# 1NC vs JCCC BB

## Off

### T --- Prohibitions ---1NC

First off is T

#### Interpretation --- Prohibitions are distinct from remedies that only block the anticompetitive elements of a practice, rather than the practice itself.

Jo Seldeslachts et al. ‘7. Professor of Industrial Organization at KU Leuven and a Senior Research Fellow at DIW Berlin, with Joseph A. Clougherty and Pedro Pita Barros. “Remedy for now but prohibit for tomorrow: the deterrence effects of merger policy tools.” https://www.ssoar.info/ssoar/bitstream/handle/document/25862/ssoar-2007-seldeslachts\_et\_al-remedy\_for\_now\_but\_prohibit.pdf;jsessionid=A244005110FDB5816E0347D9F1B75436?sequence=1

Let us now think about the differences between the two antitrust actions of prohibitions and remedies.7 In the case of a prohibition, the penalty for proposing a merger with significant anti-competitive problems involves the full prohibition of the merger: both the pro-competitive and the anti-competitive profits for merging firms are negated by the prohibition. The throwing out of the pro-competitive profits along with the anti-competitive profits is important, as this brings about the punitive measure that Posner (1970) acknowledges as being crucial for deterrence. The big difference between remedies and prohibitions is that remedies attempt to identify and eliminate the anti-competitive elements of a merger. In essence, the merging firms are able to hold on to the pro-competitive elements of the merger—so they keep (ΠPC), but the anti-competitive elements of the merger (ΠAC) are negated by the remedial action. If an antitrust authority imposes remedies, then the disincentive for firms to propose anti-competitive mergers is clearly lower. In short, prohibitions seemingly involve more deterrence than do remedies, as prohibitions represent larger punishments.

#### And, business practices are ongoing conduct defined by the behaviors of many market participants

Kerry Lynn Macintosh 97. Associate Professor of Law, Santa Clara University School of Law. B.A. 1978, Pomona College; J.D. 1982, Stanford University, “Liberty, Trade, and the Uniform Commercial Code: When Should Default Rules Be Based On Business Practices?,” 38 Wm. & Mary L. Rev. 1465, Lexis.

These new and revised articles reflect a strong trend toward choosing default rules 4 that codify existing business practices. 5 [FOOTNOTE 5 BEGINS] In this Article, the term "business practices" is used to refer to practices that emerge over time as countless market participants exercise their freedom to engage in profitable transactions. For an account of the evolution of business practices, see infra Part II. As used here, "business practices" is broader and less technical than "trade usage," which the Code narrowly defines as "any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question." U.C.C. 1-205(2). [FOOTNOTE 5 ENDS] This is particularly true of the recent revisions to Articles 3 (Negotiable Instruments), 4 (Bank Deposits and Collections) and 5 (Letters of Credit).

#### Violation---the plan only increases behavioral remedies that target anticompetitive aspects of the practice---topical affs must increase prohibitions on the practices themselves.

#### Vote neg for limits and ground---infinite behavioral remedies and no link uniqueness for offense.

#### Vote neg---

#### 1. Limits---there are infinite ways to ameliorate anticompetitive aspects of a practice through behavioral remedies. Only structural prohibitions makes the topic manageable for the neg---key to preparation and clash

#### 2. Ground---our interpretation ensures that the aff has to “break up” big industries---key to ensure link uniqueness and build in offense based on the core controversy on a topic with very few DA’s

### K Capitalism --- Commons --- 1NC

Next off is the Cap K

#### Anti-trust is a capitalist psy op to pacify the working class, buy time to mystify unsustainable accumulation, and map competition onto subjectivity – homo economicus devalues life.

Lebow 19 [David Lebow – Lecturer on Social Studies at Harvard University and lawyer, “Trumpism and the Dialectic of Neoliberal Reason,” Perspectives on Politics 18(2):380-398, doi:10.1017/S1537592719000434]

I. Neoliberal Reason

As Michel Foucault and others have argued, neoliberalism entails far more than an economic doctrine favoring deregulated markets.4 It is a novel form of governmentality—a rationality linked to technologies of power that govern conduct, not just through direct state action but through liberty itself.5 Not isolated to the traditionally demarcated sphere of economics, neoliberal society entails a whole economic-juridical order.

The central program of neoliberal governmentality is the absolute generalization of competition as a universal behavioral norm. Whereas in liberal thought, the root principle of capitalism was exchange of equivalents, for neoliberal reason it is competition entailing inequality. The key result of market processes goes from specialization to selection. The competitive market is the exclusive site of rationality. It processes information, indicated by price, and is the only mechanism of producing knowledge, defined as what is profitably utilizable. Because consumers are free to refuse inferior goods or services, the price mechanism of the market system ensures optimal solutions and maximal satisfaction of preferences.

Liberal capitalism, as Karl Polanyi argued, required the construction of “fictitious” commodities like land and labor.6 These abstract, exchangeable factors of production had to be disembedded from concrete non-market social relations, norms, and values. Instead of merely disembedding commodities, neoliberalism intervenes to make competitive mechanisms regulate every moment and point in society. It strives to build an empire of market choice that invades every domain of life, and deposes all other social, political and solidaristic institutions and values.

Neoliberalism does not allege that markets are natural; competition must be constructed. Rather than endorsing laissez-faire overseen by a night watchman, it stipulates a strong state engaged in permanent vigilance, activity, and intervention to maintain artificial competition. It must not plan outcomes, which would upset the market’s innate rationality, and must be insulated from political disturbances. Economic interventionism leads down the road to serfdom; fascism and unlimited state power are its necessary results. A “minimum of economic interventionism” on the “mechanisms of the market” must be accompanied by “maximum legal interventionism” on the “conditions of the market.”7 Fixed, formal rules make up an economic constitution that inhibits planning, repulses political disruptions, and impartially safeguards competition. The state is the executor of the market and growth is the basis of public legitimacy. Governance depoliticizes public power, promotes ostensibly post-ideological technical problem-solving by experts, and relies on “best-practices” that dissolve the distinction between public and private organization.8

Unlimited generalization of competition yields an enterprise society in which calculations of supply/demand and cost/benefit become the model of all social relations. Neoliberal reason renders homo economicus, based on this model of the enterprise, the exhaustive figuration of human subjectivity. The center of economic thought shifts from labor and processes of production, exchange, and consumption to human capital and rational decision-making under conditions of scarcity. Capital is everything that can generate future income; wages are reconceived as income from capital. Labor is no longer comprehended as a commodity exchanged for a wage, but as a combination of human capital (the worker’s education and abilities) and the income stream it generates. This neoliberal subject is an aggregate of human capital who invests in his own income-generating abilities.

Neoliberalism replaces the invariant identity of the moral person as a rights-bearing citizen with a formally empty receptacle filled up through enterprising choices. It brushes aside models of freedom as self-rule achieved through moral autonomy or popular sovereignty.9 In the neoliberal “democracy of consumers,” individual consumers together constitute the sovereign that monopolizes the issuance of legitimate commands.10 Sovereign will is expressed not through political channels, but by choices in the “plebiscite of prices.”11 Whereas producers have particular interests like protectionism, consumers have a consensual and common interest; all favor the impartial functioning of market processes. In the neoliberal free society, consumers exercise their right to choose in complete independence.

II. From Keynesian State Capitalism to Neoliberal Deregulation

Situating the 2008 crisis in a historical account of American political and economic development clarifies its broader significance. The early twentieth-century Progressives were disdainful of what they took to be the chaos and waste of fin de siècle laissez-faire society. They strove to build a new American state that would replace the structural and rights-based formalisms of the nineteenth century with direct democracy and expert administration. It took the Great Depression and New Deal to bring into full bloom the Progressive commitment to pragmatic rationality. Thereafter, the “policy state” was authorized to pursue designated social goals and develop the means to accomplish them.12 The slew of New Deal innovations included state oversight of labor negotiations, invigorated antitrust, Keynesian countercyclical deficits to stimulate demand and increase purchasing power, an expansive public sector sheltered from the business cycle, aggressive banking regulation, and social insurance. Regulation and redistribution ensured the conditions necessary for an economic system based on capital accumulation, private property, and corporate profit to endure.

To many, the differences between the New Deal and Nazi political economies appeared less significant than their common response to monopoly capitalism. Both erased boundaries between state and society by politicizing the private sphere and authorizing public bureaucracies to rationalize crisis-prone economies. Frankfurt School member Friedrich Pollock suggested that this common “state capitalism” had solved the contradiction between the forces and relations of production, and thus overcome the economy’s crisis tendencies. It seemed to him that management had become merely technical and “nothing essential” had been “left to the laws of the market.”13 Worries abounded that the private law sphere of property and contract was necessary for individual freedom. Despite salient differences between Nazi and New Deal state capitalism, many feared that intervention into society was a waystation to domination. Unease about the specter of American despotism motivated development of mechanisms to ensure that interventionism did not devolve into arbitrary rule.14 Expertise was one justification and limitation of the policy state. Authority could be safely delegated to a new corps of public-spirited administrators because their scientific knowledge would not only make them effective, but also counsel restraint. Enduring misgivings led later to new laws of administrative process. The procedural state was legitimated by its defenders as being a substantively value-neutral and instrumentally rational machine serving goals set by society. Regulatory decision-making was shunted into the abstruse procedures of courtrooms and bureaucracies. Defenders of the state emphasized that its processes of allocating authority were neutral, impartial, and open to all. The balanced accommodation of all interest groups seeking to exercise influence would yield an equilibrium corresponding to the public interest.15

The intermeshing of state and society through interest groups, agencies, and professionalized parties marginalized the public. The sovereign public opinion that Progressives had hoped would rationalize government gave way to the rationality supposedly inherent in processes of public law, public-private negotiation, and regulated markets. The state was endowed with a diffuse legitimacy in exchange for a growing economy, broad distribution, and ongoing household capacity to consume.16 The Keynesian welfare settlement pacified the working class, protecting the market economy from more radical political pressures. Newly available, mass-produced commodities encouraged leveled-down notions of citizenship as welfare clientelism and privatistic consumption. As the state expanded and routinized, the initial politicization of private property relations through public intervention developed into depoliticized economic management by lawyers and social scientists organized by administrative and judicial processes.

The terms of the social contract preserving the coexistence of capitalism and democracy had been set. In exchange for a pacified citizenry and depoliticized regulatory authority, the policy state promised to deploy instrumental reason to sustain both capital accumulation and widely distributed capacity to consume (supported, always, by the exclusion of African Americans). During the decades of postwar growth, these twin responsibilities seemed attainable and compatible. Capitalism functioned smoothly enough and potentially delegitimating inequality was clipped by inflation, tax-based welfare, and collectively negotiated wages. But in the late 1960s and early 1970s, weakening growth, stagflation, trade deficits, and the collapse of Bretton Woods revealed that state capitalism had not solved the problems of economics. As the Great Depression had enabled construction of the instrumentally rational policy state, economic disturbances in the 1970s opened the breach into which neoliberal reason entered to reconfigure the political economy. Rather than shielding rational policy-making from political pressure and assuring broadly distributed welfare, neoliberalism promised growth driven by depoliticized markets freed from regulation and downwards redistribution. Believing in the optimal rationality of competitive markets, neoliberals sought to reinvigorate capital accumulation through deregulation, lowered taxes, financialization, privatization, and market expansion.

Liberating accumulation from the restrictions and obligations incurred under state capitalism might have imperiled capitalism’s peace treaty with democracy. For deregulation to proceed without impairing the system’s legitimacy, the quid pro quo—depoliticization for consumption—had to continue. Over the ensuing decades, as Wolfgang Streeck explains, the state “bought time” by finding new ways to generate illusions of widely distributed prosperity that prolonged the capacity of the lower and middle classes to consume.17 Each successive attempt exhausted itself, leading to new and escalating disturbances. In the 1970s, inflation safeguarded social peace by compensating workers for inadequate growth until stagflation ended this mode of buying time. A subsequent reliance on public debt enabled the government to pacify conflict with borrowed money. Rising debt and balking creditors delimited this phase, which was brought to a definitive close with the Clinton administration’s social spending cuts and balanced budgets. In a final stage that dawned in the 1980s but grew increasingly paramount over time, debt-based support of purchasing power was privatized. Household spending was financed through mortgages, student loans, and credit cards. This “privatized Keynesianism” buoyed consumption up through 2008, despite cuts to social spending, falling wages, and tightening employment markets.18

Each device for upholding spending maintained the legitimacy of the depoliticized political economy, even as liberalization continued to strip the wage-dependent population of regulatory and redistributive safeguards. The end of the inflation era brought structural unemployment and weakened trade unions. The passing of the public debt regime meant cuts to social rights, privatization of social services, and a trimmed public sector. Growing private debt enabled people to hold on despite lost savings, and rising under- and unemployment. At every step, the neoliberal project was “dressed up” as a consumption project.19 Continuing consumption ensured legitimacy long enough to enact total transformation of the political economy.

The state could not buy time indefinitely. The 1970s had already witnessed the beginning of the transition from a manufacturing, production-oriented economy that exported surpluses to an import-based, finance and services economy focused on consumption. As the United States went from creditor to debtor, a system of “balanced disequilibrium” took hold.20 With impunity granted as the world’s reserve currency, the United States ran mounting budget and trade deficits. To finance them, it absorbed surplus capital from abroad, much of which wended its way to Wall Street. Banks used these profits to extend credit to the working- and middle- classes. Household debt funded consumption of imported goods, returning the surplus capital abroad, and completing the circuit of global trade. This system depended on the unsustainable condition of ever-increasing debt-based consumption. Consumption was notoriously reinforced by secondary markets in what was essentially private money (securitized derivatives and collateralized debt obligation) that was much riskier than assumed. Because increasingly irresponsible lending was integral to continuing the consumption that stabilized the macroeconomic system, it became a sort of vicious collective good that progressively magnified the scale of the inevitable crash.21 When in 2008 the debt finally proved unserviceable and the housing bubble burst, the private money disappeared and the disequilibrated global economic system fell into crisis.

Consumption based on private debt had provided an unstable bridge over the yawning inequality brought about by deregulation, financialization, globalization, and the diminished welfare state. When the 2008 crisis dried up credit, it revealed a divided “dual economy.”22 On one side is the primary sector of elite, highly-educated professionals who are collected in coastal urban centers and tied in to corporate management, technological innovation and oversight of global capital flows. On the other is the secondary sector of low-skilled workers primarily fixed in the heartland, for whom deregulated competition has brought under- or unemployment, job instability, depressed wages, exploding debt, and diminished prospects.

Unable to buy more time, the state’s breach of the postwar social contract has been exposed. The neoliberal system of capital accumulation was entrenched at the expense of broad and sustainable consumption. The results have been the politicization of defrauded citizens and a political economy plunged into legitimation crisis. Time has belied the premature conclusion that contradiction and crisis potential had been overcome by state capitalism. Contradiction was relocated into cross-cutting imperatives for the state to enable capital accumulation and distribute consumption. In hindsight, we find only a window of stabilization of an enduring crisis potential built into capitalist political economy. As Nancy Fraser puts it “on the one hand, legitimate, efficacious public power is a condition of possibility for sustained capital accumulation; on the other hand, capitalism’s drive to endless accumulations tends to destabilize the very public power on which it relies.”23 The political fallout from the 2008 crisis marks the end of the postwar social contract that had established conditions ensuring the continued coexistence of capitalism and democracy.

#### Capitalism drives extinction and structural violence

Allinson et al 21 [Jamie Allinson is Senior Lecturer in Politics and International Relations at Edinburgh University and author of The Age of Counter-revolution. China Miéville is the author of a number of highly acclaimed and prize-winning novels including October: The History of the Russian Revolution. Richard Seymour is the author of numerous works of non-fiction, His writing appears in the New York Times, London Review of Books, Guardian, Prospect, Jacobin. Rosie Warren is an Editor at Verso and the Editor-in-Chief of Salvage. All are writing for the Salvage Collective. “The Tragedy of the Worker: Toward the Proletarocene.” Introduction. July 2021. Verso EBook. ISBN: 9781839762963 //shree]

This is the question that vexed us as we set out to write The Tragedy of the Worker. From the vantage point of the present, the history of capitalist development is, as Marx expected, the history of the development of a global working class, the proletarianisation of the majority of the world’s population. But the very same process of that development has brought us to the precipice of climate disaster. Our position, to recall Trotsky’s rationalisation of War Communism in 1920, is in the highest degree tragic.

It is now clear that we will pass what scientists have long warned will be a tipping point of global warming, accelerating the already catastrophic consequences of capitalist emissions. How do we imagine emancipation on an at best partially habitable planet? Where once communists imagined seizing the means of production, taking the unprecedented capacities of capitalist infrastructures and using them to build a world of plenty, what must we imagine after the apocalypse has befallen us? What does it mean that as capitalism has become truly global, the gravediggers it has created dig not only capitalism’s grave, but also that of much organic life on earth?

Our answers to these questions remain rooted in the politics of revolutionary communism. Our stance is not based on the fantasy of a homeostatic nature that must be defended but on the critique of the capitalist metabolism – the Stoffwechsel- that must be overthrown. Earth scientists are accustomed to speak in terms of ‘cycles’ by which substances circulate in different forms: the water cycle, the rock cycle, the nitrogen cycle, the glacial-interglacial cycle, the carbon cycle, and others. One way of registering the catastrophe of climate change is to see these cycles – most of all, but not solely, the carbon cycle – as disordered, under- or over-accumulating. But this is to ignore the more fundamental circuit of which these now form epicycles, like Ptolemy’s sub-orbits of the heavenly bodies: the circuit of capital accumulation, M-C-M′.

This circuit accumulates profit and produces death. Neither is accidental. It is for this reason that the debates that capitalist ruling classes permit among themselves on ‘adaptation’ versus ‘mitigation’ take place on false premises. What is to be mitigated is the impact of climate change on accumulation, rendered through the ideology of ‘growth’ as something that benefits everyone. What we are to adapt to are the parameters of accumulation, sacrificing just enough islands, eco-systems, indigenous – and non-indigenous – cultures to maintain its imperatives for a period of time until new thresholds must be crossed, and new life sacrificed to the pagan idol of capital. Already, capitalist petro-modernity builds a certain quantum of acceptable death into its predicates: at the very least, the 8.7 million killed by fossil fuels each year according to Harvard University are considered a price worth paying for the stupendous advantages of fossil capital. And the sky can only keep going up, as deforestation, polar melt, ocean acidification, soil de-fertilisation and more intense wildfires and storms tear the web of life into patches. If the necropolitical calculus of the Covid-19 pandemic appears crass, just wait until its premises are applied to climate catastrophe.

#### Vote neg for anti-capitalist commons – collectives should refuse commitments to competitive principle and the straitjacket of what’s “realistic”

Rose 21 [Nick. PhD in Political Ecology from RMIT University. Executive Director of Sustain: The Australian Food Network. From the Cancer Stage of Capitalism to the Political Principle of the Common: The Social Immune Response of “Food as Commons.” Int J Health Policy Manag 2021. 3-31-21. DOI: 10.34172/ijhpm.2021.20 //shree]

Silvia Federici provides a longer historical perspective, noting that ‘commoning is the principle by which human beings have organised their existence for thousands of years;’ and that to ‘speak of the principle of the common’ is to speak ‘not only of small-scale experiments [but] of large-scale social formations that in the past were continent-wide.’87 Hence a commons-based society is neither a utopia or reducible to fringe projects, and the commons have persisted despite the many and continuing enclosures, ‘feeding the radical imagination as well as the bodies of many commoners.’87 Federici acknowledges that commons and practices of commoning are diverse, that many are susceptible to cooptation and many are consistent with the persistence of capitalism; indeed some, such as charities providing social services (including foodbanks) during the years of austerity budgets in the United Kingdom (2010-2015), reinforce and stabilise capitalism.87 What matters to Federici is the character and intentionality of the commons as anti-capitalist, as ‘a means to the creation of an egalitarian and cooperative society…no longer built on a competitive principle, but on the principle of collective solidarity [and commitments] to the creation of collective subjects [and] fostering common interests in every aspect of our lives.’87

Federici’s analysis resonates with the political thought and proposals developed by Dardot and Laval in their 2018 work, ‘On Common: Revolution in the 21st century.’11 For Dardot and Laval, the common is likewise understood as a principle of political struggle, a demand for ‘real democracy’ and a major driving force behind the emerging articulation of a political vision and programme that transcends and overcomes the straitjacket logic of neoliberal ideological hegemony and its ‘policy grammar’ which appears to foreclose all alternatives and lock us forever into a capitalist realism in which ‘it is easier to imagine the end of the world than it is to imagine the end of capitalism.’89 Eschewing Bollier’s ‘triarchy’ of a market/state/ commons coexistence, Dardot and Laval argue for a politics of the common based on an engaged citizenry that directly participates and deliberates in all decisions which impact it, and in the process not merely transforms the institutions responsible for the management of services and allocation of resources, but creates new institutions and new ways of being in the world.11

Dardot and Laval describe this form of politics as ‘instituent praxis’: the common, they argue, is ‘not produced but instituted.’11 This acknowledges the conventional understanding of Ostrom, Bollier and others of ‘the commons’ as residing in the rules – the laws – that a community establishes for the collective management and use of shared resources, but extends it much further and in a more radical direction. The essence of the commons, they argue, is not in the goods per se such as land or a forest or a seed bank ‘held in common,’ but rather in the process of their establishment as well as the ongoing negotiation that will surround their use and governance. Hence, Dardot and Laval distinguish the commons from the ‘rights’ tradition of property, arguing that ‘the commons are above all else matters of institution and government…the use of the commons is inseparable from the right of deciding and governing. The practice that institutes the commons is the practice that maintains them and keeps them alive and takes full responsibility for their conflictuality through the coproduction of rules.’90 To ‘institute’ in this context should not be misunderstood as ‘to institutionalise [or] render official;’ rather it is ‘to recreate with, or on the basis of, what already exists.’ 90 This messy, conflictual and evolving process is what Dardot and Laval insist will ultimately bring about a revolution, not in the form of a violent uprising or insurrection, but rather through the ‘reinstitution of society’ via the transformation of politics and economy from its current state of ‘representative oligarchy’ to full participatory and deliberative democracy.11 Such a vision is premised on a mass politicisation of society; in effect a return of mass popular political contestation and a turn away from the postpolitical era of the neoliberal consumer.91-92

### Forecasting CP --- 1NC

Next off is the forecasting counterplan---

#### The United States should only allow the continuation of non-FRAND dealing under antitrust law only when a team of the Good Judgment Project’s “super-forecasters” has determined that the activity reduces the numerical probability of platforms exclusionary conduct from an unacceptably high level.

\* The Good Judgment Project’s “Super-forecasters” are team members of the Good Judgement Project that have ended in the top 2% of forecasters tournaments, selected by Tetlock’s team.

#### It competes---the counterplan is a regulation not prohibition.

James Broaddus 50. February 6; Judge on the Kansas City Court of Appeals, Missouri; Westlaw, “City of Meadville v. Caselman,” 240 Mo. App. 1220. https://casetext.com/case/city-of-meadville-v-caselman-1

"Under power conferred on cities of the fourth class `to regulate and license' dramshops, there is no authority to wholly prohibit or suppress. Where there is mere power in a municipality to regulate in a state, with a general policy of conducting licensed saloons, authority to prohibit is excluded. The difference between regulation and prohibition is clear and well marked. The former contemplates the continuance of the subject-matter in existence or in activity. The latter implies its entire destruction or cessation.'" (Citing text writers and cases.)

#### ONLY the counterplan solves the case---the plan can’t keep up with market changes.

AMC 07. Antitrust Modernization Commission. Deborah A. Garza, Chair. Bobby R. Burchfield ,Commissioner. W. Stephen Cannon, Commissioner. Dennis W. Carlton, Commissioner. Makan Delrahim, Commissioner. Jonathan M. Jacobson, Commissioner. Jonathan R. Yarowsky, Vice-Chair. Donald G. Kempf, Jr., Commissioner. Sanford M. Litvack, Commissioner. John H. Shenefield, Commissioner. Debra A. Valentine, Commissioner. John L. Warden, Commissioner. “Report and Recommendations.” https://govinfo.library.unt.edu/amc/report\_recommendation/amc\_final\_report.pdf

To determine whether and when particular forms of business conduct may harm competition requires an understanding of the market circumstances in which they are undertaken. Antitrust agencies and the courts have long looked to economic learning for assistance in understanding market circumstances and the likely competitive effects of particular business conduct.23 Indeed, economics now provides the core foundation for much of antitrust law. Not surprisingly, as economic learning about competition has advanced over the decades, so have the contours of antitrust doctrine.

Antitrust law also must keep pace with developments in the business world. Business practices may change, especially as technological innovation and global economic integration alter the competitive forces at work in particular markets. To protect competition and consumer welfare, antitrust analysis must offer sufficient flexibility to take account of these changes, while maintaining clear and administrable rules of antitrust enforcement.

B. Periodic Assessments of the Antitrust Laws Are Advisable

The antitrust laws in the United States require ongoing evaluation and assessment to ensure they are keeping pace with both economic learning and the ever-changing economy.24 In past decades, various entities have empowered six different commissions to assess how well antitrust law operates to serve consumers. The Antitrust Modernization Commission is the seventh such commission in almost seventy years.25 Prior commissions have made recommendations about both the substance and procedure of antitrust law.

#### Flexibility is key to super forecasting competition policy---the aff locks in policy failure.

Michelle Baddeley 17. Institute for Choice, University of South Australia. Journal of Behavioral Economics for Policy, Vol. 1, No. 1, 27-31, 2017. “Experts in policy land - Insights from behavioral economics on improving experts’ advice for policy-makers”. https://sabeconomics.org/wordpress/wp-content/uploads/JBEP-1-1-4-F.pdf

Whichever side one takes on these political divides, if the modern fashion is to allow subjective, partisan opinions to trump expert advice, what are the likely implications? Is it wise to be so mistrustful of experts? Expert advice is irreplaceable. Scientific experts and academics play a crucial role in developing new findings and insights to help inform policy, with implications across the range of human activity – from health and environmental policy through to competition policy, consumer protection and financial regulation – to name just a few. But to what extent are experts objective and impartial? Is their advice really impartial and unbiased, based around a cool and calculating objective assessment of evidence, after the careful application of robust research methodologies? In practice - uncertainty, insufficient information, unreliable data or flawed analysis can limit the expert’s ability to untangle the truth, and make it difficult for the policy-maker to assess the extent to which expert advice is reliable. Robust statistical methods, careful experimental design and clear hypotheses can guide the expert but impartial advice is also compromised by a range of economic, behavioural and socio-psychological constraints, some of which may be beyond the expert’s conscious control. Heuristics, biases and social influences driving experts can have significant negative consequences for the public, especially if misleading research findings are used to guide public policy.

This paper will explore some of these influences on experts’ judgement. In Section 2, some of problems around information, risk and uncertainty are outlined; in Section 3, key economic and socio-psychological constraints are explored. Policy implications and solutions are suggested in Section 3, focussing on how we can ensure that expert advice is devised and applied in the most robust and objective ways possible.

Information, risk and uncertainty

Risk and uncertainty is an unavoidable problem, especially for the scientific research that backs up expert judgement because it is about investigating novel, poorly understood phenomena. When information is scarce, a situation is profoundly uncertainty, and/or we have had no prior experience of an event or phenomenon, we cannot quantify the risk of one event versus another. Frequency ratios capturing the incidence of similar events in the past are of no use when there have been no similar events in the past. Given uncertainty, it is not possible to tell before the fact whether experts are right or wrong. It is not like we have given them a difficult mathematical problem which we can double check ourselves using a computer or calculator. With scientific research and expert advice – there is no way to know what the truth might be, and that is why we need experts to find it. And we can only judge expert judgements with the benefit of hindsight, if at all. This is a Catch-22: we need expert evidence to judge expert evidence.

