## 1AC

### Competition---1AC

#### Advantage 1 is Competition.

#### Algorithmic dynamic pricing is anticompetitive---immediate price changes make competitive production impossible---create functional monopolies.

Ramsi A. Woodcock 20. Assistant Professor, University of Kentucky Rosenberg College of Law; Secondary Appointment, Department of Management, University of Kentucky Gatton College of Business & Economics. “Toward a Per Se Rule against Price Gouging” (September 23, 2020). CPI Antitrust Chronicle (September 2020), Available at SSRN: https://ssrn.com/abstract=3710997

I argue in a recent law review article that surge pricing — the use of algorithms to price gouge — should satisfy antitrust’s anticompetitive conduct requirement.38 Surge pricing algorithms automatically increase prices in responses to surges in demand, allowing firms to price gouge in markets in which they would have been too slow to gouge in the past and to increase the speed with which they gouge in markets in which they would have gouged anyway.39 Uber made surge pricing famous when the company starting using it to increase rideshare prices during peak demand periods, such as during bad weather.40 But Uber is not alone in engaging in surge pricing; firms across the economy appear to be adopting the practice.41

Surge pricing is anticompetitive conduct because it is quick. Price gouging has always been a part of markets, because it always has been possible to raise prices faster than output during times of shortage. But surge pricing increases the gap between the moment when a firm can respond to surging demand by increasing prices and the moment when firms and their competitors can respond by increasing output.42 Once upon a time it took a day or a week to change price labels. Often retailer management did not know there was a run on a particular product until it had run its course and inventories were depleted. With digital pricing and algorithms, firms can now identify demand surges as they unfold and adjust prices in real time.43 That is anticompetitive, because surge pricing extends the period during which a seller can take advantage of the lack of competition made possible by an unexpected increase in demand.

To be sure, allowing firms to move quicker to exploit shortage-based market power is not the same thing as directly sabotaging competitors by refusing to sell them essential inputs.44 But the distinction is not meaningful. Antitrust’s mission is to use competition to restrain market power.45 It follows that antitrust should intervene to stop defendants from engaging in activities that reduce the effects of competition, even if those activities do not directly harm competition in the sense of forcing a competitor out of the market. A firm that lacks the technology to raise prices quickly in response to a shortage experiences the lingering effects of competition for a longer period after the onset of the shortage than does a company that can adjust prices quickly. Antitrust can therefore prolong the twilight of competition after the arrival of a shortage by prohibiting surge pricing.

The argument is not as novel as might at first appear, because antitrust’s per se rule against price-fixing is similar in kind.46 For price-fixing does not normally spring whole from competitive markets. Instead, it is a way for firms to strengthen and institutionalize collusion that started as merely parallel conduct.47 The price fixing does not harm competition directly — the firms have already stopped competing and started tacitly colluding — but instead strengthens or prolongs the effects of a pre-existing ebb in competition.48 That makes price-fixing quite like surge pricing, a practice that magnifies the effects of a preexisting collapse in competition, rather than a practice that harms competition directly. Like the power incident to shortage, conscious parallelism is legal, but enhancing or prolonging its effects through a price fixing agreement is not.49 Prolonging and enhancing the effects of shortage-based power through surge pricing should receive similar treatment.

#### That collapses competition.

Ramsi Woodcock 18. Assistant Professor, University of Kentucky Rosenberg College of Law, Secondary Appointment, Department of Management, University of Kentucky Gatton College of Business and Economics. The Efficient Queue and The Case Against Surge Pricing. (August 13, 2018). Available at https://deliverypdf.ssrn.com/delivery.php?ID=596097013121101020070125002117122066063063059088049089096031112108100091088001081064036119005126028023035010072004006013064022114034029069015072023104072089118077088062043066067124096019074019002083122065125095094100070092030118064067106102098017013094&EXT=pdf&INDEX=TRUE

The trouble with this story, researchers later found, is that the high prices Uber charges in response to unexpected surges in demand often fail to induce more drivers to enter the market, but Uber still charges those prices to riders anyway.6 Herein lies an important lesson about algorithmic pricing: it allows prices to change much more quickly than production— which for the most part remains a brick-and-mortar concept—can react. When Uber experiences a surge in demand, the company’s pricing algorithms respond immediately to raise prices for rides that are already in the area, long before additional drivers are able to enter the area, if they enter at all.

The mismatch between the speed of price and the speed of production in the information age is leading to harm not just to Uber riders but to consumers across the economy, as surge pricing—the use of algorithms to accelerate the process of raising prices in response to unexpected surges in demand—has spread far beyond rideshare to everything from Disney World tickets to highway tolls.7 It should also lead to antitrust liability. For efforts to deepen the mismatch between price and output speeds are fundamentally anticompetitive.

Surges in demand create shortages, because firms cannot increase output instantaneously, and shortages create market power, because buyers lack alternatives if they do not like the prices charged by the firm. But when the speed of price roughly equals the speed of production, firms are unable to exploit their shortage-based power. By the time they are able to raise prices, they and their competitors have increased output to satisfy the excess demand, and the shortage and associated power over price are gone. Thanks to the inability of price to adjust faster than output, the competitive prices of the pre-shortage period govern the shortage period as well. Surge pricing is anticompetitive because, by accelerating the speed of price relative to that of production, surge pricing prevents competitive pricing from carrying over from the pre-shortage period into the shortage period, weakening the effects of competition and enabling the firm to raise prices and harm consumers.

#### Antitrust allows surge pricing now---it harms consumers and violates the CWS.

Ramsi A. Woodcock 20. Assistant Professor, University of Kentucky Rosenberg College of Law; Secondary Appointment, Department of Management, University of Kentucky Gatton College of Business & Economics. “Toward a Per Se Rule against Price Gouging” (September 23, 2020). CPI Antitrust Chronicle (September 2020), Available at SSRN: https://ssrn.com/abstract=3710997

The antitrust laws in the United States do not prohibit price gouging. But they could.2 Surge pricing — the use of algorithms to charge high prices in response to unexpected surges in demand — could, for example, constitute conduct illegal per se under Section 2 of the Sherman Act.3

Surge pricing is price gouging, in that it exploits the power created by unexpected shortages. As such, surge pricing harms consumers, who are better off as a group if firms simply sell out during a demand surge. But unlike low-tech price gouging, surge pricing also exhibits the element of anticompetitive conduct required for antitrust liability.4 The algorithms used in surge pricing execute much more quickly than can human beings, allowing gouging to kick in sooner in response to unexpected shortages, and therefore reducing the period of time during which the effects of competition in the pre-shortage period carry over into the shortage period to discipline prices. It follows that surge pricing is anticompetitive in effect.

But antitrust could go even further, to ban all price gouging, whether enabled by technology or not, if antitrust would only more fully embrace the spirit of its consumer welfare standard by doing away with the requirement of proof of anticompetitive conduct that today severely limits antitrust’s ability to protect consumers.5 Absent the anticompetitive conduct requirement, antitrust could hold firms liable based solely on proof of market power combined with any act, such as the charging of higher prices, that harms consumers.

Price gouging would be an excellent candidate for condemnation under such an expanded antitrust regime because price gouging is easy to identify, allowing antitrust to sidestep the problem of distinguishing cost-driven price increases from consumer-harmful price increases that otherwise complicates such a regime.6 A coincident increase in demand and price reliably signals price gouging, and price gouging is never cost justified and so always harms consumers. Enforcers would also readily be able to identify the price that the court should enjoin the gouger to charge: that is just the price charged before the firm encountered the increase in demand.

#### That causes inflation---antitrust is key.

Hans G. Despain 21. Department chair, economics and honors program chair at Nichols College. "Price gouging the real cause of Inflation (Guest viewpoint)". masslive. https://www.masslive.com/opinion/2021/12/price-gouging-the-real-cause-of-inflation-guest-viewpoint.html

What has gone underreported in the American press is that a significant amount of the inflation American households are experiencing is simply strategic behavior of businesses to increase prices in order to increase profits.

Most businesses have increased their prices to recover some revenue from increasing inputs costs. However, many businesses, especially those with significant market power, have increased their prices well beyond inputs costs to increase their profitability.

In other words some firms have been able to use the excuse of supply chain bottlenecks and inflation to price gouge consumers.

It is important to understand that any firm with market power benefits from supply chain bottlenecks. For example, the bottlenecks in the supply chains are helping to generate massive profits for shipping and postal companies.

Shipping giant Deutsche Post AG (owner of courier DHL) reported record earnings in 2021. The world’s largest shipping company, AP Maersk announced its most profitable quarter in its 117-year history. Indeed the top 10 container shipping lines are on track for profits exceeding $120 billion in 2021. Postal giant UPS posted its best year ever in 2021 and announced substantial price hikes in 2022.

Record profits for shipping and postal companies are expected to continue through at least 2022.

But profiting from bottlenecks and inflation do not stop at shipping and postal companies.

The Federal Reserve Bank of Richmond reports that 90% of businesses report increased input costs, and nearly 80% of companies increased prices to cover “at least some” increases in input costs. Digital.com reports that 56% of the 1000 businesses they surveyed have increased prices beyond inflation to boost profitabilitThaty.

Especially big business with market power has used inflation as an excuse to increase profits. Coca-Cola, Pepsi, General Mills, Hormel, Reynolds, Procter & Gamble, Kimberly-Clark, Nestlé, Unilever, Tyson Foods, Kellogg’s, Mondelez (aka Kraft), provide some examples.

The Federal Reserve of Saint Louis shows that US corporate profits have increased more than 100% in the past year. Well beyond the 6.8% inflation rate.

As reported by The Wall Street Journal, during times of inflation big business and companies with market power try and boost profit margins by increasing their prices beyond the rate of inflation.

