# 1NC Quarters

## OFF

### Vagueness---1NC

#### The aff must specifically cite the business practices they prohibit

Zephyr Teachout 10/29/21. Associate professor of law at Fordham Law School. “Why Judges Let Monopolists Off the Hook.” https://www.theatlantic.com/ideas/archive/2021/10/antitrust-facebook-congress-sherman-act/620539/

Here’s what a good antitrust fix would look like: Instead of asking judges to apply impossible standards, the law should spell out and prohibit a specific set of abusive business practices—just as it does with bribery, fraud, and employment discrimination. Each of those practices is illegal on its own terms, and we don’t ask whether it was “worth it” to society. Likewise, dominant firms should be explicitly banned from predatory pricing, coercive dealing, and exclusive dealing, for example. Agencies should overtly ban bad mergers, instead of engaging—as they now do—in negotiations for minor concessions that will allow mergers to proceed.

#### Vote neg---vague plans are impossible to debate and enable all kinds of aff shenanigans. You should also assume aff solvency starts at zero absent specification.

#### New affs are a voting issue. Makes negative preparation impossible absent pre round prep which wrecks clash and education---at worst we get new off case positions in the block and infinite condo.

### T Prohibit (Must Separate)---1NC

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

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

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

#### Business practices are ongoing conduct defined by the behaviors of many market participants

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

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

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

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

### States CP---1NC

#### The 50 states, territories and DC should uniformly should substantially increase prohibitions on anticompetitive business practices by the private sector that are currently exempted by the filed rate doctrine.

### National Security CP---1NC

#### The United States federal government should define anti-competitive business practices in which plaintiffs challenge the validity of rates or tariff terms that have been filed with and approved by a federal regulatory agency as a threat to national security.

#### CFIUS solves and avoids the FTC disad.

Richard M. Steuer 17. Member of the New York Bar. "The Horizons of Antitrust." St. John's Law Review, vol. 91, no. 1, Spring 2017, p. 177-210. HeinOnline.

As described earlier, some countries assign their competition agencies responsibility for assessing and weighing not only consumer welfare, but other goals as well. This can be daunting, but every town council and zoning board routinely faces the challenge of weighing competing goals, usually with far less analytical support.8 ' Nevertheless, the arguments against assigning competition agencies authority for applying other goals are that these agencies are ill equipped to perform non-economic analysis, and that such an approach would concentrate too much discretion within the competition authorities. If, for instance, the Federal Trade Commission were tasked with conducting a "net benefit" analysis, considering all the goals discussed earlier, it would require greater resources. It also would need the political strength to withstand the criticism it would inevitably attract year in and year out from disappointed parties and their supporters. Some countries, such as Canada and Australia, have established authorities separate from competition authorities to oversee foreign investment, applying a wide variety of goals either apart from consumer welfare or, as in Australia, including consumer welfare. 82 A model like that adopted in Australia would contemplate the creation of a foreign investment review board to advise a cabinet member or the president, who in turn would have authority to disapprove foreign investments, applying a "national interest" or "net benefit" test. If such an arm of government were assigned responsibility in the United States for balancing all these goals in the context of foreign investment, who has the breadth of experience, depth of wisdom, and political respect to make such judgments? The National Economic Council, as has been suggested by the Center for American Progress?" Would its determination be subject to judicial review, and under what standard? What about expanding the responsibilities of CFIUS, as proposed under the Foreign Investment and Economic Security bill,' to apply a "net benefit" test to foreign acquisitions of control regardless of whether those acquisitions pose a threat to national security? Under that proposal, the Committee's determination would be subject to review by the President, but otherwise would be nonreviewable. What about creating a new body, modeled on Australia's Foreign Investment Review Board? How would it be composed and who would appoint its members? Would it be modeled on the Federal Trade Commission, with members from more than one political party serving fixed terms or would it be reconstituted by each administration, like the Council of Economic Advisors? Who would have the ultimate responsibility-the Treasury Secretary? The Commerce Secretary? The President? What would be the threshold for review? Would judicial review be possible and, if so, under what standard? The simplest approach might be to expand the mission of CFIUS by defining "national security" to include economic security, or "national interest," and to create a new advisory board, with adequate staffing, to provide the support that CFIUS would need to fulfill a broader mission with respect to acquisitions of foreign control that do not raise issues of national defense or homeland security. Depending upon the scope of this new authority, there might be calls to add provisions to allow judicial review in those instances where neither national defense nor homeland security is involved." It would be easiest to leave well enough alone, of course, but if the American economy truly is being threatened by the current approach, a new assignment of responsibility should be considered. There are several viable alternatives, as just described, each of which has pros and cons. What is clear is that if the present structure in the United States no longer is working satisfactorily, a new structure needs to be considered.

### Cap K ---1NC

#### Anti-trust is capitalist---competition inevitably replicates market collapse.

Richard Wolff 19 Professor Emeritus of Economics at University of Massachusetts, Amherst. Transcript from YouTube video: “Economic Update: Competition and Monopoly in Capitalism.” Democracy @ Work. December 9th, 2019. https://www.democracyatwork.info/eu\_competition\_monopoly\_in\_capitalism.

Today I'm going to devote the program to something many of you have asked me to present, to talk about, to analyze, and that is the question of monopoly. It has to do with the assertions we hear often these days that somehow our capitalist system, here in the United States and beyond, is being negatively affected because monopolies have replaced or displaced competition. The idea here is if only we can get competition back, recreate a competitive capitalism, why then the problems we face will go away. Today's program is a design to show you how and why that is not the case, to think about these things in a different way from this nice story that capitalism is basically fine; it's just the monopoly form we have to get rid of so we get back to the competition which we're all supposed to believe is wonderful and presents us with no problems to solve. So let's go, and let's do it in a systematic way.

First, it is of course easier, faced with a declining capitalism, a capitalism that's all around us with its extreme inequalities, with its instabilities – here we are, trying to cope with the effects of the Great Crash of 2008, even while we anticipate the next downturn coming down the road soon – an economic system that has shown (that is, capitalism) that it is not respectful of the natural environment; it is not, as the words now go, sustainable in a reasonable way. Yeah, we're surrounded by problems of capitalism. So it's comforting in that situation to get the idea from somewhere that this really isn't a problem of capitalism as a system but rather the problem brought in somehow from the outside – monopoly – a situation in which competition among many companies gives way in some way we're not quite sure about to a domination by one or a small handful of companies. And so the argument goes, we don't have to be critical of capitalism; we don't have to think about an alternative system. No, no, we just have to deal with this little detail, the monopoly problem. And if we can deal with that, well, we'll get back to a competition, to a competitive capitalism that is good.

There are three big mistakes involved in this way of thinking, which is nonetheless very widespread and very popular, more so now than in quite some years. First mistake: Capitalism has been wrestling with the problem of monopoly from day one. We have had repeated periods of monopoly. They have eventually led to movements, often of many people, to destroy or remove monopoly. We used to call that in America trust-busting, or antitrust. We even have a department within the Department of Justice in Washington devoted to antitrust activities. Yeah, we've been waging battles against monopoly over and over again, and you know why? Because we keep having monopolies over and over again. Google is a monopoly. Amazon is a monopoly. They're all around us: companies that have effectively no real competition. This is a problem that capitalism has always displayed. And that ought to lead you to wonder whether thinking about it as something we can do away with isn't maybe the best possible example of wishful thinking.

The second big mistake is to imagine that competition is some unmixed blessing. It never was, and it isn't today. A competitive market is a human institution. Like every other human institution, it has strengths, and flaws, and weaknesses. To think of competition as some magical perfection is a silly abnegation of your own rational capability to evaluate something. It's sort of advertising thinking. By that, I mean the advertiser tells you what's good about the product they've been told to advertise; they don't tell you what's bad about it. If you want to evaluate it, you don't talk to an advertiser because they only give you one side. The people who promote competition use advertising logic. We're not going to do that here. Competition is no unmixed blessing.

And finally, I'm going to show you that competition is itself the major cause of monopoly. So that even if we ever got back to a competitive capitalism, all that would mean is we're back in the process that produces monopoly – as it always has.

All right, so let's begin. I'm going to start with explaining how competition has all kinds of consequences that most of you, like me, don't like, don't want. It's a discussion, if you like, of competition's other side: you know, the part that the advertiser doesn't tell you about. The used-car salesman who wants you to buy that junk doesn't tell you about what happened last week in the car crash that that was part of, etc., etc.

All right, let's begin. One of the major reasons that American corporations shut down their operations in the United States and moved them to China, among other places, is because of – you guessed it – competition. They wanted to make more money than they had been before. They were afraid of other companies beating them in the competitive game, so they said wow, let's go to China, because there you can pay workers a lot less. There you don't have the same rules to obey. There they don't care that much about pollution as they do here. So we can save on all kinds of costs, and that will allow us to undercut our competitors. Yeah, one of the consequences of competition was the exodus of American companies to other parts of the world, and the enormous unemployment that resulted from it. Yeah, that was a result, among other things, of competition.

Here's another one: Capitalists, employers, seeking to compete with one another, often engage in what we call automation. They bring in machines that are cheaper to use than human laborers, and that gets them a step ahead of their competitors. Okay, if we replace people with machines, we throw those people out of work. That has an impact on them, their self-esteem, their relationship to their spouse, their relationship to their children, their relationship to alcohol – should I continue? What are the social costs of automation? They're huge. They've been documented over and over again. Competition provokes and produces automation.

Let me give you another example: Companies are competing, say, in the food business – you know, trying to get a customer like you or me to buy this kind of cereal rather than another. So they get their labs to go to work, and they discover we can replace wheat, which we used to put in our little flakes, with – Lord help us – some chemical that is cheaper than wheat. We're not going to worry about what that chemical does to your chemistry in your body because we can now lower the price of our cereal, because we're saving on wheat, and undercut the competitor. The human beings who eat this stuff will suffer, now and in the future, but competition left our producer of cereal no choice.

And in case you think I'm making some up, let me give you some concrete ones. The Boeing Corporation, the major producer of airplanes in this country, is in a crisis as a corporation. You know why? Because the 737 Max crashed a couple of times, killing hundreds of people. And you know why? It turns out they economized on safety measures, and training measures. And you know why they did that? Because they're in a very tight competition with European and other airplane manufacturers, and that leads them – as it usually does – to look to cut corners: that race for, quote, "efficiency." Yeah, it was competition that contributed to those deaths and to that problem. That's competition too. You can't whitewash this story; they're real. One of the ways Amazon beats its competition is it speeds up the work process. It has figured out ways to make people work much more intensely, using up their brains, their muscles, their nerves, in ways that cause real long-term physical damage to working people. That, too, is a result of the competitive effort.

And you know, it wasn't so long ago that children were part of the labor force. That's right, kids as young as five and six years of age. We were told they have little fingers, you see. They can be more productive than people who are adults with big fat fingers, you know – that doesn't work. And by the way, you should be grateful because poor kids are the ones we hire, and that gives their poor families more income than they would otherwise have. We heard those arguments. Competition, the companies said, required them to use the more productive, and the lower-wage, children rather than adults. So child labor was also a result of competition. It was so ugly and so troubling to so many people that finally there were movements in the United States and many other countries simply to outlaw child labor. So it became a crime for any employer to use a worker who was under 16 or 18 years of age. That was a way in which people said we are not going to allow competition among capitalists to destroy our children. They were recognizing that competition has an awful effect in what it does to children.

Well, it has many awful effects. So let's be clear: In the history of capitalism, the monopoly problem (which we're going to get to in the second half of today's program) is no worse, it's just different, from the competition problems. Capitalism goes through phases of competition and monopoly, going from one to the other, as I will explain. But we shouldn't bemoan the one in favor of the other, any more than vice-versa. These are neither of them solutions; they are both phases of the problem. And the problem is capitalism, which does its number on us both in the period when it's competitive and in the period when it's monopoly. People who want us to engage one more time in an anti-monopoly crusade are doing something that in the end evades the problem, which is the system – capitalism – not this or that form of that system, such as competition and monopoly.

We've come to the end of the first half of today's Economic Update. This gives me an opportunity to remind you, please, to sign up if you haven't already, to subscribe to our YouTube channel. It's a way easily for you to support us, doesn't cost any money, and it is a big help to us in terms of our reputation and what we can accomplish. Likewise, please make use of our websites. They are there for your communication with us. They are there for you to be able to, with a click of a mouse, to follow us on Facebook, Twitter, and Instagram. And finally, a special thanks goes, as always, to our Patreon community for their ongoing enthusiastic support. It means the world to us. My final, very final for this first half, is about a new book that we have just produced and released. It's a follow-up to an earlier volume I have spoken to you about that was called Understanding Marxism. For the same reason, we have now produced a brand-new book, just out, called Understanding Socialism. It is a response, as this program is, to issues, questions, comments you have sent to us in large numbers. It's an attempt to give an overview of the different interpretations of what socialism means, of what happened in countries like Russia and China that tried to create this – the strengths, the weaknesses, the lessons to be learned, what to do, and what not to do. Please, if you're interested and want to follow up, check us out, check the book out: lulu.com is how you find both books. And I will be right back; stay with us.

Welcome back, friends, to the second half of today's Economic Update. This program, as I explained, is devoted to the analysis of competition and monopoly as two interactive, sequential phases of capitalism as a system. The first part of the program was devoted mostly to competition, so let's turn now to monopoly. What is the basic definition and criticism of monopoly? Strictly speaking, monopoly is defined simply as a situation in which the producers of a particular commodity – shoes, software programs, haircuts, it doesn't matter – have been reduced to only one. Literally one seller – a monopolist. But in general language, it includes also situations where many producers who once competed with one another have been reduced to only a handful. The strict term for only a handful is "oligopoly," but we don't have to split hairs about this. "Monopoly" will be the word we use for either one or a very small number.

For example, there were once dozens of automobile companies, but very quickly their competition reduced them to basically three for much of the post-World War II period, and you know their names: Ford, General Motors, and Chrysler. And likewise there were once many cigarette producers, there were once many television-set producers, and they became very few, whose names, therefore, we all know.

What's the criticism of a monopoly or oligopoly situation? Again, very simple: The idea is, if there's only one seller of something, that seller can jack up the price way above what he might have otherwise because he doesn't have any competitor. If he had a competitor, if he raised the price, the competitor would get all the business because we'd all go to the competitor who hadn't raised the price rather than buy it at a higher price from the monopolist. So we don't like monopolies, because they can jack up their prices and their profits because they don't have a competitor. And if it's a few, a handful, well then we talk about things like cartels: arrangements when a few get together over dinner, or out on the golf course, and tell us what the price is. If you ever wondered why the prices of different cars, different cigarettes, and so on, are so close to one another – mm-hmm – that's because there are few sellers, and somehow they worked it all out. But the basic criticism is that a monopoly is a situation in which the seller of something jacks the price up way beyond what they could otherwise get because there are no more competitors.

So let's talk about this monopoly problem and where the monopolies come from. Well, the first and most important lesson is this: Competition produces monopoly. It's not something external, imposed on competition. It has nothing to do with human greed or anything else. Are people greedy? You betcha – some more, some less – but that's really a separate matter. It's competition that produces monopoly, and let me show you how that works. In competition, we have, by definition, a whole bunch of producers. They all produce the same thing. They compete with one another, hoping we, the consumer, will buy from one rather than the other. They compete in the quality of what they produce and in the price of what they produce. And we are supposed, as consumers, to go look for the best quality at the lowest price, and to patronize that one who offers that to us better than the others that we could buy from but choose not to.

Okay, that's a fair definition. Now let's follow the logic. Company A produces – however it manages it – a better quality and/or a lower price than Company B. So we all go to Company A. Company B can't find any buyers because it's not competitive. Or to say the same thing in other words, Company A outcompetes Company B. Here's what happens: Company B collapses. Because it can't sell its goods, we're all going to Company A. So Company B sooner or later declares bankruptcy. It can't continue. It lays off its employees, it stops buying inputs, because it can't compete. Good. Now what happens in Company A? Company A says hey, there's a whole bunch of workers that have just lost their job at Company B; they're trained in producing what we produce; let's go hire some of them. And likewise, Company A says, they're not using their computers, or their trucks, or their other inputs. They're going to have to sell them on the secondhand market. We can get some important inputs we need at a lower price than we would have to pay if we bought them new. So what begins to happen is, where before there were two companies, A and B, there's now one larger A, and B has disappeared. Or to say the same thing in simple English, A – the winner in the competitive struggle – eats, absorbs into itself, what's left of Company B.

And this process is repeated over and over, until 30, or 300, companies have become one, or two, or three. That's the result of competition. That's how competition is supposed to work. That's how competition does work. It's important to understand: Monopoly is where competition leads. And as if that weren't enough, let me make sure you understand this from the business point of view: It is the great dream of every entrepreneur to become the last one standing in the competition, to win the competition, not just because it makes you feel good you outmaneuvered your competitors, but because if you're the last one standing, you're the monopolist. The reward for having outcompeted the others is that you're now in a position to jack up the profits, and the prices, way beyond what you could have done before.

So we have a system that produces monopoly, and all the incentives for every entrepreneur in competition to work as hard as possible to become the monopolist. So why is anyone surprised that monopolies keep happening, because they're the whole point and purpose of capitalist competition. If you ever were – and we never have, but if you ever were – able to get rid of all the monopolies and re-establish competition, all you would be doing is setting this same process in motion again for the umpteenth historical time. In other words, fighting against monopoly is pointless as long as you have capitalism, because it is the endless reproducer of this problem – as it always has been.

Now, how do monopolies maintain themselves? If you're the only one standing, you're a monopolist. Or you're an oligopoly, you're a few, and you get together and jack up your prices together. The question becomes look, a monopolist makes very high profits – much higher than a competitor can achieve – and isn't that an enormous incentive for other capitalists to get in on that business? Because look at the profits they're earning, because they're the only one. Apple, Amazon, Google – the profits are staggering. Everybody wants to get in. So the way a monopolist has to think is, I've got to create obstacles that block other people from coming in to get a piece of the enormous profits my monopoly allows me to get. We call that in economics "barriers to entry." Monopolists need to create barriers. Let me give you a couple of examples.

The major soft drink makers in the United States – basically Coca-Cola and Pepsi Cola – they produce a drink that has sugar and coloring in it, and lots and lots of water. Let me assure you, there is nothing difficult or complicated about producing a mixture of sugar, color, and water. It doesn't take a genius; it never did. Pepsi and Coca-Cola make a fortune off of their product, as we know, and they have for decades. They have a virtual monopoly. Now, lots of other people could produce water, sugar, and color close to, if not identical with, whatever they produce, but they can't break through. They can't really get to that status. And you know why? Because Coca-Cola and Pepsi erected a barrier to entry. And the way they did that was with advertising. Every billboard, every magazine cover, every doorway of every institution you've ever been to has a picture of smiling, happy people drinking one or the other. You've learned: that's the drink, that's the drink. Another company might make a perfect substitute, but they can't afford the enormous cost of advertising. The advertising costs more than the water, and the sugar, and the color. What you pay for when you buy Pepsi and Coke is the advertising that got you to buy it. You're paying for being hustled. But it works, because it means other companies know that they can't get in there by cheaply producing an alternative, because you have to produce the advertising that goes with it, or else you can't do it. And so their monopoly is maintained.

Here's another way to maintain a monopoly: Get the government to step in. Here the famous example is the milk producers. Some years ago, there was a crisis with milk. There was contamination; people were getting sick. So the clever milk monopolies came in and said, we're going to support the enormously expensive, special equipment to guarantee pasteurization, and so on, of milk. Why did they support it? Because your small farmer, your small dairy producer, can't afford it, so they go out of business. Only the big, rich few that are left can afford the enormous equipment. They used governmental rules to create a barrier to entry.

Here's another way: corrupt public officials. President Trump denounces Huawei corporation because it compromises our national security. It denounces European car producers because somehow their shipping cars here compromises our security. Who cares? As long as the president blocks other companies from getting into the business that might compete with an American, a barrier to entry exists. Monopolists have been very creative in coming up with ways to preserve their monopolies.

I don't want to lose the basic point. The basic point is: Capitalism oscillates, back and forth between competition and monopoly – first this industry, then that one. For a while, Ford, General Motors, and Chrysler were the monopolies – or the oligopoly, if you like – in automobiles. But eventually, Toyota, and Nissan, and Peugeot, and Fiat broke the monopoly. In that case, it was foreigners who did it. And then we had some competition, and that, then, is now shrinking. The French – the last two producers in France – have just agreed to merge. You get the picture. Industry by industry, first this one, then that one, go through one phase or another.

The important point is: The phases are not our problem. They merge into, and incentivize, each other. Each provokes movement in the other direction. The point to understand is that the problems of a capitalist system are not about this oscillation of phases. We're not going to solve the problem of monopoly by getting rid of them and re-establishing competition. We've been there; we've done that; it reproduces monopoly; and it doesn't change the basic inequality, unsustainability, instability of capitalism. We need to get beyond that stale, old debate – competition versus monopoly – and face the underlying reality: Capitalism is the problem, and getting beyond it is the solution.

#### Capitalism drives extinction and structural violence.

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

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

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

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

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

#### Vote neg for global syndicalism---pressures towards socialist state action are building, forces the hand of monopolies.

Cecilia Rikap 21. Professor of Economics and Coordinator of YSI States and Markets Working Group, Institute for New Economic Thinking. “Tilting the Scale Against Intellectual Monopoly Capitalism.” *Capitalism, Power and Innovation Intellectual Monopoly Capitalism Uncovered*. Routledge. 2021. 287-289

Capitalism is a system based on asymmetries and inequalities (of income, wealth, between classes, genders, races, countries and more). Quite striking for a system born from the motto “Liberté, égalité, fraternité”. As time passes by, this broken promise of modernity becomes all the more apparent. Inequalities deepen as knowledge is monopolized, digital surveillance reinforces firms and states control capacities over workers and citizens, and political conflicts never cease – with the US-China tech cold war at the current epicentre.

Social disrupts are an expected recurring outcome, and we have seen them everywhere in the 21st century. The specific motives differed, but there is a common root: people are fed up with capitalism’s growing inequalities, with a stagnant or even declining “middle class” in developed countries for several decades already and the highest gains accumulating at the global level for those in the richest 5% (Milanovic, 2016).

There is another shared feature; demonstrations are increasingly being organized online. The same technology that is used for surveillance, for broadcasting extreme right and even fascist ideas, and that drives the USChina world hegemony conflict, is also being used as a counterbalancing weapon. Internet, particularly social networks, is a powerful tool for the organization of grassroots movements. Workers’ unions can also learn from each other’s experiences online.

The absence or weakness of unions and social movements in some parts of the world has benefited intellectual monopolies rentiership and predation. For instance, hiring workers with a vendor contract not only hides the working relation (see Chapter 10) but also impedes unionization as it currently stands. Still, unions are adapting and workers organizing. In 2018, Google employees managed to stop the company from renewing an artificial intelligence contract with the Pentagon and to cancel its plans for a censored search engine for China. And, in 2020, 2,000 employees urged the company to cease selling technology to the US police after George Floyd’s killing. These initiatives should be taken by workers in other companies and contribute to unionization. Unions should be reconceived as a political actor capable of exercising their influence beyond wage claims. Workers’ organization is indispensable to counterbalance the power of intellectual monopolies, given both their global reach and states’ internal contradictions and limitations.

Peripheral countries should cease competing to attract outsourcing and offshoring by allowing worse wages and working conditions. As mentioned above in this chapter, world cooperation agreements to establish minimum labour regulations, forbidding new and old forms of informality and granting minimum working conditions are urgent. However, these agreements require great social pressures to take place. When it comes to transforming capitalism, social disrupts, grassroots social movements and unions play a crucial role.

To illustrate their paramount importance, let us briefly consider taxes. It is crystal clear that the global taxing system has failed. As pointed out in Chapters 7 and 10, global intellectual monopolies declare profits and IPRs in tax havens and use tax loopholes to minimize paid taxes. Global tax reform should consider the separation between ownership and control. Intellectual monopolies control production and innovation networks beyond their legal ownership and have the capacity to trickle down the burden of taxes. However, the intertwined relationship between global intellectual monopolies and their home (core) states renders highly unlikely to accomplish such global tax reform without intense social pressure. Even the recent US corporate tax reform was not – at least so far – successful in this respect (Clausing, 2020). Then, as far as tax havens are not eliminated, there will still be room for tax avoidance and evasion (Zucman, 2015). Countries acting as tax havens will not comply with a global reform unless huge social disrupt forces them to do so.

Additionally, workers’ protests must be coordinated at the level of the global production network because the production unit is no longer the factory but the network. The same applies to global innovation networks. Intellectual monopolies’ recognized employees have greater bargaining power than workers in subordinate firms, which are precisely those that generally need a more urgent improvement in their salaries and working conditions. “Workers of the world unite, you have nothing to lose but your chains” (Marx & Engels, 1848) can and must become an everyday reality for the French Revolution motto to be more than aspirational.