An example of how policy-makers confront these problems of uncertainty and poor information affecting expert advice is the work of the Hazardous Substances Advisory Committee (HSAC) – an advisory committee to the UK’s Department for Environment, Food and Rural Affairs. This committee focuses on another complication arising from uncertainty – the difference between a risk and a hazard. Hazards exist, they are there – but if we know where they are, we can avoid them and thereby minimize our risk. The problem comes in knowing what and where the hazards are. Scientific experts on HSAC – including a range of toxicologists, environmental scientists and biochemists, as well as social scientists – assess evidence to help to inform the UK’s regulatory policy with respect to chemicals harmful to the environment and human health. Often a key constraint is that they are asked to provide advice around the likely environmental impacts of hazardous substances such as endocrine disruptors, antiobiotics and nanomaterials – often we do not know too much about these substances and their long-term impacts, especially for innovative technologies such as nanomaterials. HSAC has therefore devised a structure for assessing the quality of evidence when information is scarce and uncertainty is endemic –spanning not only the usual scientific evidence around experiments and field observation, but also including computational modelling and anecdotal evidence (Collins et al. 2016). For experts used to analysing large data sets, the latter would seem like an anathema but when experts are facing fundamental uncertainty the types of evidence they might use must expand accordingly. If we are forced to rely on anecdote, we need to understand what distinguishes good anecdotal evidence from bad anecdotal evidence: anecdotes that are corroborated across a range of sources are more reliable than single anecdotes, for example.

Economic and socio-psychological constraints

The problems of poor information, risk and uncertainty are not about the fallibility of individuals or even differences between individuals – either in terms of their individual differences and characters, and/or their susceptibility to biases and social influences. Once we introduce these additional constraints – which reflect the characters of the experts not the nature of the evidence – the opportunities for mistakes and misleading guidance increase significantly.

Individual differences

Individual differences seem to play a role, including in terms of innate ability to make judgements about uncertain futures. Philip Tetlock conducted a study which showed that, in forecasting uncertain future events, most experts are only just better than an ordinary person guessing at random (Tetlock 2006). In a second study, however – a collaboration with Dan Gardner – he showed that some particular individuals – experts or not – are “super-forecasters” who have a particular aptitude for forecasting (Tetlock and Gardner 2015). What ideal characteristics might enable these super-forecasters to predict so well? In a complex world, we need experts who are able to understand and analyse a wide range of evidence. Do we need experts who can cover a broad range, or experts who know a narrow field very well? Linking to Isaiah Berlin’s distinction between the fox-types who have a wide but relatively superficial knowledge, and the hedgehog-types who have a deep but relatively narrow knowledge, Tetlock (2006) argues that we may prefer to be advised by foxes – who know many little things, can draw on an eclectic range of evidence and are able to improvise relatively easily when evidence shifts. The hedgehogs, who know one area very well and focus on one tradition may be too inclined to impose formulaic and inflexible solutions.

#### Binding forecasting is key to spillover---solves security.

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The greatest barrier to a clearer vision of the future is not philosophical but organizational: the potential of combining scenario planning with probabilistic forecasting means nothing if it is not implemented. On occasion, the intelligence community has used forecasting tournaments to inform its estimates, but that is only a first step. Policymakers and consumers of intelligence are the ones who must understand the importance of forecasts and incorporate them into their decisions. Too often, operational demands—the daily business of organizations, from weighty decisions to the mundane—fix attention on the current moment.

Overcoming the tyranny of the present requires high-level action and broad, sustained effort. Leaders across the U.S. government must cultivate the cognitive habits of top forecasters throughout their organizations, while also institutionalizing the imaginative processes of scenario planners. The country’s prosperity, its security, and, ultimately, its power all depend on policymakers’ ability to envision long-term futures, anticipate short-term developments, and use both projections to inform everything from the budget to grand strategy. Giving the future short shrift only shortchanges the United States.

### BizCon DA --- 1NC

Next off is the BizCon DA

#### Anti-trust law can’t be distinguished in specific industries. It’s enforced in generalist common law unlike regulation.

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I. GOING BEYOND ADJUDICATION FOR ANTITRUST ENFORCEMENT

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

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

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

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

B. Slow, Usually Predictable Doctrinal Development

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

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

C. Market-Driven Case Selection

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

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

D. Generalists versus Industry Experts

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

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

E. Tradeoffs Inherent in the Adjudicatory Approach to Antitrust

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

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

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

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

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

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

#### Unpredictable legal shifts wreck business confidence.

Sarah Chaney Cambon 21, Reporter on The Wall Street Journal's Economics Team, BA in Business Journalism from the University of North Carolina-Chapel Hill, “Capital-Spending Surge Further Lifts Economic Recovery”, Wall Street Journal, 6/27/2021, https://www.wsj.com/articles/capital-spending-surge-further-lifts-economic-recovery-11624798800

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Economic decline cascades and goes nuclear---their defense doesn’t assume post-COVID shifts.

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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.

## Advantage 1

### 1.Turn --- Trade --- 1NC

#### The plan is perceived as a protectionist shockwave that shreds any semblance of global free trade.

Allison Murray 19. JD from the Loyola Law School, Los Angeles Law School, BS in Business Administration from the University of Redlands, Judicial Law Clerk at the U.S. Bankruptcy Courts, Winter. “Given Today's New Wave of Protectionism, is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade's Coffin?” Loyola of Los Angeles International and Comparative Law Review, Volume 42, Number 1, 42 Loy. L.A. Int'l & Comp. L. Rev. 117, Lexis.

INTRODUCTION

Trump. Le Pen. Brexit. Protectionist rhetoric has consumed the international political stage. Western countries and their leaders were once the drivers of economic globalization, relying on free-market speeches and the prospect of removing trade barriers to appeal to their constituents. 1They pointed fingers at other countries engaging in or encouraging protectionist behavior and challenged them in the court of public opinion and elsewhere to stop their antics. The "our country first, world trade after" mentality was widely politicized and vilified. Now, it seems that Western national leaders are championing the very protectionism that they once criticized. 2

Although a system of truly free world trade has never been perfected, past world leaders have eliminated most of the protectionist trade mechanisms that once ran rampant in the international economy. They did so by implementing multilateral and bilateral trade agreements. These webs of agreements have bolstered decades of support for free trade, or at least some version of it. By and large, tariff policies and other forms of protectionism were either eliminated or dramatically reduced. Now, as we have seen in the media, when a government imposes a tariff, it becomes a rather extreme political statement which sends a shockwave of significant global consequences.

Protectionism did not end when the age of overbearing tariff policies did, despite then-leaders’ best efforts to vilify it. Rather, the end of the tariff era forced nations to achieve protectionist goals through more subtle trade vehicles, like antitrust law.3 So, the recent resurgence of protectionist rhetoric should mean that these subtle trade vehicles, including antitrust law, will be relied on more heavily. It is a fear of many that antitrust law may become overused and inequitably applied to achieve and combat protectionist aims.

Notwithstanding the recent uptick in tariff threats, it is unlikely that all Western leaders will revamp or terminate the trade agreements set forth by their predecessors and bring back the kinds of tariff policies that once existed in their place. Although in the United States (“U.S.”), President Trump recently imposed tariffs on steel imports, it appears that his intent is to limit this behavior to a specific industry rather than institute a widespread policy favoring the use of tariffs generally.4 To remedy bad behavior in a specialized set of industries is not to instigate a global paradigm shift. This purpose is underscored by his use of the national security exemption, which is largely interpreted as being used for individual situations rather than general policy schemes.5 Many still hope that his course of action will be retracted and is merely a strong negotiation tactic. However, there is no doubt that Trump is far more comfortable than past leaders with subverting the status quo on trade relations.

Trump is not the only high-profile leader flirting with staunch protectionism. Western *leaders* in the E.U. appear to be growing more comfortable than their predecessors with considering similar policies. However, Western *lawmakers* themselves do not seem as persuaded by the statements of their leadership. The general sentiment among international policymakers is that there has been too much political wherewithal spent on loosening international trade barriers to take actions that could counteract that progress.6 Presidential actions taken because of dissatisfaction with current global trade relations aside, a complete overhaul of trade agreements may be too daunting and difficult a task, especially absent ample political support in legislative bodies.

Given the anticipated continuation of cooperative trade agreements and the proliferation of protectionist rhetoric as the new norm of public opinion, leaders will be forced to rely on existing avenues to meet protectionist aims. Again, we find ourselves relying squarely on antitrust law, the more subtle and widely accepted mechanism of restricting trade, to address perceived inequities. In the words of the World Trade Organization (“WTO”), “once formal trade barriers come down, other issues become more important.”7 Among the important issues lies antitrust law. Antitrust and competition laws can form a subtle trade barrier resulting in the imposition of tariff-like measures.

Antitrust law can be enforced to reach protectionist aims and to combat them. It is a tool that allows nations to achieve individual protectionist aims without undermining the future of trade between countries and the cooperative framework underpinning the relatively delicate global free trade enjoyed today. However, the perception of enforcement of antitrust laws as an abusive and solely protectionist mechanism may cause the death of even the smallest semblance of international free trade that remains in the international marketplace today.

#### Nuclear war.

Dr. Michael F. Oppenheimer 21. Clinical Professor at the Center for Global Affairs at New York University, Senior Consulting Fellow for Scenario Planning at the International Institute for Strategic Studies, Former Executive Vice President at The Futures Group, The Foreign Policy Roundtable at the Carnegie Council on Ethics and International Affairs, and The American Council on Germany, “The Turbulent Future of International Relations,” in The Future of Global Affairs: Managing Discontinuity, Disruption and Destruction, eds. Ankersen and Sidhu, p. 23-30.

Four structural forces will shape the future of International Relations: globalization (but without liberal rules, institutions, and leadership)1; multipolarity (the end of American hegemony and wider distribution of power among states and non-states2); the strengthening of distinctive, national and subnational identities, as persistent cultural differences are accentuated by the disruptive effects of Western style globalization (what Samuel Huntington called the “non-westernization of IR”3); and secular economic stagnation, a product of longer term global decline in birth rates combined with aging populations.4 These structural forces do not determine everything. Environmental events, global health challenges, internal political developments, policy mistakes, technology breakthroughs or failures, will intersect with structure to define our future. But these four structural forces will impact the way states behave, in the capacity of great powers to manage their differences, and to act collectively to settle, rather than exploit, the inevitable shocks of the next decade.

Some of these structural forces could be managed to promote prosperity and avoid war. Multipolarity (inherently more prone to conflict than other configurations of power, given coordination problems)5 plus globalization can work in a world of prosperity, convergent values, and effective conflict management. The Congress of Vienna system achieved relative peace in Europe over a hundred-year period through informal cooperation among multiple states sharing a fear of populist revolution. It ended decisively in 1914. Contemporary neoliberal institutionalists, such as John Ikenberry, accept multipolarity as our likely future, but are confident that globalization with liberal characteristics can be sustained without American hegemony, arguing that liberal values and practices have been fully accepted by states, global institutions, and private actors as imperative for growth and political legitimacy.6 Divergent values plus multipolarity can work, though at significantly lower levels of economic growth-in an autarchic world of isolated units, a world envisioned by the advocates of decoupling, including the current American president. 7 Divergent values plus globalization can be managed by hegemonic power, exemplified by the decade of the 1990s, when the Washington Consensus, imposed by American leverage exerted through the IMF and other U.S. dominated institutions, overrode national differences, but with real costs to those states undergoing “structural adjustment programs,”8 and ultimately at the cost of global growth, as states—especially in Asia—increased their savings to self insure against future financial crises.9

But all four forces operating simultaneously will produce a future of increasing internal polarization and cross border conflict, diminished economic growth and poverty alleviation, weakened global institutions and norms of behavior, and reduced collective capacity to confront emerging challenges of global warming, accelerating technology change, nuclear weapons innovation and proliferation. As in any effective scenario, this future is clearly visible to any keen observer. We have only to abolish wishful thinking and believe our own eyes.10

Secular Stagnation

This unbrave new world has been emerging for some time, as US power has declined relative to other states, especially China, global liberalism has failed to deliver on its promises, and totalitarian capitalism has proven effective in leveraging globalization for economic growth and political legitimacy while exploiting technology and the state’s coercive powers to maintain internal political control. But this new era was jumpstarted by the world financial crisis of 2007, which revealed the bankruptcy of unregulated market capitalism, weakened faith in US leadership, exacerbated economic deprivation and inequality around the world, ignited growing populism, and undermined international liberal institutions. The skewed distribution of wealth experienced in most developed countries, politically tolerated in periods of growth, became intolerable as growth rates declined. A combination of aging populations, accelerating technology, and global populism/nationalism promises to make this growth decline very difficult to reverse. What Larry Summers and other international political economists have come to call “secular stagnation” increases the likelihood that illiberal globalization, multipolarity, and rising nationalism will define our future. Summers11 has argued that the world is entering a long period of diminishing economic growth. He suggests that secular stagnation “may be the defining macroeconomic challenge of our times.” Julius Probst, in his recent assessment of Summers’ ideas, explains:

…rich countries are ageing as birth rates decline and people live longer. This has pushed down real interest rates because investors think these trends will mean they will make lower returns from investing in future, making them more willing to accept a lower return on government debt as a result.

Other factors that make investors similarly pessimistic include rising global inequality and the slowdown in productivity growth…

This decline in real interest rates matters because economists believe that to overcome an economic downturn, a central bank must drive down the real interest rate to a certain level to encourage more spending and investment… Because real interest rates are so low, Summers and his supporters believe that the rate required to reach full employment is so far into negative territory that it is effectively impossible.

…in the long run, more immigration might be a vital part of curing secular stagnation. Summers also heavily prescribes increased government spending, arguing that it might actually be more prudent than cutting back – especially if the money is spent on infrastructure, education and research and development.

Of course, governments in Europe and the US are instead trying to shut their doors to migrants. And austerity policies have taken their toll on infrastructure and public research. This looks set to ensure that the next recession will be particularly nasty when it comes… Unless governments change course radically, we could be in for a sobering period ahead.12

The rise of nationalism/populism is both cause and effect of this economic outlook. Lower growth will make every aspect of the liberal order more difficult to resuscitate post-Trump. Domestic politics will become more polarized and dysfunctional, as competition for diminishing resources intensifies. International collaboration, ad hoc or through institutions, will become politically toxic. Protectionism, in its multiple forms, will make economic recovery from “secular stagnation” a heavy lift, and the liberal hegemonic leadership and strong institutions that limited the damage of previous downturns, will be unavailable. A clear demonstration of this negative feedback loop is the economic damage being inflicted on the world by Trump’s trade war with China, which— despite the so-called phase one agreement—has predictably escalated from negotiating tactic to imbedded reality, with no end in sight. In a world already suffering from inadequate investment, the uncertainties generated by this confrontation will further curb the investments essential for future growth. Another demonstration of the intersection of structural forces is how populist-motivated controls on immigration (always a weakness in the hyper-globalization narrative) deprives developed countries of Summers’ recommended policy response to secular stagnation, which in a more open world would be a win-win for rich and poor countries alike, increasing wage rates and remittance revenues for the developing countries, replenishing the labor supply for rich countries experiencing low birth rates.

Illiberal Globalization

Economic weakness and rising nationalism (along with multipolarity) will not end globalization, but will profoundly alter its character and greatly reduce its economic and political benefits. Liberal global institutions, under American hegemony, have served multiple purposes, enabling states to improve the quality of international relations and more fully satisfy the needs of their citizens, and provide companies with the legal and institutional stability necessary to manage the inherent risks of global investment. But under present and future conditions these institutions will become the battlegrounds—and the victims—of geopolitical competition. The Trump Administration’s frontal attack on multilateralism is but the final nail in the coffin of the Bretton Woods system in trade and finance, which has been in slow but accelerating decline since the end of the Cold War. Future American leadership may embrace renewed collaboration in global trade and finance, macroeconomic management, environmental sustainability and the like, but repairing the damage requires the heroic assumption that America’s own identity has not been fundamentally altered by the Trump era (four years or eight matters here), and by the internal and global forces that enabled his rise. The fact will remain that a sizeable portion of the American electorate, and a monolithically pro- Trump Republican Party, is committed to an illiberal future. And even if the effects are transitory, the causes of weakening global collaboration are structural, not subject to the efforts of some hypothetical future US liberal leadership. It is clear that the US has lost respect among its rivals, and trust among its allies. While its economic and military capacity is still greatly superior to all others, its political dysfunction has diminished its ability to convert this wealth into effective power.13 It will furthermore operate in a future system of diffusing material power, diverging economic and political governance approaches, and rising nationalism. Trump has promoted these forces, but did not invent them, and future US Administrations will struggle to cope with them.

What will illiberal globalization look like? Consider recent events. The instruments of globalization have been weaponized by strong states in pursuit of their geopolitical objectives. This has turned the liberal argument on behalf of globalization on its head. Instead of interdependence as an unstoppable force pushing states toward collaboration and convergence around market-friendly domestic policies, states are exploiting interdependence to inflict harm on their adversaries, and even on their allies. The increasing interaction across national boundaries that globalization entails, now produces not harmonization and cooperation, but friction and escalating trade and investment disputes.14 The Trump Administration is in the lead here, but it is not alone. Trade and investment friction with China is the most obvious and damaging example, precipitated by China’s long failure to conform to the World Trade Organization (WTO) principles, now escalated by President Trump into a trade and currency war disturbingly reminiscent of the 1930s that Bretton Woods was designed to prevent. Financial sanctions against Iran, in violation of US obligations in the Joint Comprehensive Plan Of Action (JCPOA), is another example of the rule of law succumbing to geopolitical competition. Though more mercantilist in intent than geopolitical, US tariffs on steel and aluminum, and their threatened use in automotives, aimed at the EU, Canada, and Japan,15 are equally destructive of the liberal system and of future economic growth, imposed as they are by the author of that system, and will spread to others. And indeed, Japan has used export controls in its escalating conflict with South Korea16 (as did China in imposing controls on rare earth,17 and as the US has done as part of its trade war with China). Inward foreign direct investment restrictions are spreading. The vitality of the WTO is being sapped by its inability to complete the Doha Round, by the proliferation of bilateral and regional agreements, and now by the Trump Administration’s hold on appointments to WTO judicial panels. It should not surprise anyone if, during a second term, Trump formally withdrew the US from the WTO. At a minimum it will become a “dead letter regime.”18

As such measures gain traction, it will become clear to states—and to companies—that a global trading system more responsive to raw power than to law entails escalating risk and diminishing benefits. This will be the end of economic globalization, and its many benefits, as we know it. It represents nothing less than the subordination of economic globalization, a system which many thought obeyed its own logic, to an international politics of zero-sum power competition among multiple actors with divergent interests and values. The costs will be significant: Bloomberg Economics estimates that the cost in lost US GDP in 2019- dollar terms from the trade war with China has reached $134 billion to date and will rise to a total of $316 billion by the end of 2020.19 Economically, the just-in-time, maximally efficient world of global supply chains, driving down costs, incentivizing innovation, spreading investment, integrating new countries and populations into the global system, is being Balkanized. Bilateral and regional deals are proliferating, while global, nondiscriminatory trade agreements are at an end.

Economies of scale will shrink, incentivizing less investment, increasing costs and prices, compromising growth, marginalizing countries whose growth and poverty reduction depended on participation in global supply chains. A world already suffering from excess savings (in the corporate sector, among mostly Asian countries) will respond to heightened risk and uncertainty with further retrenchment. The problem is perfectly captured by Tim Boyle, CEO of Columbia Sportswear, whose supply chain runs through China, reacting to yet another ratcheting up of US tariffs on Chinese imports, most recently on consumer goods:

We move stuff around to take advantage of inexpensive labor. That’s why we’re in Bangladesh. That’s why we’re looking at Africa. We’re putting investment capital to work, to get a return for our shareholders. So, when we make a wager on investment, this is not Vegas. We have to have a reasonable expectation we can get a return. That’s predicated on the rule of law: where can we expect the laws to be enforced, and for the foreseeable future, the rules will be in place? That’s what America used to be.20

The international political effects will be equally damaging. The four structural forces act on each other to produce the more dangerous, less prosperous world projected here. Illiberal globalization represents geopolitical conflict by (at first) physically non-kinetic means. It arises from intensifying competition among powerful states with divergent interests and identities, but in its effects drives down growth and fuels increased nationalism/populism, which further contributes to conflict. Twenty-first-century protectionism represents bottom-up forces arising from economic disruption. But it is also a top-down phenomenon, representing a strategic effort by political leadership to reduce the constraints of interdependence on freedom of geopolitical action, in effect a precursor and enabler of war. This is the disturbing hypothesis of Daniel Drezner, argued in an important May 2019 piece in Reason, titled “Will Today’s Global Trade Wars Lead to World War Three,”21 which examines the pre- World War I period of heightened trade conflict, its contribution to the disaster that followed, and its parallels to the present:

Before the First World War started, powers great and small took a variety of steps to thwart the globalization of the 19th century. Each of these steps made it easier for the key combatants to conceive of a general war. We are beginning to see a similar approach to the globalization of the 21st century. One by one, the economic constraints on military aggression are eroding. And too many have forgotten—or never knew—how this played out a century ago.

…In many ways, 19th century globalization was a victim of its own success. Reduced tariffs and transport costs flooded Europe with inexpensive grains from Russia and the United States. The incomes of landowners in these countries suffered a serious hit, and the Long Depression that ran from 1873 until 1896 generated pressure on European governments to protect against cheap imports.

…The primary lesson to draw from the years before 1914 is not that economic interdependence was a weak constraint on military conflict. It is that, even in a globalized economy, governments can take protectionist actions to reduce their interdependence in anticipation of future wars. In retrospect, the 30 years of tariff hikes, trade wars, and currency conflicts that preceded 1914 were harbingers of the devastation to come. European governments did not necessarily want to ignite a war among the great powers. By reducing their interdependence, however, they made that option conceivable.

…the backlash to globalization that preceded the Great War seems to be reprised in the current moment. Indeed, there are ways in which the current moment is scarier than the pre-1914 era. Back then, the world’s hegemon, the United Kingdom, acted as a brake on economic closure. In 2019, the United States is the protectionist with its foot on the accelerator. The constraints of Sino-American interdependence—what economist Larry Summers once called “the financial balance of terror”—no longer look so binding. And there are far too many hot spots—the Korean peninsula, the South China Sea, Taiwan—where the kindling seems awfully dry.

### 2. 1NC---AT: Digital Authoritarianism

#### Plan doesn’t solve digital authoritarianism.

Casey Newton 18, Silicon Valley Editor, 11-1-2018, "Internet freedom continues to decline around the world, a new report says," Verge, https://www.theverge.com/2018/11/1/18050394/internet-freedom-report-2018-freedom-house-chertoff

Digital authoritarianism is on the rise, according to a new report from a group that monitors internet freedoms. Freedom House, a pro-democracy think tank, said today that governments are seeking more control over users’ data while also using laws nominally intended to address “fake news” to suppress dissent. It marked the eighth consecutive year that Freedom House found a decline in online freedoms around the world. “The clear emergent theme in this report is the growing recognition that the internet, once seen as a liberating technology, is increasingly being used to disrupt democracies as opposed to destabilizing dictatorships,” said Mike Abramowitz, president of Freedom House, in a call with reporters. “Propaganda and disinformation are increasingly poisoning the digital sphere, and authoritarians and populists are using the fight against fake news as a pretext to jail prominent journalists and social media critics, often through laws that criminalize the spread of false information.” In the United States, internet freedom declined in 2018 due to the Federal Communications Commission’s repeal of net neutrality rules. Other countries fared much worse — 17 out of 65 surveyed had adopted laws restricting online media. Of those, 13 prosecuted citizens for allegedly spreading false information. And more countries are accepting training and technology from China, which Freedom House describes as an effort to export a system of censorship and surveillance around the world. “PROPAGANDA AND DISINFORMATION ARE INCREASINGLY POISONING THE DIGITAL SPHERE, AND AUTHORITARIANS AND POPULISTS ARE USING THE FIGHT AGAINST FAKE NEWS AS A PRETEXT TO JAIL PROMINENT JOURNALISTS.” Of course, there are tradeoffs between freedom and security. The report is critical of Sri Lanka and India, which have periodically shut down or limited access to the internet in response to the outbreak of ethnic and religious conflict. In both cases, citizens were being murdered by mobs that had encountered misinformation spread through social media. “Cutting off internet service is a draconian response, particularly at a time when citizens may need it the most, whether to dispel rumors, check in with loved ones, or avoid dangerous areas,” said Adrian Shahbaz, research director for technology and democracy. “While deliberately falsified content is a genuine problem, some governments are increasingly using ‘fake news’ as a pretense to consolidate their control over information and suppress dissent.” The report also found: Governments in 18 countries increased state surveillance between June 2017 and now, with 15 considering new “data protection” laws, which can require companies to store user data locally and potentially make it easier for governments to access. Governments in 32 countries used paid commentators, bots, and trolls in an effort to manipulate online conversations. WhatsApp and other closed messaging apps are becoming more popular targets for manipulation, the authors write.

### 3. AT: Internet Freedom

#### No impact --- the internet will never entirely collapse because of mutual interests, there are alternative ways to prevent disease, and it empirically doesn’t solve their impacts

**Mnookin 12** Seth Mnookin teaches science writing at MIT and blogs at the Public Library of Science, Download the Universe, March 23, 2012, "The Frozen Future of Nonfiction", http://www.downloadtheuniverse.com/dtu/2012/03/why-the-net-matters-how-the-internet-will-save-civilization-by-david-eagleman-canongate-books-2010-for-ipad-by-set.html

At least, that’s what I assumed before I read Why The Net Matters, Eagleman’s frustrating 2010 e-book about how and why the Internet will save civilization. (I reviewed the $7.99 iPad version, which is the platform it was designed for; a stripped-down, text-based version is available on the Kindle for the portentous price of $6.66.) The problems start with Eagleman’s premise, which is so vague and broad as to be **practically** meaningless. There are, he writes, just “a handful of reasons” that civilizations collapse: “disease, poor information flow, natural disasters, political corruption, resource depletion and economic meltdown.” Lucky for us (and Eagleman does offer readers “[c]ongratulations on living in a fortuitous moment in history”), the technology that created the web “obviates many of the threats faced by our ancestors. In other words...[t]he advent of the internet represents a watershed moment in history that just might rescue our future.” On the other hand, it just might not: In order to make his point, Eagleman **either ignores or doesn’t bother to look** for any evidence that might undercut it. The first of six “random access” chapters that make up the bulk of Why The Net Matters is devoted to “Sidestepping Epidemics,” like the smallpox outbreak that helped bring down the Aztec Empire. In the future, Eagleman writes, the “protective net,” in the form of telemedicine, telepresence (“the ability to work remotely via computer”), and sophisticated information tracking, will save us from these outbreaks. That all sounds lovely, but what of the fact that we’re currently experiencing a resurgence in vaccine-preventable diseases such as measles...a resurgence which is fueled in no small part by misinformation spread over that very same “protective net”? A few chapters later, in a section celebrating the benefits of the hive mind, Eagleman invokes Soviet pseudoscientist Trofim Lysenko, a famed quack who took over the U.S.S.R.’s wheat production under Stalin. Because the Soviet Union spanned 13 time zones, Eagleman writes, “central rule-setting was disastrous for wheat production. … Part of the downfall of the USSR can be traced to this centralization of agricultural decisions.” That sounds nice, and might even be true—but it’s not a point that’s supported by Lysenko, whose main shortcoming was not that he believed in a one-size-fits-all approach; it was that he was a fraud. Moving to the present day, Eagleman addresses wildfires that swept through Southern California in 2007, which, he writes, “brought into relief the relationship between natural disasters and the internet.” At the beginning of the outbreak in October, Californians were glued to their television screens, hoping to determine if their own homes were in danger. But at some point they stopped watching the televisions and turned to other sources. A common suspicion arose that the news stations were most concerned with the fate of celebrity homes in Malibu and Hollywood; mansions that were consumed by the flames took up airtime in proportion to their square footage, which made for gripping video but a poor information source about which areas were in danger next. So people be­gan to post on Twitter, upload geotagged cell phone photos to Flickr, and update Facebook. I had been fairly obsessed with the wildfires, and since I didn’t remember this “common suspicion,” I decided to check the article Eagleman cites as the source of this info, which was a Wired blog post titled “Firsthand Reports from California Wildfires Pour Through Twitter.” It contained no references to a celebrity-obsessed news media; instead, the piece described how “the local media [was] overwhelmed.” It also talked about a San Diego resident who was “[a]cting as an ad hoc news aggregator of sorts” by “watching broadcast television news, listening to local radio reports and monitoring streaming video on the web” and then posting information, along with info gleaned from IMs, text messages, and e-mails, to his Twitter account.

