign affairs topics will be on the agenda close to the beginning of the summit, perhaps only two days before. No full plenary discussion is likely on trade, and a minimal restatement of existing positions is likely on climate change. Should Trump make it impossible to reach a joint position, France, as the host, has the option of issuing its own statement at the end of the meeting.

Formal diplomacy has always been a complicated dance, which may pose a problem more fundamental than those created by chaos-loving nationalists. With or without Trump, the G-7 is already too slow for a world that will have fully digested whatever news comes out of it by the time everybody gets home. The talks among Sherpas have almost always been tortuous—the summit in Japan was less the exception than an extreme example of the rule. Much as with fusion cuisine, the result is usually an unhappy compromise designed to please the tastes of all that ultimately satisfies no one.

#### Regional institutions checks governance collapse.

Tang ’19 [Shiping; Fudan Distinguished Professor and Dr. Seaker Chan Chair Professor @ School of International Relations and Public Affairs (SIRPA), Fudan University, Shanghai, China; 1/24/2019; “The Future of International Order(s)” *The Washington Quarterly* 41(4), p. 117–131]

Globalization, but More Regional and Interregional Overlapping regional orders will become a key component of any future international order.15 Moreover, although the European Union is often the model conjured when thinking of regionalism, we need to approach regionalism without always taking the EU as the yardstick.16 According to a recent study by J. Thomas Volgy et al,17 regions with a single great power (e.g., North America) tend to be the most peaceful, with the exception of South Asia. In contrast, regions without a great power are more violenceprone such as the Middle East. Thus, when a region lacks a regional great power or a regional great power is either unable or unwilling (or both) to construct a peaceful regional order, that region tends to be less peaceful. In contrast, the outcomes for regions with two or more (mostly two) great powers depend on whether the regional powers can work together. Regional great powers working together tend to produce peace (e.g., the European Union in Europe), while their lack of cooperation (e.g. East Asia) tends to be more prone to war. Western Europe has been largely peaceful since World War II because Germany and France have cooperated with each other. By the same token, Central Asia may be moving toward a zone of peace, now that Russia and China have been increasingly working together. By comparison, East Asia’s future is looking increasingly fraught, given the rivalry between the U.S./Japan alliance and China, in addition to many regional states’ reluctance to embrace some kind of leadership role for Japan previously and now China. Indeed, with the collapse of the East Asia Summit that aims to forge a more integrated East Asia with only states from East Asia, East Asia seems to be a region lacking a genuinely regional project, at least for now. What does this mean for global governance? I venture to argue that regional resilience may now be more important than ever. As long as these regional blocs (and even spheres of influence) are rule-based and peacefully shaped, the current international order may be more stable and resilient than an order with only one center. Indeed, one can credibly argue that the post-WWII international system has been so stable precisely because many regions have institutionalized regional peace by constructing more rule-based regional orders.18 The key is not necessarily that there is one rulemaker, but that each region has rules. Here, it may be useful to recall that Pax Americana extended beyond the Western hemisphere only after the Cold War, and this may well be the first and the last time that any order approaches a global one. Throughout history, many regional orders have existed, though no truly global one has. Although many regional great powers may attempt to construct regional orders that can manage most regional issues within the region, few, if any, of these orders run counter to Pax Americana. The notion that Pax Americana is coming to an end and then will be replaced by a new global order underpinned by another global hegemon cannot be easily substantiated. We therefore should welcome regionalism projects in various regions. When regions can mostly take care of themselves, the world becomes a much safer and better governed place. Indeed, if regional states can manage their regional affairs well, then regions can withstand stronger headwind from the lonely and now whimsical superpower under Donald Trump. After all, almost every one of the existing security communities have originated regionally first. If regions are becoming increasingly critical, then we can also expect interregional coordination between regions to become more critical for the future international order. There are three possible types of these interregional dynamics. First, extra-regional great powers (EGPs) can choose to work for or against regionalism projects in other regions.19 It is certainly possible that extra-regional great powers (such as the United States in the European order) and regional great powers (such as France and Germany in Europe, or China and Japan in East Asia) and other regional small-to-medium states work together, if they can realize that doing so is better than plotting against each other. On this front, the United States has been the traditional go-to extra-regional great power. Today, however, both the EU and China might possibly join its ranks. Arguably, the Asia-Europe Summit, the Africa-China summit, and China’s “One Belt and One Road” (OBOR), or Belt and Road Initiative (BRI), are initiatives undertaken by the EU and China that may have a constructive role in another region. Of course, it must be admitted that China’s OBOR has not always been welcomed, to put it politely. As a result, it is unclear whether and how much OBOR can create interregional linkages. Likewise, it is unclear whether the China-Africa Summit can create much interregional and intraregional connection within Africa, although several African countries are quite interested in drawing useful lessons from China’s economic development simply because these countries would love to achieve a sustained high rate of economic growth. The same can be said regarding the Asia-EU Meeting (ASEM) and the Africa Union-EU Summit: these two interregional initiatives have added little to intraregional integration and the making of regional orders because countries within one of the regions do not like greater integration, at least for now. Second, regional organizations (e.g., the EU, the Africa Union, the Association of Southeast Asian Nations [ASEAN], and the Shanghai Cooperation Organization) can work together with each other and other key players to create new interregional frameworks or initiatives that can bring different regions together, or at least make different regions more connected with each other, besides making states within a region work together more. Here, the key question may be whether regions with more mature regionalism projects can lead the way. For instance, can the EU and East Asia work together, or even the EU, East Asia, and the Africa Union together? Third, different regional great powers can choose to work together with each other. Again, the United States has been the traditional go-to partner for many issues. Now with Trump, will key regional states rethink whether their U.S.-centrism is still warranted, at least until Trump is gone? For instance, can China and Japan work more closely with Argentina and Brazil in Latin America, or with India in South Asia? Likewise, can France and Germany work more closely with China and Japan? Altogether, because regions are becoming more regionalized, closer interregional coordination and cooperation based on open regionalism can become a key pillar of the emerging multiplex international order.20 Reforming Global Governance: More Bottom-up than Top-down? According to the definition of order noted above, rules or institutions (as key components of global governance) constitute the third dimension of international order, with the first being an order’s scope of coverage and the second being the relative distribution of power. Hence, reforming global governance is to reform one dimension of the international order for a better world by revising (or modifying) old rules and making new ones while retaining many key old rules. The post-WWII and then post-Cold War international order was mostly a top-down order because it was mostly imposed by the United States and its allies. Maintaining this status quo looks increasingly unlikely. In terms of making rules and reforming global governance, we are now moving from a mostly top-down style to a more bottom-up one. There are two critical forces behind this. First, major transformations of international order in the past had been mostly a process of victors imposing order after major wars (e.g., 1648, 1919, 1945, and 1991). With major wars being no longer feasible among great powers, it may be increasingly unlikely to have clear winners and losers. Hence, it may be increasingly unlikely to have clearly victorious sides that can hold the power and moral influence to impose order (upon losers and the rest). Second, with the diffusion of power from the West, the ability to impose order may no longer be realized. States, at least since 1648, were the only central agents in holding a concentration of power. In contrast, in today’s “flat” world, agents other than states have gained increasingly significant power in shaping rules, even though states remain key players. As a result, both developments point to new and multiple agents contesting rules. In addition, more regionalization will also mean that global governance will be increasingly constrained by regionalism projects. More regional, issue-specific, domain-specific (or ad hoc) rule-making is becoming the norm. Climate change is one prominent example of a specific issue getting attention because it is being moved forward by regional and subnational players. Federations of scientists and grassroots movements have played a critical role in pushing forward important agendas for environmental protection and reducing greenhouse gas. Despite serious under-participation from the Global South, subnational players, especially global cites, have taken a more active role in shaping the future rules of environmental protection while state-to-state coordination on climate change has mostly stalled.21 This is just one example. There will be many regional orders within different domains and dimensions, meaning more bottom-up rather than topdown rule-making. Similarly, key progress has been advanced by nongovernmental actors in areas like quality management, transparency accounting and corporate responsibilities.22 Even though many of these major changes such as the ISO certificate system and corporate responsibilities for environmental protection were mostly from the corporate world, they have played an important role in shaping global governance more broadly. Without quality management and corporate responsibilities, it is unlikely that issues such as food security and environmental protection would have the kind of attention they do. Global governance is no longer the exclusive domain of states. Non-corporate nongovernmental actors have also been making moves. One such example is the area of art repatriation. Although often a victim state does formally request its stolen or looted art treasures to be returned and often another state has to approve the repatriation, the real action in art repatriation has been driven by museums, artists, and associations of them. Finally, we should never forget technological breakthroughs. The capitalist system will continue to spur the relentless drive for technological progress and profit, and thus will continue to bring profound changes in rules underpinning global governance, especially in areas such as communication, logistics, e-commerce, and travel. All these developments point to a more bottom-up style of shaping the international order, with multiple cross-cutting agents and initiatives. For instance, global cities may work with grassroots movements to pressure their respective national governments in other areas as they have about environmental protection when state-led initiatives (e.g., the Paris Accord) have stalled. The question though remains: can we effectively cope with challenges by having multiple agents competing for rules in overlapping domains? Nevertheless, it appears to be the world (and the order) that we are increasingly living in. Beyond the West: The Future of Modernity Though cracks within the West were evident before Brexit and Trump—ranging from how to tackle global warming, the rise of non-Western countries, and regime change in Iraq, Libya, and Syria—I am not predicting the decline of the West. Global governance without the West is both unimaginable and undesirable. However, both the West and the non-West must look beyond the West for partners in a host of issues. Some issues require cooperation within the non-West; others require cooperation between the West and the non-West. Thus, the West needs to reduce its egocentrism and look beyond its borders for the sake of a better international order. More critically, identifying the West as the eternal exception in the modernity project hinders rather than helps progress toward a more inclusive modernity project. What does the rise of ethno-nationalism within the West (e.g., the United States, the UK, Austria, or even France) mean for the future of international order(s)? Politically, it will mean more “America first,” “Britain first,” and “Germany First” etc. As such, it will deepen the cracks in the West. Economically, it will mean more or less the same as what we have seen in recent years, with more protectionism and less open trade. Both trends present challenges for the operation of the present order. For the future of the West itself, two critical points should be considered. First, despite the rise of non-Western countries, the United States and the West remain the most critical players of the existing international order in the foreseeable future. Thus, one of the most critical unknowns to the future of international order may be what kind of damages Trump can wreck upon it. Trump will inevitably pass, but Trumpism, for lack of a better term, will likely remain an undercurrent within U.S. domestic politics for some time to come. What does this mean for the international order? At the very least, two aspects should be considered. First, will Trump and Trumpism have some lasting impact (or do lasting harm) on the U.S. role and power in the world, including on the legitimacy of American leadership? Or could the resilience of U.S. staying power make Trump and Trumpism only a fleeting moment without lasting impact? Also, even if the United States reverted to its pre-Trump approach toward the international order, will the world have changed so much that the United States will need to find new roles for exercising its leadership in a new world order? The second critical point about the West, for the near future, is whether the idea of a more-or-less coherent West persist with some modifications? Should such an idea still hold special sway inside and outside the West? Within the West, the idea of a unified West certainly provides a sense of security, solidarity, and perhaps superiority. But that idea may also have inhibited the West from coming to terms with the non-West. If this is true, will the West become less Western-centric? Or will the non-West remain so fragmented that the concept of the West will still remain a linchpin of any future international order? Since World War II, the United States and the EU (often together) have been leaders of the international order by default. Both sides of the Atlantic prefer each other as the go-to partner for almost all key issues. Yet, if the West-centric order really desires to integrate the rest of the world into the existing order, then a partnership between the EU and other key states and regional organizations would be useful. This is especially true with Trump in the White House and the European Union experiencing its own problems of governance and populism backlashes. For one thing, Trump seems to believe that the United States should replace partners, which are expensive and no longer necessary, with followers. The key question then becomes whether the EU can work together with other states and regional organizations. For instance, can the African Union and the EU cooperate to reduce poverty? Can the EU and Asia work together to promote trade? Similarly, can the EU and China forge a stable partnership to combat climate change and advance African growth? All these possibilities cannot become realities unless the EU and other regional organizations and states no longer see the United States as their only plausible partner. It may be high time for countries to rethink whether their U.S.-centrism is still warranted, at least until Trump is gone. For instance, whether the EU and China can forge a stable partnership really depends on whether they can see each other and approach their potential cooperation from an angle without the United States being at the center of their imagination.23 Likewise, can the EU and BRICS (Brazil, Russia, India, China, and South Africa) provide better ideas on rules of global governance and fill the void of political power now that Trump has only an “America First” policy? This may be the critical question for leaders of these countries. We need not only “West and West” and “Non-West and Non-West” but also “West and Non-West” partnerships. This rejection of U.S.-centrism, whether temporary or not, may be a critical variable in shaping the rules of global governance in future international order(s) in the next couple years.

# 2NC

## SG CP

### 2NC – OV

#### Soft law solves the whole case. Instead of changing a previous court ruling, the counterplan has the executive branch file a brief in the Supreme Court stating that the agencies will enforce the law as if the court ruling were decided differently. These briefs are technically nonbinding but the courts will defer to the solicitor general’s opinion, which sends a clear signal to all relevant actors.

#### Follow on solves any residual deficits – in response to the counterplan, the courts would issue a grant, vacate and remand order, which instructs lower courts to treat all future cases as if decided in accordance with the position in the executive’s brief which codifies the plan as dicta.

#### That process maintains stare decisis and preserves judicial legitimacy because OSG briefs use article two powers and do not require courts to change binding law.

Michael R. Dreeben, Law @ Harvard and fmr. US Solicitor General, ’21, Stare Decisis in the Office of the Solicitor General, 130 Yale L.J. F. 541

"Respecting stare decisis means sticking to some wrong decisions."3 The importance of stare decisis to the rule of law justifies this approach, for "[a]dherence to precedent promotes stability, predictability, and respect for judicial authority."4 The Supreme Court accordingly operates with a presumption that it will abide by precedent absent "special justification" that supports overruling it.5

At a time when stare decisis is triggering significant debate within the Court,6 it is worth asking about the relevance of the doctrine to another institutional actor with a close relationship to the Court: the Office of the Solicitor General (OSG). This question is especially timely given OSG's dramatic shifts in position during the Trump Administration - shifts that called into question OSG's adherence to traditional institutional interests.

Some outside observers have assumed that OSG operates under an internal form of stare decisis.7 Under such an approach, the Solicitor General presumptively adheres to the positions taken in prior briefs submitted to the Court, absent special justification that goes beyond qualms about correctness. That approach has been confirmed by former Solicitors General. One even described the practice as a form of "stare decisis."' And during my time at the Solicitor General's Office - spanning fourteen Solicitors General and Acting Solicitors General this was an unspoken way of doing business. If our Office had staked out a legal position in the Court, with rare exceptions that was the position of the United States, full stop. OSG did not ask whether to apply stare decisis to OSG positions -we just did. But is that appropriate? Or do the constitutional, functional, and institutional roles of OSG suggest that a more limited approach to OSG stare decisis is warranted?

Although the judicial system operates with a presumption of retaining precedent even when the Court regards it as wrong, I suggest that the opposite presumption should apply to OSG when it concludes that its prior position is wrong. That is, OSG should operate with a presumption in favor of providing the Supreme Court with its current view of the law, rather than sticking to error. That suggestion comes with two qualifications. First, in arriving at a position, the Solicitor General is not a free agent; rather, OSG represents the interests of the United States. Arriving at a position thus requires balancing both the institutional interests of the United States and a purely legal analysis of the case at hand.' And because a change of position can jeopardize OSG's credibility with the Court, the Office should proceed very carefully before concluding that its prior position was wrong. OSG's ordinary deliberative processes and professional culture provide a significant safeguard against unfounded reversals. Second, in special circumstances, OSG may opt for adhering to its prior position despite legal misgivings. When it does so, it should candidly inform the Court of countervailing considerations. While no single set of guidelines can govern all contexts, this normative approach is more in line with OSG's interest in promoting the sound development of the law than is the opposite presumption.

This Essay proceeds in three Parts. Part I begins by explaining the heavy cultural influence that stare decisis has on OSG. Like the Court, OSG has practical reasons for standing by its precedent. But as the law, presidential administrations, and occupants of the Solicitor General's office change, so too may the litigating positions of OSG. This Part concludes by posing the critical question: when should OSG alter its past litigating positions? Before addressing that question directly, Part II begins by looking to the recent past to determine when OSG has changed positions. Reviewing OSG's filings in the Court under the Obama and Trump Administrations, this Part explains the rarity of shifts in position by OSG, and how the Justices and the press respond to such changes.

Finally, Part III outlines my suggested normative and practical framework to guide decisions around positional changes by OSG. It argues that OSG should presumptively present the position it believes is right because (1) OSG, as part of the executive branch, exercises Article II-and not Article III -power; (2) OSG, unlike the Court, is appropriately responsive to changing approaches of individual office holders - namely, those who occupy the Solicitor General's and Oval offices; (3) OSG's positions are statements of advocacy, and not binding law; and (4) OSG can best help the Court answer difficult questions of law by presenting the best arguments available - not simply those arguments that OSG has previously made. The Part further argues, however, that positional changes should only be made after a rigorous review process. Only after careful consideration of its client's (i.e., the Government's) interests, its own credibility in the eyes of the Court and the other governmental components it serves, and the long-term impact of its choices, can OSG actually determine that its past position was wrong. And even in circumstances in which OSG makes that determination, the choice to switch should be made with caution, with an eye on institutional considerations. In many circumstances, OSG best serves governmental interests and those of the Supreme Court by submitting positions that it believes are right, even if they depart from prior submissions. Accordingly, this Essay concludes that when OSG determines - after careful review and listening to competing voices -that its prior position was wrong, it should be prepared to say so.