### Biz Con DA---1NC

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

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I. GOING BEYOND ADJUDICATION FOR ANTITRUST ENFORCEMENT

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

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

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

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

B. Slow, Usually Predictable Doctrinal Development

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

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

C. Market-Driven Case Selection

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

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

D. Generalists versus Industry Experts

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

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

E. Tradeoffs Inherent in the Adjudicatory Approach to Antitrust

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

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

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

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

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

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

#### Unpredictable legal shifts wreck business confidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

INTRODUCTION

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

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

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

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

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

METHODOLOGY

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

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

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

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

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

ECONOMY

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

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

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

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

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

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

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

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

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

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

ENVIRONMENTAL

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

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

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

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

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

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

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

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

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

GEOPOLITICAL

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

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

### Trade DA---1NC

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

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

INTRODUCTION

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

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

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

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

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

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

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

#### Nuclear war.

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

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

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

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

Secular Stagnation

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

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

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

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

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

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

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

Illiberal Globalization

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

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

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

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

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

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

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

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

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

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

### FTC DA---1NC

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

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

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

#### Antitrust enforcement saps up FTC resources and personnel, which are finite.

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

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

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

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

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

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

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

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

# Case

## Energy

### Anti-Trust Fails---1NC

#### Antitrust fails for energy.

Frank A. Wolak, ‘5. Professor in the Department of Economics at Stanford University. Managing Unilateral Market Power in Electricity. World Bank Policy Research Working Paper 3691, September 2005. https://web.stanford.edu/group/fwolak/cgi-bin/sites/default/files/files/Managing%20Unilateral%20Market%20Power%20in%20Electricity\_Wolak.pdf

The past two decades of international experience with wholesale electricity markets has demonstrated that significant consumer harm can result from firms simply engaging in unilateral profit‐maximizing behavior given the actions of their competitors. Different from other product markets, coordinated actions among suppliers or the concentration of production capacity in the hands of small number of firms is unnecessary for electricity suppliers to raise prices substantially above competitive levels. A number of wholesale electricity markets with Hirshman‐Herfindahl Indexes (HHIs) that would not raise market power concerns if they were from other industries have been subject to severe market power problems. In addition, for all of these market power episodes, the relevant competition authorities have not found evidence of coordinated actions among suppliers to raise prices in violation of the competition or antitrust law. These facts provide strong evidence that competition or antitrust policy as it is applied to other industries may be insufficient to protect electricity consumers.

### AT: Grid---1NC

#### Doesn’t solve the grid---competition doesn’t result in upgrades.

#### No widespread blackouts – That's not how the grid works.

Koerth 18 – Maggie, senior science writer for FiveThirtyEight, citing Bill Lawrence, vice president and chief security officer at the North American Electric Reliability Corporation and Candace Suh-Lee, who leads a cybersecurity research team at the Electric Power Research Institute, a nonprofit research and development lab, " Hacking The Electric Grid Is Damned Hard", *FiveThirtyEight*, 8/13/2018, <https://fivethirtyeight.com/features/hacking-the-electric-grid-is-damned-hard/> JHW

The nightmare is easy enough to imagine. Nefarious baddies sit in a dark room, illuminated by the green glow of a computer screen. Meanwhile, technicians watch in horror from somewhere in the Midwest as they lose control of their electrical systems. And, suddenly, hundreds of thousands, even millions of Americans are plunged into darkness. That scene was evoked in recent weeks as federal security experts at the Department of Homeland Security warned that state-sponsored hackers have targeted more than American elections — they’re after the electric grid, too. They’ve gotten “to the point where they could have thrown switches,” a DHS official told The Wall Street Journal. Both DHS and the FBI have linked these attacks to Russia — which was already pinned as the culprit in two attacks that shut down power to hundreds of thousands of people in Ukraine two Decembers in a row, in 2015 and 2016. It’s all very urgent — a high-risk crisis that must be solved immediately. But, surprisingly, some electrical system experts are thinking about it in a different way. Cyberattacks on the grid are a real risk, they told me. But the worst-case scenarios we’re imagining aren’t that likely. Nor is this a short-term crisis, with risks that can be permanently solved. Bringing down the grid is a lot harder than just flicking a switch, but the danger is real — and it may never go away. Representatives from two nonprofit organizations — both of which play large roles in how the electric grid is regulated and maintained — said it is easier to imagine disaster scenarios than create one. “There’ve been some very sensational books out there about the grid going dark because someone’s got their finger ready over a mouse and everything is going to turn off at the same time,” said Bill Lawrence, vice president and chief security officer at the North American Electric Reliability Corporation, the regulatory authority that sets and enforces technological standards for utility companies across the continent. “The grid does not work that way.” Our electric infrastructure is chock-full of both redundancies and regional variations — two things that impede widespread sabotage. That’s not to say that the grid isn’t under attack. Lawrence acknowledged that there is interest in “trying to hurt us from a distance.” But he emphasized there have not yet been any successful attacks — meaning hackers haven’t caused any blackouts. The division of Homeland Security that collects reports of cyberattacks on critical infrastructure has not yet published its incident report numbers for 2017. Organizations report incidents on a voluntary basis, so these numbers may not reflect all incidents. They’ve been poking at our critical infrastructure for a long while. Incident reports published by the Industrial Control Systems Cyber Emergency Response Team — a division of Homeland Security that does training and responds to cyberattacks on critical infrastructure — suggest that electricity, oil and natural gas infrastructure have been routinely targeted for years.1 There are dozens of these attacks reported to ICS-CERTS annually. However, it would be difficult for these attacks to lead to wide-scale blackouts, according to Lawrence and Candace Suh-Lee, who leads a cybersecurity research team at the Electric Power Research Institute, a nonprofit research and development lab. And that’s true even if hackers do eventually succeed in taking control of some electric systems. It helps that the North American electric grid is both diverse in its engineering and redundant in its design. For instance, the Ukrainian attacks are often cited as evidence that hundreds of thousands of Americans could suddenly find themselves in the dark because of hackers. But Lawrence considers the Ukrainian grid a lot easier to infiltrate than the North American one. That’s because Ukraine’s infrastructure is more homogeneous, the result of electrification happening under the standardizing eye of the former Soviet Union, he told me. The North American grid, in contrast, began as a patchwork of unconnected electric islands, each designed and built by companies that weren’t coordinating with one another. Even today, he said, the enforceable standards set by NERC don’t tell you exactly what to buy or how to build. “So taking down one utility and going right next door and doing the same thing to that neighboring utility would be an extremely difficult challenge,” he said. Meanwhile, the electric grid already contains a lot of redundancies that are built in to prevent blackouts caused by common problems like broken tree limbs or heat waves — and those redundancies would also help to prevent a successful cyberattack from affecting a large number of people. Suh-Lee pointed to an August 2003 blackout that turned the lights off on 50 million people on the east coast of the U.S. and Canada. “When we analyzed it, there was about 17 different things lined up that went wrong. Then it happened,” she said. Hackers wouldn’t necessarily have control over all the things that would have to go wrong to create a blackout like that. In contrast, Suh-Lee said, scenarios that sound like they should lead to major blackouts … haven’t. Take the 2013 Metcalf incident, where snipers physically attacked 17 electric transformers in Silicon Valley. Surrounding neighborhoods temporarily lost power, but despite huge energy demand in the region, “the big users weren’t even aware Metcalf had happened,” she said. Difficult isn’t the same as impossible, Suh-Lee told me. Depending on where an attack happened and how people responded, you could get the stuff of our nightmares. Lawrence repeatedly invoked the phrase “knock on wood” as he talked about the possibility of infiltrations of electric infrastructure turning into real-world blackouts. That’s why there’s a lot of effort going into research, monitoring and preparation for cyberattacks. Lawrence’s team, for instance, is gearing up for an event that’s held every other year and is sort of like war games for the electric grid. And the Department of Energy is planning a similar event, focused on figuring out what it takes to reboot after a hacker-caused blackout. But that preparation doesn’t mean we’ll eventually solve this problem, either, Suh-Lee said. If the chances of a cinematic disaster are low, the chances of a theatrical hero on a white horse riding in to save the day are even lower. Making the grid stronger and more resilient also means making it more digital — the work that’s being done to improve the infrastructure has also created new opportunities for hackers to break in. And the risk of attack is here to stay. Security improvements are “never going to completely eliminate the risk,” she said. “The risk is out there and people will find a new way to attack.” We’ll be living with cyber threats to the grid for the rest of our lives.

#### The grid is strong now---energy efficiency, new tech, and cycle generation.

Krysti Shallenberger 17, Utility Dive associate editor, 1-5-2017, "Predictions 2017: 8 sector insiders on what's next for power markets and regulation," Utility Dive, http://www.utilitydive.com/news/predictions-2017-8-sector-insiders-on-whats-next-for-power-markets-and-re/433358/

The traditional drivers of infrastructure additions were load growth and connecting distant generation sources to population centers. However, that has changed. Load growth is negligible in many areas. (At PJM we forecast peak load growth of less than half of one percent per year.) At the same time, more efficient technology, specifically energy efficiency and new natural gas combined cycle generation closer to load centers, has changed power flow patterns, which reduces the need for additional large-scale transmission expansion projects. The reduction in larger scale projects has allowed focus to be shifted to resolving aging infrastructure concerns on lower-voltage facilities. More efficient technologies, the capacity performance construct and upgrades to the system have made the grid increasingly robust and resilient. Last summer, for example, was the first time PJM met a peak demand of more than 150,000 megawatts without invoking emergency procedures and while net exporting power.

#### No grid impact---it’s overhyped.

Freedberg 14 (Sydney J, “Cyberwar: What People Keep Missing About The Threat,” Jan 6, <http://breakingdefense.com/2014/01/cyberwar-what-people-keep-missing-about-the-threat/>, CMR)

**Cites:**

--Peter W. Singer – former director of the Center for 21st Century Security and Intelligence and a senior fellow in the Foreign Policy program

--Allan A. Friedman – Research Scientist at the Cyber Security Policy Research Institute at George Washington University's School of Engineering

**Singer and Friedman** also **do a valuable service** in **beating back the hype** **about “Cyber Pearl Harbors”** **and “Cyber 9/11s” or the US suffering countless millions of “attacks.”** **Those alarmist statistics lump together everything from a virus easily stopped by** someone’s **firewall** to credit card theft **to the loss of secret schematics for the F-35** stealth fighter. **Those “attacks” vary from trivial, to significant losses** for one particular business, to actual matters of national security, **but none of them does as much damage as a good old-fashioned bomb**, they argue. **Even if hackers shut down the** national **electrical grid for weeks** on end, bad as that would be, **it wouldn’t be as bad as a single nuclear explosion**. “**It’s** a lot **like ‘Shark Week**,’” Singer said about the overhyped dangers. “**Squirrels have taken down the power grid more times than the zero times hackers have**.” There’s lots of talk about how the attacker always has the advantage in cyberspace, he told an audience at Brookings this afternoon, but “**a true cyber offense, an effective one**, a Stuxnet style [attack] **is** something **quite difficult**.”

### AT: China War---1NC

#### Uniqueness is from 2016---high energy prices aren’t key---about China seeking gas---plan doesn’t solve that.

#### No U.S.-China war.

Abraham Denmark et al 20 is director of the Asia Program at the Woodrow Wilson International Center for Scholars and a former deputy assistant secretary of defense for East Asia, April 16, “SAME AS IT EVER WAS: CHINA’S PANDEMIC OPPORTUNISM ON ITS PERIPHERY”, <https://warontherocks.com/2020/04/same-as-it-ever-was-chinas-pandemic-opportunism-on-its-periphery/>

While Washington and Beijing’s overheated rhetoric and mutual recriminations amid the ongoing coronavirus pandemic are grabbing headlines, equally important is what has been playing out across China’s eastern and southern peripheries over the past several weeks. At a moment when the Chinese Communist Party has been touting the generosity of its approach to COVID-19, there has been a marked increase in the number of incidents between China and its neighbors. Beijing has used its naval and paramilitary forces as well as its increasingly sophisticated information operations to ratchet up tensions, probe responses, and see how much it can get away with. This raises the question of what exactly China is up to. Has Beijing truly embraced a new approach of cooperation with its neighbors? Is it trying to take advantage of the COVID-19 mess to assert its interests more aggressively? Or is this simply an extension — albeit an opportunistic one — of its pre-pandemic strategy? BECOME A MEMBER The novel coronavirus pandemic has not curtailed geopolitics — in fact, it seems to be intensifying preexisting tensions. Understanding if and how China’s foreign policy has shifted is critical for assessing what is happening along China’s periphery and what Beijing might do next. Answering these questions is necessary for the United States and its allies to fashion a proper response. This, in turn, demands understanding what Beijing was doing before the crisis and thinking through what might actually signal a significant shift toward a more confrontational foreign policy. How Did I Get Here? China’s Latest Moves Chinese ships and aircraft have been involved in a spate of recent incidents across China’s maritime periphery. While there have been no fatalities, lives were certainly put at risk. Considering these incidents have involved two of China’s primary regional rivals — Japan and Vietnam — as well as Taiwan, the possibility that Beijing may see the COVID-19 pandemic as an opportunity to press an advantage during a time of geopolitical distraction and uncertainty should be considered. In mid-March, a group of People’s Liberation Army (PLA) aircraft crossed the median line in the Taiwan Strait — an unofficial demarcation line between Taiwan and China — in an exercise intended to intimidate Taiwan by demonstrating China’s ability to conduct operations at night while also testing Taiwan’s ability to react. While PLA ships and aircraft have been operating within the vicinity of Taiwan for several years, the pace and assertiveness of these activities have noticeably increased in recent years: The latest incident was the fourth time in two months that PLA aircraft forced Taiwan’s air force to scramble and intercept. Considering the impending second inauguration of Taiwan’s leader, President Tsai Ing-wen, as well as dwindling levels of support in Taiwan for Beijing’s “One Country, Two Systems” formulation, these exercises are likely to grow even more common and assertive. In late March in the East China Sea, a Chinese fishing vessel collided with a Japanese destroyer. The collision ripped a hole in the destroyer, but the ship was able to move on its own, and its crew suffered no casualties. Beijing announced that one Chinese fisherman had been hurt and blamed the Japanese vessel for the incident, calling for Japan’s cooperation to prevent future incidents. It is unclear if the Chinese vessel was a part of China’s “maritime militia,” described by the U.S. Department of Defense as “an armed reserve force of civilians available for mobilization” that plays a “major role in coercive activities to achieve China’s political goals without fighting.” The South China Sea has also seen several recent incidents involving Chinese vessels. In early March, a Vietnamese fishing vessel was moored near a small island in the Paracel archipelago — islands claimed by both Vietnam and China, among others — when a Chinese vessel chased it and fired a water cannon, causing the boat to sink after hitting some rocks. The crew was rescued by another Vietnamese fishing boat, with Hanoi claiming that the fishing boat was rammed by the Chinese vessel. The U.S. State Department issued a statement in early April expressing its serious concerns about the incident and calling on China “to remain focused on supporting international efforts to combat the global pandemic, and to stop exploiting the distraction or vulnerability of other states to expand its unlawful claims in the South China Sea.” The State Department also noted that since the outbreak of the pandemic, “Beijing has also announced new ‘research stations’ on military bases it built on Fiery Cross Reef and Subi Reef, and landed special military aircraft on Fiery Cross Reef.” Most recently, a Chinese coast guard (CCG) ship — one of several Chinese ships that harassed a Philippine commercial vessel in September 2019 — was seen patrolling near the Scarborough Shoal, representing one of many CCG ships that have been patrolling nearly all of the disputed areas between China and the Philippines in the South China Sea. Are these incidents merely a coincidence? Are they a sign that Beijing is distracted by COVID-19 and the resulting historic economic slowdown, and aggressive local commanders are pushing the envelope of their own accord? Or is this merely the result of China fielding more ships and more aircraft, leading to a predictable increase in incidents and exercises? While these explanations are all plausible, a more likely driver of China’s actions is, in fact, continuity. These incidents are not unprecedented and likely do not indicate a new, post-pandemic Chinese strategy. Rather, these incidents are consistent with a Chinese approach to foreign affairs under CCP General Secretary Xi Jinping’s leadership that even before the outbreak of COVID-19 demonstrated flexibility, assertiveness, and a singular desire to exploit opportunities of external weakness and distraction in order to advance China’s interests. For more than a decade, Chinese leaders have come to see their external security environment as generally favorable, representing a “strategic window of opportunity” in which China could achieve its primary objective of national revitalization through economic and social development, military modernization, and the expansion of its regional and global influence. Since the 2008 to 2009 global financial crisis, Beijing has perceived an opportunity to expand its geopolitical power relative to the United States yet does not seek an explicit conflict with the United States or its allies. As a result, Beijing has intensified its use of “gray zone” tactics that seek to gradually advance Chinese interests using ambiguity and tactics that are tailored to not provoke a military retaliation. These activities also serve as “probing behavior” that tests how far China can go before encountering determined resistance. In recent years, Beijing has used this approach to increase pressure on Japan in the East China Sea and advance Beijing’s territorial claims in the South China Sea against the Philippines, Vietnam, Malaysia, and Indonesia. Throughout, Beijing’s approach to regional geopolitics has been adaptive to specific conditions, flexible to broader strategic trends, and opportunistic to perceptions of weakness or distraction in its adversaries. Chinese actions are not the reckless gambles they may initially appear to be. Rather, they are premeditated probes seeking to identify weakness and opportunity. Chinese pressure is carefully calibrated to fit, but not necessarily to exceed, a given situation. This approach reflects a maxim of Vladimir Lenin, whom the Chinese Communist Party continues to revere to this day: “Probe with a bayonet: if you meet steel, stop. If you meet mush, then push.” In multiple instances, Beijing has continued to push when it perceives that its actions are unlikely to cause a significant response. But when Chinese assertiveness has been met with resolute counterpressure, Beijing’s response has not been predictably escalatory.Beijing has demonstrated flexibility when confronted with determined opposition. Examples include Japan’s response to China’s rollout of an air defense identification zone in the East China Sea in 2013 and President Obama’s reported drawing of a red line around Scarborough Shoal to Xi Jinping in March 2016. Moreover, India’s response to Chinese activities in Doklam did not lead to war.

#### No SCS war this decade---China will avoid confrontation.

Yuan 20. Author of “Panda Not Dragon: Why The Rise of China is not a Threat”. Yuan’s works have appeared on multiple scholarly journals and conferences, with topics including the conflict between China and Japan over the Senkaku islands, South Korea’s cultural influence on Modern China, and others. He is currently completing his doctoral degree at Rutgers University. Yuan received his B.A. from Centre College and his M.S. from Northeastern University.Shaoyu, 2-20-2020, South China Sea Threat Assessment: Is China a Threat or a Paper Tiger?, Georgetown Journal of International Affairs, https://gjia.georgetown.edu/2020/02/20/south-china-sea-threat-assessment/

Tensions in the South China Sea continue to rise. China’s People’s Liberation Army Navy (PLAN)’s Rear Admiral Lou Yuan, regarded as a hawkish military commentator, recently proclaimed that the continuing dispute over the ownership of the South China Sea could be resolved by sinking two US aircraft carriers. Statements like these result in a legitimate fear that China’s increasing presence in the South China Sea might spark a kinetic military conflict with the United States. However, while most Western scholars and media are paying excessive attention to the rise of China, few are contemplating China’s weaknesses in the region. Despite China’s constant verbal objections and rising tensions with the United States in the last century, the world has yet to witness any major military confrontation between the two superpowers. China will continue to avoid directly confronting the United States in the South China Sea for at least another decade because China’s military remains immature and defective. China’s weak joint command system, which has become an essential instrument in modern warfare, comprises its first major military weakness. If any military operations are to be conducted in a region such as the South China Sea, the integration and cooperation between the air force, navy, and landing army is indispensable. However, even as it boasts the second largest defense spending figures worldwide, China only recently created their first and only joint command system, the Joint Staff Department of the Central Military Commission (CMC), under President Xi Jinping’s new national defense and military reform. In addition, around 70 percent of the PLA soldiers belong to the PLA Army, and almost all senior officers on the CMC are army officers. This imbalance has the potential to cause serious complications, such as interservice rivalry for the newly formed Joint Staff Department, when it comes to decision-making involving naval and aerial affairs―areas in which army officers have no experience. The Chinese are certainly attempting to resolve this problem by establishing departments like the PLA Joint Logistic Support Force, which handles logistical operations and oversees the military supplies, infirmaries, and barracks of the PLA. However, the “peace disease”―an idea that a period of prolonged peace can weaken a state’s military ability―continues to hamper China’s military modernization, as there has been no opportunity to test its joint command system in actual combat. The last time China had a full-fledged military conflict was forty years ago with Vietnam, which concluded with a Chinese defeat. If the CMC hopes to win a direct military engagement with US naval forces, it must compensate for lack of experience in operating a joint command system. Until it does so, China’s military poses little threat to the United States and its allies. Sea power is crucial for taking control of the South China Sea. The Chinese Navy is divided into the North, East, and South Fleets. Among the four divisions, the PLAN’s South Fleets poses the most immediate threat because it is currently active in the South China Sea. Together, the fleets possess only one aircraft carrier in operation: the Liaoning, an abandoned Soviet-era vessel that was purchased from Ukraine as a training ship, but reportedly had to return to port immediately due to an engine failure during a sea trial. The country’s one and only domestically built aircraft carrier, the Type 001A, is under scrutiny, as it is believed that the carrier manager might have leaked classified information of Liaoning to the CIA. In contrast, the United States possesses nineteen aircraft carriers, far outnumbering the Chinese. Although the number and strength of aircraft carriers do not necessarily determine the victor of a confrontation, the tonnage of a country’s navy might. Larger tonnage provides more space for fuel, weapons, and ammunition, and a vessel with bigger hull not only has more rounds to fire but also the capability to endure longer voyages. The United States Navy has a total tonnage at least two times greater than that of PLAN’s. China also lags in its ballistic missiles. For instance, China’s People’s Liberation Army Rocket Force (PLARF) only began to field its Intermediate-Range Ballistic Missile (IRBM) DF-26 in 2016, and the country’s arsenal only consisted of ninety Intercontinental Ballistic Missiles (ICBM) as of 2019. In comparison, the United States had a total of 405 deployed ICBMs and 278 non-deployed ICBMs as of 2017. In reality, China’s stockpile of weapons and equipment is still substantially inferior to that of the United States, deterring a full-fledged war from breaking out in the South China Sea. Alone, China’s military is insufficient to face the United States in direct confrontation and would therefore be forced to turn to its allies. China currently lacks any such dependable military allies in the South China Sea. China’s leading ally in the region, North Korea, is a totalitarian regime with a struggling economy, and most of its vessels are only operable within fifty nautical miles of its coast. Although China and North Korea maintained strong relations during the Cold War era, the Beijing-Pyongyang relationship has gradually declined since the beginning of the twenty-first century and the start of North Korea’s nuclear program. China has joined the United Nations in implementing sanctions against North Korea because of its unauthorized nuclear testing. Although China remains North Korea’s closest friend, an alliance is rather far-fetched. Moreover, the international scrutiny that North Korea faces, as well as its deficient economy, means that it lacks the resources to support Chinese forces in the South China Sea if serious military conflict were to occur. In contrast, the United States can easily depend on South Korea, Japan, Taiwan, Australia, and the Philippines to provide naval support. In addition, although the United States is not allied with most of the Southeast Asian nations, the increasing cooperation between the United States and the Association of Southeast Asian Nations (ASEAN) is similar to a military alliance with no written agreement. The United States and ten ASEAN navies have commenced multiple maritime drills as part of a joint exercise extending into the South China Sea, countering China’s presence in the region. In contrast, China and ASEAN only had their first joint maritime exercise last year, which mostly focused on the code for unplanned encounters at sea, search and rescue operations, and communication exercises. In addition, US allies in the region have increased their defense budgets to combat growing Chinese influence. Although China’s navy has recently commissioned the Nanchang guided-missile destroyer (the biggest surface warship ever made), the vessel is only powerful in relation to other Chinese ships, which are around 3,000 tons less powerful than the United States’ Zumwalt-Class destroyer in terms of displacement. Consequently, China is slowing its plan to build two aircraft carriers for each of its regional fleets to build the Nanchang. China may be aiming for a hegemonic position in Asia, but that does not mean it will succeed. The country’s military―specifically its navy―is still immature. China is undoubtedly on the rise, yet the country still has many profound and systemic problems within its military. Perhaps some of these problems could be resolved with China’s continued growth, but institutional change―especially when problems are so ingrained into the system―takes a long time. Based on what defense analysts currently observe, China does not pose a military threat to the United States in the South China Sea; therefore, there is no need to invest more resources and capital into the Pacific for the time being. However, the United States should maintain its presence in the area by continuing to foster relationships with its allies while keeping a close eye on China’s movements. Sacrificing resources for the sake of military proliferation in a region where such action is unneeded is a wasteful move that the United States should avoid.

## Federalism

### AT: Aging Crisis---1NC

#### No aging crisis impact.

Mark L. Haas 17, Department of Political Science, Duquesne University, July 2017, “Population Aging and International Conflict,” <http://politics.oxfordre.com/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-589>

How is the near worldwide phenomenon of population aging likely to affect international relations (IR)? Most scholars who have examined this issue have linked the potential effects created by aging to established IR theories. Most analyses that have developed around the issue of aging, in other words, have not created new theoretical approaches to the study of international politics. They have instead argued that aging is likely to affect key variables associated with existing IR theories, which will then tend to generate particular outcomes based on these theories’ predictions. The IR theories that studies of populating aging have most frequently tied into include ones from realist, diversionary war, and constructivist research programs. Many of the arguments that link the effects of aging to these theories reach opposite conclusions, with some predicting a much higher probability of international conflict due to aging, others the reverse. There are, however, very few empirical analyses that test these competing hypotheses, largely because aging is such a new phenomenon.

### AT: Megacities---1NC

#### No megacities impact---evidence is from 2012---lists threats---get new defense when they read a terminal impact card.