#### Internet Freedom resilient

Jason Pielemeier 18, policy director of the Global Network Initiative, 7-9-2018, "Reports of the Death of Internet Freedom Are Greatly Exaggerated," Council on Foreign Relations, https://www.cfr.org/blog/reports-death-internet-freedom-are-greatly-exaggerated

In just under a decade, the narrative about the internet has shifted dramatically. What was once seen as a tool that would inevitably cripple corruption, topple dictators, and liberate minorities, the internet is now seen as a technology that enables surveillance, amplifies hate speech, and displaces labor. While the challenges are real and grave, it is worth carefully examining this fatalistic assessment, which obscures how much freedom remains online, and risks inviting steps that could imperil the internet’s enduring potential. Digital Policy Censorship and Freedom of Expression The internet evolved as an anomaly—government-funded research and development led to technology that found a perfect petri dish in which to flourish among tinkerers who wanted to share information. Eventually, commercial initiatives came along and expanded the audience by building out infrastructure, professionalizing services, and generating revenue. The internet’s commercial growth in the 1990s coincided with and was accelerated by an era of global deregulatory zeal, surplus capital, and geopolitical hubris. As a result, the internet became inexorably associated with the optimism of that moment in history. The mutually-reinforcing orthodoxies of free markets and free speech underlie the concept of “internet freedom,” which is often conflated with the U.S. government’s lauded and derided strategy of the same name. Today’s internet with rampant data collection, surveillance, and censorship may indeed seem grim when viewed from the idealistic perch of the 1990s. But from the perspective of today’s authoritarian regimes and information monopolists, the internet continues to present an ever-expanding threat surface. Bloggers continue to expose uncomfortable truths, journalists use encrypted apps to communicate with whistleblowers, entrepreneurs find ways to leapfrog legacy technology, and vulnerable minorities work around firewalls to seek and receive support across borders. While China presents an important counterpoint, the amount of resources and effort consistently invested by the Chinese Communist Party is unlikely to be feasible for most countries. One of the reasons internet freedom seems so imperiled is because it has been measured using an unrealistic baseline. Freedom House’s excellent, annual Freedom of the Net assessment is the most comprehensive yardstick. Using a broad set of indicators, it has repeatedly reported declining metrics for much of the world since 2011. But inherent in this methodology is an unrealistic assumption that it is feasible to return to the halcyon days of the early internet. A better baseline from which to assess freedom online is the relevant amount of freedom that is afforded online. From this perspective, what is remarkable is not how much freedom has been curtailed, but rather how much still remains. For example, comparing Freedom House’s internet freedom assessment to its similar Freedom of the Press Index reveals that twenty-one of the sixty-five countries in the former are assessed as “more free” online than they are on press freedom. Furthermore, no country is ranked less free on the internet index as they are in the press freedom one, indicating that countries assessed are freer online than they are in the press. The internet continues to provide opportunities for expression, access to information, and truth telling that simply do not exist offline in places like Angola, Kenya, and Malaysia. Furthermore, the steps governments take to protect or restrict rights online only tell part of the story. Companies also play important roles by enhancing or restricting access, pushing back on or facilitating government restrictions, and addressing or enabling harassment and other threats to users. Standard-setting bodies are underappreciated actors in this space, often operating with surprising degrees of autonomy from state actors and wielding enormous, if subtle, influence. Civil society educates users and organizes initiatives to address challenges, in addition to exposing and advocating against rights infringements. Looking across the landscape, tools like the Global Network Initiative’s Country Legal Frameworks, which document and allow comparison of relevant laws, complement Freedom of the Net, which assesses enforcement of those laws. Recent efforts to facilitate and bring rigor to such cross-indicator analysis, like UNESCO’s Internet Universality Indicators and Mozilla’s Internet Health Report, will allows activists, businesses and governments piece together a more holistic assessment of the state of internet freedom. There is a fine-line between complacency and fatalism. During the first two-decades of the internet’s growth, too much faith was put in the technology itself. Not enough was done to address challenges such as the spread of surveillance technologies, abuse of online platforms, and the general undermining of trust. As the United States, Europe, and platforms now work to devise solutions to these problems, they run a risk of unintentionally joining ranks with the malign forces who have been clamoring to stifle freedom online. Instead, they should work with NGOs and academics to establish better baselines and metrics to assess the internet’s true impact, as well as the kinds of actions that enable the good and mitigate the bad. Meanwhile, advocates for the open internet should acknowledge that regulation can help, while remaining vigilant to unintended consequences. Finally, all of these stakeholders should continue to forge coalitions like the Global Network Initiative that work across borders in support of flexible, focused, and rights-compliant efforts to improve freedom online.

## Advantage 2

### Turn --- FTC --- 1NC

#### FTC’s increasing enforcement in privacy now---it’s focused 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 enforcement saps up FTC resources and personnel, which are finite.

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.

#### That trades off with the necessary resources for privacy enforcement.

John O. McGinnis\* and Linda Sun\*\* 20. \*George C. Dix Professor, Northwestern University, and Associate-Designate, Wilmer Pickering Hale & Dorr LLP. “Unifying Antitrust Enforcement for the Digital Age.” Northwestern Public Law Research Paper No. 20-20. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3669087

The FTC needs more resources to adequately address the nation’s growing privacy concerns. Currently, the FTC oversees both consumer protection—encompassing privacy—and antitrust,249 making the FTC the chief federal agency on privacy policy and enforcement250 and the nation’s de-facto privacy agency.251 The agency has long-standing experience in enforcing privacy statutes252 and also has special privacy assets, such as an internet lab capable of high-quality tech forensics to track invasions of privacy.253 The FTC, however, has failed to keep pace with the massive growth of privacy concerns—a phenomenon also driven by modern technology. Very few Americans feel conﬁdent in the privacy of their information in the digital age.254 According to a 2019 study, over 80% of Americans feel that they have little to no control over the data collected on them by companies and the government.255 To adequately address privacy concerns, the FTC needs more resources.256 The agency has been explicit that it needs more manpower to police tech companies. In requesting increased funding from Congress, FTC Director Joseph Simons said the money would allow the agency to hire additional staff and bring more privacy cases.257 A former director of the FTC’s Bureau of Consumer Protection, which houses the privacy unit, has called the FTC “woefully understaffed.”258 As of the spring of 2019, the FTC had only forty employees dedicated to privacy and data security, compared to 500 and 110 employees at comparable agencies in the UK. and Ireland, respectively.259 Without more lawyers, investigators, and technologists, the FTC will be forced to conduct privacy investigations less thoroughly, and in some cases, forgo them altogether.260 Currently, the FT C’s resources are spread thin across multiple missions, to the detriment of its privacy efforts. Removing the agency’s antitrust responsibilities would reallocate resources from the antitrust department to its privacy unit and other areas of consumer protection. Further, it would free up the scarce time of the commissioners to oversee this essential effort.261

#### Unchecked algorithmic bias risks massive inequality and 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.”

### Soft Power --- 1NC

#### Soft power is useless.

Gray 11 – Dr. Colin S. Gray, International Politics and Strategic Studies Professor at the University of Reading. [Hard Power and Soft Power: The Utility of Military Force as an Instrument of Policy in the 21st Century, Strategic Studies Institute, https://www.files.ethz.ch/isn/128690/pub1059-1.pdf]

Unfortunately, although the concept of American soft power is true gold in theory, in practice it is not so valuable. Ironically, the empirical truth behind the attractive concept is just sufficient to mislead policymakers and grand strategists. Not only do Americans want to believe that the soft power of their civilization and culture is truly potent, we are all but programmed by our enculturation to assume that the American story and its values do and should have what amounts to missionary merit that ought to be universal. American culture is so powerful a programmer that it can be difficult for Americans to empathize with, or even understand, the somewhat different values and their implications held deeply abroad. The idea is popular, even possibly authoritative, among Americans that ours is not just an “ordinary country,” but instead is a country both exceptionally blessed (by divine intent) and, as a consequence, exceptionally obliged to lead Mankind. When national exceptionalism is not merely a proposition, but is more akin to an iconic item of faith, it is difficult for usually balanced American minds to consider the potential of their soft power without rose-tinted spectacles. And the problem is that they are somewhat correct. American values, broadly speaking “the American way,” to hazard a large project in reductionism, are indeed attractive beyond America’s frontiers and have some utility for U.S. policy. But there are serious limitations to the worth of the concept of soft power, especially as it might be thought of as an instrument of policy. To date, the idea of soft power has not been subjected to a sufficiently critical forensic examination. In particular, the relation of the soft power of attraction and persuasion to the hard power of coercion urgently requires more rigorous examination than it has received thus far.

When considered closely, the subject of soft power and its implications for the hard power of military force reveals a number of plausible working propositions that have noteworthy meaning for U.S. policy and strategy.

1. Hard military threat and use are more difficult to employ today than was the case in the past, in part because of the relatively recent growth in popular respect for universal humanitarian values. However, this greater difficulty does not mean that military force has lost its distinctive ability to secure some political decisions. The quality of justification required for the use of force has risen, which means that the policy domain for military relevance has diminished, but has by no means disappeared.

2. The political and other contexts for the use of force today do not offer authoritative guidance for the future. History is not reliably linear. To know the 2000s is not necessarily to know the 2010s.

3. The utility of military force is not a fixed metric value, either universally or for the United States. The utility of force varies with culture and circumstance, inter alia. It is not some free-floating objective calculable truth.

4. For both good and for ill, ethical codes are adapted and applied under the pressure of more or less stressful circumstances, and tend to be significantly situational in practice. This is simply the way things are and have always been. What a state licenses or tolerates by way of military behavior effected in its name depends to a degree on how desperate and determined are its policymakers and strategists.

5. War involves warfare, which means military force, which means violence that causes damage, injury, and death. Some of the debate on military force and its control fails to come to grips with the bloody reality, chaos, and friction that is in the very nature of warfare. Worthy and important efforts to limit conduct in warfare cannot avoid accepting the inherent nastiness of the subject. War may be necessary and it should be restrained in its conduct, but withal it is by definition illiberally violent behavior.

6. By and large, soft power should not be thought of as an instrument of policy. America is what it is, and the ability of Washington to project its favored “narrative(s)” is heavily constrained. Cultural diplomacy and the like are hugely mortgaged by foreigners’ own assessments of their interests. And a notable dimension of culture is local, which means that efforts to project American ways risk fueling “blow-back.”

7. Soft power cannot sensibly be regarded as a substantial alternative to hard military power. Familiarity with the concept alone encourages the fallacy that hard and soft power have roughly equivalent weight and utility. An illusion of broad policy choice is thus fostered, when in fact effective choices are severely constrained.

8. An important inherent weakness of soft power as an instrument of policy is that it utterly depends upon the uncoerced choices of foreigners. Sometimes their preferences will be compatible with ours, but scarcely less often they will not be. Interests and cultures do differ.

9. Soft power tends to be either so easy to exercise that it is probably in little need of a policy push, being essentially preexistent, or too difficult to achieve because local interests, or culture, or both, deny it political traction.

10. Hard and soft power should be complementary, though often they are not entirely so. U.S. national style, reflecting the full array of American values as a hegemonic power, has been known to give some cultural and hence political offense abroad, even among objective allies and other friends. Whereas competent strategy enables hard military power to be all, or most of what it can be, soft power does not lend itself readily to strategic direction.

11. Provided the different natures of hard and soft power are understood—the critical distinguishing factor being coercion versus attraction—it is appropriate to regard the two kinds of power as mutual enablers. However, theirs is an unequal relationship. The greater attractiveness of soft power is more than offset in political utility by its inherent unsuitability for policy direction and control.

#### 3. Single instances of action do not change international perceptions of the US.

Fettweis 8 (Christopher – professor of political science at Tulane, Credibility and the War on Terror, Political Science Quarterly, Winter)

Since Vietnam, scholars have been generally unable to identify cases in which high credibility helped the United States achieve its goals. The shortterm aftermath of the Cuban Missile Crisis, for example, did not include a string of Soviet reversals, or the kind of benign bandwagoning with the West that deterrence theorists would have expected. In fact, the perceived reversal in Cuba seemed to harden Soviet resolve. As the crisis was drawing to a close, Soviet diplomat Vasily Kuznetsov angrily told his counterpart, "You Americans will never be able to do this to us again."37 Kissinger commented in his memoirs that "the Soviet Union thereupon launched itself on a determined, systematic, and long-term program of expanding all categories of its military power .... The 1962 Cuban crisis was thus a historic turning point-but not for the reason some Americans complacently supposed."38 The reassertion of the credibility of the United States, which was done at the brink of nuclear war, had few long-lasting benefits. The Soviets seemed to learn the wrong lesson. There is actually scant evidence that other states ever learn the right lessons. Cold War history contains little reason to believe that the credibility of the superpowers had very much effect on their ability to influence others. Over the last decade, a series of major scholarly studies have cast further doubt upon the fundamental assumption of interdependence across foreign policy actions. Employing methods borrowed from social psychology rather than the economics-based models commonly employed by deterrence theorists, Jonathan Mercer argued that threats are far more independent than is commonly believed and, therefore, that reputations are not likely to be formed on the basis of individual actions.39 While policymakers may feel that their decisions send messages about their basic dispositions to others, most of the evidence from social psychology suggests otherwise. Groups tend to interpret the actions of their rivals as situational, dependent upon the constraints of place and time. Therefore, they are not likely to form lasting impressions of irresolution from single, independent

**AT: Scamming**

1. **No scammers impact.**

**Pinker 18** Steven Arthur Pinker is a Canadian-American cognitive psychologist, Professor at Harvard University. [Enlightenment Now: The Case for Reason, Science, Humanism, and Progress, Viking, Penguin Group]

Serious threats to the integrity of a country’s infrastructure are likely to require the **resources of a state**. 50 Software hacking is **not enough**; the hacker needs **detailed knowledge** about the **physical construction** of the systems he hopes to sabotage. When the Iranian nuclear centrifuges were compromised in 2010 by the Stuxnet worm, it required a coordinated effort by two technologically sophisticated nations, the United States **and** Israel. State-based cyber-sabotage escalates the malevolence from terrorism to a kind of warfare, where the constraints of international relations, such as norms, treaties, sanctions, retaliation, and military deterrence, inhibit aggressive attacks, as they do in conventional “kinetic” warfare. As we saw in chapter 11, these constraints have become increasingly effective at preventing interstate war. Nonetheless, American military officials have warned of a “digital Pearl Harbor” and a “Cyber-Armageddon” in which foreign states or sophisticated terrorist organizations would hack into American sites to crash planes, open floodgates, melt down nuclear power plants, black out power grids, and take down the financial system. Most cybersecurity experts consider the threats to be inflated—a pretext for more military funding, power, and restrictions on Internet privacy and freedom.51 The reality is that so far, not a single person has ever been injured by a cyberattack. The strikes have **mostly been nuisances** such as doxing, namely leaking confidential documents or e-mail (as in the Russian meddling in the 2016 American election), and distributed denial-of-service attacks, where a botnet (an array of hacked computers) floods a site with traffic. Schneier explains, “A real-world comparison might be if an army invaded a country, then **all got in line** in front of people at the **D**epartment of **M**otor **V**ehicles so they couldn’t renew their licenses. If that’s what war looks like in the 21st century, **we have little to fear**.”52

### Emerging Tech

#### Tech fear mongering is always wrong

Brad Allenby, December 2015. Lincoln Professor of Engineering and Ethics; President’s Professor of Civil, Environmental, and Sustainable Engineering, and of Law; and founding chair of the Consortium for Emerging Technologies, Military Operations and National Security at Arizona State University. “Emerging technologies and the future of humanity.” Bulletin of the Atomic Scientists 71(6): 29-38. Emory Libraries.

Although it was not clear at the time, Bill Joy’s article warning of the dangers of emerging technologies was to spawn a veritable “dystopia industry.” More recent contributions have tended to focus on artificial intelligence, or AI; electric car and space technology entrepreneur Elon Musk has warned that AI is “summoning the demon” (Mack, 2015), while physicist Stephen Hawking has argued that “the development of full artificial intelligence could spell the end of the human race” (Cellan-Jones, 2014). The Future of Life Institute (2015) recently released an open letter signed by many scientific and research notables urging a ban on “offensive autonomous weapons beyond meaningful human control.” Meanwhile, the UN holds conferences and European activists mount campaigns against what they characterize as “killer robots” (see, e.g., Human Rights Watch, 2012). Headlines reinforce a sense of existential crisis; in the military and security domain, cyber conflict runs rampant, with hackers accessing millions of US personnel records, including sensitive security clearance documents. Technologies such as uncrewed aerial vehicles, commonly referred to as “drones,” are highly contentious in both civil and conflict environments, for many different reasons. A recent US Army Research Laboratory report foresees genetically and technologically enhanced soldiers networked with their battlespace robotic partners and remarks that “the presence of super humans on the battlefield in the 2050 timeframe is highly likely because the various components needed to enable this development already exist and are undergoing rapid evolution” (Kott et al., 2015: 19). How is one to think about this outpouring of analysis, hypothesis, events, and existential angst? A useful first step is to realize that there are three levels to such discussions of technology.2 Level I is the instrumental level: a gun shoots a bullet and kills someone; a watch is used to tell time; a vaccine is used to prime an individual’s immune system to protect against a disease. Level II is the systems level: an uncrewed aerial vehicle conducting surveillance is part of a battlefield intelligence system; watches function in a globally standardized time system that was only institutionalized in the United States by an act of Congress in 1918; vaccinations are part of a public health system. Level III, the effect of a technology on individual psychology, society and culture, economic patterns, geopolitical status, and other Earth systems, is unpredictable and uncertain. One of the major drivers for standardized time, for example, was railroad technology, which was certainly not foreseen by those who first began developing steam locomotives. It is important to remember, however, that even if the specifics of Level III impacts cannot be predicted a priori, they will occur. Level I effects are usually not difficult to figure out: They are the reasons that a technology is commercialized. For example, the Level I effect of a bomb-dismantling robot is clear: It helps save the lives of soldiers who would otherwise have to be doing that job. Level II effects can be more complex and may point in different directions than first-order effects. A robotic hummingbird surveillance device may have entirely beneficial effects if used in counterinsurgency, because it can improve targeting and thus reduce collateral damage (Level I effect). But if the same technology becomes widely available to political parties and divorce lawyers, it could have very negative effects on privacy and public discourse (a Level II effect). And, hypothetically, robotic bugs and hummingbirds, combined with data-mining software and massive databases, could become important tools of techno-totalitarian elites, a possible, but hypothetical, Level III effect. This distinction among Level I, Level II, and Level III is useful because much of the confusion regarding emerging technologies comes from conflating relatively predictable Level I aspects of an emerging technology with highly unpredictable Level III hypotheticals, and treating them as equally valid insights into future technological trajectories. Not so. A concern about the use of drones to attack human targets in countries that are not participants in a conflict is qualitatively different than polemics against “killer robots,” and while conflating the two for purposes of argumentation may be effective, it is profoundly misleading. We have historical and operational data that enable us to evaluate the former; we don’t even know what a “killer robot” really is, except as an evocative term, and virtually no idea what would happen if such technologies became widespread in the real world. An analogous analytical mistake occurs when a particular use of a technology is treated as if it were separable from the technology itself. A medical advance in computer-brain interfaces in prosthetics, for example, is the same technology that might be used in the near future to directly connect a soldier to a remote weapons system. Any effort to ban “military AI” will fail because “military AI” is not a relevant technology category; rather, it is the advance of the underlying technology as a whole that ensures at some point that AI will be integrated into military devices. (Notably and presumably unintentionally, the proselytizing against “military AI” fails to admit that such a policy implicitly favors powers, such as Russia and ISIS, that are operating under doctrines of asymmetric warfare that privilege non-traditional tactics, technologies, and conflict.) It is precisely this confusion that one notes in the language used in many of the comments on and critiques of emerging technologies, including some of the examples given above. It is not so much a question of whether these popular dystopian visions are accurate predictions: They almost certainly are not, because the ability to predict the future paths and implications of complex and powerful technology systems is simply nonexistent. Level I assertions of knowledge are being extended to inherently unpredictable Level III systems without understanding that an important conceptual shark has been jumped. But it is useful to explore the assumptions underneath the current rage for dystopian visions of emerging technologies, which are not as implausible as some have suggested. To reduce such confusion, let me be clear from the beginning. Because much recent commentary regarding emerging technologies is generic and apocalyptic, that is what this essay will focus on. In other words, I will not concern myself with whether a particular weapon system, or smart phone app, or cyber worm, or AI tool is good or bad or competitively successful, a Level I question. Nor will I address the foreseeable Level II effects, an analysis which, as in the case of Level I, would focus on particular technological artifacts or applications and their systemic effects. Rather, since apocalyptic tends to be Level III stuff, that’s where we’ll go. Emerging technologies as an Earth system The first question to ask about emerging technologies is deceptively simple: Is today really that different? Is there something about today’s emerging technologies—which for purposes of this analysis include nanotechnology, biotechnology, information and communication technology (ICT), robotics, applied cognitive science, humtech (design and engineering of the human as a foundational emerging technology), and their various combinations and permutations—that is qualitatively different from those that characterized other eras of technological change? If there isn’t, much of today’s dramatic language can be understood as simply a reflection of the emphasis that all humans give to the particular era and landscape and culture within which they exist. Each generation tends to overemphasize the degree of change that it experiences, partly because of the immediacy of the stresses to which it is exposed, and partly because it is easy to underestimate how difficult and unpredictable life was in the past**,** since when one looks back at history it seems to flow logically and necessarily. Indeed, apocalyptic fears have been common when many major technology systems first emerged because of this immediacy, even as subsequent generations grew to view the technology as banal, even boring. In the early days of railroads, for example, there was a widespread belief that traveling at the heretofore unimaginable speed of 25 miles per hour would kill the passengers, in part because such technology was against the obvious will of God. As an Ohio school board put it, If God had designed that His intelligent creatures should travel at the frightful speed of 15 miles an hour by steam, He would have foretold it through His holy prophets. It is a device of Satan to lead immortal souls down to Hell. (Nye, 1994: 57)3 In this case, however, a strong argument can be made that emerging technologies today are different not just in degree, but in kind, from those of the past. To begin with, the scope, scale, and speed of technological change are unprecedented. Where previous waves of technological change have involved a few core technologies, such as railroads or electrification, today technological evolution is occurring across the entire technological frontier. Partially as a result of such technologies rippling across a population of seven billion people, we now live on a terraformed planet, the first world we know of anywhere that has been shaped by the deliberate activities of a single species. That is not a discontinuous process, but it is qualitatively new. Moreover, as the discussion of the engineered warrior of 2050 suggests, the human itself has become a design space. It is certainly true that people have always changed themselves in many ways, from consuming intoxicants of all kinds, to medicine, to education, but there is little question that the direct interventions that are now possible, combined with accelerating advances in fields such as neuroscience, genetics and molecular biology, and prosthetics, make virtually all aspects of the human, including cognitive and psychological domains, potentially subject to design. That the designer is not just engineering external systems, but him- or herself, adds a degree of reflexivity, nonlinearity, and complexity that makes simple predictions about particular technologies tangential and irrelevant at best. It is worth emphasizing in passing that the argument that humans are at risk from emerging technologies is in an important sense circular. Humans are increasingly both designer and designed; they are, in other words, increasingly an emerging technology in their own right. People are many things, but they are now, and certainly will be in the future, a design project. Thus, in a meaningful way the argument that people are at risk from emerging technologies becomes the argument that emerging technologies are at risk from emerging technologies, which makes little sense, and isn’t very helpful analytically, or in guiding policy or practice. Additionally, technological evolution is accelerating, which has significant implications. Past rates of technological change were slow enough that psychological, social, and institutional adjustments were possible, but today technology changes so rapidly that technology systems decouple from governance mechanisms of all kinds. All these factors, operating together, synergistically increase the impact, speed, and depth of change. Any technology potent enough to be interesting will inevitably destabilize existing institutions, power relationships, social structures, reigning economic and technological systems, and cultural assumptions. Previous waves of technological change—from steam and coal, to electricity, to rail and automotive technologies—have destabilized and restructured human and natural systems at all scales, interacting unpredictably with contemporary natural, human, and built systems. Railroads, for example, opened up continental interiors, creating the underlying transportation infrastructure necessary to support industrialized agriculture, which, coupled to advances in production of artificial fertilizers and innovation in farm machinery, created the potential for dramatic increases in global human population. It also dramatically changed ecologies and landscapes; the American Midwest is an agricultural breadbasket, not a large swamp, because railroads provided the link between that farming region and the demand of the East Coast and, via steamship, Europe. The Earth’s atmosphere has been in part restructured by development of internal combustion engine technology coupled to a psychologically potent automotive technology, which is in turn based on a massive fossil fuel infrastructure. Proposals to address climate change through so-called “geoengineering technologies,” from designing the atmosphere to reflect incoming sunlight to deploying devices that capture carbon dioxide in the atmosphere, are explicitly intended to engineer major natural systems and cycles. In short, major new technologies are not just about artifacts; rather, they represent an unpredictable, sometimes apparently discontinuous, shift in the structure of integrated Earth systems. Moreover, these shifts are not predictable a priori; railroads, for example, required new systems of time, of communication, and, more subtly, of finance and of corporate management. Development of a mass consumption economy, with washing machines from new merchandising giants and cars from Detroit, required innovation in the development of consumer credit, and massive coupled innovation in everything from road systems to supply-chain management. Widespread consumer credit, in turn, generated an ability to consume, and a concomitant quality of life, that was beyond imagining for those generations of humans that lived prior to the 20th century. It is thus highly likely that the first implicit assumption of the dystopian perspective is correct: Things are indeed different today, and the difference is fundamental and qualitative, not simply one of degree. Emerging technologies are making everything from individual molecules, to the human, to the planet itself, design spaces. Moreover, it is also likely that technological evolution, and all the concomitant changes in coupled institutional, social, economic, and cultural systems, will be more challenging and complex than anything humans have yet experienced. The remaining two issues, then, are: First, what can we do about it; and second, is this the end of humanity? What can we do about it? Precisely because new technologies are disruptive, they inevitably call forth opposition, both by conservative social forces and by threatened economic interests. Historical examples abound. With railroad technology, for example, conservative states such as the Austro-Hungarian Empire and Russia resisted rapid deployment, in part because it was feared that railroads might create social unrest in the still somewhat feudal and highly stratified cultures that characterized such countries; the French held back because of concerns it would destroy rural culture. The predictable result was that modernizing states that realized the commercial and military potential of railroad technology, such as Prussia, rapidly overtook the laggards in building rail infrastructure, with an eventual shift in geopolitical stature. In the United States, railroads were bitterly opposed by river transportation interests; in fact, Abraham Lincoln, when still a practicing lawyer, argued and won the seminal case for the Rock Island Railroad.4 (River shippers at the time were arguing that any railroad bridge over a river was an unlawful obstruction of commerce; had they been successful, railroads would have been limited to operating between rivers and streams, but not crossing them.) A more recent example is provided by the thousands of people sued by the Recording Industry Association of America in its vain effort to defend a technologically obsolete business model for the distribution of music. There are plenty of reasons, in other words, why emerging technologies might be regarded as dangerous and disruptive, and thus worth stifling. History, however, indicates that while local opposition can be successful, it will not halt the evolution of technology. Consider, for example, the Japanese attempt to limit gunpowder technology to preserve traditional Samurai culture; successful in the short term, it left Japan open to subjugation by Western naval forces with gunpowder technology. Similarly, environmentalists and governments in Europe have aggressively opposed genetic engineering (GMOs, or “genetically modified organisms”) in agriculture. Outside Europe, however, GMO technology has been one of the most rapidly adopted agricultural technologies in history. Efforts to regulate the proliferation of nuclear weapon technology have been somewhat successful, but it appears unrealistic to assume that the technology can be uninvented. Especially given today’s globalized culture, and the strategic and military advantages that emerging technologies can provide, it is highly unlikely that meaningful constraints on technological evolution, whether derived from cultural, competitive, or religious foundations, will be successful. That is particularly true as all players in the global Great Game understand that leadership in science and technology domains is a necessary, if not sufficient, prerequisite for dominance. Moreover, given the complexity of many emerging technology systems, especially as they co-evolve with other natural, built, and human systems, it is unfortunately also likely that projecting their effects and evolutionary paths before they are actually adopted and become embedded in their social and cultural context is not just hard, but for all practical purposes impossible. One can, and should, generate scenarios. But exhortations that purport to elevate hypotheticals to predictions and implications of certainty about future states are misplaced. In short, there is no certainty, and the genie is well and truly out of the bottle. However, that doesn’t necessarily imply that we can’t modulate future technological evolution, but that the way we think about it today may be too simple, and our institutions too slow and maladaptive, to be up to the task. Beyond simplistic dystopianism This analysis suggests that, as dystopians might argue, emerging technologies are indeed potent, and that, especially as the human is becoming an active design space, if AI doesn’t destroy humanity, something will. But this is a grossly incomplete perspective. Humanity, as it appears at any particular time, is always doomed. Foragers and hunter-gatherers were doomed, as were the serfs of medieval Europe with their small plots and lives lived within a radius of a few miles of where they were born. And so, in our turn, are we. Doom is, in other words, evolution, and it is unlikely that we will stop it—or, really, that we should want to. In fact, the images that we cling to, personally and institutionally and culturally, are already obsolete. The ethics and values that we insist we will impose on the future are not only historically and culturally contingent, but already obsolete as well. We want the physical and cultural landscape we live in now to propagate into tomorrow, because we all unconsciously privilege the present, but that is not how complex systems work. They evolve, and indeed our world is evolving at a remarkable and accelerating clip. The fallacy of the dystopians, then, is not in their analysis of the power of technology, or the accelerating and destabilizing rates of change. The fallacy is in equating evolution with dystopia, and, without admitting it, privileging the present over the promise and inevitability of the future. What is at risk is the limited mental model of “human” that all of us carry with us, not “humans” as an ongoing process. This is actually a common category mistake in modern discourse: Sustainability advocates and environmental activists often claim that “the planet is at risk,” but of course it is not. The planet is a large mass of rock and a film of various carbon compounds, and that is not at risk at all. What is at risk is a particular mental model of what the world should look like, a constructed snapshot. That does not mean that there aren’t many environmental issues that require attention; of course there are. But, as in the case of the emerging technology discourse, it does mean that existential catastrophe language is not only invalid, but can actually prevent seeking constructive adaptations to accelerating change. Our only recourse is neither technological fatalism nor ethical relativism. It is true that we have not yet appreciated, much less begun to respond to, the challenge of a future that will indeed be more complex and difficult than anything we have experienced as a species. Nonetheless, we can already identify several important principles. For example, we need to stop thinking of “problems” with “solutions,” and think more in terms of “conditions” that will require long-term, adaptive management. Challenges such as ISIS and climate change will not be solved, but they can and must be managed in light of other relevant goals. In this, the experience with nuclear weapons is instructive: They are not a problem that can be unmade, but they are a condition that can be, and has so far been, relatively successfully managed.

