# 1NC

## OFF

### 1NC – Adv CP

#### The USFG should:

* establish [harm to the competitive process] is a cognizable harm under the consumer welfare standard;
* implement supply chain reforms, including requiring that all firms dual source supplies in real time and distributing the capacity to produce keystone components;
* substantially increase research and development for regulated domestic AI development;
* implement binding reforms that commit the United States to Paris targets;
* substantially reduce protectionist trade barriers and tariffs;
* substantially increase support for democracies and build joint supply chain industrial policy with the EU, including cross-border ventures.

#### The counterplan expands the definition of consumer welfare instead of replacing the consumer welfare standard – avoids shocks to business confidence.

Greenfield et al , Leon B. comparative competition law @ Georgetown Law Center ; Lange, Perry A. vice-chair of the ABA Antitrust Section’s Joint Conduct Committe; Callan, Nicole. ice chair of the Civil Practice and Procedure Committee of the American Bar Association (ABA)'s Section of Antitrust Law, vice chair of the Civil Practice and Procedure Committee of the American Bar Association (ABA)'s Section of Antitrust Law, ’20,“ANTITRUST POPULISM AND THE CONSUMER WELFARE STANDARD: WHAT ARE WE ACTUALLY DEBATING? “ Antitrust Law Journal; Chicago Vol. 83, Iss. 2, (2020): 393-428.

D. The Response to the Populist Critique

The antitrust establishment has largely been critical of the new antitrust populism movement.95 But responses have sometimes mischaracterized or oversimplified the populists' critiques or failed adequately to engage with their proposed solutions.

Many critics of the populist movement have assumed that antitrust populists would replace the consumer welfare standard with a broad power for enforcers and courts to consider a range of public interest factors, for example by permitting merger reviews to examine whether a transaction would reduce wages, lead to job cuts, or harm small business.96 In defending the consumer welfare standard, Herbert Hovenkamp and Carl Shapiro dismissed the idea that enforcement agencies could evaluate mergers based on their impact on employment, small businesses, or political power.97

As discussed, many populists do call for disposing of the consumer welfare standard. Mainstream commenters have often focused on this rhetoric, causing them to overstate the extent to which populists' specific proposals would actually require a different benchmark. On examination, many specific contemporary populist critiques would not directly incorporate social and political concerns into antitrust rules of decision. Rather, many populists argue that harm to broader public interests is a result of failures to enforce antitrust laws aggressively, using traditional benchmarks like effects on pricing, quality, and output in relevant markets. As Lina Khan explained on a panel hosted by the American Constitution Society, "[P]ushing back against consumer welfare often gets mistaken for the view that antitrust really needs to move in a direction where we're balancing all sorts of other considerations, like the political power of companies or the income of workers."98 To be sure, framing the populist position as "pushing back against consumer welfare" contributes to the confusion. But Khan went on to explain that "identifying as a descriptive matter that concentration of industries has political ramifications is not the same as saying that therefore the political power of companies should be factored into antitrust analysis."99

Still, academics, practitioners, and the antitrust agencies sometimes paint populists with a broad brush, premising responses on the proposition that, in criticizing the consumer welfare standard, populists are seeking to bring broader public interest considerations into antitrust assessments that would improperly punish competitors for competing. In May 2018, Deputy Assistant Attorney General Roger Alford said the "current debate between the consumer welfare standard and the public interest standard is illustrative of the tendency to trade the scalpel for the sledgehammer."100 He praised the con sumer welfare standard for focusing antitrust inquiry, and argued that a "public interest" standard could result in undesirable discrimination in competition enforcement, with regulators favoring some competitors over others in pursuing broader social or political goals.

Assistant Attorney General Makan Delrahim also defended the consumer welfare standard in two speeches about antitrust enforcement involving online platforms.101 Delrahim acknowledged populist criticisms of antitrust enforcement in digital platform markets, and cited Lina Khan's note as an example of "fresh thinking" that the antitrust community should encourage.102 Delrahim argued that existing antitrust tools are flexible enough to address the challenges presented by emerging threats to competition, and cautioned against discarding the antitrust consensus. He cited the Microsoft case as an example of how antitrust doctrine can evolve without "a seismic shift in how we think about antitrust law."103 In Delrahim's view, the existing standard is "wellequipped to face threats to competition in media markets in the digital age."104

At the same time, members of the antitrust establishment (broadly speaking) have also advanced-whether in parallel or in response to the populists- their own proposals for making antitrust enforcement more effective using the existing consumer welfare framework.105 For example, in May 2018, the Yale Law Journal featured a collection of nine articles, all of which took the position that existing antitrust enforcement tools are capable of addressing today's antitrust challenges. In an introduction to the collection, Jonathan Baker, Jonathan sallet, and Fiona scott Morton acknowledged that the united states has "a market power problem," and that original thinking underlying the Chicago School did not fully capture the realities of collusion and exclusion.106 The articles discuss how today's framework for antitrust enforcement could address issues presented by the digital economy, including multisided plat forms107 and most-favored-nation (MFN) clauses in online markets.108 They also examine how the antitrust laws might be applied in novel ways, including in the context of minority investments in competing firms109 and patent holdup.110 Finally, embracing the common law tradition of antitrust, the articles discuss how developments in economic learning can inform antitrust analysis.111

Lina Khan and Sandeep Vaheesan published responses to the collection. Khan argued that although the collection's proposals were useful, they would likely prove inadequate to address America's market-power problem.112 In her view, the consumer welfare standard systemically biases antitrust against intervention, creating a problem that cannot be remedied until "the original values of antitrust-including a distrust of concentrated power" are restored.113 Vaheesan similarly described the proposals as "disappointingly modest in scope."114 He argued that antitrust enforcement suffers from a "combination of technocratic hyperactivism and legislative lethargy," and "fail[s] to grapple with the deeper question of whose interests should be advanced by antitrust law."115 Notably, neither Khan nor Vaheesan advanced specific proposals for reform, other than calling for the antitrust establishment to recognize that the antitrust laws encompass a broader set of goals than current enforcement acknowledges.

In 2019, Jonathan Baker published The Antitrust Paradigm: Restoring a Competitive Economy, which expands on the thesis that the consumer welfare standard, properly applied, is up to the task of addressing many of the populist critiques.116 Although favoring more robust antitrust enforcement and criticizing the Chicago School approach, he observes that "[t]he Chicagoans properly saw economic analysis as central to developing antitrust rules and identifying enforcement targets."117 And he argues that "though antitrust needs to be reframed to combat market power, emulating the structural era's noneconomic goals [e.g., by promoting small business] is probably not the best way to achieve this end."118

### 1NC – Econ DA

#### Current antitrust law fosters innovation and competition – the plan crushes growth

Wright 21 – Joshua D. Wright, Executive Director of the Global Antitrust Institute at the Antonin Scalia Law School, former commissioner of the U.S. Federal Trade Commission from 2013 to 2015, “A Time for Choosing: The Conservative Case Against Weaponizing Antitrust,” Summer 2021, https://nationalaffairs.com/time-choosing-conservative-case-against-weaponizing-antitrust

It has long been vogue among liberal advocates to champion expansion of government control over firms, their decisions, and internal workings. Perhaps no better present example can be found than in the area of antitrust, where the policy landscape looks eerily similar to the progressive view articulated 60 years ago, littered with a hodgepodge of proposals to “break up” large firms, prohibit all mergers and acquisitions, assign burdens of proof to the accused, and control the design of products. Today’s progressives offer much of the same medicine for what allegedly ails the modern economy. Senator Warren has proposed, for example, to “break up big tech” platforms such as Amazon, Apple, Facebook, and Google, and to make technology companies criminally liable for misinformation presented on their platforms.[ii] While the large and successful American tech firms—the envy of the global economy—make a convenient target for these proposals, do not be fooled. This wolf comes as a wolf. The modern progressive antitrust agenda is part of a broader, more radical program—self-described as Neo-Brandeisian Antitrust—to turn antitrust law upside down so that it may be weaponized to shape and plan all sectors of the economy.

These proposals, while unfortunate and misguided, draw heavily upon standard liberal orthodoxy that has tended to be largely suspect of markets and the agency of individuals. One can hardly be surprised to see a staunch progressive like Senator Warren or Bernie Sanders advocate greater government control over private life. Perhaps one even grows to expect it.

What is more surprising, however, is the company Senator Warren and the Neo-Brandeisian Antitrust movement have attracted with the siren call of using the antitrust laws to centrally plan the tech sector (among others things), and to achieve greater government control of the interactions between individuals and the technology we use in our daily lives. Stalwart conservatives like Senator Hawley, for example, among others, have offered policy proposals to “deal” with “Big Tech” that eerily mimic those of Senator Warren and the command and control left. Senator Hawley has proposed legislation that would rewrite Section 230 of the Communications Decency Act and usher in a quasi-Conservative Fairness Doctrine for the internet.[iii] Indeed, Hawley’s proposal would place the Federal Trade Commission in the Big Brother position of determining when a social media platform’s moderation decision was “designed to” or “motivated by an intent to” negatively impact a political party. Attorney General Barr has offered a similar refrain, announcing that antitrust is an appropriate tool to police political bias.[iv] And President Trump recently signed an executive order that directs the Federal Trade Commission to explore using its consumer protection authority to sue social media platforms for content moderation decisions.[v]

Without question, the emotional appeal undergirding these actions is understandable. Conservative voices and opinions too often face a stacked deck when dealing with technology companies and social media, in particular. And this bias against conservative voices has taken on new life in the Trump era. But the hallmark of conservative values has been to rightfully eschew government control over economic life and to value principle over expediency. What is at stake, however, with the current proposals to upend modern antitrust to address tech markets is more important than whatever fleeting satisfaction is gained from exacting policy revenge on firms perceived to squelch conservative voices and ideas. At stake are conservative commitments to the rule of law and the role of the judiciary—newly stocked with immense talent by the Trump administration—in preventing government expansion and overreach. And if we resign ourselves to transient political wins, and debase the belief that entrepreneurs rather than bureaucrats should shape technology markets, we risk not only undermining these great causes conservatives have championed for decades but also the enormous economic gains to Americans that arise in our highly competitive tech markets.

Readers less familiar with antitrust law may not understand its critical role in the conservative legal movement. Modern antitrust law—and its consumer welfare standard—is a complex product of powerful ideas, extant economic evidence, and jurists like Bork, Thomas, Scalia, Easterbrook, and Doug Ginsburg taking on the wobbly intellectual foundations of 1960s competition law. That their efforts were so successful in persuading their liberal counterparts on the Supreme Court and lesser federal courts to join in the dismantling of the stale and obsolete antitrust that was then the law of the land is powerful evidence of the force of their ideas. It is difficult to find an area of law where the conservative legal movement enjoyed as much success as quickly and with such resounding results.

No doubt it helped that yesteryear’s antitrust was intellectually bankrupt and an insult to the rule of law. It pursued an unfortunate amalgamation of contradictory doctrines, including undefined notions of populism, protection of individual industries, and reducing firm size, that could be used to justify nearly any result. For instance, antitrust law allowed the market-leading frozen pie manufacturer in Utah to successfully sue its three national-brand competitors for eroding its high market share through a series of price cuts—thereby preventing precisely the type of competition the law was intended to protect. Antitrust law was so unprincipled and incoherent at the time that it led Justice Potter Stewart to observe while reviewing a government suit to block a merger between two grocery stores with a combined market share of 7.5% that, “The sole consistency that I can find is that, in litigation under [the merger laws], the Government always wins.”[vi]

The conservative legal movement, powered by the intersection of economic analysis and law, brought the rule of law to the wild and untamed progressive antitrust vision of the 1960s. Grounding antitrust law in a disciplined and tractable framework not only promotes the rule of law while preventing arbitrary and capricious enforcement, it also creates a stable and predictable environment for private actors and firms to invest and innovate. Of course, no doctrine is perfect and today’s antitrust is not without its own flaws. But it is tethered to robust economic evidence and common-law developments that promote competitive outcomes and, like the common law, has built-in mechanisms to improve and evolve in response to empirical evidence. But the coherent and principled makeup of antitrust should not and cannot be taken for granted.

Proposals today that are attracting conservatives and liberals alike aim to unwind these gains in exchange for granting those who happen to have power in the government a dominant hand in controlling tech firms on the fleeting hope that the power will be deployed for the greater social good. We have experience with this approach to antitrust in the United States. It is what we used to do. And we know better. Shifting power from judges to regulators, and then allowing those regulators to pick winners and losers to achieve political and social goals, is a recipe for abandoning conservative commitment to the rule of law while simultaneously sacrificing economic growth and innovation. The price is too high, with little or nothing to offer those who value individual liberty, the rule of law, and economic growth. While progressive ideology is contiguous with increasing government control over economic and social interactions in technology markets for its own sake, conservative principles are not. The proposed bargain is also remarkably short-sighted. It should go without saying that empowering partisan regulators to enforce a Fairness Doctrine for conservatives is not likely to work out so well when the other side is in control.

Conservatives traditionally have been wary of proposals by liberals and other big government proponents seeking to substitute the judgment of regulators and bureaucrats for those of entrepreneurs and innovators. And rightfully so. Such proposals, even when well intentioned, risk making Americans worse off. Progressives and populists now seek to commandeer antitrust to usher in a new era of central planning in order to achieve social policy objectives that they could not accomplish otherwise. But at what cost? The risks are not trivial. Using antitrust to redesign tech companies and their products will undermine the competitive dynamics that have brought Americans countless modern benefits, including smartphones, fast and easy online shopping, on-demand ride hailing, easy-to-access streaming media, and a bevy of free services including email, maps, and video conferencing. It also will threaten the incredible economic growth and job creation that these companies have brought to America’s shores. And while politicians surely will make promises akin to, “if you like the digital platform you have, you’ll get to keep it,” it is all too clear that when you expand government discretion and limit judicial oversight, those in positions of power will increasingly impose their preferences on the broader society. Ask yourself, do you really want the government designing the iPhone?

The reality is that the U.S. digital economy is highly competitive and serves Americans well. Fueled by investment, innovation, and entrepreneurship, the digital economy has contributed substantially to America’s economic growth. According to the Bureau of Economic Analysis, the digital economy accounted for 6.9 percent of gross domestic product in 2017, growing at an annual rate of 9.9 percent since 1998 as compared to 2.3 percent for the economy overall.[vii] That economic growth has been driven by some of the world’s most successful tech companies, such as Amazon, Apple, Facebook, Intel, Google, and Microsoft, each of which calls the United States home. These firms are investing ever-increasing amounts on research and development to innovate new products and stay competitive. In fact, the United States leads the world in research and development spending, and tech companies lead in the United States—representing the nation’s top five spenders with investments totaling more than $75 billion in 2018.[viii] Tech companies rank second (behind the telecom sector) in U.S. capital expenditures, with Alphabet (Google’s parent company), Amazon, Apple, Facebook, Intel, and Microsoft together spending more than $45 billion in 2017.[ix] And these investment figures are only expected to continue to grow. These are hardly the actions of monopolists resting on their laurels, secure in belief that they are untouchable by competition.

And there is more good news. Tech has only touched a portion of the U.S. economy to date, meaning that there still are opportunities for tech companies to foster economic growth by transforming stagnant industries such as housing, transportation, manufacturing, and health care for the better. And where are the next generation of innovators and tech entrepreneurs calling home? The United States. Recognizing an economy that is dynamic and rewards creativity, venture capital investing has soared to record levels in the United States—surpassing $140 billion in 2018—providing startups with the capital necessary to innovate, compete, and grow.[x] Today the United States is home to half of all startups valued at more than $1 billion—so-called “unicorns”—outpacing every other country in the world by a wide margin.[xi]

Now, some conservatives chafe at recitations of facts and claim that technology companies exclusively benefit only the privileged. But this economic growth and investment have led to substantial benefits to ordinary American consumers and workers. You need only look to the numerous free services that tech has brought to consumers. Americans place significant value on these free services. One peer-reviewed study published by the National Academy of Sciences found that consumers would need to receive a yearly payment of $3,600 to give up free internet maps, $8,400 to give up free email, and $17,500 to give up free search engines.[xii]

Tech firms also have spurred change in long stagnant industries by developing new products that spark competition across quality, price, and other dimensions. Take for instance ride-sharing apps. Local cab companies long had a stranglehold on taxi services and saw little need to innovate or evolve. Ride-sharing apps like US-based Uber and Lyft disrupted the livery service industry by offering lower-cost and more convenient services. Cab companies have been forced to respond by offering easier payment methods and other innovative services that enhance the consumer experience. Proponents of using antitrust to restructure or even break up tech companies are unable to explain how their sweeping plans, however carefully scripted, would not undo the business models that made these services and their associated benefits possible. The burden should be on those seeking to use antitrust to remake the digital economy to demonstrate that the risk is justified. It is hard to believe how it could be.

The digital economy also has been an important source of job creation. According to one estimate, nearly 12 million people held tech jobs in the United States in 2018.[xiii] Today the largest U.S. tech companies have replaced the major American employers of the past. In just under two decades, Amazon, Apple, Facebook, Alphabet, and Microsoft have employed more than one million workers.[xiv] In 2016, Amazon became the fastest company to employ 300,000 Americans—surpassing Walmart and General Motors.[xv] Moreover, while the share of economic output going to workers has been declining steadily overall for many years both in the U.S. and globally, in the tech and telecom sectors the labor share has been steady and even has increased, suggesting improved worker welfare.[xvi]

#### Specifically, moving away from the consumer welfare standard in antitrust destroys innovation and growth

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

The adoption of the consumer welfare standard was an enormous improvement over what came before it. Yet no one would assert that every aspect of antitrust policy in furtherance of the consumer welfare standard is perfect and should remain unchanged. There will always be grounds for critique and improvement of specific policy decisions and processes. But none of these arguments undercuts the basic merits of the standard and its supremacy over alternatives.

Antitrust enforcers and courts have a difficult time as it is ensuring that their decisions actually benefit consumers. As Robert Pitofsky once said, “antitrust enforcement along economic lines al-ready incorporates large doses of hunch, faith, and intuition.”40 But the existence of imperfections does not justify intervention that would move us further away from economic objectives. Indeed, such intervention would more than likely make the imperfections worse.

When antitrust policy is unmoored from economic analysis, it exhibits fundamental and highly problematic contradictions, as Herbert Hovenkamp highlighted in a recent paper:

As a movement, antitrust often succeeds at capturing political attention and engaging at least some voters, but it fails at making effective or even coherent policy. The result is goals that are unmeasurable and fundamentally inconsistent, although with their contra-dictions rarely exposed. Among the most problematic contradictions is the one between small business protection and consumer welfare. In a nutshell, consumers benefit from low prices, high output and high quality and variety of products and services. But when a firm or a technology is able to offer these things they invariably injure rivals, typically those who are smaller or heavily invested in older technologies. Although movement antitrust rhetoric is often opaque about specifics, its general effect is invariably to encourage higher prices or reduced output or innovation, mainly for the protection of small business or those whose technology or other investments have become obsolete.41

Even with careful economic analysis, it will not always be clear how to resolve the inevitable tensions between consumer welfare and other policy preferences. In 1978, then-FTC-Chairman Michael Pertschuk laid out his vision for a “new competition policy” at the FTC. In it, he asserted that anti-trust policy must consider

the social and environmental harms produced as unwelcome by-products of the market-place: resource depletion, energy waste, environmental contamination, worker alienation, the psychological and social consequences of market-stimulated demands.”42

It is not clear what it would mean to take account of these things in the context of anything approaching a rigorous policy framework. But even more troublingly, many, if not all of them call for a rejection of the core, competition-focused objective of antitrust.

For instance, Jonathan Adler has described the collision between antitrust and environmental protection in cases where, precisely because of reduced output, collusion might lead to better environ-mental outcomes, such as improved conservation of wild fish and other common pool resources.43 How would a court or enforcer conceivably evaluate that trade-off? It is difficult enough to evaluate the procompetitive justifications for certain conduct already — including in somewhat similar circumstances where intrabrand price or distribution constraints, for example, may be aimed at pre-serving the “common pool resource” of brand value or consumer goodwill. But that difficulty is only magnified where the trade-off is between incommensurate benefits, distributed over entirely different populations, and without any operational connection between them within the firm undertaking the conduct in question.

Whatever benefits might conceivably come from giving weight to non-economic values, even just at the margin, they would inevitably come at the expense of the core, competitive values of modern antitrust. As Ernest Gellhorn noted in his masterful critique of Pertschuk’s “socially conscious” vision for the FTC:

Competitive values must be sacrificed if social values are to be given primacy — or else the new policy is nothing more than rhetoric and official deception. The second and equally important point is that the new chairman’s “humanistic model” for antitrust is formless, shapeless, and unpredictable. There simply are no generally accepted “democratic and social norms” for applying the antitrust laws — and some of the new chairman’s announced values are worrisome, at least to the extent they are offered as the basis for determining the shape and operation of much of our economy.

The problem is that unless antitrust law has an objective and principled foundation, antitrust enforcement can become the personal plaything of enforcement personnel, or the stock in trade of lobbyists and influence-peddlers.44

While it is perfectly reasonable to care about political corruption, worker welfare, and income ine-quality, it is not at all reasonable to try to shoehorn goals based on these political concerns into antitrust — a body of legal doctrine whose tools are wholly inappropriate for achieving those ends. As Carl Shapiro has noted, “The fundamental danger that 21st century populism poses to antitrust is that populism will cause us to abandon this core principle and thereby undermine economic growth and deprive consumers of many of the benefits of vigorous but fair competition.”45

#### Extended COVID economic decline causes multilateral meltdown – causes nuclear war, climate change, Arctic and space war.

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

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

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

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

### 1NC – T-Prohibit

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

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

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

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

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

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

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

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

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

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

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

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

### 1NC – States CP

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

#### States solve.

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

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

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

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

### 1NC – FTC Tradeoff DA

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

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

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

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

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

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

#### Unchecked algorithmic bias risks extinction.

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

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

### 1NC – RPA CP

#### The USFG should find that business practices that fail a balancing test with greater weight afforded to harms to diversity and redundancy of input markets in its analysis of anticompetitive business practices are prohibited under the *Robinson-Patman Act*.

#### The solves and avoids business confidence “RPA” requires only harm to competitors, antitrust requires harm to “competition.”