Market power also weakens the power of central banks, such as the Federal Reserve Bank, to control inflation. Only antitrust law can address the relationship between inflation and market power.

Increasing input costs are a real problem for American businesses. Most firms are asking households to pay for some of these costs. But our most powerful companies are using this moment as a way to increase profits and enhance their market power. This is called corporate price gouging.

Inflation is hurting American households, but the underlying cause of inflation is monopoly power and a lack of competition. In other words, corporate America is directly hurting American households.

President Trump and President Biden passed massive multiple trillion dollar relief packages to American households. The price gouging of corporations is taking that much needed relief from the pockets of hard working Americans and into the pockets of corporate executives.

When markets are competitive prices tend to remain in check. But many of America’s corporations are raising prices even as they make record profits; this is because they have market power to exploit the otherwise temporary initial causes of inflation. Their market power and the poor media coverage of this market power have provided corporate America a price gouging opportunity that is fattening corporate profits.

The lack of competition shows that the real inflation problem is corporate price gouging.

The Open Market Institute has been arguing for the promotion of greater competition for more than two decades. President Biden has recently published an official briefing to promote greater competition in the American economy. The right and left should agree, it is time to use antitrust law to address America’s monopoly problem, surging inflation, and decades of low wages.

#### Inflation collapses democracy.

Dan Bigman 22. Editor and Chief Content Officer of Chief Executive Group, publishers of Chief Executive, Corporate Board Member, ChiefExecutive.net, Boardmember.com and StrategicCFO360. “Munger On Inflation: ‘The Biggest Long-Range Danger Apart From Nuclear War’” Chief Executive. 02-17-22. <https://chiefexecutive.net/munger-on-inflation-the-biggest-long-range-danger-apart-from-nuclear-war/>

In this era of PR and pandering, confusion and Covid, it’s always refreshing to hear from Charlie Munger, vice chairman of Berkshire Hathaway, to get his sense of which way is up.

He’s 98 now, but hardly lacking for brainpower or bluntness. At the annual meeting of The Daily Journal, the media-tech company he chairs, he had plenty to say about the current moment, from crypto to memestocks (“a speculative mess and a speculative orgy”), index funds (“I think the world of Larry Fink, but I’m not sure I want him to be my emperor”) to virtual meetings (“It’s an amazing thing what you can do on a telephone”) during the livestreamed session with investors, and also in a follow-up interview with Yahoo Finance. (Hats off to Andy Serwer for the great get.)

He saved his most dire warnings to talk about **inflation**, which, he reminded, has been responsible for the **undoing of entire democracies** when left untreated. “You can argue **it’s the way democracies die**,” he said (though he doesn’t think that’s an immediate concern now, of course).

The videos are worth a weekend watch, but I pulled some of my favorite quotes out, worth chewing over.

Munger On Inflation

Inflation is a very serious subject. You can argue it’s the way democracies die. When democracy dies in Latin America, inflation is a big part of it. So it’s a huge danger once you’ve got a populace that learns it can vote itself money. If you overdo it too much, you **ruin your civilization** a lot. And so, of course, it’s a big long range danger.

If you look at the Roman republic, even after they went to an empire with an absolute ruler, they inflated the currency steadily for hundreds of years. Eventually the whole damn **Roman Empire collapsed.** So **it’s the biggest long range danger we have** probably, apart from nuclear war.

#### Democracy solves great power war.

Larry Diamond 19. PhD in Sociology, professor of Sociology and Political Science at Stanford University. “Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition and American Complacency,” Kindle Edition

In such a near future, my fellow experts would no longer talk of “democratic erosion.” We would be spiraling downward into a time of democratic despair, recalling Daniel Patrick Moynihan’s grim observation from the 1970s that liberal democracy “is where the world was, not where it is going.” 5 The world pulled out of that downward spiral—but it took new, more purposeful American leadership. The planet was not so lucky in the 1930s, when the global implosion of democracy led to a catastrophic world war, between a rising axis of emboldened dictatorships and a shaken and economically depressed collection of selfdoubting democracies. These are the stakes. Expanding democracy—with its liberal norms and constitutional commitments—is a crucial foundation for world peace and security. Knock that away, and our most basic hopes and assumptions will be imperiled. The problem is not just that the ground is slipping. It is that we are perched on a global precipice. That ledge has been gradually giving way for a decade. If the erosion continues, we may well reach a tipping point where democracy goes bankrupt suddenly—plunging the world into depths of oppression and aggression that we have not seen since the end of World War II. As a political scientist, I know that our theories and tools are not nearly good enough to tell us just how close we are getting to that point—until it happens.

#### Democratic backsliding in the US spills over.

Larry Diamond 21. Senior Fellow at the Hoover Institution and the Freeman Spogli Institute for International Studies at Stanford University. "A World Without American Democracy?". Foreign Affairs. 7-2-2021. https://www.foreignaffairs.com/articles/americas/2021-07-02/world-without-american-democracy?utm\_medium=referral&utm\_source=www-foreignaffairs-com.cdn.ampproject.org&utm\_campaign=amp\_kickers

Aprolonged global democratic recession has, in recent years, morphed into something even more troubling: the **“third reverse wave” of democratic breakdowns** that the political scientist Samuel Huntington warned could follow the remarkable burst of “third wave” democratic progress in the 1980s and the 1990s. Every year for the past 15 years, according to Freedom House, significantly more countries have seen declines in political rights and civil liberties than have seen gains. But since 2015, that already ominous trend has turned sharply worse: 2015–19 was the first five-year period since the beginning of the third wave in 1974 when more countries **abandoned democracy**—twelve—than transitioned to it—seven. And **the trend continues.** Illiberal populist leaders are **degrading democracy** in countries including Brazil, India, Mexico, and Poland, and **creeping authoritarianism** has already moved Hungary, the Philippines, Turkey, and Venezuela out of the category of democracies altogether. In Georgia, the dominance of the Georgian Dream Party has led to the steady decline of electoral processes and a breakdown in the rule of law. In Myanmar, the military overthrew the elected government of Aung San Suu Kyi, ending an experiment in partial democracy. In El Salvador, president Nayib Bukele staged an executive coup by removing the attorney general and Supreme Court justices who were obstacles to his consolidation of power. In Peru, democracy hangs from a thread as the right-wing autocrat Keiko Fujimori advances vague claims of election fraud in a bid to overturn her narrow electoral defeat to left-wing opponent Pedro Castillo. What is especially striking about this last case is that Fujimori’s gambit bears a grim resemblance to the lie perpetuated by former U.S. President Donald Trump and his followers about the 2020 presidential election. This is no coincidence. As the journalist and historian Anne Applebaum has observed, fictitious claims of fraud and “stop the steal” tactics are becoming a common means by which autocratic populists try to obstruct democracy. Such tactics have long been a source of instability in countries struggling to develop democracy. But the fact that the most recent iteration of the antidemocrat’s playbook draws heavily on precedents in the **world’s most important and powerful democracy** marks the start of a **dangerous new era.** Today, the United States confronts a **growing antidemocratic movement**, not just from the ranks of fringe extremists but also from a substantial group of officeholders—a movement that is challenging the very foundations of electoral democracy. Should this effort succeed, the United States could become the first ever advanced industrial democracy to fail—that is, to no longer meet the minimum conditions for free and fair elections as political scientists and other scholars of democracy define them. The **failure of American democracy would be catastrophic** not only for the United States; it would also have **profound global consequences** at a time when freedom and democracy are already **under siege**. As Huntington noted, the diffusion of democratic movements and ideas from one country to another has helped drive positive democratic change. Antidemocratic norms and practices can **spread in a similar fashion**—especially when they emanate from powerful countries. That is why the acceleration of a democratic recession into a democratic depression happened largely on Trump’s watch. And it is why no development would **more gravely damage the global democratic cause** than the democratic backsliding of its **most important champion.**

#### Price rationing collapses community integrity---symbolizes that dignity lies in wealth.

Ramsi A. Woodcock 20. Assistant Professor, University of Kentucky Rosenberg College of Law, Secondary Appointment, Department of Management, University of Kentucky Gatton College of Business and Economics. “The Efficient Queue and the Case Against Dynamic Pricing.” Iowa Law Review. https://ilr.law.uiowa.edu/assets/Uploads/ILR-105-4-Woodcock.pdf

The result of this new attitude toward ration pricing cannot be greater economic efficiency, because ration pricing, as shown in Parts II and III, has nothing to do with efficiency. Instead, the result is both redistribution of wealth from consumers to firms, and, more perniciously, the promulgation of the bad civic lesson that dignity resides in wealth rather than in membership in the community.214 For ration pricing not only redistributes wealth from those consumers who pay higher prices to firms, but also gives the rich priority access to scarce resources, and excludes the poor.215 The lesson that ration pricing teaches about access is all the more profound because many of the industries that, due to scarcity and excess demand, are peculiarly suited to ration pricing, and have adopted it in recent years, are infrastructural, including housing, transportation, and events.216 When ration pricing allocates access to them based on wealth, it sends a clear message about belonging.217 The fact that governments have failed to appreciate this problem, and have instead embraced ration pricing themselves in the highway and congestion areas reinforces the impression that the problem runs to culture.218 Of course the rich have always had priority in private markets in the sense that only those who can pay the costs of production ever have the chance to buy a product, and ration pricing does not change that.219 But ration pricing gives the wealthiest within this group priority.220 It is no longer good enough to be able to afford a product, one must now be the richest of those who can afford the product in order to have it.