We also need to focus on creating option spaces—portfolios of social, institutional, and technological choices that can be adaptively and flexibly deployed in complex environments. Similarly, we need to play with scenarios: If dystopian pronouncements are instead taken as scenarios—“What would you do if…?”—they are far more useful and informative than suggestions of doom. Socially and institutionally, we need to become more agile and adaptive. This is uncomfortable for many, because it implies a degree of contingency and uncertainty, but that is precisely why such skills are necessary. The rate of technological change is unforgiving and has already decoupled to a large extent from traditional governance mechanisms. So we need to develop new ones. Individually, we need to become far more humble about our ability to visualize and prognosticate on a complex and dynamic future. Cautionary scenarios and hypotheticals are welcome exercises in practicing to adjust to the unknowable that lies in front of us, but they are not appropriate foundations for policy or legal action in the present. Nightmares are seldom reality, and when bad things do happen they are seldom the ones we thought about. Fear and anger in the face of change are popular responses—witness the rise of far right and far left factions, and fundamentalisms of all stripes, around the world—but they are maladaptive, and those in responsible positions at least cannot afford such luxuries.

# 2NC vs JCCC BB

## T-Prohibit

### Circumvention --- 2NC

#### Independently, behavioral remedies incentivize circumvention---decks AFF solvency

Carrie C. Mahan 19. Partner at Weil, Gotshal & Manges LLP, with Natalie M Hayes, associate at Weil, Gotshal & Manges LLP. “MERGER REMEDIES GUIDE SECOND EDITION,” eds. Ronan P Harty & Nathan Kiratzis. https://www.weil.com/~/media/files/pdfs/2019/nonstructural-remedies.pdf

Criticisms

While non-structural relief can help agencies preserve the procompetitive benefits of a trans- action while protecting against the risk of potential competitive harm, conduct remedies are still vulnerable to criticism. In contrast to structural remedies, which are generally ‘simple, relatively easy to administer, and sure’ to preserve competition,46 behavioural remedies raise various concerns,47 including the following:

• They are difficult to draft and clearly define. The agencies acknowledge that when design- ing conduct remedies, ‘displacing the competitive decision-making process widely in an industry, or even for a firm, is undesirable.’48 Accordingly, ‘effective conduct remedies are tailored as precisely as possible to the competitive harms associated with the merger to avoid unnecessary entanglements with the competitive process.’49 This can be easier said than done; however, because ‘the behavior that such remedies seek to prohibit or require is often difficult to fully specify.’50 It may also be challenging to determine the appropriate duration of a conduct remedy given the difficulty in assessing how long it will take new entry or expansion to occur.

• The outcomes are uncertain. It is no easy task to design a conduct remedy that will appro- priately replicate the competitive dynamics of a particular market. Even when well-crafted, conduct remedies ultimately set static rules that do not fully account for changes in the market. Thus, conduct remedies may eventually distort the market because they may restrict the merged firm from engaging in conduct that would be pro-competitive as the market changes.51

• They may incentivise circumvention. In addition to potentially being overly intrusive or burdensome, conduct remedies ‘attempt[ ] to require a merged firm to operate in a manner inconsistent with its own profit-maximizing incentives’.52 Imposing such restrictions does not eliminate the firm’s incentive to pursue profit. Instead, such restrictions may introduce incentives for non-compliance, and conduct remedies are easier to circumvent than struc- tural remedies.53

• They are expensive and difficult to monitor or enforce. Conduct remedies ‘tend to entangle the Division and the courts in the operation of a market on an ongoing basis’.54 They require continued monitoring and are challenging to enforce, particularly requirements such as non-discrimination clauses and information firewalls.55 Unfortunately, the agencies may not always have the tools or resources to do so effectively. Therefore, a prominent criticism of conduct relief is that it imposes direct and potentially substantial costs upon the govern- ment and the public.56

### AT: We Meet --- General --- 2NC

#### The plan’s contingent on the effects in each individual case. That’s distinct.

Kevin Boyle & Hurst Hannum 74, Boyle is Barrister at Law at Queen’s University of Belfast; Hannum is a member of the California Bar, “Individual Applications Under the European Convention on Human Rights and the Concept of Administrative Practice: The Donnelly Case,” The American Journal of International Law, vol. 68, no. 3, American Society of International Law, 1974, pp. 440–453

In reply, the respondent government argued that the “administrative practices” exception developed by the Commission in relation to interstate cases could not in any circumstances apply to an individual application under Article 25. They submitted that it applied only where an application raised a general issue, distinct from its effects on individuals, and that an individual was incompetent to raise such general issues under Article 25.52 While denying generally that any violation of Article 3 had occurred, the respondent government maintained that, if violations did occur, adequate and effective remedies existed within domestic United Kingdom law which had not been exhausted by the individual applicants.

#### Requirements that firms act in a certain way are behavioral remedies---that describes the Aff.

Lisl Dunlop 18. Partner in the New York office and co- chair of the firm’s antitrust and competition practice group of Manatt, Phelps & Phillips, September 2018. “Current Themes in U.S. Merger Control.” https://www.manatt.com/getattachment/311dc3d1-8754-447e-91d2-01bbead87763/attachment.aspx

Two related themes that have emerged over the past year are an increased hostility toward remedies that result in ongoing supervision or monitoring by the agencies (known as “behavioral” remedies) and a sharper focus on vertical merger enforcement. The two are closely related in that the typical “fix” for competition concerns in vertical transactions is often a behavioral remedy—the imposition of requirements that the merged firm act in a certain way after consummation of the transaction, such as an obligation to continue to give access to competitors. In the absence of such a resolution, the agencies are faced with a decision to permit the transaction to proceed, look for a structural solution or challenge the transaction in its entirety.

#### Those aren’t prohibitions---only structural remedies meet the violation.

John E. Kwoka 12. Neal F. Finnegan Professor of Economics, Northeastern University, with Diana L. Moss, Vice President and Director, American Antitrust Institute. “Behavioral merger remedies: Evaluation and implications for antitrust enforcement.” THE ANTITRUST BULLETIN: Vol. 57, No. 4/Winter 2012. ProQuest.

C. Preference for structural remedies in the United States and other major jurisdictions

As noted, the 2004 Remedies Guide expressed a clear preference for structural remedies, citing “speed, certainty, cost, and efficacy” as key factors by which the potential effectiveness of a remedy should be measured.19 By way of explanation, the 2004 Remedies Guide stated that structural remedies were preferred to behavioral remedies because “they are relatively clean and certain, and generally avoid costly government entanglement in the market. A carefully crafted divestiture decree is ‘simple, relatively easy to administer, and sure’ to preserve competition.”20 This preference for structural remedies was illustrated in countless merger cases both before and after issuance of the 2004 Remedies Guide.

In this approach, U.S. policy was consistent with the enforcement posture in Canada, the European Union, the UK, and Canada. In 2001, the European Commission stated:

Commitments that are structural in nature, such as the commitment to sell a subsidiary, are, as a rule, preferable from the point of view of the [Merger] Regulation’s objective, inasmuch as such a commitment pre- vents the creation or strengthening of a dominant position previously identified by the [European] Commission and does not, moreover, require medium or long-term monitoring measures.2

The UK Competition Commission expressed a similar preference in 2008 in this way:

In merger inquiries, the [Competition Commission] will generally prefer structural remedies, such as divestiture or prohibition, rather than behav- ioral remedies because: (a) structural remedies are likely to deal with [a substantial lessening of competition] and its resulting adverse effects directly and comprehensively at source by restoring rivalry; (b) behavioral remedies may not have an effective impact on the [substantial lessening of competition] and its resulting adverse effects, and may create significant costly distortions in market outcomes; and (c) structural remedies do not normally require monitoring and enforcement once implemented.22

#### The plan bans ‘doing x in a way that causes effect y’---that means the object of the prohibition is effect y, NOT practice x.

Andriani Kalintiri 20, Lecturer in Competition Law at King's College London, “Analytical Shortcuts in EU Competition Enforcement: Proxies, Premises, and Presumptions,” Jnl of Competition Law & Economics (2020) 16(3): 392-433, Lexis

Normative and economic premises provide policymakers and adjudicators with valuable analytical shortcuts, insofar as they relieve them of the need to establish the merits of the entailed generalizations every single time they interpret and apply the competition rules. This is important in view of the far-reaching implications that the employed premises may have for competition enforcement.

Firstly, normative assertions and economic propositions are what gives shape to the otherwise vague letter of the antitrust and merger provisions. Arguably, those provisions do not immediately reveal what is prohibited and are in need of elaboration to become operational. In this process, varying perceptions about the goals of the discipline may completely shift the focus of the analysis. 45 For example, if competition law is to be enforced with a view to protecting small- and medium-sized enterprises or employment-as opposed or in addition to, say, promoting consumer welfare-then different effects in the market may become relevant. 46 On the other hand, economic premises about the procompetitive or anticompetitive nature of the conduct at hand typically inform the choice between the application of a 'rule' or a 'standard'. 47 The prohibition, for instance, of cartels as 'by object' violations of antitrust law rests on the economic premise that conduct of this kind lacks any efficiency justification and thus a rule of prima facie illegality is not liable to chill procompetitive behaviour. 48 Conversely, the treatment of quantity rebates as prima facie lawful is grounded in the idea that this type of discount reflects the cost savings achieved by the undertaking in question. 49 In the same vein, the 'by effect' analysis of exclusive dealing under Article 101(1) TFEU is explained by the economic insight that behaviour of this kind may entail efficiencies. 50 Accordingly, normative and economic premises are instrumental in the construction of competition law.

It is worth noting at this point that in the EU the 'by object' test has been occasionally portrayed as a presumption of actual or likely anticompetitive effects. Arguably, the language employed by the EU Courts is partly to blame for this. 51 In Cartes Bancaires, for instance, the Court of Justice explained that 'certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, may be considered so likely to have negative effects ( ... ), that it may be considered redundant ( ... ) to prove that they have actual effects on the market', since 'experience shows that such behaviour leads to falls in production and price increases, resulting in poor allocation of resources to the detriment, in particular, of consumers'. 52 This wording though is confusing, insofar as it may create the misimpression that a finding of 'by object' violation rests on a presumption-in the technical sense of the word-of the existence of actual or likely anticompetitive effects in the circumstances at hand. Considering that presumptions shift the burden of proof, in this case it should be open to undertakings to challenge such a finding by showing that their cartel agreement, for instance, was never implemented or that the presumed negative effects are unlikely to occur. Nevertheless, the EU Courts' jurisprudence demonstrates that such arguments may not reverse a finding of 'by object' liability. 53 Consequently, to speak of a presumption of actual or likely anticompetitive effects is incorrect.

Secondly, premises also play a fundamental role in the design of administrative priorities-that is, the identification of cases on which the authority will choose to expend its limited resources to maximize the return on taxpayers' money. For instance, if the goal is to promote consumer welfare, then it of course makes sense to prioritize investigations into practices which may have a bigger impact on it. Economic premises are critical in this screening exercise, since they can guide administrative agencies in detecting the most but also least 'problematic' types of behaviour in view of the pursued objective.

For example, the prioritization of cartel enforcement worldwide rests on the economic insight that cartel conduct is among the most harmful for competition and consumers. Conversely, the development of 'safe harbours' setting out the circumstances where an authority is unlikely to intervene is grounded in the idea that competition is not liable to be impaired in the absence of a degree of market power. The Commission Guidelines on agreements of minor importance, for instance, explain that arrangements entered into between parties whose market shares do not exceed certain thresholds will be considered not to appreciably restrict competition in the meaning of Article 101(1) TFEU. 54 Similar pronouncements may be located in the Commission Guidelines on horizontal cooperation agreements or in the Commission Guidelines on horizontal and nonhorizontal mergers. 55 While these 'safe harbours' are often presented as 'presumptions of lawfulness', strictly speaking they are simply illustrations of the authority's policy and understanding of the law. 56

Last but not least, premises have a third important function in competition enforcement-they form part of the backdrop against which the standard of proof inquiry is conducted. The reason for this is that the process of determining whether the available evidence is sufficient to surpass the requisite level of conviction or probability for a decision to be lawfully adopted is informed-among others-by normality considerations, which allow us to make sense of the evidence and to 'connect the dots'. Generally, our perception of 'usual' and 'unusual' is shaped by past experience and common sense. 57 In competition enforcement though, economic premises may also determine what is 'normal' and what is not. 58 For instance, because cartels are deemed to harm competition, claims and evidence of plausible explanations and efficiencies will be evaluated against this default idea. Likewise, the insight that 'the effects of a conglomerate-type merger are generally considered to be neutral, or even beneficial, for competition' led the General Court to emphasize in Tetra

Laval that 'the proof of anticompetitive conglomerate effects of such a merger calls for a precise examination, supported by convincing evidence, of the circumstances which allegedly produce those effects'. 59 Therefore, premises inform not only the construction of the law and the design of policy but also fact-finding, insofar as they provide 'rules of thumb' and baselines for drawing inferences from the evidence. 60

B. The Construction and Deconstruction of Normative and Economic Premises

Premises are not set in stone though. Because they embody contemporary norms and values as well as current knowledge, they may-and do-evolve over time. Societal and political shifts and advances in economics may lead to the emergence of new premises or the critical revisiting of old ones. The construction and deconstruction of normative and economic premises in competition enforcement occur in an incremental and cumulative manner predominantly outside but also within the legal system.

Outside the legal system, scholarly works exposing the thinking underlying competition enforcement and challenging its theoretical and empirical foundations, as well as its consistency, play a pivotal role in this regard. This is hardly surprising-by promoting evidence-based dialogue and allowing for the fermentation of ideas, academic debates may result in the elimination of weak propositions, the emergence of consensus positions, and the creation of new knowledge. This process though is a constant work in progress, which partly explains why many of the disputes concerning competition enforcement resurface now and again. The recently reignited conversation about the goals of the discipline is a good example of this-after the espousal by many of efficiency and consumer welfare as the main aims of competition law, the issue has again been brought into the spotlight by commentators advocating for the pursuit of broader social and political objectives. 61 Economic premises are not immune to challenges either. As the currently ongoing discussion around the low levels of vertical merger enforcement illustrates, even well-established propositions-such as the idea that nonhorizontal concentrations generally benefit competition and generate efficiencies-may be questioned and potentially overturned. 62 Finally, academic works exposing inconsistencies in the legal treatment of various categories of conduct may also cast doubt on the convincingness of the premises underlying the applicable tests. 63

Within the legal system, the construction and deconstruction of premises naturally occur during the development of policy and in the context of specific cases. Indeed, on several occasions the emergence of new knowledge or changes in the prevailing circumstances have prompted competition authorities to reflect on-and update, where necessary-the premises driving their enforcement activities. In the EU, for instance, the heavy criticisms against the Commission's early formalistic approach to the legal treatment of various practices led the authority to rethink its policy in different areas-from vertical agreements to horizontal arrangements to mergers and unilateral conduct. The replacement of old premises with new ones culminated in the publication of several soft law documents, which were seen as signalling a 'more economic' approach to EU competition enforcement. 64 More recently, the challenges of the digital economy have impelled several authorities to commission expert reports and to launch task forces or strategies with a view to ascertaining what normative and economic premises should drive antitrust and merger policy in that context. 65

By contrast, courts are naturally more cautious against regular or radical changes in the law as a result of contemporary developments due to the need to preserve legal certainty and stability. 66 Nevertheless, the normative and economic propositions underpinning competition enforcement may be exposed or challenged in the context of judicial proceedings, too. Leegin is probably among the best examples of a drastic overhaul of the law in judicial acknowledgment of an evolution in current thinking. Noting that 'economics literature is replete with procompetitive justifications for a manufacturer's use of resale price maintenance', the US Supreme Court overturned Dr Miles and dismissed the per se illegality test in favour of a rule of reason analysis. 67 In the EU, the Courts have frequently spelt out the premises behind their interpretation of the law. While many have survived the passage of time relatively unscathed, for example, the idea that pricing below average variable costs is generally irrational for an undertaking or the insight that certain restraints are necessary in selective distribution or franchising, 68 others have been tested-for instance, the idea that exclusivity rebates offered by a dominant firm are inherently harmful for competition and consumers. 69 Over the years, such challenges have provided EU judges with the opportunity to incrementally clarify and elaborate on the main ideas driving the enforcement of the antitrust and merger rules. 70

C. Economic Premises and Evidence Rules

Most, if not all, premises, in particular economic ones, have at least some empirical grounding, and their 'truth' or 'validity' may thus be contested, as just noted. To the extent that they underpin the construction of the competition provisions and their application to specific practices and may be challenged in the context of judicial proceedings, it is necessary to briefly consider whether they are subject to the evidence rules. Are economic propositions to be established to the standard of proof before being endorsed by the court? If there is disagreement between the parties about the 'correct' premise, say, for instance, regarding the competitive effects of exclusive dealing by dominant firms or the relationship between market structure and innovation, is this to be resolved in accordance with the rules on the burden of proof? And are judges exclusively dependent on parties to produce the relevant information, or can they engage in independent research?

These queries go to the heart of a rather old, yet highly important problem-that of the integration of social science in law. 71 To the extent that the construction and the application of the legal rules hinge on 'knowledge' derived from social science, including economics, is this to be treated as 'fact' or as 'law' or perhaps as something else? Scholars have approached this question in different, albeit not fundamentally conflicting, ways. On the one hand, it has been suggested that so-called legislative facts-that is, facts that 'inform ( ... ) a court's legislative judgment on questions of law and policy'- must be distinguished from adjudicative facts, that is, facts about 'what the parties did, what the circumstances were, what the background conditions were', and that the evidence rules apply only to the latter. 72 On the other hand, it has been argued that social science may be treated both as 'law' and as a 'fact depending on its use: it is akin to 'law' when it provides the basis for law-making or is employed to establish background knowledge and general methodology, while it is akin to 'fact', when it is applied to case-specific issues or to produce case-specific research findings. 73

With these remarks in mind, when economic premises are employed for the purpose of determining the optimal legal test-that is, whether a conduct should be subject to a rule or a standard (in EU terminology, the 'by object' or the 'by effect' test)-they arguably escape the application of the evidence rules. In the EU this conclusion is further reinforced by the exclusive competence of the EU Courts to provide authoritative guidance on the meaning of EU law. 74 Accordingly, conduct-specific economic premises, that is, generalized propositions pertaining to the economics of different practices-say, tying or price discrimination or refusal to supply-need not be established to the standard of proof to be accepted by EU judges as the motivation behind their choice of legal test. By contrast, where economic premises are employed as 'background knowledge' or even 'rules of thumb' for the purpose of making sense of the evidence, the answer is not as straightforward. As noted earlier, in [TABLE 1 OMITTED] this context economic premises may enable judges to draw inferences from the available pieces of information. Inevitably though, the strength of the inference is partly correlated with the strength or relevance of the economic premise. If either is prima facie challenged, then in principle the party with the burden of persuasion should explain why the inference should still be drawn.

V. PRESUMPTIONS AS ANALYTICAL SHORTCUTS IN EU COMPETITION ENFORCEMENT

A. A Brief Account of the Existing Presumptions

Somewhat ironically, considering the popularity of the term in competition scholarship, there are not many presumptions in the technical sense in EU competition law. Indeed, the examination of the EU Courts' jurisprudence reveals the existence of only five (Table 1). 75 These effectively correspond to different elements of the antitrust rules that the Commission must prove to adopt a prohibition decision.

The first presumption pertains to the notion of 'undertaking' against which Articles 101 and 102 TFEU are addressed. 76 As explained in H?fner and Elser, the concept comprises 'any entity engaged in an economic activity, regardless of the legal status of that entity and the way in which it is financed'. 77 Further elaborating on this in Hydrotherm, the Court stressed that the term 'undertaking' must be understood as designating an economic-rather than a legal-unit. 78 In this regard, the existence of distinct legal entities is immaterial; what matters is-as elucidated in Shell-that there is a 'unitary organisation of personal, tangible and intangible elements which pursues a specific economic aim on a long-term basis and can contribute to the commission of an infringement'. 79 In the case of parent companies and subsidiaries in particular, such an economic unit will exist where 'the subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company'; according to settled jurisprudence, in these circumstances the anticompetitive conduct of the subsidiary may be imputed to the parent company. 80 In Akzo the Court of Justice confirmed that 'where a parent company has a 100% shareholding in a subsidiary ( ... ) there is a rebuttable presumption that the parent company does in fact exercise decisive influence over the conduct of its subsidiary'. 81 Ever since its first affirmation, the Akzo presumption has been reiterated multiple times and is now solidly rooted in the Courts' jurisprudence.

In any event, to find a violation of Article 101(1) TFEU in particular, the Commission must also demonstrate that the undertaking participated in a collusive arrangement-be it a concerted practice or an agreement. 82 Showing the existence of a concerted practice in principle entails proving three elements: concertation, subsequent market conduct, and causal connection between the two. In H?ls and in Commission v Anic Partecipazioni, however, the Court clarified that 'subject to proof to the contrary, which it is for the economic operators concerned to adduce, there must be a presumption that the undertakings participating in concerting arrangements and remaining active on the market take account of the information exchanged with their competitors when determining their conduct on that market'. 83 Ever since, the Anic presumption-as is often called-has become firmly embedded in the Courts' case law. 84 While it was initially developed in connection with concerted practices-that is, collusive arrangements falling short of an agreement-this presumption soon provided the basis for the emergence of another one, that of participation in a cartel upon evidence that the undertaking has attended a meeting with an anticompetitive object. Indeed, as confirmed for the first time in Aalborg Portland, 'it is sufficient for the Commission to show that the undertaking concerned participated in meetings at which anticompetitive agreements were concluded, without manifestly opposing them, to prove to the requisite standard that the undertaking participated in a cartel', the presumption being that its will concurs with that of the other attendants. 85

At any rate, to adopt a prohibition decision, the Commission must also establish the duration of the antitrust violation and of the undertaking's involvement in it. This can be a daunting task-especially in complex infringements extending over longer periods of time. In recognition of this challenge, the EU Courts have eased the authority's burden of proof in two ways. Firstly, they have developed the doctrine of single, continuous or repeated infringement, according to which there is one infringement-rather than several-where a series of acts form part of an unlawful 'overall plan'. 86 The latter may be deduced 'from the identical nature of the objectives of the practices at issue, of the goods concerned, of the undertakings which participated in the collusion, of the main rules for its implementation, of the natural persons involved on behalf of the undertakings, and lastly, of the geographical scope of those practices'. 87 Secondly-and most importantly, for the purposes of this work, the EU Courts have adopted a presumption of continuity, whose foundations originate in Dunlop. According to the latter, 'if there is no evidence directly establishing the duration of an infringement, the Commission should adduce at least evidence of facts sufficiently proximate in time for it to be reasonable to accept that that infringement continued uninterruptedly between two specific dates'. 88

Finally, the case law arguably points at the existence of one more presumption-that is, if a conduct lacks any plausible explanation, it is intrinsically capable of harming competition. 89 Premises about the economics of the practice at hand and any 'objective justifications' raised by the parties will be crucial to ascertaining whether, on the facts, there is no legitimate ground for it. 90 In this case, the anticompetitive potential of the practice is automatically inferred and needs not be proved ad hoc, unless the undertaking concerned produces evidence to the contrary, and a 'by object' violation will be considered established, provided that the other elements of Article 101 TFEU or Article 102 TFEU have been sufficiently demonstrated. In the context of Article 101 TFEU, the Court of Justice explained in T-Mobile that 'the distinction between "infringements by object" and "infringements by effect" arises from the fact that certain forms of collusion between undertakings can be regarded, by their very nature, as being injurious to the proper functioning of normal competition'. 91 As the Court elaborated, 'in order for a concerted practice to be regarded as having an anticompetitive object, it is sufficient that it has the potential to have a negative impact on competition'; in this case, there is no need for the Commission to consider its effects. 92 Nevertheless, Football Association Premier League clarifies that undertakings may 'put forward any circumstance within the economic and legal context' of the arrangement in question, which would justify the finding that it is 'not liable to impair competition'. 93 A similar presumption is visible in the context of Article 102 TFEU, as well. Indeed, the judgment of the Court of Justice in Intel implies that practices, which lack a plausible explanation, are presumed to be capable of harming competition, unless the dominant undertaking challenges this conclusion 'on the basis of supporting evidence'. 94

### 2ac 2 AT: “At Least”/ Meet Ceiling

#### 2] Meeting the ceiling doesn’t mean you meet the floor

William H. Hanson, “The Formal-Structural View of Logical Consequence: A Reply to Gila Sher”The Philosophical Review , Apr., 2002, Vol. 111, No. 2 (Apr., 2002), pp. 243-258, Duke University Press on behalf of Philosophical Review

3. Logic, the A Priori, and the Empirical The other major criticism I made in my 1997 of Sher's work was that FS violates the apriority criterion of my pretheoretic account of logical consequence. This is because under FS there are arguments we can know to be valid or invalid a posteriori but not a priori. As an example I gave an argument involving the quantifier 'Q\*', which I defined as behaving exactly like 'all' in models with domains of cardinality > n, but like 'at least one' in models with domains of cardinality < n, where the value of n is an integer we can know a posteriori but not a priori. (In my example n is the least number of whole seconds in which, up through the end of the twenty-first century, a human runs a mile.)9 The argument in question is: (Q\*x) (Dog(x) -- Black(x)) (Q\*x) Dog(x) .'. (Q\*x) Black(x) Since we know that n > 3, we know the argument is invalid, but we can't know this a priori. Yet 'Q\*' counts as a logical term according to FS, so FS violates my apriority criterion.10 [\*\*start footnote 10\*\* 10 That the operator expressed by 'Q\*' satisfies Sher's criterion for formal operators can be seen by consulting the account given in section 1 of how that criterion applies to unary quantifiers. Specifically, since for any two models with domains of the same car- dinality the operator expressed by 'Q\*' functions either as the operator expressed by 'all' in both models or as the operator expressed by 'at least one' in both, the operator expressed by 'Q\*' is formal for the same reasons these other two operator.\*\*end footnote 10\*\*] This violation should be of concern to Sher, since my criterion is drawn directly from Tarski, whose work is in many ways the foundation of hers. Tarski wrote: Certain considerations of an intuitive nature will form our starting-point. Consider any class K of sentences and a sentence X which follows from the sentences of this class. From an intuitive standpoint it can never happen that both the class K consists only of true sentences and the sentence X is false. Moreover, since we are concerned here with the concept of logical, i.e., formal, consequence, and thus with a relation which is to be uniquely determined by the form of the sentences between which it holds, this rela- tion cannot be influenced in any way by empirical knowledge, and in par- ticular by knowledge of the objects to which the sentence X or the sentences of the class K refer. The consequence relation cannot be affected by replacing the designations of the objects referred to in these sentences by the designations of any other objects. (1936, 414-15) In formulating my apriority criterion, I was influenced by this passage, especially by the last part of the penultimate sentence: "[the logical consequence] relation cannot be influenced in any way by empirical knowledge, and in particular by knowledge of the objects to which the sen- tence Xor the sentences of the class Krefer" (emphasis added). This is, of course, somewhat obscure. Still it sounds compatible with, and I think even suggests, the standard I adopted, namely, that knowledge of whether the logical consequence relation holds in any particular case is knowledge that can be had a priori, if at all. Logic has long been held to be free, in some fundamental way, of all things empirical, and I believe many logicians have thought that logic achieves this freedom by meeting this (or a similar) standard.

