# 1NC

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### T Prohibit---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.

### Cap K---1NC

#### Capitalism causes environmental extinction---depletion and waste crisis outpace technological gains.

Tony Smith 21. Professor emeritus of philosophy at Iowa State University. "The Deadly Metabolic Rift". https://againstthecurrent.org/atc211/the-deadly-metabolic-rift/

Monthly Review editor and University of Oregon professor of sociology John Bellamy Foster has written several books and numerous articles, beginning with Marx’s Ecology: Materialism and Nature (2000), exploring the relevance of classical Marxist thought to grasping today’s existential environmental crises. Co-author Brett Clark is professor of sociology and sustainability studies at the University of Utah.

A small subset of the authors’ main claims will be highlighted here.

(1) There is indeed “an existential crisis in the human relation to the earth.” (1) Over the last 10,000 years planetary conditions fluctuated within relatively narrow and stable boundaries. The entire history of settled human civilizations has unfolded in this “Holocene” period of our planet’s life.

This period has now concluded. In a number of areas crucially important to humanity, these boundaries have been (or are about to be) transgressed: climate change, ocean acidification, stratospheric ozone depletion, nitrogen and phosphorus cycles, global freshwater use, changes in land use, biodiversity loss, atmospheric aerosol loading, and chemical pollution. (244)

Human activity is the main causal factor explaining this development, leading earth scientists to refer to the new period as the “Anthropocene.”

The authors of an important study cited by Foster and Clark warn that if the upper-range of projections of global warming were to occur it “would severely challenge the viability of contemporary human societies.”(1) When we recall how little has been done to prevent increased global warming, and how y-it is only one of the numerous planetary transformations imposing comparable risks on human societies, talk of an “existential threat” is fully warranted.

(2) There is no “technological fix” for this existential crisis. The more intelligent representatives of capital do not deny that serious environmental challenges must be faced. For them, however, this is best done by working with capitalist markets and not against them.

A carbon tax on polluting firms would give companies a strong market incentive to lower their costs by using technologies requiring fewer carbon emissions. Having to purchase rights to release carbon into the atmosphere in carbon markets would supposedly have the same effect, in their view.

There are also calls for the state to support firms undertaking massive geoengineering projects, such as sending aerosols into the upper atmosphere to reflect away the sun’s rays before they increase the planet’s surface temperature. Another proposal is to install technologies capable of extracting and sequestering significant amounts of carbon from the atmosphere.

As Foster and Clark remind us, technological change in capitalism tends to develop “greener” technologies without any special spur. Over the course of the industrial revolution, for example, each succeeding generation of steam engines became “greener” over time, burning less coal per unit of output than the one before. The total amount of coal burned in England increased nonetheless. (245)

This “Jevons paradox” (named after the British political economist who first brought it to attention) is easily explained: the increase in the number of units produced overwhelmed the reduction of coal use per unit, leading to more coal being burned overall.

Is there any reason to think that introducing technologies “greener” than those employed today won’t have a similarly paradoxical result? Investors in the stock market, whose pricing of oil companies’ stocks assumes that the last drop of oil in the ground will be profitably extracted, do not seem to think so. (243-4)

Engineering Disaster

Regarding geoengineering projects, Foster and Clark repeat the warning of many scientists that such unprecedented technological experiments would almost surely have pernicious consequences as harmful as the harms they are supposed to alleviate. (278)

Further, their massive scale would leave few resources for other social needs. An infrastructure capable of handling annual throughput 70 percent larger than that handled currently by the global crude oil industry would be required, along with ridiculous quantities of water — 130 billion tons annually just to capture and store U.S. emissions. (280)

Far from being a step towards socialism (as some techno-utopians of the left hold), government funded geoengineering would simply solidify an environmental industrial complex alongside the military industrial complex, the pharmaceutical industrial complex, and other complexes of big capital. (281-2)

Finally, once again, climate change is only one way in which present environmental trends will soon “severely challenge the viability of contemporary human societies.” In all the other cases too the sorts of technologies that have been developed, and the ways they have been used, have been part of the story of how we got to the present “existential crisis.”

Unless we figure out why that has been the case and eliminate that reason, to think we will be saved by technologies is to indulge in fantasy.

(3) Capitalism is the fundamental cause of the existential crisis in the relation between humans and the earth. All living beings appropriate resources from their environment and all generate wastes back into their surroundings. For a species to successfully occupy an environmental niche, the rate at which it depletes resources from its ecosystem must correspond to the rate they are replenished, and the rate it generates wastes must be aligned with the rate wastes can be processed.

When the social forms of capitalism are in place, neither condition is met, creating the metabolic rift between human society and its environment.

Capitalist market societies are distinguished from other societies in that products generally take the form of commodities sold for a profit. Any capitalist producers who do not attempt to make as much profit as possible, as fast as possible, will find themselves losing market share to those who do, if not forced out of existence altogether.

Making as much profit as possible, as fast as possible, generally means producing and selling as many commodities as possible, as fast as possible. This accelerated temporality is in tension with the temporality of our environment; resources tend to be depleted at a faster rate than they can be replenished, and wastes generated at a faster rate than they can be processed.

From this standpoint the “Jevons Para­dox” is less a paradox than a general description of how capitalism works. Any environmental benefits from technologies using fewer natural resources or generating fewer wastes per unit of production necessarily tends to be overwhelmed by the increase in the number of commodities produced in response to the “Grow or die!” imperative so ruthlessly imposed by the demands of capital accumulation.

From Local to Global Destruction

In the early phases of capitalist development, environmental destruction was relatively localized. After a handful of centuries of global expansion, it has sucked in re­sources from the natural world and spewed out wastes on a global scale, creating a fundamental rift in the metabolic relationship between human beings and the earth that is our home.

#### 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.

#### Vote neg to endorse global movements---pressures towards socialist state action are building, forces the hand of monopolies.

Carles MUNTANER ET AL. 15, MD, PhD, Professor in the Faculty of Nursing, Dalla Lana School of Public Health, and in the Department of Psychiatry, Faculty of Medicine, at the University of Toronto; Edwin Ng, PhD in Social Science and Health in the Dalla Lana School of Public Health; Haejoo Chung, associate professor in health policy at the Korea University College of Health Sciences; Seth J. Prins, PhD candidate in Epidemiology and a Psychiatric Epidemiology Training Program Fellow at Columbia University [“Two decades of Neo-Marxist class analysis and health inequalities: A critical reconstruction,” *Social Theory & Health*, Vol. 13, No. 3-4, Aug/Nov 2015, p. 267-287, Accessed Online through Emory Libraries]

An ostensible goal of all research on the social production of health inequalities is not merely to describe or explain such inequalities, but to effectively reduce them (Muntaner and Lynch, 2002; O'Campo and Dunn, 2011; Muntaner et al, 2012b). A Neo-Marxist class approach has implications for the way that researchers think about and engage with efforts to reduce health inequalities, implications that invert the mainstream relationship between research and action. A cursory glance at the conclusion sections of many population health studies reveals an almost rote focus on ‘policy implications’ relevant to policymakers. We argue here that, although this mainstream orientation to social class and health inequalities may appear innocuous or politically neutral, it in fact functions in the service of incremental, apolitical, technical changes that are ultimately system-justifying and status-quo-reproducing (Chomsky, 1971).

As we described at the outset, the individual attribute approach to social class tracked broader trends in social science theory and research towards reductionism and methodological individualism. This absolves researchers from engaging with social processes and relations, which demand analyses of exploitation, domination, and even employment relations. These intellectual trends, in turn, reflect structural changes in the political economy of academic institutions that produce such knowledge (Muntaner et al, 2012a). While a complete discussion of the impact of neo-liberalism on health inequalities research is beyond the scope of this analysis, we contend that such trends conform to political options that often perpetuate inequalities, because they produce knowledge that explicitly avoids the mechanisms that generate social and health inequalities.

What can a Neo-Marxist approach to social and health inequalities add? Aside from doing the opposite of the mainstream approach (that is, re-engaging with analyses of employment relations, exploitation, domination and other class processes), an important contribution of Neo-Marxist class analysis is to break the chain between health inequality research and the ‘policy mystique’. It can do this by flipping its orientation from the top-down to the bottom-up, and rediscovering and engaging with the rich diversity of poor people's and working class social movements whose struggles - class struggles - against inequality, including health inequalities, can become a target audience for research and action. Adopting a relational class approach means recognizing - not just politically, but from a pragmatic research design and implementation perspective - that the vast majority of ‘the 99 per cent’ are completely alienated from the policy space, both professionally and electorally. Examples of such bottom up class approaches would be the ‘Housing First’ program in Canadian cities (van Draanen et al, 2013) or public health action research with labour unions in the United States (Malinowski et al, 2015). A resurgence of poor, working class, and climate-justice activism, from the international outgrowths of Latin America's left turn and the Arab Spring (Muntaner et al, 2011) to the anti-austerity movements in the European Union (Tugas, 2014), provides compelling opportunities for researchers to address new, grassroots stakeholders.

Recognizing that the vast majority of the population is on the opposite side of the class struggle than 'policymakers' does not imply that we should abandon progressive health policy reforms, but it means that we should adopt a more critical, bottom-up perspective towards how policy changes affecting the public's health are ultimately achieved. This is not to say that all researchers of social inequalities in health must become public social scientists (Burawoy, 2005) but it is to say that we cannot consign ourselves, under a thin veil of neutrality, to de facto approaching policy from a privileged position of access to elites, that is, from the orientation of serving policymakers. At the very least, we should have a more class-conscious perspective (Burawoy, 2014). Returning to and advancing relational approaches to class may be the only way this will be possible.

### Trade DA---1NC

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

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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.

### Regs CP---1NC

#### The United States federal government should:

#### ban private sector business practices that are exempt from penalties via state action immunity through non-antitrust regulations; and

#### ban the development of nanotechnology.

#### Don’t need to alter Parker.

1AC Sack 21 [John Sack, J.D., Duke Law School, Class of 2022, B.S. University of Michigan, 2019, 2021 https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1196&context=djclpp\_sidebar]

IV. PROPOSED SOLUTIONS

The Sherman Act, and specifically Parker immunity, should be interpreted in light of the above concerns. After all, the Sherman Act is the standard-bearer for the U.S. free market system, and so our interpretation of it should evolve with our understanding of constitutional principles and economic conditions.82 Justice Burger’s concurrence in City of Lafayette elaborates on this point:

Our conceptions of the limits imposed by federalism are bound to evolve, just as our understanding of Congress’ power under the Commerce Clause has evolved. Consequently, since we find it appropriate to allow the ambit of the Sherman Act to expand with evolving perceptions of congressional power under the Commerce Clause, a similar process should occur with respect to “state action” analysis under Parker. That is, we should not treat the result in the Parker case as cast in bronze; rather, the scope of the Sherman Act’s power should parallel the developing concepts of American federalism.83

As states impose costs on each other through state-sanctioned monopolies, the Court’s understanding of federalism and the Commerce Clause counsels scrutiny of the Parker doctrine. An entirely new doctrine is not necessary to curtail Parker immunity. Rather, the issue can be resolved by applying Parker immunity in light of the American dual system of federalism and the Commerce Clause. Modern scholarship critiques the lack of concern for interstate spillovers. By that token, the modern Parker doctrine fails to account for economic efficiency and undermines political representation values meant to be protected by federalism.84 So while scholars almost universally recognize that interstate economic spillovers are problematic, there is no consensus on what remedy is most appropriate.