Kim, Karen. JD Candidate @ Columbia, Ed. Lina Khan, ’21, “AMAZON-INDUCED PRICE DISCRIMINATION UNDER THE ROBINSON–PATMAN ACT.” COLUMBIA LAW REVIEW FORUM [Vol. 121:160 2021]

I. THE ROBINSON–PATMAN ACT AND THE VOLVO DECISION

The RPA differs from other federal antitrust laws in that its primary goal is to protect small businesses from aggressive competition.27 To address concerns about large chain retailers exploiting their market power to undercut smaller retailers, Congress tightened the 1914 Clayton Act’s proscription against “secondary-line” discrimination—that is, discrimination by a seller who favors some of its customers over others.28 Establishing a secondary-line injury claim requires that (1) the relevant sales were “made in interstate commerce,”29 (2) the goods sold were of “like grade and quality,”30 (3) the defendants “discriminate[d] in price” between two purchasers of the same goods,”31 and (4) the price discrimination injured, destroyed, or prevented competition to the discriminator’s advantage.32 This last prong—requiring a showing of “competitive injury”—has been the source of much controversy. Courts have interpreted this to require harm to competitors rather than harm to competition, in stark contrast to other federal antitrust laws.33

Early in RPA jurisprudence, the Supreme Court affirmed that the RPA meant to curb injury to the “competitor victimized by discrimination.”34 In FTC v. Morton Salt Co., the Court established a plaintiff-friendly rule that competitive injury could be inferred from evidence of prolonged price discrimination over time.35 The Court explained that this presumption, which has come to be known as the Morton Salt doctrine, was justified given that competitors would most likely be injured if they were forced to pay their suppliers higher prices than their competition over a prolonged period.36 Upon a review of the Act’s legislative history, the Morton Salt Court noted that the purpose of the RPA was to address the “evil” arising from the fact that “a large buyer could secure a competitive advantage over a small buyer solely because of the large buyer’s quantity-purchasing advantage.”37

But the Supreme Court’s subsequent cases made it difficult for plaintiffs to prevail on an RPA claim by expanding what defendants could raise as affirmative defenses and heightening requirements to build a prima facie case.38 This trend, driven in large part by Chicago School scholarship in the 1970s and 1980s, reflected a growing consensus that consumer welfare is the singular economic goal of U.S. antitrust law.39 As an economic matter, the Chicago School scholars argued that shielding smaller, inefficient competitors from aggressive competition by large retailers would lead to higher prices and market inefficiency.40 The Court’s decision in Brooke Group Ltd. V. Brown & Williamson Tobacco Corp. in 1993 seemed to add further weight to the view that pro-competitive goals of the Sherman Act and the FTC Act should also constrain the application of the RPA.41” and that the Act bans “price discrimination only to the extent that it threatens to injure competition.”42 The Court effectively imported the Sherman Act’s injury-to-competition standard to apply to RPA claims for primary-line injury or predatory pricing43—which occurs when one manufacturer reduces its prices in a market and causes injury to its competitors in the same market.44 But the question remained as to whether the Court would apply a heightened evidentiary standard to secondary-line injury cases as well.45

In the latest decision involving a secondary-line case, the Supreme Court did not overturn the Morton Salt doctrine or other basic features of the RPA that fundamentally make the legislation protectionist. But it did continue to heighten the competitive injury requirement.46 The Court granted certiorari to the appellants in Volvo Trucks North America, Inc. v. Reeder-Simco GMC, Inc., where a car dealer alleged that the car manufacturer Volvo offered the dealer different wholesale prices than it did for other dealers in a competitive bidding process.47 Justice Ruth Bader Ginsburg, writing for the majority, found that the plaintiff dealer, Reeder, failed to show requisite competitive injury where Reeder and other dealers were not both “in actual competition” for the same customer under the Act.48 She rejected Reeder’s evidence that it received smaller concessions than other dealers from Volvo for different sales on which Reeder did not bid.49 On the two occasions in which Reeder did bid against another Volvo dealer, competing “head-to-head” for the same customer, the Justice held that Reeder did not show that discrimination was substantial.50 The loss of only one sale to another Volvo dealer, which amounted to $30,000 in gross profits, was not of such “magnitude” as to substantiate Reeder as a “disfavored” purchaser.51

By allowing only the “head-to-head” comparison to be considered, Justice Ginsburg narrowed what type of evidence suffices to show undue price discrimination among “favored and disfavored purchasers” under the Act.52 Justice Ginsburg echoed Brooke Group’s language that gnoreand competition is the “primary concern of antitrust law.”53 Her opinion did seem to narrow the range of scenarios in which a manufacturer could injure similarly situated resellers, expanding “procompetitive” ways in which a large buyer could legally induce price discrimination.54

Justice John Paul Stevens, in his dissent in Volvo, expressed concern that Justice Ginsburg’s transaction-specific approach eliminated the RPA’s statutory protection in “all but those rare situations in which a prospective purchaser is negotiating with two . . . dealers at the same time.”55 He viewed Reeder and other dealers as valid competitors who dealt with the same Volvo trucks “in a single, interstate retail market.”56 Moreover, by distinguishing other instances in which Volvo charged Reeder higher prices than those it charged to competing dealers as “wholly discrete events” based on the identity of the customers, Justice Ginsburg, in his view, “gnore[ed] the fact that competition among truck dealers is a continuing war waged over time.”57 Justice Stevens and other commentators have argued that the majority approach effectively restricts RPA liability in competitive bidding situations, shielding liability for manufacturers.58

The Volvo opinion, nevertheless, left plenty of ammunition for RPA advocates to leverage.59 Justice Ginsburg notably did not require a showing of harm to competition to establish second-line injury, which is required under the consumer-welfare standard applied in Brooke Group. 60 Justice Ginsburg thereby expressly reaffirmed the Morton Salt doctrine.61 The continued existence of this powerful presumption means that plaintiffs can win an RPA claim even if the wholesaler’s discriminatory conduct has the overall effect of lowering prices for end consumers. Finally, by focusing the discussion in Volvo on whether Reeder and other Volvo dealers were “functional competitors” rather than whether they dealt with a “sale of goods” under the RPA, Justice Ginsburg left open the possibility that the RPA may apply to competitive bidding or other business transactions that arguably fall somewhere between a “sale” transaction and a “competitive bidding” contest.62 She stated that the Court’s decision to hold against Reeder does not answer the question of law about whether the RPA “reach[es] markets characterized by competitive bidding and special-order sales, as opposed to sales from inventory.”63 The majority opinion does not completely foreclose the possibility of finding RPA liability in other novel business contexts (i.e., in digital markets) where the occurrence of a “sale of good” may be unclear.64

### 1NC – ICC CP

#### The President, with consent from two-thirds of the Senate, should accede to the Rome Statute. The Department of Justice should, referencing the regime of complementarity, provide jurisdiction for the prosecution of business practices that fail a balancing test with greater weight afforded to harms to diversity and redundancy of input markets to the International Criminal Court.

#### Prosecution under the ICC competes, solves better than antirust, and spurs follow on.

Jenia Iontcheva Turner, Professor of international law @ SMU, ‘7, “Transnational Networks and International Criminal Justice” Michigan Law Review , Mar., 2007, Vol. 105, No. 5 (Mar., 2007),https://www.jstor.org/stable/pdf/40041542.pdf?refreqid=excelsior%3Ab25595013b730d3c2f1a10a412c32c35&ab\_segments=&origin=

These features of international criminal law explain why relatively few transgovernmental networks have developed so far. But this paper shows that such networks are emerging slowly, and it identifies several forces that are increasingly pushing for transgovernmental cooperation in international criminal law.

The first force is rhetorical. While international crimes often do not cre- ate externalities for powerful states, the argument that the international community must act to prevent and punish international crimes has deep moral resonance. The moral force of the argument for intervention distinguishes international crimes from less poignant regulatory issues, such as antitrust and securities regulation, and helps propel international cooperation even in the absence of cross-border effects.

The second force - which builds on the first - is the active involvement of NGOs in international criminal law. These organizations work to keep international crimes in the public consciousness and on the agenda of national governments, even in states not directly affected by international crimes. Indeed, NGOs do more than lobbying and awareness-raising cam- paigns. They actively help coordinate transgovernmental efforts in international criminal law by providing information, expertise, and logistical help in setting up war crimes tribunals, drafting domestic legislation to im- plement international criminal law, and spreading best practices through face-to-face contacts, written manuals, and training programs.6 By promot- ing domestic legal reform, NGOs empower prosecutors, investigators, and judges in post-conflict countries to apply international criminal law without undue intervention by the central government and thus to be effective par- ticipants in the emerging transnational networks.

Also important to developing international criminal law networks is the existence of several international and hybrid war crimes tribunals. The inter- action between investigators, prosecutors, and judges at these tribunals is likely to have spillover effects and spur greater cooperation at the transgov- ernmental level. For example, we can expect that prosecutors, judges, and defense attorneys who have worked on a war crimes tribunal at the interna- tional level will be eager to apply their expertise elsewhere after the at the international court ends. They are thus likely to become active partici- pants in transgovernmental networks. The International Criminal Court ("ICC") can be expected to play an even more central role in promoting such networks. The court's regime of "complementarity" - under which the court takes up cases only when states are unwilling or unable to prosecute - has already prompted national au- thorities to pass implementing legislation and create judicial structures to deal with international crimes domestically. As such structures become es- tablished, they are likely to begin cooperating with their counterparts from other states. The ICC has an incentive to promote such cooperation. The court depends on national authorities to obtain evidence and custody of sus- pects and to enforce its judgments, so it will want to ensure that the authorities are well equipped and committed to provide such assistance. Moreover, the court is unable to shoulder the full load of international crimes prosecution, so it has to rely on national courts to handle many of the trials. For these reasons, the court has an interest in promoting effective pathways of transnational cooperation. As later Sections discuss in more detail, it has already sponsored some initiatives toward that end.

Finally, cooperation in international criminal law will be advanced by al- ready-existing networks in other areas of criminal law. Transgovernmental networks have begun developing to address "transnational" crimes such as terrorism, drug-trafficking, and money laundering; it would be easy and logical for some of these networks to take on responsibilities related to war crimes and crimes against humanity. The skills required for investigating and prosecuting transnational and international crimes are similar, and in- creasingly, there are connections between the two types of crimes.7 These connections make international crimes more strategically relevant for the countries that are already cooperating in the fight against terrorism and drug- and human-trafficking. A concentration of efforts to fight both types of crimes is already occurring in Europe, where special prosecutors' offices have been created to address cross-border organized crime, war crimes, and crimes against humanity.

#### The counterplan sets a precedent for treating monopolistic behavior as a crime against humanity.

Hamilton, Rebecca J., Professor of Law, American University, 11-12-21, (Nov 12, 2021). B.C. L. Rev (forthcoming 2022), Platform-Enabled Crimes Available at SSRN: https://ssrn.com/abstract=3905351 or http://dx.doi.org/10.2139/ssrn.3905351

Against the mainstream, several scholars have raised concerns about the way ICL has struggled to square individual responsibility with the reality of crimes that routinely involve group activity.80 And my prior work in this area contributes to a growing body of critical scholarship questioning whether ICL, with its blinkered focus on the individual, should be the default response in the face of atrocities that invariably implicate state and/or corporate entities as well.81

During negotiations over the jurisdictional provisions of the Rome Statute, corporate criminal liability was extensively discussed. The debate was fraught, however, because of the varying domestic standards among the different delegations, with a number of domestic jurisdictions having no provision for corporate criminal liability.82 And a last-minute proposal by the French delegation to grant the Court jurisdiction over corporations ultimately failed.83 In light of this defeat, one might imagine that the value of ICL as a body of law through which to respond to atrocities would be treated with reasonable skepticism given that individuals do not (arguably, cannot) commit mass atrocities in isolation; state and/or corporate entities are invariably implicated. Yet the recent genocide against the Rohingya in Myanmar showed, yet again, the social power of ICL as a frame through which to respond to atrocities. 84

While accountability for principal perpetrators is vitally important, accountability for the entities that enabled their actions is also essential. With platform-enabled crimes, individuals and entities form two sides of the same coin. Prosecuting individuals, without also paying attention to the role of entities, creates a distorted account of both how such crimes are committed and where responsibility for them lies. This, in turn, hampers efforts to prevent their future recurrence, since an accurate understanding of how a crime is committed is a prerequisite to its prevention.

With such concerns in mind, scholars have continued the effort to expand the remit of ICL to cover corporate criminal liability, most recently with respect to social media companies that enable international crimes. In Move Fast and Break Societies, Shannon Raj Singh argues that in appropriate circumstances, an ICL prosecution of a social media company based on its complicity in atrocities would accurately capture a platform’s role and advance accountability.85 She acknowledges that “the prosecution of legal persons is, at present, not possible before the international criminal court” but nonetheless posits that the Rome Statute, the Court’s constitutive document, could be amended to grant such jurisdiction in the future.86

#### Establishing monopoly power as a crime against humanity reinforces global ordoliberalism – solves democracy and authoritarian S-Risks.

Christian D'Cunha, Official of the European Union, ’21, ““A State in the disguise of a Merchant”: Tech Leviathans and the rule of law” Received: 20 May 2021 Accepted: 20 May 2021

This returns us to the question of power. In the modern age, ultimate power has typically reposed in the state. The rule of law has stood as a theoretical and practical counterpoint against the abuse of state power. Capitalism, in the meantime, has served up private agglomerations of wealth and patronage to rival or even dwarf the power of many sovereign states. In 1750s Bengal, one such entity, the East India Company, actually wrested control of the government. Edmund Burke railed against the Company's colonialist greed and exploitation of the population. In his attempt to impeach Governor-General Warren Hastings, Burke turned to Natural Law. Repackaging the maxim eundem negotiatorem et dominum, he charged the East India Company with becoming “that thing which was supposed by the Roman law to be so unsuitable, the same power was a Trader, the same power was a Lord … a State in disguise of a Merchant, a great public office in disguise of a Countinghouse.” 19

Most theorists of the rule of law since Burke have not reckoned with private monopolies. However, the pioneers of modern competition law took aim deliberately at the concentration of commercial power giving providers of essential services, like the railways and telecommunications, licence to discriminate between individuals and competitors. John Sherman, defending his trailblazing antitrust bill before the United States Senate in 1890, famously declared that the country could no more accept “a king as a political power” as a “king over the production, transportation, and sale of any of the necessities of life.” After the Sherman Act, there ensued a debate that has never been resolved: was monopoly illegal and dangerous by sheer dint of its bigness, or was monopoly only illegal and dangerous where intent to unreasonably stifle competition had been proven. In one landmark case, U.S. v. Alcoa, a Federal appeal judge, citing a 1932 Supreme Court decision, ruled that “size carries with it an opportunity for abuse that is not to be ignored when the opportunity is proved to have been utilized in the past.” Judge Learned Hand dismissed the argument of the defence that specific intent remained unproven— “for no monopolist monopolizes unconscious of what he is doing.”

20 Alcoa was hardly a corporate angel. With an almost complete monopoly over aluminium production in the US market, it had been colluding with Nazi German industry and was accused of refusing to expand capacity to prevent prices falling just when manufacture of warplanes became a national imperative.21 The Nazis had declared cartels to be a virtue, hiving off to them hitherto public functions.22 By contrast, what became known as the ordo-liberal school regarded competition as essential for democracy, and the duties of the state to include preventing the creation and misuse of private economic power. This at the time fringe academic thinking found favour during the Allied occupation, one of whose priorities was breaking the monopolies that had enabled Hitler's rise and had consolidated his control of the economy.23 Germany's 1957 competition law, like Japan's 1947 antimonopoly law, fulfilled one of the conditions of the return of sovereignty from the departing occupier. In parallel, similar provisions were incorporated into the treaty establishing the European Coal and Steel Community and its successor, the Treaty of Rome, establishing the European Economic Community. Both closely resembled US law, albeit with more leniency towards concentration.24

International human rights law largely developed in parallel to anti-monopoly and competition rules. Companies are not directly bound by international law, but by the laws of the jurisdiction in which they are based. Contracting states to the International Covenant on Civil and Political Rights and the European Convention on Human Rights are indeed obliged to secure to everyone within their jurisdiction human rights and freedoms, including where actions with an impact on those rights and freedoms take place outside their territory.25 More recently, the “Ruggie Principles”, endorsed by the UN Human Rights Council in 2011,26 address the power of multinational companies. The principles recommend that states act where businesses violate human rights and that businesses avoid “causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur”. Businesses should “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.” The principles are non-binding and lack any enforcement mechanism. Liability under international criminal law only applies to individual corporate officers. Discussions on its extension are now ongoing and could, potentially, see a company as a legal person tried domestically or before the International Criminal Court (to which neither China nor the United States is a party) for committing or assisting in the commission of a crime including human rights abuses.27

2.5 | The rule of law and wealth inequality

Sherman in his great speech of 1890 had explicitly connected the lack of constraint on monopoly to the perpetuation and exacerbation of poverty. Among all “the problems that may disturb social order”, he said, “none is more threatening than the inequality of condition, of wealth, and opportunity that has grown within a single generation out of the concentration of capital.” A few years earlier, in his influential 1885 study Railroad Transportation, Its History and Laws, Yale professor Arthur Hadley had remarked that most price discriminations “are in favor of the strong … As such they do great harm to the community by increasing inequalities of power.”

28 The danger monopolies posed to workers was also widely recognised at the time. Safeguards for unions and labour were inserted into the 1914 Clayton Act which closed loopholes in the Sherman Act that monopolists had been exploiting. The robustness of the rule of law was thus considered a function of the ability of the weakest to summon the law to their defence. By the 1970s, however, neoliberal economics incubated in the “Chicago School” began taking root in politics and the judiciary, increasingly discrediting any government intervention aimed at curbing the power or harmful behaviour of companies. Inequality and poverty were irrelevant, according to the new orthodoxy of leaving markets untrammelled, so long as “efficiency” manifested principally by low prices to the consumer was advanced. Richard Posner, doyen of the Chicago School with a senior judicial career spanning four decades, went so far as to argue that the “logic of the law might be economics”, and that “a second meaning of justice … is efficiency.”29 As this gained political traction beyond the United States, it drove a deeper wedge between abstract legal notions and concrete socio-economic justice. It was a radical deviation from the idea, gestated over centuries, that overbearing power should be checked. The results of this deliberate deregulation are to be seen now, early in the third decade of the twenty-first century, alongside globalisation of capital and concentration in digital markets. A small number of private American and Chinese companies now derive enormous profits from mediating human personal, commercial and political relations, aided by the recycling of talented personnel willing to trade loyalties between these companies and public administration. Public policy makers appeared mostly sanguine about this state of affairs, at least until two quite separate events in the US and China that happened to coincide at the turn of 2021: the ignominious climax of Donald Trump's presidency amid seditious lies about the outcome of the 2020 election, and the mysterious vanishing from public view of Jack Ma, the third richest person in China and the founder of Ant Group, on the eve of its initial public offering.30 In very different ways, these developments have resurfaced a question that has lain relatively undisturbed since the wake of the Second World War: constitutions have evolved to constrain the power of the state through checks and balances, but what can constrain a private multinational company that threatens to become more powerful than the state?

### 1NC – Sovereign State Preemption CP

#### The fifty states should sue the United States federal government for full federal enforcement of prohibitions on business practices that fail a balancing test with greater weight afforded to harms to diversity and redundancy of input markets in its analysis of anticompetitive business practices, on the grounds of sovereign preemption state standing based in Article III.

#### States have standing in domains where there’s active preemption and existing underenforcement. The suit forces federal courts to rule in favor of the plan.

Nash ’17 [Jonathan R; associate dean for research at Emory University School of Law, Robert Howell Hall Professor and co-director of Emory Law’s Center on Federalism and Intersystemic Governance; 1/26/17; “Sovereign Preemption State Standing”; <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1315&context=nulr>; Emory Law; accessed 9/15/21; TV]

In this Article, I advance a blueprint for what I term “sovereign preemption state standing” to sue the federal government. Sovereign preemption state standing is, I argue, consistent with the Court’s precedents and serves to clarify them. It rests upon an injury that is neither economic nor purely sovereign; rather, it is a form of quasi-sovereign—or parens patriae—injury.21 A state asserts a parens patriae injury on behalf of its citizenry. Here, that injury arises upon a combination of (i) the federal government actively preempting state law, and (ii) the executive branch under-enforcing that federal statutory law.

To be more specific, sovereign preemption state standing arises when, at a minimum, the following conditions are met. First, the state must allege that the executive branch has under-enforced the federal law in a way that is inconsistent with a governing statute. Second, the state must be able to point to preemption of state law; in particular, either the preemption of state law must be obvious and clear from a federal statute, or the federal government must have previously sought, or be concurrently seeking, to preempt state law. In addition, there must be a nexus between area of preemption and the area in which the executive branch is allegedly under-enforcing federal law.

Sovereign preemption state standing arises naturally out of the function of states in the federal system. The Constitution recognizes the continuing importance of states and preserves much of the states’ police power authority. The Constitution thus validates the ongoing role of states in protecting the health and well-being of their citizens.22 A state is unable to fulfill this role when the federal government preempts state law; still, the state’s citizens will be protected if the federal government puts in place a federal law to fill the void left by the preemption of state law. Indeed, the constitutional logic is that the federal government acts in the stead of the state governments to protect the nation’s citizenry. In effect, the state government and the federal government both have parens patriae status; either can validly protect the interest of the people. A state has no standing to challenge the mere fact that the federal government has opted to supersede the state as regulatory parens patriae on a particular issue.23

However, this logic breaks down when, notwithstanding the Congress’s decision to put in place a federal law, the executive branch under-enforces that law. Now, the state can argue that the federal government is not properly exercising the protective power that the state effectively delegated to the federal government under the Constitution. And the injury to its citizenry that results from that underenforcement is the state’s basis for sovereign preemption state standing.

Sovereign preemption state standing is broadly consistent with prior precedent governing state standing to sue the federal government. It leaves undisturbed the view—recognized by Professors Ann Woolhandler and Michael Collins and by Professor Stephen Vladeck—that a state should have standing to sue the national government for a direct injury it has suffered.24 And it is consistent with an understanding of standing, advanced by Professor Tara Leigh Grove, that allows a state to challenge the validity of federal government preemption of state law.25 Sovereign preemption state standing provides the next logic step: It provides standing where, even if the preemption is valid, the executive branch fails to enforce the federal law that takes the place of preempted state law. Sovereign preemption state standing is thus able to provide what other theories are not: a consistent logical lens through which to view the Court’s decision in Massachusetts v. EPA.

#### The doctrine spills over to clarify state standing, ensuring robust state participation within federal regulatory schemes.

Roesler ‘16 [Shannon Roesler, Professor of Law, Oklahoma City University School of Law. STATE STANDING TO CHALLENGE FEDERAL AUTHORITY IN THE MODERN ADMINISTRATIVE STATE. Washington Law Review, 2016. https://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/1588/91WLR0637.pdf?sequence=1&isAllowed=y]

We live in a world of shared governance, a world in which the supremacy of federal law depends on state cooperation in its implementation, and the efficacy of state regulation depends on federal support and action. The federal administrative state has expanded in an attempt to solve complex economic and social problems that traverse state and even national boundaries. But particularly in the health, safety, and environmental arenas, federal standards would mean very little in the absence of state cooperation. Without the assistance of state administrative agencies and mechanisms, the federal government would be unable to implement these protections in every state or would implement them in a way that fails to account for important local differences. In this “post-sovereignty” world, we need a doctrine of state standing that recognizes the interests of states as co-regulators under some federal laws.

The governance approach to state standing recognizes this regulatory reality. It allows states to challenge federal laws and actions when the underlying federal law contemplates state assistance in its implementation. When states share in the day-to-day business of regulating by implementing federal policy, they have a concrete governance interest in litigating the boundaries of state-federal authority and in challenging federal actions that affect states as regulatory partners. Massachusetts had such an interest in challenging the EPA’s decision not to regulate GHG emissions under the Clean Air Act. And because the Affordable Care Act contemplates state implementation of market reforms and exchanges, Virginia had a governance interest in challenging the Act as an unconstitutional exercise of federal power. When federal law preempts state law, state standing should not turn on whether the state can allege a traditional injury-in-fact. Indeed, as Texas v. United States demonstrates, a state can almost always show that federal law has some effect on state laws or expenditures. But indirect injuries should not be enough. The governance approach to state standing would ensure that states have a direct interest in resolving questions of intergovernmental authority. It would also help clarify state standing doctrine, making it less susceptible to judicial manipulation and facilitating the resolution of other threshold questions.