#### 3] At least suggests the baseline – must be at least that much change

Merriam-Webster 16 [<http://www.merriam-webster.com/dictionary/at%20least>]

at least

Popularity: Bottom 10% of words

Definition of at least

1: not less than a specified amount, level, etc. <At least once a year, we visit our grandparents.> <He must have at least 300 CDs!>

2—used to say that something (such as a bad situation) could be or could have been worse <The weather was cold, but at least it didn't rain.> <We don't have much money, but at least we still have each other.>

3—used to indicate the smallest or easiest thing that someone can or should do <Well, he could have at least apologized.>

4—used to indicate that the truth of a statement might change or has changed <We're going to have a picnic, at least if it doesn't rain.> <I'm fine for now at least. Thank you for asking.>

5—used to indicate that the truth of a previous statement is not certain <Her name is Sue, or at least I think it is.> <He is coming today. At least that's what he told me.>

### Prefs

### Prefer --- Bidirectionality --- 2NC

#### Bidirectionality---only requiring the aff to increase prohibitions makes antitrust law stronger.

Jo Seldeslachts et al. ‘7. Professor of Industrial Organization at KU Leuven and a Senior Research Fellow at DIW Berlin, with Joseph A. Clougherty and Pedro Pita Barros. “Remedy for now but prohibit for tomorrow: the deterrence effects of merger policy tools.” https://www.ssoar.info/ssoar/bitstream/handle/document/25862/ssoar-2007-seldeslachts\_et\_al-remedy\_for\_now\_but\_prohibit.pdf;jsessionid=A244005110FDB5816E0347D9F1B75436?sequence=1

We can now look at the causal relations between the variables of primary interest: the relationship between antitrust actions and merger frequencies: Prohibitions has a statistically-significant negative impact on future merger behavior in five out of the six regression equations (excluding only the OLS estimation in regression #1). The consistent significance and strong impact of this variable suggests that spikes in the use of Prohibitions seem to send a very clear signal of toughness by antitrust authorities—a signal that significantly reduces future merger proclivities.

Remedies, on the other hand, seem to positively influence future Mergers; though, the coefficient estimate is only significant in three regression equations—regressions’ #1, #2, & #4. Accordingly, we can interpret these results as suggesting that the effect of remedies coming at the expense of prohibitions (a lowering of antitrust toughness) is stronger than the effect of remedies coming at the expense of clearances (an increase in antitrust toughness). In other words, we have some evidence that firms seem to interpret spikes in remedies as indicating softer behavior on the part of antitrust authorities. Such an interpretation should be cautioned by the fact that the remedies coefficient estimate is not significant in the fixed- effects estimation (regression #3); thus, suggesting that the remedies effect may only be capturing cross-jurisdictional variation. Nevertheless, the important point here is that the application of Remedies does not seemingly involve a significant deterrence effect.

### Prefer --- Debatability --- 2NC

#### Behavioral remedies are impossible to negate---they’re inherently vague and uncertain

Carrie C. Mahan 19. Partner at Weil, Gotshal & Manges LLP, where her antitrust practice focuses on mergers, antitrust class actions and private litigation, with Natalie M Hayes, associate at Weil, Gotshal & Manges LLP. “MERGER REMEDIES GUIDE SECOND EDITION,” eds. Ronan P Harty & Nathan Kiratzis. https://www.weil.com/~/media/files/pdfs/2019/nonstructural-remedies.pdf

Criticisms

While non-structural relief can help agencies preserve the procompetitive benefits of a trans- action while protecting against the risk of potential competitive harm, conduct remedies are still vulnerable to criticism. In contrast to structural remedies, which are generally ‘simple, relatively easy to administer, and sure’ to preserve competition,46 behavioural remedies raise various concerns,47 including the following:

• They are difficult to draft and clearly define. The agencies acknowledge that when design- ing conduct remedies, ‘displacing the competitive decision-making process widely in an industry, or even for a firm, is undesirable.’48 Accordingly, ‘effective conduct remedies are tailored as precisely as possible to the competitive harms associated with the merger to avoid unnecessary entanglements with the competitive process.’49 This can be easier said than done; however, because ‘the behavior that such remedies seek to prohibit or require is often difficult to fully specify.’50 It may also be challenging to determine the appropriate duration of a conduct remedy given the difficulty in assessing how long it will take new entry or expansion to occur.

• The outcomes are uncertain. It is no easy task to design a conduct remedy that will appro- priately replicate the competitive dynamics of a particular market. Even when well-crafted, conduct remedies ultimately set static rules that do not fully account for changes in the market. Thus, conduct remedies may eventually distort the market because they may restrict the merged firm from engaging in conduct that would be pro-competitive as the market changes.51

### AT: Aff Ground/Over Limiting---2NC

#### 2. Data base of anti-trust literature from 2000 to the present shows it’s aff leaning.

Fiona M. Scott Morton 19. Theodore Nierenberg Professor of Economics at the Yale University School of Management. Previous deputy assistant attorney general for economics at the Antitrust Division of the U.S. Department of Justice. B.A. in economics from Yale University and Ph.D. in economics from the Massachusetts Institute of Technology. "Modern U.S. antitrust theory and evidence amid rising concerns of market power and its effects," Equitable Growth, https://equitablegrowth.org/research-paper/modern-u-s-antitrust-theory-and-evidence-amid-rising-concerns-of-market-power-and-its-effects/?longform=true

The experiment of enforcing the antitrust laws a little bit less each year has run for 40 years, and scholars are now in a position to assess the evidence. The accompanying interactive database of research papers for the first time assembles in one place the most recent economic literature bearing on antitrust enforcement in the United States. The review is restricted to work published since the year 2000 in order to limit its size and emphasize work using the most recent data-driven empirical techniques. The papers in the interactive database are organized by enforcement topic, with each of these topics addressed in a short overview of what the literature demonstrates over the past 19 years. These topics are: Horizontal mergers—mergers and acquisitions involving direct competitors Coordinated effects—the study of conditions under which competitors in an industry tacitly collude Vertical mergers—mergers and acquisitions where a company acquires another company to which it sells goods or services or from which it buys goods or services Exclusionary conduct—actions in the marketplace that deny a competitor access to either suppliers or customers Loyalty rebates—a type of conduct that occurs when a company gives a discount to a buyer for limiting its purchases from the company’s competitors Most Favored Nation clause—this clause requires a seller to give a specific buyer the best terms offered to other (often competing) buyers Predation—the strategy of taking losses in the short run in order to drive out a competitor and retain or gain a monopoly position, permitting prices the later exercise of market power Common ownership—the impact on competition when mutual funds and other types of institutional investors are the largest owners of product market competitors Monopsony power—the anticompetitive exercise of market power by employers (firms) in the labor market for workers Macroeconomics and market power—the impact of competition issues on the larger economy

**---DATA BASE OMITTED---**

The bulk of the research featured in our interactive database on these key topics in competition enforcement in the United States finds evidence of significant problems of underenforcement of antitrust law. The research that addresses economic theory qualifies or rejects assumptions long made by U.S. courts that have limited the scope of antitrust law. And the empirical work finds evidence of the exercise of undue market power in many dimensions, among them price, quality, innovation, and marketplace exclusion. Overall, the picture is one of a divergence between judicial opinions on the one hand, and the rigorous use of modern economics to advance consumer welfare on the other.

#### 3. Limits outweigh and turn topic education without clash---health care proves horizontal innovation solves.

## Cap K

## Advantage 1 --- Trade Turn

### 2

#### 2 --- Current enforcement is all talk and the legal environment is still pro-business.

JED GRAHAM 9/16/21. Writes about economic policy for Investor's Business Daily. “FTC, Biden Antitrust Enforcement Push Takes On Amazon, Google — And The Supreme Court.” <https://www.investors.com/news/antitrust-enforcement-push-by-ftc-biden-takes-on-amazon-google-supreme-court/>

Investors don't seem to see a major threat. Google parent [Alphabet](https://www.investors.com/news/technology/google-stock-buy-now/) ([GOOGL](https://research.investors.com/quote.aspx?symbol=GOOGL)), Apple and Facebook stock have hit all-time highs this month. After Khan's ascension as FTC chair, Amazon stock ran to a record, before its second-quarter revenue miss briefly halted its momentum.

Recent antitrust rulings help explain the apparent lack of concern.

The Supreme Court's June opinion rejecting NCAA limits on educational benefits for student-athletes reads like a celebration of noninterventionist antitrust law, William Kovacic, who chaired the FTC under President George W. Bush, told IBD.

"Markets are often more effective than the heavy hand of judicial power when it comes to enhancing consumer welfare," Justice Neil Gorsuch wrote. Courts examining business dealings should take care not to "set sail on a sea of doubt," he added, elevating William Howard Taft's warning of the danger of a "shifting, vague and indeterminate" antitrust standard.

The words seemed to carry a not-too-subtle message for the Biden team, Kovacic says. "Until the Congress changes the law, we will continue to endorse the approach we have taken for the last 40 years," he said.

Can Parties Unite On Antitrust Law?

The House Judiciary Committee narrowly passed a package of antitrust measures in June called the Ending Platform Monopolies Act. Amazon has warned of massive disruption from restrictions preventing the biggest online platforms from favoring their own goods and services. "These bills would jeopardize Amazon's ability to operate a marketplace for sellers, potentially resulting in hundreds of thousands of small and medium-sized businesses losing access to Amazon's customers and services."

Another measure would shift the burden of proof for Big Tech acquisitions under antitrust law. Companies with a market cap of $600 billion or more — including Apple, Amazon, Facebook and Google — would have to prove that a proposed merger wasn't anticompetitive.

GOP Sen. Josh Hawley's antitrust bill goes much further, essentially banning acquisitions by companies with a market cap over $100 billion.

Skepticism about Big Tech and excessive corporate power is clearly bipartisan. That helps explain why Khan's nomination as commissioner sailed through the Senate with 21 Republican votes. Yet Biden didn't reveal until after the vote that he intended to name Khan FTC chair, which might have given some senators pause.

Fundamental changes to antitrust law are unlikely to pass the closely divided Congress this year, Goldman Sachs analysts say. Some Democratic lawmakers have voiced opposition to the House antitrust package. Meanwhile, Hawley's Trust-Busting for the 21st Century Act has zero co-sponsors.

Antitrust Enforcement Losing Streak

As the Biden administration aims to ramp up antitrust enforcement, it inherits something of a losing streak. Even cases that seemed winnable have been lost, Skadden antitrust attorneys Steve Sunshine and Julia York wrote.

The Justice Department failed to block the AT&T (T) takeover of Time Warner in 2018. New York lost its bid to stop T-Mobile (TMUS), the No. 3 wireless carrier, from buying No. 4 Sprint. The upshot: "Merely establishing a presumption of likely anticompetitive effects does not guarantee a government plaintiff a litigation victory."

Khan wrote after a 2018 Supreme Court ruling for American Express (AXP) that it had "dealt a huge blow" to antitrust enforcement. The ruling would make it "easier for dominant firms — especially those in the tech sector — to abuse their market power with impunity."

AmEx's contracts prohibited merchants from steering customers to a payment type with a lower transaction fee. To compensate, merchants charged higher prices. Yet a 5-4 majority found that wasn't sufficient to prove consumer harm. AmEx's rewards to cardholders and indirect benefits to merchants complicated the analysis.

Kahn Rejects Antitrust Enforcement 'Rule Of Reason'

Khan's strategy to achieve a better win-loss record — despite the courts — is taking shape.

Prior antitrust regulators, when they emerged from the dugout, strictly played defense. Khan has served notice that she'll be a hurler.

At her first meeting as chair on July 1, the commission voted 3-2 to rescind a 2015 Obama-era policy statement on Section 5 of the FTC Act. Kahn said that policy "doubled down on the Commission's long-standing failure to investigate and pursue 'unfair methods of competition.' "

Section 5 of the FTC Act, passed in 1914, empowered the agency to police corporate conduct that hadn't yet violated the Sherman and Clayton Acts, but could if left unchecked, according to Khan. Yet the Obama-era FTC essentially decided to put its Section 5 power in a drawer and lock it away.

That ill-defined, rarely used authority made Obama-era antitrust enforcers uneasy. Why? Because, as Kovacic has written, it comes with an "absence of limiting principles."

Courts have an entrenched, if murky, "rule of reason" standard for judging alleged antitrust violations. They assess all pro-competitive and anti-competitive factors to gauge whether the behavior is contrary to consumer welfare.

With antitrust cases proving hard to win, Khan and her Democratic colleagues are rejecting a "rule of reason" framework. In other words, they're trying to expand the strike zone for antitrust enforcement.

Because cases brought under Section 5 shield defendants from liability for treble damages in private litigation, courts might be more open to finding fault.

But what should be the limiting standard in antitrust law? As it is, the consumer welfare standard is hard to interpret. But courts might view Khan and Biden's "fair competition" standard as too fuzzy, like "setting sail on a sea of doubt."

EU Google Antitrust Fines

Section 5 cases could look like the European Union's more proactive enforcement regime for "dominant" firms.

The European Union fined Google $2.8 billion in 2017, charging that its search results favored its own comparison-shopping site. The FTC ended its probe covering similar ground in 2013 without taking action.

Berin Szoka, president of think tank TechFreedom, criticized the fine, saying it showed that European rules were "about protecting some companies against more successful ones, not about protecting consumers," who liked Google's service. While Google is still appealing, it complied with an order to halt the practice. Rivals argue its modified behavior isn't much better.

In all, the EU has hit Google with $10 billion in antitrust fines. That includes a $5 billion penalty for using its Android mobile operating system to preserve its search dominance. Google is appealing that one too, but gave up its default search position in Europe in the meantime.

In 2020, the Justice Department filed a Google antitrust suit for maintaining search and internet advertising monopolies through anticompetitive means. The U.S. v. Google antitrust case won't go to trial until late 2023. Extended appeals could follow.

FTC Competition Rules

U.S. antitrust law is a slowly evolving patchwork made up of case-by-case decisions. But Khan argues that drawn-out cases and ambiguous rule-of-reason opinions invite dominant firms to abuse their market power.

So to keep companies on the straight and narrow, she plans to erect a series of U.S. competition rules. The Biden executive order calls for FTC rules covering a broad spectrum of practices said to contribute to lower wages or higher prices.

The FTC might restrict employers from requiring workers to sign noncompete agreements. Right-to-repair rules could break the lock companies place on repairing their goods, from Apple iPhones to John Deere tractors. Biden wants rules covering internet marketplaces and online data collection and surveillance. Agreements between drugmakers to delay market entry of a competing product are another focus. FTC competition rules also could limit occupational licensing restrictions and exclusionary real estate practices.

There's bipartisan concern about a number of these areas. Yet writing competition rules would be a huge departure from the agency's usual quasi-judicial process focused on specific facts in individual cases.

Courts Reining In Regulators

FTC commissioner Noah Phillips, a Trump appointee, sees a historical parallel in the New Deal-era National Industrial Recovery Act, which the Supreme Court struck down in 1935. The ruling held that Congress couldn't delegate broad legislative authority allowing regulators to draw up "codes of fair competition."

Khan's rule-making agenda "may present the most stark and real nondelegation controversy of our time," Phillips told a recent forum.

In an April case involving payday lender AMG Capital, all nine justices agreed that the FTC had wrongly assumed authority to impose financial penalties that wasn't explicitly provided by Congress. That could be a precursor to a harsh judicial reception for Kahn's FTC rule-making, Kovacic wrote.

In striking down the Centers For Disease Control's eviction moratorium on Aug. 26, the conservative majority issued a loud call for regulators to narrowly interpret their mandates. "We expect Congress to speak clearly when authorizing an agency to exercise powers of 'vast economic and political significance.' "

Industry Consolidation Impact Mixed

Apart from the legal underpinnings of Biden's antitrust push, how strong is the economic case for combating corporate consolidation?

Consolidation has increased in 70% of industries since the late 1990s, Goldman Sachs economists find. Nearly 20% of industries now qualify as "highly concentrated," based on DOJ and FTC criteria.

"Highly concentrated" industries include interactive media and services, led by Facebook and Google. Telecom services, airfreight and the beverage industry also qualify. Tech hardware, pharma and airlines fall a bit short of that threshold.

Lax antitrust enforcement only partly explains consolidation trends, Goldman says. High-productivity firms also have won market share from less-productive rivals.

Further, as big players like Walmart (WMT) entered more markets from 1990 to 2014, local industry concentration actually fell, Richmond Fed economists have shown.

Because "the local market is most relevant for most consumer purchases," Goldman's Joseph Briggs and Alec Phillips reach a much different conclusion than Biden and Khan. "The increase in national concentration likely increased consumer choice and welfare," the Goldman economists write.

Even so, they add, the growing scale and clout of national players "might have been harmful to small sellers and input producers."

Where consolidation has significantly reduced local competition, consumers appear to have suffered. The small-government-oriented American Action Forum finds a strong case that hospital mergers raise costs without raising quality. The group highlighted studies showing that prices tend to rise 20%-40% when hospitals within the same market merge.

Merger Activity Ramps Up

Wall Street's early reaction to the Biden administration's attempt to stiff-arm M&A activity has been to step on the gas. The FTC said in August that it's struggling to stay abreast of a "tidal wave" of mergers. The 2,436 deal filings through August have already blown past the elevated annual totals from 2017-2019.

Despite a skeptical, if not hostile, attitude among antitrust enforcers, the vast majority of these deals are likely to go through.

While Congress may increase funding for merger enforcement, the FTC and DOJ are already devoting significant resources to the Facebook and Google antitrust cases. "They can only fight so many battles," Kovacic said.

Khan Uses Bully Pulpit, Bulls Like Big Tech

That's not to say the Biden team won't create major headaches for merging parties. More mergers will face reviews and the probes will last several months longer. And where concerns arise, the agencies will be less likely to negotiate a fix.

To make deals approvable, regulators have long consented to divestitures. Sometimes regulators settle for behavioral remedies. To seal the T-Mobile-Sprint merger, the Justice Department relied on Dish Network's commitment to build out a national wireless network. But Khan says the track record of both types of fixes isn't great.

"The antitrust agencies should more frequently consider opposing problematic deals outright," Khan wrote Aug. 6. She was responding to a letter from Sen. Elizabeth Warren, who had raised concerns about defense mergers. The news added to doubts that the FTC will clear the pending Lockheed Martin (LMT) acquisition of rocket engine manufacturer Aerojet Rocketdyne (AJRD).

When regulators do decide to negotiate, "expansive divestiture demands could result in a remedy that frustrates the purpose of the deal," warned antitrust attorneys at tech-focused law firm Wilson Sosini.

Khan is clearly using her bully pulpit to the utmost, trying to dissuade merger talks from reaching fruition.

But right now it's all talk. She has turned a few heads, but the S&P 500 and Big Tech leaders have kept cruising. Facebook stock is up 11% since Khan took the FTC's helm on June 15, while Apple has climbed 15% and Google stock 18%. That's despite reports that the Justice Department is preparing to file a second Google antitrust suit over its ad dominance.

The new antitrust enforcement regime may not change all that much "until they show that they can sue and win," Kovacic said.

#### 3 --- Current antitrust enforcement efforts are non-binding.

Christopher Holding et al. 21. Chair of Goodwin's Antitrust & Competition practice, with Paul Jin, Andrew Lacy, Arman Goodwin, 7/15/21. “Biden Executive Order Calls for Heightened Antitrust Scrutiny,” <https://www.jdsupra.com/legalnews/biden-executive-order-calls-for-7783960/>

Key Implications

Revised horizontal and vertical merger guidelines are expected, which will likely implement a much more aggressive approach to deals. Note, however, that agency merger guidelines are not binding on courts and merger challenges under more aggressive theories may be met with skeptical courts;

Anticipate delays in HSR review especially for deals in industries singled out by the Order (e.g., tech, pharma, healthcare, among others), even if competitive overlaps are minimal;

Deals not subject to HSR filing requirements, even when purchase prices are relatively low, should be reviewed by antitrust specialists to assess risk, especially in the sectors identified in the Order;

Past deals that are now viewed as potentially raising antitrust concerns may be subject to review and scrutiny;

The agencies’ shift to more rigorous guidelines means it will be even more essential to negotiate antitrust risk provisions in agreements with a complete grasp of the substantive antitrust risk under this new landscape; and

This novel proposal for the FTC to exercise rulemaking authority may impose new requirement on affected industries, but will also likely face litigation challenges.

#### 4 --- Cases take years and have zero impact absent a victory.

Cat Zakrzewski 21. Technology Policy Reporter at the Washington Post, 8/19/21. “Lina Khan’s first big test as FTC chief: Defining Facebook as a monopoly,” <https://www.washingtonpost.com/technology/2021/08/19/ftc-facebook-lawsuit-lina-khan-deadline/>

Some legal experts think that the FTC will be able to address these criticisms from the judge to ensure that the case is not completely dismissed. But it’s no easy task for a relatively small agency, which sought several extra weeks to respond to the judge’s issues with the case after an initial July 29 deadline.

“There’s multiple signals that FTC is serious about doing their job of investigations and bringing these cases and fighting them hard,” said Charlotte Slaiman, competition policy director at the consumer group Public Knowledge.

Though the most significant, the Facebook case is but one of a wide range of issues on Khan’s plate. A month after she assumed office, the Biden administration issued a sweeping competition executive order, which called for her agency to take a tougher line on concentration throughout the economy.

So far, Khan has taken a series of steps to signal a shake-up has arrived at the FTC. She’s started hosting open meetings to open the agency’s business to the public, and she’s warned that greater scrutiny of mergers is on its way.

But the challenge will be for the agency to remain focused on the most important cases, including Facebook, Kovacic said. “She has a downpour of demands from both ends of the avenue,” he said.

And none of her other efforts will matter if she can’t show that she can win against companies, including Facebook, in court.

“The real measure to business decision-makers of your effectiveness and seriousness is your ability to prosecute and win cases,” Kovacic said.

#### 5 --- Claims of major antitrust now are wrong and their ev is all hype. Current enforcement is limited by regulatory capture and previous administrations, and it isn’t likely to get much stronger.

Jacob Silverman 21. Staff writer at the New Republic, 7/9/21. “Biden Wants to Tame Big Tech with a Thousand Paper Cuts.” <https://newrepublic.com/article/162940/biden-executive-order-big-tech-monopoly>

On Friday, the White House [announced](https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/) a potentially important, if modest, effort to further tamp down the power of the technology industry. This time the instrument is an executive order—the kind of wide-ranging declaration that often gets called “sweeping” or “major,” though its efficacy may take years to gauge—that covers everything from competition in the economy to drug prices to reforming a tech sector that is defined by a handful of seemingly unstoppable titans. Offering a mix of general recommendations, requests for action from other government agencies, and new administration policies, the Executive Order on Promoting Competition in the American Economy may be just what our overconsolidated economic system needs. But in tackling the power of a tech sector that has not only wrested control of the economy but remade it in its own data-hungry image, the Biden administration is still throwing pebbles at its enemy’s parapets. The tech industry has had 20 years to establish a stranglehold over our personal data, attention, and consumer choice. To tackle these problems, we need more, much more.

Despite promising to take on the power of Big Tech, President Joe Biden and his administration have so far taken a cautiously incrementalist approach. He’s [appointed tough industry critics](https://www.nytimes.com/2021/06/15/technology/lina-khan-ftc.html) like Lina Khan to be commissioner of the Federal Trade Commission, but he has yet to name a head of the Justice Department’s antitrust division, a key role for any future enforcement action. In Congress, Democrats have introduced six smallish antitrust bills, but their path out of the House is [murky](https://www.cnbc.com/2021/06/24/-big-tech-antitrust-debate-odd-alliances-form-and-party-fractures-show.html), as ongoing disputes between [Republicans](https://www.cnbc.com/2021/07/07/house-republicans-lay-out-tech-antitrust-agenda.html) and Democrats over how to fight this legislative battle mean that the final bills could look much different than they did in committee—if they make it to a floor vote at all. (It doesn’t help that some Silicon Valley–adjacent Democratic politicians, like Representative Ted Lieu and Representative Ro Khanna, have been less than supportive of the bills.)

As federal and congressional leadership lag, states have forged ahead, with dozens of attorneys general coming together in lawsuits like one, filed this week, accusing Google of [anti-competitive practices](https://www.vox.com/recode/2021/7/7/22567656/google-play-store-states-antitrust-suit-letitia-james-utah-new-york-north-carolina). Other ongoing antitrust suits include one [against Amazon](https://www.washingtonpost.com/technology/2021/05/25/dc-ag-antitrust/) over pricing issues; another lawsuit (this one with DOJ participation) [against Google](https://www.justice.gov/opa/pr/justice-department-sues-monopolist-google-violating-antitrust-laws); and two others against Facebook that a judge recently threw out. In this proliferating legal war against Big Tech—premised on a lack of competition and companies’ abusing their monopoly status—any of these cases could yield billion-dollar fines for one of the tech giants. But fines are easily paid. Whether these suits can lead to meaningful reform, to breaking up companies and redirecting business practices away from the current dominant model of user surveillance and bulk data collection—that is far less clear. As with proposed legislation in the House, bipartisan legal efforts may be sundered on the altar of competing partisan priorities, with Republicans focusing on [alleged censorship](https://newrepublic.com/article/162299/josh-hawley-gops-fake-war-big-tech) and Democrats more focused on [economic competition and user rights](https://newrepublic.com/article/160646/biden-antitrust-blueprint-monopoly-busting).

