# 1NC vs Kansas HW

### T --- Core --- 1NC

#### The core antitrust laws are The Sherman Act, the Clayton Act, and the Federal Trade Commission Act.

Thomas Horton 10. Professor of Law and Heidepriem Trial Advocacy Fellow, University of South Dakota School of Law. “Rediscovering Antitrust's Lost Values.” The University of New Hampshire Law Review. https://scholars.unh.edu/cgi/viewcontent.cgi?article=1305&context=unh\_lr

Part II of this Article discusses Congress’s historical balancing and blending of fundamental political, social, moral, and economic values to create a constitutional-like set of flexible laws that can be adapted to unforeseen and changing economic and political circumstances.22 Part II.A. briefly reviews some of the extensive scholarship addressing Congress’s balancing of values and objectives in its core antitrust laws including the Sherman, Clayton, and FTC Acts. Parts II.B. and C. explore the less-studied balancing of political, social, moral, and economic values and objectives in more recent antitrust legislation.23 Part II.B. specifically examines the legislative debates undergirding the passage of the HSR Act. 24 Part II.C. then turns to the debates and discourse that led to the passage of the NCRA in 1984 and the subsequent National Cooperative Production Amendments of 1993 and 2004. 25

#### Violation --- they don’t

#### Vote Neg

#### 1. Limits---they delete the term “core” from the resolution and make anything related to antitrust and competition topical.

#### 2. Ground---they give the Aff access to process advantages and eliminate “other legislation” CPs, which are core functional limits---that’s why we voted for “core antitrust laws.”

#### 3. Predictability---we have legal ev with intent to define and exclude.

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

1st off/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

### 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

### 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.

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

I. GOING BEYOND ADJUDICATION FOR ANTITRUST ENFORCEMENT

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

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

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

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

B. Slow, Usually Predictable Doctrinal Development

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

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

C. Market-Driven Case Selection

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

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

D. Generalists versus Industry Experts

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

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

E. Tradeoffs Inherent in the Adjudicatory Approach to Antitrust

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

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

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

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

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

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

#### 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.

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

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

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

INTRODUCTION

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

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

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

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

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

METHODOLOGY

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

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

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

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

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

ECONOMY

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

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

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

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

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

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

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

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

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

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

ENVIRONMENTAL

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

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

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

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

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

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

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

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

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

GEOPOLITICAL

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

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

### Trade DA --- 1NC

Next off is the Trade DA

#### 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.

### Notice and Comments CP---1NC

Next off is the Notice and Comment Counterplan

#### Text: The United States federal government should delegate antitrust rulemaking authority to a new expert agency. The agency should begin notice-and-comment rulemaking to increase prohibitions on anticompetitive practices in container shipping expanding the authority of the Federal Maritime Commission and maritime industry to pursue legal remedies.

#### Solves the case, engages notice and comment, and avoids courts disads.

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Without the informational benefits of expertise and notice-and-comment rulemaking, the Court may be a poor choice to define the broad proscriptions of the Sherman Act. Framed this way, the problem has an obvious solution: give the power to interpret the Act to an expert agency.240 This idea has academic support already, 241 and the case for it is strengthened by this Article's observation that the Court has tried to approximate administrative decision making by relying on amicus briefs. The obvious candidates for reallocation are the two existing antitrust agencies: the Department of Justice's Antitrust Division and the FTC.

A. The Agency Solution

Using agencies to give specific meaning to American antitrust's most important statute means avoiding the problems with the Court's current quasi-administrative process for rulemaking. As adjudicators, agency experts would know what kind of economic evidence is necessary for an efficient solution and would be better able to understand it when it is presented by the parties. Repeat exposure to antitrust cases would only reinforce this advantage, while also giving the administrative judges a broader perspective on what kinds of conflicts commonly arise in competition law, a perspective necessary for efficient policy making in the first instance. A Supreme Court Justice hears about one antitrust case a year, hardly the cross section of controversies necessary to make efficient economic policy writ large.

Agencies could take policy making a step further using notice-and-comment rulemaking. Unlike in adjudication, regulation by rulemaking can be initiated without the formal requirements of a case or controversy and a proper appeal to the Supreme Court. Informal letters of complaint could spark an investigation. A rule-making agency could announce its intention to regulate publicly and provide a convenient venue for, or even solicit, expert opinions on the economic impact of the proposed rule. Not only would it have the benefit of these numerous perspectives, but it would also have the obligation to respond to them in a reasoned manner. Its rule would be subject to judicial review, affording an opportunity to catch mistakes 242 or invalidate rules that do nothing but deliver rents to special interests.

Another advantage of rulemaking, an option for agencies but not for the Court, since it only operates through adjudication, is that rulemaking regulates behavior ex ante, while resolution of economic policy through cases is necessarily ex post. Antitrust courts worry obsessively about "chill"--deterring procompetitive behavior with overly broad rules for liability.2 43 In fact, the overruling of Dr. Miles in Leegin implies that the entire twentieth century was a period of inefficient business practices and stunted innovation in distribution because of an early misunderstanding of RPM. Only after a long and expensive period of litigation was Leegin redeemed for breaking the law by effecting a change in the law, and only after Leegin was issued were similar firms, perhaps walking the Colgate line better than Leegin, redeemed for wanting some control over their product's ultimate retail price.24 4 The problem of ex post rulemaking is made worse by the treble damages afforded successful plaintiffs suing under the Sherman Act.2 4 5 To create a new form of liability, the Court has to punish a firm threefold for complying with standing antitrust norms. Thus Supreme Court lawmaking in antitrust is a kind of one-way ratchet.246

The result of the current ex post scheme is that "antitrust law leaves considerable gaps between what is permissible and what is optimal." 2 47 With judges making the rules one case at a time, this gap is justifiable. As discussed above, when judges are not economically sophisticated enough to know where "optimal" lies, 24 8 laissez-faire is a very inexpensive regulatory regime for courts to follow, and raising the level of regulation would effect a kind of taking of property from firms operating under the status quo. So if the Court is making antitrust policy, laissez-faire may be the only sensible approach. But that is not to say that it is the most sensible approach. An agency could provide firms with the necessary clarity-ex ante-that they need when conducting business in a world where competitive behavior so closely resembles anticompetitive conduct. The current state of affairs is that much more is illegal on the books than antitrust lawyers think is actually likely to be struck down in a court.24 9 Lawyers thrive in such a legally uncertain world, but firm efficiency suffers.

#### Key to democracy and court acquiescence---notice and comment engages participants and creates deference.

Harry First and Spencer Weber Waller 13. Harry First, New York University School of Law. Spencer Weber Waller, Loyola University Chicago School of Law. “Antitrust’s Democracy Deficit”. Fordham Law Review, Volume 81 Issue 5 Article 13. https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4890&context=flr

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

CONCLUSION

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

#### Democracy solves war

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Despite Churchill’s famous quip—“Democracy is the worst form of government, except for all those other forms that have been tried from time to time”2—democracy is seen as a source of both domestic and international flourishing. Democracy, understood roughly for now as a political system with wide suffrage in which power is allocated to officials by popular election, can solve or help solve a host of problems with stunning success. It can solve the problem of revolutionary violence that condemns autocratic regimes, because mass politics can work at the ballot box rather than the streets. It can help solve the problem of famine, because the systems of free public communication and discussion that are essential to democratic politics are the backbone of the markets that have made democratic societies far richer than their competitors. It can help solve the problem of environmental despoliation, which occurs when those operating polluting factories (whether private citizens or the state) do not need to answer for harms visited upon a broad public. And democracy has been famously thought to help solve the problem of war, in the guise of the idea of the “peace amongst democratic nations”—an idea emerging with Immanuel Kant in the Age of Enlightenment and given new energy with the wave of democratization at the end of the twentieth century.

### Regulations CP---1NC

Next off is the Regulation Counterplan

#### The United States federal government should

#### --- increase prohibitions on anticompetitive practices in container shipping expanding the authority of the Federal Maritime Commission and maritime industry through non antirust regulations

#### --- develop a comprehensive interagency strategy on bioterror readiness and monitoring.

#### --- domestically phase in a carbon tax.

#### --- fully ratify and join the Convention on Biological Diversity.

#### The counterplan PICs out of anti-trust legislation and the FTC and DOJ as enforcers---other agencies’ regulations solve.

Lawrence Fullerton et al. 08. Joel M Mitnick, William V Reiss, George C Karamanos and Owen H Smith. Sidley Austin LLP. Vertical Agreements The regulation of distribution practices in 34 jurisdictions worldwide. “United States.” https://www.sidley.com/-/media/files/publications/2008/03/getting-the-deal-through--vertical-agreements-2008/files/view-united-states-chapter/fileattachment/united-states-21.pdf

5 What entity or agency is responsible for enforcing prohibitions on anticompetitive vertical restraints? Do governments or ministers have a role?

The Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DoJ) are the two federal agencies responsible for the enforcement of federal antitrust laws. The FTC and the DoJ have jurisdiction to investigate many of the same types of conduct, and therefore have adopted a clearance procedure pursuant to which matters are handled by whichever agency has the most expertise in a particular area.

Additionally, other agencies, such as the Securities and Exchange Commission and Federal Communications Commission, maintain oversight authority over regulated industries pursuant to various federal statutes, and therefore may review vertical restraints for anti-competitive effects.

#### Plank 2 Solves bioterror---prevents and manages attacks

Mizzi ’16 (Shannon; 11/21/16; Columnist for Georgetown Security Studies Review; “Bioterror: The Known Unknown”; <http://georgetownsecuritystudiesreview.org/2016/11/21/bioterror-the-known-unknown/#_edn5>; DOA: 3/22/17)

Currently, the United States has scattered anti-bioterror programs in a variety of agencies. They are not coordinated, well-funded, or ready to respond to a modern attack in a comprehensive manner. Much of the current American biodefense “strategy” is delineated in the reauthorized Project BioShield Act of 2004, but it does not provide guidance for all agencies that have biodefense programming. For example, the Department of Homeland Security maintains its own preparedness protocols for a bioterror event, and rolled out its updated BioSurveillance Program in 2012 to pinpoint the origins of an attack and send early warnings to healthcare workers. However, DHS has not yet implemented key aspects of this program, including information sharing at the local, state, and national levels. Other agencies have beneficial programs, but don’t communicate with one another, risking duplication of efforts. Departments with bioterror programs include the Department of Health and Human Services, the CDC, Department of Defense, FEMA, USAID, and the U.S. Department of Agriculture. The problem is not a lack of programming, but a lack of readiness, funding, forward thinking, and coordination on this important issue.[iv] A comprehensive study of biodefense capabilities and preparedness was last published in 2010; not surprisingly, the report gave U.S. biodefense an “F.”[v] Assessments of individual agencies since then indicate little improvement, and dramatic budget cuts for the CDC and USDA are not helping.[vi] Federal spending on biodefense programs was $6.69 billion in FY2014. However, only 12% of that figure was reserved for programs solely focused on biodefense; the remaining 88% went to programs with multiple goals.[vii] There are a number of steps the U.S. can take to remedy this situation. First, a comprehensive interagency strategy must place a premium on readiness. There is no point in having a stockpile of enough smallpox vaccinations to inoculate every American if there are no vaccine distribution plans in place.[viii] It is important to create systems to aggregate data on both humans and animals from hospitals on the local, regional, and national level to help doctors identify the cause of patients’ symptoms, and stop or limit the spread of a bioterror agent. Hospital workers should be trained on symptoms of potential bioterror bacteria or viruses, as there will be little time for such training during an outbreak. Second, the government must address the major emerging challenge of “dual use” biotechnology that can be manipulated to help or to harm. The government should carefully monitor synthetic biological experimentation, such as gene editing, both domestically and internationally. It should also regulate, where appropriate, as new techniques are developed. However, it is exceptionally important to avoid over-regulation lest it stifle positive innovation in a nascent field which could bring an economic boom and eradicate diseases in the not-so-distant future. The United States must strike a balance between measured steps to enhance readiness and pushing the panic button. To increase public knowledge without inciting panic, the government should also encourage and facilitate public conversations around a new bioethics framework, in light of gene editing technology and the rise of “do-it-yourself” biology.[ix]

#### Plank 3 solves warming---keeps it under 2 degrees and gets modeled

Inman ’17 (Phillip; 5/29/2017; economics editor of the Observer and an economics writer for the Guardian; “Sky-high carbon tax needed to avoid climate catastrophe, say experts,” <https://www.theguardian.com/environment/2017/may/29/sky-high-carbon-tax-needed-to-avoid-catastrophic-global-warming-say-experts>; Date Accessed: 7/3/2017; DS)

A group of leading economists warned on Monday that the world risks catastrophic global warming in just 13 years unless countries ramp up taxes on carbon emissions to as much as $100 (£77) per metric tonne. Experts including Nobel laureate Joseph Stiglitz and former World Bank chief economist Nicholas Stern said governments needed to move quickly to tackle polluting industries with a tax on carbon dioxide at $40-$80 per tonne by 2020. A tax of $100 a tonne would be needed by 2030 as one of a series of measures to prevent a rise in global temperatures of 2C. In a report by the High Level Commission on Carbon Prices, which is backed by the World Bank and the International Monetary Fund, they suggest poor countries could aim for a lower tax since their economies are more vulnerable. The aim of a tax on carbon would be essential to meet the targets set by the Cop21 Paris Agreement in 2015, they said. The call for action will sting European leaders, who have presided over a carbon trading scheme since 2005 that currently charges major polluters just €6 (£5.20) for every tonne of carbon they release into the atmosphere. The European scheme, which issues firms with carbon credits that can be traded on a central exchange, has come under fire for allowing heavy energy users to avoid investments in new technology to cut their emissions. Critics accuse officials of issuing too many credits and allowing the price to fall to a level that makes it cheaper for companies to pollute than change their behaviour. Stiglitz and Stern said prices should rise to $50-$100 by 2030 to give businesses and governments an incentive to lower emissions even when fossil fuels are cheap. The Trump administration has rejected calls to introduce a carbon tax in the United States, saying it would cost jobs. Washington’s refusal to adopt a tax has deterred Brussels from moving to a more substantial charge on emissions, which would have the effect of increasing energy costs, at least in the short term, and imposing higher costs on European manufacturers. The European Union’s Emissions Trading System (ETS) is the world’s biggest scheme for trading greenhouse gas emissions allowances. It covers 11,000 power stations and industrial plants in 30 countries, whose carbon emissions make up almost 50% of Europe’s total.

#### Plank 4 Solves bioD---US leadership is key

Snape ’10 (William, Senior Counsel at the Center for Biological Diversity and a Practitioner in Residence at American University Washington College of Law, “JOINING THE CONVENTION ON BIOLOGICAL DIVERSITY: A LEGAL AND SCIENTIFIC OVERVIEW OF WHY THE UNITED STATES MUST WAKE UP,” Spring 2010, <http://www.biologicaldiversity.org/publications/papers/SDLP_10Spring_Snape.pdf>)

Enter the Convention on Biological Diversity, sometimes called the “CBD” for short. The United States has signed but not yet ratified this international treaty, which has emerged as the best overarching tool to protect species, habitats, and ecological processes important to human well-being. It has a seventeen-year track record building numerous success stories with its over 190 members; only Andorra, the Holy See (Vatican), and the United States remain as non-members. Now more than ever, the engagement and leadership of the United States is necessary to protect biological diversity and the natural services enjoyed by Americans and others throughout the world. No country possesses an inventory, description, and understanding of its wildlife, habitat networks, and ecological processes greater than the United States. In addition, the U.S. possesses transparent laws, dispenses significant foreign aid, and embodies a tradition of public engagement that leads to greater biodiversity-related protection and enforcement than most countries. The U.S. has also been a good international partner in other environmental agreements and treaties such as the Convention on International Trade in Endangered Species (“CITES”), the Ramsar Convention on Wetlands, and the Montreal Protocol on Substances that Deplete the Ozone Layer. The interests of the United States stand to benefit greatly from such multilateral cooperation and continued ability to access biological diversity from other countries across the globe. Significantly, no new federal or state laws are necessary for the United States to ratify and join the CBD, and absolutely no loss of legal or natural resource sovereignty is even possible under the express terms of the Convention. The United States will, in fact, benefit under the treaty by better organizing its own biodiversity-related programs, and by similarly helping non-U.S. geographic areas, many in strategically important locations. The United States will also benefit by possessing a formal seat at the table for important upcoming negotiations and discussions under the Convention, particularly with regard to the proposed protocol on Access and Benefit-sharing (“ABS”), and by being connected to other Parties through various biodiversity related projects such as scientific research, climate offsets, ocean protection, alien invasive species work, and enforcement coordination. Many worldwide biodiversity cooperative programs flow from the Convention, including partnerships with other U.N. agreements and the World Trade Organization. Consistent with the plain language of the treaty’s text, which clearly supports U.S. Government discretion in all actions CBD-related, U.S. interests have also been protected by the so-called “Seven Understandings” and other official interpretations and clarifications developed with overwhelming bipartisan support in response to U.S. industry concerns in the early to mid 1990s. Indeed, the Convention’s implementation has been influenced by the U.S. Government interpretations. These interpretations represent a firm way of moving forward in international biodiversity matters. Younger and future generations of American and global citizens will thank the President and Senate that finally enables the United States to take its rightful place as a member of the Convention on Biological Diversity. There is no longer any rational basis for the U.S. to stand apart from the world with regard to the treaty that is known as the convention for life on Earth. The Senate should ratify this convention at the earliest possible moment, along with other high priorities including the Law of the Sea Convention (“UNCLOS”) and the International Treaty on Plant Genetic Resources (“ITPGR”).

## Advantage 1 --- Mega Ships

#### The threat of biodiversity loss is overhyped

G. Bailey 19. “Letters | ‘Mass species extinction’ headlines are overblown and ignore success in conservation efforts” South China Morning Post. 05-14-2019. <https://www.scmp.com/comment/letters/article/3010008/mass-species-extinction-headlines-are-overblown-and-ignore-success>

David Dodwell admits he may have exaggerated just a bit when lamenting the loss of life in the seas around his idyllic home, and is amazed at the wonderful diversity of natural life in Hong Kong (“Loud and clear alarm bell sounded on species extinction. What now?”, May 11). I share his amazement and wonder, but it’s a shame he wasn’t able to see that the United Nations IPBES’ (Intergovernmental Science Policy Platform on Biodiversity and Ecosystem Services) claim, that one million species are heading for extinction due to human activities, may have also been a bit of **an exaggeration** – just a bit. How exactly did this UN body arrive at such a huge and frightening figure? Apparently it was referring to one million species **out of eight million**, but all you see in yet **more doomsday headlines** is “one million species under threat”. In fact, **less than 2 per cent** of bird and mammal species have gone extinct over the last few centuries. The **success stories** about the revitalisation of nature and species is **completely ignored.** Humpback whales, for example, are flourishing after being under threat. Others do remain under threat, and many, like the orangutan, are under threat due to the demand for biofuels to replace fossil fuels to combat climate change. Sad, but true.