Because the choice to ration based on wealth is not driven by efficiency, the symbolic meaning of the decision to use that criterion is rendered all the stronger, and more harmful to the integrity of the community. It is for this reason that many governments have tended not only to discourage ration pricing with respect to the infrastructures in which it is now becoming popular, but to subsidize access to those infrastructures, to ensure that wealth would play no role in access, even for those unable to pay the costs of production.221 The deregulatory movement has curbed these impulses, and the spread of ration pricing has taken policy to the other extreme.222

#### That collapses trust in the government.

KC 19. Knights Commission. “Why Has Trust in Government and Media Declined?” Chapter 4. The Aspen Institute. 2019. https://csreports.aspeninstitute.org/Knight-Commission-TMD/2019/report/details/0287/Knight-Commission

The **decrease in trust** in American institutions, including government and the media, generally correlates with an **increase in economic inequality.** As charted by the French economist Thomas Piketty and others, after a period of declining inequality from the 1930s through the mid-1940s (from the end of the Depression through World War II) followed by several decades of relative stability, inequality began rising sharply in the mid-1970s. It is now at levels not seen for nearly a century and is still increasing (see Figure 4.2).

**[Chart omitted]**

**Several studies** have **found links** between high levels of inequality and a lack of institutional trust. Political scientists Mitchell Brown and Eric M. Uslaner from the University of Maryland find that, in fact, “economic inequality is the **strongest determinant of trust**.” They also suggest that “where inequality is higher, the poor may feel powerless. They will perceive that their views are not represented in the political system and may opt out” of participation. However, Brown and Uslaner’s research finds that the erosion of trust based on increasing inequality appears to have a **stronger impact on “communal participation”** (volunteering or giving to charity) than on political participation (voting, signing petitions). A 2016 working paper for the International Monetary Fund found “**robust evidence** that overall inequality lowers an individual’s sense of trust in others in the United States as well as in other advanced economies.”

There are **other indicators** of a link between economic inequality and trust. One example is attitudes in rural communities in places like the Rust Belt of the Midwest and Northeast and sparsely populated areas of the Western states, compared with those in urban areas, a manifestation of the “spatial polarization” cited above. Research by Katherine Cramer, a professor of political science at the University of Wisconsin-Madison, suggests that “the rural consciousness revealed [in her study] shows people attributing rural deprivation to the decision making of (urban) political elites, who disregard and disrespect rural residents and rural lifestyles. Thus, these rural residents favor limited government, even though such a stance might seem contradictory to their economic self-interests.”

**Perception of fairness.** Another perspective on inequality and trust comes from Angus Deaton, Nobel Prize-winning economist from Princeton University. He suggests that the key variable in shaping attitudes toward society and politics is **not** inequality per se but rather the **perception of the fairness of the economic system**. Deaton argues that people generally accept some forms of inequality—for example, the success of innovators and inventors who reap rewards for their creativity—as fair and therefore unobjectionable. But they perceive other forms of inequality— such as unequal access to health care and quality education, the elimination of pension benefits for workers, anticompetitive practices of large corporations, or government policies favoring businesses over individuals—as the result of unfair economic or political processes.

Support for this hypothesis comes from the **Pew Research Center survey data** that “trust in government” and “perceptions of the fairness of government” **track each other very closely**, following almost identical paths over the past half-century. As of 2015, “just 19 percent say the government is run for the benefit of all—and an identical percentage say they can trust the federal government just about always or most of the time.”

#### Trust is key to effective government and crisis response---the alternative is collapse and populism.

OECD 13. “Chapter 1 Trust in government, policy effectiveness and the governance agenda” in Government at a Glance 2013. https://www.oecd-ilibrary.org/docserver/gov\_glance-2013-6-en.pdf?expires=1641590233&id=id&accname=guest&checksum=438C5CFAB504D30AB8FF74975A07F918

Why does trust in government matter?

Trust in government has been identified as one of the most important foundations upon which the legitimacy and sustainability of political systems are built. Trust is essential for social cohesion and well-being as it affects governments’ ability to govern and enables them to act without having to resort to coercion. Consequently, it is an efficient means of lowering transaction costs in any social, economic and political relationship (Fukuyama, 1995). A high level of trust in government might increase the efficiency and effectiveness of government operations.

Core levels of trust in government are necessary for the fair and effective functioning of government institutions – such as adherence to the rule of law, or the delivery of basic public services and the provision of infrastructure. The rule of law and independent judiciary are particularly important as their proper functioning is a key driver of trust in government, as established in several studies (Knack and Zak, 2003; Johnston, Krahn and Harrison, 2006; Blind, 2007). As well-functioning government institutions matter for business investment decisions, trust in them is a necessary ingredient to spur economic growth (Dasgupta, 2009; Algan and Cuha, 2013).

Trust in government institutions at the same time influences individual behaviour in ways that could support desired policy outcomes. This may range from rather narrowly defined policies and programmes (such as participation in vaccination campaigns) to broader policy reforms (e.g. environmental regulation or pension reform). Trust is important because many public programmes create the opportunity for free riding and opportunistic behaviour. Trust could reduce the risk of such behaviour to the extent that people are prepared to sacrifice some immediate benefits if they have positive expectations of the longer-term outcome of public policies, either at a personal level (pensions) or by contributing to the common good (redistribution of income through taxation).

Trust in government may help governments to implement structural reforms with long term benefits. Many reforms involve sacrificing short-term satisfaction for longer-term gains and will require broader social and political consensus to be effective and sustainable. In a high-trust environment, such reforms may not only be properly enacted and implemented, but could be sustained long enough to bear their fruits. This extends the time frame for policy decisions. In a low-trust climate, citizen will prioritise immediate, appropriable and partial benefits, and will induce politicians to seek short-term and opportunistic gains through free-riding and populist attitudes (Gyorffy, 2013).

Trust in government could improve compliance with rules and regulations and reduce the cost of enforcement. Rules and regulations are never perfect or complete enough to eliminate abuse. Their effectiveness depends on the extent to which people see them as fair and legitimate enough to outweigh the benefits of non-compliance. This is particularly important for regulations where the gap between the cost of compliance and personal benefits is large and where control is more difficult. Taxation is an example of the first, while traffic regulations are an example of the second. Trust in the regulator can lead to higher voluntary compliance (Murphy, 2004).

Trust in government institutions could help to increase confidence in the economy by facilitating economic decisions, such as on investment and consumption that foster economic growth. Trust in institutions as well as interpersonal trust may reduce the perception of risks linked to decisions ranging from the consumption of durables to job mobility, worker hiring and investment. An increase in trust among people raises total factor productivity, therefore fosters economic progress (Dasgupta, 2009). This, in turn, supports economic growth and extends the planning horizon of economic agents, increasing economic dynamism.

Trust in government seems to be especially critical in crisis situations, such as natural disasters, economic crisis or political unrest which focuses attention on the core functions of public governance. The capacity of governments to manage crises and to implement successful exit strategies is often a condition for their survival and for their re-election. In the aftermath of major disasters, lack of trust may hamper emergency and recovery procedures causing great harm to society and damaging government’s capacity to act. Likewise, the current economic crisis may reveal dimensions of trust that were not evident in the gradual evolution of countries in the years that preceded it.

#### Key to sustainability---solves disease and poverty---alternative is extremism and war.

Jonathan Perry 21. Global Dialogue for Social Development Branch, Division for Inclusive Social Development, UN DESA. "Trust in public institutions: Trends and implications for economic security". No Publication. 7-20-2021. https://www.un.org/development/desa/dspd/2021/07/trust-public-institutions/

Why should we care about trust?

Trust is integral to the functioning of any society. Trust in each other, in our public institutions and in our leaders are all essential ingredients for social and economic progress, allowing people to cooperate with and express solidarity for one another. It allows public bodies to plan and execute policies and deliver services. Greater public trust has been found to improve compliance in regulations and tax collections, even respect for property rights. It also gives confidence to consumers and investors, crucial to creating jobs and the functioning of economies more broadly. Success in achieving each of the Sustainable Development Goals (SDGs)—from eliminating poverty (SDG1), to combatting climate change (SDG13), to building peaceful and inclusive societies (SDG16)—will depend on citizens’ and businesses’ trust in public institutions and in each other.

Governments have also drawn on public trust to effectively address every stage of the COVID-19 pandemic response—from containment, to mitigation, to vaccinations. Early evidence has found that higher levels of confidence in national public institutions is associated with lower national COVID-19 mortality rates. This is consistent with evidence from previous health crises—including SARS, H1N1 and Ebola—where high public trust was found to be a crucial determinant for successful responses. Governments will need to count on, or in cases where government responses were largely found to be ineffective, to regain public trust as they plan and implement an inclusive recovery.

However, there is growing concern about a crisis in public trust that is contributing to, among other things, support for extreme political views, increasing public discontent, protests and in some cases violent conflict. The UN Secretary-General recently warned of a “trust deficit” that threatens to undermine progress towards the SDGs.