#### That solves warming – extinction.

Buzbee 18, (Professor of Law at Georgetown, FEDERALISM HEDGING, ENTRENCHMENT, AND THE CLIMATE CHALLENGE, Wisconsin Law Review, January 19th, wisconsinlawreview.org/wp-content/uploads/2018/01/Buzbee-Final.pdf)

Advocating a new body of regulation with the explicit concession of likely error and risks of regulatory derailment may seem self-defeating. Nevertheless, effective regulatory design, like effective investment strategies, must be designed for success yet anticipate unfavorable developments and error risks.1 And in the United States, due to our constitutional structures and linked political norms, any major regulatory choice must include decisions about how to utilize the regulatory roles demarked by federalism. What roles should be allocated to or preserved for federal, state, and local actors, or perhaps a combination of them all? Climate change policy choices remain the subject of partisan and rancorous contestation, including disputes over the right federalism choice. By leavening idealized policy solutions with attention to political and legal discord and regulation-market linkages, this Article illuminates the effects and dynamics of federalism hedging, a largely overlooked value of federalism structures retaining concurrent and often interacting federal and state roles. Federalism hedging refers to the regulatory choice to retain overlapping, interacting, and often intertwined federal and state roles even in a setting where the apparently ideal regulatory regime would rely on exclusive federal regulation that would preempt state roles.

This Article argues that both federalism discourse and climate change policy debates have failed to analyze adequately how choices about federal and state roles can serve to hedge and even reduce risks of regulatory reversal and implementation failure. This Article’s analysis of federalism hedging operates at three levels. First, it introduces federalism hedging as a theory, explaining the attributes and dynamics of federalism hedging and situating it within recent scholarly and policy debates about the values and functioning of federalism. Second, it then illuminates federalism hedging with analysis of the regulatory challenges posed by climate change and the history of climate and clean energy progress and contestation. And, third, drawing on this theoretical and historical analysis, the Article makes a normative and prescriptive claim that retaining latitude for state and federal overlap can provide an array of benefits and, especially, reduce risks of disruptive policy reversals that could, in turn, undercut linked markets and regulatory progress.

Such a hedging role is of especial importance where a body of regulation provides a crucial underpinning of a market and that market is itself essential to regulatory success. Retaining latitude for both federal and state roles also can serve in a valuable precautionary role conducive both to innovation and pragmatic adjustment in regulatory settings characterized by rapid change in business models and technology.2

This Article, like much federalism discourse, is actually not about what is constitutionally required. Instead, the Article builds on an increasingly robust body of scholarship analyzing how federal and state roles recognized by the Constitution should be utilized to further particular regulatory policy goals or political ends.3 Although federalism scholars often mention the benefits of federalism “redundancy” in risk regulation and benefits of dynamic interjurisdictional learning, little of this pro-overlap and interaction federalism literature devotes attention to the regulation-business link, regulatory risks of error, implementation failures, and political reversal risks.4 Another strain of federalism scholarship documents and analyzes the logic and legality of state and local climate and clean energy initiatives undertaken without a broader national agreement.

Before comprehensive federal climate legislative proposals went down to defeat in 2009 and 2010, they spurred an important but truncated debate over what roles should be retained by states if the nation enacted a climate-focused federal cap-and-trade bill.6 Prominent scholars and stakeholders argued that because climate regulation addresses a global ill and logically must embrace market-based regulatory tools—most likely cap-and-trade-based regulation or use of pollution taxes—regulation should be structured to draw on the largest markets possible in order to facilitate the business search for costeffective means to reduce emissions.7 They often championed preemption of state climate roles. Final (but unsuccessful) bills, however, rejected such calls.8 And a recent 2017 proposal by leading Republican conservatives advocated enactment of a carbon tax regime, but coupled that proposal with a call for the elimination of other similarly targeted federal or state laws.9

In the absence of a tailored federal climate law, states nonetheless have made climate and clean energy regulatory progress and, as litigants, prompted a series of federal regulatory actions to address climate risks under the Clean Air Act and federal energy laws. And those federal regulatory interventions, especially the Clean Power Plan (CPP) targeting existing power plants’ greenhouse gas (GHG) emissions, were shaped by state experiences, sought to harness state regulatory capacity and creativity, and preserved state authority to do more.10

The role of federalism overlap and interaction as a hedge, especially in the climate regulation arena, is a subject of more than just theoretical interest. As this Article goes to press, the new administration of President Donald Trump has overtly declared plans to revisit and roll back climate progress.11 The extent to which this new administration can do so is substantially shaped by federal, state and business climate and clean energy progress, and past statutory federalism choices.

This Article agrees that the ideal answer to a global challenge like climate change would be regulation at the largest scale possible, with minimized regulatory overlap. Nonetheless, mandating such authority allocations would be the wrong answer. The effects and political economic dynamics of federalism hedging analyzed in this Article reveal why. The value of federalism hedging links to likely regulatory implementation failures, regulatory reversal risks, and risks of unsettling linked markets. Responses to regulation will inevitably be ongoing and dynamic; whatever regulatory instruments and design are chosen will shape and change the political and market terrain, and vice versa.12 All policy reforms are “at risk,” facing post-enactment threats and a dynamic environment.13 The challenges of climate change make such regulatory derailment risks especially likely to be persistent threats.

Federal harnessing of state roles, or at least preservation of the possibility of state regulation alongside federal regulation,14 can be part of an effective and durable regulatory design due to three effects linked to federalism hedging: heightened stakeholder incentives to commit to the federal regime; policy diffusion dynamics; and gradual entrenchment of supportive coalitions through a process of path dependence dynamics that result in “increasing returns” and “costs of exit.”15 Relatedly, tested regulatory and market accomplishments create a body of experience and record that can provide a bulwark against ungrounded claims of regulatory hardship, change coalitional political dynamics, and provide a fact-based foundation for future regulation.16

For market actors supplying goods and services to meet a regulatory goal, a web of regulation resulting from multiple regulators, or at least potential regulators, is far more resilient and resistant to wholesale derailment than would be complete dependence on a single federal regulatory scheme. Retaining that state authority, even if just a regulatory hedging strategy, fosters overall stability, creates room for regulatory innovation, and thereby creates conditions conducive to private investment to meet regulatory goals.

Legal durability is always important, especially where the regulatory infrastructure is a critical underpinning of linked investments and markets. This is especially true in the setting of climate regulation.17 Always underlying climate politics and linked markets is fear of all governments, citizens, and market actors that their jurisdiction will act, but others will not. Such inaction or regulatory reversals of others can disadvantage the climate-regulating jurisdiction, lay waste to investors in related businesses and markets, and leave GHG levels still on the rise.18

The climate and clean energy regulatory infrastructure is already built on laws and regulations benefitted by federalism hedging.19 Concerted federal efforts to reverse course on climate change—a constant in all climate regulation battles and an even more certain scenario under the Trump administration—will surely slow and might even halt federally led climate progress. The existence of federalism hedging strategies, however, will likely reduce the scale of such reversals and also set the stage for future progress.

### 1NC – Court Clog DA

#### Federal courts are managing caseloads now.

Nekritz ‘12/15 [Alyssa; 12/15/21; “A look at pandemic backlog in court proceedings and resources”; <https://www.ncsc.org/information-and-resources/info-and-res-page-card-navigation/trending-topics/trending-topics-landing-pg/the-pandemic-caused-delays-in-many-court-proceedings.-what-are-states-doing-about-backlog>; NCSC; TV]

About one third of U.S. courts saw an increase of over 5% in backlogs. This increase would have been larger had courts not adapted quickly to online operations. Several types of court proceedings, particularly trials, were delayed. Some court professionals are optimistic that the existing backlogs will be resolved quickly. Others are worried backlogs will continue.

In order to avert for a growing backlog, some states have or are dropping non-violent criminal cases when courts reopen . Other prosecutors are prioritizing repeat offenders. Although it is important for the court system to manage the cases timely, there are staunch critics who believe dismissal is a bad idea. Critics argue adjournments and the associated delay can create access to justice concerns, placing courts in a tough position.

Other state courts, like Florida and Washington, have requested more retired judges to assist pulled judges out of retirement and temporarily increased staffing to help with backlogs. Some jurisdictions continue to look for effective ways of addressing their backlogs.

NCSC’s Effective Criminal Case Management Project conducted extensive data collection on felony and misdemeanor cases. The project built resources on case flow management to help courts process cases efficiently.

Courts continue to innovate and NCSC is tracking pandemic related backlogs. More data will be necessary to draw conclusions about future impacts. Revisit the 2020 CCJ/COSCA Pandemic Backlog Report for more resources on dealing with a surge in civil cases. Additionally, courts can access the ECCM’s Cost of Delay Calculator (PDF and Excel) to compute a simple estimate revealing how quickly and significantly the costs of delay accumulate across a court.

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

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

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

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

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

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

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

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

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

#### Court clog produces patent delays.

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

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

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

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

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

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

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

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

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

#### Undermines biotech innovation.

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

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

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

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

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

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

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

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

#### Otherwise, ABR causes extinction.

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

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

## AT: Adv 1

### AT: Warming

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

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

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

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

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

[FOOTNOTE]

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

[END FOOTNOTE]

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

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

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

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

### AT: US-China War

#### No US-China war.

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

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

### AT: Grid

#### No blackouts impact and no attacks that can take down the grid.

Lewis ’20 [James Andrew; 8/17/20; senior vice president and director of the Strategic Technologies Program at the Center for Strategic and International Studies; "Dismissing Cyber Catastrophe," https://www.csis.org/analysis/dismissing-cyber-catastrophe]

A catastrophic cyberattack was first predicted in the mid-1990s. Since then, predictions of a catastrophe have appeared regularly and have entered the popular consciousness. As a trope, a cyber catastrophe captures our imagination, but as analysis, it remains entirely imaginary and is of dubious value as a basis for policymaking. There has never been a catastrophic cyberattack.

To qualify as a catastrophe, an event must produce damaging mass effect, including casualties and destruction. The fires that swept across California last summer were a catastrophe. Covid-19 has been a catastrophe, especially in countries with inadequate responses. With man-made actions, however, a catastrophe is harder to produce than it may seem, and for cyberattacks a catastrophe requires organizational and technical skills most actors still do not possess. It requires planning, reconnaissance to find vulnerabilities, and then acquiring or building attack tools—things that require resources and experience. To achieve mass effect, either a few central targets (like an electrical grid) need to be hit or multiple targets would have to be hit simultaneously (as is the case with urban water systems), something that is itself an operational challenge.

It is easier to imagine a catastrophe than to produce it. The 2003 East Coast blackout is the archetype for an attack on the U.S. electrical grid. No one died in this blackout, and services were restored in a few days. As electric production is digitized, vulnerability increases, but many electrical companies have made cybersecurity a priority. Similarly, at water treatment plants, the chemicals used to purify water are controlled in ways that make mass releases difficult. In any case, it would take a massive amount of chemicals to poison large rivers or lakes, more than most companies keep on hand, and any release would quickly be diluted.

## AT: Adv 2

### AT: EU Collapse/Populism

#### The EU won’t collapse [under populism].

Jeremy Cliffe 20, International Editor of the New Statesman, Former Brussels Bureau Chief for the Economist, BA from Oxford University, von Clemm Fellowship at Harvard University, “The Euro-Gloomsters Are Wrong To Use Every Crisis To Predict The Imminent Collapse Of The EU”, The New Statesman, 4/29/2020, https://www.newstatesman.com/international/2020/04/euro-gloomsters-are-wrong-use-every-crisis-predict-imminent-collapse-eu

Another crisis, another round of headlines suggesting the European Union is about to disintegrate. Politico says that coronavirus “could break the EU”. Reaction, a news website, predicts “the looming collapse of the eurozone”. New York Magazine asks whether the pandemic will “tear the EU apart”. The only thing as durable as the EU itself is the belief in its imminent demise.

As early as 1953 the diplomat Robert Boothby told Tory backbenchers that the European Coal and Steel Community would fail. His view was echoed not just by Harold Macmillan in 1955 (who told MPs that the “Monnet concept” was “doomed to failure”), but also by Boothby himself three decades later in 1981, when, as a peer, he warned the House of Lords that “the EEC will collapse. It will break up of its own accord.” More predictions of doom followed with Danish and French “no” votes to further EU integration in 1992 and 2005 respectively – and then with the eurozonene crisis. In 2012 the respected CEBR think tank put the chance of the eurozone’s collapse at 99 per cent and declared its survival “a political impossibility”. Then came the migrant crisis of 2015 (Europe’s “breaking point”, according to the New York Times) and the Brexit vote in 2016, which Nigel Farage predicted would “trigger a domino effect” leading to the EU’s collapse.

Coronavirus has unleashed the latest round of doom-mongering. Borders have gone up within the Schengen zone. The EU has not coordinated health policies in its member states. The economically strong have done too little to help the weak: despite calls for coronabonds, or mutualised debt, the EU is heading for a disappointing economic rescue and recovery package.

At their e-summit on 23 April, leaders agreed to support struggling economies through the European Stability Mechanism (the ESM, hated for imposing austerity on southern Europe during the eurozone crisis) and some combination of grants and loans issued through the EU budget.

It is therefore tempting to predict the EU’s failure. Yet today, as before, the euro-gloomsters make three crucial mistakes.

First, they mis-categorise the enterprise. The EU has fewer powers than a federal state and more responsibilities than an intergovernmental organisation. Even some valid criticisms of it exaggerate because they do not make fair allowances for this hybridity. You can reasonably argue that national health policies should be pooled at an EU level in the future. But you cannot reasonably argue that the EU, which has almost no power over member states’ health policies, “failed” to properly manage responses to Covid-19. That misreads both the function and the scale of the EU’s powers. You might as well argue that your bottle opener “failed” to heat your flat properly.

Second, the euro-gloomsters subject the EU to standards that other polities are spared. Yes, EU leaders talk a lot about solidarity and European values, sometimes sincerely. But that does not mean they do not also have their own electorates and national interests, just as leaders of the US states proclaim their belief in their union while standing up specifically for those who elected them. Even as I write, US state governments are trying to outbid one another to buy medical equipment. Some have talked of closing their borders. Rich states have grumbled about payments to poorer ones. Yet no one asks if the US is about to “fall apart”.

Third, in their obsession with this binary scenario, the euro-gloomsters miss a more interesting question: how are the complicated pressures on the EU changing it? The same mistake was made in the eurozone crisis, which prompted too many articles about the EU’s collapse and not enough about the huge structural shifts that were taking place, shifts that looked impossible beforehand and have changed the EU utterly.

A similar dynamic is playing out today. You can point to the absence of coronabonds and say that the EU is doomed. But far more insightfully, you can look at the other previously unthinkable things that it is now doing. The ESM programmes in its coronavirus rescue package will be shorn of the intrusive conditions that made them so unpopular in the eurozone crisis. The package also includes common unemployment reinsurance, until recently a glint in federalist eyes. And the EU is almost certainly on the path to a permanently and drastically higher budget; where weeks ago leaders were squabbling over fractions of percentages now there is talk of it effectively increasing by half or more.

Even on the shibboleth of mutualised debt, the union is edging in the right direction. Angela Merkel may have stood firm against coronabonds but she has departed from all German orthodoxy by agreeing to a milder version of that idea: the European Commission issuing debt backed by the EU budget. And perpetual bonds – debt with no maturity date – are now also a serious part of the discussion in a way they were not before. Big structural taboos are being broken, in ways that will change the future of the European project.

There remain very many useful, pressing questions about the EU. Is the borderless Schengen zone sustainable in the age of Covid-19 or will we see a return to national borders? Is the virus rescue package a small step towards the fiscal federalism that will give the union its best chance of a cohesive future, or is it a flop? Will disaffection in countries such as Italy express itself in shifting alliances within the EU?

All are so much more pressing – and, frankly, interesting – than the easy, abstract, clicks-driven question of whether the EU is doomed. It probably isn’t. Ask those questions instead.

### AT: EU Leadership

#### Alt causes to EU leadership.

Tony **Barber 19**, Europe editor at the Financial Times, 11-4-2019, "New EU leadership team must up its game on foreign policy," https://www.ft.com/content/e08b101e-fa48-11e9-a354-36acbbb0d9b6  
  
The new EU leadership team taking office in Brussels knows that, if the bloc’s common foreign policy is to command respect, the first place where it must achieve success is in Europe’s neighbourhood. It needs to be well-planned, as united as possible, efficiently executed and imbued with a larger sense of long-term strategy. In all these regards, two recent episodes — one concerning the Balkans, and the other Syria — have been little short of a debacle.

Each incident points to the EU’s inability to translate its undoubted weight as a commercial and regulatory bloc into hard power on the world stage. It is not just a matter of lack of military muscle, important though that is. The real problem is that, whenever two or more of the EU’s biggest countries are in disagreement, a common European foreign policy is either ~~paralysed~~ [stagnated] or becomes a question of finding the lowest common denominator among 28 states. An often overlooked point is that these disagreements tend to arise out of domestic political tensions in individual countries — over, for example, irregular migration or attitudes to Islam or Russia. Such tensions hobble the attempts of governments to find common ground with their EU partners.

In any case, France, Germany and other EU countries usually prefer to keep their freedom of manoeuvre when it suits them. The Syrian episode centres on Annegret Kramp-Karrenbauer, who is Angela Merkel’s preferred candidate to succeed her as German chancellor. Ms Kramp-Karrenbauer was named defence minister in July in an apparent attempt to raise her profile with German voters. But the proposal for a multinational security zone in northern Syria that she came up with this month was startling for its naivety and lack of preparation. Before unveiling her plan, Ms Kramp-Karrenbauer, who replaced Ms Merkel as the Christian Democratic party’s leader in December ahead of elections due in 2021, consulted neither her Social Democratic coalition partners nor Germany’s Nato and EU allies. Her proposal skipped over crucial questions such as whether the UN Security Council would endorse it, whether the US would take part and whether Germany’s under-resourced armed forces would send soldiers to Syria. To each question it rapidly became clear that the answer was almost certain to be no. Indeed, it was hard to tell who was more dismissive of the initiative — Russia and Turkey, which control events on the ground in Syria, or Heiko Maas, Germany’s foreign minister, who is of course a colleague of Ms Kramp-Karrenbauer. In this way, the plan served no purpose other than to illustrate the incoherence of the German coalition’s foreign policy, not to mention the EU’s near-irrelevance in Syria.

This is a sobering thought in view of the fact that the 2015 arrival of large numbers of war refugees from Syria and other conflict zones, plus other migrants, precipitated one of the EU’s worst crises since the 1957 Treaty of Rome that set up the bloc.

The EU’s mis-steps in the Balkans are no less painful to watch, but in this case the main culprit is France, not Germany. By blocking Albania and North Macedonia from opening EU membership talks, President Emmanuel Macron shocked and undermined a region whose stability is integral to the stability of the European continent. In North Macedonia’s case, Mr Macron’s move made the EU reek of hypocrisy. For the EU had long promised to start entry talks, provided that the Macedonians compromise with Greece over their country’s disputed name — a condition fulfilled in the Prespa agreement, which came into force last February.

In fairness to Mr Macron, he is not alone in having doubts about enlarging the EU into south-eastern Europe. Denmark and the Netherlands joined France in opposing Albania’s entry talks. Moreover, when the European parliament adopted a resolution last week in favour of starting accession talks with the two Balkan states, some 136 MEPs — or almost a quarter of those who voted — backed Mr Macron’s position. Furthermore, Mr Macron has a point when he suggests that the EU should focus on internal reforms before absorbing new members. The EU’s most important project, the 19-nation eurozone, remains a half-built house. Effective EU-wide action is woefully lacking in areas such as migration and asylum policy. However, Mr Macron would sound more persuasive, but for the persistent rumours that France’s true objective is to close the EU door forever to western Balkan countries. Instead they would be fobbed off with membership of the European Economic Area, which would keep them out of the EU’s political institutions and make them permanent second-class Europeans. The Syrian and Balkan embarrassments are symptoms of an EU unsure of its place in the world and suffering from ineffective Franco-German co-operation. But if the EU cannot get things right on its own doorstep, where can it?

# 2NC

## CP

### 2NC – Europe

#### Reversing Trumpism solves – they look to US supply chain policies.

Paola 1AC Tamma 21, reporter covering industry, labour competition and the single market at Politico Europe, “EU’s industrial policy stalls before takeoff,” Politico, 2/25/21, https://www.politico.eu/article/eus-industrial-policy-stalls-before-take-off/

Three EU officials and diplomats said the delay was unavoidable because European countries and the European Commission in Brussels are still riven by fundamental ideological divisions over how aggressive or protectionist the bloc should be in asserting its industrial prowess. The debate hinges on core economic issues like whether the EU should reshore key sectors or make more use of state subsidies.

The more assertive camp is led by France, Germany and EU Internal Market Commissioner Thierry Breton. But they are meeting fierce resistance from more liberal advocates of open economies in countries such as Sweden and the Netherlands, as well as in the powerful trade and competition departments of the European Commission.

“The question at stake is whether Europe will go for the Trumpian doctrine of made-in-Europe and protectionism, or choose to strengthen the European tradition of openness,” said an EU diplomat from the more liberal camp. Biden has also raised concern in Europe with his "Buy American" push.

#### Subsidies and protectionist policies are the key cause – counterplan reverses both.

Andrea 1ac Renda and Agnes Sipiczki 21, Renda is Part-Time Professor at the School of Transnational Governance of the European University Institute, in Florence and Senior Research Fellow and Head of the CEPS Unit on Global Governance, Regulation, Innovation and the Digital Economy, Sipiczki is a Research Assistant in the Global Governance, Regulation, Innovation, Digital Economy (GRID) unit at CEPS, “Competition Policy and State Aid: Defining a sustainable path for Europe’s recovery,” Centre for European Policy Studies Task Force Working Report, 2021, <https://docplayer.net/214078006-Competition-policy-and-state-aid.html>

Competition policy has traditionally been considered separate, if not antithetical, to industrial policy. Antitrust law and state aid have tended to centre on the idea of protecting market efficiency, thus challenging conduct that generates market failures. This approach has coexisted for decades with other peculiar aspects of EU competition law, such as its orientation towards market integration and its emphasis on preserving a competitive market structure by safeguarding the entry and survival of ‘asefficient’ competitors. In this antitrust paradigm, the role of governments has been limited to enforcing free and fair markets as opposed to engaging in interventionist policies. It has also been acknowledged that state intervention, for example in the form of subsidies or by picking winners and losers, can result in government failure and further distort the market. All of this has translated into a “consensus on the benefits of competition and free (self-correcting) markets […] accompanied by strong scepticism about traditional industrial policy”. 1 Today, however, competition policy is increasingly becoming an ally of industrial policy and of the transition towards a sustainable economy.

In a recent call for contributions launched in January 2021, the European Commission noted that “[c]ompetition policy is not in the lead when it comes to fighting climate change and protecting the environment. There are better, much more effective ways, such as regulation and taxation”. 2 Instead, the Commission observed, competition policy “can complement regulation and the question is how it could do that most effectively”.3 At the same time, Executive Vice-President in charge of competition policy Margrethe Vestager told the Organisation for Economic Co-operation and Development (OECD) Global Forum for Competition that “[c]ompetitive markets can support the green transition, by driving companies to make better, more efficient use of resources.” She added that “competition means that businesses have no choice but to respond to consumers’ demand for greener products”.4 These remarks suggest that the Commission recognises the need for competition policy to be streamlined in alignment with sustainable development and the protection of the environment (as required by the Treaties), and with the overarching goals of the Green Deal. At the same time, the extent to which competition policy can, and should, become a primary tool for achieving these goals is not yet certain. On the other side of the ‘twin transition’, the Commission seems to be quite ambitious about finding the appropriate mix of market regulation and competition policy to address the challenges posed by the increasing digitalisation of our economies and the accompanying structural market changes. The proposed Digital Markets Act (DMA) provides an example of this.