**[MSU’s card ends]**

A. Substantive Review of State Regulations

The first of these solutions is to add substantive review of state regulations. The current doctrine requires only procedural clearance before a court will grant state action immunity.85 Courts do not inquire if the regulation is substantively reasonable, nor do courts apply any “rule of reason” analysis present in most other antitrust cases. Justice Blackmun proposed a test that would insert a substantive barrier to claims of immunity: State-sanctioned anticompetitive activity must be declared void if its potential harms outweigh its benefits.86 His test is a modified rule of reason analysis. It assesses the justifications for anticompetitive activity in the same way courts assess justifications in equal protection cases: where “justifications are at all substantial,” then a court should not find the restraint unreasonable.87

Justice Blackmun applied his test to the regulation in Cantor. The anticompetitive practice at issue was an alleged tie of electricity service and lightbulbs offered by the Detroit Edison Company.88 In this case, the allege tie was providing, at no cost, new residential customers with lightbulbs and replacing burned-out bulbs. Detroit Edison’s rates, both for electricity and the omission of any charge for lightbulbs, had to be approved by the Michigan Public Service Commission and could not be changed without the Commission’s approval.89 Detroit Edison claimed that they had received no profit from the distribution of bulbs, and stated the intended purpose was to increase the consumption of electricity.90 On the other hand, the petitioner, a retail druggist selling light bulbs, claimed that the policy’s real purpose was to foreclose a substantial portion of the lightbulb market.91 Because the Court only addressed the applicability of Parker, the Court did not address the merits of the underlying antirust claim.92 Nevertheless, in his concurrence, Justice Blackmun applied a substantive rule of reason analysis and found the tie to be unreasonably anti-competitive and thus not entitled to immunity.93 He stated that while the tie originated as a way to allow people to use more electricity, there were other less restrictive means to achieve that same result, like a promotional lightbulb sale.94 Michigan’s interest in the tie—having lightbulbs being sold by a regulated producer—was rejected as an inadequate state objective because no evidence suggested that a competitive lightbulb market created instability or raised any other traditional concerns with competitive markets.95 In short, Justice Blackmun’s proposed test is slightly stricter than rational basis review.96

Justice Blackmun’s test offers a number of benefits that the current Parker doctrine does not account for. First, it would require states to articulate the intent behind the regulation that abrogates the freemarket scheme. In Cantor, Justice Blackmun took note of the lack of evidence that the Michigan Public Service Commission had even considered the light-bulb tie that it had endorsed for the private Detroit Edison Company to use.97 A state enacting an anti-competitive regulation or scheme should be incentivized to develop a rich legislative history in order to properly defend their scheme in court. In other words, they should have to show that deliberative process led to the challenged policy. This, in turn, would incline regulators to more critically review regulations before they are enacted.98 Second, it would allow courts to stay well within their wheelhouse of antitrust law: applying the rule of reason. Justice Blackmun’s test is consistent with the common practice of federal courts in antitrust cases, and the more specific problem of assessing state interests against federal dictates, also familiar to federal courts.99 Such a test would allow most legitimate state restraints to continue lawfully, and only those with significant competitive harms or no justification at all would be invalidated.

While such a system would address some political concerns about the doctrine, it does not go far enough to solve federalism concerns inherent in the modern Parker doctrine. Justice Blackmun’s solution does not explicitly outline what justifications he would find sufficient to allow a program to succeed, nor does he explicitly mention what costs may doom a program. Further, it only connects the state interest in the regulation to its effectiveness in achieving that objective. Few courts have engaged in any meaningful analysis as to state policy goals underlying a restraint on trade, and no analysis goes specifically to the interstate effects of such a policy.100 However, creating a solution to address federalism does not involve re-inventing the wheel, as existing doctrines and proposals can be slightly altered to best police the doctrine.

B. Dormant Commerce Clause Fills the Gap

Another proposed solution would leave the Parker doctrine unaltered but instead let the Dormant Commerce Clause handle state restraints that create spillovers. Dormant Commerce Clause analysis proceeds in two main ways. First, if a state regulation is facially discriminatory towards out-of-state commerce, or if it is not discriminatory on its face but still creates discriminatory effects, it is virtually per se invalid.101 Such regulations include mandating waste to be processed in certain in-state facilities,102 prohibiting the importation of out-of-state waste,103 and prohibiting the exportation of in-state minnows.104 Only if the regulation has a legitimate objective, and that objective cannot be achieved by non-discriminatory means, can the regulation survive.105 Such regulations are not typically challenged in Parker cases, but restraints on trade could fall into this category.106 Second, if a regulation is nondiscriminatory and its effects on interstate commerce are incidental, the regulation is valid unless the “burden imposed on such commerce is clearly excessive in relation to the putative local benefits.”107 This approach has been used to strike down a number of regulations, including Arizona fruit-labeling requirements,108 an Illinois statute requiring certain mudguards on trailer trucks,109 and an Iowa statute barring long trucks on their highways.110 However, this analysis has rather lenient results when state action merely “affects” interstate commerce but does not explicitly discriminate against it. 111 This lenient approach is not enough to appropriately police states that enact anti-competitive schemes that create interstate burdens.

### States CP---1NC

#### The 50 states, Washington, D.C., and all relevant territories should

#### - not exempt anticompetitive business practices from penalties

#### - regulate next gen technology and restore appropriate decentralization for experimentation, empirical testing, and learning,

#### - ban the development of nano tech.

#### Solves disruptive healthcare---opioid crisis proves

**The Chronicle 17**. The Chronicle is a newspaper and website that presents news, information, and jobs for college and university faculty and student affairs professionals. "State Attorney General’s Office Expands Drug Price Fixing Lawsuit." . 7-28-2021. https://www.chronline.com/stories/state-attorney-generals-office-expands-drug-price-fixing-lawsuit,22103

Attorneys general **across the country**, including Washington Attorney General Bob Ferguson, have filed a request to expand a **lawsuit** against **drug manufacturers** alleging price fixing to name **18 drug companies** and **15 drugs**, according to a news release from Ferguson’s office. The case is the **result** of an **antitrust investigation**. “I hold powerful interests accountable when they don’t play by the rules,” Ferguson said. “That includes drug companies that conspire to fix prices, costing potentially thousands of Washingtonians in need of medication.” The request to file an amended complaint in the case was filed in U.S. District Court for the Eastern District of Pennsylvania. The suit previously named **generic drug manufacturers** Heritage Pharmaceuticals, Inc; Aurobindo Pharma USA, Inc.; Citron Pharma, LLC; Mayne Pharma (USA), Inc.; Mylan Pharmaceuticals, Inc.; and Teva Pharmaceuticals USA, Inc. as defendants. The attorneys general are **seeking to increase** that to include Actavis Holdco U.S., Inc.; Actavis Pharma, Inc,; Ascend Laboratories, LLC; Apotex Corp.; Dr. Reddy’s Laboratories, Inc.; Emcure Pharmaceuticals, Ltd.; Glenmark Pharmaceuticals, Inc.; Lannett Company, Inc.; Par Pharmaceutical Companies, Inc.; Sandoz, Inc.; Sun Pharmaceutical Industries, Inc.; and Zydus Pharmaceuticals (USA), Inc. In 2014, the state of Connecticut began an investigation into suspicious price increases of generic pharmaceuticals. That **investigation** found evidence of **conversations** between **drug company executives** and **marketing** and sales executives discussing **price fixing**, according to the attorney general’s office.“For example, Heritage Pharmaceuticals attempted to negotiate a 200 percent price increase for a diabetes medication,” according to the news release. The companies **allegedly conspired** to increase prices for **antibiotics** and drugs treating glaucoma, epilepsy, diabetes, arthritis, high blood pressure and asthma, as well as antifungal medication and other drugs, according to the news release.

### Court Politics---1NC

#### The Supreme Court will decline to overturn Roe v. Wade now---Roberts’ influence the conservative bloc is key.

Ziegler 21 (Mary - law professor at Florida State University, “The potential silver lining for supporters of abortion rights,” 5/20/21, https://www.bostonglobe.com/2021/05/20/opinion/potential-silver-lining-supporters-abortion-rights/)

Dobbs v. Jackson Women’s Health involves a Mississippi law banning abortion at or after 15 weeks of pregnancy, with exceptions for some medical emergencies and severe fetal abnormalities. Most abortions — over 92 percent, according to the most recent data from the Centers for Disease Control and Prevention — occur in the first trimester, and if the Mississippi law is allowed to stand, those wouldn’t be blocked. But pro-choice Americans have reason to be concerned. To uphold Mississippi’s law, the court’s conservative six-justice majority would have to overturn at least part of Roe v. Wade and the abortion-rights cases that followed it. That’s because Roe recognized a right to choose abortion before fetal viability — the point at which survival outside the womb is possible — which is usually somewhere between 22 and 24 weeks. Because Mississippi’s ban would kick in much earlier, the court will be able to uphold it only by eliminating Roe’s language about fetal viability or by reversing Roe altogether. Of course, predicting the outcome of abortion cases has proved to be devilishly hard. In the early 1990s, the Supreme Court had a six-justice conservative bloc and a case teed up to reverse Roe, yet the justices balked when the moment came. It’s certainly possible that something similar could happen this time around. Chief Justice John Roberts, who cares about safeguarding the court’s legacy (and his own), may persuade his conservative colleagues not to go all the way to eliminating abortion rights.

#### Ruling against big business interests drains Roberts’ capital---counter to conservative lobbying efforts.

Pickerill 17 (J. Mitchell – Professor of Political Science at Northern Illinois University & Cornell W. Clayton- - Professor of Government at Washing State University, “The Roberts Court and Economic Issues in an Era of Polarization,” p. 695-98, *Case Western Reserve Law Review*, Volume 67, Issue 3, https://core.ac.uk/download/pdf/214111285.pdf)

A. The Emergence of a Conventional Wisdom: The Roberts Court is Decidedly Pro-Business By now, the Roberts Court’s reputation as a pro-business Court has become something like the conventional wisdom for Supreme Court scholars and commentators. In 2008, Jeffrey Rosen wrote an article titled Supreme Court, Inc. in New York Times Magazine.7 Rosen argued that, whereas the Court had embraced a form of “economic populism” throughout most the latter half of the twentieth century, by the 2000s it had transformed into a decidedly pro-business venue.8 A generation ago, progressive and consumer groups petitioning the court could count on favorable majority opinions written by justices who viewed big business with skepticism—or even outright prejudice. The economic populist William O. Douglas, a former New Deal crusader who served on the court from 1939 to 1975, once unapologetically announced that he was “ready to bend the law in favor of the environment and against the corporations.”9 Today, however, as Rosen pointed out, “there are no economic populists on the court, even on the liberal wing.”10 In addition to quoting pro-business statements from members of the so-called liberal wing of the Roberts Court at the time, Rosen noted that, when compared to prior years, the proportion of cases involving business interests was up about ten percent during the early years of the Roberts Court.11 Rosen also highlighted several cases involving antitrust law, corporate mergers, punitive damages, and product liability in which the interests of big business seemed to be faring well in the Court.12 These cases didn’t seem to split the Roberts Court along conventional ideological lines. In a 2009 law review article, Rosen reported that, when he asked Justice Stephen Breyer about the Court’s probusiness orientation, “he did acknowledge that there might be a difference between constitutional cases, where Justices have strong preconceptions and philosophical commitments, and more technical, statutory cases, where they are more open-minded and amendable to argument.”13 Finally, Rosen explained the pro-business shift as a function of a decades-long effort by conservative and business groups to counter the effects of consumer groups and public interest litigation groups like Public Citizen. 14 In particular, he credited the U.S. Chamber of Commerce’s lobbying efforts and the National Chamber Litigation Center, established in 1977, for advocating business interests in state and federal courts. 15 Various examples and statistics indicated that through filing amicus briefs on behalf of business interests, the Chamber was successful both in persuading the Court to grant certiorari and on the merits in particular cases. Although Rosen’s article garnered much attention, he was not the only journalist or commentator claiming the Court was “probusiness.”16 For example, writing for Bloomberg Business, Michael Orey declared that the Roberts Court was “open for business.”17 And in an article in the Wall Street Journal, Brent Kendall explained that the Supreme Court is “making it easier for companies to defend themselves from the kinds of big lawsuits that have bedeviled them for decades.”18 Some legal academics agreed. For instance, Erwin Chemerinsky wrote that “the Roberts Court is the most pro-business Court of any since the mid-1930s.”19 All of this attention to the Roberts Court and its business decisions led to further academic research and scholarship examining whether and to what extent the Roberts Court could be considered “pro-business.”20 Much of the early characterization of the Roberts Court as “probusiness” has been based on specific Supreme Court decisions, such as Ledbetter v. Goodyear Tire & Rubber Co.21 and Riegel v. Medtronic, Inc., 22 or specific Supreme Court terms, such as the 2006 term in which the U.S. Chamber of Commerce won in thirteen of the fifteen cases in which it had filed a brief.23 Nonetheless, there have also been more systematic analyses of the Court and its disposition toward business interests. Lee Epstein, William Landes, and Richard Posner conducted one of the most well-known systematic empirical analyses of the Supreme Court and business interests.24 In their study, Epstein, Landes, and Posner selected Supreme Court decisions from the 1946 term through the 2011 term of the Court in which a business entity was a litigant.25 They analyzed the likelihood that business entities would prevail in the Court over time.26 Controlling for numerous factors, they concluded: Whether measured by decisions or Justices’ votes, a plunge in warmth toward business during the 1960s (the heyday of the Warren Court) was quickly reversed; and the Roberts Court is much friendlier to business than either the Burger or Rehnquist Courts, which preceded it, were. The Court is taking more cases in which the business litigant lost in the lower court and reversing more of these—giving rise to the paradox that a decision in which certiorari is granted when the lower court decision was antibusiness is more likely to be reversed than one in which the lower court decision was pro-business. The Roberts Court also has affirmed more cases in which business is the respondent than its predecessor Courts did.27 Thus, the Epstein, Landes, and Posner empirical study seems to confirm the conventional wisdom.