#### Disease causes extinction---the risk is categorically underestimated.

Dennis Pamlin & Stuart Armstrong 15. \*Executive Project Manager Global Risks, Global Challenges Foundation. \*\*James Martin Research Fellow, Future of Humanity Institute, Oxford Martin School, University of Oxford. February 2015, “Global Challenges: 12 Risks that threaten human civilization: The case for a new risk category,” Global Challenges Foundation, p.30-93. https://api.globalchallenges.org/static/wp-content/uploads/12-Risks-with-infinite-impact.pdf

A pandemic (from Greek πᾶν, pan, “all”, and δῆμος demos, “people”) is an epidemic of infectious disease that has spread through human populations across a large region; for instance several continents, or even worldwide. Here only worldwide events are included. A widespread endemic disease that is stable in terms of how many people become sick from it is not a pandemic. 260 84 Global Challenges – Twelve risks that threaten human civilisation – The case for a new category of risks 3.1 Current risks 3.1.4.1 Expected impact disaggregation 3.1.4.2 Probability Influenza subtypes266 Infectious diseases have been one of the greatest causes of mortality in history. Unlike many other global challenges pandemics have happened recently, as we can see where reasonably good data exist. Plotting historic epidemic fatalities on a log scale reveals that these tend to follow a power law with a small exponent: many plagues have been found to follow a power law with exponent 0.26.261 These kinds of power laws are heavy-tailed262 to a significant degree.263 In consequence most of the fatalities are accounted for by the top few events.264 If this law holds for future pandemics as well,265 then the majority of people who will die from epidemics will likely die from the single largest pandemic. Most epidemic fatalities follow a power law, with some extreme events – such as the Black Death and Spanish Flu – being even more deadly.267 There are other grounds for suspecting that such a highimpact epidemic will have a greater probability than usually assumed. All the features of an extremely devastating disease already exist in nature: essentially incurable (Ebola268), nearly always fatal (rabies269), extremely infectious (common cold270), and long incubation periods (HIV271). If a pathogen were to emerge that somehow combined these features (and influenza has demonstrated antigenic shift, the ability to combine features from different viruses272), its death toll would be extreme. Many relevant features of the world have changed considerably, making past comparisons problematic. The modern world has better sanitation and medical research, as well as national and supra-national institutions dedicated to combating diseases. Private insurers are also interested in modelling pandemic risks.273 Set against this is the fact that modern transport and dense human population allow infections to spread much more rapidly274, and there is the potential for urban slums to serve as breeding grounds for disease.275 Unlike events such as nuclear wars, pandemics would not damage the world’s infrastructure, and initial survivors would likely be resistant to the infection. And there would probably be survivors, if only in isolated locations. Hence the risk of a civilisation collapse would come from the ripple effect of the fatalities and the policy responses. These would include political and agricultural disruption as well as economic dislocation and damage to the world’s trade network (including the food trade). Extinction risk is only possible if the aftermath of the epidemic fragments and diminishes human society to the extent that recovery becomes impossible277 before humanity succumbs to other risks (such as climate change or further pandemics). Five important factors in estimating the probabilities and impacts of the challenge: 1. What the true probability distribution for pandemics is, especially at the tail. 2. The capacity of modern international health systems to deal with an extreme pandemic. 3. How fast medical research can proceed in an emergency. 4. How mobility of goods and people, as well as population density, will affect pandemic transmission. 5. Whether humans can develop novel and effective anti-pandemic solutions.

#### Populism causes extinction.

Alex de Waal 16. Executive Director of the World Peace Foundation at the Fletcher School at Tufts University. 12-5-2016. “Garrison America and the Threat of Global War.” http://bostonreview.net/war-security-politics-global-justice/alex-de-waal-garrison-america-and-threat-global-war

Trump’s promises have been so vague that it will be hard for him to disappoint. Nonetheless, many of his supporters will wake up to the fact that they have been duped, or realize the futility of voting for a wrecker out of a sense of alienated desperation. The progressives’ silver lining to the 2016 election is that, had Clinton won, the Trump constituency would have been back in four years’ time, probably with a more ruthless and ideological candidate. Better for plutocratic populism to fail early. But the damage inflicted in the interim could be terrible—even irredeemable if it were to include swinging a wrecking ball at the Paris Climate Agreement out of simple ignorant malice.

Polanyi recounts how economic and financial crisis led to global calamity. Something similar could happen today. In fact we are already in a steady unpicking of the liberal peace that glowed at the turn of the millennium. Since approximately 2008, the historic decline in the number and lethality of wars appears to have been reversed. Today’s wars are not like World War I, with formal declarations of war, clear war zones, rules of engagement, and definite endings. But they are wars nonetheless.

What does a world in global, generalized war look like? We have an unwinnable “war on terror” that is metastasizing with every escalation, and which has blurred the boundaries between war and everything else. We have deep states—built on a new oligarchy of generals, spies, and private-sector suppliers—that are strangling liberalism. We have emboldened middle powers (such as Saudi Arabia) and revanchist powers (such as Russia) rearming and taking unilateral military action across borders (Ukraine and Syria). We have massive profiteering from conflicts by the arms industry, as well as through the corruption and organized crime that follow in their wake (Afghanistan). We have impoverishment and starvation through economic warfare, the worst case being Yemen. We have “peacekeeping” forces fighting wars (Somalia). We have regional rivals threatening one another, some with nuclear weapons (India and Pakistan) and others with possibilities of acquiring them (Saudi Arabia and Iran).

Above all, today’s generalized war is a conflict of destabilization, with big powers intervening in the domestic politics of others, buying influence in their security establishments, bribing their way to big commercial contracts and thereby corroding respect for government, and manipulating public opinion through the media. Washington, D.C., and Moscow each does this in its own way. Put the pieces together and a global political market of rival plutocracies comes into view. Add virulent reactionary populism to the mix and it resembles a war on democracy.

What more might we see? Economic liberalism is a creed of optimism and abundance; reactionary protectionism feeds on pessimistic scarcity. If we see punitive trade wars and national leaders taking preemptive action to secure strategic resources within the walls of their garrison states, then old-fashioned territorial disputes along with accelerated state-commercial grabbing of land and minerals are in prospect. We could see mobilization against immigrants and minorities as a way of enflaming and rewarding a constituency that can police borders, enforce the new political rightness, and even become electoral vigilantes.

Liberal multilateralism is a system of seeking common wins through peaceful negotiation; case-by-case power dealing is a zero-sum calculus. We may see regional arms races, nuclear proliferation, and opportunistic power coalitions to exploit the weak. In such a global political marketplace, we would see middle-ranking and junior states rewarded for the toughness of their bargaining, and foreign policy and security strategy delegated to the CEOs of oil companies, defense contractors, bankers, and real estate magnates.

The United Nations system appeals to leaders to live up to the highest standards. The fact that they so often conceal their transgressions is the tribute that vice pays to virtue. A cabal of plutocratic populists would revel in the opposite: applauding one another’s readiness to tear up cosmopolitan liberalism and pursue a latter-day mercantilist naked self-interest. Garrison America could opportunistically collude with similarly constituted political-military business regimes in Russia, China, Turkey, and elsewhere for a new realpolitik global concert, redolent of the early nineteenth-century era of the Congress of Vienna, bringing a façade of stability for as long as they collude—and war when they fall out.

And there is a danger that, in response to a terrorist outrage or an international political crisis, President Trump will do something stupid, just as Europe’s leaders so unthinkingly strolled into World War I. The multilateral security system is in poor health and may not be able to cope.

Underpinning this is a simple truth: the plutocratic populist order is a future that does not work. If illustration were needed of the logic of hiding under the blanket rather than facing difficult realities, look no further than Trump’s readiness to deny climate change.

We have been here before, more or less, and from history we can gather important lessons about what we must do now. The importance of defending civility with democratic deliberation, respecting human rights and values, and maintaining a commitment to public goods and the global commons—including the future of the planet—remain evergreen. We need to find our way to a new 1945—and the global political settlement for a tamed and humane capitalism—without having to suffer the catastrophic traumas of trying everything else first.

### Commodity Speculation---1AC

#### Advantage 2 is Commodity Speculation.

#### Commodity speculation is algorithmic surge pricing.

Ramsi Woodcock 18. Assistant Professor, University of Kentucky Rosenberg College of Law, Secondary Appointment, Department of Management, University of Kentucky Gatton College of Business and Economics. The Efficient Queue and The Case Against Surge Pricing. (August 13, 2018). Available at https://deliverypdf.ssrn.com/delivery.php?ID=596097013121101020070125002117122066063063059088049089096031112108100091088001081064036119005126028023035010072004006013064022114034029069015072023104072089118077088062043066067124096019074019002083122065125095094100070092030118064067106102098017013094&EXT=pdf&INDEX=TRUE

This is, perhaps, a radical result. For it would make impossible the business not only of the algorithmic ticket scalper, who buys up event tickets in one market only to resell them to event goers in the same market, but also the business of the algorithmic securities and commodities trader who does all of his buying and selling on a single, centralized exchange. That is because scalpers and traders profit by buying low and selling high, and the only way they can do that, in the absence of the ability to produce more output, which, if their products are scarce, would allow them to buy inputs at low prices and transform them into outputs to be sold at high prices, is by increasing prices in response to demand surges.

The reseller buys the security or commodity at the market price, and so the reseller’s cost of production is the pre-surge price itself; there is no profit built into that price by scarcity, as is sometimes the case for firms that produce the goods that they sell and which can therefore have inframarginal production costs that are below the competitive market price.216 It follows that the reseller can generate income only by reselling at a higher price, and that is possible only when the demand increase is unexpected, since, if the demand increase were expected, then the reseller’s suppliers would charge a premium to the reseller to appropriate from the reseller any profits that the reseller might otherwise generate from the extra demand. 217

Thus the antitrust laws would effectively ban algorithmic within-market resale, including algorithmic securities and commodities trading. But the radicalism of this result reflects no more than the fact that any income won by serving as a middleman between the same two markets is necessarily redistributive in character, as the middleman produces nothing other than the act of buying low and selling high and hence has no genuine production costs with which to justify any price increases; carrying this out with algorithms only magnifies the redistribution. Reselling within the same market, to the end of buying low and selling high, is properly called speculation.218 Some argue that speculation has useful allocative or signaling functions, but these arguments have already been dealt with in Part III and will be addressed again in relation to securities and commodities trading in Section IV.B.2. 219

#### The plan ends it.

Ramsi Woodcock 18. Assistant Professor, University of Kentucky Rosenberg College of Law, Secondary Appointment, Department of Management, University of Kentucky Gatton College of Business and Economics. The Efficient Queue and The Case Against Surge Pricing. (August 13, 2018). Available at https://deliverypdf.ssrn.com/delivery.php?ID=596097013121101020070125002117122066063063059088049089096031112108100091088001081064036119005126028023035010072004006013064022114034029069015072023104072089118077088062043066067124096019074019002083122065125095094100070092030118064067106102098017013094&EXT=pdf&INDEX=TRUE

2. Implications for Theories of Securities and Commodities Trading

Although much securities and commodities trading is already executed using algorithms, with the result that much securities and commodities trading is already covered by my proposed prohibition on algorithmic surge pricing, it is worth considering the implications of a broader ban on all surge pricing, both algorithmic and non-algorithmic, for securities and commodities markets.240 For such a ban would amount to a blanket prohibition on speculation. Speculation is, after all, the purchase of a good in the hope that demand will unexpectedly rise, allowing the speculator to sell the good at some markup over cost and thereby to generate a profit.241 The hope is that the increase will be unexpected because, if it were expected, then the price of the good should already have adjusted upward to eliminate any profit opportunity.242 Speculation is, therefore, no more than the act of entering into a business transaction in the hope of being able to profit from surge pricing, algorithmic or otherwise. It follows that a blanket rule against surge pricing would put an end to speculation, at least in principle.