#### Don’t solve megacities---Holmner says telemedicine could be “relevant” for megacitites---not that it’s key.

#### Doesn’t solve telemedicine---can’t prevent states from restricting healthcare providers---that’s what Sklar says is bad.

### Courts---1NC

#### Plan nukes regulatory certainty AND creates vagueness that monopolists exploit to dodge enforcement

D. Daniel Sokol 9, Assistant Professor at the University of Florida Levin College of Law, Senior Advisor at White & Case LLP, LLM from the University of Wisconsin Law School, JD from the University of Chicago Law School, MSt in History from Oxford University, AB from Amherst College, “Limiting Anticompetitive Government Interventions That Benefit Special Interests”, George Mason Law Review, 17 Geo. Mason L. Rev. 119, Fall 2009, Lexis

Antitrust litigation produces regulatory uncertainty because different courts may rule inconsistently with the same set of facts. Anecdotal evidence indicates that when courts do not understand complex antitrust issues, they rule based on a highly procedural formalism. 140 These problems of procedural formalism in antitrust decisions create particular concerns in conduct cases or with regard to penalties for conduct, regardless of the origin of the legal system. 141 For example, in New Zealand, telecommunications regulation focused on a general antitrust solution in conjunction with courts rather than with sector regulation. 142 In a case involving interconnection rates within telecommunications between the incumbent provider and a new entrant for access to the local loop, the case took five years to decide, with significant procedural delay. 143 The lack of the New Zealand judicial system's understanding of the complex pricing issues and methodologies for interconnection underlying the case meant that the conflicting court decisions left little certainty-none of the courts came up with a specific interconnection price. This enabled the incumbent Telecom Corporation to maintain its monopoly position, and it left the victims of its anticompetitive behavior without any effective means of redress. 144 A similar problem occurred in Chile, where the Chilean Supreme Court recently overruled the Chilean Competition Tribunal in cases regarding tacit collusion based on procedural rather than substantive grounds, and where it seemed apparent that the Supreme Court did not understand the antitrust issues. 145 [\*148]

#### Courts will mis enforce.

Thomas Leary 8. Hogan & Hartson Law Firm, Former Commissioner at the Federal Trade Commission; Antitrust, “Perspectives on the Future Direction of Antitrust,” vol. 22

About thirty years ago, antitrust jurisprudence began to focus on economics rather than populist slogans. After some initial resistance, this new approach gained wide acceptance. Unfortunately, some courts have not recognized that economics is still an evolving discipline, and have failed to apply William Baxter’s admonition that a “sensible antitrust policy” should be “based on whatever it is we know at any particular moment about the economics of industrial organization.”

This failure is illustrated by three recent FTC defeats in the federal courts. Each case had special factual issues, but a common thread was the inability of the courts to absorb unfamiliar economic ideas.

The Eleventh Circuit’s 2005 Schering opinion on litigation settlements between pioneer and generic drug manufacturers was dead wrong on the burden of proof when infringement is disputed and in its application of the substantial evidence standard. But the court also was unable to appreciate the unusual economics of the industry, which enabled generics to profit more from litigation settlement than from outright victory. The usual judicial preference for settlements will simply eviscerate the Hatch-Waxman Act, designed to encourage litigation to judgment in this particular area.

The D.C. District Court in Whole Foods (2007) focused on price effects, usually a traditional and sound approach. But price was not the only significant dimension of competition between the merging grocery chains. They were the two largest providers of an innovative and differentiated shopping experience for consumers of premium “organic” foods. Whole Foods was not interested in the Wild Oats stores or its cash flow; it wanted to eliminate a chain that presented a unique competitive threat. We know that because the CEO said so, in unusually candid statements that the court simply ignored.

The D.C. Circuit Court in Rambus (2008) ignored factual findings, applied a questionable evidentiary standard, and wrongfully concluded that Rambus might have merely exploited an existing monopoly. It also failed to fully appreciate that demand side distortions (in the “market” for competing technologies) are just as economically harmful as the supply side distortions with which antitrust is usually concerned, and that proof of deception can depend on the reasonable subjective expectations of an audience.

These decisions also indicate that many courts no longer recognize the FTC’s special mission to provide purely prospective antitrust guidance. An extensive body of judicial precedent may have undercut the importance of this mission, and private litigation realities diminish prospects for purely prospective guidance. Out of frustration, the FTC may begin to rely more on its Section 5 unfairness authority. This could lessen the risk of retroactive consequences in private litigation but could also awaken concerns about revival of less disciplined agency discretion. More aggressive deployment of Section 5 would not necessarily be a retrograde step, however, so long as the agency remembers that freedom to enter uncharted territory beyond precedent is not the same as freedom to ignore evolving economic principles.

#### Plan’s clarity doesn’t solve Court Circumvention.

Daniel Crane 21. Frederick Paul Furth Sr. Professor of Law at UMich (, Antitrust Antitextualism, 96 Notre Dame L. Rev. 1205 (2021). Available at: <https://scholarship.law.nd.edu/ndlr/vol96/iss3/7>

Limitations of Writing Clear Statutes This Article has shown that, historically, the judiciary has treated the antitrust statutes as broad delegations to the courts to create a pragmatic common law of competition, even when the statutes plainly said something more specifically prohibitory. What, then, are the strategies available to a reformist Congress seeking to rein in business power through remedial antitrust legislation? The one strategy that does not seem especially promising is simply writing clearer statutes. The antitrust statutes that the courts wrote down in favor of big business did not suffer from a lack of clarity or, if they did, not in the textual implications the courts chose to ignore. Strikingly, the courts continue to insist that the antitrust statutes are indeterminate delegations of common-law power, even while admitting in candor that they have simply chosen to ignore the statutes’ plain meaning in favor of a common method of deciding antitrust cases. For instance, in Professional Engineers, Justice Stevens remarked for the Court that “the language of § 1 of the Sherman Act . . . cannot mean what it says” and therefore that Congress must not have intended “the text of the Sherman Act to delineate the full meaning of the statute or its application in concrete situations,” thus justifying the courts in shaping the “statute’s broad mandate by drawing on common-law tradition.”255 Given over a century’s tradition of interpreting antitrust statutes as invitations to continue a common-law process whatever else is suggested by the statute’s text, it is difficult to see how simply accumulating stern new language in new texts would lead to a different result.

## Cap K

### Framework Top---2NC

#### It means they can’t access the case until they’ve defended their ideology.

Mathieu HILGERS, Laboratory for Contemporary Anthropology, Université Libre de Bruxelles, and Centre for Urban and Community Research, Goldsmiths, University of London, 13 [“Embodying neoliberalism: thoughts and responses to critics,” *Social Anthropology*, Vol. 21, No. 1, February 2013, p. 75-89, Accessed Online through Emory Libraries]

The implementation of neoliberalism goes far beyond the mere appearance of its policies. It cannot be reduced to the application of a programme or to institutional changes. This implementation is deployed within a triangle constituted by policies, institutions and dispositions. This last component has remained at the margins of our debate. If we wish to grasp the depth of the changes that neoliberalism causes, we cannot neglect its effects on systems of dispositions. To analyse this impact, it is necessary to describe the symbolic operations that give rise to government-enabling representations as well as to categories that support neoliberalism and are propagated by it. This task requires accounting for the historicity of the spaces in which policies are put into action, the intentional constructions but also involuntary historical formations in which they become entangled, and the transactions, negotiations, associations, working misunderstandings and chains of translation that give them their flexibility and support their deployment.

Neoliberalism is embodied in the agents and representations through which it is put into action. Through a historical process, the dispositions that it generates become, as Bourdieu would say, durable and transposable, as well as increasingly autonomous from their initial conditions of production. As such, when these conditions disappear or transform, or when policies are modified or abandoned, some of them spread into other social spaces and contexts and take on new meanings. Therein lies the importance of broadening the notion of ‘implementation’, so that we may appreciate the role of culture in the dynamics of neoliberal expansion. It is precisely (but not only) because of the embodiment of neoliberalism emphasized in this paper that at the moment we are nowhere near the end of the neoliberal era. Thus I arrive, by a different path, at the same observation that Kalb (2012) formulated in this debate: today it is capitalism that is in crisis, not neoliberalism.

In some parts of the world, information that helps people to stabilize their perceptions, practices and activities is mainly produced within a neoliberal context, forms and procedures. The figures, statistics, norms, audits and discourses that I evoke in this paper are fashioned by a constellation of institutions; they condition, train and shape a mental and practical space. They impact the way in which one conceives and carries out research. Indeed, academia is not outside of this neoliberal world; on the contrary, it is a centre of development and support for neoliberalism. While many academics are critical of neoliberalism, this does not mean that they have a permanent deconstructionist relation to the world and to themselves. In many parts of academia, a neoliberal way of functioning has become common sense. If neoliberalism is so present in our mind and in the way in which academia is designed and works today, it appears more than necessary for researchers to consider how this shapes their relation to production of knowledge.

If we wish to avoid the eviction of critical perspectives in this time of crisis, if we hope to have some chance to think within but beyond the neoliberal age, if we want to develop alternatives and different horizons, one of the first things to do is to decolonize our mind by objectifying our own neoliberal dispositions. The reflexive return to the tools of analysis is thus ‘not an epistemological scruple but an indispensable pre-condition of scientific knowledge of the object’ (Bourdieu 1984: 94), if we are to prevent the object and its definition from being dictated to the researcher by non-scientific logics, such as the necessity of being visible and marketable in the academy. To achieve a break with neoliberal common sense, anthropologists could follow Bourdieu (2003) in his will to engage in a ‘participant objectivation’.14 It is clearly this kind of objectivation even if not phrased in such terms that has led some researchers to call for a radical change in the academy, supported by new arguments and put into practice through the initiation of a ‘slow science’ movement.15 In some places, academia is still a space of critiques and alternatives.

#### Neg gets the equal right to test desirability, not feasibility.

Paul Mason 7-17-15. Writer of Live Working or Die Fighting: How the Working Class Went Global and [PostCapitalism: A Guide to our Future](https://en.wikipedia.org/wiki/PostCapitalism:_A_Guide_to_our_Future). Culture and Digital Editor of Channel 4 News. Visiting Professor at the University of Wolverhampton. Bachelors in Music and Politics from the University of Sheffield. "The end of capitalism has begun," Guardian, https://www.theguardian.com/books/2015/jul/17/postcapitalism-end-of-capitalism-begun

The power of imagination will become critical. In an information society, no thought, debate or dream is wasted – whether conceived in a tent camp, prison cell or the table football space of a startup company. As with virtual manufacturing, in the transition to postcapitalism the work done at the design stage can reduce mistakes in the implementation stage. And the design of the postcapitalist world, as with software, can be modular. Different people can work on it in different places, at different speeds, with relative autonomy from each other. If I could summon one thing into existence for free it would be a global institution that modelled capitalism correctly: an open source model of the whole economy; official, grey and black. Every experiment run through it would enrich it; it would be open source and with as many datapoints as the most complex climate models. The main contradiction today is between the possibility of free, abundant goods and information; and a system of monopolies, banks and governments trying to keep things private, scarce and commercial. Everything comes down to the struggle between the network and the hierarchy: between old forms of society moulded around capitalism and new forms of society that prefigure what comes next. ... Is it utopian to believe we’re on the verge of an evolution beyond capitalism? We live in a world in which gay men and women can marry, and in which contraception has, within the space of 50 years, made the average working-class woman freer than the craziest libertine of the Bloomsbury era. Why do we, then, find it so hard to imagine economic freedom? It is the elites, cut off in their dark-limo world, whose project looks forlorn It is the elites – cut off in their dark-limo world – whose project looks as forlorn as that of the millennial sects of the 19th century. The democracy of riot squads, corrupt politicians, magnate-controlled newspapers and the surveillance state looks as phoney and fragile as East Germany did 30 years ago. All readings of human history have to allow for the possibility of a negative outcome. It haunts us in the zombie movie, the disaster movie, in the post-apocalytic wasteland of films such as [*The Road*](https://www.theguardian.com/film/movie/131971/road) or [*Elysium*](https://www.theguardian.com/film/2013/aug/22/elysium-review). But why should we not form a picture of the ideal life, built out of abundant information, non-hierarchical work and the dissociation of work from wages? Millions of people are beginning to realise they have been sold a dream at odds with what reality can deliver. Their response is anger – and retreat towards national forms of capitalism that can only tear the world apart. Watching these emerge, from the pro-Grexit left factions in Syriza to the [Front National](https://www.theguardian.com/world/marine-le-pen) and the isolationism of the American right has been like watching the nightmares we had during the [Lehman Brothers](https://www.theguardian.com/business/lehmanbrothers) crisis come true. We need more than just a bunch of utopian dreams and small-scale horizontal projects. We need a project based on reason, evidence and testable designs, that cuts with the grain of history and is sustainable by the planet. And we need to get on with it.

#### 4. Invert your standard for solvency.

Eugene McCarraher 19. Associate Professor of Humanities at Villanova University, PhD in US Cultural and Intellectual History from Rutgers University; The Enchantments of Mammon: How Capitalism Became the Religion of Modernity, 11/12/19, p. 15-18

Words such as “paradise” or “love” or “communion” are certainly absent from our political vernacular, excluded on account of their “utopian” connotations or their lack of steely-eyed “realism.” Although this is a book about the past, I have always kept before me its larger contemporary religious, philosophical, and political implications. The book should make these clear enough; I will only say here that one of my broader intentions is to challenge the canons of “realism,” especially as defined in the “science” of economics. As the master science of desire in advanced capitalist nations, economics and its acolytes define the parameters of our moral and political imaginations, patrolling the boundaries of possibility and censoring any more generous conception of human affairs. Under the regime of neoliberalism, it has been the chief weapon in the arsenal of what David Graeber has characterized as “a war on the imagination,” a relentless assault on our capacity to envision an end to the despotism of money.24 Insistent, in Margaret Thatcher’s ominous ukase, that “there is no alternative” to capitalism, our corporate plutocracy has been busy imposing its own beatific vision on the world: the empire of capital, with an imperial aristocracy enriched by the labor of a fearful, overburdened, and cheerfully servile population of human resources. Every avenue of escape from accumulation and wage servitude must be closed, or better yet, rendered inconceivable; any map of the world that includes utopia must be burned before it can be glanced at. Better to follow Miller’s wisdom: we already inhabit paradise, and we can never make ourselves fit to live in it if we obey the avaricious and punitive sophistry professed in the dismal pseudoscience. The grotesque ontology of scarcity and money, the tawdry humanism of acquisitiveness and conflict, the reduction of rationality to the mercenary principles of pecuniary reason—this ensemble of falsehoods that comprise the foundation of economics must be resisted and supplanted. Economics must be challenged, not only as a sanction for injustice but also as a specious portrayal of human beings and a fictional account of their history. As a legion of anthropologists and historians have repeatedly demonstrated, economics, in Graeber’s forthright dismissal, has “little to do with anything we observe when we examine how economic life is actually conducted.” From its historically illiterate “myth of barter” to its shabby and degrading claims about human nature, economics is not just a dismal but a fundamentally fraudulent science as well, akin, as Ruskin wrote in Unto This Last, to “alchemy, astrology, witchcraft, and other such popular creeds.”25 Ruskin’s courageous and bracing indictment of economics arose from his Romantic imagination, and this book partakes unashamedly of his sacramental Romanticism. “Imagination” was, to the Romantics, primarily a form of vision, a mode of realism, an insight into the nature of reality that was irreducible to, but not contradictory of, the knowledge provided by scientific investigation. Romantic social criticism did not claim the imprimatur of science as did Marxism and other modern social theories, yet the Romantic lineage of opposition to “disenchantment” and capitalism has proved to be more resilient and humane than Marxism, “progressivism,” or social democracy. Indeed, it is more urgently relevant to a world hurtling ever faster to barbarism and ecological calamity. I wrote this book in part out of a belief that many on the “left” continue to share far too much with their antagonists: an ideology of “progress” defined as unlimited economic growth and technological development, as well as an acceptance of the myth of disenchantment that underwrites the pursuit of such expansion. The Romantic antipathy to capitalism, mechanization, and disenchantment stemmed not from a facile and nostalgic desire to return to the past, but from a view that much of what passed for “progress” was in fact inimical to human flourishing: a specious productivity that required the acceptance of venality, injustice, and despoliation; a technological and organizational efficiency that entailed the industrialization of human beings; and the primacy of the production of goods over the cultivation and nurturance of men and women. This train of iniquities followed inevitably from the chauvinism of what William Blake called “single vision,” a blindness to the enormity of reality that led to a “Babylon builded in the waste.”26 Romantics redefined rather than rejected “realism” and “progress,” drawing on the premodern customs and traditions of peasants, artisans, and artists: craftsmanship, mutual aid, and a conception of property that harkened back to the medieval practices of “the commons.” Whether they believed in some traditional form of religion or translated it into secular idioms of enchantment, such as “art” or “beauty” or “organism,” Romantic anticapitalists tended to favor direct workers’ control of production; the restoration of a human scale in technics and social relations; a sensitivity to the natural world that precluded its reduction to mere instrumental value; and an apotheosis of pleasure in making sometimes referred to as poesis, a union of reason, imagination, and creativity, an ideal of labor as a poetry of everyday life, and a form of human divinity. In work free of alienation and toil, we receive “the reward of creation,” as William Morris described it through a character in News from Nowhere (1890), “the wages that God gets, as people might have said time agone.”27 Rendered gaudy and impoverished by the tyranny of economics and the enchantment of neoliberal capitalism, our sensibilities need replenishment from the sacramental imagination. As Americans begin to experience the initial stages of imperial sclerosis and decline, and as the advanced capitalist world in general discovers the reality of ecological limits, we may find in what Marx called the “prehistory” of our species a perennial and redemptive wisdom. We will not be saved by our money, our weapons, or our technological virtuosity; we might be rescued by the joyful and unprofitable pursuits of love, beauty, and contemplation. No doubt this will all seem foolish to the shamans and magicians of pecuniary enchantment. But there are more things in heaven and earth than are dreamt of on Wall Street or in Silicon Valley.

#### The idea that “there is no alternative” ensuring change becomes impossible.

Detlev ZWICK 13, Associate Professor of Marketing at Schulich School of Business, York University, Toronto [“The myth of metaphysical enclosure: A second response to Adam Arvidsson,” *Ephemera*, Vol. 13, No. 2, May 2013, p. 413-419, Accessed Online through Emory Libraries]

My initial response to Adam Arvidsson's excellent and provocative essay entitled 'The Potential of Consumer Publics,' was met by the author with a thoughtful response in which he provides, I think in very helpful ways, some clarification about the politico-ideological underpinnings of his notions of the productive consumer public and the reputation (or ethical) economy (see also Arvidsson, 2008; Arvidsson, 2009). As his defense against my charges illustrates, Arvidsson represents a position that, with Zizek, we could call 'Fukuyamaist'. This position holds that the collapse of the Communist Bloc put an end to the competition between ideological and economic systems, with the result that

liberal-democratic capitalism is accepted as the finally found formula of the best possible society; all one can do is to render it more just, tolerant and so on. The simple but pertinent question arises here: if liberal-democratic capitalism is, if not the best, then the least bad form of society, why should we not simply resign ourselves to it in a mature way, even accept it wholeheartedly? (Zizek, 2009: 52)

Is this not exactly the question Arvidsson is posing in his response? Is he not asking us to accept the reality of neoliberal capitalism and get on with it? At his Fukuyamaist best, Arvidsson suggests that to keep criticizing what cannot be changed constitutes little more than the immature trolling of Utopian dreamers and tenured radicals, especially when unaccompanied by a clear description of the solution to the problem. In principle, there are two main charges leveled by Arvidsson against my critique of his argument.

First, he rejects my critique for being naïve and Utopian, but he does so not because I suggest that his productive consumer publics reproduce neoliberal capitalist logic. On the contrary, Arvidsson himself seems to agree with my assessment that his concepts of reputation economy and productive consumer publics are at the same time both product and producer of communicative capitalism. What he objects to is the anti-capitalist position from which I state my critique, because, as already mentioned above, Arvidsson has concluded that the rule of capitalism cannot be changed; it is, to put it in Zizek's terms, the real of our lives, a real so powerful that, as Fredric Jameson (2003: 73) puts it, 'it is easier to imagine the end of the world than to imagine the end of capitalism'.

Second, Arvidsson faults my response for articulating a critique without at the same time providing my own constructive vision. In other words, criticizing his neoliberal fantasies is fine as long as it is constructive, which for him means accepting his Fukuyamaist position and thus focusing one's criticism on how to make capitalism more humane and tolerable. After having been too Utopian in my anti-capitalist critique, here I am not Utopian enough for Arvidsson because I refuse to develop a vision of a more just, democratic, tolerant and environmentally sustainable capitalism.

Before I formulate a short response to these two charges, I would like to emphasize that as far as the assessment of Arvidsson's original argument is concerned, we actually do not have a substantial disagreement. My main claim has been that in his essay Arvidsson is advancing a conservative notion of social change that celebrates the global subsumption of digital labour as some kind of postmodern capitalist communism; an argument and vision that very much recalls Hardt & Negri's (2004) notion of the multitude as the new positive form of economic and social productivity and new radical political subjectivities. For Negri (2008), value forms created by autonomous digital collaboration and co- creation by the multitude - or as Arvidsson puts it, 'by putting common resources to work in processes that unfold beyond the direct control of markets and hierarchies' - are already just one small step removed from communism. No matter that the capitalists appropriate autonomous labour, commodify all forms of life and make the rules of the new productive game. Capitalists here are mere parasites leeching off the labour of the multitude and they can, at any moment, be cut off from the various forms of collaboration and common consumptive production, bringing about something we could 'call commonism if we want, or simply an "informational mode of production" to use a less loaded term'.

As I wrote in my earlier response, I see many problems with this theory of informational communism outside markets and hierarchies, not least being that the most convincing examples presented by Arvidsson of such an informal mode of production rely for their continuous existence and viability on markets and hierarchies. But again, the main point here is not that I believe Arvidsson's theory of the productive consumer public is inconsistent and in the final analysis misguided and naïve1. The main point I was trying to make in my initial response was that despite all his anti-capitalist language, Arvidsson is in actuality presenting a conservative vision of social change that takes for granted the continuation of neoliberal capitalism, albeit a version of neoliberal capitalism that over time somehow learns to accommodate and tolerate other forms of economic production and political subjectivities. In short, a neoliberalism with a human face (which is good enough for Arvidsson to move 'beyond neoliberalism', as if just saying it will make it so). And it turns out that Arvidsson, in his reply, admitted that much. Along similar lines, Arvidsson repeatedly states his disappointment about my refusal to

recognize that notions like peer-to-peer production, high-tech gift economies and the like have the power to mobilize the energies of the subjects that are most likely to become the pioneers of a new political vision - today's version of the skilled workers that have taken the lead in most modern political movements. Even though the social theory that they produce might be shallow and imperfect... we cannot simply dismiss these versions as mere ideologies to be replaced by our theoretically more refined ideologies.

I can assure you that I have no difficulty recognizing the real existence of the self- branding, entrepreneurial competitor who, via skilled knowledge work, hopes to change the world. There are plenty of them in my classroom. And I am not concerned about the depth and perfection of the social theories driving their visions for the future. What I am concerned about are the processes that constitute these students as neoliberal subjectivities in the first place and subsequently limit their desire for a better world - a desire that, of course, we should encourage and not dismiss a priori - to variations on neoliberal capitalism (variously called social entrepreneurism, corporate social responsibility, conscious capitalism and so on).

Thus, my point was not at all to moralize about the effects of communicative capitalism but to decry two things: first, that Arvidsson elevates this neoliberal subject to be the legitimate historical subject of radical transformation, and second, that Arvidsson seems to believe that the radical transformation ushered in by this subject is one we should desire. It is one thing to acknowledge the current hegemony of neoliberal governmentality. I have no problem with that. That neoliberalism is a radical social force is plain for all to see. It is something different entirely, however, to suggest, as Arvidsson appears to, that the competitive, self-branding and entrepreneurial subject is the only possible subject we can imagine today - that this subject should be allowed to create the future world. Here, we have to become normative and demand alternatives.

### Advantage 1---2NC

#### 1. The plan’s delusional investment in markets and courts to determine when energy prices are too high or too low leads to infinite consumption that proves the link turns the case.

John Gibbons 21. Environmental journalist and co-author of the Routledge International Handbook of Environmental Journalism. Resolving the paradox of satisfying the needs of all while using far less energy. Irish Times. 5-6-2021. https://www.irishtimes.com/news/science/resolving-the-paradox-of-satisfying-the-needs-of-all-while-using-far-less-energy-1.4542693

‘Drastic changes’

“Our intention is to imagine a world that is fundamentally transformed, where state-of-the-art technologies merge with drastic changes in demand to bring energy (and material) consumption as low as possible, while providing decent material conditions and basic services for all”, the authors state. Only through such a radical transformation, they add, can human needs be met within critical planetary boundaries.

At present, those daring to suggest alternatives to our current model of constant economic growth or promoting steady state economics are likely to be dismissed as new age cultists or “degrowth fetishists” trying to make everyone poor.

The new study, according to lead author, Joel Millward-Hopkins of the University of Leeds, “offers a response to the cliched populist objection that environmentalists are proposing that we return to living in caves”.

The paper points out that “inequality and especially affluence, are now widely recognised as core drivers of environmental damage”. Consider that in the year since the Covid-19 pandemic began, the collective wealth of the world’s billionaires has ballooned by some $3.9 trillion (€3.2 trillion) while hundreds of millions of the world’s poorest people were plunged deeper into poverty and financial insecurity as a result of the pandemic.