With the stage set for legislative gridlock, drawn-out lawsuits, and [bickering](https://www.politico.com/news/2021/07/06/ftc-staffers-public-appearances-498386) over the FTC’s legitimacy, a small opening has emerged for the Biden administration to take meaningful action on its own. And there are some measures in the executive order worth celebrating. One section aims to improve internet service by eliminating early termination fees and providing transparent pricing to help drive competition. Another proviso calls for gadget users—from farmers working on tractors to people tinkering with their own cell phones—to have what’s often [referred to](https://www.theverge.com/2021/7/9/22569869/biden-executive-order-right-to-repair-isps-net-neutrality) as “the right to repair,” a right that tech companies have suppressed by discouraging DIY or third-party work on broken items. (Forcing customers to take their doddering laptop to Apple’s Genius Bar helps the company maintain control over its products and ensures that repairs, and the money they generate, stay in-house.) Other relevant orders call for the restoration of net neutrality and applying more scrutiny to corporate mergers, which may prevent a tech giant from swallowing up the next WhatsApp or Slack, formerly insurgent chat/social media platforms that were absorbed by Facebook and Salesforce.

In the last year, tech companies have shifted their rhetoric, [claiming](https://newrepublic.com/article/162509/facebook-big-tech-nick-clegg-regulation-policy) that they are in favor of regulation—just on their terms. To that end, they’ve deployed armies of lobbyists to woo elected officials, making companies like Google and Facebook some of the most profligate spenders on K Street. With the potential for major legislative action still up in the air—a divided Senate doesn’t augur well, unless tech-critical Republicans like Senator Josh Hawley line up behind the Democratic legislative agenda, which seems unlikely—executive action may be the most promising way forward. Call it death by a thousand regulations. It’s also—as the executive order’s many prompts for action by the Federal Communications Commission, the FTC, and DOJ show—a plea for the government to do its damn job.

Even sympathetic observers may survey this latest initiative with some well-earned cynicism. [Regulatory capture](https://newrepublic.com/article/149438/big-pharma-captured-one-percent), in which regulatory agencies become beholden to the companies and industries they oversee, is a well-known feature of the land, and the families of leading politicians like Representative Nancy Pelosi periodically trade stocks based on what appears to be insider information. And as demonstrated by the measure to treat all internet traffic equally by restoring net neutrality (something that the Trump administration [did away with](https://newrepublic.com/article/146305/loses-war-net-neutrality)), the Biden administration is still playing catchup, fighting many of yesterday’s battles. For instance, the order “calls on the leading antitrust agencies, [the DOJ and FTC], to enforce the antitrust laws vigorously and recognizes that the law allows them to challenge prior bad mergers that past Administrations did not previously challenge.”

While divesting WhatsApp and Instagram from Facebook are worthwhile efforts, there’s also a sense that would-be tech reformers are struggling to deal with the mistakes and oversights of a previous generation of politicians (i.e., pushing for the enforcement of existing laws is yet another call for the government to do its job). Even the order’s directive that the FTC “establish rules on surveillance and the accumulation of data” seems incredibly belated. We are 20-odd years into a surveillance economy, in which consumers have become the main source to be mined for value. The resulting inequities are vast, as the tech giants have had decades to strengthen their positions. It will take far more than an executive order to undo all this, much less to ensure a more equitable future. The question is: Does the Biden administration understand this grim state of play, or is this the best we’re going to get?

#### 6 --- Antitrust enforcement is low overall.

Douglas H. Ginsburg 20. U.S. Court of Appeals for the D.C. Circuit and Professor at the Antonin Scalia Law School at George Mason University, with Cecilia (Yixi) Cheng, Law Clerk for the U.S. Court of Appeals for the D.C. Circuit, “The Decline in U.S. Criminal Antitrust CaseS: ACPERA and Leniency in an International Context”, George Mason University Law & Economics Research Paper Series, 19-31, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3460091

II. Downward Trend in Cartel Cases

The number of criminal cases filed annually by the Division decreased from 90 in 2011 to 18 in 2018, the lowest it has been since 1972.7 Similarly, whereas 27 corporations were charged with criminal antitrust violations in 2011, only 5 were charged in 2018. The total criminal fines obtained by the Division have also fallen, from an average of more than $1 billion per year in 2012 through 2015 to $172 million in 2018.

Criminal enforcement at the Division has always ebbed and flowed, of course, but this recent downward trend marks the greatest reduction in criminal enforcement activity since the leniency program was reformed in 1993:

#### 7 --- Nothing will get past GOP opposition

Dave Perera 21**.** Master’s Degree from the Columbia University School of International and Public Affairs, Technology Reporter at mLex, Veteran Cybersecurity Reporter for Politico and Former Editor for FierceMarkets Publications, “US Antitrust Legislation Faces Uphill Battle Despite Unified Democratic Government”, mLex, 3/12/2021, https://mlexmarketinsight.com/news-hub/editors-picks/area-of-expertise/antitrust/us-antitrust-legislation-faces-uphill-battle-despite-unified-democratic-government

Renewed interest among US lawmakers in antitrust legislation is unlikely to produce radical policy shifts, notwithstanding the Democratic Party’s unified control of the federal government.

Democrats promised a “big, bold agenda” after they captured the Senate by a hairsbreadth in January. Democratic lawmakers may very well stick to those ambitions and announce audacious legislative proposals. But the fate of those bills is at the mercy of a political dynamic ensuring that the more liberal the policy prescriptions, the less likely they are to become law.

The most likely outcome over the next two years is more funding for enforcers at the Department of Justice and Federal Trade Commission, whether directly through appropriated funds, steeper merger notification filing fees, or both.

It’s also possible Congress could incrementally tinker along the edges of antitrust. It might lower the threshold for challenging mergers, or mandate data portability requirements for social media companies.

Those expecting — or fearing — more ambitious outcomes likely won’t see them

enacted. So until America’s November 2022 election, scratch from the list of high probabilities reforms such as requiring dominant firms to separate lines of business, or shifting the burden of proof onto an acquiring company.

Put another way, unless a bill can attract significant Republican support, not even two years of unified Democratic government can guarantee reforms.

### 3

#### The prospect of discrimination causes investor pull-out---the threshold’s low due to systematic overestimation of antitrust’s costs

Dr. Joseph A. Clougherty 21. Professor of Business Administration at the University of Illinois Urbana-Champaign, with Dr. Nan Zhang, Assistant Professor of Management at California State University, Stanislaus, “Foreign Investor Reactions to Risk and Uncertainty in Antitrust: U.S. Merger Policy Investigations and the Deterrence of Foreign Acquirer Presence.” Journal of International Business Studies, Volume 52, Issue 3, June 2021, p. 456-458.

After setting our theoretical priors, we empirically test our two hypotheses on sector-level data covering 53 U.S. industries over the 2002–2017 period. Our panel-data empirical results indicate that merger policy investigative activities disproportionately deter foreign acquirers in local M&A markets. Specifically, increases in merger policy risk and merger policy uncertainty lead to reduced foreign acquirer presence in the U.S. markets for corporate control. The empirical evidence then suggests that merger policy enforcement is protectionist in effect, as foreign investment activities are more adversely affected by the application of merger policy as compared to domestic investment activities. These results yield salient implications for the international business literature on hostcountry characteristics and foreign investment activities.

In order to comprehensively examine the relationship between merger policy enforcement and foreign acquirer presence in local M&A markets, we structure the remainder of this paper as follows. We present a theoretical framework that focuses on the salience of policy risk and policy uncertainty in generating two hypotheses regarding the relationship between the enforcement of merger policy and the participation of foreign acquirers in domestic M&A markets. After setting out our theoretical priors, we describe our sector-level data on U.S. merger control and acquisition activities, formulate our estimation strategy, present our empirical results, and discuss robustness testing. The last section concludes.

HYPOTHESES DEVELOPMENT

A considerable amount of IB literature has examined the impact of country-level political risk and uncertainty on inward FDI activities – see the literature reviews by Kobrin (1979), Fitzpatrick (1983) and Liesch, Welch, and Buckley (2011). The basis behind this literature is that political risks and uncertainties can ‘‘arise from the actions of national governments which interfere with or prevent business transactions’’ (Weston & Sorge, 1972: 60). Firms generally react to such political hurdles by reducing their willingness to make investments as the option value of delaying investment becomes higher under such risks and uncertainties (Bloom, 2014; Brouthers, Brouthers, & Werner, 2008). While political hurdles and hazards can negatively influence the investment activities of all firms, foreign firms are generally considered to be more sensitive to such shocks. For one, foreign firms might be more frequently targeted when burdensome laws, regulations and policies are implemented by national governments; e.g., Eden (1994) observes that national policies practiced in a parochial manner represent fundamental threats to multinationals. Furthermore, foreign firms often lack the local information, legitimacy and contacts which might help them properly assess and mitigate political constraints. As Werner, Brouthers, and Brouthers (1996: 572) underscore, ‘‘firms commonly find international business opportunities to be inherently more risky than domestic ones’’ due to the stark differences in political environments and the inherent legal uncertainties characteristic of foreign investment endeavors. It is no surprise then that a great deal of empirical literature (e.g., Delios & Henisz, 2000, 2003b; Henisz & Delios, 2001) indicates that uncertainty in the political environment substantially deters foreign investment activities. Indeed, Kobrin (1979) highlights how the response to political risk and uncertainty is frequently avoidance, as multinationals simply do not get involved in countries perceived as risky.

While macro-level studies regarding the relationship between political risk and FDI tend to dominate the literature (Vadlamannati, 2012), there have been efforts to follow the prescriptions of Kobrin (1979) to consider the industry-, firm-, and project-specific factors relating to political risk and uncertainty. For one, Miller (1993) breaks down the salient host-country environmental uncertainties into six different dimensions – where uncertainties with respect to specific government policies represent the first dimension. Werner et al. (1996) follow in this line of research by considering the national laws which affect foreign firms; and Grosse (1985) and Bonaime, Gulen, and Ion (2018), respectively, consider the impact of regulatory policies and uncertainties on FDI and M&A activities. The conduct of national merger policy represents a particular regulatory policy that involves a direct threat to the participation of foreign firms in local M&A markets. Specifically, the presence of a national merger policy can negatively impact foreign acquirers by slowing down the consummation of their cross-border acquisitions via antitrust investigations, curtailing the profitability of these cross-border acquisitions by requiring structural remedies, and by even outright prohibiting them. Thus, merger control is a specific and salient government barrier that foreign acquirers must successfully navigate in order to gain access to local M&A markets (Brouthers et al., 2008; Clougherty, 2005).

While the IB literature lacks empirical scholarship concerning this topic, many IB scholars (e.g., Brewer, 1993; Buckley & Casson, 1996; Hymer, 1970; Spar, 2001) have posited that the national enforcement of merger policy potentially restrains the level of inward FDI. It is with these concerns in mind that many policy advisors recommend that countries do not prioritize competition policy, as it could discourage inward FDI via the creation of additional regulatory barriers and uncertainties for foreign investors (Oliveira et al., 2001). Moreover, the conduct of national merger policy lends itself well to analyzing the deterrence effects with respect to acquisition activities in a manner that is consistent with the pre-existing literature on political risk and uncertainty. First, merger policy is conducted at the industry level and exhibits cross-sector variation in antitrust scrutiny (Clougherty & Seldeslachts, 2013); thus, it represents an industryspecific policy context worth analyzing for policy risk factors in line with Kobrin’s (1979) prescriptions. Second, merger policy involves both policy risk and policy uncertainty – both of which may disproportionately deter foreign acquirers as compared to domestic acquirers. We turn now to a discussion of these concepts and to the formulation of our theoretical priors.

Merger Policy Risk

The concept of risk goes back to Knight’s (1921) fundamental insights, where he considered risk to be a known probability distribution over a set of events; for example, flipping a coin involves risk, but with known odds. In moving from the concept of risk to its application in IB political risk, Kobrin (1979) observes that risk is at play when managers have knowledge regarding the possibility and probability of different political outcomes via either calculations or past experience statistics. While the relevant information is available with political risk, and observers generally agree with respect to the probabilities of different outcomes, foreign investors are often considered to be at a disadvantage as compared to domestic investors due in part to inherent information asymmetries (Gehrig, 1993; Gordon & Bovenberg, 1996; Liesch et al., 2011). As Gehrig (1993: 98) makes clear, ‘‘information may have to be interpreted in the light of the legal conventions and business culture of a particular community, which may be difficult for foreigners to assess’’. Thus, domestic investors are better informed and better able to interpret the relevant probabilities as compared to foreign investors, and, as a result, foreign managers tend to overestimate the risks and underestimate the benefits involved with host-country investment activities (Liesch et al., 2011). Simply put, the lack of information, knowledge, and experience with respect to the intricacies of host-country activities accentuates the perceptions of risk when considering foreign investments. A great deal of the political risk literature accordingly focuses on the probabilistic estimates of different policy outcomes and how increased risk leads to decreased foreign investment activities. With the above as a backdrop, we consider how the policy risk involved with merger control might disproportionately affect foreign investors considering participating in the local markets for corporate control.

#### Unilateral antitrust will be manipulated AND perceived as protectionist---that shatters co-op and is the nail in trade’s coffin.

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VI. CONCLUSION

There is a clear "conflict between the evolving economic and technical interdependence of the globe and the continuing compartmentalization of the world political system composed of sovereign states . . . ." 196 This conflict can breed protectionist political views. Unless and until there is a complete paradigm shift away from protectionism, which is impossible, the global economy will not meet the "rational" assumptions necessary to preserve free market efficiency.

Some amount of protectionism is inevitable. Although "inefficient" in economic and academic circles, protectionism preserves the sovereign powers enjoyed by certain countries. In this way, it is a necessity of free [\*146] trade. This paper is not intended to be a commentary on whether protectionism is right or wrong, but rather a demonstration and prediction that antitrust law, a tool of political and economic power, can and will be wielded by individual countries to promote protectionist policies that will affect the international trade landscape in the near term.

While attempting to act on this protectionism is difficult because of the web of international trade agreements currently in existence, individual countries may still use domestic antitrust law to meet protectionist aims, especially given that an international authoritative body governing the use of antitrust does not exist. Countries serious about preserving free trade may cooperate with one another to adopt realistic economic policies that serve to dull the blade of antitrust law through regional agreements, but ought not to attempt to eliminate it altogether.

Antitrust law, like medicine, must be used appropriately to be effective. While antitrust laws generally should encourage free trade, as promoting competition is the aim of their enforcement, they are also at risk of being used to thwart free trade. That risk is further exacerbated by perceptions of unfair enforcement and the divisive rhetoric of world leaders. In this way, antitrust law has the potential to weaken the already delicate international cooperative framework that exists to foster free trade. Absent a change in perceptions and the protectionist rhetoric fueling the current political landscape, antitrust law is likely to be manipulated to serve protectionist viewpoints, making it increasingly likely to become a nail in free trade's coffin, instead of the key to its preservation. It may be a nail that nations are able to ignore for the sake of its benefit, or it may be the one that finally puts an end to the pursuit of truly international free trade. Only time will tell, but one thing is clear: anti-trust law is a field that will impact the international economic community significantly for years to come.

It’s uniquely likely now---fears of protectionism are high because of COVID, Brexit, and China disputes

Dr. Brian Ikejiaku 21. Senior Lecturer in Law at Coventry University, PhD from the Research Institute of Law, Politics, & Justice (RILPJ) at Keele University, with Cornelia Dayao, LL.M in International Business Law, “Competition Law as an Instrument of Protectionist Policy: Comparative Analysis of the EU and the US.” Utrecht Journal of International and European Law, Volume 36, Issue 1, Gale Academic Complete.

Today, there is a growing fear of resurfacing protectionism, from United States’ trade-war with China, to UK’s Brexit, to the less known trade-restricting measures adopted by countries globally. The General Agreement on Trade & Tariff (GATT), superseded by the World Trade Organisation (WTO) since 1995, rendered the classic forms of protectionism such as tariffs obsolete. However, it did not defeat protectionism; instead, protectionism has evolved through its protean capacity to adapt into new and often undetectable forms, now labelled as ‘murky’ protectionism (e.g. competition law enforcement and the recent bailout packages). It is argued that there are two ways in which States can utilise competition law to impair free-trade and restrict foreign firms’ access to domestic markets: the exemption of certain anticompetitive conduct under national competition law and the strategic application of domestic competition law. This article considers competition law as an instrument of protectionist policy with comparative analysis of the US and the European Union. Using an international political economy (IPE) perspective underpinned by overlapping theories of (legal/political) realism, this article establishes that, while no direct robust empirical evidence of protectionist motivations on competition law enforcement exists, particularly on ‘merger regulation and export cartel exemptions’, the presence of political elements on the decision-making, the wide discretion granted to competition authorities and the ‘sponge’ nature of competition law present an opportunity for the use of competition law for protectionist tendencies.

#### Business will lobby and receive protection to balance out increased antitrust enforcement.

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The Day After COVID-19

Some countries are beginning to ease their lockdowns. The fear of a deeper recession put pressure on governments to reduce shutdowns in order to revive the economy. Unemployment is particularly worrisome in many countries, even in the United States, where unemployment claims have reached 22 million.4 Latin American countries with already relatively high unemployment rates – on average 8.1 percent in 20195 – are particularly vulnerable in this respect.

Such a disturbing outlook brings me to some competition concerns for three reasons.

Firstly, competition authorities have begun to relax the enforcement of some competition rules. For example, on March 19, the UK Competition and Markets Authority (“CMA”) stated that it had no intention of taking competition enforcement action against cooperation between businesses to the extent necessary to protect consumers or ensure supplies.6 The Mexican Competition Authority (“COFECE”) recently took a similar approach.7 Nevertheless, the urgency of acting now might pave the way for setting aside future competition policies necessary for healthy markets. Therefore, in my view, it should be clear that the current approach of dealing with the emergency must be temporary.

Secondly, after the spread of COVID-19 slows, governments will prioritize the recovery of local markets even if that implies embracing extreme protectionism, which in turn will reduce foreign competition. This is important because this trend would be a force in the same direction as relaxing the enforcement of some competition rules. Competition authorities must bear this in mind for post-COVID-19 times.

Thirdly, and closely related to the two previous concerns, domestic corporations will have strong incentives to lobby for softer enforcement of competition law and might request additional protectionist measures as compensation for corporate generosity and flexibility during the pandemic. If some protectionist measures are arguably acceptable for some time, they should not be at the expense of strict enforcement of competition law in domestic markets.

In such a context, my concern is that competition policy might become excessively lenient. This would be a questionable policy choice. If protectionism was winning supporters before the pandemic, a post-COVID-19 world will tolerate more protectionism in order to back domestic industries and businesses.

#### Court packing ensures the link---blame Trump

Danielle Root 19. Director of voting rights and access to justice on the Democracy and Government Reform team at the Center for American Progress, with Sam Berger, 5/8/19. “Structural Reforms to the Federal Judiciary.” https://www.americanprogress.org/issues/courts/reports/2019/05/08/469504/structural-reforms-federal-judiciary/

Discussions of the federal judiciary often focus on the substance of decisions made—which side wins and which side loses—and rightly so. These individual opinions are frequently of incredible importance, not just to the parties involved but in shaping the law more broadly. Yet this focus on substantive decisions has obscured deeper structural factors at play in the nation’s federal judiciary. Structural problems—such as lack of judicial diversity, ideologue judges, and lack of judicial accountability—undercut the courts’ legitimacy and have tangible negative effects on judicial decision-making. Instead of protecting everyday Americans by serving as a check on abuses of power, too often the federal courts have become a tool for carrying out the agendas of special interests and corporations.

Structural problems with the judiciary have always existed to varying degrees. But they have been exacerbated in recent years due to an ongoing campaign by conservatives to take control of the federal courts, often through procedural changes that have significant effects but garner little public attention. The problem has now reached a crisis point. Conservatives have shown a willingness to abandon any and all norms to undermine the judicial nominations process and pack the courts with judges who will help them realize political goals they cannot achieve through the political process. These judges have proven more than willing to carry out the task, supporting the most specious of legal claims in order to skew the system in favor of conservative interests and even prevent many Americans from accessing the courts at all.

#### Foreign discrimination against U.S. firms causes American retaliation.

Michael Ristaniemi 18. PhD Candidate in Commercial Law at the University of Turku, Vice President for Sustainability at the Metsä Group, September. “Convergence, Divergence or Disturbance – How Major Economic Powers Approach International Antitrust.” Concurrences, Number 3. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3266018

2. Means to reach goals

16. The US aims at securing its companies’ interests abroad in a number of ways. At its most aggressive, it has several times applied its antitrust laws extraterritorially when its markets have been impacted by foreign conduct—acts which risk sparking trade friction.21 A more amiable way of ensuring favourable conditions abroad is contractually agreeing with foreign governments and enforcers to, respectively, enact or maintain certain standards with relation to antitrust in their domestic legislation and enforcement thereof as well as cooperate in investigations and otherwise share relevant information, whether as a part of broader trade agreements or in agreements dedicated to antitrust enforcement cooperation.

### 4

#### Decoupling implodes stability in every global hotspot AND throughout Asia.

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Trade tensions between the United States and China continue to rise. In June, U.S. President Donald Trump’s administration announced that it would impose tariffs of 25 percent on $50 billion worth of Chinese exports, with the first wave targeting some 800 goods worth $34 billion. China pushed back with its own set of tariffs targeting the U.S. agricultural sector and industrial heartland. In response, Trump has reportedly ordered his administration to consider a 25 percent tariff on an additional $200 billion worth of Chinese exports. As the showdown escalates, many observers are understandably focused on the potential for a full-fledged trade war that could destabilize the world economy. But they should also consider second-order, longer-term implications—in the security realm. Up until recently, the two nations’ economic ties had served as an effective brake on escalating strategic distrust. A China less constrained by and invested in economic ties with the United States could pose a substantially greater challenge to U.S. foreign policy. For all the Trump administration’s frustrations with managing interdependence, the consequences of decoupling could mean even bigger headaches.

THE ROOTS OF TRADE TENSIONS

The United States buys more exports of Chinese goods than any other country. China, meanwhile, is the United States’ largest trading partner and the fastest-growing market for its exports. Yet neither side considers these deep, multifaceted trade links an unalloyed plus.

Trump often expresses irritation over the size of the U.S. trade deficit with China, but trade tensions between the two countries are rooted less in deficit figures than in high-tech competition. The United States sees China’s technological progress as a growing national security challenge. One of Trump’s top economic advisers, Peter Navarro, warned recently that “China’s investment in strategic technologies may ultimately pose the gravest danger to America’s manufacturing and defense industrial base.” He argued that “tariffs will form a critical line of defense against predatory trade practices China has used to the detriment of American industries.”

China, meanwhile, seeks to become a global leader in advanced manufacturing. Its Made in China 2025 initiative prioritizes ten industries—including information technology, aerospace equipment, and new materials—and aims to raise the domestically produced share of “basic core components and important basic materials” used in China to 40 percent by 2020 and 70 percent by 2025.

As seen with the case of ZTE—until recently China’s second-largest telecommunications equipment maker—Beijing depends heavily on Washington for high-tech inputs. In mid-April, the U.S. Commerce Department issued an order banning companies from selling parts to ZTE for seven years. Although the justification was that ZTE had circumvented U.S. sanctions on Iran and North Korea, the more fundamental concern was that the company could use U.S. technology to engage in espionage or even conduct cyberattacks against Washington. Without chips from Qualcomm and Intel and optical components from Acacia and Lumentum, ZTE could not function, and in early May it announced it had ceased “major operating activities.” A few days later, Trump said he was working with Chinese President Xi Jinping to rescue the company, prompting the Commerce Department to soften its earlier decree, but a bipartisan group in Congress urged the agency to stick with its original order, barring firms from doing any business with ZTE through 2025.

Although the company has just received a lifeline—the U.S. Senate passed a $716 billion defense appropriations bill last week that omitted an amendment introduced by Senator Marco Rubio (R-Fla.) and his Democratic colleague Chris Van Hollen (D-Md.) to reinstate Commerce’s ban on ZTE—Chinese leaders are increasingly convinced that Beijing will not be able to realize its full economic potential unless it becomes more self-reliant. China already saw the currency crisis that rattled the Asia-Pacific in the late 1990s and the global financial crisis that erupted a decade later as evidence that it needed to diversify away from U.S. consumption. Until recently, though, Beijing was primarily looking to shore up its own domestic resilience, and to do so by unwinding its embrace of Washington over time. Now China may seek a more rapid decoupling, less for economic reasons than for strategic ones. The country’s leaders believe that extant U.S. leverage over its economy could thwart the ambitions it has set out in Made in China 2025, which a ranking Communist Party official recently called “the guarantor” of China’s “sovereignty and prosperity.”

In late April, Xi stated that in “the next step of tackling technology, we must cast aside illusions and rely on ourselves.” His conclusion parallels that of Trump, who believes that the United States has eroded its competitiveness by buttressing the postwar order and joining multilateral trade agreements. The New York Times posits that this alignment of views may presage “a time when the economic engines of China and the United States are not so closely linked, particularly in high-tech industries.” A loosening of those links would have not only economic implications but also security ones.

A MORE REVISIONIST BEIJING?

There are few factors, after all, besides trade interdependence that compel the two countries to exercise mutual restraint and carry on multifaceted cooperation. The United States is a young, racially diverse democracy whose self-conception is molded anew by each wave of immigrants; China is a five-millennia-old, predominantly ethnic Han civilization that clings to a largely immutable identity. The two countries have markedly different, sometimes explicitly antithetical, perspectives on domestic governance and foreign policy—divergences amplified by each one’s insistence upon its own exceptionalism. Absent economic interdependence, U.S.-Chinese ties may well have grown more strained, if not antagonistic, over the past four decades.

In the long run, a China economically decoupled from the United States could scale back existing bilateral cooperation and take a more overtly revisionist attitude toward the postwar order. The Council on Foreign Relations’ Elizabeth Economy explains in her new book that Xi “is ambitious to lead but embraces globalization insofar as it controls the flow of ideas, as well as human and financial capital.” Beijing could steadily reduce its financial support for leading economic institutions such as the International Monetary Fund; prioritize the development of economic and security arrangements that presently leave out the United States (such as the Regional Comprehensive Economic Partnership and the Shanghai Cooperation Organization) and undertake to construct other exclusionary ones; more proactively attempt to drive wedges between the United States and long-standing allies by casting Washington as an inconsistent and unreliable steward of world order and asserting that Beijing is better suited to adapting that system to contemporary geopolitical realities; and make a more concerted push to challenge Washington on ideological grounds.

Beijing could also further undercut the Trump administration’s “maximum pressure” campaign on North Korea. U.S. Secretary of State Mike Pompeo testified in June that there has been a “modest amount” of backsliding in China’s enforcement of multilateral sanctions on Pyongyang, acknowledging that the Chinese are “not enforcing control over their cross-border areas as vigorously as they were six or 12 months ago.” That admission came shortly before reports of a new U.S. intelligence assessment, based on evidence collected after Trump’s historic Singapore meeting with North Korean leader Kim Jong Un, that Pyongyang not only seeks to “deceive the United States about the number of nuclear warheads” in its arsenal but also may maintain more than one secret site for enriching fissile material.

On Iran, in the wake of the U.S. withdrawal from the Joint Comprehensive Plan of Action, China could decline to join any U.S.-initiated effort to sanction the regime should it resume its pursuit of nuclear weapons. It might even go further, boosting energy ties with and increasing arms sales to Tehran while expanding the scope and depth of its alignment with Russia to frustrate U.S. foreign policy objectives in the Middle East and eastern Europe. It could also accelerate its ongoing militarization of a crucial maritime chokepoint, the South China Sea; more aggressively press its claims in the East China Sea; and increase preparations for an attack on Taiwan, appreciating that a United States that is already militarily overstretched has little desire for an armed confrontation with the country possessing the world’s second-largest economy.