#### No Asia war—and no relations impact

Babones 15 (Salvatore, Associate Fellow – Institute for Policy Studies, Associate Professor, Sociology and Social Policy – University of Sydney, “The Asia-Pacific: More Stable than Anyone Thinks”, <http://russiancouncil.ru/en/inner/?id_4=5497#top>)

Political pundits routinely identify the Asia-Pacific region as a potential flashpoint for a future war between the great powers. Yes, China is rising, Japan is rearming, and the United States has announced a "pivot" to Asia. But the real risk of a great power war in the Asia-Pacific is very low. When conflict scenarios are analyzed one by one, it becomes clear that no country in the region has an interest in upsetting the status quo - least of all China. This year in Japan, the number one political issue is remilitarization. Will Japan rewrite its constitution to end its post-war legal commitment to pacifism? Will the country rewrite its textbooks to downplay its record of war crimes during World War II? Will the Japanese government continue to boost defense spending? In the Koreas (both North and South), conflict is never far from anyone's mind. The latest exchange of gunfire occurred on October 19 14 and border incidents are a constant feature of life on the peninsula. There are also continuing fears over North Korea's nuclear program, with North Korea directly threatening to use nuclear weapons against the United States. Taiwan's democratic political balance pivots on the one central issue that overrides all others: the perceived threat from mainland China. Farther south, the Philippines and Vietnam are involved in something approaching maritime guerilla warfare in order to resist Chinese expansion in the South China Sea. They are reportedly considering a formal alliance directed against China. No shortage of long-festering disputes can be added to this list: the disagreement between Japan and Russia over the Kurile Islands, the legacy of North Korea's historical abductions of Japanese citizens, differing interpretations of the 1984 Sino-British Joint Declaration on the future of Hong Kong, and many others. The Asia-Pacific region is riddled with conflicts, cold, warm, and hot. It doesn't help that the countries of the region are armed to the teeth. Five of the world's top 10 military powers are concentrated in Northeast Asia, according to a 2015 online ranking – though not a scientific analysis, it is nonetheless indicative. All of them are actively expanding their military capabilities. Examined against this backdrop, the probability of a major war breaking out in the Asia-Pacific region is... very low. The region is not on the brink of catastrophe. The Asia-Pacific balance of power is in fact much more stable than anyone thinks because it is not a balance of power at all. It is a one-sided, overwhelming preponderance of force - and not in China's favor. The China threat A rising China balanced against the established status quo Asia-Pacific powers would perhaps constitute a balance of power. Japan, Korea, Taiwan, the Philippines, Vietnam, and (farther afield) Indonesia, Australia, and India are not joined in any kind of anti-China alliance but all of them are in effect aligned in balancing against the rise of China. But when the global military power of the United States is thrown into the balance, the result is no contest. All of the major countries off China's shores are either formal or informal US allies. They buy US military equipment, incorporate US military doctrines, and rely on a promise (explicit or implicit, depending on the country) of US military support. If they can rely on US support during a crisis, the sovereignty of America's Asia-Pacific allies is absolutely secure. This fact naturally prompts the question of whether or not they can in fact rely on US support in a crisis. Politicians and pundits throughout the Asia-Pacific region are obsessed with this question. But it is the wrong question. It is the wrong question because there will not be a crisis in this century that threatens the sovereignty of any Asia-Pacific power. There will be disputes over illegal fishing, uninhabited reefs, and underwater mineral rights, but China is not going to invade Taiwan -- let alone Japan -- over these kinds of disputes. China does not have the capacity and will never have the motive to mount a full-scale invasion of any of its maritime neighbors. No country has staged a major amphibious assault since the US landings at Incheon in 1950. It is doubtful that even the United States has the capacity to launch an amphibious assault against a large country (as opposed to a small island state). China certainly does not. And unless the nature of military technology changes dramatically, it never will. Mobile missiles will easily defeat lumbering landing craft for the foreseeable future. Sophisticated defense analysts recognize this. Thus, most contemporary policy punditry on a potential Asia-Pacific conflict focuses on what has come to be called an "anti-access / area-denial" (A2/AD) scenario. The supposed threat is that China would use a combination of land-based missiles, new island bases, and an expanded PLA Navy to deny American and allied forces access to the South China Sea. This sounds quite ominous in the abstract but quite silly in the specifics. China closing the South China Sea would be like Russia closing the Bosporus and the Baltic. It would be similar to cutting off your nose to spite your face. Pundits like to point out that billions of dollars of world trade pass through the South China Sea every year. They usually don't mention that most of this traffic is going either to or from China. Sure, two-thirds of the oil bound for Taiwan, Korea, and Japan passes through the South China Sea, which sounds alarming indeed. But 80% of the oil bound for China passes through the South China Sea. What's more, oil bound for Taiwan, Korea, and Japan can always be diverted out of harm's way for the modest price of a few extra sea miles. There is no alternative route for seaborne oil bound for China. The scenarios through which China might threaten its neighbors are either technically impossible (invasion) or downright stupid (sea closure). The question of whether or not the United States will defend its Asian allies is meaningless because the United States will never be called on to defend its Asian allies. The Asian allies question is like the NATO nuclear umbrella question. It will always remain hypothetical. It is not just unanswered. It is unanswerable. The real question The real question is whether or not the United States will push its advantages in the Asia-Pacific region in ways that are intolerable to China. For now the answer seems to be no. President Obama's famous "pivot to Asia" consists mainly of trade negotiations and the rationalization of existing US force deployments. The United States and its allies will step up monitoring China's military forces as those forces grow but will not start a war to prevent their growth. They don't have to. As China expands its military capabilities it will drive more and more of its neighbors into the American camp. This is the essence of what I have called the American empire: American power is all-pervasive throughout the world because other countries voluntarily accede to it. The United States leads the "in" club, and (almost) everyone wants in. The insecurities generated by China's rise only serve to cement this tendency. The longing to be accepted by the United States is not just a matter of national policy but is a characteristic of the entire political class in East Asia. Major newspapers in the region dwell on every word spoken by US officials and routinely cover the pronouncements and prognostications of US think tanks. Their readers desperately want to know what America thinks of them. And who can blame them? It is true that not everyone wants to be a part of the American empire. In every country in the Asia-Pacific region a large proportion of the population objects to American domination. The Philippines forced the closure of American military bases there in 1992. Japanese pacifists have long called for Japan to follow suit. Even in Australia a former conservative prime minister has argued vehemently for a break with the United States. All to no avail. Policy independence is a wonderful idea in principle. In practice it is only attractive when there are no serious repercussions for choosing the "wrong" policy. When the Philippines ordered the closure of American military bases in 1992, it had little impact other than a temporary reduction in income. In 2015 the stakes are much higher. Obviously, the Filipino elite prefers to partner with imperial America to counter an expanding China. The net result is that China's military expansion is automatically self-defeating. China can never hope to control the region, and China's leaders must know this. China's military buildup is probably best understood as an effort to deny the United States and its allies the capacity to control China, an anti-A2/AD effort. Only from that standpoint does it make any sense. It is fundamentally defensive in nature. The United States and its allies are so confident in the self-evident appropriateness of their behavior that they too easily forget that many countries are wary of American power. American opinion leaders do not think about the threatening possibility that the United States might someday deny China access to world markets. Chinese opinion leaders do. Excluded from participation in the American empire, China must worry about exclusion from the world-economy as a whole. China, Russia, and the world-economy The question of who controls the sea lanes of the Asia-Pacific region is metaphysical at best. No one with the power to close the sea lanes of the Asia-Pacific has any interest in closing them. Thus the sea lanes of the Asia-Pacific will remain open for the foreseeable future. But whoever controls the sea lanes of the Asia-Pacific, the United States and its allies control the world-economy as a whole. The question of economic advantage is much more relevant than questions of war and peace. The United States government is strongly committed to the creation of an Asia-Pacific regional trading bloc, the Trans-Pacific Partnership (TPP). The TPP is much more than a free trade agreement. It also includes highly controversial provisions on the protection of intellectual property and the subjugation of national laws to transnational tribunals. Notably absent from negotiations over the TPP are two major Asia-Pacific powers: China and Russia. The TPP will later be presented to China and Russia as a fait accompli with basic rules already set by the United States and its allies. The same trick was played against China and Russia in the creation of the World Trade Organization (WTO). As with the WTO, the idea is to make membership in the TPP indispensable and only then to invite China and Russia to join. China is using its economic leverage to promote an alternative to the TPP that it calls the Free Trade Area of the Asia Pacific (FTAAP). It has had little success. As the host of the November 2014 APEC summit, China was able to push through an agreement to conduct a two-year study of the potential for an FTAAP, in effect delaying any formal negotiations until 2017 at the earliest. Even this minor opening faced strenuous US opposition. American dominance of the Asia-Pacific region leaves China only two avenues for diplomatic maneuvering on anything like an equal footing. It can look south to the relatively poor countries of Southeast and South Asia or north to resource-rich Russia. While Chinese entrepreneurs engage in small-scale investment in Southeast Asia, the Chinese government is more focused on its strategic partnership with Russia. In the midst of the European crisis and the damage of western economic sanctions, Russia needs all the friends it can get. And yet even though Russia is clearly not a party to the American empire it is nonetheless wary of deeper relations with China. The Russian capital outflows that sparked the 2014 Ruble crisis were more likely to go to Switzerland than to China. The Shanghai Cooperation Organisation notwithstanding, Russia is at best a fellow-traveler to China, not an ally. That point underscores the fundamental stability of the American order in the Asia-Pacific region. No one supports a Chinese challenge to American power in the region, not even Russia. One might add: not even the Chinese elites themselves, many of whom are in the process of seeking American passports for themselves and their families in an effort to escape the environmental and political risks of actually living in China. In this environment the best China can hope for is to maintain some degree of policy autonomy within its near seas. It is struggling to do even that. The Obama administration's pivot to Asia is widely perceived as an overdue response to expanding Chinese power. It is widely perceived as the ineffectual posturing of a declining superpower. It is widely perceived through a fog of fear. All of these perceptions are wrong. The Asia-Pacific region is a sturdy bastion of American influence and power. The United States doesn't have to pivot to Asia. It has been there all along.

#### No Bioweapon threat---empirical consensus, technical challenges, and no scenario for extinction.

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The novel coronavirus pandemic has put the threat of bioterrorism back in the spotlight. White supremacist chat rooms are [teeming with talk](https://www.businessinsider.com/coronavirus-white-supremacists-discussed-using-covid-19-as-bioweapon-2020-3?r=DE&IR=T) about “biological warfare.” ISIL even called the virus “[one of Allah’s soldiers](https://www.wsj.com/articles/what-jihadists-are-saying-about-the-coronavirus-11586112043)” because of its devastating effect on Western countries. According to a recent [memo](https://www.independent.co.uk/news/world/americas/coronavirus-terrorist-white-supremacy-fbi-bioterrorism-a9417296.html) by the U.S. Department of Homeland Security, terrorists are “[making] bioterrorism a popular topic among themselves.” Both the United Nations and the Council of Europe have warned of bioterrorist attacks. How serious is the threat? There is a long history of terrorists being fascinated by biological weapons, but it is also one of failures. For the vast majority, the **technical challenges** associated with weaponizing biological agents have **proven insurmountable**. The only reason this could change is if terrorists were to receive support from a state. Rather than panic about terrorists engaging in biological warfare, governments should be vigilant, secure their own facilities, and focus on strengthening international diplomacy. A **History of Failures** Biological warfare, which uses organisms and pathogens to cause disease, is [nearly **as old as war** itself](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1200679/). The first known use of biological agents as a weapon dates back to 600 B.C., when an ancient Greek leader poisoned his enemies’ water supply. Throughout the Middle Ages, especially during the time of the Black Death, it was common to hurl infected corpses into besieged cities. And during the two world wars, all major powers maintained biological weapons programs (although only Japan used them in combat). Among terrorists, however, the use of biological weapons has **been rarer**, although groups from nearly all ideological persuasions [have contemplated it](https://mitpress.mit.edu/books/toxic-terror). Recent examples include a plot to contaminate Chicago’s water supply in the 1970s; food poisoning by a religious cult in Oregon in the 1980s; and the stockpiling of ricin by members of the Minnesota Patriot Council during the 1990s. **No one died** in **any** of these instances. The same is true for the biological warfare programs of al-Qaeda and the Islamic State group. Both groups have sought to [buy, steal, or develop biological agents](https://www.jstor.org/stable/26369585?seq=1#metadata_info_tab_contents). For al-Qaeda, this seems to have been a priority in the 1990s, when its program was overseen by (then) deputy leader Ayman al-Zawahiri, a trained physician. With the Islamic State, evidence dates back to 2014, when Iraqi forces discovered thousands of files related to biological warfare on a detainee’s laptop. Yet **none of these efforts succeeded**. The only al-Qaeda plot in which bioterrorism featured prominently — the so-called “ricin plot” in England in 2002 — was interrupted at such an early stage that [none of the toxin](http://news.bbc.co.uk/2/hi/uk_news/4433499.stm) had actually been produced. The Islamic State’s most serious attempt, in 2017, involved a small amount of ricin, whose [**only fatality** was **the hamster**](https://www.dw.com/en/cologne-ricin-plotters-bought-a-hamster-to-test-biological-weapon/a-44804164) on which it was tested. Of the **tens of thousands** of people that jihadists have murdered, not a **single one** has died from biological agents. It may be no accident that the most lethal bioterrorist attack in recent decades was perpetrated by a scientist and government employee. In late 2001, the offices of several U.S. senators and news organizations received so-called “anthrax letters,” which killed five people and injured 17. Following years of investigation, the FBI identified the sender as [Bruce Ivins,](https://www.npr.org/templates/story/story.php?storyId=93194941&t=1591560313301) a PhD microbiologist and senior researcher at the U.S. Army’s Medical Research Institute of Infectious Diseases. Unlike the others, he was no amateur or hoaxer, but a trained expert with years of experience and full access to the world’s largest repository of lethal biological agents. **Technical Challenges** Ivins’ case helps to explain why so many would-be bioterrorists have failed. At a **technical level**, launching a sophisticated, large-scale bioterrorist attack involves a toxin or a pathogen — generally a bacterium or a virus — which needs to be **isolated** and **disseminated**. But this is more **difficult** than it seems. As well as advanced training in biology or chemistry, isolating the agent **requires significant experience**. It also has to be done in a **safe**, **contained** environment, to stop it from spreading within the terrorist group. Contrary to what [al-Qaeda said in one of its online magazines,](https://www.telegraph.co.uk/news/worldnews/7865978/Al-Qaeda-newspaper-Make-a-bomb-in-the-kitchen-of-your-mom.html) you **can’t** just make a **(biological) weapon** “in the **kitchen** of your mom!” In addition, there is the **challenge of dissemination**. Unless the agent is super-contagious, a powerful biological attack relies on a large number of initial infections in **perfect conditions**. In the case of the bacterium anthrax, for example, only spores of a **particular size** are likely to be effective in certain kinds of **weather**. State-sponsored programs often needed years of testing and experimentation to understand how their weapons could be used. Though not impossible, it is **unlikely** that terrorist groups possess the resources, stable environment, and patience to do likewise. **Doomsday Scenarios** Even if terrorists somehow succeeded, it is **nearly inconceivable** that the resulting “weapon” would be as powerful as the recent coronavirus, SARS-CoV-2. One of its uniquely devastating features has been that people are infectious while experiencing no symptoms. As it spread across the globe, there was no treatment, no vaccine, an incomplete understanding of its pathological modes of action, and no easy, cheap and widely available testing. It was the viral equivalent of a “zero-day exploit” — a cyber-attack that happens before any patch is available. None of the viruses on the U.S. Centers for Disease Control and Prevention’s list of the [**most dangerous biological agents**](https://emergency.cdc.gov/agent/agentlist-category.asp) could be easily “weaponized” or would have the same, **devastating effects** as SARS-CoV-2. Pathogenic viruses such as smallpox, Ebola, Marburg, and Lassa are extremely hard to find, isolate, and spread. Botulinum and ricin are dangerous toxins, but **not contagious**, while [Tularemia](https://www.cdc.gov/tularemia/index.html) cannot be transmitted from human to human. The plague is, of course, capable of causing pandemics, but most countries are nowadays [well prepared for this particular virus,](https://www.who.int/csr/resources/publications/plague/CSR_ISR_2000_1/en/index3.html) and will be able to limit — and cope with — localized outbreaks. This leaves only anthrax, a soil bacterium which is relatively easy to obtain. Even so, isolating a **highly pathogenic strain** is difficult. More importantly, anthrax is **not contagious**, and while its spores are durable and affected areas can be hard to de-contaminate, it is **unable to spread** on its own. Regarding SARS-CoV-2, it is important to distinguish between the possibility that the virus occurred naturally and escaped from a laboratory, and the idea that it was engineered for maximum infectiousness and deliberately released. The first remains a possibility, although other explanations are equally — if not more — plausible, while the second has been debunked by a [comprehensive examination](https://www.nature.com/articles/s41591-020-0820-9) in the journal Nature Medicine, which concluded that SARS-CoV-2 was “not a laboratory construct or a purposefully manipulated virus.” The chances that terrorists would be capable of engineering a virus such as SARS-CoV-2 **without access** to a state’s resources are **virtually zero.** If anything, the possibility of a lab escape — however remote — highlights the importance of [biosafety.](https://warontherocks.com/2020/06/a-guide-to-getting-serious-about-bio-lab-safety/) While governments have paid much attention to laboratories with the highest biosafety level (level 4), work on bat-born coronaviruses is regularly performed at lower levels (level 3, and even level 2), and should instead be subject to similar safety requirements. In sum, small-scale attacks using anthrax or other agents may be possible, but the risk of a highly advanced, weaponized pathogen that spreads among large populations — a **terrorist-initiated biological doomsday** — is **very low.** The only exception, of course, is if terrorists received support from a state, acted as its proxies, or were able to draw on its resources — as in Ivins’ case.