#### Overturning Roe would gut the principle of stare decisis---clearly contrary to precedent.

Litman 21 (Harry P. – former U.S. Attorney and Deputy Assistant Attorney General, “Will the principle of following precedent disappear with abortion rights?,” 7/30/21, https://www.theday.com/article/20210730/OP03/210739949)

The new Supreme Court conservative supermajority has already radically changed notions of law in some pockets of America. For proof, look no further than the brief that the state of Mississippi filed last week in the most closely watched abortion case in a generation, Dobbs v. Jackson Women’s Health Organization, which the Supreme Court will decide next term. The case concerns the constitutionality of a 2018 Mississippi law that generally prohibits abortion after 15 weeks of pregnancy. That Mississippi passed this law is itself breathtaking. The core holding of the Supreme Court’s abortion jurisprudence — reaffirmed as a “super duper precedent” by Chief Justice John G. Roberts Jr. at his confirmation hearing — is that the state is constitutionally forbidden from interfering with a woman’s decision to terminate a pregnancy before the fetus reaches viability, roughly at 24 to 28 weeks. The Mississippi law blatantly and expressly contradicts both the core holding and the principle of precedent, also known as stare decisis, meaning “standing by things decided,” which is elementary in constitutional law. It is as if a state were to pass a law saying criminal suspects could not be apprised of their right to remain silent, established by the 1966 Miranda decision, or that newspapers could be liable for defamation based on mere negligence rather than “actual malice,” in flat contravention of the 1964 ruling in New York Times v. Sullivan. Mississippi’s cheek in passing a law that is irreconcilable with governing precedent is an act of official irresponsibility of a piece with the South’s behavior during Reconstruction and the civil rights era. It’s no wonder the federal district court and court of appeals made quick work of striking down the 15-week abortion law. And yet the Supreme Court agreed to hear Mississippi’s appeal of those decisions, implicitly validating the state’s conduct as reasonable. Whatever the court’s conservatives think of the constitutionality of abortion rights, they should not be countenancing rank disavowal of its precedents. The brief Mississippi filed in Dobbs v. Jackson Women’s Health Organization takes the state’s brazen disrespect for current law a giant step further. “Nothing in constitutional text, structure, history or tradition,” it argues, “supports a right to abortion.” It offers no effective line of escape from the precedents set by Roe and its affirming progeny. It calls them “egregiously wrong” and repeats the claim that “the conclusion that abortion is a constitutional right has no basis in text, structure, history or tradition.” It’s hard to imagine a more extreme and sneering broadside against stare decisis. Even the successful battle in the last century to overturn the court’s infamous Plessy v. Ferguson “separate but equal” doctrine wasn’t a frontal assault that dynamited precedent. It was a years-long strategy that carefully dismantled racial segregation, theoretical brick by theoretical brick, to get to the court’s landmark decision in Brown v. Board of Education. Mississippi’s abortion strategy, besides being radical, is boneheaded. It is way too late in the day to argue “nothing in constitutional text, structure, history, or tradition supports a right to abortion.” Over time, it’s become clear that the right to choose to have an abortion is part of a constellation of unenumerated constitutional rights that the court has repeatedly recognized across a range of settings. (One notable example that bears on the result and reasoning in Roe is Griswold v. Connecticut’s recognition of a right of married people to use contraception.) Much of the coming fight over the Mississippi case — get ready for a donnybrook — will be about whether Roe alone can be overruled among those precedents. Although it’s plausible to argue that the court’s earlier abortion rulings have given women’s liberty too much relative weight, it’s much less plausible, even witless, to single out abortion rights — among other unenumerated rights — as alone being utterly unconstitutional. Not that such considerations matter to the string of anti-abortion rights states, emboldened by the court’s new makeup, that have followed Mississippi’s lead and passed their own legislation pushing beyond the limits of existing law. Texas recently banned abortions once a fetal heartbeat can be detected, which happens at around six weeks. Nineteen states have enacted nearly 100 new restrictions on abortion, including 12 bans, in 2021. These states may all be living in a constitutional fairy tale. But they are acting on the hope that the court’s conservative supermajority will make it all come true. And it might.

#### Stare decisis is key to functioning democratic governance---sustainable judicial legitimacy.

Gentithes 9 (Michael – Research Attorney for the Illinois Appellate Court, “In Defense of Stare Decisis,” p. 799, https://willamette.edu/law/resources/journals/review/pdf/volume-45/wlr45-4-gentithes-final.pdf)

The argument for a rule of stare decisis that frequently controls Supreme Court jurisprudence is often entangled with the controversial issues the Court faces when it must choose to either invoke or ignore the doctrine. But those issues distract attention from the centrality of stare decisis to democratic governments’ vitality. By taking a unique, systemic perspective this article demonstrates that stare decisis, though not a strict rule of constitutional construction, plays a vital role in the preservation of democracy. Respect for the Supreme Court’s prior decisions lends legitimacy to a body with a transitory membership. It assures citizens that the Court’s decisions are not merely the whims of Justices’ personalities, and renders the Court “strong” in the sense that it can issue decisions in the country’s most pressing controversies that both the parties and society at large consider final. I will apply this new perspective to the Court’s current stare decisis doctrine and analyze its effectiveness. Finally, I will suggest original factors that the Court should consider when applying stare decisis by looking not just backward to the decision potentially being overruled, but also forward to the decision which may replace it.

#### Healthy US democracy solves extinction.

Kasparov 17 (Garry, Chairman of the Human Rights Foundation, Russian political activist + 13th World Chess Champion, 2/16, “Democracy and Human Rights: The Case for U.S. Leadership” http://www.foreign.senate.gov/imo/media/doc/021617\_Kasparov\_%20Testimony.pdf)

The Soviet Union was an existential threat, and this focused the attention of the world, and the American people. The existential threat today is not found on a map, but it is very real. The forces of the past are making steady progress against the modern world order. Terrorist movements in the Middle East, extremist parties across Europe, a paranoid tyrant in North Korea threatening nuclear blackmail, and, at the center of the web, an aggressive KGB dictator in Russia. They all want to turn the world back to a dark past because their survival is threatened by the values of the free world, epitomized by the United States. And they are thriving as the U.S. has retreated. The global freedom index has declined for ten consecutive years. No one like to talk about the United States as a global policeman, but this is what happens when there is no cop on the beat. American leadership begins at home, right here. America cannot lead the world on democracy and human rights if there is no unity on the meaning and importance of these things. Leadership is required to make that case clearly and powerfully. Right now, Americans are engaged in politics at a level not seen in decades. It is an opportunity for them to rediscover that making America great begins with believing America can be great. The Cold War was won on American values that were shared by both parties and nearly every American. Institutions that were created by a Democrat, Truman, were triumphant forty years later thanks to the courage of a Republican, Reagan. This bipartisan consistency created the decades of strategic stability that is the great strength of democracies. Strong institutions that outlast politicians allow for long-range planning. In contrast, dictators can operate only tactically, not strategically, because they are not constrained by the balance of powers, but cannot afford to think beyond their own survival. This is why a dictator like Putin has an advantage in chaos, the ability to move quickly. This can only be met by strategy, by long-term goals that are based on shared values, not on polls and cable news. The fear of making things worse has paralyzed the United States from trying to make things better. There will always be setbacks, but the United States cannot quit. The spread of democracy is the only proven remedy for nearly every crisis that plagues the world today. War, famine, poverty, terrorism–all are generated and exacerbated by authoritarian regimes. A policy of America First inevitably puts American security last. American leadership is required because there is no one else, and because it is good for America. There is no weapon or wall that is more powerful for security than America being envied, imitated, and admired around the world. Admired not for being perfect, but for having the exceptional courage to always try to be better. Thank you.

### FTC Trade Off---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.”

## Innovation

### Innovation---1NC

#### Pharma monopolies don’t stifle innovation

Joanna Shepherd, 18 (Professor of Law, Emory University School of Law. " Consolidation and Innovation in the Pharmaceutical Industry: The Role of Mergers and Acquisitions in the Current Innovation Ecosystem," *Journal of Health Care Law and Policy*, 8-28-18, <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1356&amp;context=jhclp>

Note: M&A = Mergers & Acquisitions

Despite concerns among some researchers and competition agencies that consolidation in the pharmaceutical industry reduces innovation, aggregate innovation has held strong notwithstanding dramatic increases in M&A activity. The years 2014 and 2015 generated both record numbers of new drug approvals and record pharmaceutical M&A.152 In fact, although M&A deals and new drug approvals vary slightly year-to-year, the general pattern has been increasing aggregate innovation alongside increasing consolidation.153 Although trend data is not enough to prove a causal relationship between innovation and consolidation, when considered alongside the evolving innovation ecosystem, it suggests that M&A does not stifle drug innovation. Today, most drug innovation originates outside of traditional pharmaceutical companies, in biotech companies and smaller firms, where a culture of nimble decision-making and risk-taking facilitates discovery and innovation. In the later stages of the drug development process, the biotech companies routinely partner with large pharmaceutical companies to advance through late-stage clinical trials and produce, market, and distribute the drugs. 154 In this current ecosystem, biotech and pharmaceutical firms are able to specialize in what they do best, bringing expertise and efficiencies to the innovation process. The specialization has led to an environment in which approximately three-fourths of new drugs are externally-sourced. 155 Internal R&D is no longer the primary source, or even an important source, of drug innovation.