#### The net benefit outweighs – conceded the impact. Rule of law is a key signal for the entire world that prevents the rise of populism and the decline of liberal internationalism. The erosion of rule of law causes WMD escalation in every global hotspot.

Oliver Meier, PhD, & Maren Vieluf, MA, ’21, Upsetting the nuclear order: how the rise of nationalist populism increases nuclear dangers, The Nonproliferation Review, DOI: 10.1080/10736700.2020.1864932

The rise of nationalist populists to power in nuclear-weapon states is a phenomenon worthy of in-depth analysis for three reasons. First, the development is of an unprecedented scale globally. A recent overview found that there are “more populist leaders and parties in power than at almost any time in history.” 34

Individuals and their beliefs and preferences, along with external systemic factors, shape foreign-policy decisions and interactions among states. However, how and to what degree populists influence nuclear policies varies between countries. Populists have risen to power in democracies, electoral autocracies,35 and other hybrid regimes. Depending on the political system, their influence may be constrained by other branches of government and by actors, such as private companies, whose interests may be inconsistent with a populist agenda. Generally speaking, the individual leader has the greatest influence on a state’s decisions and behavior in personalistic systems. By contrast, the checks and balances of pluralistic systems often constrain democratically elected leaders. Even there, however, nationalist populists increase their influence by constantly chipping away at the core values, principles, and procedures of liberal democracy, such as separation of powers, rule of law, political representation, and individual rights and freedoms.36

Second, nationalist populists have risen to power in three of the five nuclear-weapon states. The significance of that development for the nuclear order is particularly great, since these five states bear a special responsibility for maintaining and improving that order and international peace generally.37 In their parallel role as the five permanent members of the UN Security Council, their consent is necessary for enforcement of compliance with the NPT and other multilateral regimes. Their willingness to forgo nuclear, biological, and chemical weapons, or their lack of willingness, sets examples for other, less influential states.

In the past, Western leaders often dismissed populism as a problem of less developed countries.38 At the same time, nuclear establishments saw the peace movement and other grassroots movements as populist—that is, non-elite groups that were challenging elitist policies supposedly based on rationality and stability.39 To be sure, the time for finger pointing is over. “Populism has not just risen in emerging democracies with weaker political parties and institutions but in systemically important democracies with long institutional histories like the United States and India,” as Kyle and Meyer observe.40 Few if any states now appear to be immune to populist challenges. Consequently, the assumption that the established nuclear-weapon states can protect the nuclear order from less responsible challengers must be revised.

#### Default to sufficiency framing – there is no impact to solving the case better because all the 1AC impacts are non-linear. The counterplan solves enough of the case, so a sliver of a net benefit is sufficient to vote neg.

### 2NC – AT: Theory

[Their interp] is good:

1) Neg ground – the resolution is word salad and this topic is devoid of coherent disad ground. Affs have infinite prep, set the terms of the debate, and speak first and last, so this counterplan is a necessary corrective.

2) Process – the critical question underpinning policy debates is not ‘is the aff good?’ but ‘how should we do it?’ Equipping debaters with seemingly semantic legal details is crucial for training future advocates.

3) Functional limits – the counterplan forces a manageable number of affs with a defense of their process. A proliferation of tiny, obscure affs is impossible to prepare for – the impact is rigorous testing.

### 2NC – AT: Perm do Both

#### 1. Perm do both links to the internal net benefit.

US Chamber of Commerce ‘21, 9-20-2021, "The Dangers of Upending Decades of Supreme Court Precedent," No Publication, https://www.uschamber.com/regulations/the-dangers-of-upending-decades-of-supreme-court-precedent

Antitrust critics have signaled their interest to radically change existing U.S. antitrust law. Their ideas often seek to overturn decades of Supreme Court precedent (over 50 years in some cases), risking the very harms the Court sought to prevent.

Proposed changes look to abandon the Court’s insistence that antitrust law be ground in the rule of reason and adhere to economic evidence, rejecting short cuts used to reach findings of harm.

Below are some of the most important Supreme Court determinations that have thoughtfully shaped the enforcement approach to antitrust:

#### 2. Common law systems require changing stare decisis to advance court opinions.

Judith M. Stinson, Professor of Law @ ASU, ’21, Preemptive Dicta: The Problem Created by Judicial Efficiency, 54 Loy. L.A. L. Rev. 587 (2021).

Despite courts’ best attempts at efficiency, the common law is simply not efficient—and it is not supposed to be. The principles underlying the common law, including stare decisis, require courts to follow the holdings of superior courts to promote predictability and fairness.205 And “the distinction between holding and dicta helps to prevent judges from evading the principle of stare decisis.”206 The law develops over time, case by case, and is tested with each new set of facts, new arguments, new data, and new policies

### 2NC – AT: Plan + File Another Brief

#### Launching two confessions of error simultaneously hurts solicitor general credibility.

Michael R. Dreeben, Law @ Harvard and fmr. US Solicitor General, ’21, Stare Decisis in the Office of the Solicitor General, 130 Yale L.J. F. 541

That is not necessarily the traditional view. Justice Elena Kagan, who served as Solicitor General under President Obama, and Paul Clement, who served as Solicitor General under President George W. Bush, discussed this issue at an American Law Institute event in May 2018.65 To a remarkable extent, the two former Solicitors General agreed on when a new Solicitor General should reverse positions previously taken by OSG in the Supreme Court: not very much. Justice Kagan said: "[A]t least for me, the office was very clear that you were supposed to think long and hard, and then you were supposed to think long and hard again, before you changed anything."66 Her first reaction to some existing positions was "I don't think I would want to do it that way," but OSG "is supposed to be serving ... the long-term interests of the United States, not any one President," and "[t]he credibility of the office in great measure depends" on courts having that perception. 67 She concluded that "[a] change in positions is a really big deal that people should hesitate a long time over. Which is not to say that it never happens.... But the bar should be high."68 Paul Clement largely agreed. He articulated a "presumption that things are not going to change .. . If both administrations are looking out for the long-term interests of the executive branch, they really shouldn't change that much."69

### 2NC – AT: Text + Func Competition

#### 2. Counterplans only have to be functionally competitive, and textual permutations are illegitimate:

#### Allowing functional intrinsicness justifies a slew of “word scramble permutations” (that was explained above.) that allow perms that do the opposite of the plan and additions of elements that are neither in the plan nor counterplan.

#### Sophistry – plan texts are policy shorthand, not an exact description of implementation. Multiple virtually synonymous plan texts prove wording reflects strategic choice more than any coherent metric for competition.

#### They are guaranteed ground due to functional competition, since we are introducing a distinct version of the aff.

#### Reasonability – decide the legitimacy of counterplans on a case by case basis. Functional competition bad is too brute of a tool that ends up limiting out good counterplans – this means winning theory justifies our model of competition.

### 2NC – AT: “Court Strike Down”

#### Counterplan’s mechanism is superordinate – the form of the counterplan overdetermines judicial opposition to the content of the plan. Corrected errors uniquely receive deference.

Z. Payvand Ahdout, Academic Fellow, Columbia Fellow, Columbia Law School, ’20, “Neutral” Gray Briefs, 6 FORDHAM INTERNATIONAL LAW JOURNAL [Vol. 43:5 2020]

Often referred to as the “Tenth Justice,”6 the Solicitor General is an integrated thread in the Supreme Court’s fabric. The Solicitor General has a physical presence—her own office—located inside the Court.7 The Court will often call for the Solicitor General’s views at the certiorari stage and will permit the Solicitor General to participate at oral argument as the most frequent amicus curiae.8 Scholars have written about the special status that the Solicitor General enjoys. 9 The Office’s success at the Court is welldocumented and unmatched at both the certiorari and merits stages.10 Some attribute this high degree of success to the special care that the Solicitor General exercises in carrying out her role.11 The Office employs a rigorous vetting process before choosing to petition for certiorari, and those who craft the briefs—the Solicitor General, the Principal Deputy Solicitor General, three career deputies, and sixteen assistants—are some of the most seasoned Supreme Court litigators in the country.12 Even the bindings of the Solicitor General’s arguments set it apart from the pack. When private parties file briefs they are either blue (petitioner), red (respondent), or green (amicus).13 The Solicitor General’s brief is always gray.14 It appears to be literally neutral.

#### Courts will defer to the solicitor general’s brief.

Darcy Covert & Annie J. Wang, Staff Attorney, King County Department of Public Defense; Yale Law School, J.D. \*\* Yale Law School, J.’21, The Loudest Voice at the Supreme Court: The Solicitor General's Dominance of Amicus Oral Argument, 74 VAND. L. REV. 681 (2021).

In April 2020, the United States Supreme Court did something it had not done in nearly a decade: it denied a motion by the Office of the Solicitor General of the United States ("OSG") to participate in oral argument as amicus.1 While many litigants file amicus briefs at the Court, amicus oral argument is a rare occurrence for every litigant except the OSG. Between the 2010 and 2019 Terms, the Court granted only fifteen of forty-three motions for amicus oral argument by litigants other than the OSG.2 During that time, it granted 306 amicus oral argument motions-all but one-by the OSG. April's denial, which was for an argument set in the 2020 Term, was the first since 2011.

To most Supreme Court litigators and other Court watchers, the Solicitor General's ("SG") dominance of amicus oral argument is taken as a matter of course. 3 The SG directs all appellate litigation involving the federal government and represents it before the Supreme Court. 4 The SG's relationship with the Court is so unique that he5 is often called the "Tenth Justice."

#### Broad, empirical research proves our point. Courts will defer to the Solicitor General – they have enough sway to count as a tenth justice.

Schoenherr, Jessica A., University of South Carolina, and Nicholas W. Waterbury. WashU St Louis, ’22, "Confessions at the Supreme Court: Judicial Response to Solicitor General Error." Journal of Law and Courts, volume 10, number 1, Spring 2022.

When Congress created the Department of Justice in 1870, it placed within that agency an “officer, learned in the law, to assist the Attorney-General in the performance of his duties, to be called the Solicitor-General, who shall be appointed by the President, by and with the advice and consent of the Senate.”1 The attorney general would head the Justice Department and broadly oversee federal law enforcement while the subordinate solicitor general would manage all appellate litigation involving the US government, including deciding which cases to appeal and how to approach the justices when appearing before the Court (Pacelle 2003). The Office of the Solicitor General excels at these tasks, getting more cases on the Court’s docket and winning more at the merits stage than any other advocate (Black and Owens 2011, 2012a). While scholars have, at various points, attributed this incredible success to the office’s expertise and professionalism(Perry 1991; Salokar 1992), repeated interactions with the justices (McGuire 1995), and ideological alignment with the Court (Bailey et al. 2005), research ultimately shows solicitors general are so successful because they sit in the office itself (Black and Owens 2012c).

Part of the solicitor general’s success is dependent on the unique, mutually beneficial relationship theOffice of the Solicitor General has with Supreme Court justices. By agreeing to appeal only the “best” federal cases to the Supreme Court, the solicitor general keeps thousands of cases off the Court’s docket and helps the justices manage their caseload (Black and Owens 2011). The solicitor general and the attorneys who work in the office have become so skilled at identifying cases worthy of review that the justices often ask the solicitor general to advise themon cases towhich theUS government is not a party, filing a Call for the Views of the Solicitor General (CVSG), to which the solicitor general always responds (Black and Owens 2012b).2 Even when the justices do not file a CVSG, the solicitor general’s input is always welcome at the Court (Collins 2008), and the appearance of an amicus brief by the solicitor general can signal a case’s certworthiness and importance (Caldeira and Wright 1988; Black and Boyd 2013; Schoenherr and Black 2019).

In exchange for the help, the Court rewards the solicitor general with considerable sway over the decision-making process, following the office’s docket recommendations up to 90% of the time (Black and Owens 2012c) and siding with the government’s position two-thirds of the time when it is a party on the merits (Segal and Reedy 1988; Segal 1990; Deen, Ignagni, and Meernik 2003; Johnson, Wahlbeck, and Spriggs 2006) or participates in the case via an amicus brief (Bailey et al. 2005; Black and Owens 2012c). This advantage disappears when a former solicitor general enters private practice (Black and Owens 2012a), underscoring that only the attorney serving as the “tenth justice” receives this unparalleled advantage.

#### Courts will defer

Vladeck, Stephen I. Prof of Law @ Texas, ’19, "The Solicitor General and the Shadow Docket." Harvard Law Review, vol. 133, no. 1, November 2019, p. 123-163. HeinOnline

For almost as long as there has been a Solicitor General of the United States (150 years next June2 ), there has been debate over the unique functions and obligations of the office. 3 It's not just that the Solicitor General is one of the only federal officers who, by statute, must be "learned in the law."4 Besides the Vice President, the Solicitor General is the only federal officer with formal offices in multiple branches of the federal government - in both the main building of the Department of Justice and the Supreme Court.5 And the Solicitor General does not just have a physical presence at the Supreme Court; the Court's rules and traditions both formally and informally privilege the Solicitor General as the de facto head of the Court's bar - and show special solicitude to the Solicitor General across a constellation of considerations.6

### 2NC – AT: Links to Net Benefit

#### CP sets precedent.

Michael R. Dreeben, Law @ Harvard and fmr. US Solicitor General, ’21, Stare Decisis in the Office of the Solicitor General, 130 Yale L.J. F. 541

In contrast to judicial stare decisis -which promotes stability in the law, limits arbitrary decisionmaking, and enhances legitimacy- stare decisis as applied to positions taken by OSG should operate with a different set of standards and guidelines. While a rigorous process should precede any determination that the legal position OSG has taken is wrong, once the Solicitor General has arrived at that conclusion, the presumption should be in favor of making the change and presenting it to the Court. Of course, any positional reversal should be acknowledged in the filing. And the Solicitor General must weigh considerations that cut against a change, including harming OSG's institutional credibility, intruding upon another agency's equity in running its programs, reliance interests, and alternative litigation approaches to provide the Supreme Court with full information. But any assumption that judicial stare decisis should naturally have a counterpart in stare decisis within OSG is difficult to support. When OSG has determined-after careful review and listening to competing voices-that its prior position was wrong, it should be prepared to say so.

## China PIC

### 2NC – OV

#### Counterplan solves advantage two – has the US adopt an interpretation of comity that increases executive deference without increasing antitrust prohibitions. That solves the impacts to advantage two – they have no reason why increasing deference over antitrust is key – counterplan just fiats the broader judicial doctrine.

### 2NC – CP

#### The United States federal government should not increase prohibitions on price fixing by the Chinese private sector.

### 2NC CP’s – Good

2NC counterplans are good:

1. Tests the intrinsicness of new aff offense – negation theory means we just need to prove a competitive option avoids our DA, not the original 1NC counterplan.
2. Our interp checks vague plans and sketchy solvency mechanisms that get re-explained in the 2AC – theirs incentivizes sand-bagging, which breaks debate because late-breaking debates reduce intricate clash.
3. Arbitrary – you wouldn’t ban new 1NR impacts to politics – proves any restraint is arbitrary, which creates an unpredictable burden for the neg that incentivizes goalpost shifting and crowds out substance.
4. Justified by conditionality – the distinction between the 1NC and 2NC is arbitrary.

### 2NC – AT: PDCP

#### “Prohibitions” – eliminates all possibility that the activity is legal – counterplan doesn’t impose one.

PEDIAA 15. “Difference Between Prohibited and Restricted”. https://pediaa.com/difference-between-prohibited-and-restricted/

Main Difference – Prohibited vs. Restricted

Prohibited and Restricted are used in reference to limitations and prevention. However, they cannot be used interchangeably as there is a distinct difference between them. Prohibited is used when we are talking about an impossibility. Restricted is used when we are talking about something that has specific conditions. The main difference between prohibited and restricted is that prohibited means something is formally forbidden by law or authority whereas restricted means something is put under control or limits.

What Does Prohibited Mean

Prohibited is a variant of the verb prohibit. Prohibited can be taken as the past tense and past participle of prohibiting as well as an adjective. Prohibited means that something is formally forbidden by law or authority. When we say ‘smoking is prohibited’, it means that smoking is not allowed at all, there are no exceptions. Prohibit indicates an impossibility. This gives out the idea that it is not at all possible under any condition or circumstance. The term Prohibited goods is used to refer to items that are not allowed to enter or exit certain countries. For example, the government of South America lists Narcotic and habit-forming drugs in any form, Poison and other toxic substances, Fully automatic, military and unnumbered weapons, explosives and fireworks as prohibited goods. The following sentences will further explain the use of prohibited.

Inter-racial marriages were not prohibited by the government.

He was proved guilty of using prohibited substances.

No one was allowed to enter the grounds; entry was prohibited.

Prohibited imports are the items that are not allowed to enter a country.Difference Between Prohibited and Restricted

What Does Restricted Mean

Restrict means to put under limits or control. Restricted can be either used as the past tense of restrict or as an adjective meaning limited. When we say something is restricted, it means that limits or conditions have been added to it. It does not mean that it is completely impossible. For example, Restricted goods are allowed to enter or exit a country under certain circumstances. A written permission can help you to import or export that item. Likewise, a restricted area does not mean that people are not allowed to enter; it means that a special permission is required to enter the place. Restricted information refers to information that are not disclosed to the general public for security purposes.

The new regulations restricted the free movement of people.

The club was restricted to its members and their family members.

Only the highest military personnel had access to the restricted area.

American scientists had only restricted access to the area.Main difference - Prohibited vs Restricted

Difference Between Prohibited and Restricted

Meaning

Prohibited means banned or forbidden.