#### No risk of nuke terror.

John Mueller 17. Professor of Political Science at The Ohio State University & Senior Fellow at the Cato Institute & Senior Research Scientist with the Mershon Center for International Security Studies at Ohio State University. “76. Nuclear Weapons: Proliferation and Terrorism.” Cato Institute. https://object.cato.org/sites/cato.org/files/serials/files/cato-handbook-policymakers/2017/2/cato-handbook-for-policymakers-8th-edition-76\_0.pdf

The possibility that small groups could set off nuclear weapons is an alarm that has been raised repeatedly over the decades. However, terrorist groups thus far seem to have exhibited only limited desire and even less progress in going atomic. Perhaps, after a brief exploration of the possible routes, they have discovered that the tremendous effort required is scarcely likely to succeed. One route a would-be atomic terrorist might take would be to receive or buy a bomb from a generous, like-minded nuclear state for delivery abroad. That route, however, is highly improbable. The risk would be too great—even for a country led by extremists—that the source of the weapon would ultimately be discovered. Here, the rapidly developing science (and art) of “nuclear forensics”—connecting nuclear materials to their sources even after a bomb has been detonated—provides an important deterrent. Moreover, the weapon could explode in a manner or on a target the donor would not approve—including, potentially, the donor itself. Almost no one, for example, is likely to trust al Qaeda: its explicit enemies list includes all Middle Eastern regimes, as well as the governments of Afghanistan, India, Pakistan, and Russia. And the Islamic State, or ISIS, which burst onto the international scene in 2014, has alienated just about every state on the planet. Nuclear-armed states are unlikely to give or sell their precious weapons to nonstate actors. Some observers, though, worry about “loose nukes,” especially in post-Communist Russia—meaning weapons, “suitcase bombs” in particular, that can be stolen or bought illicitly. However, as a former director at the Los Alamos National Laboratory notes, “Regardless of what is reported in the news, all nuclear nations take the security of their weapons very seriously.” Careful assessments have concluded that it is unlikely that any nuclear devices have been lost and that, regardless, their effectiveness would be very low or even nonexistent because nuclear weapons require continual maintenance. Moreover, finished bombs are outfitted with devices designed to trigger a nonnuclear explosion that will destroy the bomb if it is tampered with. Bombs can also be kept disassembled with the component parts stored in separate high-security vaults (a common practice in Pakistan). Two or more people and multiple codes may be required not only to use the bomb, but also to store, maintain, and deploy it. There could be dangers in the chaos that would emerge if a nuclear state were to fail, collapsing in full disarray. However, even under those conditions, nuclear weapons would still have locks or be disassembled and would likely remain under heavy guard by people who know that a purloined bomb would most likely end up going off in their own territory. Most analysts believe that a terrorist group’s most promising route would be to attempt to make a bomb using purloined fissile material— plutonium or highly enriched uranium. However, as the Gilmore Commission—the advisory panel on terrorism and weapons of mass destruction—stressed, building and deploying a nuclear device presents “Herculean challenges.” The process requires a lengthy sequence of steps; if each is not fully met, the result is not simply a less powerful weapon, but one that can’t produce any significant nuclear yield at all or can’t be delivered. First, the terrorists would need to steal or illicitly purchase the crucial plutonium or highly enriched uranium. This would most likely require the corruption of a host of greedy confederates, including brokers and money transmitters, any one of whom could turn on the terrorists or, out of either guile or incompetence, furnish them with material that is useless. Any theft would also likely trigger an intense international policing effort. Second, to manufacture a bomb, the terrorists would need to set up a large and well-equipped machine shop and populate it with a team of highly skilled and extremely devoted scientists, technicians, machinists, and managers. These people would have to be assembled and retained for the monumental task while generating no consequential suspicions among friends, family, or police about their sudden and lengthy absence from normal pursuits back home. Throughout, the process of fabricating a nuclear weapon would require that international and local security services be kept perpetually in the dark, and that no curious locals, including criminal gangs, get wind of the project as they observe the constant coming and going of outside technicians over the months or even years it would take to pull off. Physicists who have studied the issue conclude that fabricating a nuclear weapon “could hardly be accomplished by a subnational group” because of “the difficulty of acquiring the necessary expertise, the technical requirements (which in several fields verge on the unfeasible), the lack of available materials and the lack of experience in working with these.” Others stress the “daunting problems associated with material purity, machining, and a host of other issues,” and conclude that the notion that a terrorist group could fabricate an atomic bomb or device “is far-fetched at best.” Finally, the resulting weapon, likely weighing a ton or more, would have to be moved to a target site in a manner that did not arouse suspicion. Then a skilled crew would have to set off the improvised and untested nuclear device, hoping that the machine shop work has been perfect, that there were no significant shakeups in the treacherous process of transportation, and that the device, after all the effort, isn’t a dud. The financial costs of such an extensive operation could easily become monumental: expensive equipment to buy, smuggle, and set up and people to pay—or pay off. Any criminals competent and capable enough to be effective allies in the project would likely discover boundless opportunities for extortion and be psychologically equipped by their profession to exploit them. Khalid Sheikh Mohammed, the designated “mastermind” behind the 9/11 attacks, reportedly said that al Qaeda’s atom bomb efforts never went beyond searching the Internet. Even so, that raises the popular notion that the Internet can be effective in providing operational information. However, that belief seems to be severely flawed. Researcher Anne Stenersen finds that the Internet is filled with misinformation and error and with materials hastily assembled and “randomly put together,” containing information that is often “far-fetched” or “utter nonsense.” Some members of al Qaeda may have dreamed about getting nuclear weapons. The only terrorist group to actually indulge in such dreams has been the Japanese millennial group Aum Shinrikyo. However, its experience can scarcely be much of an inspiration to other terrorist groups. Aum Shinrikyo was not under siege or even under close watch, and it had some 300 scientists in its employ, an estimated budget of $1 billion, and a remote and secluded haven in which to set up shop. After making dozens of mistakes in judgment, planning, and execution in a quest for nuclear weapons, it abandoned its efforts. The rise of ISIS in 2014 does not alter these conclusions. The vicious group is certainly a danger to the people under its control and to fellow Muslims and neighboring Christians. It is actually more visible—that is, easier to find—than al Qaeda in that it seeks to hold and govern physical territory, a task that is increasingly difficult in a hostile world. In the process, it is unlikely to be able to amass the finances, the skills, and the serenity to go atomic. The notion that terrorists could come up with a nuclear weapon seems remote. As with nuclear proliferation to countries, there may be reason for concern, or at least for interest and watchfulness. But alarm and hysteria are hardly called for.

## Advantage 2 --- Alliances

#### Food price volatility decreases conflict.

Bellemare 15—Assistant Professor in the Department of Applied Economics at the University of Minnesota [Marc, “Rising Food Prices, Food Price Volatility, and Social Unrest,” *American Journal of Agricultural Economics*, Vol. 97, Iss. 1, p. 1-21, Emory Libraries]

Conclusion

Do food prices cause social unrest? The results in this article indicate that the answer to this question is a qualified “yes.” While rising food prices appear to cause food riots, food price volatility is at best negatively associated with and at worst unrelated to social unrest. These findings go against much of the prevailing rhetoric surrounding food prices. Indeed, whereas many in the media and among policy makers were quick to blame food price volatility for the food riots of 2008 and of 2010–2011, the empirical results in this article indicate that rising food price levels are to blame and that increases in food price volatility may actually decrease the number of food riots. Additionally, specifications that focus on food price volatility at the expense of food price levels show that the latter is not statistically significantly related to the former. These findings are in line with those in the applied microeconomics literature on the impacts of rising food prices (Deaton 1989) and of food price volatility (Bellemare, Barrett

### Warming D

#### Warming’s not existential---framing it as such undermines solvency.

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In the lead-up to the 2014 IPCC Fifth Assessment Report (AR5), researchers developed four scenarios for what might happen to greenhouse-gas emissions and climate warming by 2100. They gave these scenarios a catchy title: Representative Concentration Pathways (RCPs)1. One describes a world in which global warming is kept well below 2 °C relative to pre-industrial temperatures (as nations later pledged to do under the Paris climate agreement in 2015); it is called RCP2.6. Another paints a dystopian future that is fossil-fuel intensive and excludes any climate mitigation policies, leading to nearly 5 °C of warming by the end of the century2,3. That one is named RCP8.5.

RCP8.5 was intended to explore an unlikely high-risk future2. But it has been widely used by some experts, policymakers and the media as something else entirely: as a likely ‘business as usual’ outcome. A sizeable portion of the literature on climate impacts refers to RCP8.5 as business as usual, implying that it is probable in the absence of stringent climate mitigation. The media then often amplifies this message, sometimes without communicating the nuances. This results in further confusion regarding probable emissions outcomes, because many climate researchers are not familiar with the details of these scenarios in the energy-modelling literature.

This is particularly problematic when the worst-case scenario is contrasted with the most optimistic one, especially in high-profile scholarly work. This includes studies by the IPCC, such as AR5 and last year’s special report on the impact of climate change on the ocean and cryosphere4. The focus becomes the extremes, rather than the multitude of more likely pathways in between.

Happily — and that’s a word we climatologists rarely get to use — the world imagined in RCP8.5 is one that, in our view, becomes increasingly implausible with every passing year5. Emission pathways to get to RCP8.5 generally require an unprecedented fivefold increase in coal use by the end of the century, an amount larger than some estimates of recoverable coal reserves6. It is thought that global coal use peaked in 2013, and although increases are still possible, many energy forecasts expect it to flatline over the next few decades7. Furthermore, the falling cost of clean energy sources is a trend that is unlikely to reverse, even in the absence of new climate policies7.

Assessment of current policies suggests that the world is on course for around 3 °C of warming above pre-industrial levels by the end of the century — still a catastrophic outcome, but a long way from 5 °C7,8. We cannot settle for 3 °C; nor should we dismiss progress.

Plan for progress

Some researchers argue that RCP8.5 could be more likely than was originally proposed. This is because some important feedback effects — such as the release of greenhouse gases from thawing permafrost9,10 — might be much larger than has been estimated by current climate models. These researchers point out that current emissions are in line with such a worst-case scenario11. Yet, in our view, reports of emissions over the past decade suggest that they are actually closer to those in the median scenarios7. We contend that these critics are looking at the extremes and assuming that all the dice are loaded with the worst outcomes.

Asking ‘what’s the worst that could happen?’ is a helpful exercise. It flags potential risks that emerge only at the extremes. RCP8.5 was a useful way to benchmark climate models over an extended period of time, by keeping future scenarios consistent. Perhaps it is for these reasons that the climate-modelling community suggested RCP8.5 “should be considered the highest priority”12.

We must all — from physical scientists and climate-impact modellers to communicators and policymakers — stop presenting the worst-case scenario as the most likely one. Overstating the likelihood of extreme climate impacts can make mitigation seem harder than it actually is. This could lead to defeatism, because the problem is perceived as being out of control and unsolvable. Pressingly, it might result in poor planning, whereas a more realistic range of baseline scenarios will strengthen the assessment of climate risk.

## Solvency

#### State and federal courts are open now---backlog is diminishing.

US Courts, 21. “As COVID-19 Cases Fall, Juries Get Back to Work.” May 27, 2021. This is the sixth in a series of articles about how federal courts are working to recover from the COVID-19 crisis. https://www.uscourts.gov/news/2021/05/27/covid-19-cases-fall-juries-get-back-work

As coronavirus (COVID-19) case totals continue to decline in the United States, federal courts are rapidly expanding the number of jury trials and other in-person proceedings. But many court leaders remain uncertain about how quickly they can achieve a full return to pre-pandemic operations. While some courts say social distancing requirements and other COVID-related issues are likely to limit the number of jury trials, at least for the next few months, an increase in vaccinations and the recent relaxation of federal guidelines are raising the possibility of a more rapid reopening schedule. The Northern District of New York recently began its first criminal jury trial since March 2020, when the pandemic prompted many federal courts to scale back in-person hearings and trials. But the court is still assessing whether mask requirements and social distancing can be eliminated for jurors and the public after a year of pandemic restrictions. “The court is committed to taking a measured approach to relaxing the current restrictions,” said Clerk of Court John M. Domurad. “We want to be careful. We’ve gained so much, we don’t want to lose what we’ve gained by shedding restrictions too quickly.” For more than a year, federal courts have operated under a dynamic “gating” strategy, easing and tightening restrictions on courthouse procedures based on improvements or deterioration in local health conditions. Some courts resumed limited jury trials last summer, only to pull back during a winter resurgence of COVID. In recent months, as infection and hospitalization rates have fallen sharply, dozens of courts have reported changing their status from Phase 1 or 2, in which limited in-person proceedings are conducted, to Phase 3 or 4, in which jury trials can be conducted. Officials caution that future changes could tighten restrictions again. Even in districts where COVID numbers are falling most rapidly, some judges are reporting they still must overcome challenges to stage trials. “COVID numbers in our district are plummeting, and that’s wonderful,” said Chief Judge James K. Bredar of the District of Maryland. “But our detention facilities continue to lock down entire housing units when even a single inmate tests positive. That means the detainees on that housing unit cannot be transported to courts, or even to the areas within the detention facility used for video hearings. So, even with improving virus metrics and climbing vaccination statistics, we are still disrupted by COVID.“ Two of the biggest quandaries facing courts are whether vaccinations can or should be required of jurors and court staff, and whether strict social distancing is still necessary as more adults become vaccinated. In interviews, most court leaders say they are not requiring vaccinations, but that they are taking a wait and see approach on relaxing other COVID precautions. All say that assuring jurors they are safe is a top priority(link is external). “We believe that with the appropriate safety measures in place, the American public can feel safe to participate in jury trials as jurors, observers, or witnesses,” said Chief Judge Algenon L. Marbley, of the Southern District of Ohio, which resumed a full jury trial schedule on May 3. “The Court has not been asking about juror vaccination, but we may do so in the future.” Courts are still unclear how recent guidance from the Centers for Disease Control and Prevention may alter their decision-making. Noting that those with vaccinations no longer need to wear masks, Chief Judge Philip A. Brimmer of the District of Colorado said that courts still face difficult choices. Chief Judge Philip A. Brimmer, District of Colorado Chief Judge Philip A. Brimmer, District of Colorado: “Social distancing imposes many limitations on a court’s ability to return to normal.” “To what extent should courts accommodate fully vaccinated jurors who want to be socially distanced?” Brimmer asked. “Social distancing imposes many limitations on a court’s ability to return to normal. But it seems harsh to tell people who just a few weeks ago were being praised for their precautions that they now need to get over their qualms about having someone sit right next to them.” Courtroom capacity also is affecting how quickly different districts can schedule jury trials. The Southern District of Ohio has enough courtrooms to conduct eight jury trials simultaneously—three each in its Cincinnati and Columbus courthouses and two more in Dayton. In addition to outfitting each juror’s chair with plexiglass, the court gives each juror a sealed plastic bag that contains a mask, gloves, hand sanitizer, writing pad and pen. The court has sufficient space to put the public in overflow courtrooms if needed, and to allow jurors to maintain social distancing. In the District of Minnesota, Chief Judge John R. Tunheim said, courthouses in Minneapolis and St. Paul each have only one courtroom fully retrofitted with plexiglass to protect jurors. As a result, only one jury trial at a time is being held in each city. A total of three courtrooms are needed for each trial, to accommodate social-distancing needs. Chief Judge John R. Tunheim, District of Minnesota Chief Judge John R. Tunheim, District of Minnesota: “We have done everything possible to make our facilities safe.” Beginning Aug. 1, all courtrooms in Minnesota will be authorized for civil trials, which can fit the required eight-member juries in a standard jury box, but at present, expanding the number of criminal jury trials would require additional installation of plexiglass barriers. “We still want to keep the number of people in the courthouses to a minimum to prevent spread,” Tunheim said. “We are using at least two other courtrooms for each trial - one for jury deliberations and the other for the public/media to watch the trial without being in the courtroom. I am anticipating utilizing the single courtroom plan for criminal trials through the end of the summer and then reassess.” Even a limited capacity to hold jury trials can have an additional benefit in completing court business. In the District of Colorado, listing cases as pilot trials or backup pilot trials has greatly facilitated settlement of cases. “Until a case gets on the calendar, it’s not going anywhere,” Brimmer said. “So **being able to hold** even some **jury trials is helping us reduce our backlog.”** Court officials emphasize that they are making every effort to protect jury and public safety. Courts, they say, are ready to deliver justice even as the COVID crisis winds down. “We have done everything possible to make our facilities safe and will continue to be vigilant about health and safety,” Tunheim said. “I would also say that our criminal justice system is vitally important. Defendants have a right to a fair and speedy trial, so despite the challenges, it is important that we move forward with trials and hearings.”

#### Adding new private, class action litigation swamps federal courts

Thomas Henderson 2 (Thomas J, Chief Council @ Lawyer's Committee for Civil Rights, "THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, HEARING ON CLASS ACTION LITIGATION AND THE CLASS ACTION FAIRNESS ACT OF 2001," http://www.abanet.org/classaction/documents/testimony-lccrul.pdf)

First, this legislation would substantially expand the caseload of the federal courts to include hundreds, if not thousands, of complex cases that do not involve questions of federal law. It is well established that the dockets of federal courts are already significantly overburdened. It is important to point out that the federal courts have less than 1,500 judges, bankruptcy judges and magistrate judges, compared to more than 30,000 judges currently serving on state courts. Imposing substantial numbers of new cases on the overburdened dockets of the relatively modest number of federal courts will clog those dockets with the consequence that it will be more difficult to have any and all cases decided**.** Currently, there are approximately 4,500 class actions in the federal courts. Although there is not uniform record keeping that would tell us the number of state court class actions, it is reasonable to assume that there are a very substantial number that would be displaced by this le gislation. **Even a relatively modest increase in the number of** class actions **in the federal courts – and there is no reason to suppose that the increase would be modest – would substantially increase the volume of work** required by judges to dispose of cases. The increased caseload is not the only burden, this legislation would also increase the number of complex and time-consuming cases that those courts must decide. **Class actions take a greater share of the time of district judges than do other forms of litigation**. In fact, **empirical studies have shown that class actions on average consume almost five times more judicial time than the typical civil case**.2 Thus, the stress on the federal courts and the demands on the time of judges would exceed the mere increase in the number of cases on the docket. The effect would be to make judges less able to devote time to both existing cases before the federal courts and those that would be redirected by this legislation. All commentators on the subject agree that the most effective means of addressing the particular demands of, and problems that arise in, class action litigation is more careful judicial supervision of such cases. By unrealistically increasing the demands on federal judges, this legislation would have precisely the opposite effect. Judges will have less time and opportunity to give careful supervision to critical class action litigation. Indeed, faced with overburdened dockets, it can be expected that judges will engage in a form of triage to clear the docket by closing cases. This would lead to an exacerbation in the pressure improperly to dispose of cases by dismissal. This is a problem that particularly effects civil rights cases, and in many districts it is already difficult for civil rights plaintiffs with meritorious cases to survive pre-trial motions in order to have the opportunity to go forward to trial on the facts of the case. The unjustified dismissal of cases is a trend in the federal courts that the Supreme Court has consistently sought to correct. See Swierkiewicz v. Sorema, 534 U.S. 506 (2002), and Reeves v Sanderson Plumbing Products, 530 U.S. 133 (2000). An increase in the number of cases federal courts are to handle will only rachet up the pressure on district judges to dispose of as many cases as possible at the earliest stage of the litigation. Moreover increased numbers of cases on federal court dockets and further procedural hurdles will exacerbate the difficulty in securing certification of class actions in proper civil rights cases. In the late 1980’s and early 1990’s, Congress determined that effective enforcement of the nation’s civil rights laws required that the victims of discrimination have available more expansive remedies, including compensatory and, in appropriate cases, punitive damages.3 In order to ensure the effective enforcement of these civil rights laws and fulfill the intent of Congress, it is essential that class actions accommodate civil rights class actions that request compensatory and punitive damages. The only real opportunity for most victims of pattern and practice discrimination to prove and recover damages, or secure other relief, is through class actions. Yet, decisions of some courts of appeals have interpreted Rule 23 (b) in a manner that would make class certification rare, if not impossible, in cases seeking these congressionally mandated damage remedies.4 Such misguided interpretations of Rule 23 turn expanded civil rights remedies against the victims of discrimination: civil rights plaintiffs would be forced to elect between class-wide remedies for systemic discrimination, or the rights of individual class members to recover damages. These misapplications of Rule 23 (b) confound the intent of Congress, frustrate federal civil rights enforcement, and deny the benefit of the law to victims of discrimination. In considering legislation on the issue of class actions, Congress should not add to the difficulty in securing the opportunity to prove and obtain relief for patterns and practices of unlawful discrimination. Yet by compressing virtually all substantial class actions into federal courts and imposing additional burdens on their prosecution, this legislation would increase pressure on courts to dispose of class actions by denying certification altogether.