The recognition that many EU industries are lagging behind their Chinese and American counterparts has increasingly drawn the Commission’s attention to the need to strengthen Europe’s global competitiveness. Amid the geopolitical shifts in the global economy, competition policy can be a tool to sustain the European Union’s open strategic autonomy and support the ‘geopolitical Commission’ in its efforts, while promoting sustainable development and a social market economy. However, the EU should develop its own tools instead of resorting to the type deployed by big competitors like China and the United States, for example the heavy subsidisation of domestic companies or the exclusion of foreign companies from key domestic markets. The geopoliticisation of competition law should not be equated with protectionist policies and radical shifts in the current model of competition policy enforcement by, for example, facilitating the creation of European champions through relaxed state aid and merger control. Instead, the notion of open strategic autonomy justifies the current approach, centred on the strict enforcement of competition rules. Under this paradigm, the role of competition law is to strengthen competition in the internal market and consequently to increase the competitiveness of European companies.

### 2NC – Supply Chains

#### Supply chain reforms directly solve.

Barry C. 1ac Lynn 14, Director of the Open Markets Program at the New America Foundation, 2014, “Shock Therapy: Building Resilient International Industrial Systems in 2030,” Book: “Global Flow Security”, Chapter 8, <https://static1.squarespace.com/static/5e449c8c3ef68d752f3e70dc/t/5ed05090d45eb54e7aee9675/1590710418862/Shock-Therapy-Global-Flows-V1.pdf>

If these three observations are in fact true, the key to ensuring the resiliency of our international production systems is to build up realtime redundancy by physically distributing the capacity to produce keystone components, be they electronics chemicals or information. This, in turn, points us immediately to all sorts of pragmatic, practical rules and laws that would promote such distribution. We could, for instance, require that all firms dual source supplies in real time. We could, for instance, require firms to report all bottlenecks and potential bottlenecks to investors, governments, and the public. We could, for instance, alter the goals of competition policy (which, properly understood, includes trade policy) to ensure that the resiliency of vital systems is a main goal.

The one thing we need never do is adopt protectionist policies designed specifically to shift production to our own home countries. The fragility of these systems derives not from the fact that production is located off shore, but from the fact that all production of many keystone components is located in one or a couple places only. It is, if anything, a direct product of our failure to deal with such protectionist and mercantilist policies— in places like Beijing, Tokyo, Taipei, and Berlin— in a realistic fashion.

### 2NC – S – Generic

#### CWS can be modified to fit any set of needs.

Greenfield et al , Leon B. comparative competition law @ Georgetown Law Center ; Lange, Perry A. vice-chair of the ABA Antitrust Section’s Joint Conduct Committe; Callan, Nicole. ice chair of the Civil Practice and Procedure Committee of the American Bar Association (ABA)'s Section of Antitrust Law, vice chair of the Civil Practice and Procedure Committee of the American Bar Association (ABA)'s Section of Antitrust Law, ’20,“ANTITRUST POPULISM AND THE CONSUMER WELFARE STANDARD: WHAT ARE WE ACTUALLY DEBATING? “ Antitrust Law Journal; Chicago Vol. 83, Iss. 2, (2020): 393-428.

Robust debate over the proper direction of antitrust enforcement is essential, and populist critiques can contribute to the rigor of that debate. At times, however, it is unclear what the debate is actually about, and overheated rhetoric-both from populists and from the antitrust establishment-can make it difficult to join issue in a productive way. Many populists have framed their critiques of current antitrust enforcement as rejecting the consumer welfare standard. Predictably, responses from the antitrust establishment have focused on defending that standard. But as we have explained, much of what populists have proposed is perfectly consistent with retaining consumer welfare as the benchmark for adjudication.

To be sure, populists would enforce the antitrust laws more aggressively. They believe that enforcement should err on the side of avoiding false negatives rather than false positives. And they are skeptical about the capacity of current antitrust tools to predict the market effects of conduct or transactions accurately, especially over the medium to long term. Accordingly, populists would rely more heavily on presumptions of anticompetitive effects or per se rules (rather than more searching inquiries into likely competitive effects) and eliminate safe harbors and other mechanisms designed to avoid deterring procompetitive behavior. But none of these ideas is necessarily inconsistent with judging conduct based on its effects on prices, output, innovation, or quality.

Of course, just because certain proposals are consistent with the consumer welfare standard does not mean they are good ones. Advocates for reform must employ empirical evidence and reasoned argument to defend even these proposals against criticisms that they will deter robust rivalry; deprive the market of efficiencies that yield higher-quality and lower-cost products and greater innovation; or create administrability problems that are not justified by improvements in market outcomes. in responding to populist proposals, members of the antitrust establishment would do well to focus on these issues rather than on a rote defense of the consumer welfare standard. some of the populist critiques are better developed and better grounded in economic evidence and theory than the establishment tends to acknowledge. At the same time, proposals by the antitrust establishment to address concerns about economic power indirectly, while keeping the focus on consumer welfare, deserve the populists' serious attention. These proposals-which acknowledge the problems with enforcement identified by populists but seek to show that existing tools can provide solutions-could prove a fruitful area of engagement between members of the establishment and those who reject the current framework.

As to populist proposals that would have antitrust reach beyond consumer welfare and directly pursue other objectives, we believe the burden is on the populists to make their case. Populists must respond to the prevailing view that the antitrust laws are not a panacea for addressing a broad range of societal ills; that antitrust enforcement works better when its objectives are cabined and clear; and that concerns about income inequality, general wage levels, and employment are better addressed by more tailored or sector-specific regulation.

#### Creative theories of harm are not exclusive with the CWS. We can and should adapt the CWS for the contemporary age.

Greenfield et al , Leon B. comparative competition law @ Georgetown Law Center ; Lange, Perry A. vice-chair of the ABA Antitrust Section’s Joint Conduct Committe; Callan, Nicole. ice chair of the Civil Practice and Procedure Committee of the American Bar Association (ABA)'s Section of Antitrust Law, vice chair of the Civil Practice and Procedure Committee of the American Bar Association (ABA)'s Section of Antitrust Law, ’20,“ANTITRUST POPULISM AND THE CONSUMER WELFARE STANDARD: WHAT ARE WE ACTUALLY DEBATING? “ Antitrust Law Journal; Chicago Vol. 83, Iss. 2, (2020): 393-428.

B. Proposals to Improve Existing Antitrust Enforcement

Antitrust populists have advanced many proposals that, properly construed, would result in more aggressive antitrust enforcement while remaining within the consumer welfare framework. These proposals range from simple fixes, such as giving the agencies resources to bring more cases, to more substantial rule changes, such as altering current burden-of-proof allocations. The proposals are motivated by a concern that existing antitrust enforcement has led to consumer harm by erring too much on the side of under-enforcement.

1.Dedicate Additional Resources for Antitrust Enforcement

Antitrust populists have called for providing the FTC and DOJ with increasing funding and resources and for appointing more aggressively enforcement-minded leaders.121 They argue that expanded resources are necessary for the agencies to keep up with increased merger activity, technological changes, and newer and more nuanced anticompetitive practices in the economy.122

This position is consistent with mainstream antitrust views and efforts to reinvigorate antitrust enforcement during the obama and Trump administrations. For example, in 2016, President Obama issued an executive order requiring executive agencies and departments to take steps to address competition concerns, including by referring anticompetitive practices to the DOJ and FTC.123 In its fiscal year 2017 budget submission to Congress, the Antitrust Division highlighted the need for additional resources, requesting an additional $15.5 million in funding for civil merger enforcement and criminal cartel enforcement, including funding for 98 additional attorneys.124 And in its submission to Congress for fiscal year 2021, the Division requested an additional $21.8 million to administer its caseload, including funding for 87 additional positions.125

2.Improve Agency Transparency and Accountability

Antitrust populists also advocate various measures to increase agency transparency. For example, the Center for American Progress has proposed that the FTC and DOJ employ a network of experts to help assess proposed mergers, similar to the network that the Food and Drug Administration employs to help review new medical devices.126 The Center argues that a network of experts would democratize what is currently a closed process, allowing outside experts to help assess mergers and provide public comment.127 The Democrats' Better Deal proposed a new consumer competition advocate, who would proactively recommend investigations to the antitrust agencies.128 The Better Deal would also require the agencies publicly to explain decisions not to pursue a recommended investigation.129

Another common proposal is to strengthen retrospective reviews of consummated transactions. Although the agencies periodically conduct retrospective reviews, many antitrust populists have called for measures to institutionalize such efforts. For example, the Center for American Progress has proposed that the DOJ and FTC require merging companies to submit data for a three- to four-year period after a transaction, which could be an input for assessing the effectiveness of the agencies' merger-enforcement programs.130 Lina Khan and Sandeep Vaheesan argued that the President should appoint an antitrust inspector general, who would independently assess how predictions about merger effects have actually played out, and whether merger remedies have succeeded.131

calls for more agency transparency and accountability is another area where antitrust populism and the mainstream are largely in agreement. For example, at his confirmation hearing to become FTc chairman, Joseph Simons told the Senate commerce committee that the FTc needed to devote substantial resources to determining whether the agencies have been too permissive of mergers.132 Simons identified the possibility of overly lax merger enforcement as one of the top three challenges facing the FTc, and advocated systematic evaluation of the agency's work through retrospective studies of enforcement actions.133 And in September 2020, the FTC's Bureau of Economics announced a program to expand and formalize its efforts regarding merger retrospectives, including by dedicating additional resources and "maintaining a website devoted to research on retrospectives."134

3.Pursue More Creative Theories of Competitive Harm

A common populist theme is that the enforcement agencies systematically under-enforce the antitrust laws by failing to pursue novel or creative theories of competitive harm. These critiques often focus on specific industries in which or types of conduct against which critics contend the agencies' enforcement efforts have fallen short.

For example, critics frequently argue that the antitrust authorities have failed adequately to account for network effects, or that other scale advantages are imposing "insurmountable barrier[s] to entry."135 Lina Khan and others have used Amazon as a case study. Khan argues that Amazon exploits data that it receives as the owner of the Amazon Marketplace to undermine challenges from rival suppliers, e.g., by using information about its rivals' sales to target their customers.136 Khan claims that existing antitrust laws could address this type of data exploitation by more vigorously policing information transfers.137 Khan has also contended that the consumer welfare standard's emphasis on consumers "has largely blinded enforcers to many of the harms caused by undue market power, including on workers, suppliers, innovators, and independent entrepreneurs."138

Although critics may claim that the consumer welfare standard neglects network effects, scale advantages, harm to innovation, or monopsony power (including in labor markets), the standard can and does address these issues- at least where they threaten to harm market performance.139 Indeed, the current FTC and DOJ Horizontal Merger Guidelines contemplate consideration of these issues,140 which have engendered recent antitrust enforcement actions. For example, the DOJ based its action against American Express on a theory of market power reinforced and protected by network effects.141 And the agencies have challenged mergers based on theories of monopsony harm142 and harm to innovation.143 Stripped of rhetoric and properly understood, populist critiques focused on these issues do not reject the consumer welfare standard, but call for more aggressive intervention under that standard.

4.Adopt Presumptions that Favor Enforcement

a. Presumptions that Mergers Are Anticompetitive

One common populist critique is that current antitrust enforcement is too permissive of consolidation. Populists often cite John Kwoka's retrospective study of merger outcomes. That study concluded that mergers on average result in nontrivial price increases, and that the U.S. agencies have consistently permitted anticompetitive mergers.144 To overcome this perceived failing, many populists would replace today's focus on nuanced, fact-intensive assessment of competitive effects with a stricter application of the Philadelphia National Bank framework to create a presumption of illegality for mergers that result in highly concentrated markets.145 For example, the Democrats' Better Deal promised: "[U]nder our new standards, the largest mergers would be presumed to be anticompetitive and would be blocked unless the merging firms could establish the benefits of the deal."146

Populists also argue that the current presumptions fail to account for serial acquisitions of nascent competitors, particularly in the tech industry.147 As American Antitrust Institute President Diana Moss explains, the DOJ and FTc may be reluctant to challenge acquisitions of smaller, potential, or nascent competitors because regulators' decisions are driven by an error-cost analysis, under which the regulators "compare the costs of mistakenly chal lenging benign or pro-competitive deals to the cost of mistakenly not challenging anticompetitive deals."148

According to some populists, a strong presumption of illegality would result in a simpler and more predictable merger-review process and combat under-enforcement:

While agencies would still have to define relevant markets under the Philadelphia National Bank rule, the complexity of merger reviews would be greatly diminished. For one, these reviews would be significantly shortened and be much less dependent on competing speculations about the future development of markets. Armed with a simple rule rather than a standard that demands an exhaustive industry study and impossible projections of the future, the antitrust agencies, for example, would not have to spend more than a year investigating mergers in highly concentrated markets-as they routinely do now.149

Like the presumption that now exists in the Horizontal Merger Guidelines, the presumption proposed above would be generally subject to the merging firms' rebuttal: firms triggering the presumption could still merge if they could show that the merger would be unlikely to create or enhance market power.150

This proposal may well be flawed because it would sacrifice accuracy in enforcement decisions and deter too many procompetitive transactions. But it is not inconsistent with the consumer welfare standard: under the proposal as stated, agencies and courts would continue to evaluate whether transactions would result in increased prices or reduced output, quality, or innovation, rather than inquire into broader potential societal harms.151

b. Presumptions of illegal Monopolization

Antitrust populists have also advocated presumptions that Section 2 has been violated when a dominant or near-dominant firm engages in exclusive dealing, refusals to deal, or below-cost pricing.152 For example, Lina Khan argues that the current law requiring below-cost pricing and a probability of loss recoupment for predatory pricing claims fails properly to account for the economics of online-platform markets.153 Khan claims that network effects and control over data entrench early dominance, creating incentives for online platforms to price below cost to pursue growth, behavior that the current law assumes is rarely rational.154 She also argues that recoupment is difficult to detect among online platforms, which may raise prices years later, or raise prices on different products or through finely tuned price discrimination.155 To combat predatory pricing, Khan would replace Brooke Group's recoupment test156 with a presumption of predation whenever a dominant online platform prices its products below cost.157

Monopolization presumptions can be consistent with the consumer welfare standard.158 The challenge for populists is to present well-developed arguments to support their view that presumptions protect consumer welfare better than do existing enforcement approaches, and that presumptions will not overdeter procompetitive conduct, unduly sacrifice accuracy of adjudications, or prove unduly difficult to administer.

For example, enforcement agencies would need a principled way to determine which firms are dominant or near-dominant and therefore subject to the presumption. in addition, courts and enforcement agencies would need a reliable and practical method to measure whether a price is below cost, which is often very challenging to determine and can depend on the particulars of the industry and the particular firm's cost structure. Presumptions of illegality for exclusive dealing, refusals to deal, and below-cost pricing risk condemning conduct that is neutral or beneficial to the market. For instance, a presumption of predation risks punishing a firm that lowers its price to match its competition or offers a low price to introduce a new product. To address this risk, Khan suggests that the law permit a business-justification defense.159 Even so, a predation presumption may deter firms from engaging in aggressive price cutting or other procompetitive conduct. Firms engaging in such conduct would run the risk that the presumption would apply and that they would be forced into long and expensive litigation in which they would bear the potentially heavy burden of establishing a business justification (under possibly amorphous standards).

5.Addressing Potential Exclusionary Conduct by Online Platforms

Populists have focused many of their critiques of antitrust enforcement on digital platforms.160 Although some populist concerns and proposed solutions regarding platforms are outside mainstream antitrust, some are not. specifically, concerns that online platforms use data or influence the transmission of information in ways that actually harm rivals and reduce competition can be addressed under current doctrine.161

For example, advocates argue that control over data can create substantial barriers to entry, entrench dominant players, and give firms an undue advantage in entering adjacent markets that rivals cannot match.162 Although Sally Hubbard of the Open Markets Institute has criticized the consumer welfare standard, she also appears to argue that competition issues involving information platforms could be subject to enforcement under the Sherman and Clayton Acts as they are construed today.163 Hubbard takes aim at Facebook for allegedly prioritizing news content that either is native to Facebook's platform or can be viewed without taking the user to another site. Hubbard contends that Facebook's practices often bias results toward "fake news" or legitimate news housed on Facebook, harming other news outlets that both compete with Facebook and rely on the platform for distribution.164 If these alleged practices actually result in noncompetitive prices or reduced output in advertising markets or quality in content markets, they could be addressed under a consumer welfare approach.165

Some populists also argue that the antitrust laws fail adequately to address non-price harms in the tech space, including harms relating to consumer privacy.166 But the consumer welfare standard and agency practice do account for non-price harm to consumers. For example, in the Google/DoubleClick transaction, the FTC issued a closing statement explaining that it had "investigated the possibility that this transaction could adversely affect non-price attributes of competition, such as consumer privacy" and concluded that the transaction would not; rather, privacy concerns "extend[ed] to the entire online advertising marketplace."167 And most recently, the investigations into digital markets opened by the FTC, the DOJ, Congress, and state attorneys general suggest that they believe that existing antitrust tools might address many of the nonprice harms to which populists point.

### 2NC – AT: Goger and Kane

#### This is both counterplan solvency AND a double-turn with the rest of the case – advocates “reshoring,” which is a protectionist measure.

Annelies 2AC Goger and Joseph W. Kane 12/17/21, fellows at Brookings Metro, “Our supply chain woes didn't start with the pandemic,” The Hill, https://thehill.com/opinion/finance/586093-our-supply-chain-woes-didnt-start-with-the-pandemic

This holiday season, Americans have a new reason to stress: the dreaded supply chain crisis. The bottleneck of goods has many people doing their holiday shopping early while worrying about rising costs and shortages. Increased consumer demand, production stoppages due to COVID-19 lockdowns and a dearth of truck drivers are all new factors that have put immense pressure on the supply chains that stock our store shelves each December.

But these short-term disruptions are tied to deeper structural problems that didn’t emerge overnight — and are likely to get worse. Public and private leaders need to address several ongoing vulnerabilities in our supply chains instead of proposing Band-Aid solutions to get us through the holidays. We need durable strategies to avoid further economic volatility, respond to a worsening climate crisis, create better quality jobs and livelihoods and increase equity in access to those opportunities.

Shippers and retailers would have been better able to cope with this year’s challenges if public and private leaders had not been so laser-focused on minimizing short-term costs such as labor and inventory. With supportive export-oriented policies and financial deregulation, companies have spent 30-plus years reducing warehousing space, subcontracting and outsourcing production, restructuring work arrangements to cut costs and delaying investments in transportation infrastructure.

In other words, we thoroughly starved the redundancy and agility out of these systems and dramatically increased our reliance on imports, because doing so delivered shareholder profits and “just-in-time” access to cheap goods — until the day our supply chains couldn’t deliver. So it is not surprising that we now face a broken system with no easy fix.

Without a bold response to address these systemic challenges, the economic uncertainties in our supply chains will get worse. Mounting climate risks and costs are disrupting ports and the flow of goods more often. Surging demand and deteriorating working conditions are leading to high labor turnover and “shortages” all along the chain, including truck drivers. Our $28.1 billion goods trade deficit with China also carries geopolitical risks that could escalate quickly and trigger more disruptions. The costs of these uncertainties will eventually get passed along to American consumers.

While there are some short-term strategies that could dull this pain — including “pop-up yards” and upgraded inspection facilities as outlined by the Biden administration — the fact is that we need to prioritize longer-term strategies that rebalance and strengthen our supply chains so our country can be resilient in the long run. Ideally, this will involve accounting for the hidden costs of long-distance supply chains (e.g., environmental costs, increased risk, declining job quality) into the price of imported goods; reshoring more production capacity to the U.S. to diversify supply and create jobs and local business opportunities; and leveraging once-in-a-generation federal investments to jump-start a more innovative, inclusive and clean economy. The Biden administration’s explicit commitment to addressing historical inequities in infrastructure, relief and economic development investments is promising, but good intentions are not enough.

For starters, how we manage and operate supply chains geographically needs recalibration. While our global value chains will continue to be an economic asset, that doesn’t mean we can’t better price goods to reflect the true costs in the short and long term. For example, public and private sector leaders at all levels can build more capacity for stronger regional food systems by changing institutional procurement practices. This would not only help avoid situations like the one we have now, in which some schools cannot get food for lunches — it would also support local farmers and food processors, recirculating capital in the community that otherwise would flow out to multinational companies and their shareholders.

Second, the climate emergency adds renewed urgency to account for the cost of high carbon emissions in our supply chains, as we ship components and finished goods across long distances, often multiple times. Our physical infrastructure systems, including roads and ports, are overstressed, degraded and outdated. They need to incorporate new designs and technologies that reduce emissions, minimize flood risks and address many other problems. The new infrastructure bill holds promise in supporting just that, but these efforts should not end there. Producers, shippers and financial services companies have a role to play too, as we’re seeing with the potential implementation of new carbon border taxes to account for the climate costs of goods with bigger carbon footprints.

### 2NC – R&D

**Research and development solves better than antitrust.**

**Sitaraman** **20** (Ganesh Sitaraman – Chancellor Faculty Fellow and Professor of Law at Vanderbilt Law School and Director of its Program in Law and Government. "The National Security Case for Breaking Up Big Tech," Knight First Amendment Institute at Columbia University. January 30, 2020. https://knightcolumbia.org/content/the-national-security-case-for-breaking-up-big-tech)

Some might argue that robotics, AI, and quantum computing are so resource-intensive that an ecosystem of smaller companies engaged in fierce competition would mean that **no company** would have the **resources** available to **invest** in those **next-gen**eration technologies. There are a few responses to this argument. First, it is not clear that breaking up and regulating big tech would prevent those firms from having the considerable resources to develop the technologies of the future. Facebook would still have billions of users, even without Instagram and WhatsApp, for example. Amazon’s platform would still have enormous market power.

Second, and **more importantly**, part of the answer is that the decision to break up and regulate tech companies should be accompanied by **public** investment in R&D. One of the primary arguments for the national champions view is that monopolists have the resources to be able to invest in innovation because they do not face competitive pressures. 65. Baker, supra note 58, at 578 (describing the Schumpeterian view and linking it to R&D capacity).But any system of innovation operates against a backdrop of laws and public policy. 66. Some scholars have suggested that resolution to the Schumpeter-Arrow debate depends on an industry-by-industry assessment. See, e.g., Mark A. Lemley, Industry-Specific Antitrust Policy for Innovation, 3 Colum. Bus. L. Rev. 637, 651–52 (2011). But it is not clear that industry-by-industry assessments on antitrust enforcement alone can resolve this debate. Industries operate under different policy background conditions — including, for example, intellectual property rules, industrial policy, and R&D funding—and it may be that the optimal path is for policymakers to revisit policy choices in multiple areas.The ability to capture the gains of innovation depends on intellectual property law. The possibility of winning government contracts for frontier projects that require innovation is determined by procurement policies. And, of course, an alternative to monopolist investment in R&D is public investment in R&D. These policy choices all shape the innovation ecosystem, and it is not at all obvious why society has to accept national champions instead of thinking about revising these laws and policies more broadly. Given the emphasis that proponents of national champions place on research and development, it is worth noting that historically, as Mariana Mazzucato has argued, government has been a significant **driver** of **innovation** through its **r**esearch **and d**evelopment efforts. 67. Mariana Mazzucato, The Entrepreneurial State: Debunking Public vs. Private Sector Myths (2013).Today, one could **easily imagine** the government spending **considerable sums** of money on R&D in **a**rtificial **i**ntelligence, **robotics**, **quantum computing**, augmented and virtual reality, and other technological research.

Public investment in research has a variety of benefits. First, because it is **not tied** to the **profit** **motive** and business model of a single company, it covers a **wider range** of subjects, leading potentially to innovations that would **otherwise** **go** **undiscovered**. Public investment extends to basic research that **does not** have immediate or foreseeable commercial applications. It could also include research into areas that might **challenge** the incumbency and business models of **existing companies**.