#### Commodity speculation is responsible for food price spikes.

IATP 08. IATP’s Trade and Global Governance program with a major contribution from Steve Suppan. “Commodities Market Speculation: The Risk to Food Security and Agriculture” Institute for Agriculture and Trade Policy. November 2008. https://www.iatp.org/sites/default/files/451\_2\_104414.pdf

Analysts continue to research why **commodity prices increased** so much from 2006 to July 2008. Due to high prices, the total developing country food import bill rose from about $191 billion in 2006 to $254 billion in 2007.1 Today, **developing countries are consuming less food.** About 43 percent of more than 27,000 people polled in a recent 26-nation survey said that they had cut back food consumption as a result of higher prices.2 The number of those undernourished and food insecure in the world has **increased along with prices.** Over the last year, **riots broke out over food prices**, lack of available and affordable food, and insufficient food aid.3 The United Nations Food and Agricultural Organization (FAO) estimates that in 2007, **75 million people were added** to the 850 million already defined as under-nourished and food insecure.4

Amidst the food price crisis, **speculation is a major contributor to extreme price volatility**, which is skewing agriculture commodity markets to such a degree that both **farmers and consumers are losing out.** This paper reviews the role of speculation in the **global food crisis**. It explains the particular role of U.S. regulation of commodities markets within the global regime. Finally, it offers policy recom- mendations for how governments can better regulate markets in support of food security and employment goals.

#### Mathematical models and experts agree---commodity speculation is key.

Kharunya Paramaguru 12. Contributor. “Betting on Hunger: Is Financial Speculation to Blame for High Food Prices?” TIME. 12-17-12. <https://science.time.com/2012/12/17/betting-on-hunger-is-financial-speculation-to-blame-for-high-food-prices/>

Remember the food crisis of 2007 and 2008, when **rapid and extreme increases in global food prices** led to riots and civil **unrest in 28 countries**? While we have yet to see unrest on the same level since, the shadow of that crisis, and the debate as to what the systemic causes were, **remains**. At the end of November, the World Bank warned in its Food Price Watch report that high and volatile prices are the “new normal.” In a world where nearly 1 billion people live in hunger — an estimate that Jomo Sundaram, assistant director general of the U.N. Food and Agriculture Organization (FAO), describes as conservative — **high food prices can be fatal.**

The shift in prices affects consumers in rich countries, who will see their grocery bills rise at a time when wages in much of the world are stagnant. But the real impact is felt by the global poor, in places like Tajikistan, where individuals spend nearly 80% of their income on food. Price spikes in those places can be devastating, even deadly. Prices of agricultural commodities are now 7% higher than a year ago. Wheat and grain prices are especially high, with the former heavily impacted by crop failure in the U.S., Russia and other regions.

There are obvious factors at play here: poor weather, including drought in the U.S. Corn Belt, as well as the growing demand for grain from the biofuel industry and from consumers in places like India and China who are transitioning to a more meat-heavy diet. (It takes more than 15 lb. of grain to produce 1 lb. of beef.) For an increasing number of experts however, these factors do not go far enough in explaining what has caused food prices to spike since the 2000s, reversing what had been a four-decade-long trend of declining prices.

Instead, **experts are pointing toward financial actors** who have increasingly moved into the agricultural markets to **bet on future prices of these commodities.** Yaneer Bar-Yam and Greg Lindsay of the New England Complex Systems Institute argue that mathematical models show that **only speculation** — and not mere supply and demand — **can explain these spikes**. Bar-Yam’s group used these models to test the links between the possible reasons for the price spikes and found that when compared against actual prices between March 2011 and January 2012, the model pointed to speculation and ethanol conversion as the underlying cause.

#### Food fights are the most likely cause of global conflict---specifically, Middle East war and terrorism.

Sinéad Lehane 17. Research manager for Future Directions International’s Global Food and Water Crises Research program. “Shaping Conflict in the 21st Century—The Future of Food and Water Security.” www.hidropolitikakademi.org/shaping-conflict-in-the-21st-century-the-future-of-food-and-water-security.html

In his book, The Coming Famine, Julian Cribb writes that the wars of the 21st century will involve failed states, rebellions, civil conflict, insurgencies and terrorism. All of these elements will be triggered by competition over dwindling resources, rather than global conflicts with clearly defined sides. More than 40 countries experienced civil unrest following the food price crisis in 2008. The rapid increase in grain prices and prevailing food insecurity in many states is linked to the outbreak of protests, food riots and the breakdown of governance. Widespread food insecurity is a driving factor in creating a disaffected population ripe for rebellion. Given the interconnectivity of food security and political stability, it is likely food will continue to act as a political stressor on regimes in the Middle East and elsewhere. Addressing Insecurity Improving food and water security and encouraging resource sharing is critical to creating a stable and secure global environment. While food and water shortages contribute to a rising cycle of violence, improving food and water security outcomes can trigger the opposite and reduce the potential for conflict. With the global population expected to reach 9 billion by 2040, the likelihood of conflict exacerbated by scarcity over the next century is growing. Conflict is likely to be driven by a number of factors and difficult to address through diplomacy or military force. Population pressures, changing weather, urbanization, migration, a loss of arable land and freshwater resources are just some of the multi-layered stressors present in many states. Future inter-state conflict will move further away from the traditional, clear lines of military conflict and more towards economic control and influence.

#### Food wars are the gravest threat.

İbrahim Karagül 22. “The food wars have begun! This constitutes both an external and internal threat! Food prices are an issue of national security. A state of emergency must be declared in agriculture” Yeni Safak. <https://www.yenisafak.com/en/columns/ibrahim-karagul/the-food-wars-have-begun-this-constitutes-both-an-external-and-internal-threat-food-prices-are-an-issue-of-national-security-a-state-of-emergency-must-be-declared-in-agriculture-3587611>

Reliable basins of solidarity

**Great pressure will form over countries**. No state will have the strength to resist on its own. They will be driven to seek asylum in regional solidarity basins. Every country will seek new and reliable refuges.

This is the reason underlying Europe’s withdrawal, the U.S.’s contraction, African countries’ search for new asylums, and rapid convergence with Turkey.

This is why Middle Eastern countries have suddenly shifted their axis and Russia took advantage of the opportunity and returned to its former imperial region.

**Food wars: Both an internal and foreign threat**

We now have a new sort of security threat that spells doom for countries experiencing production and resource issues. This will pose both an internal and external threat.

**As price hikes and food crises** within lead to mass eruptions, those **abroad will take advantage of this situation.** Foreign threats and attacks will be plotted through these social explosions. Weak countries may experience major plundering.

We will witness appalling state brutality. This **signifies war between countries and regions** – and it has already begun. Countries will disperse; new partnerships will be established; the human race’s greed will peak.

#### Middle East war causes nuclear winter---extinction.

Adam Rogers 19. Knight Science Journalism Fellow at MIT and a reporter for Newsweek. "Even a Small Nuclear War Could Trigger a Global Apocalypse." Wired. 10-02-2019. https://www.wired.com/story/even-a-small-nuclear-war-could-trigger-a-global-apocalypse/

Whether or not Robock is exactly right might not be the most important part here. (He’s clearly the expert; one climate scientist I asked for perspective said they couldn’t help, because they’d “tend to ask Alan about questions on this, which obviously isn’t a good way of getting an independent opinion.”)

The broader point, whether a regional nuclear war causes a global winter or just a regional one—nuclear autumn, maybe?—isn’t even on most strategists’ agendas. George Perkovich, who runs the Nuclear Policy Program at the Carnegie Endowment for International Peace and studies India and Pakistan specifically, says that in multiple interviews with people in the US nuclear weapons establishment, his sources say they’ve never even talked about ecological impacts. Few beside Robock even study the possibility. Robock’s studies are “alarming, and I think it points to what should be the political logic for everybody to conduct these studies,” Perkovich says. “Even if the nuclear war is between India and Pakistan and doesn’t involve the US, if these studies are right and US agriculture is going to be devastated and the global food supply is going to be severely undercut, American people are really going to be hurt.”

Commonly accepted rules of war demand avoiding civilian casualties—absurd enough if a military targets a city with a nuke, but even more absurd if a local war’s consequences spread globally. That’s the kind of thing that war planners should be building into their theories about the use (or, ideally, non-use) of a nuclear arsenal. But they aren’t. “The basic proposition you can derive from this paper is, we have no earthly conception how bad it’s going to be,” Lalwani says. “That extends to the Korean peninsula, the Middle East, to a Russia-US or a US-China exchange, because the assumptions are really hard to pin down, and could be orders of magnitude greater than we have considered.”