Trickle-down economics

This further debunks the concept known as trickle-down economics, the notion that tax breaks for the wealthy would somehow flow towards wider society. Resources are instead being rapidly siphoned upwards towards the already wealthy and economically powerful.

The paper points out that current levels of energy usage “underpin numerous existential crises, resource scarcity and the geopolitical instabilities these issues can catalyse, especially in a growth-dependent global economy”. While there have been significant improvements in energy efficiency, these have “largely served to boost productivity and enable further growth”.

Crucially, beyond a certain point, increases in energy use in a given society deliver little or no additional benefits to that society. The study envisages, with the aid of technologies, radical demand-side transformations that largely eliminate excessive consumption and focuses available resources instead on providing the conditions required for flourishing. These include basic physical health and safety, access to clean air and safe water, good quality (largely plant-based) nutrition, and the opportunity for social and political participation.

Resolving the paradox of how to satisfy the needs of all while using far less energy and fewer resources depends on sharp global reductions in meat-eating, down by some 85 per cent in rich countries. A massive expansion of public transport globally would greatly reduce energy and emissions while allowing people to meet their transport needs without the expense of owning and running resource-intensive private cars.

Globally, much of the existing housing stock needs to be replaced over time with modern buildings with very low heating and cooling energy requirements. This would be another vital step in achieving decent living conditions with far less energy than at present.

#### 2. High energy prices will recur due to endless supply chain disruptions---that makes aggressive Chinese force inevitable.

Stephanie Neileditor 20. Editor in Chief of Automation World . The Pandemic is Shaping the Future Supply Chain. Automation World. 8-24-2020. https://www.automationworld.com/factory/supply-chain-management/article/21172689/the-pandemic-is-shaping-the-future-supply-chain

According to Bruce McIndoe, president of McIndoe Risk Advisory, there are five megatrends that will shape the future of business and the world: globalization, demographics, climate change, resource scarcity, and technology innovation. Each are interlinked and influence global supply chains as the world supports a growing global population.

McIndoe briefly described these trends:

Globalization: As a result of an uncoupling movement between the U.S. and China and vulnerabilities in the global supply chain that the pandemic exposed, there will be a shift to deglobalization via onshoring or nearshoring.

Demographics: As we add two billion more people in the next 30 years, we’ll need more water, food, and housing to support them.  It’s estimated that 80% of these new citizens will live in cities and by 2050 we’ll see cities with 50-to-100 million people. Based on urban density, growth of the middle class, and climate change, we’ll need to build an excess of 1 billion more housing units.   “In the next 30 years, we essentially will need to rebuild the entire global housing stock since the beginning of mankind. That is a huge demand,” McIndoe said.

Climate change: This can ultimately become the weak link in the supply chain. The greater frequency and severity of climate hazards create more disruptions in the global supply chain by interrupting production, hampering transportation, raising prices, and ultimately hurting corporate profits.

Resource scarcity: Here, we are the issue—humans are massive consumers of natural resources, and by 2050 we will consume 140 billion tons of minerals, ore, fossil fuels, and biomass per year. That’s three times the current consumption rate. We must decouple economic growth from massive resource use, McIndoe said. In addition, water and food are life or death resources for all of us. Lack of access to water has been catalyst to war and will be a major driver for human migration—which creates friction and unrest. Lack of access to food, too, can drive people to be aggressive which can evolve into civil unrest.

#### 3. Only the alternative solves grid collapse---the plan fueld the endless consumption of mineral cycles---that’s Allinson---copper, lithium, manganese hit bottlenecks.

Nafeez Ahmed 20 M.A. in contemporary war & peace studies and a DPhil (April 2009) in international relations from the School of Global Studies at Sussex University. Capitalism Will Ruin the Earth By 2050, Scientists Say. Vice. 10-21-2020. https://www.vice.com/en/article/v7m48d/capitalism-will-ruin-the-earth-by-2050-scientists-say

Endless growth will generate minerals scarcity within decades

The EV transition is, in short, a massive industrial project. Electrification of roads and rail will require upgraded smart grids, complex routes connected to high power lines, and regular battery-swap stations. The paper explores several scenarios to explore how such a transition would take place.

In a continuing GDP growth scenario, the authors note that the economy begins to stagnate “due to peak oil limits at around 2025-2040,” but GDP is able to continue growing thanks to the EV transition. This shows that the reduction in liquid fuels in transportation can play a powerful role in avoiding “energy shortages in the economy as a whole.”

But then the economy hits the limits of mineral and material production to sustain this electric transition—in just three decades. And this is even with high levels of minerals recycling.

By 2050, in this scenario, the EV transition will “require higher amounts of copper, lithium and manganese than current reserves. For the cases of copper and manganese the depletion is mainly due to the demand from the rest of the economy,” but most lithium demand “is for EV batteries,” and this alone “depletes its estimated global reserves.”

Mineral depletion takes place even with “a very high increase in recycling rates” in a continuing GDP growth scenario.

In one such scenario, the authors apply what they consider to be realistic upper level recycling rates of 57 percent, 30 percent and 74 percent to copper, lithium and manganese respectively. These are based on extremely optimistic projections of recycling capabilities relative to their costs.

But still they find that even these high recycling rates wouldn’t prevent depletion of all current estimated reserves by 2050. The conclusion corroborates findings of other studies, estimating an expected bottleneck for lithium by 2042-2045 and for manganese by 2038-2050.

Actual bottlenecks could come even earlier because existing studies—including the MEDEAS model—don’t account for material requirements needed for internal wiring, the EV motor, EV chargers, building and maintaining the grid to connect and charge EV batteries, the catenaries to electrify the railways, as well as inherent difficulties in recycling metals.

#### 4. The plan continues the back-and-forth escalation process between China and the US over prices and trade. It recreates the global oligarchy that creates geopolitical tensions with China, ensures military conflict

Cecilia Rikap 21. Professor of Economics and Coordinator of YSI States and Markets Working Group, Institute for New Economic Thinking. “The Interplays of the United States, China and their Intellectual Monopolies.” *Capitalism, Power and Innovation Intellectual Monopoly Capitalism Uncovered*. Routledge. 2021. 77-80.

As Strange (1996) anticipated, the decline of the state’s power vis-à-vis corporations can be partly explained by the acceleration of technological change, which tilts the scale in favour of corporations. As identified by Feenberg (2010, p. 5) “political democracy is largely overshadowed by the enormous power wielded by the masters of technical systems”. Indeed, we should consider that powerful intellectual monopolies pass over their home states in specific contexts or respects.11 With this in mind we reconceived core states as one of capitalism’s multiple powerful actors.

Beyond explicit confrontations, since intellectual monopolies organize and plan production and innovation networks taking place in different countries, they generate an overlap of political realms with sometimes contradictory rules and norms. Who oversees production and innovation inside the networks organized by intellectual monopolies? The latter or the different states where intellectual monopolies’ production or innovation networks are based? To whom subordinate firms and other organizations are accountable for their actions? Their state or the intellectual monopoly coordinating the network? The simple answer is both. The complicated part is to identify what happens when they are in contradiction, and what are the consequences of this complex set of power structures for workers and subordinated organizations.

Intellectual monopolies have replaced state functions as policymakers. An extreme example recently disclosed is Eric Schmidt, Alphabet’s former executive chairman, advising the US federal government while still managing Alphabet. He was the chair of the US Defense Innovation Board, which recommended the use of artificial intelligence to the US Department of Defense. He also chaired the National Security Commission on Artificial Intelligence which advises the US Congress on analogous topics (Klein, 2020).

The government’s threat over China is – at least to some extent – driven by US data-driven intellectual monopolies’ concern over Chinese rivals like Alibaba, Tencent and Huawei. The CEOs of Google, Amazon, Facebook and Apple made this clear in their testimonies in the 2020 US Congress Hearing. As a remedy, Schmidt had been pushing for more public investment in research related to artificial intelligence and tech-enabling infrastructure (such as 5G) (Klein, 2020). Furthermore, these data-driven intellectual monopolies make their own rules and norms for their digital republics and, to some degree, replace the role of states. Facebook’s founder and chief executive, Mark Zuckerberg, states it clearly

Every day, platforms like Facebook have to make trade-offs on important social values – between free expression and safety, privacy and law enforcement, and between creating open systems and locking down data.12

(Mark Zuckerberg, Feb 16, 2020)

And immediately afterwards, he advocates for more public regulations and informs that Facebook is working together with different governments to that end. A similar claim was raised by Sundar Pichai, arguing that artificial intelligence needs to be regulated.13

The division of power is not clear, given that corporate power and planning capacities go beyond national frontiers and beyond the capital they own. Overall, there is a legal vacuum in the reach of each state’s power and where the power of the intellectual monopoly controlling a portion of global production and innovation begins. This vacuum allows intellectual monopolies to expand their power and profits.

Another source of conflict between intellectual monopolies and core states concerns the relative absence of the usual benefits of being home to big corporations: employment generation and tax payments. Considering their earnings, global leading corporations do not generate in their home countries expected employment due to outsourcing and offshoring (of production and innovation), which is particularly the case of US and also European intellectual monopolies. This has contributed to the rise in inequalities in these regions. The consequent social distress put pressure on stringent regulations. In the US, we referred in Section 2.1 to the 2017 Tax and Jobs Act (Public Law 115-97), but changes have not been significant.

US intellectual monopolies are masters of tax avoidance. As we mentioned before, operations leading to lower tax bills and financialized profits are easier for companies with higher shares of intangible over tangible assets. Offshoring IPRs to countries where corporations are not required to pay taxes for their intellectual property is a mechanism frequently used to divert profits to tax havens (Bryan et al., 2017) (see Chapter 7 on Apple’s case). By the end of 2016, the top ten companies in terms of offshored savings were: Apple, Microsoft, Cisco, Oracle, Alphabet, Johnson & Johnson, Pfizer, Qualcomm, Amgen and Merck (Pozsar, 2018).

In China, whose global intellectual monopolies sprang from the sustained stimulus and protection of its state, the latter’s central planning capacity is starting to find limits vis-à-vis new intellectual monopolies. These corporations were not born as the chosen ones by the state, but still enjoyed the benefits of China’s protectionism. The recent case of Bytedance provides a good example. The company was spending its Chinese profits to expand its unprofitable business in the US when the US government banned its blockbuster TikTok app. Bytedance was not among Beijing’s favoured companies, among others, because of the difficulties in controlling the videos uploaded to TikTok (Yang, 2020). Regardless of the end of the story between TikTok, the US and Chinese governments and US intellectual monopolies as potential buyers for part of TikTok’s business, what the case put forward was a possible surge of clashes between emerging Chinese (data-driven) intellectual monopolies and their state. Indeed, in late 2020 the Chinese state delayed Ant Group’s IPO, followed by the introduction of antitrust regulation for digital companies.

Meanwhile, Europe remained focused on increasing regulations on foreign data-driven intellectual monopolies, including different accusations of excessive market power and unfair competition. Unlike previous stages in capitalism, Europe risks playing in the subordinate side, where the peripheries have historically been and generally remain. Germany’s fear of falling behind the US and China’s tech giants should also be read as a broader European concern to lag (far) behind those core economies.14 Overall, Europe and Japan are latecomers of the digital economy, and this space is being filled primarily by China, emerging as a digital technological power (UNCTAD, 2019). Moreover, with a drop of eight companies between March 2009 and December 2019, Europe’s share of global top 100 corporations in market capitalization fell from 27% to 15%. This drop was taken over by the US (PWC, 2020). Regulating the digital economy could thus be seen as Europe’s geopolitical rebalancing move.15

5 Final remarks

In this chapter, we argued that core states and certain corporations built a mutually beneficial relationship. We identified US and Chinese policies that contributed to the emergence and spread of global intellectual monopolies. Likewise, we elaborated on how these corporate leaders sustain and expand their respective countries’ geopolitical power. Nevertheless, we also addressed states’ concerns and the overall tensions of the juxtaposition of power between core states and intellectual monopolies.

The US state cannot afford to lose its intellectual monopolies since its global hegemon power significantly depends on those companies. Likewise, it cannot afford to let its intellectual monopolies be given their consequences for income and wealth concentration resulting in increasing social unrest. From the US state perspective, the technological war with China is necessary to remain the only superpower. Nevertheless, this conflict is also a powerful device to redirect public attention and blame – as it has always been the case of the United States – an “other” of the internal consequences of home (and global) capitalism.

Neither can the Chinese state afford to lose its alliance with its intellectual monopolies. Its national innovation system and geopolitical power are based on a strong partnership – although not without tensions – between China’s state and intellectual monopolies, the only ones challenging the US and its intellectual monopolies.

All in all, the US and Chinese states have benefited from their respective intellectual monopolies to build and reinforce their geopolitical power. Meanwhile, in the rest of the world, knowledge and data extractivisms are further expanding inequalities, diminishing social well-being and curtailing development opportunities (see Chapters 11–13). The resulting world scenario is a ticking bomb.

A missing piece in this puzzle that will be addressed in future research concerns integrating international organizations to our analysis, seeking to understand how intellectual monopolies influence them and their role as arenas of core states’ contest for global hegemony. Let us just point out that each time the US withdraws from international coordination, China moves forward. Remarkably, during Trump’s administration, the US withdrew from international treaties and organizations, putting into question its historical openness. A possible interpretation could be that the hegemon fosters an open world economy but as far as it benefits from it.

To conclude, beyond the focus on the US and China, this chapter has also made self-evident that unfolding the interplay between state and corporate power is always context-dependent. While in some contexts the state rules over global leader corporations, the latter overcome even core states’ power in other contexts. As capitalism develops through the interplay of its powerful actors, it is not possible to anticipate concrete outcomes of such a multifaceted relationship. Neither can we anticipate the counter-hegemonic tendencies that, as Cox (1981) emphasized, generally emerge to oppose the state and world order structures of capitalism. The institutions that will lead the counter-offensive to intellectual monopoly capitalism remains to be seen.

### AT: Hill Evidence

#### 2. First argument is Energy storage. Doesn’t say it’s coming now or is possible. Mineral cycles---that’s Allinson---copper, lithium, manganese hit bottlenecks.

Nafeez Ahmed 20 M.A. in contemporary war & peace studies and a DPhil (April 2009) in international relations from the School of Global Studies at Sussex University. Capitalism Will Ruin the Earth By 2050, Scientists Say. Vice. 10-21-2020. https://www.vice.com/en/article/v7m48d/capitalism-will-ruin-the-earth-by-2050-scientists-say

Endless growth will generate minerals scarcity within decades

The EV transition is, in short, a massive industrial project. Electrification of roads and rail will require upgraded smart grids, complex routes connected to high power lines, and regular battery-swap stations. The paper explores several scenarios to explore how such a transition would take place.

In a continuing GDP growth scenario, the authors note that the economy begins to stagnate “due to peak oil limits at around 2025-2040,” but GDP is able to continue growing thanks to the EV transition. This shows that the reduction in liquid fuels in transportation can play a powerful role in avoiding “energy shortages in the economy as a whole.”

But then the economy hits the limits of mineral and material production to sustain this electric transition—in just three decades. And this is even with high levels of minerals recycling.

By 2050, in this scenario, the EV transition will “require higher amounts of copper, lithium and manganese than current reserves. For the cases of copper and manganese the depletion is mainly due to the demand from the rest of the economy,” but most lithium demand “is for EV batteries,” and this alone “depletes its estimated global reserves.”

Mineral depletion takes place even with “a very high increase in recycling rates” in a continuing GDP growth scenario.

In one such scenario, the authors apply what they consider to be realistic upper level recycling rates of 57 percent, 30 percent and 74 percent to copper, lithium and manganese respectively. These are based on extremely optimistic projections of recycling capabilities relative to their costs.

But still they find that even these high recycling rates wouldn’t prevent depletion of all current estimated reserves by 2050. The conclusion corroborates findings of other studies, estimating an expected bottleneck for lithium by 2042-2045 and for manganese by 2038-2050.

Actual bottlenecks could come even earlier because existing studies—including the MEDEAS model—don’t account for material requirements needed for internal wiring, the EV motor, EV chargers, building and maintaining the grid to connect and charge EV batteries, the catenaries to electrify the railways, as well as inherent difficulties in recycling metals.

#### 3. Ther data set relies on Domestic Material Consumption.

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A number of people have asked me to respond to a piece that Andrew McAfee wrote for Wired, promoting his book, which claims that rich countries - and specifically the United States - have accomplished the miracle of “green growth” and “dematerialization”, absolutely decoupling GDP from resource use. I had critiqued the book’s central claims here and here, pointing out that the data he relies on is not in fact suitable for the purposes to which he puts it.

In short, McAfee uses data on domestic material consumption (DMC), which tallies up the resources that a nation extracts and consumes each year. But this metric ignores a crucial piece of the puzzle. While it includes the imported goods an economy relies on, it does not include the resources involved in extracting, producing, and transporting those goods. Because the United States and other rich economies have come to rely so heavily on production that happens in other countries, that side of resource use has been conveniently shifted off their books.

In other words, what looks like “green growth” is really just an artifact of globalization. Given how much the U.S. economy relies on globalization, McAfee’s data cannot be legitimately compared to U.S. GDP, and cannot be used to make claims about dematerialization. If McAfee wants to compare GDP to domestic resource consumption, then he needs to first subtract the share of US GDP that is derived from production that happens elsewhere. He does not. Nor is this possible to do.

Ecological economists have been aware of this problem for a long time. To correct for it, they use a more holistic metric called “raw material consumption,” or Material Footprint, which fully accounts for materials embodied in trade. When we look at this data, the story changes. We see that resource use in the United States hasn’t been falling at all; in fact, it has been rising along with GDP. The same is true of all other major industrial economies. There has been zero dematerialization. No green growth. And indeed when it comes to excess resource use, rich countries are the biggest problem - not the saviours that McAfee suggests they are.

#### 4. Hydrogen Extraction and Small Modular Reactors---he says there’s a slow British design of these things but no examples of how it goes global.

#### 5. CCS and Carbon Pricing.

#### Leaks cause extinction.

Kyle Ash 15 Greenpeace’s Senior Legislative Representative. One of the most quoted sources during the Copenhagen Climate Conference] “Carbon Capture SCAM” July 23, 2015 (http://www.greenpeace.org/usa/research/carbon-capture-scam/

In order for CCS to deliver a lasting benefit to the climate, the vast majority of sequestered CO2 must remain underground permanently. Geological formations proposed are sub-seabed and saline aquifers. The IEA says that depleted oil and gas reservoirs would be the most likely candidates for initial storage operations because of both their geology and proximity to industrial development.

The problem with IEA’s assertion is it is too convenient for expanding CO2-EOR operations. In addition, the multiple bore holes and wells drilled in them to find and extract oil and gas further increase the risk of leakage. The IEA also admits that, “[t] he long-term storage integrity of oil fields that have been exploited with multiple wells has yet to receive serious scientific investigation.”108

The prominent Sleipner project, a CCS storage testing site off the coast of Norway injecting CO2 scrubbed from raw gas after extraction, was found in 2012 to have many nearby fractures, warranting increased expense toward surveying the geology of such sites.109 Some scientists say it’s not a matter of if the site will leak, it’s just a question of when.110 Researchers devoted to the promise of CCS remain unconcerned.111

However, undue confidence in understanding of the geology at Sleipner is not new.112 While offshore injection may be easier for the public to accept, deepsea sites will be more difficult to monitor. There are few studies to ascertain potential effects of undersea CO2 leakage, but scientists have concluded that it may be detrimental across the ocean food web.113 CO2 leakage from sequestration could exacerbate already rising ocean acidification, since the ocean absorbs about 25% of anthropogenic CO2 pollution. This is threatening a different type of planetary disaster altogether.114

#### Too small, failed tests, funneled money to petro capital

Emma Black 21 Educational Background in continental philosophy and is a member of Socialist Alternative. Capitalism’s fake solutions to the climate crisis. 5-23-2021. https://redflag.org.au/article/capitalisms-fake-solutions-climate-crisis

While the disappearance of the outright climate denialism of the Trump era might seem cause for celebration, the new trend for spruiking the magical power of technology to solve the climate crisis is cause for serious concern. When you look beyond the headline-grabbing announcements of increased long-term ambition, the Earth Day summit amounted to little more than another case of government greenwashing of the business as usual of fossil-fuelled capitalism.

Instead of detailing the changes to be made in the here and now to reduce emissions, Biden and other world leaders instead promoted faith in the capacity of science and technology to come to the rescue at an indeterminate point in the future.

Australian Prime Minister Scott Morrison was among them. While the media highlighted the supposed gulf between a progressive, “green” Biden and the conservative, fossil-fuel-loving Morrison, they both promoted the same faith in the powers of technology. Like Biden, Morrison has vowed to invest tens of billions of dollars in developing carbon capture and storage technologies, “clean” hydrogen, “blue” carbon and “green” steel—among other colourful innovations.

In May’s federal budget, the Coalition allocated more than half a billion dollars to developing the first two of these technologies—$263.7 million for carbon capture and storage (CCS) and $275.5 million for “clean” hydrogen.

CCS mostly involves capturing C02 emissions at their source—in mines, power stations and so on—and pumping them deep underground (so the theory goes) to be permanently stored in appropriately porous and stable rock formations. But despite politicians and business leaders spruiking CCS as an easy fix for the climate crisis for decades, it has never been shown to work on anything near the scale required.

Australia already boasts the world’s largest, supposedly functional, CCS facility at Chevron’s Gorgon gas project in Western Australia. However, according to the Climate Council, “the Gorgon CCS trial has been a big, expensive failure ... capturing less than half the emissions needed to make CCS viable”. In what is only the latest in a series of problems since it became operational in 2019, Michael Mazengarb reported in Renew Economy earlier this year that pumping equipment required to clear water from the undersea formation into which the C02 is to be injected had become clogged with sand.

However, while CCS may be useless for addressing climate change, it remains an extremely useful political tool for the government—providing it with green cover while it continues to funnel money to Coalition supporters in the coal and gas industries. And of course, it’s also useful for those companies on the receiving end of the government’s “green” largesse.

Bernard Keane was right in his assessment of it as a scam in Crikey. “Fossil fuel interests”, he wrote in 2019, “sense the opportunity to extract some taxpayer funding from a government worried it might have to pretend it believes in climate change”. With this year’s budget, they hit the jackpot.

But if CCS is a scam, what about “clean” hydrogen? In his speech to the Earth Day summit, Morrison vowed to rival US innovation by investing billions in high-tech “hydrogen valleys”. “In the United States you have the Silicon Valley”, he said. “Here in Australia we are creating our own ‘Hydrogen Valleys’, where we will transform our transport industries, our mining and resource sectors, our manufacturing, our fuel and energy production.”

Hydrogen is potentially a clean energy source, but only if it’s produced using renewable energy. And to be produced at the scale required to transform the economy in the way Morrison is implying would require a lot of electricity.

In his recent contribution to the Quarterly Essay, Australia’s former chief scientist, Alan Finkel, calculates that to produce the equivalent volume of hydrogen to what Australia currently exports in liquefied natural gas would require “approximately 2,200 terawatt-hours” of electricity. This, Finkel notes, “is about eight times Australia’s total electricity generation in 2019”.

If Morrison genuinely believes the “hydrogen boom” he envisages will be based on production of renewable energy on that kind of scale, the government would have provided increased funding for renewables in the budget. None was forthcoming.

The reality is that Morrison sees the talk of “hydrogen valleys” as a way of greenwashing the same old “gas-fired recovery” he was promoting last year. The government doesn’t envisage producing hydrogen with electricity from renewables, but rather from gas. The focus on CCS gives the game away. The “hydrogen valleys” of the future will be criss-crossed with pipelines and peppered with gas-fired power stations with (we’re supposed to believe) the magic of CCS ensuring that the whole operation can nevertheless be run green and guilt-free.

“Clean” hydrogen then, just like CCS, turns out to be just another technological chimera designed to greenwash capitalism’s continuing addiction to fossil fuels.

What then of the other technological solutions being touted? Perhaps the most headline grabbing of them has been Biden’s proposed US$174 billion investment in the infrastructure for electric vehicles and their production. On the surface, again, this might sound like a good idea. Who wouldn’t want to live in a world in which we can all drive around in sleek, silent, powerful and “green” electric vehicles like Teslas?

Again, however, this is just another fake technological “fix” to the climate crisis that will help perpetuate the environmentally destructive status quo. A genuinely sustainable society won’t be built around the kind of car culture that exists today. What’s needed, among other things, is a massive investment in public transport and the transformation of cities to reduce the need for long commutes.

The promotion of electric vehicles as part of a technological “green” utopia is designed to forestall this kind of change, to protect as much as possible the car makers and other big business interests that profit from the status quo.

Elon Musk personifies this. In his authorised biography, Elon Musk: Tesla, SpaceX, and the Quest for a Fantastic Future, Ashlee Vance revealed that Musk’s California “hyperloop” proposal was aimed at quashing plans for a high-speed rail link between Los Angeles and San Francisco. “Musk had dished out the Hyperloop proposal just to make the public and legislators rethink the high-speed train”, wrote Vance. “He didn’t intend to build the thing ... With any luck, the high-speed rail would be cancelled. Musk said as much to me during a series of emails and phone calls leading up to the announcement.”

For those who can afford it (a base-level Tesla will set you back an eye-watering $73,900 in Australia today), driving an electric car might make you feel like you’re doing something to help save the planet. This is an illusion.