#### Court efficiency is key to the economy

Timothy Yu-Cheong Yeung et. al 19, PhD in Economics; Senior Research Fellow of the Centre for Legal Theory and Empirical Jurisprudence, KU Leuven (Belgium). "An Economic Theory of Court Performance: Evidence from the Court of Justice of the European" SSRN, 9-11-2019, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3451889, accessed 6-20-2020)

The efficiency of court systems is of great interest to public administrations everywhere, all the more so given pressures on reducing public spending. The balancing of several variables, from demand for quick dispute resolution to the necessary staffing levels, is key to judicial management and court system planning (Engel and Weinshall, 2019; Gomes et al., 2016; Voigt, 2016). Dysfunctional and arbitrary judiciaries have proven to have serious economic consequences for growth and businesses. In many countries in the world, courts accumulate large backlogs with the consequence of increasing delays, which downstream impact negatively both litigants and public trust in the judiciary (Cabrillo and Fitzpatrick, 2008). Dilatory judicial proceedings increase uncertainty among economic actors and thus impede economic activity. This worldwide problem has received widespread attention in international fora such as the European Union (EU), Council of Europe, Organisation for Economic Co-operation and Development (OECD) and World Bank, all of which have urged action to combat judicial delay and improve the efficiency of court systems (Falavigna et al., 2015; Henisz, 2000; Marciano et al., 2019; Melcarne and Ramello, 2016; Weder, 1995). In an attempt to shed light on the effect of backlogs and resources on the economic performance of courts, we draw on consumer choice theory to model the dynamics of the trade-off between quality and speed of judicial outcomes under a budget constraint. Compared to extant literature, this model has the distinct advantage of at once acknowledging that court performance is constrained by available resources while also incorporating, in line with real-world preoccupations, decision-making speed rather than the sheer quantity of decisions produced as a core theoretical component. We test our theory of court performance on an original dataset comprising the entire universe of cases brought before the Court of Justice of the European Union (1953-2017). We apply an instrumental variable approach by using lagged average speed as an instrument for speed to disentangle the simultaneous determination of quality and speed. Our empirical findings support the existence of a trade-off between quality and speed in court decisions, as well as the hypothesis that backlogs exert a negative effect on speed and quality, contrary to the prediction of the exogenous productivity hypothesis. We find only weak evidence of a positive effect of expenditure on speed but stronger support for its impact on quality. Finally, we find that the establishment of new courts had only a small to no positive impact on speed, contrary to the expectations of policy-makers, although the reforms did lead to an improvement in terms of quality

#### Economic decline causes nuclear war – US-China relations prove

Kalyan Kumar, 15, writer for the international business times. “Economic collapse of big economies like US and China may trigger war, says financial analyst Warren Pollock”, June 15, 2015, International Business Times, http://www.ibtimes.com.au/economic-collapse-big-economies-us-china-may-trigger-war-says-financial-analyst-warren-pollock Accessed: June 29, 2020)

Leading American financial analyst Warren Pollock has warned that **the US will slip** into the **biggest** ever **financial depression** in the history of the world. Not stopping there, the veteran also cautioned that the lingering **economic turbulence** in China and US **will** eventually **trigger a war,** which will be like "resetting the old order.” Pollock notes that a climate of war is already in the offing and the world is getting ready for war. In his analysis, he brought to the fore many geo political variables to explain the current strains in the political economy of the world. They included China, Russia and the US Fed, among others. However, Pollock is optimistic that gold will survive all vagaries of depression or war, reports USA Watchdog.

“I wouldn’t sell my gold for anything because it’s going to survive through this crisis. It’s going to survive through deflation. It’s going to survive through hyperinflation. Gold is going to survive through war, assuming that you do,” Pollock said. Economy and war Pollock said the global economy is the **key to** the **timing of war** and argued that the world economy is **in a tailspin**. "War starts when China’s economy implodes. . . . The economy in China is coming to a halt. It’s in deflation. It’s in a depression. All the capital that has been pouring into China has been misallocated. It’s similar to the 1920’s in the United States. The onset of the boom-time and the follow-on depression. . . . People in China want to get out of China. They want their assets out of China. . . They see this is going to be a **full-blown deflation** where debt is going to go bad. People’s commitments are not going to be honored, and they might try to delay . . . bide for time and try the old formula first," Pollock said. Message to China Pollock sees **signs of war manifest everywhere**, including the **recent US missile launch** off the coast of California which is a message to China.

"They are firing them in the direction of China. What is amazing is the ocean is a vast place. They could have chosen anywhere to launch these missiles from and, instead, they launched them right next to a metropolitan area. So, really, they are sending a message to the people in the United States. More so than that, they are sending a message to the people in China. It’s definitely not directed at Russia," Pollock reasoned.

He said the government wanted to show that the US has a powerful military and is in control of the world, and the reserve currency is worth something. Sign of impotence However, Pollock lampooned that show of strength. “We are a strong military power and, really, on a conventional sense, the emperor has no clothing. This use of a last resort weapon, the demonstration of it, is really a sign of impotence,” Pollock quipped.

Pollock reiterated that the biggest financial depression in the history of the world **will engulf US** and added that unlike what has been seen, it is possible that **war will turn** into a **resetting mechanism**.

"Let’s look at it from the perspective of China. Their economy goes bad and guess what? They are going to say the Japanese are evil. The Americans are evil. . . . Japan sees this war coming. Russia sees this war coming. To some extent, some generals in the U. S. see this war coming. **They are stockpiling** bullets. They have their heads in their asses in the Pentagon," he added. China harps on innovation Meanwhile, Chinese President Xi Jinping told the Group of 20 (G20) summit that targeted medicine for sluggish growth is required.

In a speech entitled "Innovative Growth That Benefits All," the Chinese leader called for collective work to maintain a stable economic growth in the short term, while adding a new impetus to the world economy in the long term, the Xinhua reported. Xi said the momentum generated by the last round of scientific and industrial revolution has waned and the potential for growth under the traditional economic system and development model is diminishing. The G20 summit was held recently at the Turkish resort city Antalya and sought to underpin global confidence to ensure strong, sustainable and balanced growth in the world economy.

# 2NC vs Kansas HW

## Regulation CP

### AT: PDB---2NC

#### Perm do both.

#### 1. It links to the net benefit. The CP does not “expand the scope of core antitrust laws” meaning the Trade disad is a net benefit.

#### 2. “Do both” is antitrust duplication---the disputes collapse resources, effectiveness, and signaling.

Carl W. Hittinger and Tyson Y. Herrold 19. Carl W. Hittinger (LAW ’79) is a senior partner and serves as BakerHostetler’s Antitrust and Competition Practice National Team Leader and the litigation group coordinator for the firm’s Philadelphia office. He concentrates his practice on complex commercial and civil rights trial and appellate litigation, with a particular emphasis on antitrust and unfair competition matters, including class actions. Tyson Y. Herrold is an associate in the firm’s Philadelphia office in its litigation group. His practice focuses on complex commercial litigation, particularly antitrust and unfair competition matters, as well as civil rights litigation. "Antitrust Agency Turf War Over Big Tech Investigations". Temple 10-Q. https://www2.law.temple.edu/10q/antitrust-agency-turf-war-over-big-tech-investigations/

Disputes over clearance can have tangible adverse effects on enforcement. First, some have commented that delays caused by clearance disputes can narrow the efficacy of remedial options, particularly with mergers. As Sen. Richard Blumenthal has commented, “The Big Tech companies are not waiting for the agencies to finish their cases. They are structuring their companies so that you can’t unscramble the egg.” Structural remedies are favored by Delrahim, who has commented that alternative, behavioral remedies should be used sparingly: “The division has a strong preference for structural remedies over behavioral ones. … The Antitrust Division is a law enforcer and, even where regulation is appropriate, it is not equipped to be the ongoing regulator.”

Second, disputes over clearance and, more so, duplicative investigations waste agency resources, threaten to blunt their effectiveness, and can lead to inconsistent and confusing governmental positions. In the Sept. 17 oversight hearing, Simons and Delrahim were both criticized for requesting an increase in funding: “As you both acknowledged, both of you could use, and desperately need, more resources. That being the case, it makes no sense to me that we should have duplication of effort, when that has a tendency inevitably to undermine the effectiveness of what you’re doing.” Duplicative investigations dilute the specialization that is a principal goal of the agencies’ clearance agreement and raise the risk that one agency will take legal positions that undercut the other. No doubt the DOJ’s amicus brief in the Qualcomm case influenced the U.S. Court of Appeals for the Ninth Circuit’s decision to issue a stay pending appeal.

So how will the FTC and DOJ resolve their latest turf war? Perhaps they will revisit their clearance agreement and decide to split their authority by company or the business practice being investigated, based on prior agency experience, rather than by industry as Appendix A currently does. Or maybe Congress will decide to consolidate civil antitrust enforcement jurisdiction under one agency. That seems like a long shot considering the political implications. However, during the Senate’s antitrust oversight hearing, Sen. Josh Hawley proposed “cleaning up the overlap in jurisdiction by removing it from one agency” and “clearly designating enforcement authority to one agency.” One thing is sure—the agencies should not be duplicating civil antitrust investigations. Stay tuned.

#### 3. Specifically true for patent law.

Claire Guo 19. Juris Doctor, Peking University School of Transnational Law. Intersection of Antitrust Laws with Evolving FRAND Terms in Standard Essential Patent Disputes, 18 J. MARSHALL REV. INTELL. PROP. L. 259 (2019). Pg. 278

The practice of three major jurisdictions suggests that the intersection of FRAND terms and antitrust laws is not a fixed process. Instead, it changes as the stipulations of FRAND evolve to have clarity and transparency. In particular, the practice suggests a general trend of less antitrust intervention into FRAND breaches when concrete competition harm is not present. One reason is that when FRAND has expanded into negotiation protocols, mere disobedience of FRAND procedurally without follow-up actions, such as filing injunctions or excessive demand, could not possibly give rise to antitrust concerns. The other reason is that the parallel enforcement of FRAND and antitrust laws is duplicative to some extent. Both FRAND and antitrust laws could be used to address the monopoly power and abusive conducts of SEPs owners resulting from the standardization process. Assuming FRAND has functioned effectively as expected, additional antirust intervention seems redundant and risks upset the balance already reached by FRAND obligation.

### AT: PDCP---2NC

#### Perm do the CP. It’s severance---

#### 1. Enforcement: antitrust requires the FTC and DOJ as enforcers---regulations are distinct legal mechanisms to restrain anticompetitive effects---that’s Fullerton.

#### “Expanding the scope” of “anti-trust laws” must be the DOJ and FTC.

Jarod Bona 21. Bona Law PC. "Five U.S. Antitrust Law Tips for Foreign Companies". Antitrust Attorney Blog. 1-16-2021. https://www.theantitrustattorney.com/five-u-s-antitrust-tips-foreign-companies/

1. Two federal and many state agencies enforce antitrust laws in the United States

The United States government has two separate antitrust agencies—the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ). The FTC is an independent federal agency controlled by several Commissioners, while the Antitrust Division of the DOJ is part of the Executive Branch, under the President.

Both of them enforce federal antitrust laws (among other laws). Their jurisdictions technically overlaps, but they tend to have informal agreements between each other for one or the other to handle certain industries or subjects. If you are part of a major industry, your antitrust lawyer may be able to tell you whether the DOJ or FTC is likely to oversee competition issues in your field.

#### 2. Jurisdiction: the plan expands the DOJ and FTC role.

Babette E. Boliek 11. Associate Professor of Law at Pepperdine University School of Law. J.D., Columbia University School of Law; Ph.D., Economics University of California, Davis. FCC Regulation Versus Antitrust: How Net Neutrality is Defining the Boundaries, 52 B.C.L. Rev. 1627 (2011). <http://lawdigitalcommons.bc.edu/bclr/vol52/iss5/2>

There is a crucial battle playing out in the world of Internet access provision. While the Internet is the natural home of competing business giants and warring digital avatars, the contest that will have the most sweeping ramifications for the future of the Internet is the turf war being waged between the Federal Communications Commission (FCC), on the one hand, and the Federal Trade Commission (FTC) and the Department of Justice (DOJ), on the other.1 Nothing less than jurisdiction over the development of the Internet is at stake.

Jurisdiction over Internet access provision is not the first confrontation between these particular government agencies; in fact, they have clashed many times.2 But it is the current iteration of the FCC’s “net neutrality” regulations that has generated the latest contest. Roughly defined, net neutrality encompasses principles of commercial Internet access that include equal treatment and delivery of all Internet applications and content.3 For some, net neutrality stands further for the proposition that Internet access operators should not be permitted to provide different qualities of service for certain application providers (e.g., guaranteed speeds of transmission), even if those application providers can freely choose their desired quality of service.4 Net neutrality has reinvigorated what may be described as an underlying interagency tug of war that reaches deep within, and far beyond, the communications industry.

Although the two regimes share a commonality of purpose—to protect consumers and to promote allocative efficiencies in production—the two have quite distinct, predominately opposing, means of securing social benefits. As Justice Stephen Breyer stated when serving as a judge on the U.S. Court of Appeals for the First Circuit, although regulation and the antitrust laws “typically aim at similar goals—i.e., low and economically efficient prices, innovation, and efficient production methods” —regulation looks to achieve these goals directly “through rules and regulations; [but] antitrust seeks to achieve them indirectly by promoting and preserving a process that tends to bring them about.”5 The battle between these two regimes may be broadly summarized in a single issue thusly: in the face of the industry-specific regulator, what is (or what should be) the role of antitrust law?6

Antitrust law preserves the process of competition across all industries by condemning anticompetitive conduct when it occurs. In contrast, industrial regulation by its nature is a public declaration that, in a given industry, market forces are too weak or underdeveloped to produce the consumer benefits that are realized in competitive markets— regulated industries are carved out from the rest of the economy and are subject to proactive, regulatory intervention that goes above and beyond antitrust enforcement measures.7 Not surprisingly, regulatory agencies were historically created as substitutes for market forces in the few markets that, by the nature of the product or technology, were natural monopolies or severely prone to monopoly.8 In the vast major- ity of markets, however, the antitrust law is the default government control, designed to supplement market forces to inhibit or prevent the growth of monopoly.

Again, although the goals of the two regimes may be similar, the means by which each can achieve those goals are in opposition. Therefore, the threshold determination of which industries are to be singled out for industry-specific regulation, and to what degree, is of vital importance as it simultaneously determines the predominance of the regulator versus the antitrust authority in securing the social good.

This Article sets forth a framework to identify the boundaries between FCC regulatory power and antitrust authority. The goal is to pinpoint for Congress the problematic use of regulatory discretion in defining, or redefining, those boundaries and to propose the standard by which Congress may address inappropriate use of existing FCC jurisdiction. Specifically, this Article creates a new categorization of “procedural opportunism” and “substantive opportunism” to identify problematic, regulatory assertions of jurisdiction. The central issue examined in this Article is to posit what is (or should be) the boundaries of antitrust law in relation to the FCC’s regulatory authority. This important issue has reached a point of public crises in the current net neutrality debate.9 Rather than act reflexively, this is an opportunity for Congress to act clearly to redefine the boundaries between the two regimes that have otherwise been blurred by regulatory overreach.

#### Defining antitrust via an agency is key:

#### 1. Limits---infinite actions can be labelled anticompetitive---the only functional limit is that antitrust agencies must be involved. Forcing FTC key warrants is good to prevent an explosion of affs.

#### 2. Ground---“write it as a regs” topic was vetoed because it kills core tradeoff DAs. They are the only offense in the topic paper, especially because single sector affs are T.

#### 3. Predictability---our ev is from the most common federal sources.

#### 3. Legal code---antitrust requires Title 15 of US Code.

Sanjukta M. Paul 16. David J. Epstein Fellow, UCLA School of Law. The Enduring Ambiguities of Antitrust Liability for Worker Collective Action. Loyola University Chicago Law Journal. https://www.congress.gov/116/meeting/house/110152/witnesses/HHRG-116-JU05-Wstate-PaulS-20191029-SD002.pdf

Unlike the Clayton Act, which was the first legislative attempt at a labor exemption from antitrust,202 the Norris-La Guardia Act did not grapple directly with trade regulation in subject matter—even with how trade regulation applies to labor—although it had the effect of modifying its reach. Norris-La Guardia is not an antitrust statute. Instead, it is incorporated into Title 29 (“Labor”) of the United States Code. By contrast, the Clayton Act was conceived and written as an antitrust statute, was incorporated into Title 15, the antitrust and trade regulation section of the Code, and portions of it dealt with matters other than labor.

### AT: Antitrust = Regulation---2NC

#### They are alternatives not subsets.

Stephen G. Breyer 87. SCOTUS Justice since 1994. California Law Review Volume 75. Issue 3. Article 15. “Antitrust, Deregulation, and the Newly Liberated Marketplace”.

On this view, antitrust is not another form of regulation. Antitrustis an alternative to regulation and, where feasible, a better alternative.3To be more specific, the classicist first looks to the marketplace to protectthe consumer; he relies upon the antitrust laws to sustain market compe-tition. He turns to regulation only where free markets policed by anti-trust laws will not work-where he finds significant market "defects"that antitrust laws cannot cure. Only then is it worth gearing up thecumbersome, highly imperfect bureaucratic apparatus of classical regula-tion. Regulation is viewed as a substitute for competition, to be usedonly as a weapon of last resort-as a heroic cure reserved for a seriousdisease.

### AT: Deterrence

#### No deterrence deficit.

#### 1. CP encourages efficiency in any industry.

Kristelia A. García 14, Associate Professor, University of Colorado Law School, “Penalty Default Licenses: A Case for Uncertainty,” NYU Law Review, Vol. 89, No. 4, October 2014, https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1071&context=articles

Companies, like individuals, are risk averse. The existence of a fallback option, even a poor one, allows them to take a chance on private negotiation. This is the case because the parties know they have an alternative should the deal not work out. Moreover, the fallback allows them the freedom of dabbling in individual deals with only one partner or a handful of them, affording valuable feedback on which terms work and which ones do not without committing the time and effort required to negotiate individually with all comers. If the private terms prove functional and an industry norm begins to take shape-as in the case of the Clear Channel-Big Machine deal-it can then be extended to the larger, more comprehensive partners and eventually reflected in the underlying legal regime.

CONCLUSION

When coupled with a penalty default, uncertainty can bring greater efficiency to the marketplace by encouraging private ordering, which allows for tailored terms and responsiveness to rapid technological change. This is great news in the music sampling context, where for years scholars, legislators, and industry players have been debating a statutory license. 271 This Article suggests that a penalty default license for samples, coupled with existing uncertainty about the future state of protections for derivative works, might alleviate efficiency concerns by encouraging more and better private negotiation. 272

This prescription is particularly timely given the imminent rewrite of "the next great copyright act," 273 and may find application outside the United States as well. In the European Union, for example, there has been a recent push for single-market licensing of intellectual property rights. 274 Copyright territoriality has largely thwarted this initiative, 275 whereas private ordering has resolved it. In November 2012, for example, Google accomplished something the European Union has thus far been unable to: The company struck a private, multiterritory agreement with thirty-five European countries. 276

Acknowledgment of the role uncertainty and penalty defaults play in increasing effectiveness in the market for statutory licensing and in copyright enforcement is only the beginning. A better understanding of uncertainty as a tool for efficiency has application in any industry facing change as a result of rapid technological growth, evolving consumer preferences, or ambiguity about the future state of the law.