That’s the kind of math you’d hope even the most fervent nuclear advocates would build into their equations. “They can’t tell us what their targets are. That’s secret. But we want to build a tool so they can put in the targets and calculate the climate response,” Robock says. “They’re obligated not to kill civilians, but right now they don’t have any way of knowing.” Stipulated: Anything that limits one of these “exchanges” is a good thing—hopefully to the point that they never happen at all, and no one has to find out if Robock is right.

#### Nuclear terrorism causes extinction---retaliation.

Matthew Bunn & Nickolas Roth 17. \*Professor of practice at the Harvard Kennedy School. \*\*Research associate at the Belfer Center’s Project on Managing the Atom at Harvard University and research fellow at the Center for International and Security Studies at the University of Maryland. “The effects of a single terrorist nuclear bomb.” Bulletin of the Atomic Scientists, http://thebulletin.org/effects-single-terrorist-nuclear-bomb11150

The escalating threats between North Korea and the United States make it easy to forget the “nuclear nightmare,” as former US Secretary of Defense William J. Perry put it, that could result even from the use of just a single terrorist nuclear bomb in the heart of a major city. At the risk of repeating the vast literature on the tragedies of Hiroshima and Nagasaki—and the substantial literature surrounding nuclear tests and simulations since then—we attempt to spell out here the likely consequences of the explosion of a single terrorist nuclear bomb on a major city, and its subsequent ripple effects on the rest of the planet. Depending on where and when it was detonated, the blast, fire, initial radiation, and long-term radioactive fallout from such a bomb could leave the heart of a major city a smoldering radioactive ruin, killing tens or hundreds of thousands of people and wounding hundreds of thousands more. Vast areas would have to be evacuated and might be uninhabitable for years. Economic, political, and social aftershocks would ripple throughout the world. A single terrorist nuclear bomb would change history. The country attacked—and the world—would never be the same. The idea of terrorists accomplishing such a thing is, unfortunately, not out of the question; it is far easier to make a crude, unsafe, unreliable nuclear explosive that might fit in the back of a truck than it is to make a safe, reliable weapon of known yield that can be delivered by missile or combat aircraft. Numerous government studies have concluded that it is plausible that a sophisticated terrorist group could make a crude bomb if they got the needed nuclear material. And in the last quarter century, there have been some 20 seizures of stolen, weapons-usable nuclear material, and at least two terrorist groups have made significant efforts to acquire nuclear bombs. Terrorist use of an actual nuclear bomb is a low-probability event—but the immensity of the consequences means that even a small chance is enough to justify an intensive effort to reduce the risk. Fortunately, since the early 1990s, countries around the world have significantly reduced the danger—but it remains very real, and there is more to do to ensure this nightmare never becomes reality. Brighter than a thousand suns. Imagine a crude terrorist nuclear bomb—containing a chunk of highly enriched uranium just under the size of a regulation bowling ball, or a much smaller chunk of plutonium—suddenly detonating inside a delivery van parked in the heart of a major city. Such a terrorist bomb would release as much as 10 kilotons of explosive energy, or the equivalent of 10,000 tons of conventional explosives, a volume of explosives large enough to fill all the cars of a mile-long train. In a millionth of a second, all of that energy would be released inside that small ball of nuclear material, creating temperatures and pressures as high as those at the center of the sun. That furious energy would explode outward, releasing its energy in three main ways: a powerful blast wave; intense heat; and deadly radiation. The ball would expand almost instantly into a fireball the width of four football fields, incinerating essentially everything and everyone within. The heated fireball would rise, sucking in air from below and expanding above, creating the mushroom cloud that has become the symbol of the terror of the nuclear age. The ionized plasma in the fireball would create a localized electromagnetic pulse more powerful than lightning, shorting out communications and electronics nearby—though most would be destroyed by the bomb’s other effects in any case. (Estimates of heat, blast, and radiation effects in this article are drawn primarily from Alex Wellerstein’s “Nukemap,” which itself comes from declassified US government data, such as the 660-page government textbook The Effects of Nuclear Weapons.) At the instant of its detonation, the bomb would also release an intense burst of gamma and neutron radiation which would be lethal for nearly everyone directly exposed within about two-thirds of a mile from the center of the blast. (Those who happened to be shielded by being inside, or having buildings between them and the bomb, would be partly protected—in some cases, reducing their doses by ten times or more.) The nuclear flash from the heat of the fireball would radiate in both visible light and the infrared; it would be “brighter than a thousand suns,” in the words of the title of a book describing the development of nuclear weapons—adapting a phrase from the Hindu epic the Bhagavad-Gita. Anyone who looked directly at the blast would be blinded. The heat from the fireball would ignite fires and horribly burn everyone exposed outside at distances of nearly a mile away. (In the Nagasaki Atomic Bomb Museum, visitors gaze in horror at the bones of a human hand embedded in glass melted by the bomb.) No one has burned a city on that scale in the decades since World War II, so it is difficult to predict the full extent of the fire damage that would occur from the explosion of a nuclear bomb in one of today’s cities. Modern glass, steel, and concrete buildings would presumably be less flammable than the wood-and-rice-paper housing of Hiroshima or Nagasaki in the 1940s—but many questions remain, including exactly how thousands of broken gas lines might contribute to fire damage (as they did in Dresden during World War II). On 9/11, the buildings of the World Trade Center proved to be much more vulnerable to fire damage than had been expected. Ultimately, even a crude terrorist nuclear bomb would carry the possibility that the countless fires touched off by the explosion would coalesce into a devastating firestorm, as occurred at Hiroshima. In a firestorm, the rising column of hot air from the massive fire sucks in the air from all around, creating hurricane-force winds; everything flammable and everything alive within the firestorm would be consumed. The fires and the dust from the blast would make it extremely difficult for either rescuers or survivors to see. The explosion would create a powerful blast wave rushing out in every direction. For more than a quarter-mile all around the blast, the pulse of pressure would be over 20 pounds per square inch above atmospheric pressure (known as “overpressure”), destroying or severely damaging even sturdy buildings. The combination of blast, heat, and radiation would kill virtually everyone in this zone. The blast would be accompanied by winds of many hundreds of miles per hour. The damage from the explosion would extend far beyond this inner zone of almost total death. Out to more than half a mile, the blast would be strong enough to collapse most residential buildings and create a serious danger that office buildings would topple over, killing those inside and those in the path of the rubble. (On the other hand, the office towers of a modern city would tend to block the blast wave in some areas, providing partial protection from the blast, as well as from the heat and radiation.) In that zone, almost anything made of wood would be destroyed: Roofs would cave in, windows would shatter, gas lines would rupture. Telephone poles, street lamps, and utility lines would be severely damaged. Many roads would be blocked by mountains of wreckage. In this zone, many people would be killed or injured in building collapses, or trapped under the rubble; many more would be burned, blinded, or injured by flying debris. In many cases, their charred skin would become ragged and fall off in sheets. The effects of the detonation would act in deadly synergy. The smashed materials of buildings broken by the blast would be far easier for the fires to ignite than intact structures. The effects of radiation would make it far more difficult for burned and injured people to recover. The combination of burns, radiation, and physical injuries would cause far more death and suffering than any one of them would alone. The silent killer. The bomb’s immediate effects would be followed by a slow, lingering killer: radioactive fallout. A bomb detonated at ground level would dig a huge crater, hurling tons of earth and debris thousands of feet into the sky. Sucked into the rising fireball, these particles would mix with the radioactive remainders of the bomb, and over the next few hours or days, the debris would rain down for miles downwind. Depending on weather and wind patterns, the fallout could actually be deadlier and make a far larger area unusable than the blast itself. Acute radiation sickness from the initial radiation pulse and the fallout would likely affect tens of thousands of people. Depending on the dose, they might suffer from vomiting, watery diarrhea, fever, sores, loss of hair, and bone marrow depletion. Some would survive; some would die within days; some would take months to die. Cancer rates among the survivors would rise. Women would be more vulnerable than men—children and infants especially so. Much of the radiation from a nuclear blast is short-lived; radiation levels even a few days after the blast would be far below those in the first hours. For those not killed or terribly wounded by the initial explosion, the best advice would be to take shelter in a basement for at least several days. But many would be too terrified to stay. Thousands of panic-stricken people might receive deadly doses of radiation as they fled from their homes. Some of the radiation will be longer-lived; areas most severely affected would have to be abandoned for many years after the attack. The combination of radioactive fallout and the devastation of nearly all life-sustaining infrastructure over a vast area would mean that hundreds of thousands of people would have to evacuate. Ambulances to nowhere. The explosion would also destroy much of the city’s ability to respond. Hospitals would be leveled, doctors and nurses killed and wounded, ambulances destroyed. (In Hiroshima, 42 of 45 hospitals were destroyed or severely damaged, and 270 of 300 doctors were killed.) Resources that survived outside the zone of destruction would be utterly overwhelmed. Hospitals have no ability to cope with tens or hundreds of thousands of terribly burned and injured people all at once; the United States, for example, has 1,760 burn beds in hospitals nationwide, of which a third are available on any given day. And the problem would not be limited to hospitals; firefighters, for example, would have little ability to cope with thousands of fires raging out of control at once. Fire stations and equipment would be destroyed in the affected area, and firemen killed, along with police and other emergency responders. Some of the first responders may become casualties themselves, from radioactive fallout, fire, and collapsing buildings. Over much of the affected area, communications would be destroyed, by both the physical effects and the electromagnetic pulse from the explosion. Better preparation for such a disaster could save thousands of lives—but ultimately, there is no way any city can genuinely be prepared for a catastrophe on such a historic scale, occurring in a flash, with zero warning. Rescue and recovery attempts would be impeded by the destruction of most of the needed personnel and equipment, and by fire, debris, radiation, fear, lack of communications, and the immense scale of the disaster. The US military and the national guard could provide critically important capabilities—but federal plans assume that “no significant federal response” would be available for 24-to-72 hours. Many of those burned and injured would wait in vain for help, food, or water, perhaps for days. The scale of death and suffering. How many would die in such an event, and how many would be terribly wounded, would depend on where and when the bomb was detonated, what the weather conditions were at the time, how successful the response was in helping the wounded survivors, and more. Many estimates of casualties are based on census data, which reflect where people sleep at night; if the attack occurred in the middle of a workday, the numbers of people crowded into the office towers at the heart of many modern cities would be far higher. The daytime population of Manhattan, for example, is roughly twice its nighttime population; in Midtown on a typical workday, there are an estimated 980,000 people per square mile. A 10-kiloton weapon detonated there might well kill half a million people—not counting those who might die of radiation sickness from the fallout. (These effects were analyzed in great detail in the Rand Corporation’s Considering the Effects of a Catastrophic Terrorist Attack and the British Medical Journal’s “Nuclear terrorism.”) On a typical day, the wind would blow the fallout north, seriously contaminating virtually all of Manhattan above Gramercy Park; people living as far away as Stamford, Connecticut would likely have to evacuate. Seriously injured survivors would greatly outnumber the dead, their suffering magnified by the complete inadequacy of available help. The psychological and social effects—overwhelming sadness, depression, post-traumatic stress disorder, myriad forms of anxiety—would be profound and long-lasting. The scenario we have been describing is a groundburst. An airburst—such as might occur, for example, if terrorists put their bomb in a small aircraft they had purchased or rented—would extend the blast and fire effects over a wider area, killing and injuring even larger numbers of people immediately. But an airburst would not have the same lingering effects from fallout as a groundburst, because the rock and dirt would not be sucked up into the fireball and contaminated. The 10-kiloton blast we have been discussing is likely toward the high end of what terrorists could plausibly achieve with a crude, improvised bomb, but even a 1-kiloton blast would be a catastrophic event, having a deadly radius between one-third and one-half that of a 10-kiloton blast. These hundreds of thousands of people would not be mere statistics, but countless individual stories of loss—parents, children, entire families; all religions; rich and poor alike—killed or horribly mutilated. Human suffering and tragedy on this scale does not have to be imagined; it can be remembered through the stories of the survivors of the US atomic bombings of Hiroshima and Nagasaki, the only times in history when nuclear weapons have been used intentionally against human beings. The pain and suffering caused by those bombings are almost beyond human comprehension; the eloquent testimony of the Hibakusha—the survivors who passed through the atomic fire—should stand as an eternal reminder of the need to prevent nuclear weapons from ever being used in anger again. Global economic disaster. The economic impact of such an attack would be enormous. The effects would reverberate for so far and so long that they are difficult to estimate in all their complexity. Hundreds of thousands of people would be too injured or sick to work for weeks or months. Hundreds of thousands more would evacuate to locations far from their jobs. Many places of employment would have to be abandoned because of the radioactive fallout. Insurance companies would reel under the losses; but at the same time, many insurance policies exclude the effects of nuclear attacks—an item insurers considered beyond their ability to cover—so the owners of thousands of buildings would not have the insurance payments needed to cover the cost of fixing them, thousands of companies would go bankrupt, and banks would be left holding an immense number of mortgages that would never be repaid. Consumer and investor confidence would likely be dramatically affected, as worried people slowed their spending. Enormous new homeland security and military investments would be very likely. If the bomb had come in a shipping container, the targeted country—and possibly others—might stop all containers from entering until it could devise a system for ensuring they could never again be used for such a purpose, throwing a wrench into the gears of global trade for an extended period. (And this might well occur even if a shipping container had not been the means of delivery.) Even the far smaller 9/11 attacks are estimated to have caused economic aftershocks costing almost $1 trillion even excluding the multi-trillion-dollar costs of the wars that ensued. The cost of a terrorist nuclear attack in a major city would likely be many times higher. The most severe effects would be local, but the effects of trade disruptions, reduced economic activity, and more would reverberate around the world. Consequently, while some countries may feel that nuclear terrorism is only a concern for the countries most likely to be targeted—such as the United States—in reality it is a threat to everyone, everywhere. In 2005, then-UN Secretary-General Kofi Annan warned that these global effects would push “tens of millions of people into dire poverty,” creating “a second death toll throughout the developing world.” One recent estimate suggested that a nuclear attack in an urban area would cause a global recession, cutting global Gross Domestic Product by some two percent, and pushing an additional 30 million people in the developing world into extreme poverty. Desperate dilemmas. In short, an act of nuclear terrorism could rip the heart out of a major city, and cause ripple effects throughout the world. The government of the country attacked would face desperate decisions: How to help the city attacked? How to prevent further attacks? How to respond or retaliate? Terrorists—either those who committed the attack or others—would probably claim they had more bombs already hidden in other cities (whether they did or not), and threaten to detonate them unless their demands were met. The fear that this might be true could lead people to flee major cities in a large-scale, uncontrolled evacuation. There is very little ability to support the population of major cities in the surrounding countryside. The potential for widespread havoc and economic chaos is very real. If the detonation took place in the capital of the nation attacked, much of the government might be destroyed. A bomb in Washington, D.C., for example, might kill the President, the Vice President, and many of the members of Congress and the Supreme Court. (Having some plausible national leader survive is a key reason why one cabinet member is always elsewhere on the night of the State of the Union address.) Elaborate, classified plans for “continuity of government” have already been drawn up in a number of countries, but the potential for chaos and confusion—if almost all of a country’s top leaders were killed—would still be enormous. Who, for example, could address the public on what the government would do, and what the public should do, to respond? Could anyone honestly assure the public there would be no further attacks? If they did, who would believe them? In the United States, given the practical impossibility of passing major legislation with Congress in ruins and most of its members dead or seriously injured, some have argued for passing legislation in advance giving the government emergency powers to act—and creating procedures, for example, for legitimately replacing most of the House of Representatives. But to date, no such legislative preparations have been made. In what would inevitably be a desperate effort to prevent further attacks, traditional standards of civil liberties might be jettisoned, at least for a time—particularly when people realized that the fuel for the bomb that had done such damage would easily have fit in a suitcase. Old rules limiting search and surveillance could be among the first to go. The government might well impose martial law as it sought to control the situation, hunt for the perpetrators, and find any additional weapons or nuclear materials they might have. Even the far smaller attacks of 9/11 saw the US government authorizing torture of prisoners and mass electronic surveillance. And what standards of international order and law would still hold sway? The country attacked might well lash out militarily at whatever countries it thought might bear a portion of responsibility. (A terrifying description of the kinds of discussions that might occur appeared in Brian Jenkins’ book, Will Terrorists Go Nuclear?) With the nuclear threshold already crossed in this scenario—at least by terrorists—it is conceivable that some of the resulting conflicts might escalate to nuclear use. International politics could become more brutish and violent, with powerful states taking unilateral action, by force if necessary, in an effort to ensure their security. After 9/11, the United States led the invasions of two sovereign nations, in wars that have since cost hundreds of thousands of lives and trillions of dollars, while plunging a region into chaos. Would the reaction after a far more devastating nuclear attack be any less?