Restricted means limited in extent, number, scope, or action

Possibility

Prohibited means that there is no possibility of doing something.

Restricted means that something can be done under certain conditions.

Adjective

Prohibited functions as an adjective derived from prohibit.

Restricted functions as an adjective derived from restrict.

Past tense

Prohibited is the past tense and past participle of prohibit.

Restricted is the past tense and past participle of restrict.

## Adv 2

### XT 1 – Innovation Now

#### U.S. innovation high now – Abbott – leading the world in innovative new tech like 5G as proven by unprecedented R&D investment. Proves AI development sufficiently high.

#### U.S. innovation is high and globally dominant---big business is key.

Wolf ’21 [Martin; April 27; Chief Economics Commentator, M.A. in Economics from Oxford University; Financial Times, “China is wrong to think the US faces inevitable decline,” <https://www.ft.com/content/8336169e-d1a8-4be8-b143-308e5b52e355>]

The Chinese elite are convinced that the US is in irreversible decline. So reports Jude Blanchette of the Center for Strategic and International Studies, a respected Washington-based think-tank. What has been happening in the US in recent years, particularly in politics, supports this perspective. A stable liberal democracy would not elect Donald Trump — a man lacking all necessary qualities and abilities — to national leadership. Nevertheless, the notion of US decline is exaggerated. The US retains big assets, notably in economics.

For one and half centuries, the US has been the world’s most innovative economy. That has been the basis of its global power and influence. So how does its innovative power look today? The answer is: rather good, despite competition from China.

Stock markets are imperfect. But the value investors put on companies is at least a relatively impartial assessment of their prospects. At the end of last week, 7 of the 10 most valuable companies in the world and 14 of the top 20, were headquartered in the US.

If it were not for Saudi Arabian oil, the five most valuable companies in the world would be US technology giants: Apple, Microsoft, Amazon, Alphabet and Facebook. China has two valuable technology companies: Tencent (at seventh position) and Alibaba (at ninth). But those are China’s only companies in the top 20. The most valuable European company is LVMH at 17th. Yet LVMH is just a collection of established luxury brands. That ought to worry Europeans.

When we look only at technology companies, the US has 12 of the top 20; China (with Hong Kong but excluding Taiwan) has three; and there are two Dutch companies, one of which, ASML, is the largest manufacturer of machines that make integrated circuits. Taiwan has the Taiwan Semiconductor Manufacturing Company, the world’s biggest contract computer chipmaker, and South Korea has Samsung Electronics.

Life sciences are another crucial sector for future prosperity. Here there are seven European companies (with Switzerland and the UK included) in the top 20. But the US has seven of the top 10, and 11 of the top 20. There is also one Australian and one Japanese company, but no Chinese businesses.

In sum, US companies are globally dominant and nearly all the most valuable non-US firms are headquartered in allied countries.

#### Funding and quality ensure our lead – specificially in AI.

Savage '20 [Neil; 12/9/20; science writer for Nature; "The race to the top among the world’s leaders in artificial intelligence," https://www.nature.com/articles/d41586-020-03409-8/]

For the near future, Ding says, the US is likely to remain the world leader in AI. “Though China has some exceptional universities, such as Tsinghua University, the US dominates in terms of maybe the top 20 universities doing AI research, and that is reflected in the quality of the papers. It’s very unlikely that China will become the singular innovation centre by 2030.”

Many countries see AI as providing a competitive edge, not only economically, but militarily, says Husain. He likens the competition in AI to the Space Race of the mid-twentieth century, in which the US and the Soviet Union vied to be the first to achieve milestones in space travel. “The Space Race yielded contributions that differentiated the American technological ecosystem from all others for decades to come,” says Husain. “If a country invests heavily in this area, it will yield technologies that will form the pillar of defence capability and economic differentiation for the rest of the century.”

Technologies that can be developed based on AI will indeed have both economic and military benefit, says Daniel Araya, a policy analyst at the Center for International Governance Innovation, a think tank in Ontario, Canada. “We’re talking new weapons, data-driven innovation for industry and automation, and redesigning how our society works from the ground up.”

Husain points to Germany, which maintains a strong economy that relies on exports of products such as machine parts and automobiles, even though lower-income countries can provide low-wage labour for manufacturing. Germany has been able to compete by using automation to keep manufacturing costs down, while keeping quality and productivity high. AI could reinforce this advantage by powering the next generation of automation technologies. “Anybody that has mastery over this technology and is investing in implementing it retains an economic lead,” says Husain. Institutions in Germany, such as the Fraunhofer Society, Europe’s largest application-oriented research organization, have been emphasizing Industry 4.0, a national strategic initiative from the German government to introduce more digital innovation and advanced robotics into manufacturing and supply-chain management.

In China, the ability offered by AI systems to monitor public spaces and scan Internet traffic in an effort to glean user intentions may provide the state with improved tools for social control, enhancing its capability for monitoring the population or censoring information. Even in countries that don’t officially track their populaces, facial-recognition technology, such as that produced by New York-based company, Clearview AI, is being used by law enforcement to identify suspects. The technology has been met with deep concern by some researchers, who say that biases built into its algorithms could result in ethical and human rights abuses.

Amid the controversy that surrounds certain applications of AI, some groups are highlighting the good it can do. In 2019, the Association for the Advancement of Artificial Intelligence, a scientific society in Menlo Park, California, launched its Artificial Intelligence for the Benefit of Humanity award, a US$1-million prize funded by Squirrel AI, an education technology company based in Shanghai, China. The inaugural winner, Regina Barzilay from the Massachusetts Institute of Technology (MIT) in Cambridge, Massachusetts, received the award in September 2020 for developing a machine-learning algorithm that can examine mammograms and predict which women are at a higher risk of breast cancer. Barzilay has also developed a pattern-recognition algorithm that predicts which molecules might make good candidates for new medications. Publishing in the journal Cell, Barzilay and her colleagues described how their system identified a molecule, dubbed halicin, as a potentially potent new antibiotic (J. M. Stokes et al. Cell 180, 688–702; 2020). When the molecule was synthesized and tested, it was found to kill antibiotic-resistant bacteria. Barzilay continues to work on halicin and hopes to progress it to clinical trials.

Money to spend

With an eye to the potential benefits of AI-based technologies, the US National Science Foundation (NSF) announced in August 2020 that it is establishing five new institutes focused on different topics, each led by a different university, and each to receive $20 million over five years. One, led by the University of Oklahoma in Norman, will use AI systems to improve climate forecasting accuracy. Another, at the University of Texas at Austin, will focus on the next generation of machine-learning algorithms. A third, led by the University of Colorado Boulder, will apply AI technologies to teaching and learning. The fourth, headed by the University of Illinois at Urbana-Champaign, will explore the discovery and synthesis of new materials and drugs using AI systems. And a fifth, led by MIT, will investigate how AI can improve research in fundamental physics. The NSF has put out a call for proposals for eight more AI institutes, which it plans to announce next year. “We have a long history of supporting basic research in artificial intelligence,” says Erwin Gianchandani, the NSF’s deputy assistant director for computer and information science and engineering.

In addition, the US Department of Agriculture’s National Institute of Food and Agriculture has committed to funding another two institutes each with $20 million over five years to apply AI to questions of crop yield, pest resistance and food distribution.

#### A new wave of innovation is imminent, reaching all sectors---large firms are key.

Gourevitch ’21 [Antoine and Massimo Portincaso; March 11; Managing Director and Senior Partner at the Boston Consulting Group, M.B.A. from INSEAD, M.A. from Ecole Centrale in Paris; Boston Consulting Group, “Deep Tech and the Great Wave of Innovation,” <https://www.bcg.com/publications/2021/deep-tech-innovation>]

Despite the inherent risks of failure, businesses and investors have shown increasing interest in deep tech. According to our preliminary estimates, investment in deep tech (including private investments, minority stakes, mergers and acquisitions, and IPOs) more than quadrupled over a five-year period, from $15 billion in 2016 to more than $60 billion in 2020. The average disclosed amount per private investment event for startups and scale-ups rose from $13 million in 2016 to $44 million in 2020. For early-stage startups, the most recent survey by Hello Tomorrow found that the amount per investment event increased from $36,000 to $2 million between 2016 and 2019.

And funding sources are expanding. While information and communications technology (ICT) and biopharma companies continue to invest substantially in deep tech, more traditional large enterprises are becoming increasingly active. For example, Sumitomo Chemical has signed a multiyear partnership with Zymergen to bring new specialty materials to the electronics products market, and Eni has invested $50 million in Commonwealth Fusion Systems and joined its board of directors. Bayer has joined forces with Ginkgo Bioworks to reduce agriculture’s reliance on carbon-intensive nitrogen fertilizers. The resulting venture, Joyn Bio uses synthetic biology to engineer nitrogen-fixing microbes that enable cereal crops to extract nitrogen from the air in a usable form. Sovereign wealth funds are playing too. Singapore’s Temasek Holdings invested in JUST (plant-based egg alternatives), Commonwealth Fusion Systems (commercial fusion energy), and Memphis Meats (animal-cell-based meat).

More and more mainstream companies and institutions are recognizing that solutions to big problems—and the future of innovation—lie in deep tech.

The Fourth Wave of Innovation

The first wave of modern business innovation started in the nineteenth and early twentieth centuries with breakthroughs such as the Bessemer process for manufacturing steel and the Haber-Bosch process for making ammonia.

Following World War II, the second wave of modern business innovation—the information revolution—gave birth to large-company R&D, particularly in the ICT and pharma sectors. Bell Labs, IBM, and Xerox PARC became household names and Nobel Prize workshops. Merck alone launched seven major new drugs during the 1980s.

In the third wave, the digital revolution, two guys in a garage (or a Harvard dorm room) led the innovation charge, which resulted in the rise of Silicon Valley and, later, China’s Gold Coast as global centers of computing and communications technology and economic growth. At the same time, the new field of biotech, also driven by entrepreneurs, fueled much of the innovation in pharmaceuticals.

The wave now taking shape as older barriers to innovation crumble embraces a new model and promises to radically broaden and deepen innovation in every business sector. The increasing power and falling cost of computing and the rise of technology platforms are the most important contributors. Cloud computing is steadily improving performance and expanding breadth of use. Biofoundries are becoming for synthetic biology what cloud computing already is for computation. Similar platforms are emerging in advanced materials (Kebotix and VSPARTICLE are two examples).

Meanwhile, costs continue to fall, including those related to equipment, technology, and access to infrastructure. Increasing use of standards, toolkits, and an open approach to innovation, paired with the ever-increasing availability of information and data, plays an important role as well.

#### Digital economy strong now---studies.

Baye ’20 [Michael Baye, James Cooper, Kenneth Elzinga, Deborah Garza, Thomas Hazlett, Benjamin Klein, Tad Lipsky, Scott Masten, Maureen Ohlhausen, James Rill, Vernon Smith, Robert Willig, Joshua Wright, and John Yun, with some professors omitted for convenience; May 20; Former Director of the FTC’s Bureau of Economics, Bert Elwert Professor of Business at Indiana University; Former Acting and Deputy Director of the FTC’s Office of Policy Planning; Economics Professor at the University of Virginia; Chair of the Antitrust Modernization Commission, Former Acting and Deputy Assistant Attorney General of the DOJ’s Antitrust Division; Former Chief Economist of the FCC, Economics Professor at Clemson University; Economics Professor at UCLA; Former Acting Director of the FTC’s Bureau of Competition, Former Deputy Assistant Attorney General of the DOJ’s Antitrust Division; Business Economics and Public Policy at the University of Michigan; Former Acting Chairman & Commissioner of the FTC; Former Assistant Attorney General of DOJ’s Antitrust Division; Nobel Laureate in Economics and Professor at Chapman University; Former Deputy Assistant Attorney General for Economics at the DOJ’s Antitrust Division, Economics and Public Affairs Professor at Princeton University; Former Commissioner of the FTC, Law Professor at George Mason University; Former Acting Deputy Assistant Director of the FTC’s Bureau of Economics, Law Professor at George Mason University; “Joint Submission Of Antitrust Economists, Legal Scholars, And Practitioners To The House Judiciary Committee On The State Of Antitrust Law And Implications For Protecting Competition In Digital Markets,” <https://laweconcenter.org/wp-content/uploads/2020/05/house_joint_antitrust_letter_20200514.pdf>]

I. The Digital Economy is Healthy, Competitive, and Benefits Consumers

We do not recount here the extensive literature calling into question claims that market power and concentration have been systematically increasing, resulting in serious consequences for consumers, workers, innovation, economic inequality, and more. 9 At best, we have an incomplete and imperfect understanding of recent market trends; there is undoubtedly more research to do. But the weight of the literature today—much of which is no more than a couple of years old and some of which is still in working paper form—does not support the conclusion that the economy has been trending inexorably toward increased market power and greater consumer harm, especially for the purpose of justifying dramatic legislative changes to the antitrust framework. It is certainly not the case that “any conclusion to the contrary reflects either an incomplete or incorrect understanding of economics and the economic literature from the last several decades.”10

The most recent studies suggest that the observed changes in national-level concentration are brought about by the expansion of more productive large firms into local markets leading to, in these economists’ own words, “more, rather than less, competitive markets.”11 Further, despite occasional claims to the contrary, the literature has not uncovered systematic competition problems in digital markets. The best interpretation of existing evidence is that the deployment of new technology by traditional industries has increased economies of scale and scope and enhanced local competition.12 None of the economic evidence supports claims about generally enhanced market power in markets inhabited by the companies that develop such technological tools.

Prominent economists across the political spectrum have offered similar analyses, all of which serve to call into question the certitude of the assertions underlying the calls for radical antitrust reform.13

The digital economy is rife with competition and innovation, and consumers are benefitting in meaningful and remarkable ways from dynamic rivalry among companies big and small. That does not mean the digital economy is, or should be, immune from antitrust scrutiny. But recent scholarship strongly suggests that competition in that sector of the economy has thrived under the existing antitrust laws, which can and should be applied when those laws are violated.

### XT 3 – No Spillover

#### No spillover – Chevron is the status quo – no reason one more ruling that affirms deference to the executive uniquely enhances executive flexibility – no uniqueness for that being low now. It’s why McGinnis is about ongoing FTC/DOJ action.

#### Chevron is resilient.

**Hickman** **21** **---** McKnight Presidential Professor in Law, Distinguished McKnight University Professor, and Harlan Albert Rogers Professor in Law at the University of Minnesota.

(Katherine, “The Future of Chevron Deference,” 70 Duke L.J. 1015)

That view, however, is too simplistic. Even if they might sometimes do so only grudgingly,17 **lower court judges** **regularly rely on Chevron**18—and the Supreme Court **rarely** **reverses** **those** **decisions**. Chevron continues to play a **significant** role in the law, even if it is rarely cited by the Justices. Nor is it clear that the Supreme Court is looking to toss out Chevron altogether. In its 2019 decision in Kisor v. Wilkie, 19 a divided Court rejected a chorus of calls to overrule Chevron’s cousin, Auer v. Robbins, 20 which prescribed judicial deference when an agency interprets ambiguities in its own regulations.21 Instead, the Court merely narrowed Auer’s scope.22 The Court’s **reluctance** to overrule Auer, a **much** **less important** decision than Chevron, suggests that **the Court may not** **be inclined to** **overrule** **Chevron** deference outright.

### XT 5 – AT: Emerging Tech/AI

#### 1. AI doesn’t solve anything – standards are meaningless and ineffective, AI is a broad umbrella phrase – commercial incentives, not government standards, will control its utilization. That’s Gupta.

#### 2. Don’t solve tech – McGinnis advocates combining the FTC and DOJ under one agency because conflict between the two undermining tech dominance now – example of Qualcomm case – plan can’t solve that.

#### 3. Impact card from the 1AC is a journal article saying AI COULD be used for ag – not that it is or will be in the future.

#### At best, they’re incredibly far off.

Etzioni ’20 [Oren; CEO of the nonprofit Allen Institute for AI, Professor of Computer Science @ University of Washington; “How to know if artificial intelligence is about to destroy civilization”; July 2nd 2020; https://www.technologyreview.com/2020/02/25/906083/artificial-intelligence-destroy-civilization-canaries-robot-overlords-take-over-world-ai/]

And though the Turing test itself is not a good canary, limited versions of the test could serve as canaries. Existing AIs are unable to understand people and their motivations, or even basic physical questions like “Will a jumbo jet fit through a window?” We can administer a partial Turing test by conversing with an AI like Alexa or Google Home for a few minutes, which quickly exposes their limited understanding of language and the world. Consider a very simple example based on the Winograd schemas proposed by computer scientist Hector Levesque. I said to Alexa: “My trophy doesn’t fit into my carry-on because it is too large. What should I do?” Alexa’s answer was “I don’t know that one.” Since Alexa can’t reason about sizes of objects, it can’t decide whether “it” refers to the trophy or to the carry-on. When AI can’t understand the meaning of “it,” it’s hard to believe it is poised to take over the world. If Alexa were able to have a substantive dialogue on a rich topic, that would be a fourth canary.

Current AIs are idiots savants: successful on narrow tasks, such as playing Go or categorizing MRI images, but lacking the generality and versatility of humans. Each idiot savant is constructed manually and separately, and we are decades away from the versatile abilities of a five-year-old child. The canaries I propose, in contrast, indicate inflection points for the field of AI.