Even if your car is charged from electricity produced by renewable energy, you also have to consider all the emissions produced in the construction and maintenance of the roads and freeways on which you drive. Then there’s the material of the car itself, and the lithium needed for the battery. Already, the skyrocketing demand is causing major environmental problems for major lithium producers like China, Chile and Bolivia. Tellingly, Musk has already devised the ultimate escape plan for himself—moving to Mars. This is not an option for most people.

The long list of fake technological fixes to the climate crisis is nothing more than a delaying tactic, designed to create the impression of change to ensure the profits bonanza of the fossil fuel economy can continue for as long as possible. Only a total transformation of society, in which technological production is rationally designed and democratically organised and controlled, can ensure that we are able, in Marx’s words, “to bequeath the Earth in an improved state to succeeding generations”.

#### Material inputs undo environmental benefits.

John Mccollum 19. Assistant professor of sociology at Minot State University. Limits of the Green New Deal. Section on Marxist Sociology. 12-11-2019. https://marxistsociology.org/2019/12/limits-of-the-green-new-deal/

The treadmill of production idea becomes relevant in the context of the GND because of the gains in energy production efficiency, as well as the program’s proposed investments in the expansion of public transportation and “clean” manufacturing methods.  The efficiency gains of a nation-wide energy efficiency program can be undone by a total increase in material inputs.

Examining renewables in greater detail, wind turbines and solar panels produce a host of environmental externalities.  Both technologies rely on the availability of rare earth metals.  Their manufacturing and disposal generate other forms of toxic pollutants.  Also, converting land from either “natural” usage to land for renewables will also have a variety of environmental externalities, exemplified by solar farms in California’s deserts, which have displaced native species like the desert tortoise.

Another issue resulting from this practice will be a widening of the “metabolic rift” between global regions and between the natural metabolism of the earth and humanity’s production and consumption of natural resources.  John Bellamy Foster’s work on the “metabolic rift” derives from Marx’s Economic and Philosophical Manuscripts of 1844 and Marx’s attendant interest in the widening gap between “town and country.”  Marx studied the developments in agricultural science and soil chemistry during his era and noted the tendency of capitalism’s material demands to outstrip nature’s restorative capacities.  As the natural fertility of soil declined, agricultural producers came to rely on distant sources of nitrogen-based fertilizers.  This shift led to a “metabolic rift” in the spatial distribution of soil nutrients and a temporal rupture in the earth’s natural cycles of soil fertility.

The GND threatens to reproduce this gap.  To use a single example, though the US has some deposits, the rare earth metals used in solar panels and wind turbines will come from Global South states where mining and processing these minerals poses great risks to human health and the environment.  The benefits of using these materials in renewable technologies will not be seen by the citizens of those countries where extraction occurs.  The GND’s agricultural methods hold some promise of making major gains in de-carbonizing the US’s agricultural system, but the movement of soil fertility around the US as agricultural goods made in one region move to another still would widen the spatial and temporal elements of the metabolic rift.

At present, it does not appear that the GND is dealing with the contradictions of the treadmill of production and a widening metabolic rift.  The “treadmill of production” poses yet another problem though:  the contradiction of continually expanding production to meet the systemic demands of capital to accumulate and workers’ attendant dependence on this cycle for wages.  Production of “green” things may need to expand continually to generate employment and welfare benefits for workers.  Workers in a new state sector could find themselves dependent on this expansion, just as they would have under private capital.  Although “green”, this expanded production will recreate the environmental problems the GND is meant to end.  Getting off this treadmill is going to require more than just vigorous investment by the state in green infrastructure.  Next, I turn to the GND’s potential to create a state-sponsored green capitalism.

The creation of a green fraction of capital

The GND is consciously modeled on the New Deal of the 1930s.  The New Deal saw an expansion of social programs benefiting wide swathes of the working class.  Social Security was lifted wholesale from socialist programs.  Farm aid encouraged both recovery from environmental problems like the Dust Bowl and debt relief for poor farmers.  Infrastructural development raised wages and boosted further growth.  In terms of arts and culture, working people were mobilized into new forms of cultural production celebrating working-class identity.  The general agitation during this period by the broad left pushed these programs forward despite the opposition of powerful factions of the capitalist class in the United States.

Despite this legacy, the New Deal preserved capitalism during one of its most dire crises to date; the GND may perform a similar regulatory function.  One of the boosts the GND is likely to give to capital is through state investment through private partnerships.  The GND does not propose the creation of state ownership of utilities, much less agriculture, housing, or medical care.  Similarly, the bill has provisions for energy upgrades through refurbishing existing buildings, environmental cleanup, and an unusual provision to “ensure businesspersons are free from unfair competition.”  Without further establishing state ownership over these sectors, many of these provisions are going to add value to existing private property or rely on contractors to do the work, paid for by large sums of public money.  Although the GND provides decent employment and these emission reduction programs are desperately needed, much of this activity will generate further wealth in private hands if not performed by the state.  The present electoral left may not be capable of enacting or want to deliver on this revolutionary goal.

#### It’s a system of pay to pollute.

Michael Schmidlehner 21. Research Nucleus on Work, Territory and Politics in Amazonia, Brazil. Analysing the Discourse of ‘Green’ Capitalism: The Meaning of Nature in ‘Nature-Based.’ World Rainforest Movement, Bulletin 255. 5-18-21. <https://wrm.org.uy/articles-from-the-wrm-bulletin/section1/analysing-the-discourse-of-green-capitalism-the-meaning-of-nature-in-nature-based/>

The discourse of ‘green’ capitalism

More recently new and somehow different discursive constructions have emerged. Twenty or thirty years ago terms such as sustainability, biodiversity or emission reduction were used to suggest a scientific foundation of projects. During the last ten years, however, more technically vague and audience-pleasing, business-friendly expressions have increasingly come to the fore.

‘Green economy’ was propagated ten years ago as a new economic model, including a huge range of technologies – from solar energy to carbon trade – conveying the general idea, that capitalist economy is not a problem, but the solution. (3) Likewise, the idea of ‘circular bioeconomy’ (4) evokes associations with the harmonic circle of life and promises to save the planet through valuation of ‘natural capital’ and a transition to the ‘butterfly economy.’ (5) Also recently, the idea of ‘nature-based solutions’ is intensively being promoted as a supposedly new model for combating climate change and providing “human well-being and biodiversity benefits.” (6) The massive introduction of such ecological-economical all-purpose terms indicates, that the ‘sustainable development’ discourse, as described by authors like Arturo Escobar in the 1990s, is now in a different new phase and that it would more aptly be described as the discourse of ‘green’ capitalism.

So what is the reason for this change? What are the new economic and power interests that demand the adaptation of the truth regime?

The typical sustainable development projects of the 1990s, following the motto “use it or lose it”, sought to make economic use of nature by physically extracting products from protected areas, like non-timber forest products (e.g. latex, brazil nuts) or ‘sustainably harvested’ timber. Projects in the last decade, by contrast, are increasingly driven by interests in environmental and climate compensation. By this logic, in protected areas, in order for them to serve as a pawn for destruction or pollution in other areas, any human interference with so-called ‘ecosystem services’ (e.g. carbon stockage, biodiversity preservation) that are to ‘compensate’ for destruction of the same ‘service’ elsewhere, must be minimised or interdicted. What distinguishes current projects from previous ones are new mechanisms of appropriation. Environmental and climate compensation extract commercial value from nature by ‘virtualizing’ it. The so-called ‘ecosystem services,’ once quantified, are considered interchangeable. By this means, without anything being physically extracted or produced, ‘financial assets’ are created from the land in the form of certificates.

The foundational logic of such projects is not only flawed (since pay-to-pollute is not a solution), (7) but also deeply inhumane, once it ultimately aims at the criminalization and eviction of traditional peoples from their land.

In order to conceal this hardly defensible underlying rationale and its flaws, the discursive production has to be split: On the one hand, there is the highly technical jargon in technical papers, largely incomprehensible to lay people, about assessing ‘anthropic impact’ (i.e. human-induced disturbances) in ecosystems, along with calculations of emissions or biodiversity losses supposedly reduced or avoided by a project. This discursive strand is understandable only for a small group of consultants and technicians tasked with making this new form of extraction happen.

On the other hand, for the broad public the superficial euphemistic discourse of ‘nature-based solutions’ is produced. Here, the romanticisation of untouched nature goes along with a happy talk about new solutions and ‘win-win’ situations. The win-win fantasy can easily be sustained for the general public, as long as the factual loss, the destruction of livelihoods that takes place, where the impacted subaltern communities are not in a position to make themselves heard, remains hidden.

An extensive study from Brazilian researchers (8) evidenced this kind of split in the context of a prominent REDD+ project in an Amazonian indigenous territory. (9) The technical descriptions of the project, in order to ‘prove’ that the project measures will avoid deforestation that otherwise would have taken place, depict the indigenous community as notorious forest-destroyers. This information is held on the back stage, or, as the authors put it, concealed in the ‘black box’ of expert language.

On the front stage – in popular YouTube videos, glossy brochures etc. – the narrative of the indigenous people as nature-loving forest guardians is exploited. While the forest-destroyer narrative is the technical requisite for selling ‘avoided emissions’ as carbon credits, the forest-guardian narrative is necessary in order to effectively greenwash the image of the buyer, in this case a large cosmetics industry.

The mechanisms of appropriation of nature for the purpose of environmental and climate compensation are so obscene and violent, and so far from contributing to the resolution of the crises, that the general public, if they were transparent, would not accept them.

Another effective strategy to hide something is to put it in a haystack. Terms like ‘green economy’ or ‘nature-based solutions’ cover a very wide range of initiatives, programmes and projects, blurring the distinctions between them. They function as an all-encompassing label that lumps predatory offset programmes together with initiatives such as urban building greening and small-scale agroecological projects. The use of a common label suggests that all these initiatives – despite some of them seem more ‘technically complex’ than others – strive in the same direction and must ultimately have the same goal, namely preservation of the environment and climate. The purely commercial interests that are driving the compensation projects and their exclusionary nature thus remain unrecognized by much of society.

The broadness of the new terms and the ‘positivity’ of the discourse serve to further neutralise critical voices. Those who reject these terms automatically fall into the disrepute of being against any constructive contribution and can therefore easily be excluded from the discussion as notorious ‘naysayers’.

The expression ‘nature-based’ conveys the idea that the supposedly new ‘solutions’ arise from a new relationship with nature, that humans are now coming to peace with nature and learning from it. Of course, the exclusionary and predatory character of the projects behind this term makes a mockery of this notion. But the expression ‘nature-based’ in the context of such projects reveals something more fundamental.

### AT: Reslient

#### 3. Warming will peak in the next four years. There’s no room for the affirmative or green tech in the transition.

Juan Bordera et al 8-23. journalist, screenwriter and activist, and Fernando Valladares, doctor of biological sciences, a research professor at the CSIC, and recipient of the Rey Jaime I Award (for environmental protection), and Antonio Turiel, has degrees in theoretical physics in mathematics, a scientific researcher at CSIC and an expert in energy. He is the author of the recent book, Petrocalipsis: Crisis energética global y cómo (no) la vamos a solucionar, and Ferran Puig Vilar, doctor in Ecology and director of the Sustainability Observatory, and Fernando Prieto, doctor in Ecology and director of the Sustainability Observatory, and Tim Hewlett, doctor of astrophysics and a member of the Scientist Rebellion collective. “Leaked report of the IPCC reveals that the growth model of capitalism is unsustainable.” MROnline. 8/23/2021. <https://mronline.org/2021/08/23/leaked-report-of-the-ipcc-reveals-that-the-growth-model-of-capitalism-is-unsustainable/>

The second draft of the IPCC Group III report, focused on mitigation strategies, states that we must move away from the current capitalist model to avoid surpassing planetary boundaries and climate and ecological catastrophe). It also confirms our previous reports, covered by CTXT and The Guardian, that “greenhouse gas emissions must peak in the next four years”. The new leak acknowledges that there is little or no room for further economic growth. The undersigned scientists and journalists have analyzed a new part of the Sixth Assessment Report, which has been leaked to us by the same sources as last time—Scientist Rebellion and Extinction Rebellion Spain. In this leak the usual more timid positions can be found, but also prominent statements that would have been unthinkable not long ago. To contextualize, let’s just remember: In 1990, the First IPCC Report stated that, “the observed increase [in temperature] could be largely due to natural variability”, and although subsequent reports put this position to rest, this Sixth Report eliminates any possibility of doubt, and leaves no room for the climate denial arguments which have been historically and amply financed by those who had the most to benefit from maintaining this narrative: the fossil fuel lobbies. The leaked report mentions that indefinite growth must be renounced. Since radical transition is required, the key question is how can a shift away from models of perpetual growth be understood as a benefit and not merely relinquishment? Any transition must take into account historic differences in emissions between countries, differences between rural and urban worlds, and above all, the tremendous growing economic inequalities between the poor and increasingly obscenely rich. If these three dichotomies are not addressed, any transition will have more opposition than support, as the draft literally sets out: Lessons from experimental economics show that people may not accept measures that are considered unfair, even if the cost of not accepting them is higher. Even if a change of course is achieved, the scientists warn: “transitions are not usually smooth and gradual, they can be sudden and disruptive.” They also note “the pace of transition can be impeded by ‘lock-in’ from existing capital, institutions, and social norms”. The report emphasizes how important it is to understand these sources of inertia, stating that “the centrality of fossil energy in economic development in the past 200 years raises obvious questions about the possibility of decarbonisation”. Policies favoring fossil fuel companies have extracted the common wealth—our air, forests, land…—and put that wealth in the hands of a small minority. Therefore, green policies must be redistributive at a time when inequality is spiraling. One of the measures proposed to reduce the regressivity of carbon prices is the redistribution of tax revenues in favor of low and middle incomes. But as anthropologist Jason Hickel states: anything short of a binding cap on fossil fuel extraction, with declining annual targets that will wind down the industry to zero, is just hand-waving. Significantly, although many have made similar comments before, the report gives prominence to the view that not only is climate change caused by industrial development, but that “the character of economic development produced by the nature of capitalist society … [is] ultimately unsustainable”. We can have good lives while consuming less, but capitalism is unlikely to sustain itself without growth. The report comes to conclude that “current emissions are incompatible with the Paris Agreement, so it is absolutely mandatory to reduce them in an immediate and forceful way.” [figure 1 omitted] The drastic decrease in emissions which are essential, are impossible to achieve in the short term with the current model, with its assumptions about growth in energy consumption and material use. Moreover, the report links emissions reduction with the achievement of the 17 Sustainable Development Goals, agreed in 2015 for the UN, to be met by 2030. Despite the existing contradictions amongst the 17 SDG, we also find unquestionable aims, such as reducing inequality and protection of biodiversity, mixed with a more controversial one within the same report: to promote sustainable economic growth. If in 1990 the debate was still about the causes of climate change, 30 fruitless years later the debate is centered between those who believe that we can continue to grow and reduce emissions at the necessary pace, and those who see this as another type of denialism, more subtle, but which in the end benefits and is defended by the same people who once questioned the origin of global heating. The question is, as usual: who stands to gain? The report states that “mitigation and development goals cannot be met through incremental change”. Some argue that you can continue to focus on growth, because technologies could be developed to reduce concentrations of greenhouse gases in the atmosphere. But such technologies (e.g. Carbon Capture and Sequestration) are not materializing as promised. To continue to rely on unproven technologies while arguing for unconstrained growth—while ecosystem carbon sinks are in decline, climate tipping points are being breached, and the climate is heating and destabilizing—is at best folly and at worst criminal. Why has so little changed? The report highlights an “organized hypocrisy”, in which agreements and statements do not match actions, presenting one of the most dangerous barriers to genuine mitigation. The report argues that Covid-19 could teach the world many lessons, with the costs of prevention and preparatory actions being minimal compared to the costs of unmitigated impacts. The analogies with the climate crisis are clear. Delaying measures will have increasing costs that will be very difficult to bear. [figure 2 omitted] If action is not taken soon, the challenges will increase in a non-linear fashion and with unforeseeable consequences. What are the implications of all this? First, given the evident contradictions in the concept of sustainable growth, it will only be possible to speak of any form of development if GDP as a measure of wealth is abandoned. The only sustainable growth is horizontal, not vertical, with the goal of reducing inequality. Second, communicating the immense magnitude of the problem to both the public and those in power is essential. Only if there is a perception that the majority benefits from transformational change can the required measures be successful. Without transformational change, no one will ultimately benefit. Third, cooperation rather than competition is the key to explaining the great evolutionary leaps, as the microbiologist Lynn Margulis demonstrated. We now face a precipice caused by the intersection of ecological and climate crises. Only if we cooperate, if we understand that we share so many things—among them the atmosphere—will we be able to avoid the fall.

### Carbon Bubble---2NC

#### Carbon bubble, peak oil.

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The Carbon Tracker Initiative, a London-based think tank serving the energy industry, reports that the steep decline in the price of generating solar and wind energy “will inevitably lead to trillions of dollars of stranded assets across the corporate sector and hit petro-states that fail to reinvent themselves,” while “putting trillions at risk for unsavvy investors oblivious to the speed of the unfolding energy transition.”19 “Stranded assets” are all the fossil fuels that will remain in the ground because of falling demand as well as the abandonment of pipelines, ocean platforms, storage facilities, energy generation plants, backup power plants, petrochemical processing facilities, and industries tightly coupled to the fossil fuel culture. Behind the scenes, a seismic struggle is taking place as four of the principal sectors responsible for global warming—the Information and Communications Technology (ICT)/telecommunications sector, the power and electric utility sector, the mobility and logistics sector, and the buildings sector—are beginning to decouple from the fossil fuel industry in favor of adopting the cheaper new green energies. The result is that within the fossil fuel industry, “around $100 trillion of assets could be ‘carbon stranded.’”20 The carbon bubble is the largest economic bubble in history. And studies and reports over the past twenty-four months—from within the global financial community, the insurance sector, global trade organizations, national governments, and many of the leading consulting agencies in the energy industry, the transportation sector, and the real estate sector—suggest that the imminent collapse of the fossil fuel industrial civilization could occur sometime between 2023 and 2030, as key sectors decouple from fossil fuels and rely on ever-cheaper solar, wind, and other renewable energies and accompanying zero-carbon technologies.21 The United States, currently the leading oil-producing nation, will be caught in the crosshairs between the plummeting price of solar and wind and the fallout from peak oil demand and accumulating stranded assets in the oil industry.22

### COVID---2NC

#### COVID---“recovery” is sugar rush that drives crisis.

Roberts & Smith ‘21 [Michael Roberts worked as an economist for over 40 years, Activist in British Labor Movement in Britain. Interviewed by Ashley Smith, Author at Specter Journal. “Out of Lockdown and Back into the Long Depression.” 7-6-21. <https://spectrejournal.com/out-of-lockdown-and-back-into-the-long-depression/> //shree]

The Covid slump of 2020-21 was basically a supply-side shock due to the global spread of the Covid-19 virus and the failure of governments in the major economies (with a few exceptions) to prevent its spread. There were delayed and bungled measures along with weakened health systems, so economies had to close down as lockdowns and isolation measures were the only answer to avoiding catastrophe. Economically, that meant supply stopped, and then that led to a collapse in demand as people were laid off and businesses crashed. But recovery is now under way (more or less) in most major economies. Demand was propped up in the major advanced economies through massive government fiscal spending and central bank injections of credit for businesses (particularly large ones). And now through a combination of lockdowns and the incredibly fast development and rollout of effective vaccinations (thanks to publicly funded science), the major economies are now able to recover. But in the G7 economies this initial recovery has the aspect of a “sugar rush.” The “sugar” of fiscal stimulus and historic levels of easy credit is infusing capitalist businesses and household spending with an energy boost. Indeed, during the pandemic slump sections of capitalism did not suffer at all; on the contrary, they gained hugely, e.g., the social media and tech sector, the mega-distribution companies, and Big Pharma. Better-off households also suffered less (at least materially) as they continued to be paid, could work at home, and saved income significantly. This led to a house purchase boom as these sectors of labour looked to change their lifestyles post-Covid. At the same time, zero interest rates and cheap credit allowed financial institutions to make hay in financial markets and billionaire wealth rocketed as stock and bond markets hit historic highs. But, for most manual workers in the cities and in low-paid service industries, the pandemic slump was a disaster and with little prospect of returning to “normal” for them in the recovery. And it’s the advanced capitalist economies and the East Asian states that are recovering best in 2021-22. The so-called global South suffered hugely in the pandemic, with record levels of excess deaths and a massive rise in unemployment and poverty levels. Fiscal support from governments was limited and the rollout of vaccines to get economies going again is way short. Estimates are that the target vaccination levels in these countries will not be achieved until 2023-4! So, what we are going to see is the major capitalist economies of the West and China returning to pre-pandemic levels of national output by the end of this year or in early 2022, but Latin America, Africa, South Asia failing to do so. What are the weaknesses and contradictions of the recovery in those economies? Before the pandemic, the world economy was slowing down. Real GDP growth rates in the G7 were dropping to just 1 percent or lower; the so-called emerging economies had growth rates down to 3 percent (hardly enough to cover increases in population). World trade was declining. Even the giant economies of China and India had slowed. The main reason was that growth in investment in productive assets that can boost the productivity of labor and expand technology and employment had also slowed. In my view, investment and productivity growth are key to developing the productive forces of modern capitalist economies, and they were failing because under capitalism, profitability is the driving force behind investment. And according to the best estimates, US and global profitability levels are at historic lows. This is the long-term result of the basic contradiction of capitalism: between raising the productivity of labour and sustaining profitability. Over the long term, this cannot be done, and this is the economic Achilles heel of capital. At first sight, this result seems strange when we read of the huge profits being made by the likes of the so-called FAANGS (the tech and social media monopolies) and Amazon. But these are the exceptions that prove the rule. On average, the profitability of firms in the productive sectors of capitalist economies are low. That’s partly why profits have been reinvested into financial and other unproductive sectors like property where profitability is higher. Indeed, it is estimated that before the pandemic, about 15-20 percent of companies in the major economies were what are called “zombies,” i.e., not making enough profit to invest or expand, but just enough to pay wages and service their debts. They are the “living dead” in capitalist terms. At the same time, however, corporate debt is at record highs in most countries, raising the risk of bankruptcies if interest rates were to rise. All this makes it unlikely that we shall see any significant change post-pandemic from what we saw in the post-great recession decade, i.e., slow growth in investment, low wage growth, poor productivity growth, rising inequality, and unchanged or worsened global poverty. In the US, a lot has been made about Biden’s turn away from the neoliberal consensus toward Keynesianism. What has he done, why has he done it, and what has been its impact so far? The pandemic fiscal packages introduced by various G7 governments and, of course, by the Biden administration were emergency measures by states to avoid complete meltdown and catastrophe from the pandemic. In my view, they do not signify a change of ideology or policy by pro-capitalist governments. The usual talk is “let’s get out of this slump and preserve capitalist businesses using state funds and credit and then worry about paying it all down later.” The “later” is still to come. Biden’s fiscal packages have been heralded as a sea change in government policy and a return to Keynesian macro-management and stimulation of capitalist economies. But first, let’s leave aside the fact that Keynesian stimulus and macro-management was mainly a myth anyway and really the product of a war economy after 1945 which was ditched in the mid-1970s. Instead let us consider the actual impact of the Biden packages. The latest estimates by Goldman Sachs, hardly a voice of the left, is that after all the machinations of Congress by the end of this year, the Biden package will be equivalent to about 1 percent of US GDP each year for the rest of Biden term. But Biden is going to pay for these partly by increasing taxation by 0.75 percent of GDP a year. Given that the best estimates of so-called multiplier effects on GDP from fiscal stimulus are about one, that means the net effect of the Biden packages, if fully implemented, might boost US real GDP growth by 0.25 percent a year. The current forecast for long-term us real GDP growth is just 1.8 percent a year. So, the “great” return to Keynes by Biden will be minimal. If Biden manages to get his larger proposals for increased spending on infrastructure and social welfare spending through Congress, what impact will that have on the US and world economies? If the Biden package will have a limited effect on the US economy, any spillover effect into other economies will be even less substantial. The EU is also planning an economic recovery package that will boost government funds in EU countries with already large debt burdens like Italy and Spain. But again, the impact on the capitalist sectors of these economies will be minimal. Japan is about to announce a fiscal package that aims to “balance the books” over the next decade – hardly stimulus then! Indeed, the latest growth forecast for japan is a further slowing from its pre-pandemic pace of less than 1 percent a year. And apart from China, Vietnam, and the small East Asian states, the rest of the global South has little prospect of any fiscal stimulus or economic recovery. Most estimates from international agencies are that these economies will not recover to pre-pandemic GDP levels before 2023 and will never recover to pre-pandemic trajectories of economic growth. There is a permanent “scarring” of these weak peripheral capitalist economies. There has been a whole range of bourgeois commentators like Lawrence Summers warning about the threat of inflation. What’s your assessment about the arguments about inflation? What are the dangers of a return to what in the 1970s was called stagflation, a combination of slow growth and increased inflation? In the short term, inflation has returned to many economies. This is because of the sugar rush of consumer demand as economies open up again and people start spending down savings built up during the pandemic slump, while companies search for raw materials and components to restart businesses. Coupled with a significant disruption of global value chains, supply cannot meet demand and bottlenecks have created an inflation of prices in raw materials and consumer goods and services. But is this as transitory as the federal reserve and other central banks claim (though to be fair, there are divergent views within these banks)? Some, like Summers, argue that credit and fiscal stimulation boost demand without engendering enough supply because there is a secular stagnation in investment and productivity in modern economies. Others argue that credit injections and monetary easing after the great recession did not lead to inflation. On the contrary, easing only boosted financial and property prices. The Keynesian view is that inflation only happens when wage costs rise, i.e., inflation is caused by labor rather than capital. And that is not happening so far. My view is that price inflation in goods and services in capitalist economies comes about through a combination of demand generated by new value (as expressed in wages and profits) and the pace of money supply growth. But it is the change in value production that matters most. Capitalist economies have experienced a slowdown in new value growth for decades, so inflation rates have slowed to a trickle. Central banks have tried very hard with monetary easing to get some inflation (2 percent targets, etc.) and failed. Tinkering with interest rates and money quantities cannot deliver even moderate inflation in these conditions. So, after this initial burst, inflation will rise above pre-pandemic rates (i.e., 2 percent or so) only if the world capitalist economies generate faster growth in new value (unlikely) and/or there are sustained levels of double-digit growth money supply (possible). The latter is what central banks control, and they are divided on how long to maintain that. This raises larger theoretical questions on the left. Many believe that Keynesianism or Modern Monetary Theory can stimulate growth and bring about a more egalitarian capitalist order. You have challenged these ideas in your blog, The Next Recession. Why do Marxists argue that Keynesianism can’t overcome capitalist crisis in general and in this slump? The key to answering this is to recognize that capitalists decide whether economies grow or go into slump. By that I mean capitalists will only invest in means of production and employment if there is a profit to be made. Profit calls the tune under capitalism. And as mentioned above, average profitability in the major capitalist economies is low; corporate debt is high, and many firms are just surviving through cheap credit and not investing productively. But Keynesian theory does not consider capitalist economies from the perspective of profitability. It’s effective demand that decides. If government spending can increase demand, then it can get capitalist economies going. If Marxist theory is a better explanation of capitalist accumulation, then if profitability of capital stays low and does not recover to new higher levels post-pandemic, then government spending will be ineffective.