### Solvency---1AC

#### Antitrust prohibition key.

Ramsi A. Woodcock 20. Assistant Professor, University of Kentucky Rosenberg College of Law, Secondary Appointment, Department of Management, University of Kentucky Gatton College of Business and Economics. “The Efficient Queue and the Case Against Dynamic Pricing.” Iowa Law Review. https://ilr.law.uiowa.edu/assets/Uploads/ILR-105-4-Woodcock.pdf

C. THE CASE FOR PER SE ILLEGALITY UNDER THE ANTITRUST LAWS

While the power that makes dynamic pricing possible comes from product differentiation, making it indistinguishable from the power all firms normally exercise without violating the antitrust laws, there is a remedy uniquely available for dynamic pricing that does not involve putting an end to product differentiation, and all of differentiation’s associated benefits: prohibition. Prohibiting dynamic pricing would allow firms to continue to improve and differentiate their products, while preventing firms from raising their prices above costs in response to surges in demand. And, unlike a general prohibition on above-cost pricing, a prohibition on dynamic pricing would not require firms to dabble in the difficult business of ascertaining the costs of firms or setting the prices firms charge. That is because dynamic pricing in response to demand surges is always above-cost pricing.84 Banning the practice simply forces firms to continue to charge at-cost prices in response to surges in demand, effectively forcing firms, as will become clear in Part III, to sell out of their inventories instead of exploiting temporary scarcity to extract more profits from consumers. By focusing on and banning the practice of adjusting prices over time periods that are shorter than those required to alter a firm’s output, antitrust enforcers can stop a practice that always leads to above-cost pricing without needing to know what a firm’s costs actually are and without needing to dictate the prices that the firm must charge.85 By contrast, a general prohibition on above-cost pricing by firms selling differentiated products would require courts to do both of those things, which is why the courts generally refuse to regulate prices under the antitrust laws.86 Because prohibiting dynamic pricing does not actually involve direct price regulation, the courts’ rationale for not intervening in the pricing decisions of firms simply does not exist in the dynamic pricing context.