#### No internal link---the 1AC evidence that says disruptive healthcare innovation solves disease outbreaks is from 2015---Covid disproves

#### Big Pharma solves disease

Sandip **Shah 19**. State Public Health Lab Director and Administrator at State Department of Health. "Opinion: Big Pharma doesn't deserve all the hate.". 11-21-2019. https://www.naplesnews.com/story/opinion/contributors/2019/11/21/opinion-big-pharma-doesnt-deserve-all-hate/4267640002/

This **scorn** is **misplaced**. It's true that the biopharmaceutical sector contains a few bad actors who price gouge and cut regulatory corners. But the majority of drug companies are **responsible** corporate citizens that **spend billions** to **invent lifesaving medicines**. If we let our **collective resentment** turn into tangible, **anti-innovation policies** – such as drug price controls – we'll end up **worse** off. American **pharmaceutical** researchers deserve credit for the **lion's share** of **medical progress**. In 2017, drug firms poured $97 billion into research and development operations in the United States. That's more than double the U.S. government's spending on scientific research. Scientists in U.S. labs are currently developing 4,500 experimental drugs – more than half of all medicines in development worldwide. Thanks to these efforts, Americans are **beating deadly diseases** in record numbers. Cancer death rates have declined close to 30% since the 1990s. Researchers credit nearly three-quarters of these **survival gains** to **groundbreaking new drugs**. Biopharmaceutical research also **revolutionized** the treatment of **HIV/AIDS**. Just 30 years ago, a diagnosis was a death sentence. In the mid-1990s, scientists developed **highly active** antiretroviral therapies. These drugs caused HIV/AIDS death rates to plummet 88%, and have averted close to 1 million premature deaths in the United States alone. Scientists have recently turned their attention to **new types** of drugs, such as **gene and immunotherapies**, that reprogram patients' own bodies to fight disease. Doctors are already using these **cutting-edge medicines** to treat **hemophilia**, **leukemia** **and blindness**. Progress like this doesn't come easy. Each new drug is the result of millions of man-hours of research and testing. It takes over a decade to turn a promising lab compound into a marketable medicine. For every experimental drug that makes it to patients, nine others fail in clinical trials. Taking this **failure rate** into consideration, it costs more than $2 billion on average to bring a **new treatment** to market.

#### They have no “US key” warrant---other countries solve or make it inevitable.

### AT: Disease

#### Disease impact card sucks---not peer-reviewed and just spewing hypotheticals.

#### Burnout and geographic dispersion check disease.

Sebastian Farquhar 17. \*\*Project Manager at FHI responsible for external relations, M.A in Physics and Philosophy, Oxford. \*\*John Halstead, Global Priorities Project. \*\*Owen Cotton-Barratt, Research Associate in the FHI at Oxford, Lecturer in Mathematics at St. Hugh’s College. \*\*Stefan Schubert, PhD in philosophy, Researcher at the Centre for Effective Altruism. \*\*Haydn Belfield, Academic Project Manager, Centre for the Study of Existential Risk, Cambridge. \*\*Andrew Snyder-Beattie, Director of Research at FHI. “Existential Risk: Diplomacy and Governance.” *Future of Humanity Institute*. Oxford, Global Priorities Project. <https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf>.

For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.38 None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic.

One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39

#### ABR won’t get close to extinction, intervening actors solve it, their internal link can’t

Ed Cara 17, science writer for The Atlantic, Newsweek, and Vocativ, 1/27/17, “The Attack Of The Superbugs,” http://www.vocativ.com/394419/attack-of-the-superbugs/

Antibiotic-resistant infections kill at least 700,000 people worldwide a year right now, according to an exhaustive report commissioned by the UK in 2014, and without any substantial medical breakthroughs or policy changes that slow down resistance, they may claim some 10 million deaths annually by 2050 — eclipsing cancer in general as a leading cause. These deaths largely won’t come from pan-resistant infections, just tougher ones. A preventable death there, a preventable death here. Leaving that aside, antibiotics, along with proper sanitation and nutrition, gird our entire way of living. Most every invasive surgery, pregnancy, organ transplant and chemotherapy session we go through will become riskier. Other diseases like HIV, malaria or influenza will become deadlier, since bacteria often exploit the opening in our immune system they leave behind. And already precarious populations like those living with cystic fibrosis, prisoners, and the poor will lose years off their lives. For all the warranted gloom, though, Farewell does think there are reasons to be hopeful. “I don’t think we are doing enough, but the scientific community along with many governmental and private foundations are very actively involved in finding not only new antibiotics, but new solutions to this problem,” she said. There’s been a noticeable change in attitude and increased urgency surrounding antibiotic resistance, she said, one that she hadn’t seen even five years ago, let alone twenty. Until recently, that attitude change could be seen from places as high up as the U.S. federal government. In 2014, former President Obama issued an executive order aimed at addressing antibiotic resistance, the first real acknowledgement of the problem from an administration, devoting funding and outlining a national action for combatting resistance. Through its federal agencies, the administration pushed to reduce antibiotic use on farms and encouraged doctors to stop using them in excess. “There has been a lot of work done the last couple of years, much of it spurned by [Obama’s] National Action Plan,” said Dr. David Hyun, a senior officer for Pew Charitable Trusts’ Antibiotic Resistance Project. The CDC, in particular, has used its funding to open up regional labs that allow them to better detect and respond to antibiotic-resistant outbreaks like the Nevada case, he said. They ultimately hope to create an expansive surveillance system that can easily keep track of resistance rates on a national, state and regional level. A parallel system also exists for monitoring resistance in the food chain, shepherded by the CDC and the U.S. Department of Agriculture. In fact, it was this sort of cooperation between national and local health agencies that enabled Nevada doctors to stop the worst from happening, said Dr. Lei Chen. The swift identification of a possible CRE strain by the hospital, coupled with the woman’s medical history, led to a precautionary quarantine, while also prompting Chen’s public health department and eventually the CDC into action. And it may help prevent future cases from spilling into the public. According to Chen, the CDC has allocated funding this year to all of Nevada’s state public health departments so they can better detect CRE and other dangerous resistant strains. Under the Trump administration, there’s no telling how these small victories will hold up or whether they will advance. All references to antibiotics once found on the Whitehouse.gov site have been removed, including a link to the Obama administration’s national action plan, and the fact that they’re already tried to bar USDA scientists from discussing their work with the public while stripping funding from other public health agencies isn’t encouraging. Even with the best public policy, however, there’s no clear light at the end of the tunnel. Antibiotic resistance has gradually been worsening, even within the last 15 to 20 years, when superbugs like methicillin-resistant Staphylococcus aureus (MRSA) first became widely known, said Hyun. The effort needed to develop new drugs has been in short supply, hamstrung by pharmaceutical companies’ inability to recoup the costs of bringing new antibiotics to market. That’s because, unlike the latest heart medication, any new antibiotics will have to be treated like the last drops of water during a drought, used as little as possible — the exact opposite way to make money off a new product. Yet, much like climate change, the financial toll of not doing anything will total in the trillions years down the road. And it already numbers in the billions now, according to the CDC. Of course, we need bacteria to survive. And most need or pay no mind to us in return. Even pan-resistant bacteria don’t really mean harm. Some have been found in perfectly healthy people, a fact that’ll either comfort you or keep you awake at night, only causing problems when our immune system wavers. There’s no army of sentient E. coli that will rise up and someday overthrow the human race. But barring the calvary showing up, a new fear of ours will learn to settle in, almost unnoticed. It’ll creep in when we pick our heads up from a nasty fall that scrapes our skin open or breaks our bones; when we wave goodbye to our loved ones before they enter an operating room, or when we cradle our newborns into a world teeming with the living infinitesimal, wishing there was still a way to shield them from it as our parents once could for us. A fear of naked vulnerability. The antibiotic apocalypse will be gentle, if it fully arrives, but it won’t be any less devastating to the human spirit.

## Federalism

### Turn---1NC

#### No modeling---1AC Dennis says federal government sets the standard---plan fuels state regs.

#### *Parker*’s exemptions from federal antitrust law derive from the principle of federalism.

Jason Kornmehl 15. Law Clerk, Maryland Court of Appeals. State Action on Appeal: Parker Immunity and the Collateral Order Doctrine in Antitrust Litigation. Seattle University Law Review. 2015. 39(1): 8-9

The Parker decision left open the issue of whether the conduct of private actors and subordinate government entities could be exempt from federal antitrust laws based on the state action doctrine.46 However, in a series of cases in the 1980s, the Supreme Court found that private actors and certain subordinate government entities could rely on the state action doctrine to shield their conduct from federal antitrust scrutiny. In California Retail Liquor Dealers Ass’n v. Midcal Aluminum, the Court established a two-part test for determining whether private actors could take advantage of Parker immunity.47 The unanimous Court stated that (1) the challenged restraint must be “one clearly articulated and affirmatively expressed as state policy[,]” and (2) “the policy must be ‘actively supervised’ by the State itself.”48 Because actions of a state legislature and a state’s highest court acting in a legislative capacity are treated as the action of a state itself, the state action doctrine applies to these entities without a need to establish the clear articulation and active supervision requirements of Midcal. 49 Midcal’s two-part test has long supplied the framework within which courts have determined the availability of the state action defense to private parties.50 However, actions taken by subordinate government entities such as counties and municipalities may also be entitled to Parker immunity. Subordinate government entities are not entitled to the same protection from the federal antitrust laws as a state itself, and thus also fall under the Midcal framework.51 However, municipalities and local government entities need only satisfy Midcal’s first prong for their conduct to be exempt from federal antitrust laws under the state action doctrine.52 The state action doctrine is a strong weapon, or perhaps more appropriately, a shield, in the arsenal of antitrust defendants.53 Because the state action doctrine “derive[s] from principles of federalism and other constitutional considerations,”54 and is a long-term priority of the Federal Trade Commission,55 it is an important exemption that governmental and private entities will continue to invoke in antitrust litigation.

#### Parker Immunity threads the needle between federalism and competition---changes implicate federalism.

Jason Kornmehl 15. Law Clerk, Maryland Court of Appeals. State Action on Appeal: Parker Immunity and the Collateral Order Doctrine in Antitrust Litigation. Seattle University Law Review. 2015. 39(1): 31-32

CONCLUSION The state action doctrine is an important area of antitrust law. Not only is the doctrine conceptually interesting because it implicates federalism and state sovereignty issues, but it also has great practical impact. A fairly significant number of antitrust disputes involve Parker immuni- ty questions.211 One of the areas of confusion over the scope of the state action doctrine is whether an order denying a motion to dismiss an antitrust claim under the state action doctrine is immediately appealable as a collateral order. The profound circuit split on this complex question demonstrates the significance of this issue in antitrust appellate practice. Because the state action doctrine’s parentage derives from the same principles of federalism and state sovereignty as the Eleventh Amendment,212 the best understanding of the doctrine is as an immunity when applied to governmental defendants that are considered part the of the state itself. On the other hand, the state action doctrine does not function as an immunity when defendants must satisfy the Midcal framework (i.e., government entities that are not considered part of the state and private parties). Finally, allowing the immediate appeal of orders denying Parker immunity to governmental entities that are part of the state will not undermine the final judgment rule’s goal of ensuring efficient judicial administration. The state action doctrine is essentially “an attempt to resolve the tension between federalism concepts favoring states’ rights and national policies favoring competition.”213 This Article’s conclusion—that some governmental defendants should have the right of an immediate appeal while denying an immediate appeal to other governmental defendants and private parties—is in accord with the state action doctrine’s delicate balancing act.

**No Grey Goo---1NC**

#### Norms fail.

Edward M. Geist 16. Policy Analyst at RAND, former MacArthur Nuclear Security Fellow at Stanford, and a PhD in history from UNC. “It’s already too late to stop the AI arms race—We must manage it instead.” *Bulletin of the Atomic Scientists* 72(5): 319-20. Emory Libraries.