Some theorists, like Bostrom, argue that we must nonetheless plan for very low-probability but high-consequence events as though they were inevitable. The consequences, they say, are so profound that our estimates of their likelihood aren’t important. This is a silly argument: it can be used to justify just about anything. It is a modern-day version of the argument by the 17th-century philosopher Blaise Pascal that it is worth acting as if a Christian God exists because otherwise you are at risk of an everlasting hell. He used the infinite cost of an error to argue that a particular course of action is “rational” even if it is based on a highly improbable premise. But arguments based on infinite costs can support contradictory beliefs. For instance, consider an anti-Christian God who promises everlasting hell for every Christian act.  That’s highly improbable as well; from a logical point of view, though, it is just as reasonable a wager as believing in the god of the Bible. This contradiction shows a flaw in arguments based on infinite costs.

My catalogue of early warning signals, or canaries, is illustrative rather than comprehensive, but it shows how far we are from human-level AI. If and when a canary “collapses,” we will have ample time before the emergence of human-level AI to design robust “off-switches” and to identify red lines we don’t want AI to cross. AI eschatology without empirical canaries is a distraction from addressing existing issues like how to regulate AI’s impact on employment or ensure that its use in criminal sentencing or credit scoring doesn’t discriminate against certain groups.

As Andrew Ng, one of the world’s most prominent AI experts, has said, “Worrying about AI turning evil is a little bit like worrying about overpopulation on Mars.” Until the canaries start dying, he is entirely correct.

#### Tech is all hype – won’t amount to anything anytime soon. At worst, every other impact outweighs---their evidence is suspect

John Horgan 20, directs the Center for Science Writings at the Stevens Institute of Technology, 12-4-2020, "Will Artificial Intelligence Ever Live Up to Its Hype?," Scientific American, https://www.scientificamerican.com/article/will-artificial-intelligence-ever-live-up-to-its-hype/

Elon Musk made headlines in 2018 when he warned that “superintelligent” AI, much smarter than we are, represents “the single biggest existential crisis that we face.” (Really? Worse than climate change? Nuclear weapons? Psychopathic politicians? I suspect that Musk, who has invested in AI, is trying to promote the technology with his over-the-top fearmongering.)

Experts are pushing back against the hype, pointing out that many alleged advances in AI are based on flimsy evidence. Last January, for example, a team from Google Health claimed in Nature that their AI program had outperformed humans in diagnosing breast cancer. In October, a group led by Benjamin Haibe-Kains, a computational genomics researcher, criticized the Google health paper, arguing that the “lack of details of the methods and algorithm code undermines its scientific value.”

Haibe-Kains complained to Technology Review that the Google Health report is “more an advertisement for cool technology” than a legitimate, reproducible scientific study. The same is true of other reported advances, he said. Indeed, artificial intelligence, like biomedicine and other fields, has become mired in a replication crisis. Researchers make dramatic claims that cannot be tested, because researchers—especially those in industry—do not disclose their algorithms. One recent review found that only 15 percent of AI studies shared their code.

### XT 6 – Multilat Fails

#### Extraterritorial governance fails fails – failure of the Iran deal, rise of autocratic leaders, and the G8 becoming the G7 prove multilateral cooperation is impossible. Trump was the symptom, not the cause – that’s Ross.

#### No impact or internal link to multilateralism.

Ferry ’18 [Jean; October 2018; Professor of Economics with Sciences Po of Paris and the Hertie School of Governance of Berlin, former campaign director for Emmanuel Macron and Commissioner-General of France Stratégie, the Founding Director of the think tank Bruegel; Policy Contribution, “Should we give up on global governance?” https://bruegel.org/wp-content/uploads/2018/10/PC-17-2018.pdf]

C. Obsolescence of global rules and institutions

Although the previous argument primarily rests on the broad pattern of international trade and finance, the adverse effects of external liberalisation can be compounded by inadequate governance. As far as trade is concerned, two cases in point are, first, inertia in the categorisation of countries, especially the fact that emerging countries, including China, still enjoy developing country status in the WTO; and, second, failures to enforce the adequate protection of intellectual property (an issue on which the EU recently joined the US and filed a complaint at the WTO against Chinese practices; see European Union, 2018). These grievances, and others concerning subsidies or investment, are not new: they were clearly spelled out by policymakers from the Obama administration (see for example, Schwab, 2011, and Wu, 2016). The underlying concern is that the systemic convergence on a market economy template that was expected from participation in the WTO has failed to materialise. The rules and institutions of global trade have brought shallow convergence but not the deeper alignment of economic systems that was hoped for.

More generally, existing rules and institutions were conceived for a different world. This is very apparent in the trade field: the GATT/WTO framework dates from what Baldwin (2016) has called the “first unbundling” of production and consumption. They were not designed for the “second unbundling” of knowledge and production that gave rise to the emergence of global value chains. For decades, the implicit assumption behind the structure of trade negotiations has been that nations have well-defined sectoral trade interests: they are either exporters or importers. But in a world of global value chains, they are both importers and exporters of similar products simultaneously. Even if the principles of multilateralism remain valid, important features of the rules and institutions in which they are embedded are increasingly outdated.

In the same way, opening to capital movements was supposed to result in net financial flows from savings-rich to savings-poor countries. What has happened instead is a massive increase in gross flows resulting in the interpenetration of financial systems and the coexistence of sizeable external assets and liabilities. The consequence has been the emergence of a global financial cycle (see for example Rey, 2017) and of policy dilemmas that are quite different from those arising in a simple Mundell-Fleming framework, in which interdependence takes place through net inflows and outflows of capital.

Developments in the climate field further illustrate the point. The 1997 Kyoto Protocol was negotiated under the assumption that the bulk of greenhouse gas emissions would continue to originate in the advanced countries. But by the time the Protocol was meant to enter into force, it was clear already that the hypothesis was deeply wrong. The exemption of developing countries from emissions reductions was one of the reasons why the US did not ratify the treaty. The failed Copenhagen agreement of 2009 was an attempt to replicate Kyoto on a global scale, but there was no consensus for such an approach.

Rules can be reformed and institutions can adapt. But this is a long and demanding process, especially when it requires unanimity, when participating countries have diverging interests and when changes require ratification by parliaments where there is no majority to support them. Global rules therefore exhibit a strong inertia that often prevents necessary adaptations. Trade rules, amendments to which require unanimity, are a case in point.

Institutions are nimbler and can adapt to changing priorities or perspectives on interdependence. The IMF for example has succeeded in adjusting to major changes in the international economic regime and major shifts in the intellectual consensus. But even institutions face limitations to their ability to keep up with underlying transformations. This is one of the reasons why solutions to emerging problems have often been looked for outside the existing multilateral, institution-based governance framework (Table 1).

D. The imbalances of global governance

A further reason for popular dissatisfaction with global governance is its unbalanced nature. The deeper international integration becomes, the broader the scope of policy its management should cover, and the more acute the tension between the technical requirements of global interdependence and the domestically-rooted legitimacy of public policies. This is most apparent in the field of taxation. International tax optimisation by multinationals has become an issue of significant relevance and it is estimated that 40 percent of their profit is being artificially shifted to low-tax countries – with major consequences for national budgets (Tørsløv et al, 2018). But the fact that taxation remains at the core of sovereign prerogatives limits the scope and ambition of initiatives conducted at international level. The result, which can be regarded as an illustration of Rodrik’s trilemma, is that global coordination in tax matters falls short of what equity-conscious citizens regard as desirable and, at the same time, exceeds what sovereignty-conscious citizens consider acceptable.

The imbalances of global governance are by no means limited to the taxation field. The same can be found in a series of domains, for example biodiversity and the preservation of nature.

E. Increased complexity

The final obstacle to multilateral solutions has to do with the sheer complexity of the challenges global governance has to tackle. In recent decades channels of international interdependence have both multiplied and diversified. They now link together countries with significantly differing levels of technical, economic or financial development. Because they have developed outside the scope of negotiated rules and established institutions, some of channels of interdependence also escape the reach of international agreements to an unprecedented degree. This is especially, but not only, the case of the internet and the multiple networks that rely on it. The world does not fit anymore the usual representation whereby individual nations trade goods, capital and technology. Even putting aside geopolitical consequences and assuming a shared commitment to openness and multilateral solutions, such complexity is bound to test the limits of existing international governance arrangements.

#### Gridlock is self-reinforcing.

Hale & Held 18 Dr Thomas Hale, Politics PhD from Princeton, Global Politics master’s degree from the London School of Economics, public policy professor at the University of Oxford, & David Held, a British political scientist, Politics and International Relations Professor at Durham University until his death. [Breaking the Cycle of Gridlock, Global Policy, 9(1), Wiley Online Library]

One of the central concepts developed in Gridlock was ‘self‐reinforcing interdependence’ (Hale et al., 2013), the mutually enabling relationship between globalization and the institutionalization of world politics that profoundly deepened interdependence over the postwar period. The idea is that international cooperation is not just a response states use to manage existing interdependence; over time, cooperation also increases the links between economic and social systems across borders, deepening interdependence further. For example, trade agreements create incentives for companies to develop global supply chains and invest in technologies that facilitate cross‐border production, changing their business models and building new constituencies for trade. The resulting increase in interdependence creates additional political incentives for countries to cooperate further, beginning the cycle again. We argued in Gridlock that this historical process of partially endogenous interdependence deepened to such a degree over the postwar period that a number of ‘second order’ cooperation problems arose – namely, multipolarity, harder problems, institutional inertia, and fragmentation – causing gridlock. Today it seems clear that gridlock itself also has a self‐reinforcing element, one that emerges from the corrosive effect of unmanaged globalization on domestic politics. The rise of nationalism and populism across the world, in many different kinds of countries, has multiple and complex origins. But this trend can be seen as part of a downward spiral in which gridlock leads to unmanaged globalization or unmet global challenges, which in turn help to provoke anti‐global backlashes that further undermine the operative capacity of global governance institutions (Figure 1). image Figure 1 Open in figure viewerPowerPoint The vicious cycle of self‐reinforcing gridlock. Consider each dynamic in turn. First, as per the gridlock argument, we face a multilateral system that is less and less able to manage global challenges, even as growing interdependence increases our need for such management. Second, in many areas this inability to manage globalization or to meet global challenges has led to real, and in many cases severe, harm to major sectors of the global population, often creating complex and disruptive knock‐on effects. Perhaps the most spectacular recent example of harm caused by mismanaged interdependence was the 2008–9 financial crisis. A product of inadequate regulation in major economies and at the global level, the crisis wrought havoc on the world economy in general, and on many countries in particular, which was reinforced in many places by severe austerity measures that tried to limit the fallout. We should not be surprised that such significant impacts have led to further destabilization. Third, what has become clear only several years after the crisis is not just the economic cost, but the scale of the political destruction to which the crisis contributed. Rising economic inequality, a long‐term trend in many economies, has been made more salient by the crisis. It reinforced a stark political cleavage between those who have benefited from the globalization, digitization, and automation of the economy, and those who feel left behind in the wake of these powerful disruptions. The global financial crisis was not the only cause of many of the political disruptions that have come to characterize and realign politics in major countries in the last few years, but it has been a critical contributing factor in several of them, building on the economic dislocations that globalization had effected over several decades (Colgan and Keohane, 2017). Perhaps most importantly, the financial crisis sharpened the divide between working‐class voters in industrialized countries, who were hit hard by the events, and other segments of the population. This division is particularly acute in spatial terms, in the cleavage between global cities and their hinterlands. Global cities like London, Paris, Shanghai, New York and San Francisco have become nodes of power and influence in the global economy, linked to each other through a variety of social and economic networks. Their citizens have benefited directly as opportunities have sharply risen. By contrast, those in the hinterlands, typically rural areas and deindustrialized cities, but not exclusively so, have often been left behind in absolute and relative terms, building up frustrations and resentments. The effect on politics has been profound, with a number of nationalist and populist movements emerging and, in some cases, winning elections (or otherwise seizing power) in many countries. Again, we should not be surprised that people exposed to the negative effects of globalization will turn against it. Research shows that over the course of history, right‐wing populist movements and financial crises are strongly correlated (see Funke et al., 2016). Relatedly, the 2008 crisis exacerbated many of the woes that have beset the eurozone since 2010, such as the repeated bailouts of Greece and other countries, and consumed European politics, driving voters on both the creditor and debtor side of the political chasm towards Euro‐scepticism. And more broadly, the impact on the centre‐left parties that have traditionally supported global and regional cooperation has also been severe, with the differential effects of globalization straining the traditional coalition between metropolitan progressives and the working class. Moreover, the financial crisis is only one area where gridlock has undercut the management of global challenges and undermined political support for global cooperation. Consider the global response to terrorism. International cooperation, though effective in many areas, has failed to prevent extremists from attacking civilians around the world. While relatively cohesive and centralized networks like Al Qaeda have been largely taken apart through a combination of aggressive policing, surveillance, drone attacks, and other techniques, more inchoate movements like the Islamic State are much harder to root out. The attacks by these groups, for example in Paris in 2015, have been all too effective in creating a public discourse in many countries that sees perpetual war between Islamists and the West. This sentiment, in turn, creates political pressure for militarized responses from the West that can create as many terrorists as they eliminate, as well as anti‐Muslim policies that breed further resentment. These negative effects also spill across issue areas. The failure to manage terrorism and to bring to an end the wars in the Middle East has had a particularly destructive impact on the global governance of migration. With millions of refugees fleeing their countries in search of safety and a better life for their families, many of them heading for Europe, the global forced migration regime has been overwhelmed. Many recipient countries have seen a potent political backlash from right‐wing national groups and disgruntled populations, which further reduces the ability of countries to generate effective solutions at the regional and global level. We see trends toward nationalism and populism across many different kinds of countries, from Trump's United States to Duterte's Philippines, from Putin's Russia to Brexit Britain, from Modi's India to Erdoğan's Turkey. The anti‐global backlash is heterogeneous and rife with contradictions. It encompasses terrorism in the name of Islam and Islamophobic discrimination against Muslims. It includes leftist rejection of trade agreements and right‐wing rejection of environmental agreements. One powerful tie that unites these disparate movements is a rejection of interdependence and collective efforts to govern it. Global institutions and (perceived) cosmopolitan elites have always been a potent and politically expedient whipping boy [scapegoat] for nationalist and populists, even when those institutions, or some other form of international cooperation, are needed to tame the socioeconomic forces that inflamed populist movements to begin with. This undermining of global cooperation, whether for migration, terrorism, financial regulation, climate change, or other areas, is the fourth and final element of self‐reinforcing gridlock. As the global trend to nationalism and populism undermines the effectiveness of global institutions even further, the whole cycle begins anew.

#### Shifting power relations.

Anton ’18 [Diana, Writer @ Global Risk Insights, “What Trump’s actions at the G7 summit mean for multilateralism,” 6/10/18, https://globalriskinsights.com/2018/07/trump-g7-summit-mean-multilateralism/]

The shifting power relationship among the G7 and other countries will be further complicated in the long term by the rise of new political powers such as China and North Korea. With China’s strategic influence growing in the right-wing governments in Central-Eastern Europe due to economic and political investment, the G7 powers may find it difficult to keep the right-wing governments of Hungary and Poland under control with the present multilateral framework. This is because there is the potential that any economic leverage the G7 powers may have over the East will decrease as the East becomes more heavily reliant on China. Thus, being unable to exert control over these authoritarian governments, the G7 powers will not be able to promote the image of a united Europe thereby undermining the multilateral framework.

Furthermore, a stronger alliance is beginning to develop between the United States and the more authoritarian North Korea. If this alliance bears fruit, there will be a new dimension to international security that the G7 will have to consider if multilateralism is to continue being effective. According to Chatham House, if it is to survive, multilateralism needs to evolve to incorporate not just the countries’ governments, but the private sector and civil society as well. However, this will not be easily accomplished in today’s political climate and is in fact likely to have significant consequences that may spell the end for multilateralism. The main obstacle to any potential reforms is the rise of right-wing governments in Austria, Hungary, Poland and Italy. The election of these right-wing governments indicates that an increasing proportion of civil society in the East does not hold much confidence in the G7, and as a result will most likely not be willing to cooperate with them.

#### Competition wrecks it.

Egel ’16 Naomi Egel, research associate in the International Institutions and Global Governance program, Government PhD candidate at Cornell University. [Multilateralism is Hard to Do, 6-9-2016, https://www.cfr.org/blog/multilateralism-hard-do]

Challenges to the liberal world order limit multilateralism Traditional multilateralism—as part of the U.S.-led liberal world order—is under strain and underperforming. At the precise moment that global interdependence is deepening, resurgent great power competition is undercutting prospects for sorely needed cooperation. Emerging powers are obviously determined to secure greater influence over international institutions. What is less clear is whether their ultimate aim is simply to increase their proportional weight and authority within these institutions, or something more ambitious—to replace the current norms and rules governing state conduct in spheres ranging from international security to development cooperation. The answer to this question matters. If countries like China, India, Russia, Brazil, and Turkey are invested in the system but merely looking for greater voice, the relative decline of the West seems less worrisome. If their aims are to transform the system, all bets are off. Complicating matters, the redistribution of global power is occurring in an increasingly crowded institutional environment—in which the effectiveness of different bodies varies dramatically. With many existing multilateral organizations deadlocked and resistant to reform, the United States and other countries are pursuing alternative, essentially experimental forms of international cooperation, including coalitions of the capable, interested, or likeminded. This dynamic is evidenced across the board, from the Nuclear Security Summit to the surprising resilience of the Group of Seven advanced market democracies. Multilateralism is also increasingly networked, disaggregated, and bottom-up. The Paris Agreement on climate change exemplifies this new model. Although it was an intergovernmental agreement, a slew of nonstate actors influenced its negotiation and will be critical to its implementation. It is also simply one part of the climate change puzzle, which is being addressed through multiple, mutually reinforcing multilateral initiatives. Finally, it took the form not of a single comprehensive treaty, handed down on all parties from above, but as the compilation of individual, nationally-determined contributions, in the hopes that the whole would exceed the sum of its parts. Domestic turbulence makes multilateral agreement more difficult Turbulent domestic politics around the world, including in the United States, create serious obstacles to effective multilateral cooperation. The tensions facing the European Union highlight this point: The persistence of low economic growth, the ongoing crisis in the Eurozone, Europe’s struggle to respond to uncontrolled flows of refugees and migrants, and the rise of nationalist and xenophobic parties have stopped integration in its tracks. Meanwhile, the total breakdown of social trust and governing structures in much of the Middle East poses a fundamental, potentially decades-long challenge for the region. Whatever agreements the United States and other external actors might be able to achieve in diplomatic corridors will not be sufficient to restore stability and deliver prosperity in the Middle East. Getting the world on the right track, in other words, increasingly depends on whether individual countries can get their own houses in order first. Take the international economy. In the wake of the global financial crisis, the major institutions of global economic governance performed rather well, staving off what might well have been a second Great Depression. What multilateral cooperation has not delivered, however, is a path to sustained global growth and prosperity. And the reason is that this outcome ultimately rests on sound domestic policy decisions and their implementation at the national level. The main challenges facing the global economy, including low productivity in developed economies and growing inequality around the world, will not be met through simply deeper commercial and financial integration or multilateral regulations.