#### AI innovation solves cyber attacks

**Gil 18** [Laurent Gil, co-founder and chief product officer of Zenedge, which gives application delivery and security professionals the tools and expertise they need to intelligently defend their sites, systems, and applications from a complex and ever-evolving cyber threat landscape; they use adaptive machine learning and automation to proactively combat cyber attacks for organizations, from DDoS and OWASP Top 10 to bots and API level attacks, The Debate is Over: Artificial Intelligence is the Future for Cybersecurity, 3-22-18, SC Media, SC Media arms information security professionals with the in-depth, unbiased business and technical information they need to tackle the countless security challenges they face and establish risk management and compliance postures that underpin overall business strategies, https://www.scmagazine.com/the-debate-is-over-artificial-intelligence-is-the-future-for-cybersecurity/article/749603/] A.S.

In January Google's parent company, Alphabet, announced the launch of Chronicle – an artificial intelligence-based solution for the cybersecurity industry – promising “the power to fight cybercrime on a global scale.” There are mixed opinions on the value and readiness of artificial intelligence (AI) in our industry. Just last year Google's own Heather Adkins, director of information security and privacy addressed the crowd at TechCrunch Disrupt 2017 and criticized the over use of artificial intelligence for the cybersecurity industry. Adkins argued that the implementation of artificial intelligence relies too heavily on feedback, “to learn what is good and bad…but we're not sure what good and bad is.” She went on to say that companies should invest in more human talent and less technology. Chronicle is an about-face on that position, diving straight into the use of machine learning to combat cybercrime. The ever-changing landscape and scope of threats are pushing information security experts towards a solution that can adapt and react faster than existing applications and analysts are able to. When it comes to winning the war against hackers today, AI and machine learning represent **critical innovation**. Chronicle's launch itself is further validation of the need for widespread AI adoption, and companies must realize this is the path to salvation. While major organizations like Alphabet are starting to realize the benefit of using AI in cybersecurity and are throwing their hats into the ring to drive innovation, there are many others who are still on the fence. Here is what those organizations need to consider: Throwing more humans at the problem is not a foolproof, viable solution. Current patching procedures cannot assure a fully secure environment. When Adkins was asked what advice she would give to businesses to keep their networks safe, she replied, “Pay some junior engineers and have them do nothing but patch.” The idea that the massive security issues facing businesses today can be resolved by putting more people on the job is naïve. If the ability to create an environment that is 100% secure is directly based on the number of humans defending it - there is absolutely no reason why Equifax should have been breached. After all, their team was comprised of **225** **security** **professionals** and their breach still boiled down to **one person** who forgot to deploy a single patch. Businesses need to understand that it doesn't matter how many experts they hire or how many procedures and processes they've put in place, because when it comes down to it…. There simply **isn't enough** cybersecurity talent available in the workforce. It's easy for Google to say that more cybersecurity experts are the answer - they can easily attract and retain the very best in the business. However, for the average organization, there is a **tremendous shortage** of infosec professionals in the market today and it's set to **get worse** – in fact, it's predicted that our global cybersecurity workforce will be short **1.8 million by 2022**. The top minds of our industry don't want to work in a cubicle in corporate America – they are attracted to Silicon Valley and innovative tech giants like Google, Amazon and Apple. If they don't wind up working for these companies, they are lured away by the inflated salaries and benefits packages of the Fortune 500. The mid-market is often the most vulnerable to cyber attacks and has the most difficulty finding talent. This leaves many businesses with one option – scramble to fill open roles and plug the holes with the latest and greatest AI-driven technology. Humans will continue to fail and so will traditional security solutions. Someone will always forget to patch – it doesn't matter how many junior engineers are on the job. Employees will never stop opening attachments and links from unknown sources. Internal analysts will continue to miss major network vulnerabilities. And vendors will not be able to identify and patch all zero-day exploits before an attack occurs. So what is the current solution? More technology is purchased to try and eliminate human error and yet, errors continue to occur. Again, take Equifax, a week after the company received the advisory and the patch was not deployed, a network scan also failed to identify the threat. Last year, Oracle's Larry Ellison issued a battle cry for companies to move toward automation, saying, “It can't be our people against their computers—we're gonna lose that war. It's gotta be our computers versus their computers.” He's right; automation (including auto-patching technology) plays a major role in eliminating human error and winning the war means pitting robots against robots. But make no mistake about it, traditional technology and automation will also inevitably fail. In the same way, one person can forget a patch, one computer can get a bug, or get hacked or get “tricked” by an exploit that is smarter or yet unknown. Artificial Intelligence represents the **only viable future** for cybersecurity. Although Chronicle's launch is promising - there is still far too much hesitation when it comes to AI, machine learning and its future in our industry. The technology is already here, developed and ready to act as a completely independent, autonomous system that can be deployed as a layer over human talent and traditional technology. The myth of false positives can be overcome quickly during the training process, which is precisely designed to do just that. Artificial intelligence is limitless and nonlinear – smarter and faster than any human or computer, and the more it's trained, the more powerful it becomes. AI is not reactive, it is able to proactively identify and mitigate a threat before a patch is even developed and released, let alone applied and verified. The entire industry needs to work towards a model that reduces human error while enabling and enhancing human oversight. The cybersecurity team of the future is much more than the narrow view of humans installing patches in combination with flawed, limited hardware or antiquated cloud-based solutions. Businesses need to focus on hiring security intelligence analysts that are experts in their field (whether that's retail, finance, healthcare, government etc.) that can analyze the specific anomalies that are flagged by artificial intelligence-driven cybersecurity solutions. Make no mistake: The future of cybersecurity is about embracing and innovating for the partnership of man and machine – both relying on each other in the fight against hackers. It's **the only path to success** if organizations want a reasonable chance to survive the onslaught of complex, sophisticated, multi-vector attacks.

## Adv 1

### XT – AT: US-China War

#### Deterrence checks.

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

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

#### Structural factors.

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

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

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

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

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

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

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

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

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

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

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

3. The Cold War had just two major powers

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

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

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

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

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

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

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

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

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

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

### XT – AT: Grid

#### Hardening and monitoring check critical infrastructure

Melendez ’20 [Steven – Fast Company, “‘We’re always ready’: Would the U.S. win a cyberwar with Iran?,” 1-15-20, https://www.fastcompany.com/90450348/were-always-ready-would-the-u-s-win-a-cyber-war-with-iran]

The good news, experts say, is that the worst-case scenario is highly unlikely. Iranian military leaders know that a violent cyberattack on civilian targets would likely result in serious retaliation from the United States and its allies. “The strategy that I see right now is they want to retaliate without dragging themselves into an all-out war with the U.S.,” said Carmel, the chief strategy officer at Cybereason. When Iran first retaliated for Soleimani’s death, for instance, it appeared to pick U.S. military targets in Iraq that did not result in any casualties, effectively capping the cycle of escalation. That same strategic thinking would likely guide Iran in any future cyberattack, Lewis suggested. “If they turned out the lights in an American city, they would probably expect a violent U.S. response,” he said. “If they wipe the data from another casino, they might think they could get away with it.” Of course, U.S. forces are always hunting for evidence of digital incursions—and are reportedly increasingly willing to use offensive cyberpower to prevent or preempt attacks. “It wouldn’t surprise me if Cyber Command is monitoring the Iranians to see if they should interfere,” said Lewis. In such cases, the costs of electronic snooping—probing U.S. systems for potential vulnerabilities—can escalate quickly. At the same time, Carmel said, U.S. organizations have begun to invest more in technology to detect and stop cyberattacks sooner rather than later. With enough time and effort, practically any computer system can be hacked, but more robust monitoring and defensive capabilities have limited the number of soft targets, and increased the resources required to cause widespread damage. “America’s a really big country, and so there’s millions of targets, and some of them are really tough,” noted Lewis. “Some of the ones the Iranians would want to hit like the really big banks, they probably wouldn’t have the capability.”s

#### Blackouts happen all time---no cascading effect AND a litany of alt causes

Hassan Haes-Alhelou et al. 19., Mohamad Esmail Hamedani-Golshan, Takawira Cuthbert Njenda, and Pierluigi Siano. \*Department of Electrical and Computer Engineering, Isfahan University of Technology, Iran. \*\*Department of Electrical Power Engineering, Faculty of Mechanical and Electrical Engineering, Tishreen University, Lattakia. \*\*\*Department of Management & Innovation Systems, University of Salerno, Italy., 2-20-2019, "A Survey on Power System Blackout and Cascading Events: Research Motivations and Challenges," MDPI, <https://www.mdpi.com/1996-1073/12/4/682> \*numbers edited for easier reading

In this section, we consider some of the blackouts that have occurred in the USA. Table 4 shows the total number of blackouts recorded in the USA from 2008 to 2015 [54,56]. The least amount of power outages was 2169 [2100], recorded in 2008 and it left 25.8 million people stranded. The following year, 2840 outages were recorded and 13.5 million people were affected [54]. This was the least number of people affected as recorded from 2008 to 2015 [56]. Out of the 3149 outages that occurred in 2010, 17.5 million people were affected [54]. The highest recorded number of people affected was 41.8 million when 3071 outages occurred in 2011. In 2012, 2808 outages were recorded leaving 25.0 million people without power. Of the 3236 power outages that occurred in 2013, 14.0 million people were affected. The largest number of power outages occurred in 2014 and 14.2 million people were affected [56]. Lastly, in 2015 out of the 3571 recorded power outages a total of 13.2 million people were affected [56]. The numbers are just not mere statistics but indicate the severity of the recorded power outages. Even though Table 4 focuses on the number of outages and the people affected, the impacts of these outages can be far reaching [57]. USA is used as a case study example but different countries across the globe experience similar power outages with some resulting in the total collapse of the power system. Table 5 shows the summary of the recorded outages in 2015 [56]. Of the 3571 recorded outages a total of 13,263,473 customers were affected. In total, the outages lasted for approximately 122 [120] days in terms of lost time [54]. An average of 3714 people were affected per each outage that occurred and each outage lasted for at least 49 min [54]. The loss in monetary value amount to billions of US$ [54].

Of the 3571 outages recorded in 2015, we also considered the top ten states with the highest number of recoded outages [54]. In Figure 3, it can be seen that California was the most affected with 417-recorded outages which is about 25% of the recorded outage. Indiana had the least amount of recorded outages amounting to 100 in the same year. From the analysis of blackouts, the major cause was weather conditions. Therefore, the areas with the highest number of outages indicated areas that had more abnormal weather conditions. In what follows, we show the major causes and events that might lead to a blackout situation. We firstly highlight the significant causes that led to blackouts in USA in 2015. As explained earlier, power outages affect millions of customers and have serious further economic effects [54,56,58,59]. Generally, the causes of power outages range from natural disasters, aging power systems, and maloperation of protection systems or operators. Some of the major causes of power system blackouts as recorded in the USA in 2015 are described in what follows. On 17 November, a windstorm with a speed of about 70 mph destroyed electrical power lines leaving nearly 180,000 customers affected [54,56]. Trees falling on electrical power lines further worsened the effect. A storm which was classified as more severe than Hurricane Sandy left 280,000 people without power after destroying electrical power infrastructure on 23 June [54]. During the same period, 250,000 customers were affected in the Philadelphia region [54]. A power outage, which was caused by an underground fire on 15 July, left 30,000 people without power [54]. Further investigations indicated that the problem was aging equipment. An increased demand of power on 20 September when the weather temperatures were very high led the utility to curtail some loads in order to balance the generation and demand. About 150 MW of power was curtailed, leaving 115,000 San Diego customers without power [57]. On 7 April, a metal said to have broken loose from a power line at a switching station led to the interruption of power supply from two power stations [56]. Thousands of people were affected in Washington DC and Maryland. On 14 July, Birmingham experienced severe power cuts due to bad weather. A frosty storm which hit Oklahoma city on 28 November led to power cuts which affected 110,000 residents [54]. The main reason was that power lines were coated with ice to an extent that they became heavy and broke. Similarly, on 14 February, a cold front which brought severe winds of over 50 mph left 103,000 customers in need of power [56]. On 24 December, 60 mph winds led to power cuts leaving nearly 105,000 homes and businesses without power.

### AT: Cyber

#### No cyber impact.

Lewis ’20 [James Andrew; 8/17/20; senior vice president and director of the Strategic Technologies Program at the Center for Strategic and International Studies; "Dismissing Cyber Catastrophe," https://www.csis.org/analysis/dismissing-cyber-catastrophe]

More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are:

Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals.

There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.)

No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare.

State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war.

This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation.

The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability.

#### Systemic risk is a hoax.

**Moosa ’10** [Imad; October 4; Finance Professor at RMIT in Melbourne, Australia; Journal of Banking Regulation, “The myth of too big to fail,” vol. 11]

There is **only one argument** for TBTF, the argument of systemic risk and failure. But there is **no support** **in history** for the proposition that the failure of **one institution** could **bring** **about** **havoc** on the financial system and the economy at large. There are **numerous** cases of financial **institutions** that were **allowed to** **fail** without **significant** **systemic** **problems**. The resulting losses were shared by a large number of investors and creditors, who would have been making good returns in previous years. Then some managers who had been accumulating huge personal fortunes through parasitic activities would lose their jobs and most likely find others. A failed institution would then disappear because of **serious errors of judgements**, **so what**? Is not this a feature of capitalism? Is not this the corporate version of the survival of the fittest? Is this not what Adam Smith believed in? Failure is **necessary** in a free market as it improves **economic efficiency**. When a company fails, a **more** **successful company** can **buy its good assets**, releasing them from incompetent management. The same applies to the labour force. It is a **hoax** to believe that **catastrophic** **systemic** **losses** can result from the **failure of a badly managed** financial **institution**.

### AT: Warming

#### No climate impact.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The apocalypse now

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Billions won’t die

#### It won’t cause extinction

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

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

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

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

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

## Adv 2

### XT – AT: EU Collapse/Populism

#### Populists are powerless.

Statista 20 – Statista Research Department, “Populism in Europe - Statistics & Facts”, https://www.statista.com/topics/3291/right-wing-populism-in-the-european-union/

It is unclear how big the impact of the current populist surge will be for the future of Europe. As of March 2018, populist parties have secured more than half the vote in only four countries in the European Union. The parties themselves are perceived negatively by large portions of the population along with many populist figures, such as Nigel Farage, Marine le Pen and Geert Wilders. There is also evidence of a generational divide, with younger voters more likely to have voted “remain” in the Brexit referendum, or to find figures such as Boris Johnson unpopular. The youth of Europe that are drawn to populist ideologies are more likely to be left-wing than right.

### XT – AT: EU Leadership

#### Covid Alternate Causes

#### A. Chinese vaccines

McLoughlin 2-23-21

(Bill, https://www.express.co.uk/news/world/1401520/eu-news-eu-vaccine-latest-hungary-Sinopharm-covid19-vaccine-viktor-orban)

EU unity splintering: Hungary breaks ranks to begin administering Chinese vaccines HUNGARY has broken ranks from the EU to announce it will begin the rollout of the Chinese Sinopharm vaccine tomorrow, as Brussels' vaccine farce continues.Hungary will now become the first EU state to use the Chinese drug as it looks to increase its vaccine programme. In bold defiance of the EU, Hungary will use a vaccine which has not been approved by the European Medicines Agency. Hungary, which has often been a critic of the EU now hopes vaccine rates could rise quickly due to the introduction of the drug.

#### B. Border Controls

Di Santolo 2-26-21

(Alessandra Scotto, https://www.express.co.uk/news/politics/1403013/eu-news-France-Germany-border-checks-pcr-test-macron-Merkel-moselle)

EU unity crumbles as Macron hits Germany with harsh coronavirus border checks FRANCE has announced new restrictions at its border with Germany in a blow to Angela Merkel after the Chancellor's repeated threats to seal off the country. French President Emmanuel Macron said he would bring in new COVID-19 restrictions for the Moselle area at its border with Germany. Cross-border workers, who had exemptions until now, will need to present negative PCR tests to get through if travelling for reasons unrelated to their jobs, the ministers for European affairs and health said in a joint statement. Working from home in the area will also be reinforced, they said. France and Germany have said they want to find ways to prevent a border closure while also controlling the virus. Chancellor Angela Merkel told reporters after a virtual summit of EU leaders: "Border controls are not on the agenda at the moment."

#### C. These swamp the aff’s ability to solve- it’s a bigger internal link

Murray 2-20-21

(Douglas, https://www.dailymail.co.uk/news/article-9281969/DOUGLAS-MURRAY-EU-tearing-apart-right-eyes.html)

For decades, critics of the EU warned that the bloc would one day fall apart under the weight of its own contradictions. For years, British Remainers countered that our stability, like that of every country in Europe, depended on EU membership. Well, now the EU is fracturing at a rate that even the most extreme eurosceptic would hardly have dared to predict. After a decade spent staggering through one financial crisis after another, the EU has faced yet another catastrophe – Covid – and has once again been found wanting. The vaccination programme should have been a triumph for an EU united in solidarity against the virus. The combined weight of wealth, scientific knowledge and sheer purchasing power was supposed to produce a world-beating programme for the bloc's 750 million citizens. As recently as Boxing Day, Ursula von der Leyen, president of the European Commission, the EU's governing executive, was boasting that its vaccination campaign would be a 'touching moment of unity. And a European success story.' Yet today, even the most ardent europhiles are admitting what anyone can see: the EU response has been a disaster. Or, to quote the arch-federalist MEP Guy Verhofstadt, 'a fiasco'. On current trends, some countries' populations won't all be vaccinated this decade, never mind this year. And far from being a one-off, the shambles of the rollout is just another reminder of a conundrum at the heart of the EU. A conundrum that threatens to split it apart. Whenever things are going well, Brussels talks about the spirit of 'one for all, all for one'. But whenever there is a major challenge, that great solidarity fractures into a mess of infighting, loathing and utter incompetence. Today, politicians from central, eastern and southern Europe are breaking away from the failed EU vaccine scheme. To the horror of Brussels, they are demanding jabs manufactured by Russia and China. Ireland is still reeling from the betrayal of the Commission's shameful – and mercifully short-lived – decision to impose border posts across the island to prevent vaccines reaching Great Britain. Politicians in France – the country which built the EU edifice – are starting to ask if they would be better going it alone. And the public mood across the bloc is turning nasty, with Germans going through a historic collapse of trust in the EU. Almost 70 per cent blame their fellow German, von der Leyen, for the mess.

#### EU Soft power no longer effective- China

Krieger, PhD, 3-28-21

(John, professor of French history at the University of Cambridge and former research director of its politics department. https://www.spectator.co.uk/article/the-eu-s-decline-is-self-inflicted)

Third, for the EU - a soft power only construct – that habitually takes the moral high ground as a setter of international norms, a virtuous upholder of a rules-based international system, and a collective of free-trading nations, its vaccine bans and trampling on private legal contracts will be pounced on by its enemies and competitors globally. As if this lamentable display of the EU in prolonged self-harm mode were not enough, its ‘political dwarf’ status is being further undermined internationally. In an increasingly competitive world where the international rules-based system is being challenged, the soft power at the core of the EU’s existence is being called out. At the best of times, soft power is only ever a supplement to hard power. In the realpolitik of present day international politics, Stalin’s quip about the real power of the Vatican - ‘How many divisions?’ - is all the more true. Or as President Theodore Roosevelt put it more kindly: ‘Speak softly and carry a big stick’. The EU’s problem is that it has no stick and is unlikely to have one in the near future. China has spotted this and has called the EU out over what it deems to be mere virtue signalling over human rights. Over the years the EU has to a certain extent got away with its grandstanding of opposition to Russian infringement of human rights and breaches of the rules-based international order, with diplomatic gesturing and half-hearted sanctions while continuing with Nord Stream. That was because Russia played the game of ‘tit for tat’ fairly even-handedly; you expel three diplomats we expel three diplomats. But a far more powerful China does not want to play that western hemisphere game and the EU is firmly in its sights. The EU declared persona non grata four Chinese officials and one institution for their role in the repression of Uyghurs, but Peking replied with ten Europeans and four institutions. The French Foreign Ministry summoned the Chinese ambassador in Paris to protest. He declined saying his agenda was full; however the EU’s ambassador in Peking was summoned by Chinese authorities at midnight and went. The French junior minister for Europe claimed the EU was not ‘a doormat’, clinging to Macron’s celebrated ‘European strategic autonomy’. The Chinese, via the Communist Party’s mouthpiece Global Times, scoffed at EU ‘power’ for seeking ‘to highlight its political existence by pressing for sanctions over ‘human rights issues’ against both China and Russia’ because it ‘perceives’ human rights as a ‘weapon’. The reason, it explained witheringly, is that the EU ‘doesn’t have the financial and military power that Washington has’. China is calling the EU’s bluff and highlighting its ‘military worm’ status. Soft power is a fine thing, but hard power helps when the going gets tough; ‘all mouth and no trousers’ means humiliation sooner or later.

#### Poor leadership and beauracracy.

Prince Michael **Liechtenstein 19**, founder and Chairman of Geopolitical Intelligence Services AG Vaduz, 11-04-2019, "Bureaucracy and centralization are limiting freedom in Europe," https://www.gisreportsonline.com/how-to-destroy-the-european-union,3019,c.html

Expanding bureaucracies

However, Parkinson’s law – that work expands to fill the time available for its completion – took hold in European bureaucracy, which overran institutions. Its growth did not stop at the national level, but infiltrated EU administration. More and more centralization and harmonization were imposed through a web of new rules and regulations. Local, national and regional specificities and needs are frequently ignored. This took place even as national bureaucracies grew increasingly excessive. Now, two nannies domineer over European citizens: their national governments and the European Commission.

This situation might still be accepted if Brussels, with the support of some governments, did not harmonize and unify various measures, undermining the principles of self-determination, local control and subsidiarity to the point where individual citizens feel it acutely.

The problem of potentially excessive centralization is a consequence of weak leadership and expedient policies

Although Brexit was initially a result of weak leadership in London, it should serve as a warning against both an “ever closer union” and a “union of different speeds.” Centralization was the cause of the outcome of the Brexit referendum. The problem of potentially excessive centralization is a consequence of weak leadership and expedient policies in member states, which allows for excessive rules, regulation and centralized power.

Discriminating measures

A few years ago, Europe’s central authorities (a majority in the European Council) decided to allocate migrants among member states, often against those countries’ wishes. “Solidarity” was the pretext. The Czech Republic, Hungary and Poland objected and refused to take in those migrants. Last week the Advocate General, an advisory body to the European Court of Justice (ECJ), issued an opinion that the three countries can be fined and forced to accept the arbitrary quota. The ECJ is not obliged to follow the Advocate General’s opinions, but usually does. Interfering in the population policy of individual member states will undoubtedly be perceived as crossing a red line. A ruling is expected early next year.

Again, the problem is one of weak leadership. Since at least the 1990s, it had been evident that a wave of migration from Africa would eventually come. There is no reason Europe – especially the European Commission, the Mediterranean states and larger countries such as Germany – should have been surprised. Still, no preventive measures were taken. Instead Brussels, Berlin and Paris sent messages that encouraged the migrants.

Today, a bureaucratic paradise is being installed on global, supranational and national levels

There are plenty of other examples showing how Europe’s central authorities discriminate against member states. The reams of red tape that hinder emerging economies come to mind, such as new rules on posting workers that grossly violate the freedom of exchange of services.

Losing trust

Europe should be flourishing. The above-mentioned discriminatory measures (just a few of the striking ones among many) harm Europe. Weak political leadership results in excessive control, less freedom and bureaucratic overreach.