### Ag Collapse---2NC

#### Ag collapse---short term.

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The Triassic-Permian ‘great dying’ was a megaphase change taking place through pulses lasting for tens of thousands of years, separated by interludes of hundreds of thousands of years, if not millions. The current mass extinction event is a megaphase change taking place in microphase time. Mass extinction is punctuated by the production of what the environmentalist Jonathan Lymbery calls ‘dead zones’: the conversion of wild ecosystems into dead monocultures. In Sumatra, these dead zones are made by burning rainforest and, amid the stench of death, planting palm crop. The palm oil is used in foods and household items, while the nut is used in animal feed. It is secured with barbed wire, and treated with poison, to prevent the crop from being eaten. Surviving animal life, and surrounding human communities, are pushed to the edges, to the brink of extinction. Agricultural workers are abused, underpaid, even enslaved. This is an example of what Moore would call ‘cheap food’, where the ‘value composition’ of the goods, the amount of waged labour necessary to produce each item is ‘below the systemwide average for all commodities’. In this case, a ‘cheap nature’ is produced by a distinctly capitalist form of territorialisation, wherein forestry is converted through deforestation into palm monoculture, while ‘cheap labour’ is secured partly through the dispossession of neighbouring human communities. More calories with less socially-necessary labour-time is cheap food. Cheap is not, of course, the same thing as efficient. Food production is, alongside fuel, a fulcrum of the capitalist organisation of work-energetics. It is one that, as with fossil fuels, wastes an incredible amount of the energy it extracts. According to the FAO (Food and Agriculture Organization of the United Nations), 30 per cent of cereals grown for human and animal consumption are wasted, along with almost half of all root crops, fruits and vegetables. To conclude from this grotesque squander that a ‘more efficient’ capitalism would ‘solve the problem’ of ‘the environment’ would be to fail to understand waste, capitalism and ecology: that the first is intrinsic to the second; that the second, whatever the degree to which it is inflected by the first, is inimical to the third. Capitalism also directly undermines its own productivity, precisely through its industrially-produced biospheric destruction. According to the UN, for example, there are at most sixty harvests remaining before the world’s soils are too exhausted to feed the planet. This edaphic impoverishment is a product, not a byproduct. It is the predictable, and long-predicted, consequence of intensive agriculture, over-grazing and the destruction of natural features (such as trees) that prevent erosion. Likewise, the death-drop of insect biomass, the decline of pollinating bees, are hastened by the extensive use of pesticides and fertilisers. Capitalist food production can only evade the problem – a problem, in its terms, of accumulation – either by establishing new ‘cheap natures’ through such means as deforestation, or by extracting rent from competitor producers through such means as intellectual property rights. For instance, since 1994’s notorious TRIPS agreement (Trade-Related Aspects of Intellectual Property Rights), through the rules of UPOV (Union for the Protection of New Plant Varieties), particularly the notorious UPOV 1991, and in the face of local fightbacks from Guatemala to Ghana, the World Trade Organisation has enforced property agreements outlawing the saving of seeds from one season to the next, thus sharply raising costs for farmers producing 70 per cent of the global food supply.

### AT: Perm Do Both---2NC

#### 3. Any combination poisons the alt.

William Curran 16. Editor for the Antitrust Bulletin. Commitment and betrayal: Contradictions in American democracy, capitalism, and antitrust laws. Antitrust Bulletin. 2016. 61(2): 246

Scholars now link antitrust with distributional values. 11 Professor Anthony B. Atkinson wants antitrust to value the individual,1 12 recognizing as Hand did in Alcoa1 13 that "among the purposes of Congress in 1890 was a desire to put an end to great aggregations of capital because of the helplessness of the individual before them." 1 14 And it is the individual-rich and poor, but especially the poor-whom Atkinson wants to protect from the inequities of the marketplace.115 Atkinson sees as Senator John Sherman did in 1890 that the "problems that may disturb [the] social order ... none is more threatening than the inequality of condition of wealth, and opportunity that has grown within a single generation out of the concentration of capital into vast combinations to control production and trade to break down competition." 11 6 Sherman's and Hand's worries were certainly not Bork's. Hand said it best in Alcoa, "[W]e have been speaking only of the economic reasons which forbid monopoly ... [but] there are others, based upon the belief that great industrial consolidations are inherently undesirable, regardless of their economic results.",1 1 7 Bork-regardless of destructive results to democracy-would never find efficient economic results inherently undesirable. Bork would likely find democracy a "cornucopia of social values, all rather vague and undefined but infinitely attractive."iiS A definition that was surely meant to disparage, fails. What makes democracy attractive is its socially related values. 11 9 What makes it infinitely attractive are its regenerative capacities and potential for self-definition. 120 Bork blocked democracy's values so as not to tempt liberal judges. He worried needlessly. An antitrust solution to wealth's severe inequality is simply not plausible. 121 Antitrust has always been the heart of capitalism's ideology. 122 In truth, antitrust's distribution of wealth for the wealthy is more than ideology-it is heartless reality. So was Bork right? Are the fates of capitalism and antitrust intertwined? 123 And if antitrust were repealed? Professor Atkinson wants antitrust saved and used for citizens.124 But like Professors Stiglitz, Krugman, and Reich, he has fallen headfirst into antitrust's heartless ideological trap. And like the other three he would resurrect TR's trust-busting for the twenty-first century. Piketty avoids ideological traps. He learns the facts of history-unencumbered by ideologies like Bork's-and has an unobstructed vision 125 of the unequal and democratically destructive wealth of capitalism. Bork's antitrust is the wrong policy tool for a nation presumed to be dedicated to serving citizens equitably. 126

### Link---2NC

#### 1. “Competitive” vs. “Anticompetitive” file rates link---The 1AC’s critique of current energy prices is premised on the capitalist logic that if something is good for competition. The plan and precedent are not “anti-high energy prices” or “anti-corporate” but explicitly endorse higher energy prices as long as it is for the market. We should not start from questions of competition but fairness.

Sanjukta Paul 20. Wayne State University Law School. “Recovering the Moral Economy Foundations of the Sherman Act”. (DRAFT), 131 YALE L.J. \_\_ (FORTHCOMING)Yale Law Journal, (Volume 131). Accessed: 9/26/2021. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3564452

A major strand of the common-law antecedents of antitrust law was rooted in the perspective of “moral economy.” 26 The moral-economy perspective is one in which the social coordination of markets is taken as a given, and the relevant normative question about particular instances of economic coordination is not whether they are anticompetitive in the abstract, but whether they are fair or unfair. Elsewhere I have argued that even antitrust law today functions in essentially this way, although its normative reasoning is often suppressed in favor of asking simply whether conduct is anticompetitive or not.27 In the restraint of trade case-law, which formed an important antecedent for the Sherman Act, 28 such normative reasoning about acceptable and unacceptable market conduct is more frequently on the surface. Indeed, as discussed herein, many of antitrust law’s common-law precedents were animated by notions of fairness: they set out positive rules of fair dealing, often assumed fair or just price as an underlying normative benchmark, and sought to define fair competition as an overall legal goal. 29

The more usual approach is to read the common law tradition through the elite tradition of classical economics or classical political economy (which certainly informed it as well, particularly in the nineteenth century), rather than through the popular vision signified by moral economy.30 Reorienting our understanding of antitrust’s common-law precedents in this way is significant because it turns us away from the notion of a self-regulating market as a normative benchmark for law, thus also foregrounding questions of fairness as primary and unavoidable. Moreover, the concrete moral economy tradition in which these precedents were embedded was the very same one that led to Thompson’s coinage of the term “moral economy,” itself grounded in a popular movement. While the common law itself was heterogenous, the fact that antitrust has roots in this soil of moral economy is both significant and largely neglected.

#### Their rhetoric of preserving competition cements neoliberalism by legitimizing and justifying extreme inequality in economic, social, and political spheres.

William DAVIES 14, Senior Lecturer at Goldsmiths, University of London [“How ‘competitiveness’ became one of the great unquestioned virtues of contemporary culture,” *The London School of Economics and Political Science*, May 19, 2014, http://blogs.lse.ac.uk/politicsandpolicy/the-cult-of-competitiveness/]

The years since the banking meltdown of 2008 have witnessed a dawning awareness, that our model of capitalism is not simply producing widening inequality, but is apparently governed by the interests of a tiny minority of the population. The post-crisis period has spawned its own sociological category – ‘the 1%’ – and recently delivered its first work of grand economic theory, in Thomas Piketty’s Capital in the Twenty-first Century, a book dedicated to understanding why inequality keeps on growing.

What seems to be provoking the most outrage right now is not inequality as such, which has, after all, been rising in the UK (give or take Tony Blair’s second term) since 1979, but the sense that the economic game is now being rigged. If we can put our outrage to one side for a second, this poses a couple of questions, for those interested in the sociology of legitimation. Firstly, how did mounting inequality succeed in proving culturally and politically attractive for as long as it did? And secondly, how and why has that model of justification now broken down?

In some ways, the concept of inequality is unhelpful here. There has rarely been a political or business leader who has stood up and publicly said, “society needs more inequality”. And yet, most of the policies and regulations which have driven inequality since the 1970s have been publicly known. Although it is tempting to look back and feel duped by the pre-2008 era, it was relatively clear what was going on, and how it was being justified. But rather than speak in terms of generating more inequality, policy-makers have always favoured another term, which effectively comes to the same thing: competitiveness.

My new book, The Limits of Neoliberalism: Sovereignty, Authority & The Logic of Competition, is an attempt to understand the ways in which political authority has been reconfigured in terms of the promotion of competitiveness. Competitiveness is an interesting concept, and an interesting principle on which to base social and economic institutions. When we view situations as ‘competitions’, we are assuming that participants have some vaguely equal opportunity at the outset. But we are also assuming that they are striving for maximum inequality at the conclusion. To demand ‘competitiveness’ is to demand that people prove themselves relative to one other.

It struck me, when I began my Sociology PhD on which the book is based, that competitiveness had become one of the great unquestioned virtues of contemporary culture, especially in the UK. We celebrate London because it is a competitive world city; we worship sportsmen for having won; we turn on our televisions and watch contestants competitively cooking against each other. In TV shows such as the Dragons Den or sporting contests such as the Premier League, the division between competitive entertainment and capitalism dissolves altogether. Why would it be remotely surprising, to discover that a society in which competitiveness was a supreme moral and cultural virtue, should also be one which generates increasing levels of inequality?

Unless one wants to descend into biological reductionism, the question then has to be posed: how did this state of affairs come about? To answer this, we need to turn firstly to the roots of neoliberal thinking in the 1930s. For Friedrich Hayek in London, the ordoliberals in Freiburg and Henry Simons in Chicago, competition wasn’t just one feature of a market amongst many. It was the fundamental reason why markets were politically desirable, because it conserved the uncertainty of the future. What united all forms of totalitarianism and planning, according to Hayek, was that they refused to tolerate competition. And hence a neoliberal state would be defined first and foremost as one which used its sovereign powers to defend competitive processes, using anti-trust law and other instruments.

One way of understanding neoliberalism, as Foucault has best highlighted, is as the extension of competitive principles into all walks of life, with the force of the state behind them. Sovereign power does not recede, and nor is it replaced by ‘governance’; it is reconfigured in such a way that society becomes a form of ‘game’, which produces winners and losers. My aim in The Limits of Neoliberalism is to understand some of the ways in which this comes about.

In particular, I examine how the Chicago School Law and Economics tradition achieved an overhaul (and drastic shrinkage) in the role of market regulation. And I look at how Michael Porter’s theory of ‘national competitiveness’ led to a new form of policy orientation, as the search for competitive advantage. Both of these processes have their intellectual roots in the post-War period, but achieved significant political influence from the late 1970s onwards. They are, if you like, major components of neoliberalism.

By studying these intellectual traditions, it becomes possible to see how an entire moral and philosophical worldview has developed, which assumes that inequalities are both a fair and an exciting outcome of a capitalist process which is overseen by political authorities. In that respect, the state is a constant accomplice of rising inequality, although corporations, their managers and shareholders, were the obvious beneficiaries. Drawing on the work of Luc Boltanski, I suggest that we need to understand how competition, competitiveness and, ultimately, inequality are rendered justifiable and acceptable – otherwise their sustained presence in public and private life appears simply inexplicable.

And yet, this approach also helps us to understand what exactly has broken down over recent years, which I would argue is the following: At a key moment in the history of neoliberal thought, its advocates shifted from defending markets as competitive arenas amongst many, to viewing society-as-a-whole as one big competitive arena. Under the latter model, there is no distinction between arenas of politics, economics and society. To convert money into political power, or into legal muscle, or into media influence, or into educational advantage, is justifiable, within this more brutal, capitalist model of neoliberalism. The problem that we now know as the ‘1%’ is, as has been argued of America recently, a problem of oligarchy.

Underlying it is the problem that there are no longer any external, separate or higher principles to appeal to, through which oligarchs might be challenged. Legitimate powers need other powers through which their legitimacy can be tested; this is the basic principle on which the separation of executive, legislature and judiciary is based. The same thing holds true with respect to economic power, but this is what has been lost.

Regulators, accountants, tax collectors, lawyers, public institutions, have been drawn into the economic contest, and become available to buy. To use the sort of sporting metaphor much-loved by business leaders; it’s as if the top football team has bought not only the best coaches, physios and facilities, but also bought the referee and the journalists as well. The bodies responsible for judging economic competition have lost all authority, which leaves the dream of ‘meritocracy’ or a ‘level playing field’ (crucial ideals within the neoliberal imaginary) in tatters. Politically speaking, this is as much a failure of legitimation as it is a problem of spiralling material inequality.

The result is a condition that I term ‘contingent neoliberalism’, contingent in the sense that it no longer operates with any spirit of fairness or inclusiveness. The priority is simply to prop it up at all costs. If people are irrational, then nudge them. If banks don’t lend money, then inflate their balance sheets through artificial means. If a currency is no longer taken seriously, political leaders must repeatedly guarantee it as a sovereign priority. If people protest, buy a water canon. This is a system whose own conditions are constantly falling apart, and which governments must do constant repair work on.

#### 2. Turns their offense to the K---competition as the goal prevents challenging domination.

Sanjukta Paul 20. Wayne State University Law School. “Recovering the Moral Economy Foundations of the Sherman Act”. (DRAFT), 131 YALE L.J. \_\_ (FORTHCOMING)Yale Law Journal, (Volume 131). Accessed: 9/26/2021. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3564452

This proposed antitrust prescription draws on a moral economy vision, which takes the social coordination of markets as given, and embraces making and implementing normative choices about market construction as a key regulatory task. This vision runs through each of the three sources I primarily consider: the pre-enactment common law of restraint of trade and its antecedents, nineteenth-century antimonopoly politics, and the Sherman Act’s legislative history. The common-law tradition generally viewed markets as socially and legally constituted, rather than self-regulating: from this perspective, the key issues were distinguishing between beneficial and deviant coordination, and enforcing rules of fair competition—rather than punishing coordination as such, or promoting competition as such.10 The nineteenthcentury antimonopoly political vision, grounded in a farmer-labor coalition, offered an egalitarian interpretation of moral economy traditions. This vision critically involved both cultivating democratic coordination and containing domination11—or “power with” rather than “power over,” as it would later be articulated in Progressive thought.12 Within the moral economy perspective, all markets are understood to be coordinated, and in the antimonopoly vision, democratic coordination is the preferred mode.

The legislative record, too, is continuous with the moral economy framework, which makes sense of legislators’ actions better than an analytical framework that revolves around self-regulating markets. While recovery of the legislative purpose has recently not been in fashion,13 this account builds on an older literature that has shaped the law and broader thinking about antitrust.14 I argue that the core prescription suggested by the legislative history is to disperse economic coordination rights. 15 This prescription entails both containing domination and accommodating democratic coordination, while also carrying forward the emphasis on fair competition already present in the common law tradition.

#### 3. The logic of competition destroys any permutation.

Sanjukta Paul 20, assistant Professor of Law at Wayne State Law School, “Antitrust As Allocator of Coordination Rights,” UCLA Law Review, Vol. 67, No. 2, 2020, https://papers.ssrn.com/sol3/Papers.cfm?abstract\_id=3337861

INTRODUCTION

The central function of antitrust law is to allocate economic coordination rights. This means that private decisions to engage in economic coordination are always subject to public approval, which antitrust law grants either expressly or tacitly. Currently, its methods for accomplishing this function have the effect of anointing control and concentrated power as the preferred form of economic coordination, and to frown upon forms of economic coordination in which power and decisionmaking are more broadly dispersed. Antitrust law’s current methods for allocating coordination rights include what I call its firm exemption, as well as its preference for vertical over horizontal coordination beyond firm boundaries. Antitrust’s methods of allocating coordination rights are ultimately indigenous, and cannot be explained away by external referents: neither by other areas of law, nor by putatively neutral conclusions of social science. They are also historically contingent, and have shifted over time.

Practically speaking, the reigning antitrust paradigm authorizes large, powerful firms as the primary mechanisms of economic and market coordination, while largely undermining others: from workers’ organizations to small business cooperation to democratic regulation of markets. While deploying the legal concept of competition to undermine disfavored forms of economic coordination, antitrust law also quietly underwrites certain major exceptions to principles of competition, notably, the business firm itself. In surfacing the firm exemption, this Article also isolates the underlying, largely unexamined decision criteria for allocating coordination rights that it employes.

The current paradigm for thinking and decisionmaking within antitrust law has a professed commitment to implementing the insights of neoclassical economic theory in legal decisionmaking.1 According to that framework, the aggregate of individual market transactions, rather than direct coordination, will result in an optimal allocation of society’s resources. But this process of market allocation, which the law is supposed to facilitate but not displace, itself has no existence independent of prior legal allocations of economic coordination rights. Those coordination rights are shaped by numerous areas of law—from property to corporate law to labor law to antitrust, among others. This Article focuses on antitrust law, where this function is rarely acknowledged. Although the law and economics paradigm has enormous institutional sticking power in current antitrust law, the basic purposes and methods of antitrust law are also up for debate today in a way that they have not been in decades. Recent contributions to the antitrust revival have emphasized the law’s traditional concerns with corporate power and fairness, which were largely written out of antitrust law in the Chicago School revolution. 2 Dissenting voices asserted these as legitimate antitrust concerns even prior to the current challenge. 3 Mirroring the reformist call to put some limits upon the broad coordination rights of the powerful, a growing chorus of scholarship has emphasized the need to expand the coordination rights of small players to some extent or another, beginning with the question of workers and microenterprises caught between labor and antitrust regulation.4

However, proposals to reform antitrust, or to reconceptualize it, have thus far generally stopped short of questioning the basic premise that its primary function is to promote competition. At least officially, if increasingly uneasily, competition is still king. To be sure, many posit that antitrust performs this stated function badly, or does not perform it at all in certain markets.5 Even when reintroducing values such as fairness and deconcentrating power, for the most part the reform camp has characterized those values as flowing from—or at least coextensive with—promoting or protecting competition. Thus, the political debate over antitrust has been characterized by all sides claiming the idea of competition and defining what it means to promote competition in different ways.

In the current moment of paradigm instability,6 this Article aims to serve a clarifying role. Defenders of Chicago School antitrust tend to view reformers’ concerns—for example, fairness or deconcentrating corporate power—are extraneous to the fundamental function of antitrust law. That view, however, relies upon the idea that the function of antitrust law is to promote competition and that the law does so by following the independent guidance of economics. But neither of these things is true. Antitrust law decides where competition will be required and where coordination will be permitted. And in accomplishing that task, its most fundamental judgments are not ultimately derived from a neutral external referent, such as economic theory. Meanwhile, as the opposition to antitrust’s targeting of small players’ economic cooperation builds, some have begun to respond that this opposition evinces an inconsistency within the antitrust reform program, which otherwise generally favors increased antitrust enforcement. But, again, this objection only makes sense if one assumes that antitrust’s purpose is to promote competition, full stop. By showing that antitrust in fact already allocates coordination rights, I also show that a conscious reallocation would not constitute a special exemption from a general principle. Instead, it would simply be a different allocation of coordination rights, requiring justification no more and no less than the current one. By reframing antitrust law as this Article does, we can clarify what we are actually debating: what criteria should antitrust law use to allocate economic coordination rights? What forms of economic coordination should it permit or even promote, and what forms of economic coordination should it discourage or even prohibit?

Part I of the Article sets out the doctrinal and logical argument that a core function of antitrust law is to allocate economic coordination rights, that its disfavor of horizontal coordination beyond firm boundaries is an example of this function, and that this function cannot be reduced to the operation of other areas of law. Part II then shows how antitrust’s firm exemption, as embodied in Supreme Court case law, involves the concentration of economic coordination rights—a preference that is mirrored in other aspects of antitrust doctrine as well.

Part III briefly describes how these criteria for allocating coordination rights—preferring control over cooperation, and naturalizing the coordination embodied in hierarchically organized business firms— resulted from a historically contingent process within the development of antitrust law itself. Part IV addresses the contention that this allocation of coordination rights can be rationalized and justified by reference to economic theory, focusing on a now-foundational argument articulated by Robert Bork.

I. ANTITRUST LAW’S OVERALL ALLOCATION OF ECONOMIC COORDINATION RIGHTS

Antitrust law’s core function is to allocate coordination rights to some economic actors and deny them to others. This makes private decisions to engage in economic coordination subject to public approval, which antitrust law grants either expressly or tacitly. Importantly, this reframing is an analytic claim that redescribes existing reality; it is not a normative claim about what antitrust law ought to do. That said, reframing antitrust law this way renders visible economic coordination that has been naturalized and invites us to consider anew forms of economic coordination that have been presumed illegitimate. Ultimately, transparency about antitrust law’s core function should lead to transparency in performing it—that is, in articulating and defending the criteria by which coordination rights are allocated. Currently, those criteria are often obscure and implicit; where they are acknowledged at all, they are often presumed, incorrectly, to be derived from the independent conclusions of social science.

Economic coordination is always either authorized by antitrust law, or not. For any given instance of economic coordination, and certainly for any instance of economic coordination implicating prices, antitrust asks—either explicitly or implicitly—whether that coordination is justified, and then answers that question one way or the other. Moreover, the answers that antitrust gives to these questions are not derivable from property, contract, or corporate law—though its answers interact with each of these.

Currently, antitrust law tends to allocate coordination rights, across doctrinal areas, according to criteria that systematically prefer concentrated control over dispersed coordination or cooperation. If we envision antitrust’s approach to allocating economic coordination rights as a three-legged stool, its conception of the firm is one leg. The other two are its treatment of horizontal coordination beyond firm boundaries and its treatment of vertical coordination beyond firm boundaries. In deciding how to evaluate interfirm coordination, antitrust law first decides whether that coordination is horizontal (between competitor firms in the same market) or vertical(between firms in adjacent markets, such as supplier or distributor relationships). Antitrust law’s stark preference for coordination accomplished through vertical contracting over horizontal interfirm coordination mirrors the criteria according to which the firm exemption itself is applied. Both preferences embody the preference for control over cooperation, which is to say, for the concentration of economic coordination in fewer rather in many hands. This Article focuses primarily on the firm exemption because it is the most obscure of the three legs, and because both vertical interfirm coordination and horizontal coordination beyond firm boundaries are dealt with in greater detail in other work.7 For context, I briefly summarize the doctrinal content of the other two legs of the stool, and their relationship to the firm exemption. I also briefly describe the role of the Chicago School revolution in establishing this overall allocation of coordination rights, although this Article does not provide an exhaustive account of historical origins or etiology of current doctrine.8

A. Horizontal and Vertical Interfirm Coordination

Horizontal coordination beyond firm boundaries—including between individuals—has become increasingly disfavored in antitrust law over time, while vertical interfirm coordination has come increasingly into favor. Together, these tendencies represent the same preference for control over dispersed coordination that is embodied in the firm exemption itself. Moreover, the disfavor of horizontal interfirm coordination adds to the significance of the firm exemption by allocating certain coordination rights uniquely to firms.