# 1NR

## Stare Decisis

### 1NR – Kick

## DOJ Tradeoff

### 1NR – Kick

## Deference CP

### 1NR – Kick

Concede perm – not going for it

## ITC CP

### 1NR – Kick

Concede perm – not going for it

## China

### 1NR – O/V

#### The plan expands global capitalism to China – WTO rules reduce state involvement in the economy to encourage the free movement of capital. That strips the Chinese economy of state involvement . You should assume our internal link is more probable – the CCP has maintained stable and GROWN over the past few years due to price fixing and government involvement – change is inherently suspect to instability.

#### If we turn CCP Collapse, we turn every impact – decline in relative power causes CCP collapse and extinction.

Jing 15 (Lu - director of the Institute of International Relations, China Foreign Affairs University, China’s rise will restore history of peaceful benefits for its neighbors, http://www.globaltimes.cn/content/907832.shtml)

The "China threat" theory has been widely circulated and constantly hyped by Western countries during China's rise and is often cited by China's neighboring countries. It typically reflects the Western thinking of realpolitik in international relations. In fact, be it in history or in the current stage, a powerful China has never posed a threat to the peace and stability of its neighboring countries or the whole world, but instead it has created a positive influence. People may infer that a mighty China will manifest its identity by all means based on their memory of the Middle Kingdom or the tributary system. However, looking back, China in its powerful times was always favorable to others in economic ties, adhered to the principle of benevolence in political relations and was cautious about resorting to force. Having been through harsh humiliation in recent history, today's China holds firmly that one should not impose his or her beliefs on anyone else. Today, a rising China is determined to guide and exercise its relations with the outside world by using new diplomatic mind-set focused on win-win cooperation. China has realized that if a country wants to seek development, security and well-being, it has to allow others to have them. It is out of this concept that China has taken on more and more duties as a big power to safeguard the prosperity and stability in the region and the world. While China has proposed to build a new type of major power relationship, it also adopts the principles of closeness, sincerity, sharing in prosperity and inclusiveness in fostering neighborhood relations to make neighbors benefit from China's development. China has become the largest trade partner and export destination and exporter of many neighboring countries. China has proactively joined the efforts to address global issues that range from the UN peacekeeping missions, prevention and treatment of infectious diseases, climate change, non-proliferation of mass destruction weapons to a series of regional hot-spot issues. Its roles are highly recognized. China remains a developing country faced with arduous development problems and needs a stable international environment. It means a lot for China to prevent the world from falling into violence and tumult. A weak China will actually serve as a threat to the neighborhood stability. China's feebleness in recent history not only invited a century-long humiliation for itself, but it also drew in the countries around. If China with its more than 1.3 billion population is still mired in poverty and turbulence or even undergoes internal collapse, the resulting problems of refugees and emigrants will pose a threat to the neighborhood and the rest of the world. As President Xi Jinping noted in his speech at the Moscow State Institute of International Relations in 2013, a well-developed China with over 1.3 billion people will bring tangible benefits to the world. On the contrary, if China becomes feeble, it will be a matter of grave concern for the world.

#### Collapse causes global disaster – threatens Asian stability, global economy, and escalates all flashpoints.

David ’8 (Steven; Professor of Political Science and Vice Dean for Centers and Programs at the Johns Hopkins University, Ph.D. in Political Science from Harvard University; 2008, Catastrophic Consequences: Civil Wars and American Interests, “China: Collapse of a Great Power,” ISBN 080188988X, p. 116-121)

While some American policymakers would greet the prospect of a China mired in internal conflict with relief, ~~a crippled~~ [a collapsed] China presents its own threats to American interests, threats that are in many ways more dire than those posed by a rising China. American and Chinese economies have become closely intertwined with huge amounts of American investment in China and even larger Chinese purchases of American bonds. If domestic unrest undermines this relationship, any hope of China becoming prosperous would be dashed, while the American economy would be thrown into recession—or worse. China is a great power with a population of 1.3 billion people, bordering on 14 countries. Its collapse would threaten the stability of close American allies such as South Korea and Japan, create opportunities for mischief by Russia and North Korea, and produce a humanitarian catastrophe unprecedented in world history. Should China choose to stave off internal unrest through aggressive actions against Taiwan, prospects for a Sino-American military confrontation become all too real. Precisely because China needs good relations with its neighbors and the United States to continue on its path of economic growth, there is reason to hope that the Chinese leadership would not deliberately opt for bellicose policies. If China is wracked with instability, however, Chinese leaders may not be able to control what happens within and outside their borders, endangering key American concerns. Understanding the consequences of a failing China for the United States requires first grasping why a stable China is so important to American concerns. As will be seen, China plays a central role in American economic and strategic interests. Why China, despite its seeming prosperity and progress, may fall victim to civil unrest is then examined. Unlike Pakistan, Saudi Arabia, and Mexico, China forces us to confront what the collapse of a great power would be like. Far from a welcome occurrence, the implications of such an event are potentially catastrophic for America, China’s Asian neighbors, and the world community. American Interests in China The United States cares about what happens in China, because America’s prosperity and well-being rests on China remaining stable. China is the second largest trading partner of the United States (after Canada), a relationship whose disruption would be disastrous for both countries. The low cost of Chinese exports has kept inflation down in the United States, while delighting consumers with $40 DVD players and $20 digital cameras. These benefits, while highly visible, pale in comparison to the critical role played by Chinese purchases of American securities. China holds over one trillion dollars in foreign reserves, one of the largest holders of such reserves in the world. Because China exports so much and imports so little, it accumulates huge amounts of dollars. This would normally cause the Chinese currency (yuan) to gain in value, thus reducing its exports and its mammoth reserves. To preserve its critical export sector, however, China has not allowed the yuan to float freely and instead has kept its value relatively constant by buying dollars to the tune of $20 billion per month, ensuring that its reserves will continue to grow. Approximately 70% of these reserves are in U.S. dollars, with the great majority in U.S. treasury bonds, widely seen as the most secure investment one can make, since they are backed in full by the American government. A major reason why interest rates in the United States have been kept low is because China buys so many of these bonds. These low interest rates are central to the health of the American economy, fostering economic expansion and high home prices. The housing market is especially critical, as it has been the major engine of growth for the American economy over the past several years, as homeowners (many of whom have saved little) borrow against the ever rising values of their houses, stimulating the economy with their robust consumer spending. If China stops buying American treasury bonds or dramatically slows down their purchase, American interest rates would need to increase in order to attract other buyers, making business expansion more costly, houses much more expensive, and dramatically cutting consumer spending.3 China displayed its economic clout the day after the Democrats won control over both houses of Congress in November 2006, when the head of China’s central bank declared that the Bank would diversify more of its reserves into nondollar currencies. This prompted an immediate worldwide sell-off of American dollars, which dramatically cut the dollar’s value. If such a seemingly benign announcement could produce this effect, one shudders to think of the impact of a major Chinese sell-off of American bonds on the United States.4 Some have taken solace in the view that Chinese self-interest would prevent Beijing from acting in ways that would harm the American economy. If, for example, China halted its purchase of American securities, China too would suffer as the value of the bonds in its possession would also decrease. If China is convulsed with domestic disorder, however, it would be unable to purchase the American bonds, plunging the U.S. economy into crisis. An unstable China also presents major strategic concerns for the United States. Since the death of Mao in 1976, China has largely cooperated with the United States on key foreign policy goals. China has been a prime player in talks with North Korea, striving to contain the damage done by Pyongyang’s development of nuclear weapons. In part because of China’s concerns about its own Islamic minority, Beijing has worked with Washington after 9/11 to confront terrorism. China has become a major international player in the United Nations, contributing more troops to peacekeeping missions around the world than any other Security Council member.5 With Washington’s endorsement, China joined the World Trade Organization, where it is expected to play a major role in lowering tariffs and establishing rules for free trade that the world (and it) will follow. To be sure, the United States and China do not agree on everything. The United States is concerned about China’s lack of democracy, overlooking of human rights abuses in Darfur and elsewhere, border disputes with its neighbors, close ties with Iran, and continuing claims to Taiwan. Nevertheless, in a world increasingly divided between those fostering terror and instability and those seeking to maintain order and enhance prosperity, China clearly belongs in the latter camp, much to America’s relief. If China is beset by internal disorder, however, there is no telling what kind of regime might emerge in its wake. The brutal civil war in China in the late 1940s gave birth to an equally brutal government that made life miserable for its neighbors and America for decades. A twenty-first-century civil war could well bring about the emergence of a hostile, expansionist China that, armed with nuclear weapons and a strong economy, posed an even greater threat to American interests and world stability than its Maoist predecessor. A strong China is necessary to preserve Asian stability, a vital interest of the United States. The prosperity of Asian nations is directly linked to the surging Chinese economy. In the 1990s, Asian nations produced goods largely for non-Asian countries, particularly the United States. By 2005, more than half of all regional exports were to other states in the region, with China the most likely destination. China is the number one trading partner of such Asian powerhouses as South Korea and Japan, both of which now provide more direct investment to China (over $5 billion per year) than even the United States.6 Moreover, China has emerged as the major player in Asian multilateral organizations, including the Association of Southeast Asian Nations (ASEAN), the Shanghai Cooperation Organization (SCO), and the Asia-Pacific Economic Cooperation forum (APEC). None of these organizations could meet their goals of fostering economic and political interdependence without the active cooperation of China. Insofar as economic interdependence and international institutions promote peace and security, the continued economic growth and stability of China is essential for Asia.7 The importance of a stable China to American strategic interests is best seen by considering what might happen if China unraveled. One of the first consequences would be millions of refugees pouring from China’s borders, unsettling its neighbors. The stability of key American allies such as Japan, South Korea, and Taiwan would be severely tested as they try to cope with this massive human flow along with the economic shockwaves of China’s dissolution. Nor would the United States be immune, as many Chinese may take advantage of corrupt officials or professional human smugglers (”snakeheads”) to make their way to America’s shores.8 North Korea, unpredictable under normal circumstances, may flex its military muscle along its borders with China and South Korea, with dreadful results. Ethnic minorities in provinces such as Tibet and Xinjiang might seize the moment to attempt to break away from Beijing’s domination, fostering even greater instability. China’s control of its more than 200 nuclear weapons, usually very secure, may be compromised, with the arms eventually falling into unknown hands. The territorial disputes that China has with Russia, Vietnam, India, and others could well degenerate into armed warfare as China loses control over its own military forces and its neighbors seek to take advantage of its internal strife. As Chinese leader Deng Xiaoping remarked (following the 1989 Tiananmen demonstrations), the collapse of Chinese rule would have terrible effects that would go far beyond China’s borders: “And if a civil war broke out, with blood flowing like a river, what ‘human rights’ would there be? If civil war broke out in China, with each faction dominating a region, production declining, transportation disrupted and not millions or tens of millions but hundreds of millions of refugees fleeing the country, it is the Asia-Pacific region, which is at present the most promising in the world, that would be the first affected. And that would lead to disaster on a world scale.”9 While Deng may have had reason to exaggerate the effects of the toppling of the Chinese regime, his concerns ring true. American relations with China would be severely damaged in the wake of Chinese unrest. The Chinese regime might single out the United States as an enemy in order to stifle civil strife by fostering anti-American nationalism. If China violently suppressed protests, as it did during the 1989 Tiananmen demonstrations, the American Congress might retaliate with economic sanctions, further escalating tensions between China and the United States. Especially if China takes actions against groups favored by the United States, such as Chinese Christians, the American leadership is likely to react harshly against Beijing. Chinese leaders already worry about the United States exploiting internal unrest to remove them from power. Actual American support of insurgent groups even if it is confined to expressions of sympathy, could be taken as a sign that Washington had joined with the rebels, throwing Sino-American relations into crisis. China would very quickly turn from an erstwhile ally into a superpower adversary.10 The deterioration of the American relationship with China would be especially dangerous regarding Taiwan. Under the best of circumstances, Taiwan presents a flash point in the Chinese-American relationship. China’s claims that Taiwan is a renegade province belonging to the People’s Republic fly in the face of America’s commitment to protect Taiwan, a democratic and prosperous ally. So long as Taiwan does not declare its independence, the United States and China can agree to disagree about Taiwan’s future, but should internal unrest engulf China, this uneasy and informal accommodation could unravel. If China falls victim to widespread instability, the pressure to act against Taiwan would be enormous. It would give China the excuse to impose martial law, improving its abilities to suppress any budding revolt. China’s claims to Taiwan enjoy near unanimous approval among the Chinese people. Acting against Taiwan would enable the Chinese leadership to fan the flames of nationalism, one of the few means at its disposal to rally support for an otherwise illegitimate regime.11 A Sino-Taiwanese confrontation could also come about inadvertently if the Chinese leadership decided to provoke a crisis over Taiwan only to find itself at war as popular emotions prevented a peaceful resolution of the crisis. If a Taiwanese leader decided to exploit Chinese unrest by declaring independence, the Chinese government might have no choice but to launch an attack. As the political scientist Susan Shirk argues, no Chinese regime can stand aside and allow Taiwan to announce its independence without going to war if it expects to survive in power.12 Whether through miscalculation or brinksmanship, war with Taiwan producing a Sino-American confrontation could well be the unintended outcome of Chinese civil conflict. China is well prepared to take forceful action against Taiwan if it decides to do so. China has been constantly upgrading its air and sea capabilities for a possible invasion across the Straits of Taiwan.13 If China chooses not to invade, it could launch the hundreds of ballistic missiles deployed on its coast against Taiwan or it could blockade its two principal ports. Given that Taiwan is critically dependent on foreign trade (75% of its GDP) and imports of fuel for energy consumption (95% of its energy needs come from outside the country), either of these actions would cripple the island state.14 It is difficult to see the United States remaining indifferent to a brutal assault against one of its allies. Perhaps most worrisome, we simply do not know all of the effects that the collapse of China would bring. The prospect of civil unrest in China threatens an existing great power poised perhaps to become the major power of the twenty-first century. The impact of civil conflict in China cannot be isolated to one or a handful of consequences. As seen in the French Revolution of 1789–1799 and the Russian Civil War of 1918–1920, great powers do not suffer civil violence quietly, or alone. Given China’s central role in the world economy, enormous population, nuclear arsenal, and growing international influence, the unraveling of China cannot help but be shattering for the world. Change can be beneficial, and the weakening of a prospective superpower competitor would be celebrated in some American quarters. Nevertheless, an uncontrolled, cataclysmic transformation in China would threaten American interests as much as, if not more than, the purposeful designs of Maoist China a generation ago.

#### WE have two links – one is a proper turn, the other is a price fixing/communism good DA

#### A) LIBERALIZATION BAD – China should stay out of the global economy. The WTO will invite investor hawks into the country. Werner says its code for cutting wages, reducing capital controls etc. That makes the economy more unstable for a host of reasons subpointed throuughly explained below.

#### B) PRICE FIXING GOOD – THIS IS AN EXTERNAL DA TO ALL THE LIBERALIZATION DEBATE. Chinese price fixing helps them maintain the stability of goods, avoids hyper inflation and maintains popular support.

#### 4. Our internal links to CCP collapse outweighs –

#### A) Proximate cause of legitimacy. 1nc evidence says the support of the public poor is more important than chiense vacuous prestige in global markets. The crux of CCP legitimacy is the POWER OF THE PEOPLE, and they do not care about global markets.

#### B) EPISTEMOLOGY – Liberalization good arguments are Shock Therapy triumphalism. The “good reformers” versus the autocrats story is a US construct.

### 1NR – AT: Growth

#### Growht is strong now because China is price fixing and maintaining an illiberal economic system – it creates legitimacy for the CCP by preventing poverty.

#### Authoritarism makes Chinese econ growth MORE sustainable than liberal democracy.

Mitter and Johnson 21 - [Rana Mitter](https://hbr.org/search?term=rana%20mitter&search_type=search-all) is a professor of the history and politics of modern China at Oxford. [Elsbeth Johnson](https://hbr.org/search?term=elsbeth%20johnson&search_type=search-all), formerly the strategy director for Prudential PLC’s Asian business, is a senior lecturer at MIT’s Sloan School of Management and the founder of SystemShift, a consulting firm. (What the West Gets Wrong About China, HBR, Spring 21 https://hbr.org/2021/05/what-the-west-gets-wrong-about-china)//gcd

But this argument overlooks some fundamental differences between China and the United States, Japan, Britain, Germany, and France. Those countries have since 1945 been pluralist democracies with independent judiciaries. As a result, economic growth came in tandem with social progress (through, for example, legislation protecting individual choice and minority rights), which made it easy to imagine that they were two sides of a coin. The collapse of the USSR appeared to validate that belief, given that the Soviet regime’s inability to deliver meaningful economic growth for its citizens contributed to its collapse: Russia’s eventual integration into the global economy (perestroika) followed Mikhail Gorbachev’s political reforms (glasnost).