People have increasingly begun to worry about security and prosperity. They are – unfortunately, somewhat justifiably – losing trust in democratic institutions due to weak leadership and oversized bureaucracy. As happens so often throughout history, grand initiatives and shining achievements are suffocated by their own institutions.

#### Collective action problem

Wolfgang **MüNchau 19**, associate editor of the Financial Times, 10-27-2019, "Europe needs to solve its collective action problem," https://www.ft.com/content/0d5126aa-f72a-11e9-9ef3-eca8fc8f2d65

The news is less dramatic than Turkey’s invasion of northern Syria, or our daily fix of Brexit news. But it is hard to overestimate the importance of German chancellor Angela Merkel’s decision to allow Huawei, the Chinese telecoms group, to bid for Germany’s 5G mobile network.

This is the quintessential instance of EU’s collective action problem: a large European country makes a unilateral decision to the detriment of other member states of the bloc.

Germany’s constitutional balanced budget rule is another example. I would classify it as the single most stupid economic policy decision taken by a G7 country in my lifetime. It artificially constrains the ability of fiscal policy to stabilise the economy at a time when monetary policy has hit the limits. The governance of the eurozone is the grandfather of the EU’s collective action problems. Huawei is the grandchild.

The issues with Huawei’s 5G bid will become clear much sooner: the company exposes the EU to security risks. Unless the German parliament manages to overturn Ms Merkel’s decision, other countries are bound to follow. This in turn will limit the EU’s ability to develop an industrial policy towards China. It would be a diplomatic own goal on a scale similar to US President Donald Trump’s decision to pull American troops out of Syria.

There are technical and commercial reasons for Germany to favour the Huawei bid. German telecom operators are already invested in Huawei’s technology. And the German economy would take a hit if China were to respond to a Huawei ban in kind. But these economic effects are small compared to the wider implications. Two of the world’s three 5G producers, Nokia and Ericsson, are European. Why not let European companies build the EU’s 5G network?

As a Chinese company, Huawei would struggle to dispel doubts about its ability to shield sensitive EU data from the Chinese security services.

The EU cannot base its industrial strategy on the illusory hope that a Chinese-owned company might stand up to Chinese politicians or defy Chinese law. 5G is not simply another telephone network. It will be a critical component of the telecommunications infrastructure on which much of our future commercial activity will be based.

By its nature, the EU is not well equipped to deal with this type of problem. It is good at triangulating between the divergent interests of its members, but not at developing a coherent geopolitical strategy. For example, the EU has failed to leverage the euro into a foreign policy tool. Foreign policy was not on member states’ minds when they created monetary union. And despite some minor reforms here and there, the eurozone’s governance framework is still similar to what it was 20 years ago.

A small-country mindset doesn’t simply disappear when states come together to form a union. And today’s policy debate in the eurozone is still full of single-country obsessions like competitiveness and fiscal rules. A similar mindset afflicts foreign policy. In contrast to the Americans, Chinese or Russians, Europeans are framing foreign policy in terms of relationships, not interests. Interest-based policies are discretionary by definition. But the EU is rules-based. As central bankers are only too well aware, rules and discretion do not happily coexist.

The EU has shown that it can act forcefully when there is near-unanimity, as was the case when national leaders responded to Russia’s annexation of Crimea. But that was an exception. More typical has been the failure to agree a joint immigration policy. Immigration is a classic collective action problem where interests are not aligned.

#### EU never takes foreign policy initiative.

Jolyon **HOWORTH** Jean Monnet Professor of European Politics and Professor Emeritus of European Studies @ Bath & Fellow at the Belfer Center for Science and International Affairs @ Harvard **’19** “Differentiation in security and defense policy” *Comparative European Politics* 17 p. 271

In his new book, European Strategy in the Twenty-First Century: New Future for Old Power, Sven Biscop takes a similar line, arguing that the EU has never really known how to come to terms with power and therefore tends to avoid talking about it, preferring to behave like a glorified NGO. In particular, the EU has never attempted, in the manner of nation states, to define its collective interests, preferring to believe that its primary impact on the world lies in the field of values. He notes that the EU’s first attempt to define a strategy, the 2003 paper whose subtitle was ‘A secure Europe in a better world’ (EU 2003) sought essentially normative objectives. He observes that the EU really has no clue how to “make the world a better place”. Despite this realist(ic) appraisal of the EU’s failure to get to grips with grand strategy, Biscop offers a densely argued case for the EU to assume its role as a great power capable of holding its own in the shifting arena of twenty-first century international politics. The key, he argues, will be “principled pragmatism”, a sophisticated but elusive combination of hard-nosed interests and deeply held values (Biscop 2019).

As the late Anne-Marie Le Gloannec demonstrated with great lucidity in her posthumous book Continent by Default, even in the area where the EU has arguably had the greatest foreign policy success—enlargement—this was done in a reactive, technocratic way rather than as a strategy. As she put it, “it just happened”—more or less “in a fit of absent-mindedness” (Le Gloannec 2018: 17, 201–202). Europe, she concludes “stumbled into a role”—that of making order out of a chaotic continent. However, this was achieved reactively rather than proactively. Because the EU never attempted to define its long-term interests or objectives, it failed ultimately to control or manage turbulent events that threw the continent back into disorder. The Ukraine and refugee crises, Brexit, Trump and the rise of authoritarian governments in Hungary and Poland, she concludes, “mark the end of an order that the Union strove to establish” (Le Gloannec 2018: 11).

A forthcoming article in the Journal of Common Market Studies has coined the expression “a-strategic”. The EU is a-strategic in the sense that it lacks any clear strategic appraisal of its external environment and therefore has a weak basis for making policy choices. It has never grasped the classic “ends, ways and means” triptych; its external objectives are overly aspirational, reflecting an absence of clear priorities and an avoidance of difficult choices; its approaches are ill-suited to its (ill-defined) objectives, but it seems incapable of altering these approaches; and it lacks the diplomatic, financial and military resources to achieve whatever objectives it might in fact be pursuing. In this sense, it is very far from being a strategic actor. “If good strategy is about having a clear assessment of one’s external environment, identifying key priority areas where one may have a decisive impact and putting in place policies backed up by resources to achieve concrete objectives, the EU remains far from having such a strategy” (Cottey 2019). For Pierre Hassner, Europe’s “power problem” derives from its inability to transfer virtual power (of which, in theory, it possesses considerable amounts) into genuine power. The underlying cause of this powerlessness is, for Hassner, Europe’s structural lack of unity. Until and unless that challenge is overcome, Europe will forever remain a “virtual power” exercising minimal real power (Hassner 2018).

#### Unanimity problems block EU grand strategy.

Sven **BISCOP** Director of the Europe in the World program at the Egmont–Royal Institute for International Relations in Brussel & Int’l Studies @ Ghent **’19** “EU-U.S. Consensus and NATO-EU Cooperation” in *New Perspectives on Shared Security: NATO’s Next 70 Years* ed. Tomas Valasek p. 17

Obviously, a strategic dialogue makes sense only if it leads to decisions. For now, the EU lacks the agility that strategic action requires, because on foreign policy and defense, the union operates on an intergovernmental basis and makes all decisions by unanimity. It only takes one member state that prioritizes its bilateral relations with an external power to weaken or block any EU position. Governments may be more reluctant to break consensus in NATO on the military dimension of strategy, but they can easily hamper other crucial dimensions in which only the EU can take the lead. Not only the EU but also NATO and the United States therefore have an interest in strengthening the agility of the EU’s Common Foreign and Security Policy by introducing decisionmaking by majority.

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#### it cascades across global systems.

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

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

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

INTRODUCTION

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

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

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

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

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

METHODOLOGY

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

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

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

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

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

ECONOMY

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

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

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

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

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

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

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

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

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

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

ENVIRONMENTAL

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

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

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

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

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

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

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

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

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

GEOPOLITICAL

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

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

#### Independently innovation solve emerging tech threats – extinction.

Jain ’20 [Ash; 2020; Senior fellow with the Scowcroft Center for Strategy and Security; Strategic Studies Quarterly; “Present at the Re-Creation: A Global Strategy for Revitalizing, Adapting, and Defending a Rules-Based International System,” <https://www.atlanticcouncil.org/wp-content/uploads/2019/10/Present-at-the-Recreation.pdf>]

The system must also be adapted to deal with new issues that were not envisioned when the existing order was designed. Foremost among these issues is emerging and disruptive technology, including AI, additive manufacturing (or 3D printing), quantum computing, genetic engineering, robotics, directed energy, the Internet of things (IOT), 5G, space, cyber, and many others. Like other disruptive technologies before them, these innovations promise great benefits, but also carry serious downside risks. For example, AI is already resulting in massive efficiencies and cost savings in the private sector. Routine tasks and other more complicated jobs, such as radiology, are already being automated. In the future, autonomous weapons systems may go to war against each other as human soldiers remain out of harm’s way.

Yet, AI is also transforming economies and societies, and generating new security challenges. Automation will lead to widespread unemployment. The final realization of driverless cars, for example, will put out of work millions of taxi, Uber, and long-haul truck drivers. Populist movements in the West have been driven by those disaffected by globalization and technology, and mass unemployment caused by automation will further grow those ranks and provide new fuel to grievance politics. Moreover, some fear that autonomous weapons systems will become “killer robots” that select and engage targets without human input, and could eventually turn on their creators, resulting in human extinction. The other technologies on this lisgt similarly balance great potential upside with great downside risk. 3D printing, for example, can be used to “make anything anywhere,” reducing costs for a wide range of manufactured goods and encouraging a return of local manufacturing industries.61 At the same time, advanced 3D printers can also be used by revisionist and rogue states to print component parts for advanced weapons systems or even WMD programs, spurring arms races and weapons proliferation.62 Genetic engineering can wipe out entire classes of disease through improved medicine, or wipe out entire classes of people through genetically engineered superbugs. Directed-energy missile defenses may defend against incoming missile attacks, while also undermining global strategic stability.

Perhaps the greatest risk to global strategic stability from new technology, however, comes from the risk that revisionist autocracies may win the new tech arms race. Throughout history, states that have dominated the commanding heights of technological progress have also dominated international relations. The United States has been the world’s innovation leader from Edison’s light bulb to nuclear weapons and the Internet. Accordingly, stability has been maintained in Europe and Asia for decades because the United States and its democratic allies possessed a favorable economic and military balance of power in those key regions. Many believe, however, that China may now have the lead in the new technologies of the twenty-first century, including AI, quantum, 5G, hypersonic missiles, and others. If China succeeds in mastering the technologies of the future before the democratic core, then this could lead to a drastic and rapid shift in the balance of power, upsetting global strategic stability, and the call for a democratic- led, rules-based system outlined in these pages.63

The United States and its democratic allies need to work with other major powers to develop a framework for harnessing emerging technology in a way that maximizes its upside potential, while mitigating against its downside risks, and also contributing to the maintenance of global stability. The existing international order contains a wide range of agreements for harnessing the technologies of the twentieth century, but they need to be updated for the twenty-first century. The world needs an entire new set of arms-control, nonproliferation, export-control, and other agreements to exploit new technology while mitigating downside risk. These agreements should seek to maintain global strategic stability among the major powers, and prevent the proliferation of dangerous weapons systems to hostile and revisionist states.

#### Framing issue – most defense doesn’t apply – CP solves all of it

### 2NC – AT: ANtitrus Now

#### Restrictive rules and the courts have blocked antitrust action

DeGeurin 1/18 – Mack DeGeurin, reporter at Gizmodo, “Following Record Year for Mergers, the FTC Wants to Know How You'd Fix Antitrust,” 1/18/22, https://gizmodo.com/following-record-year-for-mergers-the-ftc-wants-to-kno-1848378299

The first few months of Joe Biden’s presidency were marked by the recruiting of what some called an “Antitrust All-Star Team.” Spearheaded by dogged Amazon critic Lina Khan, antitrust scribe Tim Wu, and longtime Google annoyance Jonathan Kanter, that dream team has little to show for itself, so far. Despite plenty of anti-monopolistic, pro-worker blustering, company mergers and acquisitions reached a record pace in 2021, with over 1,047 deals struck worth at least $100 million each. Now, nearly one year after Biden assumed office, two of his top competition enforcement agencies are vying to reevaluate—and potentially rewrite—merger and acquisition guidelines in ways they argue could give them a fighting chance against a growing tidal wave of economic consolidation

In a press conference on Tuesday, the Federal Trade Commission and Department of Justice announced they are jointly launching a public inquiry to revise and strengthen their merger and acquisition guidelines to better detect and prevent anti-competitive corporate business practices. Though both agencies were tight-lipped on their specific policy preferences, they said the public comment process is intended to ensure the agencies’ rules and guidelines are up to the task of handling a modern economy currently undergoing a radical digital transformation.

“The supply chain no longer follows a simple upstream or downstream path,” DOJ Assistant Attorney General Jonathan Kanter said during the press conference. “It’s interconnected in complex and evolving ways.” Kanter went on to say digital technologies have revolutionized not just the goods and services everyday consumers use but, “the nature of industry, at its core.”

While the public inquiry will look broadly at the agencies’ guidelines, FTC chair Lina Khan outlined three areas of most importance. First, the agencies want to find out whether or not the current guidelines are “attentive to the range of business strategies and incentives that might drive acquisition.” Second, Khan said the agencies are interested in knowing if the current guidelines adequately assess whether mergers are harming workers. (Seemingly included in this question is scrutiny of the consumer harm principle, which up until now has allowed for mergers so long as they do not result in increased prices). But as any Amazon warehouse worker or breached Facebook user will attest, prices may only tell part of the story with modern tech business practices. Finally, the agencies want to know if the current guidelines are “unduly limited in their focus on particular types of evidence.”

Though neither Khan nor Kanter advocated for any particular type of reform, it was clear they weren’t exactly pleased with the current merger onslaught. According to Khan, the FTC and DOJ last year received more than double the number of merger filings than in any of the past five years. “We need to ensure our tools of today allow us to understand the markets of today,” Kanter said.

“Illegal mergers can inflict a host of harms, from higher prices and lower wages to diminished opportunity, reduced innovation, and less resiliency,” Khan said in a statement. “This inquiry launched by the FTC and DOJ is designed to ensure that our merger guidelines accurately reflect modern market realities and equip us to forcefully enforce the law against unlawful deals.”

The agencies’ call to action came literally hours after Microsoft announced its intention to acquire video game publishing giant Activision for a gargantuan price tag just short of $69 billion. Representatives from both the FTC and the DOJ declined to comment specifically on the Microsoft acquisition during the press conference, but both acknowledged that the recent rise in acquisitions across the board has strained their resources thin.

The public inquiry also comes about six months after President Biden signed a wide-ranging executive order directing the FTC and DOJ to rein in monopolistic corporate practices. That order contained 72 separate initiatives with a particular focus on adding enforcement mechanisms to target Big Tech business practices. So far though, the order has proven mostly symbolic.

Despite an apparent appetite for more aggressive anti-monopolistic enforcement mechanisms, federal agencies have found themselves subject to restrictive rules and lengthy court battles that limit their efficacy. A review process could alter the former, but representatives declined to comment on what, if any, effect those revamped guidelines would have on the seemingly inevitable tussle with courts.

#### That provides uniqueness for biz con – losses in court increase business confidence and make the FTC look weak

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Supply chain improving

Kalish 1/18 – Ira Kalish, Chief Global Economist, Deloitte, “Weekly global economic update,” 1/18/22, <https://www2.deloitte.com/us/en/insights/economy/global-economic-outlook/weekly-update.html>

Economists and business leaders are eagerly looking and hoping for evidence that the supply chain disruption of the past year is abating. Fortunately, there is such evidence, although we are not yet out of the woods. For example, Taiwan’s government reports that overall exports to the mainland increased dramatically in 2021, largely due to a surge in exports of semiconductors. Specifically, Taiwanese exports were up 24.8% from 2020 to 2021. Exports to the mainland were up 22.9%. Also, Taiwanese exports of electronic components to the mainland were up 23.3%.

This massive growth indicates several things. First, China’s own production of semiconductors has not kept pace with demand, especially due to US sanctions that limited Chinese access to certain technologies. Hence, strong demand for Taiwanese electronics. Second, it indicates strong Chinese manufacturing activity, which depends heavily on semiconductors. Indeed, Chinese exports grew rapidly in 2021. Third, it indicates that production of semiconductors is increasing rapidly, suggesting that the shortage is diminishing. Indeed, Taiwan’s government reported that manufacturing capacity has increased considerably in the past year.

Taiwan remains the world’s most important producer of semiconductors, estimated to account for 64% of global output. Yet, Taiwanese companies are evidently keen on diversifying risk. As such, they continue to invest overseas. However, investment into the mainland declined 14.5% last year (while mainland company investment in Taiwan declined 62.9%). Meanwhile, Taiwanese investment in Southeast Asia, Australia, and New Zealand increased 115.6% last year.

There is other evidence of supply chain improvement. There has been a sizable decline in the cost of shipping commodities and containers, as evidenced by a decline in the well-known Baltic Dry Index as well as the Harper Index. This means that the bottlenecks of the past year are starting to diminish. In addition, there has been a drop in the prices of several mineral and agricultural commodities. This means that shortages of these inputs are starting to abate. And finally, there has been a sizable increase in industrial production and manufactured exports in East Asia. This suggests that manufacturers are increasingly able to meet the strong demand that led to disruption in the first place.

Also, there is reason to expect that global demand for manufactured goods will decelerate in the year ahead. Already, we have seen a decline in real (inflation-adjusted) spending on goods by US consumers over the past half year. Although the level of spending remains well above prepandemic levels, it’s declining from the peak reached in early 2021. This likely reflects an easing of government stimulus, satisfaction of pent-up demand, and possibly a consumer decision to shift back toward spending on services. Going forward, most advanced economies are expected to experience a tightening of monetary and fiscal policy in the coming year, with the likely result being weaker growth of consumer demand. Less consumer demand for goods will mean fewer bottlenecks and less stress on supply chains. It could also mean less inflation.

#### FTC threats aren’t credible now – but the plan is an actual legal prohibition which changes the game

Ingrassia 21 – John Ingrassia, Proskauer Rose LLP, “New FTC Leadership Continues to Flex Their Muscles: New Practice of Issuing Warnings Imposes Unnecessary Uncertainty on Merging Parties,” 10/11/21, https://www.jdsupra.com/legalnews/new-ftc-leadership-continues-to-flex-3430679/

So far, merging parties and the antitrust bar generally have taken the FTC’s new warning letters with a grain of salt. Mere saber-rattling, they say, claiming that the warning letters are “largely superficial” because – ultimately – the FTC needs to go to court to challenge a deal. See FTC Merger Warning Letters Seen as Largely Superficial, Law360 (Aug. 18, 2021). Viewed logically, the risk of litigation over a deal the FTC does not even want to fully investigate, let alone challenge, during the statutory period (which can extend a year or longer) must be small.

#### Companies can signal litigation threats now which causes the FTC to back down – the plan’s fiat overrides this

Rissmiller 21 – Meghan Rissmiller, Washington DC partner at Freshfields Bruckhaus Deringer, “The Antitrust Outlook for the Year Ahead,” December 2021, https://www.freshfields.us/insights/campaigns/board-memo-2022/the-antitrust-outlook-for-the-year-ahead/

Maintain a credible litigation threat throughout the merger review process

A key feature of the M&A review process in the United States is that the DOJ and FTC cannot unilaterally block a transaction based on their own determination about its competitive implications. Instead, the antitrust authorities must challenge the transaction in federal district court to obtain an injunction preventing closing. As the DOJ and FTC scrutinize transactions more closely, conduct longer investigations, and consider novel theories of harm that have limited or no precedent in the case law, it will be increasingly important for companies to signal that they have the time and the resources to successfully litigate a merger challenge. Doing so may make the regulators think twice about pursuing a case at the margins of the antitrust laws.

#### Existing antitrust actions haven’t chilled business activity – but the plan is the final nail in the coffin

Ingrassia 1/5 – John Ingrassia, Proskauer Rose LLP, “How to Navigate the Coming Antitrust Policy Tests,” 1/5/22, https://www.jdsupra.com/legalnews/how-to-navigate-the-coming-antitrust-7543303/

[HSR = Hart-Scott-Rodino]

The year 2021 has been like no other for antitrust enforcement. While the FTC's various policy pronouncements are clearly intended to chill merger activity, it does not appear to have had the intended outcome.

HSR filings continue at off-the-charts levels. Amid this strong showing of M&A activity, the advice is to keep moving transactions forward, stay ahead of the new tacks the agencies might take, and account for newly injected risk and uncertainty.

Looking ahead, expect another energetic year. So far, the FTC's policy changes have not seemed to slow the pace of merger activity, but the frenzy cannot last forever. Nonetheless, merging parties are now going into the merger review process with eyes open, knowing it is likely to be more intense and uncertain. Parties to vertical transactions will no longer ride easy on double marginalization theories, and parties will be handing over their HR and payroll files.

At the same time, the heavy resistance to these changes will continue, if not strengthen, and will play out not just in courts and the halls of Congress, but will also spill into the political mainstream.

The U.S. Chamber of Commerce is planning to spend hundreds of thousands of dollars on an ad campaign across 10 states denouncing what it calls the FTC's overstepping of regulatory authority.

And the Americans for Prosperity Foundation, an advocacy group backed by the Koch family, is starting to lay the groundwork of a challenge to the FTC's merger policy changes. It recently filed a Freedom of Information Act suit seeking communications and directors related to the decisions.

Yes, 2021 will be remembered in antitrust law. But the real show may be 2022.