I do not claim that a single school or influence within antitrust law is, by itself, responsible for this overall allocation of coordination rights: the legs of the stool have been built with a variety of materials over an extended time. Yet the Chicago School revolution in antitrust analysis has played an important role in creating or intensifying several aspects of antitrust’s current approach to allocating coordination rights, and some background on its influence is therefore warranted.

The Chicago School influence helped to construct antitrust’s attitude to both horizontal and vertical interfirm coordination in a few ways. First, it intentionally cleared away specific normative benchmarks in older antitrust analysis—notably, conceptions of fair business conduct,the flourishing of small enterprise, and attention to the influence of disparities in economic power upon the polity—that would have provided counterweights to other legal criteria. Second, the Chicago School elevated and intensified the focus upon the ideal competitive order as the unitary normative framework for antitrust analysis; that framework implies that horizontal interfirm coordination has inherently distorting effects. Third, the Chicago School specifically argued for relaxing antitrust scrutiny of vertical interfirm coordination.

#### Boom & Bust.

Alan Maass 21. Communications staff for Rutgers AAUP-AFT. Marxism Shows Us How Our Problems Are Connected. Jacobin. 1-5-2021. https://jacobinmag.com/2021/01/marxism-capital-socialism-capitalism-book-review

When Things Fall Apart

Marxist economics explains not only how capitalism works but why it regularly doesn’t — during the periodic economic busts that inevitably follow the booms. As Marx and Engels wrote:

Society suddenly finds itself put back into a state of momentary barbarism; it appears as if a famine, a universal war of devastation had cut off the supply of every means of subsistence; industry and commerce seem to be destroyed. And why? Because there is too much civilization, too much means of subsistence, too much industry, too much commerce.

Of course, in a world where billions go without enough food, there’s no such thing as “too much means of subsistence.” There’s only too much from the point of view of the capitalists — too much to sell their products at an acceptable profit.

Thier introduces the chapters on capitalist crisis by unpacking a long quotation from Engels that ends: “The contradiction between socialized production and capitalistic appropriation is reproduced as the antagonism between the organization of production in the single factory and the anarchy of production in society as a whole.”

Under capitalism, production within workplaces is generally highly regimented, but the economy as a whole is a free-for-all. Businesses make their investment decisions behind closed doors, each hoping to get a leg up on the competition — by introducing the most popular model, the new product, the next trend. Success means a greater share of the market and therefore more profits.

All the important questions for society as a whole — how much food should be produced, how many homes to build, what kind of drugs to research and manufacture, how to generate electricity — are decided by the free market.

In economic good times, success seems contagious. Companies make ambitious investments, produce more and more, and watch the money roll in. But when enough companies jump in, the market gets saturated, sales slump, debts grow, and the record profits start to sink. The effects spread from part of the economy to the next, as Thier explains, using the example of oil:

If refineries sit idle because there is an overproduction of oil, the workers are laid off, and the creditors, who financed the investment, are dragged down as well. But as future oil extraction and refining projects are pulled back, so too is demand for the raw materials (steel, concrete, plastics, electricity, etc.) and engineering necessary for the production of oil rigs, pipelines, and so on. The construction business and service and retail companies, which had benefited from the springing up of oil boomtowns, suffer as well.

Because of the complexity of the international capitalist economy, the boom-slump roller-coaster ride can look and feel different each time around. Thier devotes a chapter to analyzing the crash last time: the Great Recession of 2008–9. She explains why and how the parasitical realm of banking and finance was the detonator of this slump but looks beyond popular left explanations about “financialization” to reveal the underlying crisis of global overproduction.

Among Marxist economics writers, there are some disagreements about the details here, specifically about “which aspects of Marx’s writing — falling profitability, overproduction (or in some cases, underproduction), disproportionality among branches, the role of credit — are emphasized and how these pieces fit together,” Thier writes.

In her account, Thier tends to stress overproduction, to the disappointment of those who emphasize falling profit rates. This focus on overproduction crucially emphasizes how an organic mechanism of capitalism — inevitable in a system driven by exchange, exploitation, and competition — repeatedly causes crisis.

Regardless of their ideology or morality (or lack thereof), capitalists are inevitably driven to reduce costs, they inevitably see an advantage in producing more for less, and this inevitably leads to frantic overproduction that undermines profitability and ultimately slams the economy into reverse.

In other words, capitalism stops working not because of a mistake or failed policy, but because it’s been working the way it’s supposed to. As Thier writes:

Competition is the mainstay of capitalism. It can’t be made friendlier or softer because it requires an accumulation of capital at any cost, in order to get ahead or get left behind.… These same processes of accumulation necessarily lead to contradictions that threaten the very profits that capitalists seek. Every contradiction for capitalism is both a great hazard to our lives — since we are made to pay the price — and also an important crack in the system. Every periodic crisis is a potential point around which to organize.

#### 4. Adopting a social medicine solves advantage 2---the internal link is about healthcare access.

Mohan J. DUTTA 15, Professor and Head of the Department of Communications and New Media at the National University of Singapore, Adjunct Professor of Communication at the Brian Lamb School of Communication at Purdue University [*Neoliberal Health Organizing*, 2015, p. 231-234]

Latin American social medicine depicts a distinct and long strand of theorizing of health systems that challenges the liberal capitalist organizing of health, grounded in the organizing principles of social medicine and noting [END PAGE 231] that changing the overarching structures is central to transforming the conditions of poor health (Waitzkin, 1991, 2011; Waitzkin & Modell, 1974). That health is constituted within broader social conditions is the basis for research, teaching, clinical practice, and activism in socialist medicine, with early roots in Latin America. Social medicine thus connects health, healing, and health care delivery to the politics of social change and structural transformation, clearly voicing an activist agenda directed at transforming the unequal social conditions.

One of the earliest influences of social medicine was evident in the work of the medical student activist Salvador Allende, who would later become the president of Chile. In his book The Chilean Medico-Social Reality, Allende (1939) outlined the social conditions in Chile that resulted in poor health outcomes, emphasizing the broader conditions of foreign debt dependence, underdevelopment, international dependence, and resource consolidation in the hands of the local elite. Proposing social rather than medical solutions to health, Allende emphasized “income redistribution, state regulation of food and clothing supplies, a national housing program, and industrial reforms to address occupational health problems” (Waitzkin, 2011, p. 160). In his political life, Allende sought reforms in the Chilean national health service, complemented by reforms in the housing and nutrition areas, efforts at national income redistribution, and minimizing the role of multinational corporations.

The individualized model of public health that sees health and illness as a dichotomy is interrogated by the framework of social medicine that suggests that health and illness exist in a dialectical relationship that is dynamic and is continually shifting on the basis of social conditions, structures, cultural practices, economic production, reproduction, marginalizing practices, and processes of political participation. Thus, interventions in social medicine point toward the necessity for transforming the underlying relationships of production and resource distribution, resisting the public health narrative of interventions as mechanisms for improving economic productivity. Taking a social-class-driven approach to health inequities, Latin American social medicine sees the problems with health being situated within means of economic production, patterns of ownership of means of production, and control over productive processes. Therefore, health is approached from the framework of transforming the processes of economic production and labor processes.

The dominant framework of health as integral to growth and economic productivity is questioned by the framework of social medicine that situates the relationship between health and illness amid the very processes of economic organization, distribution of economic resources, and the pervasive effects of social class on health services and health outcomes. [END PAGE 232] The innovations in organizing of health structures in Chile, Cuba, Mexico, Bolivia, and Venezuela offer invaluable insights about the possibilities of alternative organizing that seek to redo the entire structure of social organizing that constitute health. The strong health indicators in Cuba demonstrate the effectiveness of a health system that is committed to addressing the structural determinants of health, creating equitable contexts for the realization and delivery of health (Campion & Morrissey, 2013). Social medicine research has looked at the relations among work, reproduction, the environment, and health, describing in-depth the material conditions that constitute health. For instance, researchers studying health in Mexico within the context of unions and local communities have documented health problems that relate to work processes and the environment. Similarly, researchers in Chile have documented the relations between gender, work, and environmental conditions. A key strand of social medicine examines the relationship between violence and health, connecting violence to poverty, the structures of organizing, and the inequities in ownership of processes of economic production. Investigations of violence attached to the U.S.-supported dictatorship in Chile, the violence connected to narcotics traffic and paramilitary operations, and the violence within the broader structures of the state-imperial networks draw linkages to the broader political economic configurations of neoliberalism.

#### 5. Federalism as the “truly local” without spillover breaks down New Deal challenges to capitalism and transnational human rights struggles.

AKA when the 1AC says “states have rights as long as they don’t hurt other people” they put the “state” into the category of the “true local” and say that the issue with current state actions is that they “infringe” on other states. This prevents transnational infringement that is necessary like Universal Human Rights.

Resnik 01Judith Resnik, Arthur Liman Professor of Law, Yale Law School 1-1-2001 Categorical Federalism: Jurisdiction, Gender, and the Globe http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1772&context=fss\_papers

B. Fears of "the Foreign" Within

These developments abroad illuminate another aspect of the appeal of categorical federalism in the United States. Insistence on the "truly local" as a jurisdictional limit underscores territorial boundaries in an effort to defend against waves of transnational laws and increasingly homogenized cultures. Categorical federalism therefore promises (or threatens, depending on one's view) not only to limit (or undo) the New Deal, but also to reinscribe isolationist foreign affairs policies aimed at returning the globe to a description of the planet rather than a powerful presence within the physical boundaries of the United States. Categorical federalism deploys "the local" as if it is inevitably a site of participatory democracy that protects some categories of human enterprise from distant power by safely ensconcing them in decisional processes controlled by one's friends, one's neighbors, and oneself.

Categorical federalism is thus specially responsive to the history of this nation's birth in rebellion from a distant and centralized power. The central gesture of the American Revolution-separation from King George-is reenacted by claiming that "[t]he Constitution requires a distinction between what is truly national and what is truly local,"210 thereby limiting Washington's power. Moreover, a tenet of constitutional faith, that the Constitution defines and confines all power, is invoked to justify the Court's exercise of its own power. In addition, categorical federalism has psychological appeal; "people often believe that there is an underlying essence or reason for categories to be the way that they are."2 1 Categorical federalism thus helps to cushion anxiety occasioned by dissolving boundaries.

Working in conjunction with other precepts of current federalism jurisprudence about the relationship between "the local" and "the international," the boxes constructed through categorical federalism become fortresses designed to ward off incursions not only from the national government but also from abroad.2 12 This posture also has a history. The claim that states' rights ought to preclude the application of international human rights law was raised in the early 1950s, when, after the creation of the United Nations and the promulgation of the Universal Declaration of Human Rights, Senator John Bricker proposed a constitutional amendment that would have limited federal treaty power if deployed to undercut states' rights.2 "3 According to one commentator, "Bricker wanted to insure that international agreements would not lead to United Nations interference or more liberal social and economic policies and legislation in the United States." 2 14

### Federalism---2NC

#### Federalism advantage---the plan does not solve circuit splits. Courts will eviscerate the action of the plan. Fiat can’t solve weakening of anti-trust laws and misinterpretation in individual cases.

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For most of American history, all sides in most major fights about the nation’s political economy agreed about one thing: the questions they were fighting about were constitutional in nature. In other words, they were fighting about constitutional political economy. This point is central to a book project that Willy Forbath and I have been working on for a few years, [The Anti-Oligarchy Constitution: Reconstructing the Economic Foundations of American Democracy](https://www.hup.harvard.edu/catalog.php?isbn=9780674980624) (forthcoming January 2022). We tell a story about rival visions of constitutional political economy stretching back to the Founding Era and how advocates of these visions fought out their differences both through politics and in court at different moments in American history. We are especially interested in what we call the “democracy of opportunity” tradition, which runs from the founding through the New Deal, whose (varied) advocates contended, by and large, that the Constitution required that we enact laws to disperse economic and political power, rather than letting it get concentrated in too few hands. We also explore various rival traditions, from the distinctive constitutional political economy arguments of the defenders of slavery to the anti-redistributive constitutional political economy arguments that crystallized a century ago into what we now call Lochnerism. You’ll notice I said “through politics and in court.” A central theme of the book is that for most of American history there has not been much separation (if any) between the constitutional political economy arguments advocates make in the courtroom, in the legislative hearing room, at a protest rally, or on the stump as candidates for office. And yet there does seem to be a noticeable pattern, which is my topic in this blog post. For advocates of the democracy of opportunity tradition—the tradition holding that the Constitution required (among other things) crushing the landed Southern oligarchy of the Slave Power; breaking up the trusts and monopolies; taxing the incomes of the rich; distributing land, education, and opportunity to ordinary Americans; and enforcing workers’ rights to organize and strike—courts have generally been the least hospitable of the three branches of government. The pattern is pretty striking. Painting with a bit of a broad brush—this is a blog post—it seems fair to say that American courts have, much more often than not, taken a particular side in fights about constitutional political economy. Courts have taken the side of holding that the Constitution protects the rights of aristocracy and oligarchy to maintain their outsized economic and political power. Many Americans have argued that the Constitution requires just the opposite, but they have found a more receptive audience, on the whole, in the democratically elected branches than in the courts. Over the course of American history, the elected branches have built a considerably more open and democratic political economy than the courts generally have wanted to allow. Today, as courts eviscerate voting rights and campaign finance laws, and take whacks at public employee unions and social safety net programs such as the Affordable Care Act, this particular alignment of the branches of government is with us again. But why? Why this alignment, so much more often than the reverse? The pattern began in earnest with Reconstruction. To the Radical Republicans, it was obvious that racial inclusion was impossible without destroying the planter oligarchy and building a mass, multi-racial middle class in the South. As Thaddeus Stevens put it, “The whole fabric of southern society must be changed . . . [i]f the South is ever to be made a safe republic.” There can be no “republican institutions . . . in a mingled community of nabobs and serfs.” But as violent white supremacists undid Reconstruction, the Court abetted them by finding ways to eviscerate the Reconstruction Amendments, striking down key parts of the core civil rights statutes that Congress had enacted to enforce the Amendments. The Court’s gutting of those statutes left Black citizens unprotected from most [discrimination](https://www.oyez.org/cases/1850-1900/109us3), [disenfranchisement](https://supreme.justia.com/cases/federal/us/189/475/), and even [massacre by white terrorist mobs](https://supreme.justia.com/cases/federal/us/92/542/). However, the same Court was receptive to claims that the Reconstruction Amendments protected [corporations](https://www.amazon.com/dp/B01M64LRDJ/) and their freedom from various forms of government regulation. The Supreme Court during this period—which was a long period, spanning much of the late nineteenth and early twentieth centuries—managed to surprise almost everyone by [striking down](https://www.oyez.org/cases/1850-1900/157us429) an income tax on the highest earners as unconstitutional (a decision eventually overturned by constitutional amendment). Frequently, federal courts, including the Supreme Court, found ways to weaken the antitrust laws that Congress enacted. Courts attacked efforts to organize labor unions with sweeping injunctions, court-sanctioned state violence, and jail terms aimed at protecting employers’ rights to an uninterrupted flow of non-union workers. (These are just a few highlights; there are many more in the book.) When you read some of these decisions today, they barely read like what we recognize as law—the class politics is so raw and right on the surface. But the views of those judges were predictable. The early-twentieth-century Republican Party that dominated American politics and judicial appointments in that era was the party of big business; the federal courts were stacked with elite lawyers from the emerging corporate bar, whose jobs before they joined the bench mostly involved serving the railroads and the trusts and their owners, the oligarchs of the Gilded Age. It would have been surprising if these judges had not beenactivists bent on finding ways to thwart the democratic branches’ efforts to rein in oligarchy. So what about when American politics turned? After President Franklin Roosevelt’s dramatic confrontation with the *Lochner* Court, the Court retreated and upheld the New Deal, ushering in a new constitutional regime. The Court reconceived its role, especially after World War II, as the nation’s protector of civil liberties and, eventually, civil rights. The Court upheld many laws parallel to the ones it had struck down after Reconstruction, such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965. But that was the most important thing it did in its brief period of mid-20th-century liberalism: step out of the way. The Warren Court has a reputation for activism, and many of its decisions—Brown v. Board of Education, the criminal procedure revolution, one-person-one-vote—were indeed activist holdings. But when it came to economic inequality, the Warren Court was operating during the period of American history when inequality was at its most muted (the “great compression”). Restraining oligarchy, or building up the middle class as a bulwark of Republican government, was not on the Court’s docket. Some observers expected the Court to do more—to enlist the Constitution in the War on Poverty, set [constitutional minimum welfare guarantees](https://www.theregreview.org/wp-content/uploads/2016/05/80HarvLRev.pdf), or [equalize school funding](https://www.oyez.org/cases/1972/71-1332)—but in the end, it didn’t. And then the Court took a long right turn, and now we are once again in a Gilded Age, with the Court playing the familiar role it played a century before, as the branch where efforts to build a democracy of opportunity can most readily expect to be crushed. There is a lot of contingency in American history, perhaps especially when it comes to courts. But it seems to me non-coincidental that the Court has so consistently been the least dangerous branch to aristocrats and oligarchs and their efforts to concentrate economic and political power. The simplest reason is this: efforts to restrain concentrations of private power—whether it’s the landed aristocrats Jefferson worried about at the founding, their Slave Power successors, or the monopolist robber barons of the Gilded Age—require the exercise of public power in the form of legislation. There are supporting roles to be played here by executives executing legislation and by courts interpreting it. But fundamentally, courts are not equipped to initiate or lead the work—the constitutionally necessary work—of laws like the Sherman Antitrust Act, the National Labor Relations Act, the Social Security Act, the Civil Rights Act, the Voting Rights Act, or the Affordable Care Act (to name a few!). Courts can interpret these statutes in ways that further the statutes’ goals, or courts can try to thwart them. But courts are not equipped to move first or take the lead in advancing these statutes’ goals. On the other hand, courts are better equipped to recognize the anti-redistributive, so-called libertarian claims of property, contract, and so on that some of these statutes might be viewed as threatening. Those claims are of a form that we still teach in the first year of law school: an individual claimant, standing on old common law-ish rights, against the redistributive machinations of the progressive state. Conservatives have long understood this point. They have placed their hopes in courts for over a century. As we explain in the book, conservatives never accepted the “New Deal Settlement” that exists in the wishful thinking of liberals. Instead they have continued ever since the 1930s to find ways to enlist the courts in their struggles to build a less redistributive constitutional political economy, one more tolerant of concentrations of economic and political power. Liberals and progressives cannot similarly place their hopes in courts—and not only because currently, contingently, the courts are far more conservative than the country as a whole. And yet liberals and progressives cannot ignore courts, which still have the power to thwart almost any intervention in our constitutional political economy. Nor should liberals and progressives argue seriously for an end to judicial review: we do actually need the courts to police violations of civil liberties and civil rights. That leaves liberals and progressives in a tricky spot. We need the courts, but we also need to understand that the courts are not our friends—and are unlikely ever to be. We need to understand the role of courts in our constitutional politics: rather than umpires sitting outside of politics, judges are a special kind of political actor, engaged quite directly in their own form of constitutional politics. If history is any guide, the long-term solution when the courts are aligned against liberal and progressive causes is not to “reform” the politics out of the courts, but, rather, to confront the courts through politics itself. It has worked before.

### K Solves---2NC

#### No link turn---The alternative solves private utilities----socialized utilities mean corporations can’t manipulate market prices and impose prices that are too high or too low which short circuits their internal link.

Thomas M. Hanna &, Michael Brennan 20, 12-21-2020, There’s No Solution to Big Tech Without Public Ownership of Tech Companies, Jacobin Magazine, https://www.jacobinmag.com/2020/12/big-tech-public-ownership-surveillance-capitalism-platform-corporations

The Antitrust Impulse The early stage antitrust actions of recent months are encouraging signs that policy makers, activists, and others are beginning to wake up to some of the dangers these platform corporations present — including the standardization of precarious work, overriding and ignoring labor laws, the entrenchment and exacerbation of racism and inequality through algorithmic bias, increased financialization, the proliferation of misinformation, and manipulation, the undermining of regulations and tax codes, environmental degradation, and the erosion of privacy and extension of social control. While these are welcome developments, it’s worth noting that there has been almost no discernable antitrust enforcement against Big Tech in recent years. Antitrust enforcers, for example, have not blocked a single acquisition out of hundreds by dominant platform companies over the last decade. As such, it is unclear how successful these antitrust actions, alone, will ultimately be. So, what are the obstacles and limitations? First and foremost, for antitrust to be actualized and ultimately succeed, the entire legal regime around it would likely need to be radically overhauled. Specifically, over the last several decades there has been a fundamental reinterpretation of antitrust law by the courts and a large decline in successful antitrust prosecutions by the Justice Department. Thus, any strategy that centers antitrust is contingent on a wholesale revision of the grounds on which a company is currently deemed to be a monopoly or anti-competitive. In particular, the still prevalent focus on consumer welfare and prices is likely to be an inadequate standard for antitrust action against platforms where in most cases the “product” is essentially provided for free. Second, increasing competition doesn’t address the natural monopoly dynamics inherent to the platform economy. “The consumer internet is a kind of natural monopoly,” Dipayan Ghosh explains: Its leading constituent firms consistently exhibit network effects: the networked services operated by Facebook, Amazon, and Google increase in value when more users use them. This meanwhile makes it extraordinarily difficult for new entrants to offer competitive levels of utility to consumers out of the gate. As with telecommunications before it, this industry now maintains impossibly high barriers to entry. Lastly, without additional changes to the structure of the companies (i.e. ownership, control, values) and the broader balance between market mechanisms (and imperatives) and state intervention, a reconcentration is almost inevitable. In the US context, there is ample evidence of this. For instance, both Standard Oil and AT&T (two of the most famous companies to be physically broken up by antitrust enforcement) ultimately reconsolidated. The former took several decades (ultimately becoming ExxonMobil) while the latter occurred relatively quickly, highlighting the additional challenges related to implementing antitrust strategies in an era of strong ideological and political adherence to market fundamentalism and neoliberalism. The Ownership Alternative Historically, one of the common “solutions” to the problem of natural monopolies has been public utility regulation. And while the idea of classifying and regulating platforms and other Big Data–dependent corporations as public utilities is controversial, it is starting to gain traction among various experts. However, both the experience and theory (including from diverse ideological perspectives) of public utility regulation in the United States suggests that it is often insufficient to deal with the innumerable problems associated with corporate concentration and power, and does little in furtherance of redistributing or democratizing wealth and economic control. Case in point is the United States’ experience with large investor owned electricity utilities. This leaves alternative models of ownership as the most viable and radical path forward, and one of the only options capable of getting to the root of the problem. A new report from Common Wealth and the Democracy Collaborative (to which the authors contributed) presents several bottom-up and top-down proposals to fundamentally change the ownership structure, values, governance, and orientation of platforms and data, and gain control over the commanding heights of the modern economy. First and foremost, this includes taking some or all of the large platform corporations into public ownership (either wholly or through a controlling or majority share ownership position). Part of this process must include embedding democratic principles at various levels. For instance, if ownership stakes are taken in major platform companies, they should likely be held in an autonomous public trust (or similar vehicle) organized with democratic multi-stakeholder representation from workers, consumers, government officials, the general public, etc. Once in public ownership, the platform companies themselves should also be restructured to embed both democratic management structures and new public interest principles. Of particular concern will be ensuring that anti-surveillance and data privacy values are woven into these new publicly owned platforms. This cannot be an afterthought, as it would introduce the unacceptable risk that the new public platforms would face incentives and pressure to collect, monetize, and/or misuse data (including sharing it with government agencies engaged in surveillance and social control). Rather, anti-surveillance and privacy values and rules should be included in any and all enabling legislation. Moreover, a strict national data privacy framework — whether enacted in conjunction with, or prior to, platforms being brought into democratic public ownership — would be an important complement to this proposal, together overcoming the problem of consumer protections creating barriers to entry that favor dominant firms. Another important component will be ensuring global, multi-stakeholder governance of these new public platforms. While many of the major platform and Big Tech companies are nominally based in the United States, their users are located throughout the world. Any proposal to democratize the ownership of platforms and data must take these global dynamics into account and develop ways in which people around the world (and not just in the United States and the UK) can be involved in ownership and governance decisions. In addition to public ownership of the major platform corporations, there are a number of further policy solutions that should be deployed to confront the platform monopolies and chart a course away from surveillance capitalism. For instance, a new and powerful set of labor and union rights, such as that put forward by the PRO Act, should be embedded in the organization and management structures of any new public or cooperatively owned platforms (and should be enacted regardless of possible shifts in ownership). Existing and new public agencies at various scales should be dedicated to incubating and supporting the development and proliferation of new cooperative and nonprofit platform and data alternatives; and financing of such ownership alternatives could be facilitated via direct federal spending and through the establishment of a network of local and regional public banks. A new multi-stakeholder regulatory authority should be created, tasked with democratically setting and enforcing standards around data collection and speech — taking those decisions out of the hands of bosses, corporations, and state technocrats; and when data is collected, it should be held in a new network of public “data trusts” that enable residents and communities both access to, and democratic control over, the data so that it can improve their lives, and not be misused for purposes of surveillance capitalism and social control. Lastly, as we are confronted with the rapidly emerging prospect of the currency system itself being captured by platform capitalists like Facebook’s newly rebranded cryptocurrency project, Diem, a linked Central Bank Digital Currency (CBDC) and postal banking system should be established to modernize payment infrastructure, while centering the preservation of financial data privacy inherent to paper cash. Tech Socialism or Barbarism None of these proposals are a silver bullet, and all need further exploration and definition. Moreover, as the British economist and former politician Stuart Holland articulated in the 1970s, they won’t by themselves fulfill the socialist goal of abolishing private sector capitalism completely, but they could create a “chain reaction” that radically, and permanently, tips the balance of economic, political, and social power. This is critical because with the platform monopolies and Big Tech corporations poised to dominate the commanding heights of our economy for decades to come, the decisions we make now will lock in a future; whether that future will be defined by increasingly pervasive surveillance capitalism or a more equitable, democratic, and ecologically sustainable alternative is up to us. The challenge is to liberate the potential of platforms and data from the logics of concentrated corporate ownership that currently shape their operation. This will require a newly ambitious agenda that can reimagine how platforms, and the data they – and we – generate, are owned, governed, and controlled.