## Adv 1

### Bio D

#### Bio-d loss isn’t existential

Kareiva and Carranza, 18—Institute of the Environment and Sustainability, University of California, Los Angeles (Peter and Valerie, “Existential risk due to ecosystem collapse: Nature strikes back,” Futures, available online January 5, 2018, ScienceDirect, dml)

The interesting question is whether any of the planetary thresholds other than CO2 could also portend existential risks. Here the answer is not clear. One boundary often mentioned as a concern for the fate of global civilization is biodiversity (Ehrlich & Ehrlich, 2012), with the proposed safety threshold being a loss of greater than 0.001% per year (Rockström et al., 2009). There is little evidence that this particular 0.001% annual loss is a threshold—and it is hard to imagine any data that would allow one to identify where the threshold was (Brook, Ellis, Perring, Mackay, & Blomqvist, 2013; Lenton & Williams, 2013). A better question is whether one can imagine any scenario by which the loss of too many species leads to the collapse of societies and environmental disasters, even though one cannot know the absolute number of extinctions that would be required to create this dystopia. While there are data that relate local reductions in species richness to altered ecosystem function, these results do not point to substantial existential risks. The data are small-scale experiments in which plant productivity, or nutrient retention is reduced as species numbers decline locally (Vellend, 2017), or are local observations of increased variability in fisheries yield when stock diversity is lost (Schindler et al., 2010). Those are not existential risks. To make the link even more tenuous, there is little evidence that biodiversity is even declining at local scales (Vellend et al., 2013, 2017). Total planetary biodiversity may be in decline, but local and regional biodiversity is often staying the same because species from elsewhere replace local losses, albeit homogenizing the world in the process. Although the majority of conservation scientists are likely to flinch at this conclusion, there is growing skepticism regarding the strength of evidence linking trends in biodiversity loss to an existential risk for humans (Maier, 2012; Vellend, 2014). Obviously if all biodiversity disappeared civilization would end—but no one is forecasting the loss of all species. It seems plausible that the loss of 90% of the world’s species could also be apocalyptic, but not one is predicting that degree of biodiversity loss either. Tragic, but plausible is the possibility of our planet suffering a loss of as many as half of its species. If global biodiversity were halved, but at the same time locally the number of species stayed relatively stable, what would be the mechanism for an end-of-civilization or even end of human prosperity scenario? Extinctions and biodiversity loss are ethical and spiritual losses, but perhaps not an existential risk.

#### No tipping point—overwhelming experimental ev.

Jeremy Hance 18, wildlife blogger for the Guardian and a journalist with Mongabay focusing on forests, indigenous people, climate change and more. He is also the author of Life is Good: Conservation in an Age of Mass Extinction., 1-16-2018, "Could biodiversity destruction lead to a global tipping point?," Guardian, https://www.theguardian.com/environment/radical-conservation/2018/jan/16/biodiversity-extinction-tipping-point-planetary-boundary

“It makes no sense that there exists a tipping point of biodiversity loss beyond which the Earth will collapse,” said co-author and ecologist, José Montoya, with Paul Sabatier Univeristy in France. “There is no rationale for this.” Montoya wrote the paper along with Ian Donohue, an ecologist at Trinity College in Ireland and Stuart Pimm, one of the world’s leading experts on extinctions, with Duke University in the US. Montoya, Donohue and Pimm argue that there isn’t evidence of a point at which loss of species leads to ecosystem collapse, globally or even locally. If the planet didn’t collapse after the Permian-Triassic extinction event, it won’t collapse now – though our descendants may well curse us for the damage we’ve done. Instead, according to the researchers, every loss of species counts. But the damage is gradual and incremental, not a sudden plunge. Ecosystems, according to them, slowly degrade but never fail outright. “Of more than 600 experiments of biodiversity effects on various functions, none showed a collapse,” Montoya said. “In general, the loss of species has a detrimental effect on ecosystem functions...We progressively lose pollination services, water quality, plant biomass, and many other important functions as we lose species. But we never observe a critical level of biodiversity over which functions collapse.”

### No Nuke Terror---2NC

#### 5) Reject their fear mongering---nuke terror is too complex.

Christopher J. Fettweis 19. Associate professor of political science at Tulane University. “Pessimism and Nostalgia in the Second Nuclear Age.” *Strategic Studies Quarterly* 13.1

Finally, despite the string of bleak and terrifying projections from a variety of experts, nuclear weapons have remained well beyond the capabilities of the modern apocalyptic terrorist. The great fear of the SNA literature, that scientific knowledge and technology would gradually become more accessible to nonstate actors, has remained only a dream. Nor does there appear to be a great reservoir of fissile material in the world’s various black markets waiting to be weaponized.58 Just because something has not yet occurred does not mean that it cannot or will not occur eventually. However, it is worth noting that the world has not experienced any close calls regarding nuclear terrorism. Forecasting future unique events is a necessarily dicey enterprise, but one way to improve accuracy is to examine events that have already or almost happened. Given the many complexities involved with nuclear weapons, especially for amateurs as any terrorists would almost certainly be, it is not unreasonable to expect a few failures, or near misses, to precede success. While it is possible that we might not know about all the plots disrupted by international law enforcement, keeping the lid on nuclear near misses would presumably be no small task. As of this writing, the public is aware of no serious attempts to construct, steal, or purchase nuclear weapons, much less smuggle and detonate one. “Leakage” does not seem to be a problem, yet.59 The uniformly pessimistic projections about the second nuclear era have not, at least thus far, been borne out by events. Post–Cold War trends have instead been generally moving in directions opposite to these expectations, with fewer nuclear weapons in the hands of the same number of countries and none pursuing more. Why, then, doesnuclear pessimism persist? What are the roots of the current fashionable unwillingness—or even inability—to detect positive patterns in nuclear security?

#### Technical barriers prevent synthetic pathogens.

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

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

#### no motive or technical ability.

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

Bioterrorism seems to be back in fashion. In the past, it has received bursts of attention that arose from particular incidents—the “anthrax letters” sent through the mail to US politicians and media outlets in 2001, for instance, or the purchase of plague bacteria by white supremacist Larry Wayne Harris in 1995. This time, it’s an unlikely individual calling attention to the bioterror threat—Bill Gates, the Microsoft founder turned philanthropist. Over the last several years, the world’s richest man has spent vast sums of money on global health, and in the last few months he has turned his attention to bioterrorism. At a high-profile security summit in Munich in February, he warned that bioterrorism could kill tens of millions. At a London security meeting a couple of months later, he said terrorists could wipe out 30 million people by weaponizing a disease such as smallpox.

I disagree. At a stretch, terrorists taking advantage of advances in biology might be able to create a viable pathogen. That does not mean they could create a sophisticated biological weapon, and certainly not a weapon that could kill 30 million people. Terrorists in any event tend to be conservative. They use readily available weapons that have a proven track record—not unconventional weapons that are more difficult to develop and deploy. Available evidence shows that few terrorists have ever even contemplated using biological agents, and the extremely small number of bioterrorism incidents in the historical record shows that biological agents are difficult to use as weapons. The skills required to undertake even the most basic of bioterrorism attacks are more demanding than often assumed. These technical barriers are likely to persist in the near- and medium-term future.

### South East Asia war

#### No Malacca impact – alternative pipelines and interdependence.

Copeland 15—PhD in political science from U Chicago and an Associate Professor of politics at U Virginia [Dale, *Economic Interdependence and War*, p. 440-442]

Still, China's strategy of economic engagement with the world also contains a subtle hedging dimension-one that may be understandable within the anarchic context of international politics, but that could have destabilizing consequences for long-term US-Chinese relations. For one thing, China is trying its best to diversify its energy imports away from, its primary reliance on Middle East and African oil. Over the last decade, China has built oil and gas pipelines to Kazakhstan, Turkmenistan, and Russia, and increased oil exploration in the East and South China seas. A pipeline that would go from Iran into Pakistan and over the Karakorum mountains into western China has been actively discussed, too. 12 Such pipelines not only give China more control over its access to oil; over the long term they would reduce US leverage over Chinese foreign policy as well. Beijing is also implementing plans to build up a three-month strategic reserve of oil to lessen any shock caused by a cutoff, and give suppliers and the United States less of an incentive to implement oil sanctions. Finally, China has solidified relations with Pakistan and Burma, and is helping both nations construct deepwater harbors that once the necessary pipelines are constructed, would allow China to bring Middle Eastern and African oil into the country without having to go through the Malacca Strait. 13

All this makes good strategic sense, notwithstanding the up-front economic cost. With oil consumption expected to rise from eight to fifteen million barrels a day over the next two decades, the pipelines from Central Asia, Russia, and Iran will give China additional suppliers to help fill any supply shortfalls. 14 The proposed pipelines from harbors in Pakistan and Burma can provide China with alternative routes that would undercut any US threats to refuse passage of oil tankers bound for China through the Malacca Strait. Yet the question that hovers over US-China relations is this: Just how long can China maintain such a strategy without having to build up a power projection capability needed to protect the pipelines and trade routes (not to mention its allies and oil suppliers) from emerging threats? The United States found itself after 1943 having to actively project its naval and conventional power into the Middle East in order to deter threats, and from Eisenhower onward, respond to them by occasionally putting boots on the ground. Will Chinese leaders eventually be forced to project significant naval power into the Indian Ocean, or perhaps intervene in the affairs of Central Asian states, just to maintain their sense of secure access to energy?

The theory of this book would predict that Chinese leaders will continue to be cautious about turning to such strong power projection options, at least as long as they remain confident that the United States is willing to sustain the free flow of oil. To build a large navy and start sending it into the Indian Ocean might seem to make sense from an economic realist perspective. But this is not the multipolar environment of the 1880s and 1890s when new powers such as Italy, Japan, and Germany could build up their naval forces to protect their trade without automatically provoking the dominant naval power (Britain) into a hardline reaction. 15 In the current situation of clear US naval and conventional hegemony, no American administration would take kindly to a significant change in Chinese naval policy. Officials in Beijing understand this. They know that a new Chinese power projection policy would almost certainly set off a trade-security spiral, with US economic sanctioning and alliance efforts likely forcing China to pressure neighbors to become part of a Chinese economic sphere. The undermining of three decades of economic progress-not to mention a rise in the risk of actual war-would follow as a result. Until trade expectations take a downturn, then, Chinese leaders will probably play it smart, and continue Deng's policy of building economic power and not rocking the geopolitical boat.

## Advantage 2

### Food

#### Food prices don’t cause conflict–reject their bad studies.

Demarest 15—PhD Researcher at the Centre for Research on Peace and Development [Leila, “Food price rises and political instability: Problematizing a complex relationship,” *The European Journal of Development Research*, Vol. 27, No. 5, p. 650-671, Emory Libraries]

6. Conclusions and Way Forward

While some progress has been made in improving our understanding of the linkages between rising food prices and conflict, several important gaps remain. Firstly, notions of conflict and political instability are often used interchangeably, while these concepts and the relationships between them remain to some extent vague. The ‘food riot’ concept in particular leads to confusion. Although it is popularly seen as a violent rise of the masses, in reality, many peaceful events are gathered under this term, while violence is often committed by the state rather than by hungry consumers. The term also presupposes that food is the central issue at hand, which does not necessarily have to be the case. Many misunderstanding arise from the second gap identified in this paper: the uncritical data gathering based on international news reports. Not only are these remarkably inconsistent, they also make use of classifications which are not scientifically investigated. Finally, causal mechanisms in the relationship between rising food prices and conflict often remain assumptions in the literature and lack empirical foundation. Three crosscutting avenues for improvement therefore exist: better concept definitions, better data gathering, and more focus on contexts.

Clearly defined concepts and categorizations of conflict and instability are a necessary foundation for research on the linkages between rising food prices and conflict. For (food) protests in particular, purposeful categorizations require an enhanced insight in the events that took place on the ground. Local news sources for data gathering can prove to be more reliable than Western (English) media to accomplish this. Event descriptions are also likely to be more detailed in local sources, which allows for a first-hand qualitative analysis of causes and context.

As international food prices are likely to remain high, improving our understanding of the causal mechanisms which can lead to conflict remains crucial. We can draw important lessons from the literature on poverty and conflict, resource scarcity and conflict, and regime transition in Africa. The causal role of economic factors alone has continuously been questioned, and ‘context’ or prevailing political, economic, and social factors play a crucial role in the conflict outcome. The argument that adverse economic shocks seem more of a trigger to conflict rather than an important cause is not particularly remarkable in itself. Yet while many authors acknowledge this, the focus often remains on the trigger. Resource scarcity, climate change, population growth, or food insecurity often remain the starting point of analyses, with researchers consequently tracing the divergent (theoretical) possibilities for conflict. In the end, most admit that these factors do not automatically lead to conflict everywhere, and stress the importance of context. Because the theoretical possibilities for conflict are so large, however, the context factor remains rather understudied with as most agreed upon notions that elements of ‘grievance’ and ‘collective action’ are required.

It is hence important to focus more on the ‘contexts’ that can lead to conflict and, in doing so, to make the distinction between different forms of conflict. This also implies a data collection exercise. Contextual data are currently collected at the aggregate, national level, and only on a yearly basis, which can lead to spurious relations. While the use of these variables is increasingly questioned in civil war studies, we can also doubt their strength in the study of highly localized, one-time events such as riots. I particularly make the case for ‘bringing politics back in’. The policies taken by the government are crucial in the violent escalation of social conflict (e.g. accommodation versus repression), but the only variable currently in use to explain state behaviour seems to be the country-level regime type variable (Polity IV or Freedom House), which is also used with regards to highly localized conflicts. Other ways in which politics matter, can be the strength of the political opposition. The Muslim Brotherhood in Egypt, for example, was probably better organized than other opposition groups to make use of economic unrest.

### Warming

#### Warming’s not existential---framing it as such undermines solvency.

Zeke Hausfather & Glen P. Peters 20. \*Director of climate and energy at the Breakthrough Institute in Oakland, California. \*\*Research director at the CICERO Center for International Climate Research in Oslo, Norway. "Emissions – the ‘business as usual’ story is misleading". Nature. 1-29-2020. https://www.nature.com/articles/d41586-020-00177-3

In the lead-up to the 2014 IPCC Fifth Assessment Report (AR5), researchers developed four scenarios for what might happen to greenhouse-gas emissions and climate warming by 2100. They gave these scenarios a catchy title: Representative Concentration Pathways (RCPs)1. One describes a world in which global warming is kept well below 2 °C relative to pre-industrial temperatures (as nations later pledged to do under the Paris climate agreement in 2015); it is called RCP2.6. Another paints a dystopian future that is fossil-fuel intensive and excludes any climate mitigation policies, leading to nearly 5 °C of warming by the end of the century2,3. That one is named RCP8.5.

RCP8.5 was intended to explore an unlikely high-risk future2. But it has been widely used by some experts, policymakers and the media as something else entirely: as a likely ‘business as usual’ outcome. A sizeable portion of the literature on climate impacts refers to RCP8.5 as business as usual, implying that it is probable in the absence of stringent climate mitigation. The media then often amplifies this message, sometimes without communicating the nuances. This results in further confusion regarding probable emissions outcomes, because many climate researchers are not familiar with the details of these scenarios in the energy-modelling literature.

This is particularly problematic when the worst-case scenario is contrasted with the most optimistic one, especially in high-profile scholarly work. This includes studies by the IPCC, such as AR5 and last year’s special report on the impact of climate change on the ocean and cryosphere4. The focus becomes the extremes, rather than the multitude of more likely pathways in between.

Happily — and that’s a word we climatologists rarely get to use — the world imagined in RCP8.5 is one that, in our view, becomes increasingly implausible with every passing year5. Emission pathways to get to RCP8.5 generally require an unprecedented fivefold increase in coal use by the end of the century, an amount larger than some estimates of recoverable coal reserves6. It is thought that global coal use peaked in 2013, and although increases are still possible, many energy forecasts expect it to flatline over the next few decades7. Furthermore, the falling cost of clean energy sources is a trend that is unlikely to reverse, even in the absence of new climate policies7.

Assessment of current policies suggests that the world is on course for around 3 °C of warming above pre-industrial levels by the end of the century — still a catastrophic outcome, but a long way from 5 °C7,8. We cannot settle for 3 °C; nor should we dismiss progress.

Plan for progress

Some researchers argue that RCP8.5 could be more likely than was originally proposed. This is because some important feedback effects — such as the release of greenhouse gases from thawing permafrost9,10 — might be much larger than has been estimated by current climate models. These researchers point out that current emissions are in line with such a worst-case scenario11. Yet, in our view, reports of emissions over the past decade suggest that they are actually closer to those in the median scenarios7. We contend that these critics are looking at the extremes and assuming that all the dice are loaded with the worst outcomes.

Asking ‘what’s the worst that could happen?’ is a helpful exercise. It flags potential risks that emerge only at the extremes. RCP8.5 was a useful way to benchmark climate models over an extended period of time, by keeping future scenarios consistent. Perhaps it is for these reasons that the climate-modelling community suggested RCP8.5 “should be considered the highest priority”12.

We must all — from physical scientists and climate-impact modellers to communicators and policymakers — stop presenting the worst-case scenario as the most likely one. Overstating the likelihood of extreme climate impacts can make mitigation seem harder than it actually is. This could lead to defeatism, because the problem is perceived as being out of control and unsolvable. Pressingly, it might result in poor planning, whereas a more realistic range of baseline scenarios will strengthen the assessment of climate risk.

## Solvency

### Court Clog

### Finishing Henderson

**Even a relatively modest increase in the number of** class actions **in the federal courts – and there is no reason to suppose that the increase would be modest – would substantially increase the volume of work** required by judges to dispose of cases. The increased caseload is not the only burden, this legislation would also increase the number of complex and time-consuming cases that those courts must decide. **Class actions take a greater share of the time of district judges than do other forms of litigation**. In fact, **empirical studies have shown that class actions on average consume almost five times more judicial time than the typical civil case**.2 Thus, the stress on the federal courts and the demands on the time of judges would exceed the mere increase in the number of cases on the docket. The effect would be to make judges less able to devote time to both existing cases before the federal courts and those that would be redirected by this legislation. All commentators on the subject agree that the most effective means of addressing the particular demands of, and problems that arise in, class action litigation is more careful judicial supervision of such cases. By unrealistically increasing the demands on federal judges, this legislation would have precisely the opposite effect. Judges will have less time and opportunity to give careful supervision to critical class action litigation. Indeed, faced with overburdened dockets, it can be expected that judges will engage in a form of triage to clear the docket by closing cases. This would lead to an exacerbation in the pressure improperly to dispose of cases by dismissal. This is a problem that particularly effects civil rights cases, and in many districts it is already difficult for civil rights plaintiffs with meritorious cases to survive pre-trial motions in order to have the opportunity to go forward to trial on the facts of the case. The unjustified dismissal of cases is a trend in the federal courts that the Supreme Court has consistently sought to correct. See Swierkiewicz v. Sorema, 534 U.S. 506 (2002), and Reeves v Sanderson Plumbing Products, 530 U.S. 133 (2000). An increase in the number of cases federal courts are to handle will only rachet up the pressure on district judges to dispose of as many cases as possible at the earliest stage of the litigation. Moreover increased numbers of cases on federal court dockets and further procedural hurdles will exacerbate the difficulty in securing certification of class actions in proper civil rights cases. In the late 1980’s and early 1990’s, Congress determined that effective enforcement of the nation’s civil rights laws required that the victims of discrimination have available more expansive remedies, including compensatory and, in appropriate cases, punitive damages.3 In order to ensure the effective enforcement of these civil rights laws and fulfill the intent of Congress, it is essential that class actions accommodate civil rights class actions that request compensatory and punitive damages. The only real opportunity for most victims of pattern and practice discrimination to prove and recover damages, or secure other relief, is through class actions. Yet, decisions of some courts of appeals have interpreted Rule 23 (b) in a manner that would make class certification rare, if not impossible, in cases seeking these congressionally mandated damage remedies.4 Such misguided interpretations of Rule 23 turn expanded civil rights remedies against the victims of discrimination: civil rights plaintiffs would be forced to elect between class-wide remedies for systemic discrimination, or the rights of individual class members to recover damages. These misapplications of Rule 23 (b) confound the intent of Congress, frustrate federal civil rights enforcement, and deny the benefit of the law to victims of discrimination. In considering legislation on the issue of class actions, Congress should not add to the difficulty in securing the opportunity to prove and obtain relief for patterns and practices of unlawful discrimination. Yet by compressing virtually all substantial class actions into federal courts and imposing additional burdens on their prosecution, this legislation would increase pressure on courts to dispose of class actions by denying certification altogether.