#### Garland is sabotaging antitrust efforts

Moran 1-6-22

(MAX MORAN is research director of the Personnel Team at the Revolving Door Project. https://prospect.org/justice/merrick-garland-is-undermining-biden-antitrust-strategy/)

The Biden administration is threatening new anti-monopoly enforcement actions against the Big Four meatpacking companies, in part to counter inflation at the grocery store and in part to address decades of exploitation of small farmers. On Monday, the president dispatched Agriculture Secretary Tom Vilsack and Attorney General Merrick Garland to hear grievances from small ranchers, while the White House builds a new web portal to gather complaints. While the White House’s proposals for funding small meat processors to increase competition are rather unsatisfying, the enforcement piece could have a real impact. This initiative has caused the usual grumbling from neoliberal economists, and the usual corrections to the usual grumbling. But no one has yet explained how Biden plans to actually follow through on his threat—a problem for which Garland is partly to blame. As The Information’s Josh Sisco reported on Tuesday, there are currently just two deputies trying to manage the entire DOJ Antitrust Division (ATR) alongside Assistant Attorney General Jonathan Kanter, who was confirmed only two months ago. ATR typically has at least 12 deputies and top advisers in the “front office” who oversee about 700 career staffers. And that was under past administrations, which didn’t have nearly as ambitious an antitrust agenda as Biden’s. Reversing four decades of Borkian antitrust sloth requires a cohesive and energetic senior leadership team. Meanwhile, the Federal Trade Commission, the executive branch’s other main antitrust enforcer, remains in a 2-2 partisan deadlock, as Senate Republicans blockade Biden nominee Alvaro Bedoya from being confirmed as a commissioner. He has a path to 51 Senate votes, but arcane (and unnecessary) procedural hurdles have slowed the process to a crawl, hindering the other avenue to antitrust action. Biden can only do so much to move Bedoya’s nomination. But in theory, nothing prevents him from hiring whomever Kanter personally trusts to help execute their shared agenda. The deputies at ATR are not Senate-confirmed positions. So what’s causing the chaos? The problem isn’t procedural; it’s political. In addition to diversity concerns, Sisco reports that “ideological divisions” about anti-monopoly enforcement within the Biden administration are causing fights over any potential selection for the ATR deputies. These divisions should be familiar to anyone who followed the initial fight over antitrust nominees during the Biden transition last year. While Biden himself seems sold on the benefits of a strong anti-monopoly agenda, Garland testified last year that he sees no problem with hiring big corporations’ preferred defense attorneys to oversee their former firms and clients. Garland and other anonymous voices floated a slew of names to run ATR throughout last year—anyone but Kanter, whom progressives favored. While Garland lost that initial fight, he seems content to starve Kanter of resources as a work-around, even if it means sabotaging his own president’s agenda. Garland, after all, appears to consider it core to his job to throttle the better parts of the Biden administration for the sake of an imagined apolitical comity. He rushed to the Trump administration’s defense over the objections of the White House many times over the last year, and continues to undermine environmental action wherever he can. It’s perfectly in keeping with his priorities to undermine antitrust enforcement too. The corporate revolvers and pro-monopoly hacks Garland boosted also haven’t gone anywhere. Again according to Sisco, Sonia Pfaffenroth is now in the mix for one of those coveted jobs in the ATR “front office.” Pfaffenroth revolved from Arnold & Porter into the Obama ATR and back over the last two decades. In private practice, she’s defended pharmaceutical firms, fossil fuel companies, and mining companies from class actions, price-fixing cases, and of course antitrust lawsuits. One should look to Pfaffenroth’s record from her past stint at ATR to get a sense of what a second go-around might look like. Under the Obama administration, Pfaffenroth blessed tie-ups between Virgin America and Alaska Airlines, as well as US Airways and American Airlines. Today, just four mega-airlines control 80 percent of U.S. air traffic. Pfaffenroth even approved the $107 billion merger between Anheuser-Busch InBev and SABMiller, allowing 30 percent of the world’s beer market volume and 60 percent of the world’s beer market profits at the time to be controlled by one firm. Today, AB InBev has essentially hacked the multitiered regulatory system that kept the alcohol market competitive for decades. In some cases, AB InBev’s distributors only allow craft brewers to distribute their drinks to retailers if they keep overall production low. This bottlenecking, alongside the pandemic, has been devastating for craft brewers. Pfaffenroth’s record at ATR reveals someone whose poor judgment has harmed major American industries. But her judgment is reflective of the failed antitrust status quo, and in antitrust and everything else, Garland sees maintaining the status quo as inherently salutary. Where you or I might see bad calls, Garland likely sees jurisprudence executed according to a well-worn book. Whether the book is right or wrong is immaterial, in his eyes. To state the obvious, Biden ought to reject Pfaffenroth and empower Kanter with deputies ready to throw that book aside, or else his antitrust agenda on meatpacking and everything else will get tossed on the growing pile of broken promises that are cratering his approval ratings. Doing so, however, will require standing up to Garland. Thus far, Biden has appeared reluctant to do so, for fear of threatening the attorney general’s independence. There’s a kernel of truth here, after the Justice Department was turned into the president’s personal law firm under Trump. But there is a big difference between deploying the DOJ’s resources to help friends and target enemies and ensuring the DOJ has the staff and leadership necessary to execute its policy agenda. One is a blatant abuse of power, the other a clear presidential prerogative.

#### Court opposition and low resources prevent expanded antitrust enforcement now

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

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

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

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

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

How the FTC can tackle antitrust

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

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

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

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

How Congress can tackle antitrust

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

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

#### Election year and GOP midterm wins crush antitrust policy now

Lima 21 – Cristiano Lima, business reporter and author of The Washington Post's Technology 202 newsletter, “The biggest threat to lawmakers’ Big Tech antitrust agenda: Time,” 11/19/21, https://www.washingtonpost.com/politics/2021/11/19/biggest-threat-lawmakers-big-tech-antitrust-agenda-time/

With Democrats controlling Washington, a bipartisan group of lawmakers has a unique chance this Congress to revamp the nation’s antitrust laws in a bid to rein in tech giants like Google and Apple. To succeed, they will need to weave through a complex web of political agendas and rally enough support to get their bills over the finish line.

The single biggest threat to their efforts may be quite simple: running out of time.

President Biden’s slumping approval ratings and potential GOP gains in the House due to redistricting have cast doubt on Democrats’ ability to hang onto full control of Congress after the midterms, which could be key to executing the tech antitrust agenda.

While forecasting election outcomes is always fraught, the mere prospect of Democrats losing control of Congress poses a very real threat to lawmakers’ antitrust plans. They include proposals aimed at blocking tech giants from prioritizing their own products over rivals', limit their ability to buy up emerging competitors and put new restrictions on their app stores, among others.

“The political reality is that we have this Congress to really get something done in a bipartisan way on antitrust,” said Jon Schweppe, director of policy and government affairs at the American Principles Project, a conservative think tank that supports the antitrust bills.

Public Citizen competition policy advocate Alex Harman, whose progressive advocacy group also backs the proposals, declined to speculate on how the midterm elections will shake out. But he acknowledged that timing could be a factor as the bills are considered.

“I have operated in the world in which [GOP control] is a possibility, so I tend to think of our window of getting the stuff done before then, before the midterms,” he said.

A GOP takeover of the House could doom lawmakers’ chances of advancing most of the bipartisan antitrust proposals targeting the tech giants.

The two lawmakers who would be in pole position to control whether the bills are marked up and moved to the floor in a GOP-led House, Minority Leader Kevin McCarthy (R-Calif.) and Judiciary Committee Ranking Member Jim Jordan (R-Ohio), are both vocal opponents of the push.

In June, McCarthy signaled he opposes giving antitrust regulators too much power and that House Republicans plan to target Big Tech companies by focusing on issues around “free speech and free enterprise.” That’s a nod to Republican allegations that major digital platforms censor conservatives and to concerns from tech trade groups and industry-friendly lawmakers that the antitrust bills would stifle innovation.

During a podcast earlier this month with Rep. Matt Gaetz (R-Fla.), who supports the antitrust package, Jordan made clear his priorities leading the Judiciary Committee would be speech, not antitrust. “What Big Tech in collusion with big government is doing in this cancel-culture world we live in is so wrong … that’s what the Judiciary Committee has to focus on,” said Jordan, who voted against most of the proposals under consideration during a committee markup in June.

“They’ll still have an anti-Big Tech agenda, but it will be focused on Section 230,” said Schweppe, a reference to the decades-old law that shields digital platforms from lawsuits for hosting and moderating user content.

Whether Democrats retain control of the Senate may not be as crucial for lawmakers’ antitrust plans. Unlike in the House, advancing legislation in the Senate typically requires bipartisan support, since it takes more than just a simple majority to clear most bills. That makes it harder for party leaders to unilaterally block a bipartisan effort.

And unlike the House Judiciary Committee’s antitrust proposals, some of their Senate companions have the support of the Senate Judiciary Committee’s top Republican, Sen. Chuck Grassley (R-Iowa). That means if Grassley wins reelection in 2022 and Republicans retake the Senate, there would still be an ally for the antitrust push atop the key Judiciary panel.

But proponents of the push aren’t holding out hope that a GOP-led Senate would put antitrust legislation atop its agenda.

“I just don’t see Mitch McConnell running these bills as a priority,” Harman said.

### 2NC - Link

#### Changin the consumer welfare standard creates a crisis in antitrust – creates a chilling effect for business confidence, raises prices, and discourages innovation

Wright 19 – Joshua D. Wright, University Professor and Executive Director of the Global Antitrust Institute at George Mason University, “Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust,” *Arizona State Law Journal*, 2019, 51 Ariz. St. L.J. 293

Opponents of the modern approach to antitrust law and policy have called for nothing less than the complete dismantling of the consumer welfare standard and the consensus that has been built over the last nearly fifty years through vigorous debate among antitrust practitioners, enforcers, and academics from across the political spectrum about how best to promote competition. It is no exaggeration to say that what these critics desire is an anti-economics revolution that untethers the antitrust laws from a coherent and consistent framework and replaces consumer welfare with vague social and political standards that ultimately would once again plunge antitrust into crisis. 268

In the current debate about the appropriate framework for antitrust analysis, the most often cited replacement for the consumer welfare model is either the "public interest" or "citizen interest" standard.269 The "public" and "citizen" interest standards would purportedly capture a much broader range of potential effects emanating from a challenged transaction or business practice, including: the availability of services, the openness of markets, the stability of global supply chains and financial systems, and the ability of rivals to compete.2 0 Of course, there is reason to believe that any new antitrust standard might also be broad enough to capture other noncompetition factors touted by proponents of consumer welfare reform, such as income inequality,21 undue political influence, and perceived conflicts of interest between firms in a vertical relationship.

Abandoning the consumer welfare standard and embracing the "public" or "citizen" interest standard (or a similar approach) would have significant adverse costs on competition policy. It would again force antitrust to serve multiple masters, many of which have inconsistent interests. The inevitable confusion and lack of unified approach also would create uncertainty in the business community that ultimately would have a chilling effect on procompetitive conduct and encourage new efforts by firms to influence antitrust outcomes through political pressure and agency rent-seeking. This is not mere speculation. Indeed, the history of the Federal Communication Commission (FCC), which employs a similar public interest standard, serves as a prime example of the deleterious effects of vague enforcement standards that are not rooted in economic evidence.2 2

A. Replacing Consumer Welfare with an Incoherent and Inconsistent Approach

Replacing the well-established consumer welfare standard would necessarily require courts to trade off some amount of consumer welfare for some other set of values, thereby throwing open the door to uncertainty and to exploitative behavior. As has been discussed above, decades of debate and case law has worked to refine the precise contours of the consumer welfare standard and to bring consensus about the types of evidence that are indicative of harm to competition and consumers.2"3 The consumer welfare standard employs a variety of economic tools to evaluate the effect transactions and business practices may have on consumers in the form of increased prices, reduced output, reduced innovation. By using current economic theory and empirical evidence as the starting point for creating liability rules and subsequently conducting an evidence-based inquiry into the welfare effects of a particular practice, the consumer welfare model offers a tractable method for weighing procompetitive and anticompetitive effects.

If consumer welfare were to be replaced by some other set of values, the result explicitly would be for courts and enforcers to elevate other factors above consumer welfare and to reach different conclusions about liability. Under a "public interest" or "citizen interest" approach, a transaction that would reduce prices to consumer, increase output, or spur innovation may be prohibited under the antitrust laws for failing to satisfy any number of other vague factors, including failing to leave some arbitrary number of competing firms in the market despite the clear presence of competition or create a more efficient albeit consolidated supply chain. Even more dramatically, a new standard also may result in a transaction that increases prices, reduces output, or stifles innovation to not necessarily run afoul of the antitrust laws if a court concludes that such consumer harm can be tolerated to satisfy other aspects of the multidimensional standard, such as income equality. In light of these very real concerns, a subjective, multiprong antitrust standard untethered from economics offers nothing beyond speculative benefits. Accordingly, it would be imprudent to abandon the consumer welfare standard.

#### Any alternative to consumer welfare causes a laundry list of problems for the economy – specifically causes special interest rent-seeking and cronyism

Keating 21 – Raymond J. Keating, chief economist for the Small Business & Entrepreneurship Council, “The Treacherous Turn on Antitrust Regulation of U.S. Tech Companies,” 2/24/21, <https://sbecouncil.org/2021/02/24/the-treacherous-turn-on-antitrust-regulation-of-u-s-tech-companies/>

[Modified for objectionable language]

Nonetheless, in the end, the consumer welfare standard is, by far, the best we have in terms of some consistency and reasonableness in applying vague antitrust laws.

Antitrust and Congress: A Bad System May Become Far Worse

Given the formidable shortcomings of antitrust law and regulation, one would hope that if Congress was going to consider reform or updating, the effort would be focused on at least trying to somehow better connect the law and enforcement with economic realities and how markets actually function.

That is not the case with the reports presented by Democrats and Republicans in the House Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary. In fact, each report, and largely the Democrats’ analysis, serves up recommendations that would create far greater distance between how markets work and antitrust regulation.

Let’s be perfectly clear: Neither report offers recommendations that will improve antitrust law and enforcement. Most of the proposals labor under mistaken assumptions; and would actually inject more politics and uncertainty into the antitrust equation, while moving antitrust law, regulation and enforcement further away from sound economics.

The Democrats’ majority report is intent on a vast expansion of antitrust regulation and enforcement, including tossing out the consumer welfare standard in favor of, effectively, more politics over economics; while the Republican report also argues for expanded regulation and enforcement, but more tentatively so at least in terms of the language used.

The overwhelming tendency in the Democrats’ report is to make sweeping declarations about increased and inevitable monopolization (such as: “Over the past decade, the digital economy has become highly concentrated and prone to monopolization.”), along with “weakened innovation and entrepreneurship,” that ignore the dynamism of the tech economy, the enormous benefits derived by consumers, actual consumer decisions, and the definition of a monopoly.

As for the Republican report, it is willing to go along with the Democrats on a number of proposals, raises questions about others, and rejects some. As stated, “We prefer a targeted approach, the scalpel of antitrust, rather than the chainsaw of regulation.”

As it turns out, though, the Republican “scalpel” is far from targeted. The report expresses political disagreements with the firms involved (for example: “Most notably, the report does not address how Big Tech has used its monopolistic position in the marketplace to censor speech. This censorship is experienced by groups and ideologies on all wings of the political spectrum but is most notably realized through tech platforms exerting overt bias against conservative outlets and personalities.”)

Consider some key proposals from the Democrats’ report and our responses.

• Proposal: “Reasserting the anti-monopoly goals of the antitrust laws and their centrality to ensuring a healthy and vibrant democracy.” – “[T]he Subcommittee recommends that Congress consider reasserting the original intent and broad goals of the antitrust laws by clarifying that they are designed to protect not just consumers, but also workers, entrepreneurs, independent businesses, open markets, a fair economy, and democratic ideals.”

Response: This proposal would toss out the consumer welfare standard, and replace it with a broad basis for undermining businesses that have earned considerable market share. Antitrust actions would return to a period in which politics, special interest influences, rent-seekers, and uncertainty held even greater sway over the realm of antitrust – even more so than it does today. By effectively giving more control over business decisions and models to a political class that often fails to understand current business and market conditions, never mind where industries and markets are headed in the future, there inevitably will be losses in terms of innovation, investment, efficiency, and growth.

• Proposal: “Structural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” – “Structural separations prohibit a dominant intermediary from operating in markets that place the intermediary in competition with the firms dependent on its infrastructure. Line of business restrictions, meanwhile, generally limit the markets in which a dominant firm can engage.”

Response: Again, having government determine and dictate business decisions, rather than having decisions made by businesses and entrepreneurs subject to market competition and consumer sovereignty would mean lost innovation, productivity and consumer benefits.

• Proposal: “Interoperability and data portability, requiring dominant platforms to make their services compatible with various networks and to make content and information easily portable between them.”

Response: Investments in engineering and information often are the lifeblood of businesses in the digital economy. It’s how they provide added value to customers. To have government impose assorted mandates on the use and availability of such investments inevitably will reduce and/or redirect such investments, with consumers, again, suffering.

• Proposal: “Presumptive prohibition against future mergers and acquisitions by the dominant platforms.” – “Under this change, any acquisition by a dominant platform would be presumed anticompetitive unless the merging parties could show that the transaction was necessary for serving the public interest and that similar benefits could not be achieved through internal growth and expansion.” – “[T]he Subcommittee recommends that Members consider codifying bright-line rules for merger enforcement, including structural presumptions. Under a structural presumption, mergers resulting in a single firm controlling an outsized market share, or resulting in a significant increase in concentration, would be presumptively prohibited…”

Response: The basis for justifying such random impositions on mergers certainly does not rest with sound economics, nor with how the market works, including that any mergers ultimately will be put to the test of competition and consumer decision-making in the marketplace. Instead, this is simply about a political preference or bias against mergers and “bigness” per se.

• Proposal: “To strengthen the law relating to potential rivals and nascent competitors, Subcommittee staff recommends strengthening the Clayton Act to prohibit acquisitions of potential rivals and nascent competitors.” – “Since startups can be an important source of potential and nascent competition, the antitrust laws should also look unfavorably upon incumbents purchasing innovative startups. One way that Congress could do so is by codifying a presumption against acquisitions of startups by dominant firms, particularly those that serve as direct competitors, as well as those operating in adjacent or related markets.”

Response: A surefire way to ~~cripple~~ [destroy] startups is to reduce or disincentivize investment in such ventures. This proposal seems designed specifically to undermine entrepreneurship. It is rather commonplace in an assortment of industries for a certain portion of startups to eventually be purchased and merged into larger businesses. Indeed, that possibility or option provides incentives for investing in such enterprises.

• Proposal: “Clarifying that market definition is not required for proving an antitrust violation, especially in the presence of direct evidence of market power” and “Clarifying that ‘false positives’—or erroneous enforcement—are not more costly than ‘false negatives’—or erroneous non-enforcement—and that, in relation to conduct or mergers involving dominant firms, ‘false negatives’ are costlier.”

Response: These measures are simply meant to make it easier to impose politically-driven antitrust regulation or actions against businesses. After all, why bother with defining the market or even considering “false positives” when one is so sure that large businesses and mergers are inherently evil – again, despite the fact that large businesses gained their notable market share by serving consumers well?

• Proposal: “Restoring the federal antitrust agencies to full strength, by triggering civil penalties and other relief for ‘unfair methods of competition’ rules, requiring the Federal Trade Commission to engage in regular data collection on concentration, enhancing public transparency and accountability of the agencies, requiring regular merger retrospectives, codifying stricter prohibitions on the revolving door, and increasing the budgets of the FTC and the Antitrust Division.”

Response: The assumption with these proposals is that antitrust agencies are not doing everything that this Democratic report seeks to do at least in part due to a lack of power, dollars and/or staff. The fact that some administrations might see matters differently, and have a dissimilar antitrust philosophy, seems to be ignored. Also, the number of rather absurd antitrust cases brought by such agencies belies the lack-of-power and/or lack-of-funding assumptions. Consider for example, the FTC suing to stop Edgewell Personal Care Co., maker of Schick razors, from buying razor rival Harry’s Inc., or the FTC challenging Post Holdings, Inc.’s proposed acquisition of TreeHouse Foods, Inc.’s “private label ready-to-eat cereal business.” Private label products are made by one company and offered for sale by a different firm under its brand, and the FTC argued for government action to stop a merger in a small portion of the breakfast foods market. Also, there don’t seem to be high barriers to entry in the razor market. In each case, government antitrust action led to the mergers being called off – after all, challenging a federal agency’s antitrust intrusion gets quite pricey. So much for federal antitrust agencies lacking power and resources.

• Proposal: “Strengthening private enforcement through elimination of obstacles such as forced arbitration clauses, limits on class action formation, judicially created standards constraining what constitutes an antitrust injury, and unduly high pleading standards.”

Response: The objectives here not only include an expansion of antitrust actions and special interest interference, but clearly, serving the interests of trial lawyers.

And, the list goes on. As noted already, the two reports do not make recommendations that would improve antitrust law and regulation.

As for the Republican report, while the language is more tentative in expanding antitrust regulation, and does not go as far as the Democrats, the effort in effect would ramp up antitrust regulation, which would lay the groundwork for political allies and opponents to use this as a stepping stone to greater antitrust interference. Most striking from the Republican report was where they clearly went beyond the idea of using a “scalpel” to improve antitrust enforcement. Consider the following for example:

• “The Clayton, Sherman, and Federal Trade Commission Acts were all written with broad interpretations to ensure antitrust regulators would not be hamstrung by future market developments. However, antitrust enforcers have boxed themselves in by relying on judicial interpretations instead of statutory language and Congressional intent. The report accurately describes how these changes have hamstrung true oversight efforts, granting Big Tech a de facto immunity from antitrust scrutiny…

• “By reinforcing presumptions that certain behaviors are likely to reduce competition, lowering evidentiary burdens in litigated cases, and emphasizing that anticompetitive effects are not limited to price effects and include innovation competition, quality, output, and consumer choice, Congress can make a meaningful difference.”

• “We also agree with a number of the majority’s other legislative recommendations, including proposals to shift the burden of proof for companies pursuing mergers and acquisitions and empowering consumers to take control of their user data through data portability and interoperability standards.”

• “The report makes a good case for the need to strengthen our nation’s antitrust agencies with regard to resources. We agree wholeheartedly with this recommendation. We need to give our nation’s antitrust enforcers the resources needed to succeed in litigation against Big Tech.”

Response: Recommendations to expand the powers and discretion of regulators; to increase unnecessary and burdensome regulatory requirements; to reduce checks and balances on regulatory undertakings; and to increase the budget for regulators, all in order to increase regulation of U.S. technology firms seems otherworldly. Missing is a healthy skepticism of governmental power and regulation.

And then there is the willingness to use antitrust action to engage in political disagreements with private companies, as noted earlier. For example:

• “Google used its dominant advertising technology product to demonetize conservative media outlets, including The Federalist. YouTube, a Google subsidiary, blocked videos from Republican politicians and media groups. Amazon censored conservative organizations, including the Family Research Council and the Alliance Defending Freedom by blocking Americans’ ability to donate to these groups through the AmazonSmile tool. Facebook’s algorithms, advertising policies, and content moderation rules have all combined to discriminate against conservative viewpoints, shadow ban conservative organizations and individuals, and suppress political speech… Unfortunately, the majority missed an opportunity to fully scrutinize Big Tech’s use of monopoly power to silence Americans’ First Amendment right to free speech. It is difficult to consider the subcommittee’s investigation into platform behaviors and anticompetitive behavior complete without a robust discussion about platforms using their monopoly power to engage in editorial decisions that silence free speech.”

Response: While one can agree or disagree with particular decisions being made by private companies, they are private companies. And bringing governmental power down upon such decision-making should always be deeply troubling. For good measure, this certainly is not an area for antitrust regulation.

On the more positive aspects of their recommendations, Republicans were unwilling to go along with their Democratic colleagues in other areas. For example:

• “However, the majority also offers policy prescriptions that are non-starters for conservatives. These proposals include eliminating arbitration clauses and further opening companies up to class action lawsuits. Similarly, the majority’s desire to institute Glass-Steagall for America’s tech sector and modeling the majority’s equal terms for equal services recommendation on President Obama’s net neutrality rule will not garner support from Republicans.”

• “The majority report also includes a recommended presumption that any vertical merger by a dominant platform is unlawful. We are concerned that the presumption against vertical mergers, in particular, will chill venture capital investment in a way that will further harm innovative startups and reduce their ability to get their product to market.”

As far as these criticisms of the majority report go, they generally are on target. However, the overall friendliness of the minority report, or response to the Democrats’ majority report, is troubling, and would help to lay the groundwork for a potential vast expansion in antitrust regulation that, in the end, will undermine investment, innovation, dynamism and entrepreneurship in the economy, which, of course, would harm consumers.