The administrability of a ban on dynamic pricing gives the courts an opportunity to protect consumers from the harmful side effects of the power created by product differentiation. And antitrust’s consumer welfare standard requires that the courts act.87 That standard, current since the 1970s, holds that the mission of the antitrust laws is to protect consumer welfare in the economic sense against harms arising from anticompetitive conduct.88 Product differentiation is anticompetitive, in the sense that it gives a firm’s products characteristics that competing products lack, putting those competing products at a competitive disadvantage.89 But product differentiation is only harmful to consumers when the firm uses the power that product differentiation’s anticompetitive aspect confers on the firm to raise prices above costs.90 Otherwise, differentiation benefits consumers, by giving them improved products that they prefer.91 It follows that antitrust’s consumer welfare standard requires that antitrust laws intervene, whenever possible, to prevent firms from exploiting the power differentiation gives them to raise prices, without preventing firms from engaging in the act of differentiation itself.92 Prohibiting dynamic pricing gives the courts an opportunity to use the antitrust laws to do just that.

Antitrust’s developing doctrine of less restrictive alternatives, which the courts apply today in reviewing virtually all conduct challenged under the antitrust laws, shows why the consumer welfare standard demands a prohibition on dynamic pricing.93 According to that doctrine, the courts decide whether to condemn anticompetitive conduct that, like product differentiation, benefits consumers, by asking whether the defendant has chosen to pursue the conduct in a way that minimizes harm to consumers.94 If the firm has pursued the conduct in that way, meaning that the firm has pursued the conduct in a way that is less restrictive with respect to the welfare of consumers, then the court will stand aside and impose no liability.95 But if instead there is a less restrictive alternative to the conduct actually pursued by the firm, then the court will impose liability.96 Exploiting the power created by product differentiation to charge above-cost prices is not a less restrictive way of pursuing production differentiation. That instead would be to differentiate and then charge at-cost prices. So exploiting differentiation to charge above-cost prices violates the less restrictive alternatives standard and should always give rise to antitrust liability.97 The courts do not actually condemn above-cost pricing as a general matter in these circumstances only because of the absence of an administrable remedy.98 Because banning dynamic pricing is an administrable remedy for the peculiar form of abovecost pricing that is dynamic pricing into a surge in demand, the administrability bar is removed and less restrictive alternatives analysis therefore requires that courts condemn the practice.

Normally, courts would treat dynamic pricing under antitrust’s default rule of reason, which would require that every instance of dynamic pricing be evaluated independently to determine whether the practice gives rise to consumer harm.99 But the unambiguity of the harm created by dynamic pricing should not only deliver dynamic pricing from innovation primacy, the exemption generally allowed for pricing practices associated with product differentiation, but actually place dynamic pricing at the other extreme of the antitrust laws: in the category of practices for which case-by-case analysis under the rule of reason is not required because the conduct is condemned as illegal per se.100 Under the consumer welfare standard, a practice is illegal per se when it always or almost always harms consumers, a characteristic that most certainly exists in the case of dynamic pricing into surges in demand.101 There is no need for courts to undertake an analysis of the effects of dynamic pricing on consumers in each case in which the practice may be challenged, because basic economic theory establishes that the practice must always harm consumers when applied in response to a surge in demand over a period when supply is fixed.102 A court need only ascertain that a firm sets prices dynamically, and that the firm experienced an unexpected surge in demand, in order for the court to be absolutely certain that the firm exploited power arising from product differentiation to harm consumers.103 That makes dynamic pricing the perfect candidate for per se treatment.

Indeed, dynamic pricing has many characteristics in common with the archetypical example of per se illegal conduct in antitrust: naked price fixing, the joint setting of prices by competitors unaccompanied by any other joint conduct, such as joint investment in new product development, that might make the joint price setting necessary.104 Probably the most important similarity is that both are pricing practices, rather than examples of anticompetitive conduct, and so the fact that the antitrust laws condemn price fixing establishes that the antitrust laws can target practices, such as dynamic pricing, that exploit monopoly power, and not just practices that create monopoly power. Naked price fixing has the superficial appearance of anticompetitive conduct because when a firm chooses to fix prices, the firm stops competing based on price. But the ability of any two firms to fix higher prices is actually limited by the extent to which the two firms’ products are differentiated from those of competitors in ways that consumers prefer.105 The better the firms’ products are, the higher the prices that the firms can fix.106 The less differentiated the firms’ products, the lower the prices the firms can fix.107 So the power of any two firms to fix higher prices is actually identical in source to the power of an individual firm to raise prices based on product differentiation.108 What firms do when they fix prices is not, from this perspective, to create monopoly power, for that is already latent in the differentiation of their products in relation to others, but rather to exploit that power through the methods they use to set their prices, namely the agreement between them to set the same prices.109 Thus naked price fixing, like dynamic pricing, is a pricing practice aimed at exploiting power generated through other means, and so the ban on price fixing sets an important precedent for a ban on dynamic pricing.

Another similarity between naked price fixing and dynamic pricing is their prohibition does not force the courts to measure costs or set prices, delivering both from the administrability concerns that normally prevent antitrust from regulating firms’ pricing practices.110 The courts understand that firms have no incentive to employ price fixing to reduce prices, because lower prices mean lower revenues, and so the courts are confident that if firms fix prices, they must fix higher prices.111 To ban the practice, then, the courts need only to ascertain that firms have reached an accord on price.112 The courts do not need to know what that price is, what the firm’s costs are, or the actual magnitude of the difference between the firms’ costs and the price fixed.113 Similarly, courts can ban dynamic pricing of demand surges without inquiry into the nature of the dynamic prices actually charged, because firms only have an incentive to use dynamic pricing, in response to a demand surge, to raise prices.114

### Extra---1AC

#### 1. Restructure the economy---regulations outside of the CWS are necessarily over and under inclusive. Only the plan can prevent stock and real estate bubbles.

Ramsi A. Woodcock 20. Assistant Professor, University of Kentucky Rosenberg College of Law; Secondary Appointment, Department of Management, University of Kentucky Gatton College of Business & Economics. “Toward a Per Se Rule against Price Gouging” (September 23, 2020). CPI Antitrust Chronicle (September 2020), Available at SSRN: https://ssrn.com/abstract=3710997

VI. A PER SE RULE AGAINST PRICE GOUGING WOULD TRANSFORM THE ECONOMY

The advantage of using antitrust to pursue price gouging is that antitrust’s laser focus on consumer welfare would allow antitrust to do a better job of isolating genuine cases of gouging than do state gouging statutes today.

State gouging statutes tend to be both overbroad and under-broad. They tend to be over-broad because they apply for arbitrarily-fixed time periods, but price gouging exists only while the market is unable to increase supply.81 Once new supply comes online, the cost of that new supply may push prices up and firms should be able to incorporate those costs into prices. State price gouging laws also tend to be under-broad because they apply only to certain products and only to price increases in excess of a certain percentage.82 But the economic definition of price gouging does not distinguish between the nature of the product at issue or the magnitude of the price increase. Using a price increase of any amount to ration access to any product in short supply is price gouging in the economic sense, and harms consumers.

An antitrust prohibition on price gouging would eliminate the mismatch between actual price gouging and state price gouging laws. Governed by the consumer welfare standard, an antitrust prohibition would apply only during periods of genuine shortage, before manufacturing and distribution processes can respond to demand. After that, antitrust would not prevent prices from rising to enable firms to bring higher-cost inventories to market to satisfy demand. In the California egg case, for example, it would be illegal gouging in antitrust terms for supermarkets to raise prices on existing egg inventories in response to pandemic-driven demand surges. But it would not be an antitrust violation to raise prices in order to acquire new inventories. By contrast, California’s price gouging law would likely condemn both the shortage-driven price increase and the cost-driven price increase without distinction.83

But an antitrust prohibition on price gouging would also extend far beyond state price gouging laws to cover conduct that Americans do not normally associate with gouging, even though the conduct qualifies as such in the economic sense.84 Consider the stock market. Price increases in stocks are often triggered by unexpected increases in demand. Moreover, the time required for firms to issue additional shares is often counted in months and years. It follows that any investor who offers shares at the market price, but ends up selling at a higher price due to a surge in demand, is gouging.85 Making a profit on a sale of shares never violates state price gouging laws, but it would violate an antitrust rule against price gouging.

So too would a great many real estate transactions.86 Any homeowner who lists a home at one price, but sells at a higher price because buyers have gotten into a bidding war over the home, gouges the winning bidder.87 Needless to say, state gouging laws do not apply, but an antitrust rule against price gouging would. Incorporating a rule against price gouging into the antitrust laws would transform the economy from one that rations based on willingness to pay, and by extension based on wealth, to one that rations on the more egalitarian basis of first-comefirst-served.88

VII. CONCLUSION

The pandemic-related shortages currently rippling through the economy make this an ideal moment for antitrust enforcers to experiment with antitrust condemnation of price gouging. Antitrust’s consumer welfare standard would allow antitrust to do that with a combination of focus and breadth that state price gouging statutes lack.

#### 2. Shaming, expertise, and private enforcement.

Ramsi Woodcock 18. Assistant Professor, University of Kentucky College of Law. The Antitrust Duty to Charge Low Prices (February 27, 2017). Cardozo Law Review, Vol. 39, 2018, Available at SSRN: https://ssrn.com/abstract=2924828 or http://dx.doi.org/10.2139/ssrn.2924828

This Article makes the case that antitrust should use the same strategy of shaming price gougers that other parts of government now employ, by imposing a duty on businesses to charge low prices, understood to mean prices no higher than economic cost, enforceable by nominal damages only. Shaming is best pursued through the antitrust laws because those laws are backed by the expertise of two enforcement agencies dedicated to protecting consumers from high prices, not to mention a nation full of potential private antitrust plaintiffs.11 Accordingly, antitrust should be able to identify, and arouse public ire toward, instances of high pricing that, for whatever reason, would otherwise fail to come to the attention of the general public.