In China, however, growth has come in the context of stable communist rule, suggesting that democracy and growth are not inevitably mutually dependent. In fact, many Chinese believe that the country’s recent economic achievements—large-scale poverty reduction, huge infrastructure investment, and development as a world-class tech innovator—have come about because of, not despite, China’s authoritarian form of government. Its aggressive handling of Covid-19—in sharp contrast to that of many Western countries with higher death rates and later, less-stringent lockdowns—has, if anything, reinforced that view.

China has also defied predictions that its authoritarianism would inhibit its capacity to [innovate](https://hbr.org/2011/06/what-the-west-doesnt-get-about-china). It is a global leader in AI, biotech, and space exploration. Some of its technological successes have been driven by market forces: People wanted to buy goods or communicate more easily, and the likes of Alibaba and Tencent have helped them do just that. But much of the technological progress has come from a highly innovative and well-funded military that has invested heavily in China’s burgeoning new industries. This, of course, mirrors the role of U.S. defense and intelligence spending in the development of Silicon Valley. But in China the consumer applications have come faster, making more obvious the link between government investment and products and services that benefit individuals. That’s why ordinary Chinese people see Chinese companies such as Alibaba, Huawei, and TikTok as sources of national pride—international vanguards of Chinese success—rather than simply sources of jobs or GDP, as they might be viewed in the West.

Thus July 2020 polling data from the Ash Center at Harvard’s Kennedy School of Government revealed 95% satisfaction with the Beijing government among Chinese citizens. Our own experiences on the ground in China confirm this. Most ordinary people we meet don’t feel that the authoritarian state is solely oppressive, although it can be that; for them it also provides opportunity. A cleaner in Chongqing now owns several apartments because the CCP reformed property laws. A Shanghai journalist is paid by her state-controlled magazine to fly around the world for stories on global lifestyle trends. A young student in Nanjing can study propulsion physics at Beijing’s Tsinghua University thanks to social mobility and the party’s significant investment in scientific research.

Many Chinese believe that the country’s recent economic achievements have actually come about because of, not despite, China’s authoritarian form of government.

The past decade has, if anything, strengthened Chinese leaders’ view that economic reform is possible without liberalizing politics. A major turning point was the financial crisis of 2008, which in Chinese eyes revealed the hollowness of the “Washington consensus” that democratization and economic success were linked. In the years since, China has become an economic titan, a global leader in technology innovation, and a military superpower, all while tightening its authoritarian system of government—and reinforcing a belief that the liberal narrative does not apply to China. That, perhaps, is why its current president and (more crucially) party general secretary, Xi Jinping, has let it be known that he considers Gorbachev a traitor to the cause for liberalizing as he did, thereby destroying the Communist Party’s hold on the USSR. And when Xi announced, in 2017, that the “three critical battles” for China’s development would fall in the areas of reducing financial risk, addressing pollution, and alleviating poverty, he also made it clear that the objective of these reforms was to solidify the system rather than to change it. The truth, then, is that China is not an authoritarian state seeking to become more liberal but an authoritarian state seeking to become more successful—politically as well as economically.

In much Western analysis the verb most commonly attached to China’s reforms is “stalled.” The truth is that political reform in China hasn’t stalled. It continues apace. It’s just not liberal reform. One example is the reinvention in the late 2010s of the Central Commission for Discipline Inspection. Empowered by Xi to deal with the corruption that had become so prevalent early in that decade, the commission can arrest and hold suspects for several months; its decisions cannot be overturned by any other entity in China, not even the supreme court. The commission has succeeded in reducing corruption in large part because it is essentially above the law—something unimaginable in a liberal democracy. These are the reforms China is making—and they need to be understood on their own terms, not simply as a distorted or deficient version of a liberal model.

#### Chinese people believe authoritarianism is key to economic and social prosperity. Liberalism causes governance collapse.

Mitter and Johnson 21 - [Rana Mitter](https://hbr.org/search?term=rana%20mitter&search_type=search-all) is a professor of the history and politics of modern China at Oxford. [Elsbeth Johnson](https://hbr.org/search?term=elsbeth%20johnson&search_type=search-all), formerly the strategy director for Prudential PLC’s Asian business, is a senior lecturer at MIT’s Sloan School of Management and the founder of SystemShift, a consulting firm. (What the West Gets Wrong About China, HBR, Spring 21 https://hbr.org/2021/05/what-the-west-gets-wrong-about-china)//gcd

Authoritarian Political Systems Can’t Be Legitimate

Many Chinese not only don’t believe that democracy is necessary for economic success but do believe that their form of government is legitimate and effective. Westerners’ failure to appreciate this explains why many still expect China to reduce its role as investor, regulator, and, especially, intellectual property owner when that role is in fact seen as essential by the Chinese government.

Part of the system’s legitimacy in the eyes of the Chinese is, again, rooted in history: China has often had to fight off invaders and, as is rarely acknowledged in the West, fought essentially alone against Japan from 1937 until 1941, when the U.S. entered World War II. The resulting victory, which for decades the CCP spun as its solo vanquishing of an external enemy, was reinforced by defeat of an internal one (Chiang Kai-shek in 1949), establishing the legitimacy of the party and its authoritarian system.

Seventy years on, many Chinese believe that their political system is now actually more legitimate and effective than the West’s. This is a belief alien to many Western business executives, especially if they’ve had experience with other authoritarian regimes. The critical distinction is that the Chinese system is not only Marxist, it’s Marxist-Leninist. In our experience, many Westerners don’t understand what that means or why it matters. A Marxist system is concerned primarily with economic outcomes. That has political implications, of course—for example, that the public ownership of assets is necessary to ensure an equal distribution of wealth—but the economic outcomes are the focus. Leninism, however, is essentially a political doctrine; its primary aim is control. So a Marxist-Leninist system is concerned not only with economic outcomes but also with gaining and maintaining control over the system itself.

That has huge implications for people seeking to do business in China. If China were concerned only with economic outcomes, it would welcome foreign businesses and investors and, provided they helped deliver economic growth, would treat them as equal partners, agnostic as to who owned the IP or the majority stake in a joint venture. But because this is also a Leninist system, those issues are of critical importance to Chinese leaders, who won’t change their minds about them, however effective or helpful their foreign partners are economically.

This plays out every time a Western company negotiates access to the Chinese market. We have both sat in meetings where business executives, particularly in the technology and pharmaceutical sectors, expressed surprise at China’s insistence that they transfer ownership of their IP to a Chinese company. Some have expressed optimism that China’s need for control will lessen after they’ve proved their worth as partners. Our response? That’s not likely, precisely because in China’s particular brand of authoritarianism, control is key.

A Leninist approach to selecting future leaders is also a way the CCP has maintained its legitimacy, because to many ordinary Chinese, this approach produces relatively competent leaders: They are chosen by the CCP and progress through the system by successfully running first a town and then a province; only after that do they serve on the Politburo. You can’t become a senior leader in China without having proved your worth as a manager. China’s leaders argue that its essentially Leninist rule book makes Chinese politics far less arbitrary or nepotistic than those of many other, notably Western, countries (even though the system has its share of back-scratching and opaque decision-making).

Familiarity with Leninist doctrine is still important for getting ahead. Entry to the CCP and to a university involves compulsory courses in Marxist-Leninist thought, which has also become part of popular culture, as evidenced by the 2018 TV talk show Marx Got It Right. And with handy apps such as Xuexi Qiangguo (“Study the powerful nation” and a pun on “Study Xi”) to teach the basics of thinkers including Marx, Lenin, Mao, and Xi Jinping, political education is now a 21st-century business.

The Leninist nature of politics is also evidenced by the language used to discuss it. Political discourse in China remains anchored in Marxist-Leninist ideas of “struggle” (douzheng) and “contradiction” (maodun)—both seen as attributes that force a necessary and even healthy confrontation that can help achieve a victorious outcome. In fact, the Chinese word for the resolution of a conflict (jiejue) can imply a result in which one side overcomes the other, rather than one in which both sides are content. Hence the old joke that China’s definition of a win-win scenario is one in which China wins twice.

China uses its particular authoritarian model—and its presumed legitimacy—to build trust with its population in ways that would be considered highly intrusive in a liberal democracy. The city of Rongcheng, for example, uses big data (available to the government through surveillance and other data-capturing infrastructure) to give people individualized “social credit scores.” These are used to reward or punish citizens according to their political and financial virtues or vices. The benefits are both financial (for example, access to mortgage loans) and social (permission to buy a ticket on one of the new high-speed trains). Those with low social-credit scores may find themselves prevented from buying an airline ticket or getting a date on an app. For liberals (in China and elsewhere), this is an appalling prospect; but for many ordinary people in China, it’s a perfectly reasonable part of the social contract between the individual and the state.

Such ideas may appear very different from the outward-facing, Confucian concepts of “benevolence” and “harmony” that China presents to its international, English-speaking audience. But even those concepts lead to considerable misunderstanding on the part of Westerners, who often reduce Confucianism to cloying ideas about peace and cooperation. For the Chinese, the key to those outcomes is respect for an appropriate hierarchy, itself a means of control. While hierarchy and equality may appear to the post-Enlightenment West to be antithetical concepts, in China they remain inherently complementary.

#### Growth coming now in stock

Bloomberg 3-19 ([China Put Can Be Game Changer for Stock Market After Global Rout - Bloomberg](https://www.bloomberg.com/news/articles/2022-03-19/china-put-can-be-game-changer-for-stock-market-after-global-rout), 3-19-22, hyperlinkekd)/gcd

Following a string of dramatic interventions by Beijing, the [worst selloff](https://www.bloomberg.com/news/articles/2022-03-15/china-tech-stocks-tumble-after-historic-rout-as-risks-mount) in Chinese markets since 2008 turned into a [historic surge](https://www.bloomberg.com/news/articles/2022-03-17/china-stocks-extend-stunning-surge-as-traders-cheer-support-vows), catapulting the country’s U.S.-listed technology firms into a rebound not seen before. For investors who’ve been burned many times by abrupt somersaults in government policy, the question is whether the rally will hold, turning the world’s second-biggest economy into a haven for traders and a life-raft for global output amid concerns over a broad slowdown.

The best answer from strategists is: It could.

Even the perpetually pessimistic [Bank of America Corp.](https://www.bloomberg.com/quote/BAC:US) team said Friday that China’s “verbal intervention” could become a “bull driver” for a spring rally if policy stimulus ends the country’s growth downgrades and puts a floor on global economic output estimates.

“The market was indeed oversold, irrational, in the dramatic rout, so the real money is back doing bottom-fishing,” said Castor Pang, head of research at Core Pacific Yamaichi.

For Christophe Barraud -- one of the top forecasters for the Chinese economy according to Bloomberg’s rankings -- a confluence of factors shows why the country felt compelled to act. The [lockdown in Shenzhen](https://www.bloomberg.com/news/articles/2022-03-13/china-places-all-shenzhen-residents-under-lockdown-afp) on Monday, a tech-hub province of 24 million, tested the country’s zero-Covid policy at the same time as a hit to foreign demand from the conflict in Ukraine. That threatened to derail China’s economic growth ahead of a Communist Party meeting later this year at which President Xi Jinping is expected to secure a precedent-breaking third term in office, according to Barraud, chief economist at Market Securities LLP.

China’s top financial policy committee swung into action. It vowed to ease a crackdown on technology firms, support the battered real-estate market and stimulate the economy. [The pledge](https://www.bloomberg.com/news/articles/2022-03-16/china-vows-to-keep-markets-stable-and-handle-developers-risks) follows a prolonged squeeze on financing for property developers and a sweeping regulatory campaign aimed at internet giants like [Alibaba Group Holding](https://www.bloomberg.com/quote/BABA:US) and [Tencent Holdings](https://www.bloomberg.com/quote/700:HK).

[Read More: Global Exodus From Chinese Markets Prompts Xi to Change Tack](https://www.bloomberg.com/news/articles/2022-03-18/global-exodus-from-chinese-markets-prompts-xi-to-change-tack)

That was swiftly followed by the country’s central bank intervening to [weaken the yuan](https://www.bloomberg.com/news/articles/2022-03-18/china-moves-to-weaken-yuan-with-record-push-back-via-fixings) and the government [distancing itself](https://www.bloomberg.com/news/articles/2022-03-18/global-exodus-from-chinese-markets-prompts-xi-to-change-tack) from Russia’s attack on Ukraine to [minimize the risk](https://www.bloomberg.com/news/articles/2022-03-17/biden-team-hardens-view-of-china-tilting-toward-putin-on-ukraine) of drawing Joe Biden’s ire and potential U.S. sanctions. Xi then [signaled a shift in a longstanding Covid-fighting strategy](https://www.bloomberg.com/news/articles/2022-03-18/xi-hints-at-tweaks-to-china-s-covid-strategy-virus-update) by pledging to reduce its economic impact.

### XT 1NC 1: Econ Turn

#### “Liberalization” of China is neoliberal orthodoxy – it pushes deregulation, privatization of publicly owned land and reduction of capital controls. Giving global investors more power over China invites inflation, deindustrialization, and declining labor share of income.

Andrew B. Liu, Professor of History at Villanova, 2-21-22“The Market’s Specter” https://www.thenation.com/article/world/china-communism-free-markets/

How China Escaped Shock Therapy, by contrast, highlights not the continuity of China’s capitalist ascent but the very real political disagreements that animated the first decade of Deng’s “reform and opening.” In the 1980s, many reformers embraced the advice of an emergent neoliberal orthodoxy that advocated the overnight liberalization of all prices within the Chinese economy—that is, unraveling the state’s planned system of prices for all goods, from cigarettes and bicycles to petroleum and raw cotton. Price liberalization paired with fiscal austerity constituted a “package reform” that would later be adopted in Eastern Europe and the former Soviet states in the 1980s under the title of “shock therapy.” Had it come to pass in China, Weber argues, the results would have been equally disastrous, leading to hyperinflation, deindustrialization, and plummeting incomes.

Thankfully, a handful of young, pragmatic, rural-oriented Chinese reformers led a countermovement to persuade the state’s top economic decision-maker, Premier Zhao Ziyang, to adopt a gradualist dual-track price system (shuanggui zhi). The industrial core of the socialist economy would remain under state price controls, while “nonessential” goods at the margins were gradually commodified, enabling China to maximize its economic potential. The tragic events of 1989, however, with mass state violence against students and workers in Beijing’s Tiananmen Square, resulted in the political exile of Zhao and many of the young reformers, burying a valuable record of vibrant debate, even as the consequences of their policies helped secure China’s ascent at the turn of the century.

Weber begins her book with a basic question: Why did the Chinese state decide to maintain price controls in an era seeking to unleash the market? In her view, there are many historical reasons as well as economic ones. She frames the debates of the 1980s in terms derived from the text Guanzi, from the seventh century bce, which argued that in economic questions, one should distinguish between “light and heavy” goods (qingzhong): that is, between “heavy” essential goods, such as salt, grains, and silk, which the state has a duty to regulate, versus everything else, which officials could leave unprotected from market dynamics. Such principles grounded the economy of the 18th-century Qing Empire, for example, especially when it came to its regulation of massive granaries, the most elaborate famine-relief program in world history. “Light and heavy” principles, Weber suggests, influenced the two tracks of price reform in the 1980s as well.

Another source for the dual-price scheme came from modern times: US planners during World War II rationed and set prices on basic goods, and the new Chinese state, recovering from decades of war with Japan and civil war with the KMT, also fixed many prices in order to establish a new currency. In both cases, the problem was the exceptional hardships of war, which led to an overabundance of money in circulation that outpaced material goods. Rather than stimulate production, as neoclassical economics might argue, high demand combined with inelastic supplies meant prices would spiral upward endlessly and speculation and hoarding would overtake productive agriculture and industry. In China, the new state succeeded by prioritizing “heavy” or essential items, buying up grains and cloth and selling them at state-designated prices, cutting out speculators and restoring faith in the new currency, the renminbi. Thus, the price control strategies taken up by 1980s reformers could also be seen in multiple times and places throughout world history, neither uniquely Chinese nor exotic to modern economics.

#### It destabilizes Chinese control over the money supply – causes wars and instability.

Esfandyar Batmanghelidj, 3-11-2022, visiting fellow with the Middle East and North Africa programme at the European Council on Foreign Relations, "Is the West Laissez-Faire About Economic Warfare?," War on the Rocks, https://warontherocks.com/2022/03/is-the-west-laissez-faire-about-economic-warfare/

Mulder recounts how Japan’s occupation of Manchuria in 1931 was motivated by a fear of the economic weapon as it had been deployed in World War I. The Japanese military elite believed that “the fate suffered by imperial Germany — a national model since the Meiji restoration — at the hands of the Allied blockade had grave implications for their own country.” The invasion of Manchuria was intended to “create a resource-intensive industrial base” in order to give Japan the means to resist sanctions during a “future continuous war.” But the push for autarky was derailed in 1937 when rising tensions led to skirmishes between Japanese garrisons and Chinese Nationalists. Chiang Kai-Shek and the Nationalist leadership felt that the Japanese encroachment was becoming permanent. Mulder relays that in July of that year H. H. Kung, the Nationalists’ finance minister, told officials in Washington that “China was preparing for what it felt was an inevitable war with Japan.”