Norms are not enough

One goal of the campaign against autonomous weapons is to forestall state and non-state actors from weaponizing artificial intelligence by establishing a norm among AI researchers against contributing to socially undesirable uses of their work, as biotechnology researchers did at the 1975 Asilomar Conference on Recombinant DNA (Russell 2015; Grace 2015). While it is laudable to discourage artificial-intelligence practitioners from contributing to morally dubious projects, experience with other potentially dangerous emerging technologies indicates that merely establishing such norms may prove inadequate. The researchers’ open letter from last year approvingly invokes “international agreements that have successfully prohibited chemical and biological weapons,” but the USSR secretly developed a massive biological weapons program despite signing the 1972 Biological Weapons Convention (Leitenberg and Zilinskas 2012). While Western biologists demonstrated their concern about the possible hazards of genetic engineering at the 1975 Asilomar Conference, this did not prevent their Soviet counterparts from trying to create apocalyptically dangerous bioweapons using the technology (Grace 2015; Leitenberg and Zilinskas 2012). Attempts to forestall the creation of AI weapons relying primarily on the establishment of unverifiable cultural norms are liable to repeat this same lamentable pattern.

#### 1AC Work evidence says China is the alternative---that solves

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Beijing’s AI policy priorities are clear. The “Next Generation Artificial Intelligence Development Plan,” announced by China’s State Council in July 2017, called for China to catch up on AI technology and applications by 2020, and to become a global AI innovation hub by 2030. Chinese President Xi Jinping hammered the point home in his 19th Party Congress speech in October, when he mentioned the development of advanced manufacturing and the promotion of further integration of the Internet, big data and artificial intelligence with the real-world economy. Beijing has placed huge bets on AI for a host of political and economic reasons, from improving governance capacity to improving policy development and surveillance. The plan calls for China to lead the way in developing a **regulatory environment** to both encourage AI development and to **mitigate the** potential **downsides of AI.** A few months after the national plan’s announcement in July, the Ministry of Science and Technology (MOST) designated Baidu to lead the autonomous vehicle platform, Tencent for medical, Alibaba for Smart Cities, and iFlyTek for speech interfaces. These plans should be taken seriously, as the Chinese government has shown a strong track record in delivering results. For example, Beijing announced in 2010 that China would become the world’s leader in adopting high-speed rail (HSR). Today it has 60% of the world’s HSR market. In 2014, the Chinese government announced the “Mass Entrepreneurship and Innovation Plan.” Today there are business 8000 incubators in China, compared to 1400 in 2014. These plans have teeth, both due to the deadlines and metrics set out at the national level, as well as the local companies that are likely to take these directions as top priorities. We can expect a similar trajectory for China’s AI policies. Historically, the Chinese government has been open-minded towards technology development. When a new technology comes out, the government will give it the benefit of doubt and let it grow, rather than stifle it with policy or endless debates. Also, the environment in China is more conducive to fast launch and iteration. There is a general belief that it is better to launch something and then get it approved later. This allows Chinese businesses to generate real data at scale, which in turn allows technology to improve over a shorter period of time, particularly once AI is introduced into the equation. For example, while in the US, truckers’ unions are petitioning the Department of Transportation to delay autonomous truck testing, in China, the Xiong’an New Area, a planned smart city development southwest of Beijing, is being designed from the ground up with full autonomy in mind. Various highway authorities are willing to develop road augmentation, special lanes, or move warehouses near highway exits, all to facilitate faster deployment of autonomous trucks. We also see major initiatives in cities, following the central government’s call to action. Shanghai, Nanjing, Wuhan, and Tianjin are but a few of the cities coming out with their own AI initiatives. As with past policies, much of the resources will be applied at the provincial and city government levels. The types of resources may include subsidies for top talent (especially overseas talent); guidance for top VC funds, with the government playing the role of limited partner (LP) but offering some of its upside to the general partners (GPs) of the funds; special programs for top AI companies and start-ups (free rent, subsidy for local hiring, housing and private school for top talents); and technical awards for companies and individuals. Finally, the US, EU, and China will also compete to be out in front on developing a regulatory regime around AI technologies and applications. The National Plan’s explicit recognition of the need for regulatory, legal, and ethical principles for AI development and use represents an **uncommonly foresighted approach.** Of course, the government’s approach to AI regulation, ethics, and economic adjustment will reflect Beijing’s broader model of **governance and ideology**. Given its preference for a **state-centric approach** to international issues, for example, it is possible China will launch an initiative via the UN to establish first an automation/AI-related “code of conduct,” or basic regulatory approach, followed by a special committee on the topic and eventually an oversight body operating within a UN framework. Such an initiative would put **China at the forefront of developing a global approach to these issues.** Beijing has attempted a similar approach on cybersecurity issues, which it argues have a global impact and require a global regulatory response.

#### No impact to grey goo.

Jeremy **Shere 16**, a science writer who has written and produced for some of public radio's top nationally syndicated science programs, including Sound Medicine, Earth & Sky, and A Moment of Science. His work has appeared in Talking Points Memo, Reuters, Matter Network, The Jerusalem Report, Bloom, and Reform Judaism, among others. He is the author of Renewable: The World-Changing Power of Alternative Energy. Shere teaches journalism and magazine writing at the School of Journalism at Indiana University in Bloomington, “Grey Goo Attack”, 4/2/2016, http://indianapublicmedia.org/amomentofscience/grey-goo-attack-2/

Attack of the Killer Robots Nanotechnology scientists dream of some day creating robots the size of molecules, or even turning molecules into machines that could roam the human body and perform all sorts of useful tasks. But some nanotechnology theorists and science fiction aficionados imagine a more ominous possibility. What if one of these tiny robots were given the ability to self-replicate? All it would take is a single malfunction and the robots would consume everything in the galaxy as they multiply out of control until all that was left was a shapeless, robotic mass called “grey goo.” Worst Case Scenario Now, before you go heading for the hills with a year’s supply of water and a survival guide, understand that the death-by-robot scenario is just that—a scenario, and a pretty fanciful one to boot. First, we’re nowhere near the point of being able to create a self-replicating nano-machine. But even if such machines do one day exist, they would have a hard time taking over the universe for one simple reason: **fuel**. Even microscopic machines need an energy source. Inorganic matter such as rocks and minerals wouldn’t do the trick because they just **don’t contain stuff that the machines could break down and use for power.** But what if a mad scientist created a robot that fed on organic materials such as sunlight and living things? **Not to worry**. Natural life forms have had around four billion years of training to compete for resources; the killer robots probably **wouldn’t stand much of a chance** against such streamlined competitors. Plus, if the robots were made from organic materials, they might be **preyed on by bacteria or other predators.**

### No AI Impact---1NC/2AC

#### No AI impact.

Michael Shermer 17. Publisher of Skeptic magazine, a monthly columnist for Scientific American, and a Presidential Fellow at Chapman University. “Why Artificial Intelligence Is Not an Existential Threat” April 2017. Skeptic. Vol. 22, no. 2, pp. 29-35.