#### Breakdown escalates civil conflicts that draw in Iran, Russia, and North Korea---nuclear war

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But that overlooked the ways in which the risk of interstate war was already rising before COVID-19 began to spread. Civil wars were becoming more numerous, lasting longer and attracting more outside involvement, with dangerous consequences for stability in many regions of the world. And the global dynamics most commonly cited to explain the falling incidence of interstate war—democracy, economic prosperity, international cooperation and others—were being upended.

If the spread of democracy kept the peace, then its global decline is unnerving. If globalization and economic interdependence kept the peace, then a looming global depression and the rise of nationalism and protectionism are disconcerting. If regional and global institutions kept the peace, then their degradation is unsettling. If the balance of nuclear weapons kept the peace, then growing risks of proliferation are disquieting. And if America’s preeminent power kept the peace, then its relative decline is troubling.

Now, the pandemic, or more specifically the world’s reaction to it, is revealing the extent to which the factors holding major wars in check are withering. The idea that war between nations is a relic of the past no longer seems so convincing.

The Pessimists Strike Back

More than any other individual, it was cognitive scientist Steven Pinker who popularized the idea that we are living in the most peaceful moment in human history. Starting with his 2011 bestseller, “The Better Angels of Our Nature: Why Violence Has Declined,” Pinker argued that the frequency, duration and lethality of wars between great powers have all decreased. In his 2019 book, “Enlightenment Now: The Case for Reason, Science, Humanism, and Progress,” he wrote that war “between the uniformed armies of two nation-states appears to be obsolescent. There have been no more than three in any year since 1945, none in most years since 1989, and none since the American-led invasion of Iraq in 2003.”

Optimists like Pinker held that, rather than the world falling apart, as a quick glance at headline news might suggest, the opposite was true: Humanity was flourishing. More regions are characterized by peace; fewer mass killings are occurring; governance and the rule of law are improving; and people are richer, healthier, better educated and happier than ever before.

In their book, “Clear and Present Safety: The World Has Never Been Better and Why That Matters to Americans,” Michael A. Cohen and Micah Zenko argued that the evidence is so overwhelming that it is difficult to argue against the idea that wars between great powers, and all other interstate wars, are becoming vanishingly rare. Even when wars do break out, they tend to be shorter and less deadly than they were in the past. John Mueller, a senior fellow at the Cato Institute, also reasoned that the idea of war, like slavery and dueling before it, was in terminal decline, while Joshua Goldstein, an international relations researcher at American University, credited the United Nations and the rise of peacekeeping operations for helping win the “war on war.”

But in recent years, a range of critics have begun to poke holes in these arguments. Tanisha M. Fazal, an international relations professor at the University of Minnesota, contends that the decline in war is overstated. Major advances in medicine, speedier evacuations of wounded soldiers from the field of battle and better armor have made war less fatal—but not necessarily less frequent. Fazal and Paul Poast, who is at the University of Chicago, further assert that the notion of war between great powers as a thing of the past is based on the assumption that all such conflicts resemble World War I and II—both are historical anomalies—and overlooks the actual wars fought between great powers since 1945, from the Korean War and the Vietnam War to proxy wars from Afghanistan to Ukraine. Meanwhile, Bear F. Braumoeller, an Ohio State political science professor, analyzed the same historical data on conflicts used by Pinker, Mueller and Goldstein, and found no general downward trend in either the initiation or deadliness of warfare over the past two centuries. What’s more, Braumoeller contends that the so-called “long peace”—the 75 years that have passed without systemic war since World War II—is far from invulnerable, and that wars are just as likely to escalate now as they used to be. Just because a major interstate war hasn’t happened for a long time, doesn’t mean it never will again. In all probability, it will.

And by focusing solely on interstate wars, the optimists miss half the story, at least. Wars between states have declined, but civil wars never disappeared—and these internal conflicts could easily escalate into regional or global wars.

The number of conflicts in the world reached its highest point since World War II in 2016, with 53 state-based armed conflicts in 37 countries. All but two of these conflicts were considered civil wars. To make matters worse, new studies have shown that civil wars are becoming longer, deadlier and harder to conclusively end, and that these internal conflicts are not really internal. Civil wars harm the economies and stability of neighboring countries, since armed groups, refugees, illicit goods and diseases all spill over borders. Some 10 million refugees have fled to other countries since 2012. The countries that now host them are more likely to experience war, which means states with huge refugee populations like Lebanon, Jordan and Turkey face legitimate security challenges. Even after the threat of violence has diminished in refugees’ countries of origin, return migration can reignite conflicts, repeating the brutal cycle.

A Yugoslav Federal Army tank.

Perhaps most importantly, recent research indicates that civil wars increase the risk of interstate war, in large part because they are attracting more and more outside involvement. In a 2008 paper, researchers Kristian Skrede Gleditsch, Idean Salehyan and Kenneth Schultz explained that, in addition to the spillover effects, two other factors in civil wars increase international tensions and could possibly provoke wider interstate wars: external interventions in support of rebel groups and regime attacks on insurgents across international borders.

Immediately after the Cold War, none of the ongoing civil wars around the world were internationalized. According to the Uppsala Conflict Data Program, there were 12 full-fledged civil wars in 1991—in Afghanistan, Iraq, Peru, Sri Lanka, Sudan, and elsewhere—and foreign militaries were not active on the ground in any of them. Last year, by contrast, every single full-fledged civil war involved external military participants. This is due, in part, to the huge growth in U.S. military interventions abroad into civil conflicts, but it’s not only the Americans. All of today’s major wars are in essence proxy wars, pitting external rivals against one another. Conflicts in Syria, Yemen and Libya are best understood not as civil wars, but as international warzones, attracting meddlers including the United States, Russia, Saudi Arabia, Turkey, Iran, France and many others, which often intervene not to build peace, but to resolve conflicts in a way that is favorable to their own interests. These internationalized wars are more lethal, harder to resolve and possibly more likely to recur than civil wars that remain localized. It is not that difficult to imagine how these conflicts could spark wider international conflagrations. Wars, after all, can quickly spiral out of control.

As Risks Increase, Deterrents Decline

To make matters worse, most of the global trends that explained why interstate war had decreased in recent decades are now reversing. The theories that democracy, prosperity, cooperation and other factors kept the peace have been much debated—but if there was any truth to them, their reversals are likely to increase the chance of war, irrespective of how long the coronavirus pandemic lasts.

Democracy is often considered a prophylactic for war. Fully democratic countries are less likely to experience civil war and rarely, if ever, go to war with other democracies—though, of course, they do still go to war against non-democracies. While this would be great news if democracy and pluralism were spreading, there have now been 14 consecutive years of global democratic decline, and there have been signs of additional authoritarian power grabs in countries like Hungary and Serbia during the pandemic. If democracy backslides far enough, internal conflicts and foreign aggression will become more likely.

Other theories posit that economic bonds between countries have limited wars in recent decades. Dale Copeland, a professor of international relations at the University of Virginia, has argued that countries work to preserve ties when there are high expectations for future trade, but war becomes increasingly possible when trade is predicted to fall. If globalization brought peace, the recent wave of far-right nationalism and populism around the world may increase the chances of war, as tariffs and other trade barriers go up—mostly from the United States under President Donald Trump, who has launched trade wars with allies and adversaries alike.

The coronavirus pandemic immediately elicited further calls to reduce dependence on other countries, with Trump using the opportunity to pressure U.S. companies to reconfigure their supply chains away from China. For its part, China made sure that it had the homemade supplies it needed to fight the virus before exporting extras, while countries like France and Germany barred the export of face masks, even to friendly nations. And widening economic inequalities, a consequence of the pandemic, are not likely to enhance support for free trade.

This assault on open trade and globalization is just one aspect of a decaying liberal international order, which, its proponents argue, has largely helped to preserve peace between nations since World War II. But that old order is almost gone, and in all likelihood isn’t coming back. The U.N. Security Council appears increasingly fragmented and dysfunctional. Even before Trump, the world’s most powerful country ratified fewer treaties per year under the Obama administration than at any time since 1945.

Trump’s presidency only harms multilateral cooperation further. He has backed out of the Paris Agreement on climate change, reneged on the Iran nuclear deal, picked fights with allies, questioned the value of NATO and defunded the World Health Organization in the middle of a global health crisis. Hyper-nationalism, rather than international collaboration, was the default response to the coronavirus outbreak in the U.S. and many other countries around the world.

It’s hard to see the U.S. reluctance to lead as anything other than a sign of its inevitable, if slow, decline. The country’s institutionalized inequalities and systemic racism have been laid bare in recent months, and it no longer looks like a beacon for others to follow. The global balance of power is changing. China is both keen to assert a greater leadership role within traditionally Western-led institutions and to challenge the existing regional order in Asia. Between a rising China, revanchist Russia and new global actors, including non-state groups, we may be heading toward an increasingly multipolar or nonpolar world, which could prove destabilizing in its own right.

Finally, the pacifying effect of nuclear weapons could be waning. While vast nuclear arsenals once compelled the United States and the Soviet Union to reach arms control agreements, old treaties are expiring and new talks are breaking down. Mistrust is growing, and the chance of an unwanted U.S.-Russia nuclear confrontation is arguably as high as it has been since the Cuban missile crisis.

The theory of nuclear peace may no longer hold if more countries are tempted to obtain their own nuclear deterrent. Trump’s decision to abandon the Iran nuclear deal, for one thing, has only increased the chance that Tehran will acquire nuclear weapons. It’s almost easy to forget that, just a few short months ago, the United States and Iran were one miscalculation or dumb mistake away from waging all-out war. And despite Trump’s efforts to negotiate nuclear disarmament with Kim Jong Un’s regime in Pyongyang, it is wishful thinking to believe North Korea will give up its nuclear weapons. At this point, negotiators can only realistically try to ensure that North Korea’s nuclear menace doesn’t get even more potent.

In other words, by turning inward, the United States is choosing to leave other countries to fend for themselves. The end result may be a less stable world with more nuclear actors.

If leaders are smart, they will take seriously the warning signs exposed by this global emergency and work to reverse the drift toward war.

If only one of these theories for peace were worsening, concerns would be easier to dismiss. But together, they are unsettling. While the world is not yet on the brink of World War III and no two countries are destined for war, the odds of avoiding future conflicts don’t look good.

The pandemic is already degrading democracies, harming economies and curtailing international cooperation, and it also seems to be fostering internal instability within states. Rachel Brown, Heather Hurlburt and Alexandra Stark argue that the coronavirus could in fact sow more civil conflict. If this proves accurate, the increase in civil wars is likely to lead to more external meddling, and these next proxy wars could soon precipitate all-out international conflicts if outsiders aren’t careful. With the usual deterrents to conflict declining around the world, major wars could soon return.

#### Trade escalation splits the globe into blocs---nuclear war

Dr. Larisa Kapustina 20, PhD in Economics and Professor of Economics at Ural State University, Dr. Ľudmila Lipková, Professor of Economics at the University of Economics in Bratislava, Yakov Silin, Rector of Ural State University of Economics, and Andrei Drevalev, Senior Lecturer of the Marketing and International Management at Ural State University, “US-China Trade War: Causes and Outcomes”, SHS Web of Conferences 73, p. 10-11 [grammar edit]

4.4 Scenario 4. Trade war will escalate into Hot World War III

A trade war can escalate from Cold to Hot stage, which is especially unwanted scenario considering that the US allows limited use of nuclear weapon[s]. According to Terence Tai-Leung Chong & Xiaoyang Li, the trade conflict between China and the US is of fundamental nature and it cannot be easily resolved [29]. The conflict is associated with the race for global economic domination. The US has a serious advantage in cyberspace and it seeks to “digitally colonize” the global economy. According to Ashmanov, almost all neural platforms in the world are US-based, including first of all those belonging to Google and Facebook [35]. “The US shows with its actions, that they are ready to easily throw any inconvenient contracts and obligations away into the trash can, and also to ignore the UN and other international organizations, granting itself the right for unilateral military actions, the US is moving towards the role associated with the British Empire after the World War I” [6]. This scenario seems unlikely now, but it is not excluded.

Trump has made matters worse by acting unilaterally against China in a way that would appear to breach World Trade Organization rules. Indeed, potential allies find Trump’s “America First” rhetoric repulsive. All this has given China the political high ground – “China doesn’t want a trade war, but we’re not afraid to fight a trade war” has become Beijing’s official line [22].

5 Conclusion

The greatest trade war in economic history can result in a change in the international trade architecture, slow-down of financial markets. The countries can be divided into two blocks supporting the US or China, and at the same time, forming the mega-alliances of economies, as well as regional currency zones. The Asia’s role in globalization processes and the development of global supply chains is likely to strengthen. The US strives to weaken its main competitor and maintain dominance in the global arena: in the economy, politics and the national security.

The current foreign trade policy of the US aims to slow down the still rapid economic growth of the PRC and its growing importance in the world economy. The China’s government in its turn has a goal to achieve leadership in robotics, biotechnology and artificial intelligence. It will provide financial support to high-tech industries, and will do everything possible not to let the US stop or slow down the modernization and digitalization of the China’s economy.

## Advantage 1

### Internet Freedom

#### Internet freedom resilient

David Pozen 18, Professor of Law at Columbia Law School and inaugural visiting scholar at the Knight First Amendment Institute at Columbia University, "The De-Americanization of Internet Freedom," Lawfare, https://www.lawfareblog.com/de-americanization-internet-freedom

“The Internet,” Ira Magaziner opined in a 1998 speech, is “a force for the promotion of democracy” as well as “individual freedom and individual empowerment.” At the time he gave this speech, Magaziner was the Clinton administration’s internet guru. He began his remarks in a tentative register, observing that “humility is an important quality for anyone working to develop policies for the Internet,” given the “uncharted” nature of the terrain. A minute or so later, Magaziner informed his audience that the internet would “be the primary driver of the broader economy for the next couple of decades,” make dictatorships and other non-democratic forms of government “impossible in the long run,” and “bring all the peoples of the world closer together.” At least, the internet would deliver these revolutionary benefits if policymakers regulated it appropriately. And that, Magaziner explained, meant regulating it as little as possible: pursuing a “market-driven model” in which “the government role is not in regulating, but rather in setting the terms for a predictable legal environment for contracts to form.” A “regulated model” would stifle the growth of the medium and cause “distortion.” Nation-states, accordingly, should abandon most efforts to tax the internet, to subject it to traditional telecommunications and competition laws, or to censor or control content. (Intellectual property in electronic commerce, on the other hand, would require “strong protection.”) “If I could wave a magic wand,” Magaziner summed up his message, “I would say we should go through a complete deregulation here, and let the market go.” Thus was launched the United States’ “internet freedom” agenda. Its precise elements have shifted some over time, but as Jack Goldsmith explains in a riveting new essay on “The Failure of Internet Freedom,”\* it has consistently been anchored in the principles of (as Goldsmith puts it) “commercial non-regulation” and “anti-censorship.” This agenda has been a boon for the commercial development of the internet, particularly for the large U.S. firms that dominate life online. Yet in virtually every other respect, Goldsmith argues, the agenda has been an abject failure. Authoritarian regimes—most notably China, but also states in the Caucasus, the Arabian Peninsula, and beyond—“have become adept at clamping down on unwelcome speech and at hindering the free flow of data across and within their borders.” European regulators have become increasingly aggressive in going after U.S. technology companies and in repudiating U.S. notions of privacy and free expression. Edward Snowden’s leaks exposed the hypocrisy of the U.S. government’s “hands-off” approach to digital networks. And years of lax regulation have contributed to a domestic online environment saturated with falsehoods, conspiracy theories, troll armies, cyberthefts, cyberattacks, and related ills—an environment that Russian president Vladimir Putin “was able to exploit,” in Goldsmith’s telling, “to cause unprecedented disruption in [American] democratic processes, possibly denying [Hillary Clinton] the presidency.” As with other aspects of U.S. economic and social policy, President Trump inherits, and is himself the political product of, a baneful legacy of neoliberalism with regard to managing the internet. \* \* \* Why did the internet freedom agenda fail? Goldsmith’s essay tees up, but does not fully explore, a range of explanatory hypotheses. The most straightforward have to do with unrealistic expectations and unintended consequences. The idea that a minimally regulated internet would usher in an era of global peace, prosperity, and mutual understanding, Goldsmith tells us, was always a fantasy. As a project of democracy and human rights promotion, the internet freedom agenda was premised on a wildly overoptimistic view about the capacity of information flows, on their own, to empower oppressed groups and effect social change. Embracing this market-utopian view led the United States to underinvest in cybersecurity, social media oversight, and any number of other regulatory tools. In suggesting this interpretation of where U.S. policymakers and their civil society partners went wrong, Goldsmith’s essay complements recent critiques of the neoliberal strains in the broader human rights and transparency movements. Perhaps, however, the internet freedom agenda has faltered not because it was so naïve and unrealistic, but because it was so effective at achieving its realist goals. The seeds of this alternative account can be found in Goldsmith’s concession that the commercial non-regulation principle helped companies like Apple, Google, Facebook, and Amazon grab “huge market share globally.” The internet became an increasingly valuable cash cow for U.S. firms and an increasingly potent instrument of U.S. soft power over the past two decades; foreign governments, in due course, felt compelled to fight back. If the internet freedom agenda is understood as fundamentally a national economic project, rather than an international political or moral crusade, then we might say that its remarkable early success created the conditions for its eventual failure. Goldsmith’s essay also points to a third set of possible explanations for the collapse of the internet freedom agenda, involving its internal contradictions. Magaziner’s notion of a completely deregulated marketplace, if taken seriously, is incoherent. As Goldsmith and Tim Wu have discussed elsewhere, it takes quite a bit of regulation for any market, including markets related to the internet, to exist and to work. And indeed, even as Magaziner proposed “complete deregulation” of the internet, he simultaneously called for new legal protections against computer fraud and copyright infringement, which were soon followed by extensive U.S. efforts to penetrate foreign networks and to militarize cyberspace. Such internal dissonance was bound to invite charges of opportunism, and to render the American agenda unstable. Developments outside of government only heightened the contradictions. As private platforms increasingly came to function as the new governors of online speech, the non-commercial regulation principle and the anti-censorship principle came into increasing tension with each other. Magaziner envisioned the state as the source of all undesirable restrictions on and distortions of online speech. Yet many of the ways in which digital content is controlled today are the product of corporate decisions, not government policies. And in some instances, public regulation may be the most effective means to combat the speech-restrictive or speech-distortive effects of those decisions. As Nani Jansen Reventlow and Jonathan McCully observe, by “seeking to take a ‘hands-off’ approach when it comes to regulating these platforms, the internet freedom agenda . . . jeopardizes the anti-censorship principle.” \* \* \* Whatever the causes—and there are likely multiple, overlapping contributing factors—it is hard to gainsay Goldsmith’s descriptive claim that the U.S. internet freedom agenda now finds itself derailed and discredited around the globe. The fact that the U.S. internet freedom agenda is failing, however, does not necessarily mean that the larger project of internet freedom is failing. On the contrary, the growing detachment of this project from American commercial and ideological interests may suggest a new path forward. Writing in response to Goldsmith, Jansen Reventlow and McCully, along with David Kaye, offer this glass-half-full perspective. While endorsing Goldsmith’s basic critique of U.S. policy, these leading international lawyers push back against the parochialism inherent in evaluating internet freedom in U.S.-centric terms. “If we reorient the internet freedom analysis away from U.S. supply or geopolitical struggle,” Kaye submits, we will find a wide variety of actors—from the U.N. Human Rights Council

(UNHRC) to regional courts to grassroots activists—who are mobilizing to meet the global demand for online access, privacy, and security and thereby “laying the groundwork for resistance to authoritarian policies and laws.” Jansen Reventlow and McCully likewise praise such developments, identifying the UNHRC’s “comprehensive, human rights-based approach” as an especially promising and legitimate alternative to the hegemonic projection of U.S. power. As compared to the Clinton, Bush, and Obama administrations’ vision of internet governance, the vision that seems to be emerging from this global movement is less deferential to market logic and more concerned with people’s capacity to control their own data—more concerned, that is, with the positive liberty to use the internet constructively and autonomously than with the negative liberty to be spared state interference. Participants in this movement see themselves as the true defenders of internet freedom and the United States as its false or fickle friend. And so, twenty years in the future, we may find that reforms taken in the name of internet freedom bear little resemblance to the ideas Magaziner set forth in 1998. Humility counsels that we be open to the possibility.

## Advantage 2 --- FTC

### Soft Power

#### No impact

Greenwald ‘10 (Abe, associate editor of COMMENTARY, “The Soft-Power Fallacy”, July/August, <http://www.commentarymagazine.com/viewarticle.cfm/the-soft-power-fallacy-15466?page=2>)

Like Francis Fukuyama’s essay “The End of History,” soft-power theory was a creative and appealing attempt to make sense of America’s global purpose. Unlike Fukuyama’s theory, however, which the new global order seemed to support for nearly a decade, Nye’s was basically refuted by world events in its very first year. In the summer of 1990, a massive contingent of Saddam Hussein’s forces invaded Kuwait and effectively annexed it as a province of Iraq. Although months earlier Nye had asserted that “geography, population, and raw materials are becoming somewhat less important,” the fact is that Saddam invaded Kuwait because of its geographic proximity, insubstantial military, and plentiful oil reserves. Despite Nye’s claim that “the definition of power is losing its emphasis on military force,” months of concerted international pressure, including the passage of a UN resolution, failed to persuade Saddam to withdraw. In the end, only overwhelming American military power succeeded in liberating Kuwait. The American show of force also succeeded in establishing the U.S. as the single, unrivaled post–Cold War superpower. Following the First Gulf War, the 1990s saw brutal acts of aggression in the Balkans: the Bosnian War in 1992 and the Kosovo conflicts beginning in 1998. These raged on despite international negotiations and were quelled only after America took the lead in military actions. It is also worth noting that attempts to internationalize these efforts made them more costly in time, effectiveness, and manpower than if the U.S. had acted unilaterally. Additionally, the 1990s left little mystery as to how cataclysmic events unfold when the U.S. declines to apply traditional tools of power overseas. In April 1994, Hutu rebels began the indiscriminate killing of Tutsis in Rwanda. As the violence escalated, the United Nations’s peacekeeping forces stood down so as not to violate a UN mandate prohibiting intervention in a country’s internal politics. Washington followed suit, refusing even to consider deploying forces to East-Central Africa. By the time the killing was done, in July of the same year, Hutus had slaughtered between half a million and 1 million Tutsis. And in the 1990s, Japan’s economy went into its long stall, making the Japanese model of a scaled down military seem rather less relevant. All this is to say that during the presidency of Bill Clinton, Nye’s “intangible forms of power” proved to hold little sway in matters of statecraft, while modes of traditional power remained as critical as ever in coercing other nations and affirming America’s role as chief protector of the global order. If the Clinton years posed a challenge for the efficacy of soft power, the post-9/11 age has exposed Nye’s explication of the theory as something akin to academic eccentricity. In his book, Nye mentioned “current issues of transnational interdependence” requiring “collective action and international cooperation.” Among these were “ecological changes (acid rain and global warming), health epidemics such as AIDS, illicit trade in drugs, and terrorism.” Surely a paradigm that places terrorism last on a list of national threats starting with acid rain is due for revision. For what stronger negation of the soft-power thesis could one imagine than a strike against America largely inspired by what Nye considered a great “soft power resource”: namely, “American values of democracy and human rights”? Yet Ayman al-Zawahiri, al-Qaeda’s second-in-command, had in fact weighed in unequivocally on the matter of Western democracy: “Whoever claims to be a ‘democratic-Muslim,’ or a Muslim who calls for democracy, is like one who says about himself ‘I am a Jewish Muslim,’ or ‘I am a Christian Muslim’—the one worse than the other. He is an apostate infidel.” With a detestable kind of clarity, Zawahiri’s pronouncement revealed the hollowness at the heart of the soft-power theory. Soft power is a fine policy complement in dealing with parties that approve of American ideals and American dominion. But applied to those that do not, soft power’s attributes become their opposites. For enemies of the United States, the export of American culture is a provocation, not an invitation; self-conscious “example-setting” in areas like nonproliferation is an indication of weakness, not leadership; deference to international bodies is a path to exercising a veto over American action, not a means of forging multilateral cooperation.

#### Soft power fails.

Lacey 13 — Jim Lacey, Professor of Strategic Studies at the Marine Corps War College, holds a Ph.D. in Military History from Leeds University, 2013 (“Soft Power, Smart Power,” National Review Online, April 22nd, Available Online at http://www.nationalreview.com/article/346131/soft-power-smart-power, Accessed 05-27-2013)

During World War II, Stalin’s advisers encouraged him to seek the favor of the pope. He famously replied: “How many divisions does the pope have?” Decades later, the Soviets came to realize that papal power was not something to cavalierly disregard. Many, in fact, claim that Pope John Paul II’s moral authority was decisive in breaking the Soviet hold on Poland and propelling the Evil Empire toward its final demise. It was, therefore, a true example of the clout of “soft power.” Of course, one can maintain that view only by discounting the massive U.S. and NATO military forces that kept Soviet hard power in check for decades. A few years back, a number of policymakers, jumping on a popular academic trend given its greatest voice by Joseph Nye, began espousing a theory of soft power. In this new and shiny vision, America could wield its greatest global influence through the power of its example. The world would just look at how good we were, and how great it was to be an American, and clamor to follow us. Somehow these visionaries neglected to notice that Europe’s almost total unilateral disarmament had failed to translate into influence on the global stage. Rather, it had done the opposite. In a remarkably short time, European opinions on any matter of consequence ceased to matter. Worse, a large segment of the world took a good look at the American example and was repelled. Some of these people launched the 9/11 attack. At some point, it became clear that those holding a world vision that included returning to eighth-century barbarism were not finding our example attractive. Our deep-thinking strategists realized they needed a new answer. What they came up with was even more seductive than soft power. In the future, America would prosper through the employment of “smart power.” One wonders if our policymakers had been willfully employing “dumb power” for the previous two centuries. In any case, smart-power advocates claimed that a new policy nirvana was attainable, if only we could find the right mix of soft and hard power. Well, soft power and smart power were fascinating intellectual exercises that led nowhere. Iran is still building nuclear weapons, North Korea is threatening to nuke U.S. cities, and China is becoming militarily more aggressive. It turns out that power is what it has always been — the ability to influence and control others — and deploying it requires, as it always has, hard instruments. Without superior military power and the economic strength that underpins it, the U.S. would have no more ability to influence global events than Costa Rica. When President Obama made the strategic decision to pivot toward Asia, he did not follow up by sending dance troupes to China, or opening more cultural centers across the Pacific’s great expanse. Rather, he ordered the U.S. military to begin shifting assets into the region, so as to show the seriousness of our intent. If North Korea is dissuaded from the ultimate act of stupidity, it will have a lot more to do with our maintenance of ready military forces in the region than with any desire the North Korean regime has for a continuing flow of Hollywood movies. By now every serious strategist and policymaker understands that if the United States is going to continue influencing global events it requires hard power — a military — second to none. That is what makes a new report from the well-respected Stockholm International Peace Research Institute troubling. According to SIPRI, in 2012, China’s real military spending increased by nearly 8 percent, while Russia’s increased by a whopping 16 percent. Worse, SIPRI expects both nations to increase spending by even greater percentages this year. The United States, on the other hand, decreased real spending by 6 percent last year, with much larger cuts on the way. After a decade of war, much of our military equipment is simply worn out and in need of immediate replacement. Moreover, technology’s rapid advance continues, threatening much of our current weapons inventory with obsolescence. As much as the utopians (soft-power believers) want to deny it, American power is weakening even as the world becomes progressively less stable and more dangerous. In a world where too many states are led by men who still believe Mao’s dictum that “Power comes from the barrel of a gun,” weakness is dangerous. Weakness is also a choice. The United States, despite our current economic woes, can easily afford the cost of recapitalizing and maintaining our military. We are not even close to spending levels that would lead one to worry about “imperial overstretch.” Rather, our long-term security is being eaten up so as to fund “entitlement overstretch.” I suppose that one day, if left unchecked, the welfare state will absorb so much spending that the only military we can afford will be a shadow of what has protected us for the past seven decades. Soft power will then cease to be one option among many and, instead, become our only choice. We will become as relevant to the rest of the world as Europe. I wonder how many people realize just how different their daily lives will become if that day arrives. For a long time, American hard power has cast a protective shield around the liberal world order. It will not be pretty when that is gone.