One month later, the Second Sino-Japanese War began. Japan declined to formally declare war, citing China’s lack of a unified government. But the absence of a formal declaration was also calculated to reduce the chances of foreign military intervention on China’s behalf. As part of its effort to maintain control of Manchuria, the Japanese government instituted a “pacific blockade” of Chinese ports, preventing trade under the pretense of anti-piracy measures. According to Mulder, this made Japan “the first non-Western power to use organised economic pressure in an undeclared war.” The blockade would remain in place until 1945, “making it one of the longest of the twentieth century.”

Western powers imposed their own sanctions on Japan in response to its invasion of Manchuria with the aim of stemming Japan’s imperial ambitions. Mulder argues convincingly however, citing a contemporary warning from Elizabeth Boody Schumpeter, that while Japan’s experience in Manchuria proved that “conquest was not a sustainable means to autarky … by provoking economic pressure it could cause war to escalate.” Here, the vicious cycle between economic war and conventional war becomes clear. Schumpeter predicted a vicious cycle: “‘Economic pressure, the threat of sanctions, a policy of autarky, and territorial aggression … act upon one another with cumulative force.’”

In some respects, China’s escape from shock therapy was a decades-long attempt to break this cycle. Fearing the effects of a future blockade, Japan invaded Manchuria. When Chinese forces sought to push out the Japanese invaders, they were subjected to a blockade. The consequences of that blockade were profound. Weber argues that hyperinflation was a key factor in the fall of the Nationalist regime. “Inflation began with the outbreak of the Sino-Japanese War in 1937 and by the mid-1940s had evolved into chronic hyperinflation,” she writes. The war led to a decrease in the supply of key commodities and a rapid increase in the money supply as the Nationalists sought to finance their war effort by printing money. Weber also makes passing reference to the role of “Japanese blockages” in exacerbating the “breakdown of the supply and distribution of food grains,” which had reached “a scale unknown in imperial times.” As the government struggled to bring prices under control, peasants confronted increasingly onerous taxes, urban wage earners and state employees resented the loss in their purchasing power, and the army grew restive as food supplies declined. The menace of inflation, driven in part by Japan’s undeclared war and economic sanctions, helped to pave the way for communist forces to cement their hold over China.

Once in power, communist policymakers had to wage their own battle and bring prices under control. Chen Yun, who led the Chinese Communist Party’s Organisation Department during the war against Japan and who would go on to become “a key architect of China’s economic reforms of the late 1970s and early 1980s,” established his reputation in halting the economic crises of the 1940s. The experience of the hyperinflation was formative for Chen, who began to stress “the importance of trade and commodity circulation for economic development.” The blockade — or at least its effects — led Chen to see the both the potential and pitfalls of liberalized trade (the Nationalists had even imposed their own blockades on Communist-controlled regions as China’s civil war reached its final phases). In 1950, Chen would coin a highly influential economic slogan that captured his approach to economic policymaking: “Rising prices are not good, falling prices, too, are not good for production. It is better to be groping for stones to cross the river more steadily.”

#### Their internal is backwards – opening up China causes more money to leave china than to enter it. China should maintain capital controls to keep money for its people, not allow global finance to control it.

Daniel H Rosen, Founding Partner of Rhodium Group, ’21, China’s Economic Reckoning: The Price of Failed Reforms, July August 21

TWO STEPS FORWARD, TWO STEPS BACK

This interbank market crisis was just the first sign of what has become a pattern during the Xi era: bold attempts at reform followed by retreats when those attempts trigger instability and upheaval. The pattern recurred in 2014, when Beijing took steps to make it easier for Chinese companies to invest abroad directly, a necessity if they were to graduate from manufacturing basic goods for export to running global businesses. And invest they did, with outward foreign direct investment rising from $73 billion in 2013 to a high of $216 billion in 2016. The explosion of outbound investment was far more significant than anyone had anticipated. Some of these investments earned China bragging rights as a global player—the acquisition by Anbang Insurance of the Waldorf Astoria, for example, and the financing of a venture with Carnival Cruise Lines by the China Investment Corporation, a sovereign wealth fund. But as these foreign assets piled up, China’s foreign exchange reserves, built up over years thanks to consistent trade surpluses, fell by almost a quarter (from nearly $4 trillion to below $3 trillion) as Chinese players sought dollars to invest abroad. By the end o\* 2016, the ++,, anxious over the rapid outflows, decided that reform could wait and reimposed capital controls. Outbound investment has been stagnant ever since.

#### Liberalization subjects China to global financial boom bust cycles – China should not integrate into the global economy .

Turner 5/9/14 (Adair, former Chairman of the United Kingdom’s Financial Services Authority, is a member of the UK’s Financial Policy Committee and the House of Lords, “The Perils of Financial Freedom”, https://www.project-syndicate.org/commentary/adair-turner-warns-that-full-liberalization-of-china-s-bank-sector-could-lead-to-another-global-crisis)

LONDON – Back in 2007, China’s then-prime minister, Wen Jiabao, famously described his country’s economy as “unstable, unbalanced, uncoordinated, and unsustainable.” Today, the imbalance remains, with the economy too focused on investment and too dependent on credit.

China’s current leadership is committed to building a more balanced model, and believes that the market must play a “decisive role” in achieving that. But, while stronger market discipline is needed in some areas, Chinese officials should be under no illusion that free markets are a panacea for the financial sector. Indeed, China’s current economic imbalances partly reflect the dangers created by competition in credit markets.

Even before the 2008 global financial crisis, China’s annual investment/GDP ratio was running at an exceptionally high 40%, and economists were calling for a transition to more consumption-led growth. But the huge credit stimulus introduced in 2009 drove the economy further in the opposite direction. The investment ratio rose to 47% by 2012, and construction now accounts for 30% of all output. Total credit has risen from 130% of GDP to 200%, with both bank loans and “shadow bank” credit expanding rapidly.

Both China and the global economy benefited from that stimulus, which helped prop up overall demand in dangerously deflationary times. But it has led to significant wasted investment in heavy industry, real estate, and urban infrastructure, and leaves China facing the challenge of deleveraging and working out bad debts.

In many areas, improved market discipline does have an important role to play in addressing the structural causes of imbalance. Wasteful construction investment is encouraged by the under-pricing of rural land. The lack of a normal ownership relationship between the central government and state-owned enterprises (SOEs) allows the latter to pay minimal dividends and over-invest in business expansion. Caps on interest rates on bank deposits result in household savers supplying a large subsidy to corporate borrowers. And SOEs have better access to credit from state-owned banks than private companies do.

But the belief that financial liberalization will provide an easy route to a balanced and stable economy is a delusion, as Japan’s experience in the 1980’s illustrates. As Joe Studwell argues persuasively in his book How Asia Works, neither Japan nor South Korea based its successful economic development on free markets in credit supply; instead, they relied on the deliberate direction of credit toward industrial development rather than real estate or consumption.

When Japan relaxed constraints on its banking system in the 1980’s, the result was an enormous real-estate boom and subsequent bust, followed by two decades of slow growth and deflation. China’s per capita income is still only about a quarter of Japan’s in 1990; it would be a tragedy if it suffered a similar setback before completing the path to developed-country living standards.

One striking feature of the Chinese economy, however, is that real estate and urban infrastructure development – high-rise housing, grand transport projects, convention centers, sports stadiums, and museums – already play a far more important role than they did in Japan and South Korea at comparable stages of economic development.

This reflects the interaction of two distinctively Chinese factors and one inherent feature of all banking systems. The first Chinese factor is the authorities’ focus on “urbanization” as an end in itself, rather than as a byproduct of industrialization. The second is China’s decentralized approach to economic development, with strong competition between regions and cities often focusing on prestige urban infrastructure projects.

The universal feature in this mix is the fact that banks everywhere can create private credit, money, and purchasing power that did not previously exist, and they have a natural bias, if not constrained by public policy, to allocate it to fund real-estate developments, which drive rising land prices.

These factors will drive construction booms and busts even if obvious market distortions are removed and market discipline is tightened. The pre-crisis Irish and Spanish banking systems proved just as capable as Chinese state-owned banks at funding excessive real-estate construction.

So, even as China introduces greater market discipline to a largely positive effect, it must plan to constrain credit creation with policy tools that were missing in the advanced economies before the 2008 crisis. Caps on loan-to-value or loan-to-income ratios on real-estate loans should be used aggressively. Capital requirements for banks should reflect higher risk weights for real-estate lending than banks’ private assessments of credit risks suggest are appropriate.

The People’s Bank of China should maintain reserve requirements for commercial banks to contain credit creation, rather than reject them as old-fashioned, as occurred in the advanced economies in the decades before 2008. Credit provision by shadow banks needs to be tightly regulated. The credit cycle is too important to be left to free markets.

China thus faces a difficult challenge. It must undergo a transition not to the Western model that produced the 2008 crisis, but to an entirely new model that combines elements of market discipline with strong public-policy constraints.

How smoothly that transition occurs matters for the whole world. By the early 2020’s, China’s GDP will be $20 trillion. If the credit/GDP ratio reaches 250% by then, total loans and debt securities would equal $50 trillion, which is more than three times the total of US mortgage debt in 2008. Today, much of that debt represents claims within the state sector – owed, for instance, by SOEs to state-owned banks. But, as the private sector develops, SOEs are subjected to hard budget constraints, and the external capital account is opened, this huge credit mountain will create increasing global financial vulnerability.

### XT 1NC: Public Ownership

#### Chinese public ownership distributes the gains of development evenly – key to party legitimacy.

Enfu and Xiaoqin 17 (January, Cheng Enfu is a member of the Chinese Academy of Social Sciences and chair of the World Association for Political Economy. Ding Xiaoqin is deputy director of the Center for Socialist Political Economy with Chinese Characteristics at Shanghai University of Finance and Economics, a postdoctoral researcher at the Chinese Academy of Social Sciences, and secretary general of the World Association for Political Economy. “A Theory of China’s ‘Miracle’”, https://monthlyreview.org/2017/01/01/a-theory-of-chinas-miracle/)

3. Public Ownership Precedence in National Property Rights The basic tension between increasingly socialized production and capitalist private ownership gives rise to other contradictions and crises. These include the conflict between the management and planning of private enterprises and the chaos of the market, the disparity between the indefinite expansion of production and the relative shortfall in real demand, and periodic bubbles, panics, and recessions. The class antagonisms that result from these contradictions have historically inspired mass movements to replace private ownership of the means of production with public ownership. Contemporary Chinese political economy adheres to the principle of property rights, with dominant public ownership. In the context of the relative underdevelopment of productivity in socialism at its earliest stages, economic development has required that a dominant public ownership develop alongside diversified private ownership: “Domestic and foreign private enterprises are developed under the precondition of the qualitative and quantitative priority of the public economy.”8 This principle stresses the need continually to strengthen and develop the public economy while also encouraging the development of private sectors of the economy, ensuring that all forms of ownership make up for each other’s deficiencies through mutual promotion and coordinated development. Nevertheless, the central role of public ownership must be safeguarded, so the state sector must be dominant in the economy. This is the institutional guarantee for all Chinese people—that they will share the fruits of development—as well as an important guarantee for enhancing the party’s leading position and maintaining the Chinese socialist system. The principle highlights a basic difference between the socialist economy and the modern capitalist economic system, in which private ownership is dominant. If we handle it properly, public ownership cannot only have an organic integration with the market economy, but also achieve greater fairness and efficiency than private ownership. Meanwhile, we should also see clearly that currently the globe is still divided into nation-states and that state ownership still remains an appropriate form of socialist ownership.

#### Especially for land ownership – that’s key to maintain party legitimacy.

Xinhua 7 – Chinese state media (“China says 'No' to land privatization” <http://www.chinadaily.com.cn/china/2007-01/30/content_796867.htm>) RMT

The issue of rural land rights is a thorny problem for China. Without secure land rights, more and more Chinese farmers have been cleared from their land to make way for roads, factories and residential areas as China's economy sizzles.

Chinese Premier Wen Jiabao warned earlier last year that illegal seizures of land without compensation and resettlement are a key source of instability in rural areas.

"This kind of thing sparks mass incidents in the countryside," said Wen. "We must absolutely avoid committing an historic error over land problems."

The central leadership has taken some positive steps in this regard. According to the notice issued last year, the use of farmland for construction purposes will no longer be approved by the State Council for each project, but should be reported to provincial governments and submitted to the State Council for approval on an annual basis.

The new rules put the responsibility for land permits on provincial governments, said Chen. That means that if local land use exceeds the quota, local governments will have to shoulder the responsibility.

China's reform of land utilization should reflect Chinese conditions and be managed step by step, said Chen.

Top reason for farmers' petitions

Land confiscation is the most frequent subject of petitions made by Chinese farmers, with complaints about village finances and environmental pollution coming next, he said.

Chen said that government officials "should not turn a deaf ear to farmers' requests".

Neither should government officials brush aside farmers' petitions claiming that they are trivial," he said at a press conference held by the Information Office of the State Council.

Chen urged governments at various levels to "get acquainted with farmers' requests and endeavor to have their problems resolved".

He warned that if governments failed to address farmers' issues in a timely and efficient manner, a single petition could lead to "a mass incident" involving public protests or even a riot.

The number of "mass incidents" attributed to Chinese farmers declined last year and the numbers of those who died from such incidents or got arrested were also down, Chen said, without revealing specifics.

But chief judge Xiao Yang told a national judicial meeting earlier this month that "mass incidents" should be given additional attention because they have become a conspicuous problem that disturbs social stability.

#### Public perception is a bigger internal link to war, lashout and collapse.

Jia 13 – Mark, graduate student in politics at Oxford and a Rhodes Scholar, previously a lecturer at China Foreign Affairs University, 2013 ("Xi Jinping: a new kind of politician?" *openDemocracy*, January 15th, https://www.opendemocracy.net/mark-jia/xi-jinping-new-kind-of-politician)

First, China’s challenges are severe, and as they worsen, frustrated citizens will need to know they have an empathetic leader on high. In China, there remains a longstanding belief that the emperor, under the mandate of heaven, is fundamentally just. As long as instances of local abuse are brought to his attention, all will be remedied. This is what still brings countless aggrieved petitioners into Beijing every year with letters addressed to China’s highest authorities. But if trust in top leadership is eroded, and Xi is perceived to have lost his 'mandate' – whether heavenly or not – a loss of faith in existing arrangements can contribute to serious social instability. Second, public support – even under autocracy – can translate into real political capital. In the consensus-based decision-making model of the Politburo Standing Committee – where Xi is but first among seven peers, it is crucial that his (mostly conservative) colleagues see him as wielding a popular mandate. Naturally, Xi fans won’t be writing constituent letters to their elected representatives to support his agenda, but modern Chinese authoritarianism bases much of its legitimacy, and indeed its own conception of “democracy,” upon its ability to be responsive to public opinion. Rival peers will be slower to challenge Xi’s authority if he is seen to command the will of the Chinese people. Of course it remains to be seen whether Xi will be able to capitalize on his favorable persona. It will require more than popular support to defeat the many entrenched interests that stand in the way of genuine reform. But Xi the politician is off to a promising start, and if he succeeds, he may be only the first of a new generation of Chinese leaders who can speak directly – and compassionately – to the people they govern.

### 1NR – AT: Cooperation

#### Alt causes to US-China coop:

#### Alt causes – travel ban – creates tension – athats Al jezear. Arms control also fails – cant agree on limtis and verification.

#### Sino-Russia collusion over Ukraine

Wilkie 3/16

(Christina Wilkie, 3-16-22, “Russia sees China as lifeline against sanctions, but U.S. threatens ‘consequences’ if Beijing helps,” CNBC, <https://www.cnbc.com/2022/03/16/russia-sees-china-as-lifeline-against-sanctions-but-us-threatens-consequences-if-beijing-helps.html>, JKS)

Russian finance minister Anton Siluanov said Sunday that his country’s economic “partnership with China will still allow us to maintain the cooperation that we have achieved … but also increase it in an environment where Western markets are closing” to Russian exports. This “increased” cooperation from China could take several different forms. Some of them would overtly violate sanctions against Russia, triggering an automatic responses from the U.S. But experts say other actions Beijing might take would be technically legal, forcing the U.S. to rely more on soft power tactics to counter them. Overt violations could include helping Russia get around U.S. export controls on high-tech equipment by purchasing American products and then selling them to Moscow. That move would be very risky for businesses, however. The sanctions are specifically written to apply not only to American companies, but to any company in the world that uses U.S. software or components, which includes many in China. Commerce Secretary Gina Raimondo recently explained what the consequences would be for a major Chinese semiconductor company, if the U.S. learned it was selling chips to Russia in violation of American export controls. “We could essentially shut [the company] down, because we prevent them from using our equipment and our software,” Raimondo said in an interview with The New York Times on March 8. Raimondo’s example highlights how the U.S. can leverage its economic power to make any company’s decision to help Russia evade sanctions, essentially, a fatal one. “Most large institutions in China are not willing to take the risk of falling afoul of U.S. sanctions, and so any sanction busting is likely to be done by smaller institutions that have less to lose,” said Martin Chorzempa, a research fellow at the Peterson Institute for International Economics. “Overall, China looks like it’s going to complain but comply,” he told The Washington Post. Another possible avenue for cooperation between Russia and China would be for Beijing to buy Russian oil and gas on the cheap, Alexander Gabuev, senior fellow and Russia chair at the think tank Carnegie Moscow Center, told CNBC’s “Capital Connection” on Monday. “There will be no formal violation of U.S. and EU sanctions, but that will be a significant material lifeline to the regime” in Russia, Gabuev said. That kind of Sino-Russian cooperation demands a different response from the United States, working together with European allies to emphasize the long-term risk to China’s reputation on the world stage.