Why AI is not an Existential Threat First, most AI doomsday prophecies are grounded in the false analogy between human nature and computer nature, or natural intelligence and artificial intelligence. We are thinking machines, but natural selection also designed into us emotions to shortcut the thinking process because natural intelligences are limited in speed and capacity by the number of neurons that can be crammed into a skull that has to pass through a pelvic opening at birth, whereas artificial intelligence need not be so restricted. We don't need to compute the caloric value of foods, for example, we just feel hungry. We don't need to calculate the waist-to-hip ratio of women or the shoulder-to-waist ratio of men in our quest for genetically healthy potential mates; we just feel attracted to someone and mate with them. We don't need to work out the genetic cost of raising someone else's offspring if our mate is unfaithful; we just feel jealous. We don't need to figure the damage of an unfair or non-reciprocal exchange with someone else; we just feel injustice and desire revenge. Emotions are proxies for getting us to act in ways that lead to an increase in reproductive success, particularly in response to threats faced by our Paleolithic ancestors. Anger leads us to strike out, fight back, and defend ourselves against danger. Fear causes us to pull back, retreat, and escape from risks. Disgust directs us to push out, eject, and expel that which is bad for us. Computing the odds of danger in any given situation takes too long. We need to react instantly. Emotions shortcut the information processing power needed by brains that would otherwise become bogged down with all the computations necessary for survival. Their purpose, in an ultimate causal sense, is to drive behaviors toward goals selected by evolution to enhance survival and reproduction. AIs -- even AGIs and ASIs -- will have no need of such emotions and so there would be no reason to program them in unless, say, terrorists chose to do so for their own evil purposes. But that's a human nature problem, not a computer nature issue. To believe that an ASI would be "evil" in any emotional sense is to assume a computer cognition that includes such psychological traits as acquisitiveness, competitiveness, vengeance, and bellicosity, which seem to be projections coming from the mostly male writers who concoct such dystopias, not features any programmer would bother including, assuming that it could even be done. What would it mean to program an emotion into a computer? When IBM's Deep Blue defeated chess master Garry Kasparov in 1997, did it feel triumphant, vengeful, or bellicose? Of course not. It wasn't even "aware" -- in the human sense of self-conscious knowledge -- that it was playing chess, much less feeling nervous about possibly losing to the reigning world champion (which it did in the first tournament played in 1996). In fact, toward the end of the first game of the second tournament, on the 44th move, Deep Blue made a legal but incomprehensible move of pushing its rook all the way to the last row of the opposition side. It accomplished nothing offensively or defensively, leading Kasparov to puzzle over it out of concern that he was missing something in the computer's strategy. It turned out to be an error in Deep Blue's programming that led to this fail-safe default move. It was a bug that Kasparov mistook as a feature, and as a result some chess experts contend it led him to be less confident in his strategizing and to second-guess his responses in the subsequent games. It even led him to suspect foul play and human intervention behind Deep Blue, and this paranoia ultimately cost him the tournamentt.[ 13] Computers don't get paranoid, the HAL 9000 computer in 2001 notwithstanding. Or consider Watson, the IBM computer built by David Ferrucci and his team of IBM research scientists tasked with designing an AI that could rival human champions at the game of Jeopardy! This was a far more formidable challenge than Deep Blue faced because of the prerequisite to understand language and the often multiple meanings of words, not to mention needing an encyclopedic knowledge of trivia (Watson had access to Wikipedia for this). After beating the all-time greatest Jeopardy! champions Ken Jennings and Brad Rutter in 2011, did Watson feel flushed with pride after its victory? Did Watson even know that it won Jeopardy!? I put the question to none other than Ferrucci himself at a dinner party in New York in conjunction with the 2011 Singularity Summit. His answer surprised me: "Yes, Watson knows it won Jeopardy!" I was skeptical. How could that be, since such self-awareness is not yet possible in computers? "Because I told it that it won," he replied with a wry smile. Sure, and you could even program Watson or Deep Blue to vocalize a Howard Dean-like victory scream when it wins, but that is still a far cry from a computer feeling triumphant. This brings to mind the "hard problem" of consciousness -- if we don't understand how this happens in humans, how could we program it into computers? As Steven Pinker elucidated in his answer to the 2015 Edge Question on what to think about machines that think, "AI dystopias project a parochial alpha-male psychology onto the concept of intelligence. They assume that superhumanly intelligent robots would develop goals like deposing their masters or taking over the world." It is equally possible, Pinker suggests, that "artificial intelligence will naturally develop along female lines: fully capable of solving problems, but with no desire to annihilate innocents or dominate the civilization."[ 14] So the fear that computers will become emotionally evil are unfounded, because without the suite of these evolved emotions it will never occur to AIs to take such actions against us. What about an ASI inadvertently causing our extinction by turning us into paperclips, or tiling the entire Earth's surface with solar panels? Such scenarios imply yet another emotion -- the feeling of valuing or wanting something. As the science writer Michael Chorost adroitly notes, when humans resist an AI from undertaking any form of global tiling, it "will have to be able to imagine counteractions and want to carry them out." Yet, "until an AI has feelings, it's going to be unable to want to do anything at all, let alone act counter to humanity's interests and fight off human resistance." Further, Chorost notes, "the minute an A.I. wants anything, it will live in a universe with rewards and punishments -- including punishments from us for behaving badly. In order to survive in a world dominated by humans, a nascent A.I. will have to develop a humanlike moral sense that certain things are right and others are wrong. By the time it's in a position to imagine tiling the Earth with solar panels, it'll know that it would be morally wrong to do so."[ 15] From here Chorost builds on an argument made by Peter Singer in The Expanding Circle (and Steven Pinker in The Better Angels of Our Nature[ 16] that I also developed in The Moral Arc[ 17] and Robert Wright explored in Nonzero[ 18]), and that is the propensity for natural intelligence to evolve moral emotions that include reciprocity, cooperativeness, and even altruism. Natural intelligences such as ours also includes the capacity to reason, and once you are on Singer's metaphor of the "escalator of reason" it can carry you upward to genuine morality and concerns about harming others. "Reasoning is inherently expansionist. It seeks universal application," Singer notes.[ 19] Chorost draws the implication: "AIs will have to step on the escalator of reason just like humans have, because they will need to bargain for goods in a human-dominated economy and they will face human resistance to bad behavior."[ 20] Finally, for an AI to get around this problem it would need to evolve emotions on its own, but the only way for this to happen in a world dominated by the natural intelligence called humans would be for us to allow it to happen, which we wouldn't because there's time enough to see it coming. Bostrom's "treacherous turn" will come with road signs ahead warning us that there's a sharp bend in the highway with enough time for us to grab the wheel. Incremental progress is what we see in most technologies, including and especially AI, which will continue to serve us in the manner we desire and need. Instead of Great Leap Forward or Giant Fall Backward, think Small Steps Upward. As I proposed in The Moral Arc, instead of Utopia or dystopia, think protopia, a term coined by the futurist Kevin Kelly, who described it in an Edge conversation this way: "I call myself a protopian, not a Utopian. I believe in progress in an incremental way where every year it's better than the year before but not by very much -- just a micro amount."[ 21] Almost all progress in science and technology, including computers and AI, is of a protopian nature. Rarely, if ever, do technologies lead to either Utopian or dystopian societies. Pinker agrees that there is plenty of time to plan for all conceivable contingencies and build safeguards into our AI systems. "They would not need any ponderous 'rules of robotics' or some newfangled moral philosophy to do this, just the same common sense that went into the design of food processors, table saws, space heaters, and automobiles." Sure, an ASI would be many orders of magnitude smarter than these machines, but Pinker reminds us of the AI hyperbole we've been fed for decades: "The worry that an AI system would be so clever at attaining one of the goals programmed into it (like commandeering energy) that it would run roughshod over the others (like human safety) assumes that AI will descend upon us faster than we can design fail-safe precautions. The reality is that progress in AI is hype-defyingly slow, and there will be plenty of time for feedback from incremental implementations, with humans wielding the screwdriver at every stage."[ 22] Former Google CEO Eric Schmidt agrees, responding to the fears expressed by Hawking and Musk this way: "Don't you think the humans would notice this, and start turning off the computers?" He also noted the irony in the fact that Musk has invested $1 billion into a company called OpenAI that is "promoting precisely AI of the kind we are describing."[ 23] Google's own DeepMind has developed the concept of an AI off-switch, playfully described as a "big red button" to be pushed in the event of an attempted AI takeover. "We have proposed a framework to allow a human operator to repeatedly safely interrupt a reinforcement learning agent while making sure the agent will not learn to prevent or induce these interruptions," write the authors Laurent Orseau from DeepMind and Stuart Armstrong from the Future of Humanity Institute, in a paper titled "Safely Interruptible Agents." They even suggest a precautionary scheduled shutdown every night at 2 AM for an hour so that both humans and AI are accustomed to the idea. "Safe interruptibility can be useful to take control of a robot that is misbehaving and may lead to irreversible consequences, or to take it out of a delicate situation, or even to temporarily use it to achieve a task it did not learn to perform or would not normally receive rewards for this."[ 24] As well, it is good to keep in mind that artificial intelligence is not the same as artificial consciousness. Thinking machines may not be sentient machines. Finally, Andrew Ng of Baidu responded to Elon Musk's ASI concerns by noting (in a jab at the entrepreneur's ambitions for colonizing the red planet) it would be "like worrying about overpopulation on Mars when we have not even set foot on the planet yet."[ 25] Both Utopian and dystopian visions of AI are based on a projection of the future quite unlike anything history has given us. Yet, even Ray Kurzweil's "law of accelerating returns," as remarkable as it has been has nevertheless advanced at a pace that has allowed for considerable ethical deliberation with appropriate checks and balances applied to various technologies along the way. With time, even if an unforeseen motive somehow began to emerge in an AI we would have the time to reprogram it before it got out of control. That is also the judgment of Alan Winfield, an engineering professor and co-author of the Principles of Robotics, a list of rules for regulating robots in the real world that goes far beyond Isaac Asimov's famous three laws of robotics (which were, in any case, designed to fail as plot devices for science fictional narratives).26 Winfield points out that all of these doomsday scenarios depend on a long sequence of big ifs to unroll sequentially: "If we succeed in building human equivalent AI and if that AI acquires a full understanding of how it works, and if it then succeeds in improving itself to produce super-intelligent AI, and if that super-AI, accidentally or maliciously, starts to consume resources, and if we fail to pull the plug, then, yes, we may well have a problem. The risk, while not impossible, is improbable."[ 27]

# 2NC

## 2NC

### Framework Top---2NC

#### 1. Education. Question of what we should do carries presuppositions about political subjectivity---if those are wrong, our policies will be too, so they can’t perm away our links. 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.

#### 3. Reciprocity. Fiating attitudinal, durable enforcement of antitrust despite lack of political will and the ongoing effects of Republican court packing is utopian. It doesn’t reflect pragmatic reality. Neg gets the equal right to test desirability, not feasibility.

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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.

### Cap Turns Disease---2NC

#### 3. Causes pandemics.

John Bellamy Foster et al. 21, R. Jamil Jonna and Brett Clark. John Bellamy Foster is the editor of Monthly Review and a professor of sociology at the University of Oregon. R. Jamil Jonna is associate editor for communications and production at Monthly Review. Brett Clark is associate editor of Monthly Review and a professor of sociology at the University of Utah. The authors thank John Mage, Craig Medlen, and Fred Magdoff for their assistance. “The Contagion of Capital Financialised Capitalism, COVID-19, and the Great Divide.” The Jus Semper Global Alliance. In Pursuit of the People and Planet Paradigm Sustainable Human Development March 2021. Essays on True Democracy and Capitalism. https://jussemper.org/Resources/Economic%20Data/Resources/BellamyFosterJonaClark-ContagionCapital.pdf

The COVID-19 Crisis and the Great Divide

Received economic ideology, with its compartmentalised view, treats the COVID-19 pandemic as simply an external shock to the economy emanating from the natural environment and thus unrelated to capitalism. However, as Rob Wallace and his colleagues have shown, contagions like COVID-19 arise from the worldwide circuits of capital associated with the global labor arbitrage and the accelerated extraction of the planet’s resources. This is tied especially 40 to global agribusiness, which displaces, often forcibly, subsistence farmers while advancing into wilderness areas, destroying ecosystems, and disrupting wildlife. The result is a growing spillover of zoonoses (or diseases from other animals that are capable of being transmitted to human populations). From the standpoint of the Structural One Health tradition in epidemiology, the COVID-19 pandemic can therefore be seen as part of the larger planetary ecological crisis or metabolic rift engendered by twenty-first-century capitalism.41

### AT: Perm ---2NC

#### 2. Neoliberalism is governmentality through conduct---you can’t distinguish neoliberalism in competition policy against the broader system we’ve criticized. Competition as a site of universality/rationality is what we’ve critiqued, it invades every other domain of the social order.

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

I. Neoliberal Reason

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

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

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

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

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

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

II. From Keynesian State Capitalism to Neoliberal Deregulation

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

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

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

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

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

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

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

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

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

#### 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

### Anti-Trust Link---2NC

#### 3. 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.

### Off Shoring Link---2NC

#### 5. Off-shoring.

Jerry Kopf et al 13 . Professor of Economics, Radford University. Charles Vehorn, Professor of Economics, Radford University. Joel Carnevale, Professor of Economics, Syracuse University. “Emerging Oligopolies in Global Markets: Was Marx Ahead of His Time?” Journal of Management Policy and Practice 14(3): 96-98. <http://www.m.www.na-businesspress.com/JMPP/KopfJ_Web14_3_.pdf>

With firms branching out into global competition and countries lowering their trade barriers to promote such competition, the absence of effective global regulation once again raises Marx concerns. Because of strong federal governments, national governments were able to pass and enforce, through the uses of military or police force where necessary, laws that regulated externalities, such as pollution, and antitrust. At the moment there is no strong federal government at the global level and, therefore, no one to pass and enforce laws that effectively regulate externalities or antitrust. Epstein and Greve raise a Marx like concern, “when firms have international market power, one would expect them to behave as monopolists just like domestic firms with market power” (2004). Therefore, without any dominant form of regulatory governance, industry concentration could very well replicate what was seen in the late 19th century, though, globally instead of nationally. Carstensen & Farmer discusses this tendency towards M&A’s: The transformation of formerly regulated or noncompetitive industries to competition is closely linked with merger movements. The historical record demonstrates that once faced with competition, leading firms in these industries began to merge. This has been the pattern in airlines, banks, railroads, electric and gas utilities, health care and, with great prominence, telecommunications (2008). While some may argue that reaching that level of concentration is unlikely, one should consider current industries that hold a considerable global market share. “Although it may be more difficult to establish and maintain market power internationally, there is no reason to believe that it is impossible or, for that matter, rare. Industries such as pharmaceuticals, passenger aircraft, and software illustrate the phenomenon” (Epstein & Greve, 2004). There are actually quite a few firms who have emerged into the global market that hold what can be considered a significant share within global industries, ranging from manufacturing, financial intermediation, and transport service along with other service industries. For example, The European Aeronautic Defense and Space Company and The Boeing Company combined hold more than 50% market share within the global civil aerospace products manufacturing industry. Goldman and Sachs hav2 20.20% market share within the global investment banking and brokerage industry and Vivendi holds 20.10% within the global music production and distribution industry. United Parcel Service holds 23.80%, within the global logistics – couriers industry (IBISW, 2011). We do not intend to imply that the monopolization that had plagued the United States in the late 19th century has emulated itself at the global level, creating one dominant firm controlling an entire global industry. However, it does appear that a number of industries are starting to exhibit Marx, “inevitable move toward a monopoly.” The increase in oligopoly power at the global level presents unprecedented challenges. Reaching a cross-country consensus on competition policy is a difficult. Epstein & Greve discuss some of the issues that arise when attempting to unite foreign and domestic competition policy. Competition policy embodies imprecise normative judgments that invite controversy and defection rather than consensus and commitment. Because its scope extends to such a wide range of economic activity, it has the potential to inflict significant costs on many transactors. In particular, competition policy tempts states both to impose nominally neutral policies that favor local producers and consumers at the expense of global welfare, and to administer their policies in a discriminatory fashion to similar ends” (2004). While more and more countries are adopting competition policies, this seemingly positive step towards unification of trust law has its negative effects. “Nearly one hundred jurisdictions now have antitrust laws” according to Epstein & Greve, this raises increasing issues of “jurisdictional overlaps” since many countries will assert their “jurisdiction over extraterritorial conduct that has a domestic impact” (2004). Antitrust enforcement agencies around the world have tried to cope with the increased power of global corporations by staying in regular and increasing contact with one another on individual merger cases as well as on general issues of mutual enforcement interest. Through instruments such as the 1995 Recommendation of the Organization for Economic Co-operation and Development (OECD) that its 29 members cooperate with one another in antitrust enforcement and bilateral agreements like that which exists between the United States and the European Community, the antitrust agencies notify one another when a case under investigation affects another's important interests and they share what information they can and otherwise cooperate in the investigation and resolution of those cases (1999). Richard Parker, Senior Deputy Director of the Bureau of Competition FTC, presenting on global merger enforcement, discussed the implementation of the Organization for Economic Co-operation and Development (OECD) and concluded with examples of global merger enforcement. While attempts at unified standards of competition policy are underway, the efforts of the OECD are considered to have substantial limitations on enforcing global merger laws. Epstein and Greve state: Information sharing or “soft” cooperation has also been pursued at the Organization for Economic Co-operation and Development, which has generated several aspirational texts. None of these impose obligations on states, and they are not intended to do so. Their goals are modestly limited to improving communication on competition issues. History shows us that even with a strong federal government with the ability to enforce laws through the use of force where necessary, such as the United States federal government has on its states, firms are very good at ignoring or getting around antitrust laws. If the U.S. government did not have strong federal power over states, and it was up to the states to reach agreements on antitrust laws, one can easily imagine that there would likely be problems resulting in less strenuous competition policy. Take for example state control over age discrimination laws. When these laws originated, states chose whether to enact policies aimed at protecting workers rights. By 1960 only 8 states had age discrimination laws until the federal government enacted such regulations as the Age Discrimination Employment Act of 1967 (ADEA). This, along with the Department of Labor in 1979 giving administrative authority to the U.S. Equal Employment Opportunity Commission (EEOC), established unified laws protecting individual employment rights (Lahey, 2007). Without this dominant authority of the federal government, fair employment practices may still continue to be a regionally dependent right. In the current era of globalization, where industry’s actions domestically can be felt by all corners of the globe and vice versa, without a global entity with strong “federal” powers capable of monitoring and enforcing competition policy, it seems reasonable to conclude that Marx may in fact be proven correct: the inevitable result of the efficient market is increasing concentration of power resulting in global oligopolies or, eventually, monopolies.