#### Nye is terrible.

Bruce Newsome 21, Lecturer, International Relations, University of San Diego, "The Wokeness of Soft Power," Critic Magazine, 03/03/2021, https://thecritic.co.uk/the-wokeness-of-soft-power/.

Joe Nye, the author of the term “soft power”, was there too, to remind us inadvertently that the wokeness of “soft power” begins with its vagueness. Nobody would disagree with what it’s not. “Hard power” (i.e., military power) is associated with vicious “hawks”, while progressives like to paint themselves as virtuous “doves”. The concept is ancient, although Nye published the term in 1990 when he was a professor of political science at Harvard. Within years, he was serving in Bill Clinton’s administration.

Nye has never defined soft power in any operationalizable way or measured it except by personal judgements. He specifies the objective as getting “other countries to want what you want”, or to “attract” others to your way of thinking. But an objective is not the same as a definition. He breaks soft power down into “culture”, “values”, and “policies”, but your culture, values, and policies appeal most to those who already share them. Meanwhile, soft power can be repellent to others. Nye himself admits that the worst despots had soft power. Moreover, pursuing soft power might mean compromising on one’s values to appeal to somebody else’s.

Nye has never provided a satisfactory guide to navigating these imperfectly competitive choices. Indeed, his later comments became decreasingly helpful. For instance, in 2012, he admired China’s rise with this contradiction: “the best propaganda is not propaganda.” At Thursday’s conference, the closest he came to giving an example of soft power is to hope for a post-Trump return to “values”. In answer to Miliband, he admitted that “hypocrisy” undermines soft power.

Clinton sometimes remembered to include “soft power” in her list of achievements, but she never defined soft power and gave only “diplomacy and negotiation” as examples.

Yet if soft power is just communication, then every state has soft power – at least, as long as any other state wants to talk. People are more likely to talk if you have hard power. Otherwise, they’re being charitable.

Most of the participants advocated charity as the main form of soft power. But then one wonders, in which direction is soft power really moving? Does the aider have soft power, or the recipient for attracting the aid? Or is it the interest groups that drive governments to virtue-signal despite the waste and counter-productiveness? Soft power ends up being used to justify itself.

At times, advocates of soft power see soft power everywhere. Tugendhat cited the use of the Union Jack to decorate mobile phones: “If that’s not soft power, I don’t know what is.” His next example was the appeal of British universities to foreign students. He pointed to foreign consumption of BBC news, but this is British soft power only if the coverage of Britain is positive, which it rarely is.

#### BUT, if they are right about great power politics, soft power is irrelevant.

Ilan Manor & Guy J. Golan 20, Digital Diplomacy Scholar, University of Oxford; Associate Professor, Bob Schieffer College of Communication of Texas Christian University, "The Irrelevance of Soft Power," E-International Relations, 10/19/2020, https://www.e-ir.info/2020/10/19/the-irrelevance-of-soft-power/.

The irrelevance of Soft Power stems not from its theoretical dimension, but from a changing global landscape. The 21st century will be characterized by growing competition among three giants – China, India and the United States. To contend with this triumvirate, nations will create short-termed strategic alliances that will collectively bargain opposite the giants, or force their hands. These alliances will rest on shared interests, not shared values. In a world governed by increased competition, as opposed to cooperation, the practice of Soft Power will become secondary. The benefit of strategic alliances lies in their malleability. Unlike the Cold-War era, nations will not be bound to one giant. On the contrary, nations will collaborate with different giants towards different ends. National power will emanate from a nation’s status as a desirable member in strategic alliances. This desirability may rest on diverse resources ranging from economic stability to technological infrastructure and geographic location. Now is not the age of uni-polarity or bi-polarity. Now is the age of giants. And in this age, power will function differently, as explained in this article.

Vladimir Putin once stated that ‘I would prefer to abandon the terminology of the past. ‘Superpower’ is something that we used during the Cold War time. Why use it now?’ (Financial Times, 2016). The demise of the Cold War led scholars to reconsider additional terms including power. In a world no longer marked by ideological conflict and a nuclear arms race, collaboration rather than confrontation could be the order of the day. In a seminal article, Professor Joseph Nye introduced the concept of Soft Power. Ultimately, Nye argued, the attractiveness of a nation’s culture, political values, and foreign policy will be more influential on its engagement with other nations than the number of ballistic missiles at its disposal (Nye, 1990; 2008).

In this article we argue that the world is in the midst of profound structural change, and that this change necessitates that the concept of power be examined yet again. Specifically, we contend that this century will see the emergence of a modern day Triumvirate of three giants. While middle powers such as Russia, Iran, Brazil and the EU (European Union) will remain central to global affairs, it is the three giants who will dictate the rules of the game. India’s population size and status as a global telecommunications hub will see its power overshadow that of Iran or Brazil. China’s financial dominance and global military reach will eclipse that of Russia, while the US’s strength will continue to rest on its mass investment in defense, and ardent commitment to consumerism.

# 1NR vs JCCC BB

### Overview---2NC

#### The impact is linear which means any DA to the perm outweighs---even small forecasting differences prevent war.

J. Peter Scoblic and Philip E. Tetlock 16. Scoblic, Fellow in the international security program at New America. "We didn’t see Donald Trump coming. But we could have.". Washington Post. 2-12-2016. https://www.washingtonpost.com/opinions/we-didnt-see-donald-trump-coming-but-we-could-have/2016/02/12/46ece26a-d0db-11e5-abc9-ea152f0b9561\_story.html

The answer lies in measuring a forecaster’s performance over many predictions. Do the things you say will happen 5 percent of the time actually happen about that often? Do you assign high probabilities to events that happen and low probabilities to those that don’t, as opposed to playing it safe with middle-of-the-road predictions? By answering these questions, we can find out whose forecasts are generally the most accurate — even if we can’t say they were “right” — and use the results to refine our beliefs and plan for the future.

Individuals, businesses and policymakers often face choices involving competing priorities and limited resources. Probabilistic predictions, especially from forecasters who have proved their accuracy over time, can enable better decisions, and even small improvements in predictive ability can mark the difference between danger and security, recession and growth, war and peace. Imagine that the intelligence community had been more circumspect in 2002, saying there was a 75 percent chance that Iraq had weapons of mass destruction (and a 25 percent chance it did not) instead of bluntly stating, “Baghdad has chemical and biological weapons.” Would Congress still have authorized the use of force? No one knows for sure, but lawmakers might have been more cautious. Decreasing the odds of multi-trillion-dollar mistakes is not something to sniff at.

What about supposed black swans, though? It’s true that judging the accuracy of forecasts involving extremely unlikely events is harder, because they could take decades or even millennia to play out. But there are still standards we can use to benchmark those odds, especially compared with other unlikely events. So even if we can’t assign an objective probability to an alien invasion, we can presumably say it’s less likely than, say, war with Russia and prepare accordingly.

A purely black swan is, by definition, a completely unforeseeable event, and there are relatively few of those. The 9/11 attacks are often cited as an example, but there were many data points suggesting that al-Qaeda wanted to attack the United States and that terrorists might use airplanes as weapons. (Tom Clancy had even published a book in which a pilot intentionally crashes a jetliner into the Capitol.) As the 9/11 Commission Report put it, the attacks “were a shock, but they should not have come as a surprise.”

Likewise, the intelligence community considered the possibility of the Soviets placing missiles in Cuba, of Islamists overthrowing the shah of Iran and of the Soviet Union collapsing under the weight of communism. That does not mean that its forecasts were accurate! But if these scenarios were imaginable, then they were predictable in a ballpark probabilistic sense. And the accuracy of those predictions could have been used to refine the intelligence community’s models of the world.

Prediction is not positivism: We need to be humble about what we know and what we don’t know — and always remember that a probability is just that. There are limits to our foresight, but better prediction can reduce the uncertainty that erodes confidence in the future. Trump is wrong: America doesn’t need to be made great again. But prediction just might make it better.

#### Outweighs and turns every impact---forecasting models are key to action on all existential risks.

Jeffrey A. Friedman et al. 18. Assistant Professor of Government at Dartmouth College. Joshua D. Baker is a Ph.D Candidate in Psychology & Marketing at the University of Pennsylvania. Barbara A. Millers is the I. George Heyman University Professor at the University of Pennsylvania. Philip E. Tetlock is the Leonore Annenberg University Professor at the University of Pennsylvania. Richard Zeckhauser is the Frank P. Ramsey Professor of Political Economy at Harvard University. “The Value of Precision in Probability Assessment: Evidence from a Large-Scale Geopolitical Forecasting Tournament”. International Studies Quarterly, Volume 62, Issue 2, June 2018, Pages 410–422, https://doi.org/10.1093/isq/sqx078

Conclusion

Uncertainty surrounds every major foreign policy debate. As of this writing, for example, the US public is sharply divided in assessing the extent to which restricting immigration from Muslim-majority countries could reduce (or potentially exacerbate) the risk of terrorism. One of the foremost controversies facing the United Nations Security Council concerns the extent to which economic sanctions can reduce the probability that North Korea will continue expanding its nuclear arsenal. Debates over policy responses to climate change revolve around different perceptions of the risks that climate change poses and of the extent to which regulations could feasibly reduce those risks. At the broadest level, it is logically impossible to support a high-stakes decision without believing that its probability of success is large enough to make expected benefits outweigh expected costs. For that reason, it makes little sense to ask whether foreign policy analysts should assess probability. The question is rather how they can assess probability in the most meaningful way possible.

We have seen throughout this article how many scholars and practitioners are deeply skeptical of probability assessment. It is easy to understand why this is the case. Many of the events that have shaped world politics over the past two decades—such as the September 11, 2001 terrorist attacks, mistaken judgments of Iraq's presumed weapons of mass destruction programs, the 2008 financial crisis, the Arab Spring, the rise of ISIS, Brexit, and the election of Donald Trump—were outcomes that most political analysts failed to see coming or cases in which experts confidently stated that the opposite would be true. Our ability to predict world politics is clearly less accurate than we would like it to be.

This article nevertheless shows that it is a mistake to believe that probabilistic reasoning is meaningless in world politics or to think there is no cost to leaving these judgments vague. By examining nearly one million geopolitical forecasts, we find that foreign policy analysts could consistently assess probability with numeric precision. We find that rounding off these forecasts into qualitative expressions—including qualitative expressions currently recommended for use by US intelligence analysts—systematically sacrifices predictive accuracy. We see no evidence that these returns to precision hinged on extreme forecasts, short time horizons, particular scoring rules, or question content. We also see little indication that the ability to parse probabilities belonged primarily to respondents who possess special educational backgrounds or strong quantitative skills.

These findings speak to both academic and practical concerns. Great scholars such as Popper, Keynes, and Mill have all expressed doubts about the value of assessing subjective probability. Aristotle himself argued that justifiable precision declines as questions become more complex. Yet, even if that is true, it does not tell us where the frontier of justifiable precision lies in foreign policy analysis or in any other discipline. That is ultimately an empirical question, and to our knowledge, this article represents the first attempt to address that question directly. The results of our analysis are relevant not only for intelligence analysts and military planners, but also for scholars, pundits, and any other participants in the broader marketplace of ideas. In short, our data indicate that it is possible to improve the quality of foreign policy discourse on a widespread and immediate basis, simply by raising standards of clarity and rigor for assessing uncertainty.

### 2ac 1 AT: PDB---2NC

#### Adding durability is bad---revision is key to policy accuracy.

Jeffrey A. Friedman et al. 18. Assistant Professor of Government at Dartmouth College. Joshua D. Baker is a Ph.D Candidate in Psychology & Marketing at the University of Pennsylvania. Barbara A. Millers is the I. George Heyman University Professor at the University of Pennsylvania. Philip E. Tetlock is the Leonore Annenberg University Professor at the University of Pennsylvania. Richard Zeckhauser is the Frank P. Ramsey Professor of Political Economy at Harvard University. “The Value of Precision in Probability Assessment: Evidence from a Large-Scale Geopolitical Forecasting Tournament”. International Studies Quarterly, Volume 62, Issue 2, June 2018, Pages 410–422, https://doi.org/10.1093/isq/sqx078

We also find that respondents’ experience making forecasts and their willingness to revise those forecasts consistently predict higher returns to precision (though the latter finding fell short of the p < 0.05 threshold in some models). These findings provide additional grounds for optimism that professional forecasters could replicate and potentially exceed the returns to precision shown in GJP's data. Many national security professionals assess uncertainty on a daily basis over many years. Professional foreign policy analysts also have much more opportunity and incentive to refine and revise their forecasts in light of new information than did GJP respondents, who revised their forecasts less than twice per question, on average.

#### Reversion key to superforecasting.

Brad Keywell 17. Uptake Technologies, Founder & CEO. "What Makes a Good Forecaster? ". 7-12-2017. https://www.linkedin.com/pulse/what-makes-good-forecaster-brad-keywell

They admit when they’re wrong: When accused of being inconsistent, the legendary British economist John Maynard Keynes is said to have once quipped back: “When the facts change, I change my mind. What do you do, Sir?” Many people (who are not superforecasters) do not change their mind when the facts change. Instead, they fall into a downward spiral of defensiveness and stubbornness. This is dangerous! Opinions in any organization or business must be open to discussion, distillment, disagreement, and, dissent and discard. Opinions may be ours, but they are not us, and they do not define us. Facts are meant to be discovered. They are not screaming out at us. Rather, we must be diligent explorers and searchers to find those relevant facts that matter most. And if we find a fact that makes our opinion wrong, embrace it! Be wrong – being disproven by a new fact is excellent. It’s normal, and it’s valued in a fact-driven drama-free environment. Doing this serves us well as forecasters.

I believe that intellectual curiosity is at the core of a purpose-driven life. The authors of Superforecasting illustrate intellectual curiosity with a simple example: Do you take the question “Who will win the presidential election in Ghana?” as pointless, or as an opportunity to learn something about Ghana?

This may sound corny, but I constantly try to remind the people who work at Uptake, the company I run—as well as, myself—to “be super”: super in our efforts to tenaciously learn and discover the unarguable facts; super in our refusal to rush to judgement about the quality of our opinions or the quality of the opinions of others; super in seeing both the outside and the inside; super in our refusal to allow the easy big ideas to define our actions in how we pursue the complicated small steps; and super in seeing when we’re right, or super in admitting when we’re wrong, and then gracefully transitioning to the more probable path of success.

### 2ac 2 AT: PDCP---2NC

#### It’s most predictable---we have the common and precise definition.

Dictionary.com “Inhibit vs. Prohibit”. https://www.dictionary.com/e/inhibit-vs-prohibit/

Prohibit is a transitive verb that means to forbid or prevent. Unlike inhibit, the word prohibit means that an action is being completely prevented. For example: “Angie’s coat was so tight, it prohibited any arm movement.” In this case, Angie isn’t able to move her arms at all. Prohibit is often used to describe the actions of authority figures. It can explain a rule or law. For example, “School rules prohibit cellphone use during class.” A street sign may say “Parking prohibited,” while a sign in a building lobby might say “Smoking prohibited by law.” All of these cases mean that cell phone use, parking in a certain area, or smoking are completely forbidden by their given authority figures, and can’t be done at all.

#### Prohibitions are absolute bans without exemption.

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

Main Difference – Prohibited vs. Restricted

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

What Does Prohibited Mean

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

Inter-racial marriages were not prohibited by the government.

He was proved guilty of using prohibited substances.

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

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

What Does Restricted Mean

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

The new regulations restricted the free movement of people.

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

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

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

Difference Between Prohibited and Restricted

Meaning

Prohibited means banned or forbidden.

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

Possibility

Prohibited means that there is no possibility of doing something.

Restricted means that something can be done under certain conditions.

Adjective

Prohibited functions as an adjective derived from prohibit.

Restricted functions as an adjective derived from restrict.

Past tense

Prohibited is the past tense and past participle of prohibit.

Restricted is the past tense and past participle of restrict.

#### That means the counterplan is plan minus---it could find the activity procompetitive.

AMC 07. Antitrust Modernization Commission. Deborah A. Garza, Chair. Bobby R. Burchfield ,Commissioner. W. Stephen Cannon, Commissioner. Dennis W. Carlton, Commissioner. Makan Delrahim, Commissioner. Jonathan M. Jacobson, Commissioner. Jonathan R. Yarowsky, Vice-Chair. Donald G. Kempf, Jr., Commissioner. Sanford M. Litvack, Commissioner. John H. Shenefield, Commissioner. Debra A. Valentine, Commissioner. John L. Warden, Commissioner. “Report and Recommendations.” https://govinfo.library.unt.edu/amc/report\_recommendation/amc\_final\_report.pdf

Economic learning has provided the foundation for updated antitrust analysis in part by revealing the potential procompetitive benefits of some business conduct previously assumed to be anticompetitive. The accommodation of such advances in economic learning has increased the flexibility of antitrust law, with courts and the antitrust agencies now considering a wide variety of economic factors in their analyses. Improved economic understanding and greater analytical flexibility have increased the potential for a sound competitive assessment of business conduct in all industries, including those characterized by innovation, intellectual property, and technological change.

#### Economic changes outpace the aff---only the counterplan solves.

AMC 07. Antitrust Modernization Commission. Deborah A. Garza, Chair. Bobby R. Burchfield ,Commissioner. W. Stephen Cannon, Commissioner. Dennis W. Carlton, Commissioner. Makan Delrahim, Commissioner. Jonathan M. Jacobson, Commissioner. Jonathan R. Yarowsky, Vice-Chair. Donald G. Kempf, Jr., Commissioner. Sanford M. Litvack, Commissioner. John H. Shenefield, Commissioner. Debra A. Valentine, Commissioner. John L. Warden, Commissioner. “Report and Recommendations.” https://govinfo.library.unt.edu/amc/report\_recommendation/amc\_final\_report.pdf

Indeed, the evolution of antitrust law—both through case law and agency guidelines—has shown that new or improved economic learning can be incorporated into antitrust analysis as appropriate. Allowing the ongoing incorporation of economic learning into antitrust case law and agency guidelines is preferable to attempts at legislative change to specify different antitrust analyses for industries characterized by innovation, intellectual property, and technological change. Industries that fall into those categories will keep changing over time; attempts to define them would likely be difficult and impermanent at best. Furthermore, economic learning continues to evolve, and antitrust law needs to be able to incorporate this new learning as appropriate. It is important that antitrust develops through mechanisms, such as case law development in the courts and agency guidelines, that allow ongoing reassessments of existing law and economic principles relevant to antitrust analysis.

### Solvency/AT: Rollback---2NC

#### GJP Super-forecasters will get it right---40% better than other teams.

Philip E. Tetlock et al. 14. Barbara A. Mellers, Nick Rohrbaugh and Eva Chen “Forecasting Tournaments: Tools for Increasing Transparency and Improving the Quality of Debate”. Current Directions in Psychological Science. August 2014, Vol. 23, No. 4 (August 2014), pp. 290-295. https://www.jstor.org/stable/pdf/44318787.pdf?casa\_token=wfbfNUGCPzIAAAAA:q6nZlMF41JAuqZ8MAmDMeGSDCcyVWSW0oY3Qlxa6ETEzu6sFTPU3WiMF9Kw-wU6KeTxhUbUuQvm8Sq6pV1TJPZ4nH6227\_OLmBvkQRfAqEKICJL3H4xP

The Good Judgment Project (GJP)1 won the IARPA tournament: Its best wisdom-of-the-crowd algorithms were on the right side of 50/50 on 86.2% of all daily forecasts, outperforming the simple average of the control group (forecasters randomly assigned to a working-alone, no- training condition) by 60% and other teams by 40%. The tournament was not, however, just a horse race. GJP randomly assigned its forecasters to cells in factorial designs that tested hypotheses about the psychological drivers of accuracy. We discovered four such drivers: (a) recruitment and retention of better forecasters (accounting for roughly 10% of the advantage of GJP forecasters over those in other research programs); (b) cognitive-debiasing training (accounting for about a 10% advantage of the training con- dition over the no-training condition); (c) more engaging work environments, in the form of collaborative teamwork and prediction markets (accounting for a roughly 10% boost relative to forecasters working alone); and (d) better statistical methods of distilling the wisdom of the crowd - and winnowing out the madness (the log-odds-extremiz- ing algorithm of Satopää, Baron, et al., 2014, Satopää, Jensen, Meilers, Tetlock, & Ungar, in press, and Baron, Ungar, Meilers, and Tetlock, 2014, which contributed an additional 35% boost above unweighted averaging of forecasts).

GJP also added a controversial twist to its winning strategy. It created "super-forecaster" teams by skimming off the top 2% of forecasters each year of the tournament and assigning them to elite teams. We say "controversial" because GJP informally surveyed experts and found flatly contradictory opinions on the wisdom of this strategy, from the bearish "Expect nothing. Your lucky 'supers' will soon regress toward the mean" (e.g., in the spirit of Hartzmark, 1991) and "The 'super' label will swell their heads" (e.g., Levitt & March, 1988) to the bullish "Expect good things. The best predictors of future performance are past performance and IQ - and your supers have both factors going for them" (e.g., in the spirit of Hunter & Hunter, 1984) and "Supers will also get a self-fulfilling- prophecy boost - and derive the benefits that tracking confers on high-ability students" (i.e., stimulation from peers; e.g., Betts & Shkolnik, 2000).

The experts were divided, but the data were unequivocal: Super forecasters performed superbly. Averaged forecasts of GJP's super forecasters (five teams of 12 fore- casters each) in Year 2 handily beat the Brier-score goals that the IARPA set for Year 4, and all other research pro- grams. They showed no regression toward the mean from one year to the next, and they improved on all the standard psychometric indices of judgmental accuracy, including calibration, discrimination, and area under the curve (Meilers, Ungar, et al., 2014).

#### Super-forecasters with updated evidence are comparatively more accurate and less partisan.

Philip E. Tetlock, Barbara A. Mellers, and J. Peter Scoblic 17. Tetlock & Mellers, Department of Psychology, University of Pennsylvania. Scoblic, Harvard Business School, Harvard University. "Bringing probability judgments into policy debates via forecasting tournaments". Science. 2-3-2017. https://science.sciencemag.org/content/355/6324/481.full

Leveraging these findings allowed GJP to generate forecasts that outperformed—by roughly 30%—a prediction market run by the U.S. intelligence community in which the players were professional analysts with access to classified information (3–5, 9–11). By producing a superior forecasting methodology, the ACE tournament yielded an important public policy tool: If policy-makers have access to more accurate forecasts, they can better anticipate the consequences of their actions and therefore make better decisions.

“Forecasting tournaments—contests among individuals or teams—[incentivize] competitors to make accurate predictions about specific events.”

More generally, the IARPA contest demonstrated the utility of tournaments as a tool for knowledge production. GJP’s tournaments within the ACE competition allowed randomized-control trials of how best to boost accuracy. These experiments demonstrated the surprising effectiveness of short training or debiasing exercises that taught forecasters how to ground probability estimates in base rates and to update their beliefs in a roughly Bayesian fashion in response to new evidence. Other experiments demonstrated the power of well-choreographed forms of teamwork. Training team members how to precisely but diplomatically question each other’s assumptions—how to disagree without being disagreeable—helped groups outperform the same number of individuals working alone. Tournaments thus proved themselves a useful method for conducting experiments outside the laboratory.

We suspect that tournaments can do even more by providing a framework for resolving public policy debates. A key feature of tournaments is accountability—participants in the GJP tournaments were publicly ranked according to the accuracy of their forecasts—and research has shown that predecisional accountability prompts individuals to engage in preemptive self-criticism (12, 13). Faced with the prospect of having to justify a position or decision, they consider the ways in which their audience might react. This effort increases cognitive complexity, by which individuals contemplate a greater number of germane factors—or, in the case of a political problem, arguments for or against a particular position. Having considered a wider range of views and anticipating a critical audience, individuals may moderate their beliefs. Were political opponents to participate in a forecasting tournament, they might well temper their predictions and, by implication, the extremeness of their policy positions.

# 2NR vs JCCC BB

#### “Prohibitions” are distinct from behavioral remedies.

Tomaso Duso et al. 11. Professor at the Duesseldorf Institute for Competition Economics of the Heinrich-Heine University Duesseldorf, with Klaus Gugler and Burcin B. Yurtoglu. “How effective is European merger control?” European Economic Review 55 (2011) 980–1006. ScienceDirect. https://www.wu.ac.at/fileadmin/wu/d/i/iqv/Gugler/Artikel/dgy\_eer.pdf

ABSTRACT

This paper applies an intuitive approach based on stock market data to a unique dataset of large concentrations during the period 1990–2002 to assess the effectiveness of European merger control. The basic idea is to relate announcement and decision abnormal returns. Under a set of four maintained assumptions, merger control might be interpreted to be effective if rents accruing due to the increased market power observed around the merger announcement are reversed by the antitrust decision, i.e. if there is a negative relation between announcement and decision abnormal returns. To clearly identify the events’ competitive effects, we explicitly control for the market expectation about the outcome of the merger control procedure and run several robustness checks to assess the role of our maintained assumptions. We find that only outright prohibitions completely reverse the rents measured around a merger’s announcement. On average, remedies seem to be only partially capable of reverting announcement abnormal returns. Yet they seem to be more effective when applied during the first rather than the second investigation phase and in subsamples where our assumptions are more likely to hold. Moreover, the European Commission appears to learn over time.

1. Introduction

This paper aims to provide econometric evidence on the effectiveness of merger control decisions in the European Union (EU). This seems to be both necessary and timely. From an academic perspective, there is a lively on-going discussion among antitrust scholars as to whether there is any need for a competition policy at all, as witnessed by the discussion spurred by Crandall and Winston’s (2003) and Baker’s (2003) papers. In particular, merger control institutions are repeatedly under criticism: they are ineffective and do not deter anticompetitive conduct (Crandall and Winston, 2003), they destroy synergistic efficiencies by unnecessarily intervening in the market place (Aktas et al., 2004), are protectionist (Aktas et al., 2007), are relatively open to capture (Evans and Salinger, 2002), might not be the best instrument to prompt technological progress (Carlton and Gertner, 2003), or they are too lenient and allow anticompetitive mergers to go through (Kim and Singal, 1993).

From the policy standpoint, throughout the last decade there has been a clear shift in merger control to consider remedies as a superior policy instrument if compared to outright prohibitions. Remedies are supposed to function as a surgery treatment in that they effectively tackle the market power concerns potentially raised by mergers without destroying efficiency enhancing synergies. In this instance, the European experience is enlightening. The European Commission cleared most of the over 4200 notified mergers since 1990 without commitments (around 90%), as they presumably do not pose a threat to competition. Nonetheless, few major mergers have been completed without some conditions and obligations being offered by the parties and implemented by the agency, such as divestitures, provision of access, termination of agreements, or other behavioral requirements. More than 60% of phase 2 decisions were cleared compatible only with commitments; yet only 20 mergers were blocked between 1990 and 2009.2 Moreover, significantly fewer proposed mergers have been blocked in recent years, following the overruling of three of the Commission’s prohibitions by the European Court of Justice (Airtours/First Choice; Schneider/Legrand; and Tetra Laval/Sidel), which were under the media spotlight and triggered major institutional changes in European antitrust.3 A similar evolution of merger policy is reflected in the American experience. The Federal Trade Commission (FTC) and the Department of Justice (DOJ) have also been increasingly making use of remedies in merger control decisions during our sample period (see Fig. 1).4 However, unlike the European Commission, prohibitions have been intensively employed in the US, especially during the last 3 years of our sample.