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#### Court efficiency is key to the economy

Timothy Yu-Cheong Yeung et. al 19, PhD in Economics; Senior Research Fellow of the Centre for Legal Theory and Empirical Jurisprudence, KU Leuven (Belgium). "An Economic Theory of Court Performance: Evidence from the Court of Justice of the European" SSRN, 9-11-2019, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3451889, accessed 6-20-2020)

The efficiency of court systems is of great interest to public administrations everywhere, all the more so given pressures on reducing public spending. The balancing of several variables, from demand for quick dispute resolution to the necessary staffing levels, is key to judicial management and court system planning (Engel and Weinshall, 2019; Gomes et al., 2016; Voigt, 2016). Dysfunctional and arbitrary judiciaries have proven to have serious economic consequences for growth and businesses. In many countries in the world, courts accumulate large backlogs with the consequence of increasing delays, which downstream impact negatively both litigants and public trust in the judiciary (Cabrillo and Fitzpatrick, 2008). Dilatory judicial proceedings increase uncertainty among economic actors and thus impede economic activity. This worldwide problem has received widespread attention in international fora such as the European Union (EU), Council of Europe, Organisation for Economic Co-operation and Development (OECD) and World Bank, all of which have urged action to combat judicial delay and improve the efficiency of court systems (Falavigna et al., 2015; Henisz, 2000; Marciano et al., 2019; Melcarne and Ramello, 2016; Weder, 1995). In an attempt to shed light on the effect of backlogs and resources on the economic performance of courts, we draw on consumer choice theory to model the dynamics of the trade-off between quality and speed of judicial outcomes under a budget constraint. Compared to extant literature, this model has the distinct advantage of at once acknowledging that court performance is constrained by available resources while also incorporating, in line with real-world preoccupations, decision-making speed rather than the sheer quantity of decisions produced as a core theoretical component. We test our theory of court performance on an original dataset comprising the entire universe of cases brought before the Court of Justice of the European Union (1953-2017). We apply an instrumental variable approach by using lagged average speed as an instrument for speed to disentangle the simultaneous determination of quality and speed. Our empirical findings support the existence of a trade-off between quality and speed in court decisions, as well as the hypothesis that backlogs exert a negative effect on speed and quality, contrary to the prediction of the exogenous productivity hypothesis. We find only weak evidence of a positive effect of expenditure on speed but stronger support for its impact on quality. Finally, we find that the establishment of new courts had only a small to no positive impact on speed, contrary to the expectations of policy-makers, although the reforms did lead to an improvement in terms of quality

#### Economic decline causes nuclear war – US-China relations prove

Kalyan Kumar, 15, writer for the international business times. “Economic collapse of big economies like US and China may trigger war, says financial analyst Warren Pollock”, June 15, 2015, International Business Times, http://www.ibtimes.com.au/economic-collapse-big-economies-us-china-may-trigger-war-says-financial-analyst-warren-pollock Accessed: June 29, 2020)

Leading American financial analyst Warren Pollock has warned that **the US will slip** into the **biggest** ever **financial depression** in the history of the world. Not stopping there, the veteran also cautioned that the lingering **economic turbulence** in China and US **will** eventually **trigger a war,** which will be like "resetting the old order.” Pollock notes that a climate of war is already in the offing and the world is getting ready for war. In his analysis, he brought to the fore many geo political variables to explain the current strains in the political economy of the world. They included China, Russia and the US Fed, among others. However, Pollock is optimistic that gold will survive all vagaries of depression or war, reports USA Watchdog.

“I wouldn’t sell my gold for anything because it’s going to survive through this crisis. It’s going to survive through deflation. It’s going to survive through hyperinflation. Gold is going to survive through war, assuming that you do,” Pollock said. Economy and war Pollock said the global economy is the **key to** the **timing of war** and argued that the world economy is **in a tailspin**. "War starts when China’s economy implodes. . . . The economy in China is coming to a halt. It’s in deflation. It’s in a depression. All the capital that has been pouring into China has been misallocated. It’s similar to the 1920’s in the United States. The onset of the boom-time and the follow-on depression. . . . People in China want to get out of China. They want their assets out of China. . . They see this is going to be a **full-blown deflation** where debt is going to go bad. People’s commitments are not going to be honored, and they might try to delay . . . bide for time and try the old formula first," Pollock said. Message to China Pollock sees **signs of war manifest everywhere**, including the **recent US missile launch** off the coast of California which is a message to China.

"They are firing them in the direction of China. What is amazing is the ocean is a vast place. They could have chosen anywhere to launch these missiles from and, instead, they launched them right next to a metropolitan area. So, really, they are sending a message to the people in the United States. More so than that, they are sending a message to the people in China. It’s definitely not directed at Russia," Pollock reasoned.

He said the government wanted to show that the US has a powerful military and is in control of the world, and the reserve currency is worth something. Sign of impotence However, Pollock lampooned that show of strength. “We are a strong military power and, really, on a conventional sense, the emperor has no clothing. This use of a last resort weapon, the demonstration of it, is really a sign of impotence,” Pollock quipped.

Pollock reiterated that the biggest financial depression in the history of the world **will engulf US** and added that unlike what has been seen, it is possible that **war will turn** into a **resetting mechanism**.

"Let’s look at it from the perspective of China. Their economy goes bad and guess what? They are going to say the Japanese are evil. The Americans are evil. . . . Japan sees this war coming. Russia sees this war coming. To some extent, some generals in the U. S. see this war coming. **They are stockpiling** bullets. They have their heads in their asses in the Pentagon," he added. China harps on innovation Meanwhile, Chinese President Xi Jinping told the Group of 20 (G20) summit that targeted medicine for sluggish growth is required.

In a speech entitled "Innovative Growth That Benefits All," the Chinese leader called for collective work to maintain a stable economic growth in the short term, while adding a new impetus to the world economy in the long term, the Xinhua reported. Xi said the momentum generated by the last round of scientific and industrial revolution has waned and the potential for growth under the traditional economic system and development model is diminishing. The G20 summit was held recently at the Turkish resort city Antalya and sought to underpin global confidence to ensure strong, sustainable and balanced growth in the world economy.

# 1NR vs Kansas HW

## Biz Con

#### Economic decline outweighs on sheer scope and is an impact filter for every one of their impacts---

#### 2. Timeframe. COVID creates an economic brink.

Christopher Rugaber 21. Associated Press. “Federal Reserve keeps key interest rate near zero, signals COVID-19 economic risks receding.” https://www.chicagotribune.com/business/ct-biz-fed-interest-rates-economy-20210428-bumyc3ynpza6ri4ygsntmdsmya-story.html.

WASHINGTON — The Federal Reserve is keeping its ultra-low interest rate policies in place, a sign that it wants to see more evidence of a strengthening economic recovery before it would consider easing its support. In a statement Wednesday, the Fed expressed a brighter outlook, saying the economy has improved along with the job market. And while the policymakers noted that inflation has risen, they ascribed the increase to temporary factors. The Fed also signaled its belief that the pandemic’s threat to the economy has diminished, a significant point given Chair Jerome Powell’s long-stated view that the recovery depends on the virus being brought under control. Last month, the Fed had cautioned that the virus posed “considerable risks to the economic outlook.” On Wednesday, it said only that “risks to the economic outlook remain” because of the pandemic. The central bank left its benchmark short-term rate near zero, where it’s been since the pandemic erupted nearly a year ago, to help keep loan rates down to encourage borrowing and spending. It also said in a statement after its latest policy meeting that it would keep buying $120 billion in bonds each month to try to keep longer-term borrowing rates low. The U.S. economy has been posting unexpectedly strong gains in recent weeks, with barometers of hiring, spending and manufacturing all surging. Most economists say they detect the early stages of what could be a robust and sustained recovery, with coronavirus case counts declining, vaccinations rising and Americans spending their stimulus-boosted savings.

#### Business confidence is high. Delta, labor shortages, and supply problems don’t influence investment.

Brad McMillan 11/4. Brian McMillan is the chief investment officer at Commonwealth Financial Network. “Continued Economic Improvement Ahead?”. Forbes. 11/9/2021. https://www.forbes.com/sites/bradmcmillan/2021/11/09/continued-economic-improvement-ahead/?sh=aaefa7c26426

After a difficult September, the markets bounced back in October. Here in the U.S., the Nasdaq NDAQ -1.6% and the S&P 500 gained more than 7 percent, and the Dow went up almost 6 percent. Further, developed markets gained almost 2.5 percent, and emerging markets had a small rise of 1 percent. Although stocks did well, bonds had another bad month, dropping slightly as interest rates rose. So, what drove these results—and where do we go from here? Data Improved in October Economic damage passing. After the weakness seen in September, some key economic data improved. Job growth bounced back sharply, as shown in the October employment report, and layoffs continued to drop. Consumer confidence showed signs of stabilizing, and business confidence and investment remained high. So, while the economic damage from the Delta variant is real, it seems to be passing as the medical news improves. Better news on medical front. The medical news was indeed better throughout October. Case growth continued to decline, extending the significant September improvement. By the end of October, cases were down more than 40 percent. Testing rates and hospitalizations showed similar improvements, as did death rates. While the pandemic is still very much with us, things are getting better. People and the economy respond. The October jobs report showed a sharp increase in hiring, to a very healthy gain of 531,000 jobs. It also recorded a substantial upward revision of the weak September numbers, which rose from 194,000 to 312,000 additional jobs. In October, not only was hiring up across the board, but layoffs ticked back down, ending the month at their lowest level since the start of the pandemic. Perhaps driven by the better jobs data, consumer confidence rose unexpectedly, supporting another increase in retail sales. Overall, the October data suggests that the September decline was a one-off trend—and that the fourth quarter will be stronger than the third. Beware the risks. Although October started the fourth quarter strongly, there are still risks to keep in mind. The improvement in the medical news, for example, appears to have paused in the first week of November. If the medical improvement stays slow, the economic improvement could slow as well. Moreover, if the pandemic sees a winter wave, economic activity could slow once again. That is not happening yet, but it remains a real possibility. Even absent a winter wave, current infection growth and hospitalizations remain at economically damaging levels. So, if October’s lesson is that improving medical news can generate an economic rebound, we must remember that September showed us how bad medical news can damage the economy and markets. The Outlook for November Return to normal? Looking ahead to the rest of the year, however, the prospects are good despite the risks. The pandemic remains at a level the economy seems able to tolerate, and the recovery continues. Job growth is up and layoffs are down. Overall, we are returning to something like normal, and the consumer economy has real momentum. Business confidence and investment remain strong, despite the real labor shortage and supply problems. Many of the most significant risk factors, such as the expiration of federal stimulus programs, are starting to recede. As we move further into the fourth quarter, we will likely see more economic improvement. Markets expecting improvement. That improvement is what the markets are expecting. After September’s pullback, the markets have returned to new highs, suggesting that doubts about the recovery’s durability and fear of the pandemic are decreasing. The fundamentals also support the idea that the fourth quarter will be better. Earnings have continued to come in strong. With margins up and sales holding, corporate earnings are expected to rise by almost 40 percent in the third quarter. We should see additional strong gains in the fourth quarter. Companies continue to sell more—and to keep more of the sales as profits. From a business perspective, confidence remains high, and the results justify this. Positive Trends Ahead Although November and the rest of the fourth quarter will face challenges, the outlook remains positive. The actual outcome is uncertain, and the risks we saw in September are real. Still, there are signs those risks may be fading—and that the very real positive trends from earlier in the year will reassert themselves. September was the month when the markets started to take risk seriously. But, in October, those risks may have started to subside. In November, we will likely see the improving trends continue.

#### Antitrust threatens to morph into economy-wide national policy.

Geoffrey A. Manne 18, President and Founder International Center for Law & Economics, “Why US Antitrust Law Should Not Emulate European Competition Policy,” ICLE, A Comparative Look at Competition Law Approaches to Monopoly and Abuse of Dominance in the US and EU Before the United States Senate Committee on the Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights, 12/19/18, https://www.judiciary.senate.gov/imo/media/doc/Manne%20Testimony.pdf

A. The European approach to Facebook and Google as cautionary tale

The question of whether technology platforms should be regulated (and why) is a contentious one. But whatever the political, economic, or social rationale impelling regulation, it remains a crucial question whether antitrust — or competition policy implemented through other laws — is the proper regulatory lever. Despite many claims that European authorities, through their competition laws, have adopted a “better” approach toward regulating technology platforms, these claims are generally based on an a priori preference for the outcome — not on a careful assessment of the underlying legal interpretation and its broader implications.

Indeed, Europe’s recent (and ongoing) experience with applying antitrust to both Facebook and Google presents a cautionary tale, not a model. As these examples show, moving towards a more open-ended enforcement of antitrust law (potentially converging with EU competition law) entails significant risks.

1. Facebook

The German Bundeskartellamt’s (Federal Cartel Office, or “FCO”) ongoing Facebook investigation, for which an infringement decision is said to be in the pipeline,28 is a stark case of the unprincipled extension of antitrust to attempt to reach a politically favored result. Indeed, in contrast to the European Commission — which at least often mentions economic analysis in its decisions — the FCO did not include any economic analysis or an attempt to gauge the actual effects of the complained-of conduct on users in its preliminary assessment. The FCO’s investigation thus bears all the traits of consumer protection enforcement (which, in Europe at least, tends to rely upon bright-line rules and little analysis of effects) rather than competition scrutiny (which nominally entails at least some inquiry into to the economic effect of firms’ conduct). The crux of the case concerns Facebook’s collection of users’ personal data outside its site — data that is then merged with Facebook’s user profiles.29 The German competition agency asserts in its preliminary assessment that Facebook (which it “assumes… is dominant”) is “abusing this dominant position by making the use of its social network conditional on its being allowed to limitlessly amass every kind of data generated by using third-party websites and merge it with the user’s Facebook account.” 30 Note that the allegation on its face is not that Facebook forecloses other sites from amassing this external data, nor that its data collection amounts to anticompetitive harm (e.g., supracompetitive prices) to consumers. Rather, its allegation is that Facebook’s terms of service authorizing this data collection are simply not good for consumers, regardless of their acceptance of the terms, and thus constitute an abuse of dominance. “In the authority’s assessment, consumers must be given more control… and Facebook needs to provide [consumers] with suitable options to effectively limit this collection of data.” 31 The German competition authority is thus attempting to use its antitrust authority to impose on consumers (and Facebook) its idiosyncratic political preferences, in this case with regard to privacy. But turning voluntary contract terms that are not, in and of themselves, anticompetitive into an antitrust violation requires a remarkable and unprecedented sleight of hand. To begin with, the FCO asserts that this data — data collected from outside of Facebook — is “essential” for other social networks to compete with Facebook. But, despite asserting that its assessment is not based on how Facebook uses internal data collected from users’ interactions with Facebook directly, the FCO appears to convert this external data into an essentiality by condemning Facebook’s superior ability to combine it with its own internal data: Facebook has superior access to the personal data of its users and other competitionrelevant data. Because social networks are data-driven products, access to such data is an essential factor for competition in the market. The data are relevant for both[] the product design and the possibility to monetise the service. If other companies lack access to comparable data resources, this can be an additional barrier to market entry.32 The effect of this is to condemn Facebook’s success — and even, perhaps, to end up demanding that Facebook share its internal data — without saying so outright. The reference to “comparable data resources” is an unmistakable nod to the essential facilities doctrine, which can require access to a firm’s competition-relevant inputs where comparable inputs cannot be obtained elsewhere. Here the FCO appears to be asserting that competitors’ effective use of external data is thwarted if they do not have comparable internal data with which to combine it. But, of course, Facebook has this data only as a result of its success in bringing users to its platform. And it would be the height of unmoored antitrust enforcement to demand that other social networks, which do not operate through Facebook (in contrast, say, to advertisers, who do reach consumers via Facebook), must have access to Facebook’s internal data simply to give them a leg up in competing with a more successful rival. And yet, that is precisely what the authority seems to be suggesting — just indirectly by purporting to rest its claim on access to external data (which, like Facebook, competing social networks certainly do try to use). Of course, lack of access to a successful company’s resources is a form of barrier to entry in every case where a challenger wishes to enter a market where existing firms are long established. The same argument that the FCO makes with respect to Facebook and data could be applied to any firm that has a strong reputation, significant brand value, substantial customer loyalty, or even large real estate holdings or an established line of credit with a bank. For antitrust to require competitor access to these resources would be to undermine completely the competitive market forces that antitrust is supposed to support. And yet the FCO does not — and cannot — distinguish these valuable types of capital from that of access to a large pool of self-generated consumer data. The FCO also alleges that Facebook’s “exploitative business terms”33 constitute an antitrust violation because “[t]he damage for the users lies in a loss of control: they are no longer able to control how their personal data are used.” 34 But the allegedly exploitative nature of this loss of control is a function of European data protection laws, not antitrust law. The FCO appears to convert the alleged data protection law violation into an antitrust offence because, [a]ccording to the authority’s preliminary assessment, when operating this business model Facebook, as a dominant company, must consider that its users cannot switch to other social networks. Participation in Facebook’s network is conditional on registration and unrestricted approval of its terms of service. Users are given the choice of either accepting the “whole package” or doing without the service.35 But because of the essentiality of Facebook’s internal data, this choice is alleged to be a false one. And thus consumers “have no option to avoid the merging of their data” 36 — a violation, the FCO asserts, of data protection law. In this way the FCO uses data protection law as a foothold to build a convoluted antitrust case that really amounts to nothing more than the condemnation of Facebook’s size and success.

This is exactly the sort of uneasy merging of general social policy and the tools of competition policy that is so corrosive to the rule of law. Using the language of antitrust, the FCO is basically making a case that Facebook should be subject to competition law penalties for possessing more data than the FCO thinks is appropriate. Perhaps there are violations under other laws — data security or privacy laws, e.g. — but nothing in the FCO’s discussion of its preliminary assessment suggests anything recognizable in the economic literature as an abuse of dominance.

The FCO’s approach would dramatically expand the scope of German (and possibly European) competition law. As some commentators have observed, any dominant company that infringes any legal obligation aimed at protecting consumers — regardless of whether the violation actually results from the absence of competition, results in cognizable anticompetitive effects, or extends the company’s dominance — could be found to infringe competition law.37

Although particularly egregious here, the FCO’s efforts to reach beyond the limited constraints of competition law are not new. Starting in 2017, the FCO has been progressively urging for expansion of its powers into a broader consumer protection set of tools.38 Thus, even if it is unsuccessful in building its case under the current state of the law, the FCO is laying the foundations for convincing the German legislature why it needs vast new powers to combine consumer protection and competition into a single regulatory authority. Notably, even the US Federal Trade Commission (FTC) — which has both consumer protection and competition mandates — treats these missions separately, and regards competition cases to arise only under competition law, and not from the violation of specific consumer protection rules.

The implications of this approach are obvious. If competition law is unconstrained on its own terms — that is, it unmoored from a set of subject-specific constraints imposed by courts and legislatures — it threatens to become a large, sprawling, economy-wide set of regulations that resembles more closely a national industrial policy. The merits or demerits of actually having an economywide industrial policy aside, it is unquestionably a bastardization of antitrust law to facilitate the imposition of policies from law and regulation outside of competition policy, in ways that of necessity will promote other polices at the very expense of competition.

And, although this is a German case, its antecedents in the prevailing orthodoxy of EU law are not hard to recognize. Though the Commission frequently makes noises about conducting an economic analysis, as I discuss below, the EU’s competition process is, at root, a political one. As such, a tremendous amount of leeway is afforded to EU competition regulators. This makes sense, on its own terms: the Commission is, after all, a policy-making body directly responsive to the policy preferences of the President of the European Commission.39 While the Commission may sometimes cite to economics in its decisions, it fundamentally structures its activities in a way that affords it a large degree of policy-making discretion.