#### Anti-Chinese business policies

Cheng 3/8

(Evelyn Cheng, 3-8-22, “American businesses in China say U.S.-China relations are back to Trump era tensions,” CNBC, <https://www.cnbc.com/2022/03/08/biz-optimism-on-us-china-back-to-trump-era-amcham-survey-says.html>, JKS)

BEIJING — American businesses in China no longer expect relations between the two countries to improve from the tensions of the Trump administration, according to a business association survey. After President Joe Biden was elected in late 2020, there was a spike in optimism among businesses, with 45% of respondents expecting better U.S.-China relations, the American Chamber of Commerce in China’s annual survey of members found. That level of optimism has dropped to 27% of respondents in the latest survey — conducted in fall 2021 — the same as when Donald Trump was president and enacted tougher policies on China. Rising U.S.-China tension has ranked among the top five challenges for doing business in China since 2019, the survey said. “There was a level of perhaps hope and optimism once Biden entered office that the relationship would improve,” Alan Beebe, president of AmCham China, said Tuesday in a call with reporters. “But I think what we’ve seen over the course of the last year is that there’s a new reality that has set in, where largely speaking many of the policies and sentiment of the Trump administration remain in place with the Biden administration,” he said. Since Biden took office in early 2021, Trump-era tariffs have remained in place, while the U.S. has added more Chinese companies to blacklists that prevent them from buying from American suppliers.

#### Biden wants to crush China, not cooperation

Rogin 2/10

(Josh Rogin, 2-10-2022, "Opinion," Washington Post, <https://www.washingtonpost.com/opinions/2022/02/10/biden-china-strategy-competition/>, JKS)

Upon returning to government, several top Biden officials said they were struck by how determined Beijing had become in implementing Xi’s strategy against the West. U.S. intelligence assessments, they said, portray Xi as a man in a hurry to secure China’s supremacy in the hierarchy of nations and prove the superiority of its autocratic system. Xi has shared this intention with others, including Biden, who has mentioned it in private and in public. “From China to Russia and beyond, they’re betting the democracies’ days are numbered. They’ve actually told me democracy is too slow, too bogged down by division to succeed in today’s rapidly changing, complicated world,” Biden said on Jan. 6. The competitors have not always prevailed inside the Biden administration. Early on, the NSC’s Campbell and his team pushed for the White House to reserve vaccine donations for strategic allies in Asia, including Taiwan and South Korea. China was engaged in heavy-handed vaccine diplomacy, which included coercing countries such as Paraguay and Nicaragua to drop their diplomatic recognition of Taiwan in exchange for vaccine supplies. The State Department team in charge of vaccine distribution objected, noting that the United States should not play politics with vaccines. Yet Beijing was doing just that: Days after Nicaragua switched its diplomatic recognition from Taiwan to China, Beijing delivered a million doses to Managua. The competitors understand that large parts of the government are not on board with their approach. Meanwhile, many in the business community and Wall Street continued to press the Biden team to let go of the tariffs and sanctions that constitute the leverage of the competitive approach, and smooth relations with Beijing for the economy’s sake. Inside the Treasury and Commerce departments, senior officials continue to resist the harder line. This year will bring internal fights over trade policy, whether to engage Beijing on North Korea and inevitably rising tensions across the Taiwan Strait. Holding a firm line with Beijing is likely to get harder, not easier. Nonetheless, an NSC spokesman said Biden’s team “is moving out in unison in executing our strategy: out-competing China in the long term by investing in ourselves and aligning with our allies and partners.” As Biden’s second year in office began, U.S. tariffs on China were still in effect. U.S. and allied ships traversed the South China Sea more often. Sanctions for China’s human rights violations and restrictions on its technology and investments continued to pile up. Meanwhile, Beijing’s use of masks and other supplies since the pandemic began as tools of political coercion awakened other countries to the reality that China was a sometimes unreliable partner in a crisis. At home, an unexpected consensus had emerged: Americans in both parties want the U.S. government to pursue a tougher approach to China, polls show. Ordinary Americans seem to understand that meeting the China challenge means abandoning the wishful thinking of the past — even if some influential voices do not. In November, CNN anchor and Post columnist Fareed Zakaria characterized the Biden administration’s approach to China as a failure because Beijing had not gotten on board. “What has been achieved by this tough talk? What new trade detail have you got? What concessions has China made? What climate agreement has been reached? What has been the net effect of all of that?” he asked Sullivan on CNN. “I think it’s the wrong way to think about it,” Sullivan responded. “The right way to think about it is, have we set the terms to an effective competition where the United States is in a position to defend its values and advance its interests not just in the Indo-Pacific but around the world?”

### 1NR – AT: Pharma

#### Their impact card is about the He Jiankui scandal, but that solves itself because it caused a flood of additional regulation and safety standards for Chinese biotech

Araz 20 – Sevan Araz, research intern at CSIS [not an undergrad, as far as I can tell from his LinkedIn page – Callahan], “China Adopts Biotechnology Regulation, Amid Authoritarianism Concerns,” 8/31/20, https://www.csis.org/blogs/technology-policy-blog/china-adopts-biotechnology-regulation-amid-authoritarianism-concerns

China is gearing up to become a biotechnology powerhouse. Within the past five years the Chinese government is estimated to have invested over $100 billion in life sciences research and development. Further signaling its determination, Beijing is lavishing the sector with a host of fiscal incentives while state-backed entities dish out largesse to promising startups.

As biotechnologies rapidly proliferate, China—and other states—are rushing to develop regulatory and ethical frameworks. The COVID-19 pandemic has raised the urgency of such efforts. To set parameters for the evolving sector, Beijing has rolled out various initiatives.

In 2017, the Ministry of Science and Technology issued a series of regulatory measures to streamline the management of biotechnology research and development (R&D). Among the provisions was the establishment of the National Biotechnology Research and Development Safety Management Expert Committee. The advisory board draws from a broad swath of professionals: lawyers, economists, physicians, and biologists. The purview of the committee includes developing inspection practices, safety protocols and incident response guidelines

Tepid efforts to rein in rogue biotechnology R&D were jolted by revelations of unethical gene-editing trials at the Shenzhen-based Southern University of Science and Technology. The affair, commonly referred to as the “CRISPR-baby scandal”, centered on the experimental endeavors of biophysicist He Jiankui. Applying the CRISPR–Cas9 gene-editing technique, He engineered mutations into human embryos in an attempt to confer resistance to HIV. The edited embryos were subsequently implanted into two recipients, resulting in several births. Following this disclosure in 2018, the scandal swept China and the globe, attracting public scrutiny and prompting a slew of ethical questions. Seeking to deter future bouts of frankensteining, Beijing set a firm precedent by indicting He for practicing illegal medicine. In 2019, a Chinese court condemned the infamous biophysicist with a three-year prison sentence, while two colleagues received lighter sentences. The long-awaited verdicts marked the end of the gripping saga. But the bioethical concerns kindled by the incident continue to reverberate.

He’s disregard for ethical principles for research involving human subjects spurred Chinese lawmakers to curb unfettered biomedical research. As part of the regulatory drive, the Chinese Ministries of Justice and Science and Technology released a revamped slate of codes for administering the use of human genetic resources—and associated data. The directives supersede earlier measures promulgated in 1998. The scope of the regulation package extends to the collection, preservation, utilization and export of Chinese human genetic resources. The rules, which came into effect in July 2019, also establish procedures for obtaining research approval. Compliance management is within the remit of provincial science and technical administrative departments, according to article four of the regulations.

While unveiling the genetic governance codes in March 2019, Justice Minister Fu Zhenghua and Science and Technology Minister Wang Zhigang touted the industrial advantages conferred by China’s demographic diversity. The cabinet members characterized vast, polyethnic gene pools as a critical asset in propelling Chinese life sciences ambitions. (Presently, Beijing is exploiting its genocide against Muslim minorities in Xinjiang to develop, field, and assess a bevy of novel, disturbing biotechnologies.)

In the course of the press conference, the ministers also revealed the government’s intention to establish genetic registries across select provinces, presaging the state-orchestrated gene harvesting campaigns roiling China, and Xinjiang in particular. The accumulated data is set to buoy Beijing’s bulging surveillance capabilities.

Later that March, the Ministry of Science and Technology rolled out fresh draft regulations for biotechnology R&D. The draft establishes a risk taxonomy—high, moderate or low risk—for assessing biotechnology activities. Compliance requirements are specified for each risk category. The document also proposes organizations adopt in-house governance measures. To this end, the draft lists a series of recommendations for institutions carrying out high-risk biotech R&D, including having a detailed outline of research plans and methods, instituting risk reduction measures, and creating emergency response strategies. Institutions are also instructed to set up biotechnology security commissions. These advisory committees are charged with supervising the implementation of the aforementioned policies. Intent to maintain tabs on its burgeoning biotechnology industry, Beijing required security commissions to register with local authorities.

Aiming to advance the ethical reckoning precipitated by the CRISPR-baby scandal, Beijing also launched the National Science and Technology Ethics Committee in July 2019. The committee is tasked with crafting uniform ethical standards for emerging technologies. To date, its primary focus areas are artificial intelligence and biomedicine.

The enduring COVID-19 crisis has also animated Chinese biosafety concerns—and resolve. While addressing a session of the powerful Central Comprehensive Deepening Reform Commission in February 2020, Chinese President Xi Jinping pushed for the rapid crafting of biosafety legislation and the establishment of biosecurity governance frameworks. Xi also harped on incorporating biosecurity tenets into China’s national security strategy.

#### 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

### XT – AT: US-China War

#### No US-China war – interdependence, desire to isolate competition from the security sphere, lack of ideological confrontation, options short of conflict, and aversion to war prevent escalation – that’s Lei. Bienen says they wont go to war over ecnomci ompetitoin.

#### 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.

#### Social linkages.

Paul Gewirtz, Director - Yale’s Paul Tsai China Center, Potter Stewart Professor of Constitutional Law - Yale Law School, Nonresident Senior Fellow - Brookings Institution, ’19, Can the US-China crisis be stabilized? https://www.brookings.edu/blog/order-from-chaos/2019/06/26/can-the-u-s-china-crisis-be-stabilized/

The “Cold War” comparison is a poor one. The U.S. and China have interdependent and mutually beneficial economies, whereas the Soviet Union’s economy was not significant in our relationship. The U.S. and China have a huge number of people-to-people exchanges in every walk of life; the U.S. and Soviet Union did not. The Soviet Union’s leaders told the United States “we will bury you” and the Soviet Union invaded and occupied numerous foreign countries; China may be a tough competitor, but it is not seeking to destroy us, is not an existential threat to us, and is not invading other countries. Its leaders are proud of what China’s system has achieved, but do not seem to be aggressively trying to export it to other countries, at least not yet. Our Cold War strategy with the Soviet Union was “containment,” resting on the ultimately correct assumption that the Soviet Union would collapse from within; but it’s very unlikely that an awakened and powerful China of 1.4 billion people will self-destruct if we try to “contain” it.

#### Middle powers.

Hunter Marston, doctoral candidate @ Australian National University and consultant at GlobalWonks, ’19, The U.S.-China Cold War Is a Myth

https://foreignpolicy.com/2019/09/06/the-u-s-china-cold-war-is-a-myth/

In recent years, the notion of an emerging second Cold War, this time between the United States and China, has gained credence. As early as 1995, China scholar David Shambaugh warned of deteriorating relations in an article titled, “The United States and China: A New Cold War?” Last year, Cold War analyst Graham Allison, the Douglas Dillon professor of government at the Harvard Kennedy School, warned of a “new cold war,” and articles published in the Economist, Foreign Policy, the Washington Post, and across the mainstream media have built on this narrative. But the Cold War paradigm is not the best way to understand today’s strategic landscape. The Cold War paradigm is not the best way to understand today’s strategic landscape.

The security environment is far more benign than that of the Cold War, and middle powers—countries with more moderate power and influence—have far more agency to shape great-power competition to suit their interests. Southeast Asia is a prime case in point. The region was at the heart of the Cold War era’s so-called hot wars—calamitous U.S. interventions in Vietnam, Cambodia, and Laos that have shaped the outlooks of a generation of counterinsurgency and strategic analysts in Washington. Today, it sits at the geographic nexus of Chinese and U.S. influence, and is the site of emerging military friction. But the dynamics are very different.

Characterizing U.S.-China competition in Cold War terms risks embedding a limited framework into U.S. strategic thinking. Worse still, Washington runs the repeat danger of coming to view Southeast Asian nations as dominoes that will fall to one side or the other, rather than as autonomous partners with their own divergent interests.

Today’s international security environment is far more tranquil than that of the Cold War. Unlike the devastation of the wars in Syria and Yemen, along with the humanitarian crisis associated with massive displacement, U.S.-China competition has so far been nonviolent, occurring predominantly along economic and technological axes. Compare this to the Cold War, when the United States waged a proxy war against the Soviet Union in Afghanistan, and U.S. troops fought and died in Korea and Vietnam.

Stephen Wertheim, a scholar at the Saltzman Institute of War and Peace Studies at Columbia University, warned in a recent New York Times op-ed that the emerging “cold war [with China] could plunge the United States back into gruesome proxy wars around the world and risk a still deadlier war among the great powers.” However, that outcome is far less likely now than it was during the Cold War. For one, the Vietnam War was born from a hard-fought struggle for independence from colonial occupation. Today, even the weakest powers in Southeast Asia display more ability to hedge between competing great powers.

#### No first use.

David Axe, defense editor at the National Interest, ’19, China: We Won't Use Nuclear Weapons First in a War, https://nationalinterest.org/blog/buzz/china-we-wont-use-nuclear-weapons-first-war-69007

China: We Won't Use Nuclear Weapons First in a War

China has reaffirmed its policy of never being the first in a conflict to use nuclear weapons. Experts refer to this policy as “no first use,” or NFU.

The NFU policy reaffirmation, contained in Beijing’s July 2019 strategic white paper, surprised some observers who expected a more expansive and aggressive nuclear posture from the rising power.

Notably, the United States does not have a no-first-use policy. “Retaining a degree of ambiguity and refraining from a no first use policy creates uncertainty in the mind of potential adversaries and reinforces deterrence of aggression by ensuring adversaries cannot predict what specific actions will lead to a U.S. nuclear response,” the Pentagon stated.

Chinese state media posted the government’s white paper in its entirety. "Nuclear capability is the strategic cornerstone to safeguarding national sovereignty and security," the paper asserts.

“This is standard language,” explained David Santoro, a nuclear expert with the nonprofit Pacific Forum. “China's nukes serve to prevent nuclear coercion and deter nuclear attack.”

Then the surprise. “China is always committed to a nuclear policy of no first use of nuclear weapons at any time and under any circumstances, and not using or threatening to use nuclear weapons against non-nuclear-weapon states or nuclear-weapon-free zones unconditionally,” the white paper adds.

This NFU clause surprised Gregory Kulacki, a nuclear expert with the nonprofit Union of Concerned Scientists. “Ever since I took this job 17 years ago, U.S. colleagues of all political and intellectual persuasions have been telling me that sooner or later China would alter, adjust, amend or qualify the policy that China will never, under any circumstances, use nuclear weapons first,” Kulacki wrote.

It would be difficult to compose a more emphatic rejection of claims that China’s no-first-use policy is changing. The statement also indicates it is not Chinese policy to use nuclear weapons first to forestall defeat in a conventional military conflict with the United States. China does not have an “escalate to de-escalate” nuclear strategy.

China is not preparing to fight a nuclear war with the United States. It does not have “battlefield” or “tactical” or “non-strategic” nuclear weapons. Chinese nuclear strategists don’t think a nuclear war with the United States is likely to happen. And they seem sure it won’t happen as long as the U.S. president believes China can retaliate if the United States strikes first.

That’s not a high bar to meet, which is why China’s nuclear arsenal remains small and, for the time being, off alert.

China sees its comparatively modest nuclear modernization program as a means to convince U.S. leaders that a few Chinese ICBMs can survive a U.S. first strike and that these survivors can penetrate U.S. missile defenses.

Chinese nuclear planners might be willing to slow or scale back their nuclear modernization efforts if the United States were willing to assure China’s leaders it would never use nuclear weapons first in a military conflict with China. Chinese experts and officials have been asking the United States to offer that assurance for decades. U.S. experts and officials consistently refuse.

While China has not adopted a more aggressive nuclear policy, it does continue to upgrade its small nuclear arsenal and its command systems. Kulacki explained that modernization in the context of America’s own refusal to commit to no-first-use.

“In the absence of a no-first-use commitment from the United States, Chinese nuclear strategists believe continued improvements to their nuclear arsenal are needed to assure China’s leaders their U.S. counterparts won’t take the risk of attacking China with nuclear weapons,” Kulacki wrote.

Chinese experts know U.S. efforts to develop a working ballistic missile defense system are not going well, but they still feel the need to hedge against continued U.S. investment in the system with incremental improvements in the quality and quantity of China’s small nuclear force.

Given the impassioned attack on constructive U.S.-China relations currently sweeping U.S. elites off their feet, along with the continued proliferation of misinformation about Chinese nuclear capabilities and intentions, many U.S. commentators are likely to brush aside the new white paper’s reiteration of China’s longstanding nuclear no-first-use policy.

It doesn’t fit in the emerging U.S. story about a new Cold War. That’s unfortunate, especially as the U.S. Congress threatens to ramp up a new nuclear arms race its supposed adversary has no intention to run.