### Markets Link ---2NC

#### 6. Markets.

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.

### Advantage 1 Link---2NC

#### Health care market incents pandemics, monocultures erode health

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

Such suffering at the individual and population level is, however, a significant commercial opportunity for the corporate players in the global healthcare market, valued at $US8.45 trillion in 2018, and, with an anticipated compounding annual growth rate of nearly 9%, expected to reach nearly $US12 trillion by 2022.23 In a revealing statement, a recent Businesswire commentary on this booming sector noted that: “Going forward, faster economic growth, technological developments and the increasing prevalence of diseases due to rising busy and sedentary lifestyles will drive the growth [of the global healthcare market]. Factors that could hinder the growth of this market in the future are rising interest rates, increasing awareness of alternative therapies and natural remedies, government provisions in healthcare services, and stringent government regulations”23 (emphasis added). The implication here is that greater public spending on healthcare and better public health generally are, from the perspective of the private healthcare market, unwelcome, insofar as they inhibit increasing profit. From the standpoint of ethics and a commitment to basic human rights, including the right to the highest attainable standard of health, such reasoning can only be described as perverse. And yet it is widely accepted as the ‘common sense’ of industry and financial markets, as well as being reinforced in a directly material sense by highly effective lobbying efforts aimed at inhibiting public health measures such as a sugar tax.24 In terms of the ecological impacts, large-scale industrialised monocultures and the deforestation and land-use change that they entail are major drivers of anthropogenic climate change, with the food system accounting for as much as 37% of all greenhouse gas emissions, according to the Intergovernmental Panel on Climate Change.25 Such practices are also major drivers of the ‘unprecedented’ rapid decline in ecosystems and accelerating rate of species extinction, leading to humanity ‘eroding the very foundations of our economies, livelihoods, food security, health and quality of life worldwide;’ this being the conclusion of the most comprehensive assessment of the state of planetary ecosystems ever undertaken by the world’s leading scientists in their respective fields.26 Summarising these and other major datasets, 16 leading biophysical scientists, in a paper published in January 2021, stated that ‘the scale of the threats to the biosphere and all its lifeforms – including humanity – is so great that is difficult to grasp for even well-informed experts.’27 They added that the current political and policy responses were woefully inadequate to the extent and severity of the crisis, concluding that: “The gravity of the situation requires fundamental changes to global capitalism, education, and equality, which include inter alia the abolition of perpetual economic growth, properly pricing externalities, a rapid exit from fossil-fuel use, strict regulation of markets and property acquisition, reigning in corporate lobbying, and the empowerment of women.”27 Absent such thorough-going structural changes, they warned, the future in the coming decades would be ‘ghastly.’ They thus concluded with an exhortation to ‘experts in any discipline that deals with the future of the biosphere and human well-being to eschew reticence, avoid sugar-coating the overwhelming challenges and “tell it like it is.” Anything else is misleading at best, or negligent and potentially lethal for the human enterprise at worst.’27 This paper is written in the spirit of that academic and scientific call to arms.

#### 4. Markets fail for emerging existential diseases---incentives are against dealing with emergency.

Benjamin Mazer 20. A physician specializing in laboratory medicine and health policy. "The Free-Market Approach to This Pandemic Isn't Working". Wired. xx-xx-xxxx. https://www.wired.com/story/the-free-market-approach-to-this-pandemic-isnt-working/

AMERICA’S HEALTH CARE system has always been bizarre. During the Covid-19 pandemic, it’s become absurd. I am a laboratory medicine physician, and one of the most difficult parts of my job is giving patients bad diagnoses—bad not just because of the disease but because of the unaffordable medical bills that often follow. I regularly have patients whose condition progresses unchecked because they don’t have the resources to address it. As an individual doctor, though, I don’t control the distribution and cost of medical care. The truth is that no one is controlling the health care system. American health care is a free market affair. It’s an endless fight between individuals, hospitals, and insurers over who gets treatment and who pays for it.

Free markets are powerful tools to efficiently distribute resources. But they are not magic—especially right now. A functional market can’t spring up overnight for a disease that didn’t even exist last year. Worse still, markets have no concern for the public good. The US health care system may be a free market, but it’s not a fair one. Covid makes this terribly clear.

Take testing, for instance. The number of tests being done has increased by more than an order of magnitude since last spring, yet we still don’t have enough to meet demand. The privileged and connected, however, don’t seem to be having any problems. Billionaire Elon Musk recently tweeted that he had taken four rapid antigen tests for Covid in succession, and then sent off multiple PCR tests (with an enviable 24-hour turnaround) for confirmation. In the beginning, labs were hampered by a slow-to-respond Food and Drug Administration. Now the problem is lack of resources. PCR testing—the gold standard for Covid diagnosis—relies on expensive machines, multiple chemical reagents, highly trained staff, and a pile of cheap plastic “consumables.” All of these are still in short supply. The US can run millions of Covid-19 PCR tests every day, but it’s just not enough given the ongoing outbreak. Many of these supplies are used for testing other infectious diseases, too—so the delays are not limited to Covid.

Musk may be an eccentric example of how the wealthy and powerful cut to the front of the testing line, but he’s not the biggest offender. More uncomfortable is the use of widespread testing to keep college campuses and professional sports open. Schools like the University of Illinois can run more than 10,000 tests per day, while nursing homes—the places hardest hit by the disease—struggle to keep their turnaround times acceptable. This is America’s free market health care system at work: If you can pay more or have the right connections, you get what you need; if you don’t, you suffer.

The pandemic didn’t have to go like this. With no time for “market wisdom” to develop, the government could have jumped in to coordinate and ration testing resources. Instead, the list of market failures seems to grow daily. Testing capacity is not evenly distributed, so some labs are sitting idle while others are crushed under the volume. Because no one’s sure how long the pandemic will last, labs don’t want to invest too much money in expensive equipment that will be useless in a year or two. Providers are left to their own devices to figure out where to send tests. Many struggle to identify which labs will provide the quickest turnarounds, lowest prices, and most reliable results.

The federal government has taken some half-hearted steps to intervene. When test manufacturer Abbott’s rapid antigen test was authorized, the Trump administration immediately purchased almost the entire supply. The feds have since attempted to distribute these tests by need rather than wealth (though nursing homes remain reluctant to use them). The government also utilized the Defense Production Act to expedite and coordinate testing and protective equipment, but experts suggest this could be done far more aggressively, with even the Congressional Research Service calling Trump’s use of the act “sporadic and relatively narrow.”

In a free market pandemic, labs, hospitals, and patients are actually competitors. Profit may be prioritized over need. Hospitals and laboratories have taken huge financial losses as the pandemic cut into lucrative elective procedures. The quick expansion of Covid testing has, despite its challenges, provided income to ameliorate this damage, but it’s not enough. Universities, fearing an existential loss of tuition revenue, will do anything possible to keep their students from the supposed indignity of Zoom classes.

#### 5. Won’t respond until its too late.

Dr Rajiv Pathni 20. IAF veteran; independent consultant with interest in healthcare strategy and digital health. "The Case for Securitising Pandemics". ORF. 3-11-2020. https://www.orfonline.org/research/the-case-for-securitising-pandemics/

The military focuses on flexibility, logistics, and maintaining readiness for any foreseeable situation. It develops a comprehensive strategy, with enough built-in flexibility for it to evolve as conditions demand, and then its members repeatedly review, simulate, and rehearse it. The military does not wait until a war is declared to start developing or procuring weapons; platforms to anticipated threats are developed and modified over years. The same type of approach is needed to develop platforms for vaccines and potential treatments. A market-driven approach that relies only on private pharmaceutical companies simply cannot work, because vaccines or treatments for diseases such as COVID-19 have virtually no market until the situation is already out of hand.