## Alternative

### Alt---2NC

#### Buch Hansen votes neg.

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Conclusion In times where planetary boundaries are reached or crossed, mainstream political economy choses to either completely ignore the environment or reproduce the myth of green growth. If political economy intends to contribute towards re-embedding production and consumption patterns in environmental limits and indeed a corresponding ecological and social transformation, we have here argued that it needs to abandon its anthropocentric ontology and reposition itself in the postgrowth context. This presupposes a break with mainstream economics and an amalgamation with heterodox approaches such as ecological economics, ecofeminism and degrowth. Within the emerging and diverse political economy of and for the postgrowth era, the Marxian tradition, with its simultaneous focus on historically specific economic categories, social relations and modes of consciousness, is capable of playing a constructive part. And some of the concepts of contemporary critical political economy approaches such as regulation theory may give a hint into the further particulars of an analysis of this new epoch. Like growth economies, postgrowth economies will have institutions that may be understood in terms of ‘institutional forms’. We discussed this further at the example of the state. In our reading, a societal mobilization beyond, through and by the state would be necessary to push through an eco-social agenda with the potential of initiating degrowth. A range of corresponding policies and policy instruments have been identified including proposals for work sharing, minimum income schemes, caps on wealth and income, time-banks or job guarantees. Indeed, overall, there is no lack of more or less developed policy suggestions to which activists may turn. The problem continues to be that these are often fragmented and in need of being unified in a coherent strategy for the social and ecological transformation of the rich countries. It is encouraging that this issue is increasingly reflected in recent contributions that explore the synergy potential of single policies in terms of ‘recipes’ for a degrowth transition (Parrique, 2019) or ‘virtuous circles of sustainable welfare’ (Hirvilammi, 2020). Contributing to advance this agenda could be an entry point for political economists wishing to move beyond narrow anthropocentric perspectives to generate knowledge relevant for the postgrowth era. Whereas mainstream economics by means of its theory form and policy recommendations actively contributes to obstruct the economic and social transformations urgently needed to halt the climate and ecological crises, much political economy scholarship inadvertently plays a negative role by reproducing key ideas of mainstream economics – such as the notion that endless economic growth is unproblematic and desirable. If the discipline of political economy is to retain its relevance in the years to come, it needs to free and distance itself from this delusion.

#### The alternative’s state action solves Buch Hansen’s pre-requisite concern.

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State roles and eco-social policies in the transformation to a steady-state economy Here I apply the materialist state perspective to the issue of how existing states could assist and initiate a transformation from a capitalist growth economy to a sustainable post-growth one. Raising this issue is somewhat against the growth-critical mainstream since neither state theories nor policies are especially popular in post-growth/degrowth circles. In fact much green thought has tended to view states as part of the problem rather than as the solution (Cosme et al. [2017](https://www-tandfonline-com.proxy.library.emory.edu/doi/full/10.1080/09644016.2019.1684738)). Yet Cosme et al. also demonstrate that most concrete policy proposals tabled by growth-critical scholars are traditional ‘top-down’ and state-led measures rather than ‘bottom up’ and community-led. I would argue that this contradiction – between conceptualising the state as an external power, incapable of initiating change in an ecological and social direction, and politically appealing to it to do precisely this – can be overcome through an application of materialist state theory. In particular, Poulantzas’ concept of ‘condensation’ of wider societal struggles within the state indicates that the political actions of the state are far from independent of what goes on beyond it. If mobilisation by socio-ecological and growth-critical groups reached a critical momentum (Buch-Hansen [2018](https://www-tandfonline-com.proxy.library.emory.edu/doi/full/10.1080/09644016.2019.1684738)), the existing state apparatus could be used to initiate a transition that breaks the glass ceiling of current environmental states. This would require a combination of bottom-up mobilisations and action and top-down regulation, resulting in a new mix of property forms including communal, state, and individual property and a new division of labour between market, state, and ‘commons’. The top-down aspect of this transition would presuppose an ‘active interventionist “innovation state”, with substantial public investment, state banking, subsidies, and other incentives to private investment and greater regulation and planning’ (Gough [2017](https://www-tandfonline-com.proxy.library.emory.edu/doi/full/10.1080/09644016.2019.1684738), p. 197). A range of policies concerning taxation and/or caps on wealth and/or income to offset regressive impacts on lower-income groups would be required to reverse growing levels of inequality that are likely to accompany an economic retraction (Buch-Hansen and Koch [2019](https://www-tandfonline-com.proxy.library.emory.edu/doi/full/10.1080/09644016.2019.1684738)). At the same time, the investment functions of social policy would need to be enlarged and reconciled with environmental investment. If integrated into a comprehensive strategy, the following state policy initiatives could facilitate the transition to an economy beyond the growth imperative.

#### 2. It’s succeeding now.

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Forgetting about growth

At the moment, degrowth has no mass constituency. But some of its animating ideas are nonetheless exerting an influence on political economic thought — particularly the critique of G.D.P. growth as the lodestar of human progress.

“Even within mainstream economics, the growth orthodoxy is being challenged, and not merely because of a heightened awareness of environmental perils,” John Cassidy wrote in The New Yorker last year. “After a century in which G.D.P. per person has gone up more than sixfold in the United States, a vigorous debate has arisen about the feasibility and wisdom of creating and consuming ever more stuff, year after year.”

What’s the alternative? Kate Raworth, an English economist, has identified one option: “doughnut economics.” In Raworth’s view, 21st-century economies should abandon growth for growth’s sake and make it their goal to reach the sweet spot — or the doughnut — between the “social foundation,” where everyone has what they need to live a good life, and the “environmental ceiling.”

“The doughnut model doesn’t proscribe all economic growth or development,” Ciara Nugent explains in Time. “But that economic growth needs to be viewed as a means to reach social goals within ecological limits, she says, and not as an indicator of success in itself, or a goal for rich countries.”

Raworth’s ideas have had real-world impact: Last year, during the first wave of the pandemic, Amsterdam’s city government announced it would aim to recover from the crisis by adopting the precepts of “doughnut economics.” A year before that, Prime Minister Jacinda Ardern of New Zealand announced her country would prioritize its residents’ welfare and happiness over G.D.P. growth.

Delighted to hear that Jacinda Ardern is reading Doughnut Economics and that it reinforces her existing views. There is another economy waiting and it's starting to be made...

Even in the United States, which has embraced no such policy, G.D.P. growth has slowed in the past two decades, largely because of falling birthrates and a switch in spending patterns from goods to services.

That hasn’t solved the problem of America’s addiction to fossil fuels, of course. “Yet the sorts of policies on offer from degrowth advocates — like universal basic services and shorter working hours — could help address some of the long-standing ills now afflicting a wide range of economies,” Kate Aronoff writes in The New Republic. “Rather than chasing an increasingly far-off goal by trying to coax forth elusive corporate investment with giveaways, governments could start planning for what a fairer lower growth, lower carbon future might look like.”

#### 3. There is a wide approval for the alternative.

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Neoliberalism alternative.

Capitalism is in crisis. Until recently, that conviction was confined to the left. Today, however, it has gained traction across the political spectrum in advanced economies. Economists, policymakers, and ordinary people have increasingly come to see that neoliberalism—a creed built on faith in free markets, deregulation, and small government, and that has dominated societies for the last 40 years—has reached its limit.

This crisis has been long in the making but was brought into sharp focus in the aftermath of the global financial meltdown of 2007–8 and the global recession that followed it. In the developed countries of the Organization for Economic Cooperation and Development, economic growth over the last decade ceased to benefit most people. At the end of 2017, nominal wage growth among OECD members was only half what it was a decade earlier. More than one in three people in the OECD countries are estimated to be economically vulnerable, meaning they lack the means to maintain a living standard at or above the poverty level for at least three months. Meanwhile, in those countries, income inequality is higher than at any time in the past half century: the richest ten percent hold almost half of total wealth, and the bottom 40 percent hold just three percent.

Defenders of neoliberalism frequently point out that although decades of wage stagnation and wealth concentration have led to ballooning inequality in developed countries, the same time period has seen a dramatic increase in prosperity on a global scale. Over a billion people, they argue, have been lifted out of extreme poverty owing to technological advances, investments, and prosperity that were made possible by the spread of free markets. However, this argument fails to account for the critical role that governments have played in that change through the provision of education, health care, and employment. Such state interventions have arguably been as decisive as the invisible hand of the market in lifting living standards. This defense also ignores the fact that despite many gains in prosperity, massive wealth concentration and staggering inequality continue to shape the global economy: less than one percent of the world’s population owns 46 percent of the world’s wealth, and the poorest 70 percent own less than three percent.

Inequality has always been a feature of capitalist societies, and people have been willing to tolerate it as long as they felt that their quality of life was improving, their opportunities were expanding, and their children could expect to do even better than them—that is, as long as all the proverbial boats were rising. When that stopped happening in recent decades, it fed a growing perception that the system is unfair and is not working in the interest of the majority of people. Pent-up frustration has led to a clamor for change—including a new receptivity to socialist ideals that have long been sidelined or even considered taboo. In the United Kingdom, for example, 53 percent of people recently polled said they believed that the economy has become more unfair over the last decade. Eighty-three percent said they felt that the economy worked well for the wealthy, but only ten percent said that it worked for people born into poor families. And ideas such as restoring public ownership of the essential utilities that were privatized in recent decades, such as railways, electrical services, and water companies, are gaining traction, with over 75 percent of people polled supporting such a step. Meanwhile, in the United States, a 2018 Gallup poll found that among Americans aged 18 to 29, socialism had a higher approval rating (51 percent) than capitalism (45 percent). “This represents a 12-point decline in young adults’ positive views of capitalism in just the past two years,” Gallup noted, “and a marked shift since 2010, when 68 percent viewed it positively.”

A mere revival of the social democratic agenda of the postwar era, however, would not be sufficient. For one thing, that period’s emphasis on central authority and state ownership runs counter to the widespread demand in developed economies for more local and collective control of resources. Perhaps more important, however, is the need to confront a challenge that postwar social democratic models did not have to take into account: the threat posed by climate change and catastrophic environmental degradation. After all, neoliberalism is not just failing people: it’s failing the earth. Owing in no small part to the massive levels of consumption and fossil fuel use required by an economic model that prioritizes growth above all else, climate change now imperils the future of human existence. Last year, the Intergovernmental Panel on Climate Change concluded that the world has barely over a decade to halve carbon emissions if humanity is to have any chance of limiting the increase in average global temperatures to 1.5 degrees Celsius above preindustrial levels—a point past which the damage to human and natural systems would be devastating and largely irreversible.

Just like the economic breakdown that has chipped away at people’s quality of life, environmental decline is rooted in the crisis of capitalism. And both challenges can be addressed by embracing an alternative economic model, one that responds to a hunger for genuine reform by adapting socialist ideals to the contemporary era. A new economic model must prioritize a thriving and healthy natural environment. It must deliver improvements in well-being and guarantee all citizens a decent quality of life. It must be built by businesses that plan for the long term, seek to serve a social purpose beyond just increasing profits and shareholder value, and commit to giving their workers a voice. The new model would empower people and give them a larger stake in the economy by establishing common ownership of public goods and essential infrastructure and by encouraging the cooperative and joint ownership of private, locally administered enterprises. This calls for an active but decentralized state that would devolve power to the level of local communities and enable people to act collectively to improve their lives.

# 1NR Quarters

## Topicality

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Construction and Deconstruction of Normative and Economic Premises

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

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

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

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

C. Economic Premises and Evidence Rules

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

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

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

V. PRESUMPTIONS AS ANALYTICAL SHORTCUTS IN EU COMPETITION ENFORCEMENT

A. A Brief Account of the Existing Presumptions

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

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

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

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

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

#### 5. Not specifying the remedy is WORSE and links MORE to our offense! A vague plan prohibits nothing at all.

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

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

#### 6. The we meet argument is about per se illegality---that’s not responsive.

#### A. All they do is create a rule and remedy, allowing its use for case-by-case evaluation---until that rule is applied, this prohibits nothing at all.

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

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#### B. There’s a chance that no court will ever apply the AFF’s standard to prohibit a business practice!

--courts applying the AFF might simply find every example of conduct reasonable

--conduct might be deterred such that no court ever applies the rule to prohibit a course

Lee Loevinger 61, Assistant Attorney General in charge of the Antitrust Division U. S. Department of Justice. "THE RULE OF REASON IN ANTITRUST LAW" Prepared for Delivery Before the AMERICAN BAR ASSOCIATION SECTION OF ANTITRUST LAW St. Louis, Missouri August 7, 1961 <https://www.justice.gov/atr/speech/file/1237731/download>

As might be expected, the promulgation of this rule of reason resulted in an attempt by defendants to justify every restrictive combination that was attacked on the grounds that, in the light of all the economic facts and conditions, the particular practice assailed is reasonable. The courts have responded to this by developing a doctrine of so-called "per se" violations which are held to be prohibited by the antitrust laws regardless of any asserted justification or alleged reasonableness. Such category of violations are sometimes referred to as "unlawful per se" 8/ and it is sometimes said that such acts are illegal per se regardless of their reasonableness. 9/ However such a view suggests an arbitrary holding which, in my opinion, is not justified by an analysis of the cases themselves. Rather, I think the correct analysis is indicated by the statement of the Court in the Socony-Vacuum case that "Agreements for price maintenance...are, without more, unreasonable restraints within the meaning of the Sherman Act because they eliminate competition \*\*\* "10/ and by the statement in certain later cases that tie-in agreements and similar arrangements are "unreasonable per se" 11/. This view seems to be that which the Court itself is now taking as indicated by the statement in the Northern Pacific decision that "There are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conslusively presumed to be unreasonable and, therefore, illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." 12 In the opt phrase of a recent decision, such practices are "intrinsically unreasonable". 13/

In this view, the distinction to be made between the categories of acts which are prohibited by the antitrust laws is between those which are intrinsically and those which are extrinsically unreasonable. Acts which are intrinsically unreasonable violate the antitrust laws because their inherent character is so restrictive of competition that the courts will not undertake an elaborate economic inquiry into their purposes, tendencies or effects, or into the circumstances giving rise to their adoption and use.

Over the years a number of specific practices have been found to be thus intrinsically unreasonable and, therefore, illegal under the antitrust laws.

#### C. The contours of what’s banned might be implied, but that’s not a prohibition.

Joseph N. Laplante 12, US District Court, New Hampshire, “SignalQuest, Inc. v. Tien-Ming Chou & Oncque Corp,” 284 F.R.D. 45, Lexis

Here, the parties agree that SignalQuest did not make service on defendants pursuant to Rules 4(f)(1), (2)(A)-(B), or (3). Taiwan is not a signatory to the Hague Convention or any other agreement specifying an appropriate means of service, so service pursuant to Rule 4(f)(1) is not a possibility, [\*\*8] and it is undisputed that SignalQuest did not follow Taiwan's law governing service, the directions given in response to a letter rogatory, or any order of this court. As just mentioned, SignalQuest relies solely on Rule 4(f)(2)(C)(ii), contending that it properly effectuated service of process under that section by having the clerk of this court deliver the summons and complaint to defendants by Federal Express. Defendants' disagreement with that contention is limited to a single issue: they argue that the method of service SignalQuest chose in this case is "prohibited by the foreign country's law," and therefore ineffective under Rule 4(f)(2)(C). 2

The principal point of disagreement between the parties is the proper interpretation of the term "prohibited by the foreign country's law." That matter has occupied a number of courts, and two clear lines of authority, [\*\*10] corresponding to the positions the parties stake out here, have developed. "The vast majority of cases to consider the issue have held that HN4 a method of service is not prohibited under Rule 4(f)(2)(C)(ii) unless it is expressly prohibited by a foreign country's laws." Fujitsu Ltd. v. Belkin Int'l, Inc., No. 10-cv-3972, 2011 U.S. Dist. LEXIS 99922, 2011 WL 3903232, \*3 (N.D. Cal. Sept. 6, 2011); see also SEC v. Alexander, 248 F.R.D. 108, 111-12 (E.D.N.Y. 2007) (collecting cases). The only judge of this court to consider the issue has also taken that view, see Emery v. Wood Indus., Inc., 2001 DNH 155, 4-5 (McAuliffe, J.), which is the interpretation SignalQuest urges. The remaining cases, which have interpreted the rule in the manner defendants urge, hold that "unless expressly permitted by foreign law, service by registered mail should be deemed prohibited under Rule 4(f)(2)(C)(ii)." TruePosition, 2006 U.S. Dist. LEXIS 39681, 2006 WL 1686635 at \*4.

As between the two interpretations, the court finds the majority view more persuasive. To begin, that interpretation fits more comfortably with HN5 the plain language of Rule 4(f)(2)(C) itself, which, of course, is the "starting point" for "interpreting a formal rule of procedure." Delgado v. Pawtucket Police Dep't, 668 F.3d 42, 49 (1st Cir. 2012). [\*\*11] HN6 To "prohibit" means "to forbid by authority or command: ENJOIN; INTERDICT." Webster's Third International Dictionary 1813 (1993); see also Black's Law Dictionary 1212 (6th ed. 1990) (defining "prohibit" as "[t]o forbid by law; to prevent"). 3 "A form [\*49] of service is not 'forbidden by authority' merely because it is not a form explicitly 'prescribed' by the laws of a foreign country." Dee-K Enters. Inc. v. Heveafil Sdn. Bhd., 174 F.R.D. 376, 380 (E.D. Va. 1997); see also Wright, supra § 1134 (noting that while the rule "can be interpreted to bar parties from using any method of service not explicitly prescribed by the laws of the foreign country . . . this reading of the rule seems inconsistent with the text on its face."). To be "prohibited" requires something more, akin to a clear command that a course of action cannot be taken.

### AT: Counter-Interp---2NC

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

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

Criticisms

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

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

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

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

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

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

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

#### 4. “Prohibitions” require outright bans on a practice.

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

We also have measures that help capture the annual level of regulatory scrutiny given merger activity in a particular antitrust jurisdiction: our core explanatory variables. 'Antitrust Actions' refers to an antitrust jurisdictions annual sum of monitorings, remedies, and prohibitions. Where 'Monitorings' are the number of transactions cleared but with commitments by the antitrust authority to monitor post-merger behavior, 'Remedies' are the number of transactions cleared but forced to undertake behavioral or structural remedies to ameliorate anti-competitive concerns, and 'Prohibitions' are the number of transactions that are out-right prevented by the antitrust authority.16 Accordingly, antitrust actions represent an annual count of the possible merger policy actions taken by a particular jurisdiction with respect to merger behavior: with monitorings, remedies and prohibitions representing the three sub-categories of actions. Table 1 reports summary statistics – based on the observations employed in the empirical estimations – for the Mergers variable and the three types of Antitrust Actions broken down by the twenty-eight antitrust jurisdictions.

### AT: Aff Ground

#### 2. Link turn. It’s the only clear bright line---if the business practice described by the aff can still legally occur post-plan, it is not prohibited.

Martin G. Vallespinos 20. LLM, University of Michigan Law School; Manager at Ernst & Young Detroit, “Can the WTO Stop the Race to the Bottom? Tax Competition and the WTO,” 40 Va. Tax Rev. 93, Lexis

Prohibited subsidies, as described in Article 3 of the SCM Agreement, are disallowed outright, and WTO members can unilaterally impose countervailing measures against the country sponsoring them. This category [\*146] includes (i) subsidies that are contingent, in law 237or in fact 238upon export performance 239and (ii) subsidies that are contingent upon the use of domestic over imported goods.

Export contingency can be "de jure" or "de facto." De jure export contingency derives from "the very words of the relevant legislation, regulation[,] or other legal instrument constituting the measure." 240De facto export contingency is met when "the facts demonstrate that the granting of a subsidy ... is in fact tied to actual or anticipated exportation or export earnings." 241The WTO jurisprudence regarding "de facto" contingency, however, is not uniform and WTO panels have set forth various alternative tests. In Australia-Automotive Leather II, the Panel established a standard of "close connection" between the grant of a subsidy and export performance. 242In Canada-Aircraft, the Panel and the Appellate Body ("AB") implemented the so called but-for test, which interprets the "tied to" language to be equivalent to a relationship of "conditionality" between the grant of a subsidy and export performance. 243Therefore, de facto contingency is met when "the facts demonstrate that the tax benefit would not have been granted ... but for anticipated exportation or export earnings." 244In the same case, the AB clarified that "it does not suffice to demonstrate solely that a government granting a subsidy anticipated that exports would result." 245This means that, in the AB's view, the granting authority's expectations on exports may not be sufficient to meet the standard, so the subsidy must be objectively contingent upon export [\*147] performance. 246In pursuit of a more objective criteria, the AB suggested that, "where relevant evidence exists, the assessment could be based on a comparison between, on the one hand, the ratio of anticipated export and domestic sales of the subsidized product ... and on the other hand, the situation in the absence of the subsidy." 247But both the Panel and AB further clarified that an assessment based on ratios is incapable by itself of establishing that a given subsidy is de facto contingent on export performance "in the absence of any meaningful analysis regarding how a subsidy's design and structure contributes to the presence of an incentive for a recipient to [favor] export sales over domestic sales." 248

With respect to domestic use contingency, Article 3.1(b) contains no reference to contingency in law or in fact. Nevertheless, the AB has found that Article 3.1(b)'s scope covers both de jure and de facto contingency. 249Also, both the Panel and the AB have concluded that the general guidance regarding evaluations of de facto export contingency should be applicable to de facto domestic use contingency. Finally, it should be mentioned that the Panel and AB decisions are not binding precedential authority but rather can be only strongly persuasive authority. Therefore, countries should be aware of all these alternative tests when designing their tax policies, as there is no certainty as to which criteria WTO decision makers may apply in the event of a dispute (e.g. but-for test, close connection test, assessments based on ratios, etc.).

A subsidy that is not considered "prohibited" can still satisfy the specificity criteria and become an actionable subsidy if it meets the two following requirements:

(1) Specificity: an actionable subsidy is considered specific when the eligibility to receive the benefits is limited to certain enterprises, industries, or areas; 250and

(2) Adverse effect: an actionable subsidy is considered adverse when it produces a serious prejudice to the interests of another member, an injury to its domestic industry, or a nullification or impairment of benefits accruing directly or indirectly to other members under the GATT. 251

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

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

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

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

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

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

### Extra---1NR

#### On the we meet debate---Subsets. Prohibiting a subset is a reg, NOT antitrust

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I. INTRODUCTION

In Controlling Market Power in Telecommunications: Antitrust vs. Sector-specific Regulation ("Controlling Market Power"), Damien Geradin and Michel Kerf undertake the ambitious task of comprehensively reviewing and analyzing the telecommunications regulatory structure of five nations that have achieved some success in promoting competition in telecommunications markets. The purpose of this undertaking is to evaluate the use of telecommunications sector-specific regulation versus more general, economy-wide antitrust regulation to accomplish specific goals related to promoting competition and efficiency in the provision of telecommunications services.

Controlling Market Power is a slow read, densely packed with information about a broad range of telecommunications regulations in the five countries analyzed. The discussion ranges from interconnection obligations to retail and wholesale price regulation to spectrum auction rules to universal service programs. In the course of this wide-ranging analysis, the authors make a number of useful observations and recommendations. But their overarching conclusions, concerning the ideal division of telecommunications regulation between sector-specific rules and institutions and antitrust-based rules and institutions, are simply too broad to be of much use to policymakers or practitioners in countries that already have well-established telecommunications regulatory models.

Despite its limitations, Controlling Market Power offers an important lesson. Understanding the contributions and limitations of the comparative analysis contained in the book helps to clarify the circumstances in which comparative analysis of telecommunications regulations can serve as a useful tool for the telecommunications policymaker or practitioner. That is, where the circumstances and objectives of the countries are sufficiently comparable, and the issue being analyzed is sufficiently narrow, much can be learned by examining the experience of other countries that have already undertaken regulatory activity designed to promote the relevant policy objectives.1 [FOOTNOTE 1 BEGINS] 1. In performing such a comparative analysis, it may be useful to keep in mind the distinction identified in Controlling Market Power between approaches that rely on sector-specific regulation as opposed to antitrust-based regulations that apply across the economy as a whole. [FOOTNOTE 1 ENDS] This type of analysis often takes place as other countries look to U.S. regulatory activity, but there also are a number of circumstances in which U.S. policymakers and practitioners can benefit from analyzing regulatory activity that has taken or is taking place in other countries.

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

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

Criticisms

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

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

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

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

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