#### The consumer welfare standard is stable, predictable, and ­well-understood – the burden should be on the aff to provide robust empirical support for their departure from it

Dorsey 20 – Elyse Dorsey, Adjunct Professor, Antonin Scalia Law School at George Mason University, “Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement,” *Pepperdine Law Review*, 2020, 47 Pepp. L. Rev. 861

The populist antitrust movement argues vociferously for abandoning the well-established consumer welfare standard.145 To many within this movement, the consumer welfare standard is an impediment to successful antitrust enforcement and to the achievement of socio-political goals such a regime may foster.14 6 As such, they argue that the consumer welfare standard should not be allowed to persist. This line of argument views with the rosiest of glasses the well-trod history, described above, of antitrust enforcement pre-consumer welfare standard-which experts, scholars, Nobel Laureates, judges and Supreme Court Justices across the political spectrum have recognized to be a disaster that undermined fundamental principles of our democracy, including the rule of law. 147

Nonetheless, populist antitrust proponents advocate returning to this pre-consumer welfare standard world.148 Some of the many benefits of the consumer welfare standard-and the commensurate costs of abandoning this standard-are described above.149 This section explores the empirical evidence upon which populists rely when arguing to abandon the consumer welfare standard.15

A threshold question raised by the populist movement's call to abandon the consumer welfare standard is whether this standard is systematically flawed such that abandoning it is warranted.151 The move to reject a standard that has been uniformly embraced by the Supreme Court and the lower courts for decades should be supported by clear economic consensus that the standard is doing more harm than good.15 2 In other words, strong empirical support should exist for the populist movement's allegations that the consumer welfare standard is not doing what it purports to do, that it is, in any event, attempting to maximize the wrong set of values, and that wholesale retargeting of antitrust enforcement would achieve the goals the populist movement has identified. 153

Thus far, however, the populist antitrust movement has not demonstrated such a sound economic basis.154 The evidence upon which it relies is mixed, at best. 5 At most, it calls into question the level of enforcement under the consumer welfare standard, not the utility of the standard itself. 156 As an initial matter, then, rejecting the consumer welfare standard today would risk all the observed benefits of the standard without compelling evidence of an actual problem-and with no persuasive reason to believe the proffered solutions would enhance outcomes.15 7

#### Any departure from consumer welfare involves incoherent and unpredictable standards – it actively dissuades growth

Wright 19 – Joshua D. Wright, University Professor and Executive Director of the Global Antitrust Institute at George Mason University, “Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust,” *Arizona State Law Journal*, 2019, 51 Ariz. St. L.J. 293

It is widely acknowledged by commentators across the political spectrum that prior to the antitrust revolution, antitrust jurisprudence was an incoherent and unpredictable body of law that frequently showed hostility to business.239 Before the adoption of the consumer welfare standard, courts would attempt to weigh an array of social and political goals that often were at odds with one another and also with modern economics. 240 This paradoxical approach weaponized the antitrust laws against the competitive process and, as a result, antitrust doctrine was internally inconsistent and counterproductive. Antitrust not only failed to promote competition, but it actively dissuaded competitors from becoming more efficient and bringing consumers lower prices, greater innovation, and other benefits.

The consumer welfare standard offered antitrust a way out of this quagmire. Today, the consumer welfare standard provides antitrust jurisprudence a disciplined method of analyzing competition that starts and ends with the straightforward question: "Is the challenged conduct likely to make consumers better or worse off?" Rather than issuing decisions that may hinge upon any number of socio-political goals, courts today predictably answer-and their analyses turns solely upon-this question in every antitrust case. This singular focus avoids the internal inconsistencies of the socio-political approach to antitrust, within which various courts would condemn both procompetitive and anticompetitive conduct depending upon the discrete social or political end the court sought to foster in a given case and not based upon whether the conduct actually promoted competition.

Multi-prong approaches often elevate the welfare of competitors or other social and political goals above consumers, and perversely can lead to results in which prices go up, output goes down, or innovation is slowed, but yet the conduct is not condemned because some other social end is achieved. The consumer welfare model instead provides a concrete framework for evaluating allegedly anticompetitive behaviors based on tradeoffs tied to the health of the competitive process as measured by whether consumers are better or worse off. Critically, the consumer welfare standard allows antitrust to funnel earlier questions about the ability of less efficient rivals to compete, the viability of small and independent competitors, and the size and influence of firms back to a singular inquiry about whether consumers are harmed. As a result, non-economic social and political objective no longer serve as a distraction and antitrust can contribute positively to society.

Today, courts, enforcers, and businesses have in the consumer welfare standard a consistent and predictable methodology for assessing whether conduct is permissible under the antitrust laws. With the Supreme Court embracing the central role of the consumer welfare standard to modern antitrust analysis, the contemporary debate largely has shifted to identifying appropriate liability rules and economic evidence for assessing whether specific transactions and business arrangements is likely to harm consumers. 241

#### Consumer welfare is the only objective standard – everything creates incoherent rules that get weaponized by special interests

Dorsey 20 – Elyse Dorsey, Adjunct Professor, Antonin Scalia Law School at George Mason University, “Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement,” *Pepperdine Law Review*, 2020, 47 Pepp. L. Rev. 861

Experience over the last fifty years demonstrates that the consumer welfare standard has had a significant positive influence on antitrust jurisprudence and enforcement decisions. 108 Today, the consumer welfare standard offers a workable, coherent, and objective framework that elegantly translates the core antitrust inquiry of whether there has been harm to competition into a simple question: does the conduct make consumers better or worse off? 109 In unifying antitrust under a singular objective, the consumer welfare standard abandons the use of vague tests that incorporate multiple, and often contradictory, social and political goals that fail to meaningfully cabin discretion and thus ultimately permit decisionmakers to reach almost any result they desire. 110 Significantly, the consumer welfare standard grounds antitrust decisions in economics and economic evidence, which has the dual virtues of reducing the role of conjecture and supposition driven by personal preference, and of increasing the consistency of decisions across disparate political administrations." Proposals to abandon the consumer welfare standard as the lodestar of the antitrust laws thus bear a heavy burden to deliver a similarly robust set of virtues that help ensure that antitrust is a force for good in society. 1 12

A. Consumer Welfare is a Clear, Consistent, and Coherent Legal Framework

The consumer welfare standard is widely recognized across the political spectrum as the superior model for antitrust enforcement because it is clear, consistent, and coherent. 113 Today, the consumer welfare standard is well-developed, and its meaning and the evidence required to show harm is well-established." 4 As a result, a key benefit of the consumer welfare standard is that it offers an objective and concrete framework for evaluating whether a challenged conduct has harmed competition." 5 It does so by examining a singular factor: whether consumers have been made better or worse off as a result of the conduct. 116

The consumer welfare standard therefore stands in sharp contrast to earlier multi-pronged approaches that sought to weigh a variety of vague sociopolitical factors that were at the decision-maker's discretion and often led to inconsistent and incoherent results.1 1 7 This earlier approach had the result of weaponizing antitrust against the competitive process and, paradoxically, not only failed to promote competition but actively dissuaded lower prices, increased innovation, and other competitive benefits.

Critics of the consumer welfare standard argue that the decision to focus on the welfare of consumers (rather than some other group or on non-welfare objectives) is inherently a political decision and therefore no more justified than alternative tests.118 There are at least two errors with this position. First, the decision to adopt the consumer welfare model is political only in the sense that every policy decision is a political decision. 119 That is neither remarkable nor interesting for assessing the benefits of the consumer welfare standard. 120 The more important question is whether the consumer welfare standard, as applied, is better or worse than alternative tests at minimizing the discretion of a decisionmaker and therefore the potential influence of politics and rent-seeking in antitrust decisions. 121 Significantly, what experience shows is that because the consumer welfare model is clear and objective, it cannot easily be contorted by a decisionmaker who may be motivated by a desire to pick winners and losers in a specific case. 12 2 The singular focus on consumer welfare thus creates a predictable methodology that leads to more consistency across different antitrust cases and to treating similarly situated parties equally under the law. 123 Indeed, by exporting the consumer welfare standard to other jurisdictions around the world, the United States has helped to foster the rule of law and limited the use of antitrust to promote protectionist goals. 124

Second, although the consumer welfare standard may be imperfect, it is by far the best available antitrust framework because it maximizes the welfare of all Americans. 12 ' Alternative tests pick between different groups or classes of people or, worse yet, allow decisionmakers to make those distributional choices based on personal preference. 126 Not all Americans are small business owners or have the same social policy preferences as a decisionmaker. But every American is a consumer. And therefore, all Americans benefit from maximizing consumer welfare. The new populist antitrust movement aims to address a wide range of non-welfare policy preferences through antitrust because it is a convenient and potentially expeditious tactic for implementing progressive policies. 127 But as history shows, these distributional decisions are inherently political; they are not well-suited for law enforcement agencies and judges; and they are better achieved through the legislative efforts of elected officials. 128

Importantly, the clarity of the consumer welfare standard does not require promoting an overly narrow test that is unable to incorporate key evidence relevant to assessing harm to competition. 129 Critics of the consumer welfare standard frequently assert that it is too narrowly focused only on price and therefore is unable to assess the full context of a conduct's effect on competition. 130 They claim that the narrow focus on price leads to many types of conduct going unchallenged and therefore requires a fundamental shift to a new test. 131 These arguments are either disingenuous or represent a profound misunderstanding of the robustness of the consumer welfare standard. In reality, as discussed below, a long list of cases shows that the consumer welfare standard considers a host of factors beyond price, including quantity, variety, quality, and innovation. 132 While it is not always easy to assess non-price factors, these factors fall well within the consumer welfare standard, and there exist numerous, sophisticated economic tools to evaluate whether a challenged conduct harms consumers on balance. 133

#### Firms will take advantage of vague new standards to distort enforcement decisions and capture regulators

Wright 19 – Joshua D. Wright, University Professor and Executive Director of the Global Antitrust Institute at George Mason University, “Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust,” *Arizona State Law Journal*, 2019, 51 Ariz. St. L.J. 293

Replacing the well-defined consumer welfare model with a vague, new standard that has no unifying objective based in objective economic evidence would dramatically increase the ability and likelihood of interested industry participants to engage in rent seeking when appearing before the federal antitrust authorities. 2 4 Today, the well-established definitions and boundaries of the consumer welfare standard allow courts to hold enforcers (and private parties) accountable and prevent misuse of the antitrust laws and political influence in antitrust enforcement decisions. Unlike sister agencies prone to capture, the FTC and DOJ are relatively well insulated from such influence by the need to apply objective economic principles to a clearly articulate consumer welfare standard.

A new "public interest" or "citizen interest" standard would take years to deploy and even longer before meaningful guidance could be issued similar to that which the consumer welfare standard offers today. In the meantime, firms could use the new standard as leverage over the Antitrust Agencies—something that is not possible today because the consumer welfare standard offers a well-defined framework. By substituting in a vague new standard, Hipster Antitrust proponents ironically would grant large, powerful corporations with the ability to exert undue influence over the Antitrust Agencies' decision-making process. Moreover, once allowed to influence agency enforcement practices during the initial period when no framework exists, it will be difficult to establish guidelines that do not leave room for such manipulation to continue.

Calls to abandon the consumer welfare framework thus would exacerbate concerns about corporate influence by providing firms with a new ill-defined standard to manipulate. As a result, contrary to the purported objectives of consumer welfare critics, abandoning the consumer welfare model would revert the antitrust laws to a rent-seeking regime that increases-rather than reduces-corporate welfare.

#### Increases in antitrust rent-seeking undermine competition, increase consolidation, and turns the case

Dorsey 20 – Elyse Dorsey, Adjunct Professor, Antonin Scalia Law School at George Mason University, “Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement,” *Pepperdine Law Review*, 2020, 47 Pepp. L. Rev. 861

As Baumol and Ordover observe, antitrust law is inherently prone to rent-seeking, especially protectionism. 298 This rent-seeking, in turn, leads to numerous harms, including the misallocation of resources (both government and private), less efficient firms, and a diversion of firms' energies towards less productive ends, including both offensive (aimed at having enforcers investigate and prosecute competitors) and defensive (protecting oneself from such endeavors and actions) efforts. 299 It can also lead to regulatory capture, whereby enforcers may be "captured" by certain interests and fail to act in a way that aligns with their stated objectives.300 Explicitly incorporating opaque socio-political goals into antitrust enforcement only exacerbates these harmful tendencies-and simultaneously decreases the ability to hold captured enforcers responsible, as they can justify nearly any outcome.301 Indeed, evidence drawn from analyzing early enforcement actions, arising before antitrust fully embraced the consumer welfare standard-and when it was seeking to further a wider set of socio-political goals-indicates that such public interest factors failed to explain significant percentages of enforcement actions. 3 02

The economically grounded consumer welfare standard helped substantially to cabin such harms and align enforcement with consumer interests.303 But reintroducing a political dimension to antitrust law would reestablish a regime inherently prone to capture by rivals seeking to ride populist waves of protectionism to economic dominance. And so politicized antitrust is, quite contrary to the populist movement's stated goals, a recipe for a corporate welfare regime.

Moreover, as discussed, when antitrust policy is unmoored from economic analysis, it exhibits fundamental and highly problematic contradictions. 304 Perhaps most critically, attempting to promote socio-political goals through competition laws tends to undermine competition itself.305 If competition law is unconstrained on its own terms-that is, if it is unmoored from a set of subject-specific limitations imposed by courts and legislatures-it threatens to morph into a large, sprawling, economy-wide set of regulations resembling a national industrial policy.306 The merits or demerits of actually having an economy-wide industrial policy aside, it is unquestionably a perversion of competition law to facilitate the imposition of policies from law and regulation outside of competition policy in ways that, of necessity, will promote other polices at the very expense of competition.

"[F]inally, if the underlying basis for antitrust enforcement is extended beyond economic welfare effects, how long can we expect to resist calls to restrain enforcement precisely to further those goals?" 307 The effort and incentive to obtain exemptions would be significantly increased "as the persuasiveness of the claimed justifications for those exemptions [(]which already encompass non-economic goals3 08[) would] be greatly enhanced." 309 The end result could "even be more concentration . . . [as the] exceptions could subsume the rules."310

This discussion highlights the "fundamental, underlying problem: If... antitrust [becomes] more political," the outcome will be "less democratic, more politically determined, results-precisely the opposite of what proponents claim to want."

### 2NC - UQ

#### Econ high :

#### Growth is high – no impact to inflation or Omicron

Payne 1/13 – David Payne, staff economist and reporter for The Kiplinger Letter, “GDP: 4.0% GDP Growth in 2022,” 1/13/22, https://www.kiplinger.com/economic-forecasts/gdp

GDP will likely grow by 4.0% next year, after rising 5.6% in 2021. Consumers will pull back some spending because of price concerns. Lower-income households will be most affected by higher prices. The car and truck shortage will last well into this year, keeping vehicle prices high. Gasoline prices are likely to stay up. Inflation pressures in general will stay elevated because of supply issues. However, consumers have saved an average of $21,000 per household more than usual since the start of the pandemic, so they will continue to spend when supply shortages are corrected.

The high level of COVID-19 infections may dampen consumer enthusiasm in the short term for eating out and traveling, and will likely delay some business plans to reopen offices. However, expect the infection rate to start declining by the end of January, with a boost to consumer services spending by the spring.

A factor supporting growth this year is that retailers and manufacturers will have to rebuild inventories, which are still at very low levels. That will keep manufacturers busy.

#### Aff uniqueness arguments prove the brink – the economy will be bumpy but won’t go into recession unless there’s a shock like the plan

Lazard 1/6 – Lazard Asset Management, “Outlook on the United States,” 1/6/22, https://www.lazardassetmanagement.com/us/en\_us/research-insights/outlooks/united-states

For investors, 2022 poses a bit of conundrum. Growth is likely to be strong, but inflation will likely be uncomfortably high. Monetary policy will remain accommodative but will be less so through the year, with rate hikes increasingly likely in the second half. Fiscal policy will also remain stimulative but less so as the year progresses. And amid all this, equities are entering 2022 at demanding valuations, largely supported by even more extreme valuations in the fixed income markets and across private assets. In a nutshell, even though the economic and policy backdrop will be very positive relative to pre-pandemic history, the second derivative will be negative, and valuations leave little room for error. In our view this is a recipe for increased volatility and dispersion in markets. While we do not see a material risk of recession on the horizon, absent exogenous shocks such as a vaccine-evasive variant of COVID-19 or geopolitical surprises, we do see a bumpier path in equity markets through 2022 that demands careful security selection and portfolio construction.

#### No thumpers – the economy is stable

Lazard 1/6 – Lazard Asset Management, “Outlook on the United States,” 1/6/22, https://www.lazardassetmanagement.com/us/en\_us/research-insights/outlooks/united-states

While short-term rates rose in anticipation of rate hikes next year, long-term yields, starting at the 10-year mark, have likely been lower than economic fundamentals would suggest in part due to the demand for a "safe haven.” Investors from outside the United States have been buying longer-term Treasuries as a cushion against left-tail risks, which are not in short supply. Russia’s military buildup on the Ukrainian border has raised the risk of conflict; Turkey’s currency set new record lows, with the entire economy at risk as the central bank cut rates in line with President Recep Tayyip Erdogan’s unconventional policies; and the rapid spread of the new COVID-19 Omicron variant has raised uncertainty over global growth. Against such possibilities, Treasuries still offer the safest haven, with the best liquidity, deepest markets, and highest nominal and hedged yields among benchmark developed-sovereign rates. For example, 10-year German Bunds and 10-year Japanese Government Bonds yield -0.36% and 0.05%, respectively, vs 10-year Treasuries at 1.45%.

Typically, an inverting yield curve can signal a growth slowdown and even recession, but that is not the case now in our opinion. Although US GDP growth has likely peaked at around 5.9% this year and monetary stimulus is normalizing from its emergency setting, the latest forecasts call for healthy growth of 3.9% in 2022. Meanwhile, employment has improved to the point that some 3.4% of workers in November felt confident enough to quit their jobs, according to the latest labor market report. Finally, US credit quality is stronger than ever, with corporate bankruptcies near historical lows and states flush with cash. In a way, it can be said that the Fed simply has nothing to bail out anymore, at least at this moment. So, given the technical forces driving longer-dated Treasury yields lower than they otherwise would be if based solely on US economic fundamentals, a flat or inverted yield curve in and of itself wouldn’t necessarily be a reliable harbinger of economic recession, but it is still worth watching.

#### CEO surveys prove – they perceive supply chain issues and inflation as short-term

Mourgelas 1/10 – Isabella Mourgelas, research analyst with Chief Executive Group, “CEO Confidence Jumps At Start Of 2022,” 1/10/22, https://chiefexecutive.net/ceo-confidence-jumps-at-start-of-2022/

At the start of 2022, America’s business leaders are hopeful that persistent issues in the supply chain and growing inflation—and maybe even Covid-19—will wind down this year. Their rating of future business conditions reached its highest level since July of 2021, when vaccinations became widely available across the country. Many CEOs we polled point to persistent demand, even during a large spike in Covid-19 cases, as the source of their growing confidence.

Those are the key findings from Chief Executive’s latest poll of 210 U.S. CEOs, fielded January 4 through 6, which asks America’s business chiefs to rate the environment today and 12 months out based on their assessment of business conditions—and forecast the impact on their company’s growth.

Their 7 out of 10 rating of future business conditions was a stunning 7 percent increase over last month—matching their forecast at the beginning of 2021. Their rating of the current business environment, however, dropped by 1.5 percent to 6.7 out of 10, from 6.8/10 in December. Nevertheless, CEOs’ current rating of today’s business environment is 8 percent higher than their rating of conditions in January of 2021.

“The worst is here. Now it’s the beginning of the end for Covid,” says Andrew Ly, CEO of Sugar Bowl Bakery, summing up the hope of many CEOs across the nation.

“I’ve been keeping a watchful eye on inflation and interest rates and I anticipate increased business as COVID-19 and supply chain conditions improve over the next year,” says Arthur James, President at Mills James Productions, a video production company. He expects that conditions will improve from a 6 to a 7 one year from now.

Andrew Featherman, Esq., President at Intergroup, a real estate company, agrees with James, saying, “Supply shocks and inflation are one-offs and will stabilize by 4th quarter.” He expects conditions to remain at the 8 he rates them now.

#### Supply bottlenecks are easing and confidence is rising

Mutikani 1/11 – Lucia Mutikani, macroeconomics editor for Reuters, “U.S. small business sentiment rises modestly in December – NFIB,” 1/11/22, https://www.reuters.com/world/us/us-small-business-sentiment-rises-modestly-december-nfib-2022-01-11/

WASHINGTON, Jan 11 (Reuters) - U.S. small business confidence increased modestly in December amid growing concerns about inflation and worker shortages, a survey showed on Tuesday.

The National Federation of Independent Business said its Small Business Optimism Index rose 0.5 point to 98.9 last month. Twenty-two percent of owners said inflation was the single most important problem for operations, up from 18% in November.

The economy is experiencing a period of high inflation as the COVID-19 pandemic snarls supply chains.

But there are tentative signs that supply bottlenecks are starting to ease, with an Institute for Supply Management survey last week showing manufacturers reporting improved supplier deliveries in December. Economists and Federal Reserve officials expect inflation will start subsiding this year.

Even as inflation concerns mounted last month, the NFIB survey showed the share of owners raising average selling prices decreased two points to 57%. Price hikes were the most frequent in wholesale, construction and retail industries.

The proportion of businesses planing to raise prices fell five points to 49%.

#### Capital spending is up because of increased confidence

Ezrati 1/17 – Milton Ezrati, Senior Contributor to Forbes, “Capital Spending Points To Growth, At Least For The Time Being,” 1/17/22, https://www.forbes.com/sites/miltonezrati/2022/01/17/capital-spending-points-to-growth-at-least-for-the-time-being/?sh=48d13bea2369

Among other signs of economic recovery, the Commerce Department has added a positive report on capital spending. Orders for capital goods from business and industry surged in November. Growth was more pronounced in some areas than others, but the general strength was undeniable and offers economic encouragement on three fronts: First, the spending will directly buoy economic activity. Second, it will enlarge the economy’s capacity to produce over the longer term. Third, it speaks to business confidence, a necessary component of any economic expansion.

#### Decreases in confidence are limited and sector-specific

Mourgelas 1/10 – Isabella Mourgelas, research analyst with Chief Executive Group, “CEO Confidence Jumps At Start Of 2022,” 1/10/22, https://chiefexecutive.net/ceo-confidence-jumps-at-start-of-2022/

January polling shows that confidence has improved across most industries with the exceptions of consumer manufacturing and retail trade, whose ratings fell by 7.1 percent and 2.6 percent, respectively. CEOs in consumer manufacturing are discouraged by raw material inflation and the labor shortage preventing them from reaching their full potential, even though demand remains high. Retail CEOs, who gave the lowest rating this month of 6.33, share that material and inventory shortages, coupled with inflation and worker resignations are creating a volatile business environment.

The largest gain in confidence was seen by CEOs in the construction sector. Many are motivated by increased investment in infrastructure and see the end of Covid in sight.

Alan Pramuk, Chairman of Gresham Smith, in the construction industry, shares what is encouraging him: “The need and will to improve the US infrastructure, specifically with energy, renewables, power distribution, transportation, water quality and resiliency.”

Comparing ratings by company size, measured in annual revenues, only CEOs running companies with $100 to $999.9 million in revenues lost confidence this month, with their rating down 5 percent. CEOs’ ratings in both the smallest companies with revenues under $10 million and those in companies with revenues over $1 billion increased by double digits, at 16 and 12 percent, respectively.

#### Businesses are confident in both hiring and investment

Mourgelas 1/10 – Isabella Mourgelas, research analyst with Chief Executive Group, “CEO Confidence Jumps At Start Of 2022,” 1/10/22, https://chiefexecutive.net/ceo-confidence-jumps-at-start-of-2022/

The proportion of CEOs predicting increases in profits remained unchanged in January, hovering at 71 percent. The proportion of those predicting increases in revenues, however, jumped 13 percent this month to 88 percent, up from 78 percent in December and matching its 2021 high in May.

The proportion of CEOs expecting to increase their capital expenditures clawed back most of its losses this month, increasing by 7 percent to 61 percent, after a 7.5 percent drop in December. This proportion is 28 percent higher than the proportion of CEOs who expected to increase their capex in January of last year.

Similarly, the proportion of CEOs expecting to add to their headcount increased by 6.5 percent this month, after a slight drop in December. Now, 69 percent of CEOs are planning to up their hiring over the next year—25 percent higher than the 55 percent who planned the same at the start of 2021.