The Bundeskartellamt’s action, although specific to Germany, makes (unfortunate) sense against this backdrop. Where, unlike in the US, antitrust enforcement is viewed as a political function of the state, regulators administering competition policy can surely be relied upon to turn it into a general regulatory apparatus, as much as possible. While this is precisely what some advocates seem to want for US antitrust, doing so entails enormous risk and the potential agglomeration of massive political power outside of our democratically elected branch of government.

#### 2. Perception of Precedent

#### The plan is an abrupt interference in business confidence.

Alden F. Abbott 21. J.D. from Harvard Law School and M.A. in Economics from Georgetown University, “Competition Policy Challenges for a New U.S. Administration: Is The Past Prologue?”, Concurrences: Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

12. But recent suggestions put forth in an October 2020 House Judiciary Subcommittee on Antitrust majority report (HJSMR) [12] and in a November 2020 report by the Washington Center for Equitable Growth (WCEGR) [13] (coauthored by various prominent critics of Trump administration antitrust enforcement who served in the Obama administration) would go far beyond application of existing antitrust law to big digital platforms. In particular, the HJSMR proposes taking a highly regulatory approach to digital platforms, including imposing “[s]tructural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” [14] The WCEGR also endorses the use of rulemaking (and, in particular, FTC rulemaking) to tackle significant problems of competition. [15] Rushing into rulemakings on platforms (especially without a clear showing of market failure) poses major risks, however, including, in particular, the creation of disincentives to invest in platform-specific innovation; and the interference with potential efficiency-seeking transactions by platform operators and suppliers of complements (in light of inevitable government second-guessing of platform-related business decision-making). The JBA antitrust team may wish to keep such potential costs in mind in setting competition policy vis-à-vis digital platforms.

13. To address the perceived growth and abuse of market power that are said to afflict the American economy, the HJSMR and WCEGR have also proposed to amend and thereby “toughen” the core antitrust statutes, to alter burdens of proof in litigation, and to bestow a substantial increase in resources on federal antitrust enforcers. [16] The problem of scarce agency resources has long been highlighted by enforcement agency leadership, and certainly merits attention. The call for dramatic systemic change in antitrust enforcement norms, however, should be approached cautiously, with a jaundiced eye. In our common-law-based antitrust system, a major disruption to long-familiar statutory schemes would generate major uncertainty regarding antitrust enforcement principles and substantially disrupt business planning for an indeterminate amount of time. Many welfare-enhancing transactions could be sacrificed. The harm to consumer and producer welfare due to lost socially beneficial business initiatives would be hard (if not impossible) to measure, but nonetheless real. It is certainly possible that such losses would outweigh (perhaps substantially) whatever welfare gains might flow from statutory enforcement “reform.” In other words, it should not casually be assumed that “more and different” antitrust would be an unalloyed benefit. As in all other areas of law enforcement, likely costs as well as purported benefits should be central to the antitrust public policy calculus. (Costs would include, of course, the likelihood and magnitude of “false positives” under the new enforcement regime, not just the reduction in socially beneficial transactions.)

#### Risk of strategic litigation stifles business growth.

Patrick J. Medeo 18, Judicial Law Clerk at the New Jersey Superior Court, Appellate Division, JD from Rutgers Law School, BS in Business Administration and Legal Studies from Drexel University, “Potential Negative Impacts of Antitrust Litigation on Businesses”, Rutgers Law School Center for Corporate Law and Governance, 4/6/2018, https://cclg.rutgers.edu/blog/potential-negative-impacts-of-antitrust-litigation-on-businesses-by-patrick-j-medeo/

In the United States, antitrust litigation is not solely a matter of government concern. In fact, antitrust enforcement is a tool strategically used by private parties as part of business operations in the United States. By increasing litigation costs, potential damages, risk of suit, and regulatory oversight costs, antitrust litigation can be an impediment on businesses. Further, fear of litigation and associated costs stifles new product development and production in the United States by creating a high barrier to entry in the form of regulatory costs and significant risk of liability. With the number of antitrust cases rising annually, the negative impact on businesses should be of concern for enforcers especially as the number of private claims grows. Properly applied antitrust laws allow both government and private parties the ability to stop or hinder abuses of market power by participants seeking anticompetitive advantages.

A meritorious use of antitrust law by private parties may entail a situation where a cartel of competitors in an industry work together to fix prices, control supplies, and divide market share. In doing so the cartel blocks access to necessary resources for new entrants to the market; through strategic distribution, wholesale, and manufacturing contracts the cartel is able to raise barriers to entry so high that a new entrant would be unable to enter the market or would be unable to effectively compete upon entry. Proper application of antitrust laws by a private party would allow for recourse against the cartel participants and would promote competition in the industry by lowering barriers to entry for new market participants. However, due to the staggering effects that antitrust litigation can have, private parties may also abuse the laws in order to subvert competition.

According to an article published by the International Bar Association in 2009, it was noted how “broad procedural and substantive rules providing incentives to litigation produce economic harm” to companies and employees, specifically emphasizing the role played by antitrust cases. The liability is of such a drastic nature that liability policy premiums “increase (s) of 300 or more percent are not uncommon for [European] companies with a US [stock] listing.” In 2016 alone, there were 853 antitrust cases heard in federal courts, a majority of which were brought by private actors. This is an increase of 10.9 percent from 2015 and a 21 percent increase from 2012, where 702 antitrust cases were filed in federal court alone. [1] As of 2007, the average duration of an antitrust case, from filing to completion, was 24.6 months.[2] Such prolonged cases prove expensive for defendants and can create a disincentive to enter the United States Market as the frequency of them increases.

A poignant example of prolonged litigation is the LIBOR-Based Financial Instruments Antitrust Litigation. With lawsuits dating back to 2007, the private litigation against numerous banks is still in the process of closing, over a decade later. Collectively, the defendant organizations have paid hundreds of millions and potentially billions of dollars to end litigation, with firms like Citigroup paying individual settlements with private litigants upwards of $100 million.[3] The use of private antitrust litigation may be abused by private litigant as a strategic and anti-competitive tool.

Although Antitrust laws are meant to be used to uphold the competitive integrity of US Markets, the laws may also be used by private litigants for anti-competitive ends. This specifically comes into play where non-dominant firms in competitive markets utilize antitrust laws to sue dominant firms. According to a United State Department of Justice paper on the procompetitive and anticompetitive nature of private antitrust litigation, antitrust suits brought by non-dominant firms in competitive markets are more likely to constitute abuses of the law rather than true claims of anticompetitive activity.[4] Further, the use of private antitrust litigation can be highly profitable for nefarious plaintiffs; for instance, not only is the risk of long, complex, and the costly litigation a major deterrent for defendants but it may often lead to profitable settlements for the plaintiffs. In addition to profitable settlements, plaintiffs in private antitrust actions may also be rewarded with easier competition due to fear by defendants of copy-cat lawsuits, this is especially true after a successful government claims. Overall, even where claims may have merit private parties may be less likely to use antitrust laws to impede anticompetitive behavior than use it for their own profit.

Antitrust lawsuits are not only costly because of settlements, litigation costs, and other directly monetary outputs; instead, antitrust may also take a toll on opportunity and operational costs ultimately stifling innovation and go-to-market strategies. A prime example is the strategic use of antitrust laws by Digital Equipment Corp. against Intel in 1997. As illustrated in the Department of Justice’s article “The Strategic Abuse of the Antitrust Laws”, a well-timed antitrust allegation can be effective and profitable for the aggressing party. Although suit was never brought, the prospect of a large scale antitrust battle led to a $700 million settlement deal between Digital and Intel, ending months of patent litigation.[5] The settlement came just after a press release by Digital claiming that Intel was bolstering a monopoly in high power micro processing chips, at the same time the FTC began questioning Intel’s dominance in the chip and semi-conductor market.

In a highly competitive market Digital was able to nearly stop Intel in its tracks by threatening antitrust litigation and utilizing a Public Relations campaign to draw attention to the company’s market power, founded upon verifiable anticompetitive activity or not. The benefits of this strategy for Digital were not limited to a cash settlement, although the settlement was highly profitable more significant gains were made. In the settlement agreement it was stipulated that Digital would be guaranteed discounts on Intel Pentium chips (used in Digital’s computer products instead of its own competing chips), and continued access to the same Intel Pentium chips. Digital’s personal computers, which incorporated Intel chips, represented nearly 25% of its total revenues. By strategically threatening antitrust litigation Digital was able to slow Intel’s growing and usurping dominance in the high-power chip market, where both parties were competing. In doing so Digital added to its cash reserves while forcing Intel to acquire its chip technology. [6] Ultimately the FTC investigation lead to the finding that Intel had withheld information in the patent litigation process, but Digital’s threat antitrust suit forced a settlement exclusive to them and not benefitting other patent litigants against Intel.

Although private parties may, and often do, have a vested interest in utilizing antitrust law to stop anticompetitive behavior strategic uses such as Digital’s are viewed more as abuses. This is because they ultimately do not better competition in the market as a whole, and instead are highly profitable for only the aggressing party. Strategic uses of antitrust such as this appear problematic for businesses. Although they strong arm parties into dealing together, they also hinder development of new products and allow intelligent abusers to systematically restrain their competitors that may otherwise be outperforming other market participants. This may be done regardless of the veracity of their claim. Ultimately, it is the consumer that pays in the form of higher prices, slowed product development and potentially inferior products.

#### Labor market, supply chains, and delta aren’t disrupting business confidence because their trends are positive.

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Stocks consolidated recent gains last week, catalyzed by several concerns. The most visible market concerns are the surging virus that’s causing weaker-than-expected economic readings, while anticipation continues to build over potential reductions in Federal Reserve bond purchases later this year. We are also in a seasonally weak period for stocks, while tax reform and the looming debt-ceiling showdown in Congress remain sources of potential volatility. However, we remain encouraged by the recovery that has been unfolding since the economy began reopening. We continue to see improvement in important cyclical sectors of the economy while consumers are historically healthy and still have pent-up demand. Business confidence has rebounded with strong corporate profits that should support further capital spending and hiring (there are now more job openings than there are unemployed people by a record amount). We expect to see further improvement in the international backdrop, supported by unprecedented fiscal and monetary stimulus and accelerating rates of vaccination. Although the impact of the Delta wave is still being felt, recent evidence confirms the effectiveness of vaccines in limiting deaths and hospitalizations. With the pace of vaccination now picking up in the areas most impacted by this wave—Asia and Australia—the case for fading headwinds leading to improving economic growth later this year remains positive. The signals from financial markets themselves remain positive. Despite consolidating last week, stocks remain near record highs while the 10-year Treasury remains well above the lows of earlier this summer when concerns about Delta first emerged. These factors support our view of a durable economic recovery from the pandemic that should continue supporting stock prices. A healthy labor market is a critical element for a sustainable recovery that supports profit growth and last week’s news from the labor market remains encouraging. JOLTS Report and Jobless Claims Support Healing Labor Market Narrative: The Job Openings and Labor Turnover Survey (JOLTS) showed job openings jumped another 7.4% in July, the same as in the previous month, to 10.9 million, a new record high. The increase was led by health care and social assistance, finance and insurance, and accommodation and food services. There are now far more job openings than people employed – 10.9 million openings vs. 8.7 million unemployed in July (a record gap). Voluntary quits, which increased 2.8% to nearly 4.0 million, the second highest level on record, is also indicating strong worker confidence. Historically, job openings is a leading indicator for hiring and this report is signaling a very tight labor market, with falling unemployment, and rising wages, in the months ahead. Importantly, this attests to the underlying strength of the economy and bodes well for the sustainability of the economic recovery. Weekly jobless claims are also an important barometer of the labor market and initial claims for unemployment insurance dropped 35,000 last week to 310,000, another pandemic low, and below the consensus of 335,000. It was the sixth decline in the past seven weeks, a sign of fewer layoffs, even as the Delta variant dented the pace of hiring. This is an important confirmation of a healing labor market. Persistent supply chain constraints linked to the limited availability of key inputs (semiconductors and labor) and transportation impediments (clogged ports) remain a risk to economic growth and a source of inflationary pressures. Indeed, these issues have been a major reason for downward revisions to third-quarter economic growth. However, this is also causing record-low inventory levels and pent-up demand that are a source of growth in future quarters. We expect these constraints to alleviate in the coming months as Delta fades with accelerating global vaccinations. Further labor market improvement should also help supply chain issues.

#### Bagrie is warrantless. He is also an economist concentrated on New Zealand. He is writing about the role of business confidence in that single economy.

Cameron 2AC Bagrie 18. Managing Director of Bagrie Economics, “Business confidence is a hopeless indicator. But that doesn't mean the economy isn't in trouble,” Spinoff, 8-9-2018, https://thespinoff.co.nz/business/09-08-2018/business-confidence-is-bullshit-but-that-doesnt-mean-the-economy-isnt-in-trouble/

A whopping net 45% of firms are pessimistic about the general economy according to the ANZ Business Outlook survey. That’s a level last seen around the global financial crisis. Of course, no one really believes things are that bad. We can’t blame the global scene as other countries would be seeing massive falls in confidence too if that was a key factor. Other countries are not. The New Zealand Institute of Economic Research (NZIER) is showing weak readings for business confidence within their Quarterly Survey of Business Opinion (QSBO) too.

#### Consensus of empirical studies prove the causal link.

George-Marios Angeletos 15, Professor of Economics at MIT, “Why you need to restore confidence to recover from a recession,” WEF, 3/16/15, https://www.weforum.org/agenda/2015/03/why-you-need-to-restore-confidence-to-recover-from-a-recession/

Macroeconomic activity and economic confidence seem closely linked. Figure 1 shows the relationship between the cyclical component of GDP and a popular measure of economic confidence, the University of Michigan Consumer Sentiment Index. There has not been a single instance of a recession during this period that has not been preceded-accompanied by a significant deterioration in confidence.

The popular press and economic commentators often invoke this relationship when reporting on macroeconomic developments. For example, they attribute recessions to declines in aggregate demand that are triggered by sagging confidence. They link reductions in hiring and investment by firms to their pessimism about the demand for their products; and reduced spending by consumers to their pessimism about their job and income prospects. Consumers’ and business’ confidence indexes move together, indicating that the pessimism of one class of agents often appears to justify, if not feed, that of other.

Previous attempts to introduce coordination failures and market psychology

A literature in macroeconomics that blossomed in the late 80s and the 90s sought to rationalise this close link between market psychology and macroeconomic activity within a class of models that featured multiple equilibria and self-fulfilling fluctuations (e.g., Cooper and John 1988, Benhabib and Farmer 1999). The appealing feature of these models was that they could accommodate coordination failures and movements in economic confidence without any commensurate movements in ‘hard’ fundamentals, such as peoples’ abilities and tastes or the economy’s know-how, or expectations of such fundamentals. Yet, these models are not part of the core chute of quantitative macroeconomic models used nowadays to study the data and guide macroeconomic policy. This probably reflects the fact that, although equilibrium multiplicity is an interesting theoretical concept that highlights the perils of coordination failure, it also poses serious difficulties when evaluating a model’s empirical performance or when seeking to guide policymaking.

Mainstream macroeconomic models have little use ‘for confidence’

Mainstream dynamic stochastic general equilibrium (DSGE) models, on the other hand, simply opt to ignore the possibility of either coordination failure or extrinsic shifts in market sentiment. By imposing that economic agents share a single, common belief about the current state and the future prospects of the economy (e.g., agents never disagree with one another on how deep a recession might be, how long the recovery may take, or when the next boom is coming), these models are built on the convenient but unrealistic assumption that the millions of firms and consumers, whose joint behaviour determines macroeconomic activity, can coordinate their actions in a perfectly orchestrated manner. In so doing, these models also take a narrow view of the notions of confidence and market psychology; those are linked exclusively to uncertainty about fundamentals such as technology and policy, with uncertainty about the actions of others and the possibility of coordination failures being ruled out. We find this both limiting and counterproductive.

Waves of optimism and pessimism as a driver of the business cycle

In Angeletos et al. (2015), we thus seek to liberate the formation of expectations in mainstream DSGE models. We accomplish this by introducing a certain type of higher-order uncertainty (what I believe, that you believe, that I believe, that you…) which relates directly to the firms’ and the consumers’ expectations about the short-term economic outlook.

The paper contains contributions on both the methodological and applied front.

The methodological contribution lies in devising a method that bypasses the technical difficulties associated with incomplete information and higher-order uncertainty.

The applied contribution derives from accommodating certain waves of optimism and pessimism about the short-term economic outlook, quantifying their importance within real business cycle and New Keynesian models, and establishing that these waves help capture multiple salient features of the data in a manner that is not easily rivalled by existing structural mechanisms.

The key mechanism of our model is encapsulated by the following narrative. Consider a negative confidence shock represented by the belief that other agents have developed a pessimistic outlook about the short-term prospects of the economy (with the medium- to long-term prospects remaining invariant). As firms expect the demand for their products to be low for the next few quarters, they too find it optimal to lower their own demand for labour and capital. Households, on their part, experience a transitory fall in wages and total income. They react by working less and by cutting down both consumption and saving. Variation in confidence, therefore, leads to a strong co-movement between employment, output, consumption, and investment at the business-cycle frequencies, without commensurate movements in labour productivity, TFP, or the relative price of investment at any frequency. It is precisely these co-movement patterns that represent the key properties of observed business cycles and that existing structural mechanisms have difficulty accounting for.

Along with capturing these important features of the data, our mechanism offers a novel formalisation of the notion of fluctuations in ‘aggregate demand’. In spite of its popularity and widespread use, aggregate demand is a fuzzy concept that is difficult to nail down in general equilibrium models. Our model links aggregate demand and its variation to the level and variation of confidence (a barometer of the beliefs held by economic actors about other actors’ outlook on the economy) and, unlike the New Keynesian model, it does not require either nominal rigidities or frictions in the conduct of monetary policy for demand to matter for business cycles.

In addition, our model-based confidence concept looks remarkably similar to its empirical counterpart. We illustrate this in Figure 2, by comparing the University of Michigan Consumer Sentiment Index to the confidence shock in our model, which is itself estimated on the basis of standard macroeconomic series alone, without any information about that index. We view this coincidence as additional validation of our mechanism and of its interpretation.

Figure 2. Confidence in the model and in the data

Recessions under the lenses of the new theory

Our approach helps revisit the interpretation of actual recessions. To account for them, New Keynesian models rely on a level of nominal rigidity which seems hard to reconcile with menu-cost models and micro evidence on price-setting behaviour. They also require certain kinds of adjustment costs that have dubious micro-foundations. By contrast, our approach offers a structural interpretation of the business cycle that is not unduly sensitive to either the degree of nominal rigidity or the aforementioned modelling features. In particular, it attributes economic downturns and the possibility of sluggish recoveries to, at least in part, coordination failures and to a non-monetary form of ‘deficient demand’. It can thus account for the fact that the Great Recession was not accompanied by a ‘great deflation’, as one would have expected on the basis of the New Keynesian model; it can accommodate the view that depressed consumer spending is at the core of this recession by linking the former to the observed large and persistent drop in confidence; and it provides a formal foundation for the argument that the recovery hinges on ‘restoring confidence in the economy’.

#### Resilience is grounded in business confidence.

Neil Irwin 21, senior economics correspondent for The New York Times, “17 Reasons to Let the Economic Optimism Begin,” NYT, 3/14/21, https://www.nytimes.com/2021/03/13/upshot/economy-optimism-boom.html

17. The post-pandemic era could start with a bang

The last year has been terrible on nearly every level. But it’s easy to see the potential for the economy to burst out of the starting gate like an Olympic sprinter.

That could have consequences beyond 2021. A rapid start to the post-pandemic economy could create a virtuous cycle in which consumers spend; companies hire and invest to fulfill that demand; and workers wind up having more money in their pockets to consume even more.

Americans have saved an extra $1.8 trillion during the pandemic, reflecting government help and lower spending. That is money that people can spend in the months ahead, or it could give them a comfort level that they have adequate savings and can spend more of their earnings.

Things are also primed for a boom time in the executive suite. C.E.O. confidence is at a 17-year high, and near-record stock market valuations imply that companies have access to very cheap capital. There is no reason corporate America can’t hire, invest and expand to take advantage of the post-pandemic surge in activity.

#### ?Collapse of business confidence triggers recessions.

Thayer Watkins 10, professor in San José State University Department of Economics, “The Nature and Immediate Cause of Recessions: The Collapse of Business Investment,” https://www.sjsu.edu/faculty/watkins/recessioncause.htm

In general there is a whole chain of events that lead up to an event like a recession. Here recession strictly means a substantial decline in the real level of sales and hence output (GDP). When some adverse event occurs the level of consumer purchases or government purchases or exports may decline but that decline is just a few percent. When business investors decide there is no need for any increases in productive capacity investment in plant and equipment goes from some substantial amount to near zero. Likewise inventory investment goes from some positive amount to a large negative amount as businesses sell off inventory and do not replace it. In other words, when something happens that discourages the other component of demand the adjustment is marginal, but business investment goes into free fall. The loss of confidence on the part of business investors thus creates a self-fulfilling prophesy.

In the case of the Great Depression of the 1930's the level of private investment declined by 90 percent between 1929 and 1932. The loss of this source of demand for goods and services led to a drastic increase in the unemployment rate and all of the other terrible consequences. In that case the collapse of investment was driven by record high real interest rates, which in turn were due to deflation brought about by mistakes in monetary policy by the Fed. Later the real GDP began to increase but at a rate too low to absorb the pool of unemployment that had been created by the earlier recession in production. The condition was deemed a depression because of production being substantially below its potential. It did not end until the increase in demand involved with the entry of the United States into World War II.

In the case of the recession of 2008-2009 the level of real GDP did not start declining significantly until the third quarter of 2008. This was after there was public declarations of the U.S. being in a recession. These declarations, such as by the National Bureau of Economic Research (NBER), were based upon an entirely different definition of recession. According to the NBER a recession is when there are adverse changes in a broad range of economic indicators. It just happened that real GDP was not declining when the NBER declared the U.S. was in a recession that started in the fourth quarter of 2007. That was undoubtedly a factor in business investors deciding to reduce their investment in capacity and their restocking of inventory. This then resulted in private investment going into free fall, dropping at annual rates on the order of forty to fifty percent per year.

There had been a financial crisis in September of 2008 but that in itself was not what caused national sales and production to decrease. It was the loss of confidence on the part of businesses about the future of the economy that produces the decline in demand. The finance crisis was an influence on the loss of confidence, but it was the loss of confidence itself which was the cause of the recession in production.

The previous recession was in 2001. It was not much of a recession and did not last long.

Likewise there was a slight recession in 1990 and it did not last long.

A more substantial recession occurred in the early 1980's as a result of Paul Volcker's monetary program to curb inflation.

The previous recession occurred at end of Gerald Ford's administration and continued into the beginning of Jimmy Carter's administration in 1975.

In each of these recessions the decline in real GDP occurred in the same quarter as the decline in private investment. In order to establish the general proposition that recessions occur only when business investment collapses one must establish in the historical record that real GDP did not decline before private investment.

Here is the plot of percentage change in real private investment versus the percentage change in real GDP in the previous quarter.

Visually there appears to be very little correlation between the two variables and regression analysis confirms this. The percentage change in real GDP the previous quarter only explains 7.1 percent of the variation in the percentage change in private investment.

On the other hand, because private investment is a major component of aggregate demand a decline in investment necessarily corresponds to a decline in GDP. Here is the plot of the data for 1947II to 2010III.

The correlation is apparent and regression analysis reveals that 61.6 percent of the variation in the persentage in real GDP. Private Investment now constitutes only 13.6 percent of GDP so its effect on GDP is not merely as a component of aggregate demand.

Conclusion

Private Investment is sensitive to expecations of growth and is the most volative component of aggregate demand. Its decrease produces the recessions. This decrease is the immediate cause of recessions.

#### Defense doesn’t assume the post-COVID landscape.

Elise Labott 21, Adjunct Professor at American University’s School of International Service, Columnist at Foreign Policy, MA in Media Studies, New School for Social Research, BA in International Relations from the University of Wisconsin-Madison, “Get Ready for a Spike in Global Unrest”, Foreign Policy, 7/22/2021, https://foreignpolicy.com/2021/07/22/covid-global-unrest-political-upheaval/

To call 2021 the summer of discontent would be a severe understatement. From Cuba to South Africa to Colombia to Haiti, often violent protests are sweeping every corner of the globe as angry citizens are taking to the streets.

Each country has different histories and realities on the ground, particularly in Haiti, where years of violence and government corruption culminated two weeks ago in the assassination of President Jovenel Moïse. But they all faced a perfect storm of preexisting social, economic, and political hardships, which fallout from the COVID-19 pandemic only inflamed further. And they are merely a foreshadowing of the post-coronavirus global tinderbox that’s looming as existing tensions in countries across the world morph into broader civil unrest and uprisings against economic hardships and inequality deepened by the pandemic.

The coronavirus pandemic was a once-in-a-century crisis that not only shocked countries’ existing health systems but also demanded a response that impacted—and was itself shaped by—economic, political, and security considerations. The efforts to contain it may have curbed fatalities in the short term but have inadvertently deepened vulnerabilities that laid the groundwork for longer-term violence, conflict, and political upheaval and should serve as a danger sign to world leaders as countries reopen—including in the United States.

History is full of examples of pandemics being incubators of social unrest, from the Black Death to the Spanish flu to the great cholera outbreak in Paris, immortalized in Victor Hugo’s Les Miserables. Underlying it all this time around is a pervasive inequality. COVID-19 has ripped open economic divides and made life harder for already vulnerable groups, including women and girls and minority communities.

It has also exposed weaknesses in food security and dramatically increased the number of people affected by chronic hunger. The United Nations estimates around one-tenth of the global population—between 720 million people and 811 million—were undernourished last year. The impacts of climate change and environmental degradation have only compounded the despair.

Take the Sahel, where, due to a toxic cocktail of conflict, COVID-19 lockdowns, and climate change, the scale and severity of food insecurity continues to rise. Countries such as Ethiopia and Sudan are among the world’s worst humanitarian crises, with catastrophic levels of hunger. Droughts and locusts are coming at a critical time for farmers ready to plant crops and are stopping herders in their tracks from driving their livestock to greener pastures.

The global vaccine shortage is fueling the instability. A majority of Africa is lagging far behind the world in vaccinations, meaning COVID-19 will continue to constrain national economies and, in turn, become a source of potential political instability. The same is true for much of Latin America and Asia, where countries don’t have enough vaccines to protect their populations and simmering sources of protest—such as rising living costs and deepening inequalities—are more likely to boil over.

The global risk firm Verisk Maplecroft has warned that as many as 37 countries could face large protest movements for up to three years. A new study by Mercy Corps examining the intersection of COVID-19 and conflict found concerning trends that warn of potential for new conflict, deepening existing conflict, and worsening insecurity and instability shaped by the pandemic response.

The group found a collapse of public confidence in governments and institutions was a key driver of instability. People in fragile states, already suffering from diminished trust in their government, have felt further abandoned as they face disruptions in public services, rising food prices, and massive economic hardships, such as unemployment and reduced wages. Supply chains disrupted during the pandemic have seen food prices skyrocket, while in the global recession humanitarian aid budgets are being slashed, bringing many countries to the brink of famine. For the first time in 22 years, extreme poverty—people living on less than $1.90 a day—was on the rise last year. Oxfam International estimates that “it could take more than a decade for the world’s poorest to recover from the economic impacts of the pandemic.”

The shocks caused by the pandemic have also eroded social cohesion, further fraying relations between communities and deepening polarization. That is especially true in the United States, where social and political pressures both deepened the health crisis and were themselves worsened by it. All of this should serve as a clarion call to countries that they can’t prepare for, or respond to, future health crises in a vacuum—but must anticipate an economic, political, and social crisis. This is true for any severe shock, which brings the potential for a breakdown in public order.

#### Economic decline fractures the global order, causes rampant nationalism, and conflict escalation.

Lawrence H. SUMMERS 17, US Secretary of the Treasury (1999-2001) and Director of the US National Economic Council (2009-2010), former president of Harvard University, where he is currently University Professor [“Will the Center Hold?” *Project Syndicate*, December 21, 2017, <https://www.project-syndicate.org/onpoint/recession-or-financial-crisis-political-fallout-by-lawrence-h--summers-2017-12?a_la=english&a_d=5a37edac78b6c709b8d260dd&a_m=&a_a=click&a_s=&a_p=%2Fsection%2Feconomics&a_li=recession-or-financial-crisis-political-fallout-by-lawrence-h--summers-2017-12&a_pa=section-commentaries&a_ps>=]

The US now has a president who regularly uses his Twitter account to heap invective on leaders of nuclear-armed states, the American news media, members of his own cabinet, and religious and racial minorities, while showering praise on those who traduce the values of democracy, tolerance, and international law.

Countries such as China, Russia, Turkey, and Saudi Arabia are more authoritarian, more nationalist, and more truculent on the world stage than they were a year ago. And then there is the surely more belligerent and possibly more erratic leader of North Korea, a country on the brink of developing the ability to deliver nuclear weapons at long range.

Europe also faced trials in 2017. Aside from the United Kingdom’s decision to proceed with its withdrawal from the European Union, the far right won seats in the German Bundestag for the first time in decades, and far-right parties and candidates did better than ever in a number of European elections. In mid-November, 60,000 people marched through Warsaw demanding a “White Europe.”

So there is plenty of passionate intensity. And much of it is directed at the traditions and understandings that have made the last several decades the best in human history, in terms of living standards, human emancipation, scientific and artistic progress, reduction in pain and suffering, or minimization of premature and violent death.

Will things stay together? Can some kind of center hold? Financial markets offer a remarkably optimistic view. The US stock market has broken one record after another in the year since Donald Trump’s election as president, while indicators of realized stock-market volatility and of expected future volatility are at very low levels by historical standards. And some stock markets around the world have done even better.

While high equity prices and low volatility may seem surprising, they likely reflect the limited extent to which stock-market outcomes and geopolitical events are correlated. For example, Japan’s attack on Pearl Harbor, the assassination of President John F. Kennedy, and the 9/11 terrorist attacks had no sustained impact on the economy. The largest stock-market movements, such as the 1987 crash, have typically occurred on days when there was no major external news.

Stock markets are buoyant because they comprise individual companies, and, to a remarkable extent this year, corporate profits have been both rising and predictable. How long this will last is difficult to judge, and there is a risk that investors are increasingly taking on leverage or pursuing strategies – such as contemporary versions of portfolio insurance – that will cause them to sell if markets decline. It is worth remembering that, looking back, markets do not appear to have been remarkably bubbly prior to the 1987 crash.

There is also the question of financial institutions’ health. While major firms appear far better capitalized and far more liquid than they were prior to the crisis, market indicators of risk suggest we may not be quite as far out of the woods as many suppose. Despite apparently large increases in capital and consequent declines in leverage, it does not appear that bank stocks have become far less volatile, as financial theory would predict if capital had become abundant.

Financial markets are widely cited, including by US President Donald Trump, as providing comfort in the current moment. But a relapse into financial crisis would likely have catastrophic political consequences, sweeping into power even more toxic populist nationalists. In such a scenario, the center will not hold.

Beyond the kind of near-term risks that markets price, there is the question of an economic downturn. The good news is that sentiment is positive in most of the world. Inflation seems unlikely to accelerate out of control and force a lurch toward contractionary fiscal and monetary policies. Most forecasters regard the near-term risk of recession as low.

But recessions are never predicted successfully, even six months in advance. The current expansion in the US has gone on for a long time, and the risk of policy mistakes there is very real, owing to highly problematic economic leadership in the Trump administration. I would put the annual probability of recession in the coming years at 20-25%. So the odds are better than even that the US economy will fall into recession in the next three years.

The risk from a purely economic point of view is that the traditional strategy for battling recession – a reduction of 500 basis points in the federal funds rate – will be unavailable this year, given the zero lower bound on interest rates. Nor is it clear that the will or the room for fiscal expansion will exist.

This means that the next recession, like the last, may well be protracted and deep, with severe global consequences. And the political capacity for a global response, like that on display at the London G-20 Summit in 2009, appears to be absent as well. Just compare the global visions of US President Barack Obama and UK Prime Minister Gordon Brown back then with those of Trump and Prime Minister Theresa May today.

I shudder to think what a serious recession will mean for politics and policy. It is hard to imagine avoiding a resurgence of protectionism, populism, and scapegoating. In such a scenario, as with another financial crisis, the center will not hold.

But the greatest risk in the next few years, I believe, is neither a market meltdown nor a recession. It is instead a political doom loop in which voters’ conclusion that government does not work effectively for them becomes a self-fulfilling prophecy. Candidates elected on platforms of resentment delegitimize the governments they lead, fueling further resentment and even more problematic new leaders. Cynicism pervades.

How else can one explain how the candidacy of Roy Moore for a US Senate seat? Moore, who was twice dismissed for cause from his post on the Alabama Supreme Court, and who is credibly charged with sexually assaulting teenage girls when he was in his 30s, could enter the US Senate as many of his colleagues look the other way.

If a country’s citizens lose confidence in their government’s ability to improve their lives, the government has an incentive to rally popular support by focusing attention on threats that only it can address. That is why in societies pervaded by anger and uncertainty about the future, the temptation to stigmatize minority groups increases. And it is why there is a tendency for officials to magnify foreign threats.

We are seeing this phenomenon all over the world. Russian President Vladimir Putin, Turkish President Recep Tayyip Erdoğan, and Chinese President Xi Jinping have all made nationalism a central part of their governing strategy. So, too, has Trump, who has explicitly rejected the international community in favor of the idea that there is only a ceaseless struggle among nation-states for competitive advantage.

When the world’s preeminent power, having upheld the idea of international community for nearly 75 years, rejects it in favor of ad hoc deal making, others have no choice but to follow suit. Countries that can no longer rely on the US feel pressure to provide for their own security. America’s adversaries inevitably will seek to fill the voids left behind as the US retrenches.

#### Regulations are the opposite of the link. It clarifies regulated industries are an exception not the norm.

Dr. Babette E.L. Boliek 14, Ph.D. in Economics from the University of California, Davis, J.D. from the Columbia University School of Law, Professor of Law at Pepperdine University, “Antitrust, Regulation, and the "New" Rules of Sports Telecasts”, Hastings Law Journal, 65 Hastings L.J. 501, February 2014, Lexis

I. The Current Relationship of Antitrust, Regulation, and Sports Broadcast

As noted, antitrust and industry-specific regulation are two distinct means to achieve much the same social goal - to protect consumers and encourage efficiencies in production and distribution. 38 However, the two regimes are by no means interchangeable, and the choice between them is itself imbued with certain social policy preferences. 39

[FOOTNOTE] As then-Chief Judge Stephen Breyer stated, while regulation and the antitrust laws "typically aim at similar goals - i.e., low and economically efficient prices, innovation, and efficient production methods," regulation looks to achieve these goals directly "through rules and regulations; [but] antitrust seeks to achieve them indirectly by promoting and preserving a process that tends to bring them about." Town of Concord, Mass. v. Bos. Edison Co., 915 F.2d 17, 22 (1st. Cir. 1990). [END FOOTNOTE]

Antitrust law is an enforcement regime that preserves competition across all private industries by condemning anticompetitive conduct only after it occurs. 40 In contrast, industrial regulation is inherently a social admission that, in a given industry, market forces are too weak to produce the consumer benefits that are realized in competitive markets. 41 Therefore, regulated industries are an exception to the economy at large and are subject to preemptive, regulatory rule that may actively engineer industry conduct far beyond that permitted under antitrust law. 42

#### Antitrust imposes ex post punishment for unforeseeable consequences. Regulation merely prohibits certain action without imposing liability.

Alan Devlin 11, Visiting Lecturer in Law, Trinity College Dublin & University College Dublin, “Extraneous Liability in Antitrust,” 53 Ariz. L. Rev. 781, Fall 2011, lexis.

This Article addresses an overlooked, and profoundly odd, feature of the U.S. antitrust regime. 1Link to the text of the note Specifically, prevailing jurisprudence permits the government to condemn actions that were entirely lawful at the time that they were carried out. 2Link to the text of the note The Author characterizes this phenomenon as "extraneous liability," which reflects the process by which antitrust faults conduct not by reference to the proclivity of that behavior to produce particular negative results, but solely by the action's ultimate consequence, which extraneous factors may have shaped, guided, or transformed in an unanticipated manner.

Such liability is anomalous, as it contravenes two fundamental principles of justice. The first is that the law should not hold a person responsible for consequences that bore no discernible relationship to her corresponding behavior ex ante. Similarly, though no less importantly, the law has no business revisiting the status of a discrete and completed act that was proper when completed. These two norms overlap to a considerable extent, though they are not perfectly coterminous.

These uncontroversial principles materialize under a variety of guises. In the realm of criminal law, the U.S. Constitution prevents the government from passing ex post facto laws. 3Link to the text of the note As a result, one cannot impose criminal sanctions on [\*783] an individual today whose impugned, though completed, behavior was lawful yesterday. In the civil setting, the law makes liability contingent on foreseeability and proximity, the latter of which limits the legal concept of causation. These tenets of tort relieve one of liability when there was no discernible causal connection between the relevant act and the ensuing harm. This limitation serves a crucial purpose: when a person acts, the consequences do not always, or even typically, follow a path that one can predict with mathematical precision. Instead, the causal effects of one's behavior are often intertwined with, and shaped by, extraneous factors, which combine to produce an ultimate result. Subjecting an individual to sanctions or liability for an outcome that she could not have envisioned would not only be inequitable, it would eradicate incentives to act efficiently. Where an initial effect combines with extraneous factors to produce a wildly unpredictable or random final result, the law declines to impose liability. To do otherwise would be to command the impossible, requiring people subject to the laws to refrain from actions the negative consequences of which one could not identify ex ante. 4Link to the text of the note

Given the potentially abstract nature of these principles, it is important to clarify the limits of the Article's relevant policy prescription. This Article submits that one cannot legitimately impose sanctions with respect to an act that was neither unlawful nor liability-generating at the time of its completion. The Food and Drug Administration ("FDA"), for example, could legitimately revoke approval of a drug that, despite all cost-feasible testing and scrutiny during clinical trials, later turns out to yield harmful side effects. This should not be surprising, for it would be odd to pre-commit a regulatory agency to a policy that was optimal when rendered in a context of incomplete information. Subsequent, superior information may become available that counsels a change of course.

Yet, there is a critical difference between (1) imposing constraints on future behavior and (2) subjecting an entity to sanctions for a prior act that was not tortious when completed, but that later yields negative effects. The FDA's right to prohibit future sales is distinct from the imposition of liability on the drug company for sales that preceded new information as to negative side effects. The prohibition on such retroactive punishment encompasses not only criminal sanctions, but damages at common law and backward-reaching equitable relief, such as disgorgement. Forward-reaching equitable relief may be permissible when it does not punish a prior act, but merely forbids future behavior that can be detached from that earlier act.