#### 1. Private sector solutions to disease fail.

Yaniv Heled et al 20. Associate Professor, Georgia State University College of Law; Center for Law Health & Society and Center for Intellectual Property, and Ana Santos Rutschman, Assistant Professor of Law, Saint Louis University School of Law, Center for Health Law Studies and Center for Comparative and International Law, and Liza Vertinsky, Associate Professor, Emory Law School. “The problem with relying on profit-driven models to produce pandemic drugs.” Journal of Law and the Biosciences, Volume 7, Issue 1, January-June 2020. <https://academic.oup.com/jlb/article/7/1/lsaa060/5882039>

Why the divergence of private incentives and public health widens in pandemic preparedness and response This divergence of private incentives from public health needs widens in contexts of pandemic preparedness and response. First, forces of supply and demand mediated by price do not work well to respond either to the possibility of future pandemics or, on an emergency basis, to allocate resources and guide economic activity once the public health emergency has struck.20 Even in well working markets, price does a poor job of reflecting the value of being prepared for unknown future contingencies. The price mechanism does not and cannot capture the difficult-to-quantify and heavily discounted public health value of being better prepared in the uncertain event that a (corona) virus or other pathogen of a particular type will spread rapidly within economically profitable markets at some future time. Pandemic preparedness requires ‘inefficiencies’ from an economic point of view: carrying excess capacity, stockpiling equipment, and ensuring geographically spread production and distribution infrastructure that exceed market demand or for which there will never be any realized demand.21 It involves investing in the R&D of vaccines and treatments for pathogens that are likely to never emerge, and for diseases that are most likely to remain contained,22 and/or for pathogens that might mutate over time such that approved products might not work for future infections and outbreaks. Compounding these bleak economic prospects is the fact that outbreaks of infectious diseases often start with, and remain limited to, neglected regions and populations, where markets for pharmaceutical products offer limited economic potential.23 The 2014–2016 transnational Ebola outbreak, which affected primarily countries in West Africa, is a case in point. Coincidentally (or perhaps not), many of the promising leads on treatments for COVID-19 are based on advances made—but then stalled—in response to Ebola.24 Moreover, under current paradigms, pricing of any existing vaccines and drug products before the start of an outbreak is bound to grossly undervalue the preventative and therapeutic effects of such products.25 Once an infectious disease that threatens severe health outcomes starts spreading, it is sure to result in inelastic, and sometimes irrational, maximal market demand for treatments, regardless of individuals’ risk status and even regardless of product effectiveness.26 Panic increases the demand for any potential therapy dramatically, but leaves the ability to pay rather than health need or health benefit as the determinant of who gets the product in times of shortage. Infectious diseases like COVID-19 tend to spread more readily and have greater health effects on poorer communities, where purchasing power, and thus market demand, is low.27 But when a pandemic emerges, markets allocate resources based on who can pay the most, which reflects neither individuals’ need nor the best allocation for achieving public health goals. The tension between ability to pay and medical need is further compounded by the additional tension between individual demand and the public interest: while individuals rationally seek to maximize benefits for themselves and their loved ones, on a population level, herd response is the only method of effectively tackling pandemics, with herd immunity being the ultimate goal. Leaving the allocation of treatments to be decided by who can pay for them will inevitably lead to suboptimal results, to everyone’s detriment. This problem takes on an even greater dimension when we consider the needs of poorer countries outside of the USA, and the importance of considering not just treatment effectiveness but also accessibility to large groups of people. In addition to problems of inelastic demand confronting income constraints and capacity constraints, the rising price for any type of therapy combined with scarcity of effective treatments leads to problems of profiteering and attracts products of uncertain quality. During the period of the outbreak, as information gaps increase and, with them, irrational and even desperate individual responses, pharmaceutical companies gain the ability to charge high prices for virtually any purported treatment, regardless of its safety and efficacy profile, and with minimal risk of tort liability further down the road.28 While emergency conditions also include downward pressures on prices, which arise, among other things, from emergency government responses such as compulsory licensing, in the US these pressures are curbed by the dominant political belief in the power of the market and the importance of rewarding private innovation.29 With the ability to raise prices in a time of crisis, and with limited threat of competition due to limited capacity, market incentives might even encourage non-preparedness, untimely response, and profiteering.30 Moreover, although the two are related, it is not product price, but stock price, that drives pharmaceutical company decisions. Profit-driven entities are primarily driven by stock price, executive compensation, and short-term profits, which—in the case of pandemics—creates and exacerbates biases against efforts to prepare for and respond to long-term problems.31 Long-term planning, investment in potential therapies with uncertain future applications, carrying excess capacity for pandemic preparation, and heeding to need-driven allocation of goods required for pandemic response are unlikely to translate into expectations of short-term stock price increases. Instead, pharmaceutical markets have been increasingly oriented around the ability to reduce risk, enhance proprietary boundaries, and increase expected short-term revenues from product sales. Such inherent short-termism makes profit-driven entities particularly poor at responding to the threat of pandemics. The response once a pandemic threat becomes an actuality is also problematic. Once emergency strikes, interest in potential therapies drives any company that can even remotely claim to have a drug or drug candidate to tout its potential and invest in its development. The immediate impact of the promise of a pandemic drug on the stock price of pharmaceutical companies is incentive enough to promote poorly substantiated and even just rumored benefits of purported treatments.32 For those companies with legitimate potential therapies in development, impact on stock price is an important factor in managing clinical testing and controlling the release of results, even when public health would be clearly better served by the rapid disclosure and sharing of all information, including reports of negative results or information that might support development of competing therapies.33 This failure of price to act as a mechanism for directing supply and demand based on public health value of pandemic preparedness and response plays out well beyond the development of therapeutic products. The ongoing COVID-19 pandemic has shed light on similar embodiments of this problem in other areas that are critical to a quick and effective response to a pandemic, including the scarcity of hospital beds,34 diagnostic tests,35 and ventilators36 in the USA. Collectively, these examples illustrate the dangers of relying on price as a signal of healthcare value, a topic we explore in greater detail in the case study on remdesivir below. Second, the US policy choice to emphasize relying on private incentives to drive pandemic preparedness and response, and the resulting socialization of the costs (including the costs of not being prepared) but not the benefits, leaves pharmaceutical companies essentially in exclusive control of the product target choice, R&D process, and intellectual property where public input and shared control are most needed. The outspoken reliance on the private sector to provide pandemic solutions reinforces government efforts to evade accountability for ensuring pandemic preparedness by shifting responsibility to the private sector, which is beholden to stockholders, not the public. In this way the government is able to avoid making the large investments in public capacity and R&D that government preparedness would require. Limited government funding is devoted to academic and government research on potential drug candidates for future outbreaks, but almost always with the idea of handing off early stage ideas to private companies. Government funding is also provided to private companies for R&D into drugs that might be useful for some potential future pandemic, but the funding is inadequate and the return on investment for pharmaceutical companies is too low to attract much of their time or interest.37 Once a pandemic or large-scale public health crisis occurs, or, more specifically, reaches the USA, the emergency triggers investment of large sums of government money in initial R&D and purchasing of treatments.38 Yet, in the USA such initial investment is almost never accompanied by any measures to secure a reasonable pricing scheme or even just consideration of the public investments in R&D.39 Moreover, the investment of public funds often takes the form of supporting existing market forces through increased private incentives to speed discovery and development and subsidize capacity building. This practice is underpinned by a narrative promoting the need for unfettered private sector innovation, which is portrayed as incompatible with government efforts to control the price and/or allocation of the R&D outputs.40 Even in the rare instances in which measures to secure reasonable pricing have been attached to government investments in early R&D, they have not been implemented.41 In the midst of the COVID-19 outbreak, the government response to the need for a cure continues to depend heavily on unfettered private sector innovation, as most recently reflected in the emergence of ‘Operation Warp Speed’, a public private partnership formed to identify and speed the development of promising drug and vaccine candidates for COVID-19 through large-scale government support for private sector programs.42 The heavy reliance that US policymakers have placed on private sector innovation to produce therapies and vaccines stands in stark contrast to international efforts focused on public−private collaborations backed by academic scientists from around the world and the World Health Organization.43 Third, the nature and extent of regulation in US pharmaceutical markets has favored business models that exploit the availability and use of exclusivities throughout the lifecycle of product selection, development, and sale. The most profitable pharmaceutical business models focus either on large blockbuster drugs that can be sold at prices high relative to cost and/or niche market products (such as orphan drugs) where competition is restricted and prices can be kept high. The market potential of these exclusivities is limited in the context of developing potential therapies for pandemic preparedness. Exclusivities have little value for drug that do not (yet) have a proven existing use, but they do operate to limit the incentives and ability of others to experiment with and utilize undeveloped and underdeveloped drug candidates. The value of exclusivities in pandemic drugs and drug-candidates is further compromised when the primary market(s) for such drugs are in countries where purchasing power is low, and their value can be limited, especially in pandemic contexts, by temporary government emergency measures such as compulsory licensing. While pharmaceutical companies may not themselves be interested in developing potential therapies for pandemics in the absence of information that an outbreak is likely, they may still prefer to exercise market control over drug-candidates R&D and the capacity to produce such drugs where the area of R&D overlaps with their existing commercial interests. The commercial value of exclusivities increases for therapies with potential pandemic application once the pandemic occurs, but so too does the social cost of these exclusivities. Effective response to a pandemic requires a commitment to open and rapid sharing of information, including proprietary information, among potential competitors, and across national and geopolitical lines.44 Yet, the regulatory environment that has allowed for limited pharmaceutical competition outside the context of a pandemic continues to reward responses to healthcare emergencies with both intellectual property and market exclusivities administered by the Food and Drug Administration (FDA), while allowing stringent data secrecy policies to remain in place.45 Once a pandemic strikes, the lure of exclusivities leads to an ‘arms race’ for potential therapeutics and to development strategies that are designed wherever feasible to safeguard proprietary advantages. If and when the sharing or transfer of data and intellectual property does occur, it takes place on a delayed timeline, often only after substantial public and political pressure and concessions.46 Furthermore, when data and intellectual property sharing arrangements are implemented, they typically follow the model of strategic licensing, which is designed to limit the capacity of competitors to compete in particularly lucrative markets.47 Even where there is a wiliness to engage in collaborative R&D, the industry lacks well-developed mechanisms and practices for collaborative product development because these mechanisms are so different from normal drug discovery and development pathways.48 Efforts at collaboration through public−private partnerships, such as the Accelerating COVID-19 Therapeutic Interventions and Vaccines (ACTIV) partnership formed by the National Institutes of Health, other government agencies, and a group of large pharmaceutical companies to accelerate the development of vaccines and therapeutics in response to COVID-19, fail to depart significantly from existing proprietary R&D models.49 Instead of an extension of normal practices, open and collaborative late stage development and distribution requires an entirely different way of operating. Eventually, all of these market dynamics pit pharmaceutical companies against public health pressures, leading to adversity and mistrust where collaboration is urgently needed.50 This is even more true at the global level, where the national interests of the USA in controlling and receiving priority in access to effective treatments is in tension with much needed global coordination of efforts, data sharing, and widespread production.51

### Advantage 2 Link---2NC

#### 2. Cap bad tech---ruthless maximization is a s-risk.

**Shino 15** [Yuya, Journalist at Reuters "Capitalist forces could create ‘uncontrollable’ artificial intelligence – scientist," RT International, https://www.rt.com/uk/235143-capitalism-ai-dangerous-technology]

Murray Shanahan, professor of cognitive robotics at Imperial College London, cautioned against “capitalist forces” developing AI without any sense of morality, arguing it could lead to potentially “uncontrollable military technologies.” Shanahan’s comments follow warnings from leading scientists and entrepreneurs, including Stephen Hawking, Bill Gates, and Tesla Motors CEO Elon Musk. Gates admitted last month that he doesn’t “understand why some people are not concerned” by the threat of AI. Speaking to the Centre for the Study of Existential Risk at the University of Cambridge last week, Shanahan argued that AI development faces two options. Either a potentially dangerous AI is developed – with no moral reasoning and based on ruthless optimization processes – or scientists develop AI based on human brains, borrowing from our psychology and even neurology. “Right now, my vote is for option two, in the hope that it will lead to a form of harmonious co-existence [with humanity],” Shanahan said. AI based on the human brain would not be possible without first mapping the organ – a task the Human Connectome Project (HCP) is undertaking and aims to complete by late 2015. However, once the map is complete, it could take years to analyze all the data gathered. Experts disagree as to how long it will be before AI is successfully developed – or if it is even possible. Estimates range from 15 years to 100 years from now, with Shanahan believing that by the year 2100, AI will be “increasingly likely but still not certain.” Whether the technology is helpful or harmful to humans depends on which of Shanahan’s two options becomes the driving force behind its development. There is a fear that current economic and political systems are leading to the development of option one – a machine with no moral reasoning. “Capitalist forces will drive incentive to produce ruthless maximization processes. With this there is the temptation to develop risky things,” Shanahan said. For Shanahan, risky things include AI which could rig elections, subvert markets, or become dangerous military technology. “Within the military sphere governments will build these things just in case the others do it, so it's a very difficult process to stop.” Shanahan’s comments echo fears expressed by Gates and Musk last year, both of whom were influenced by Nick Bostrom’s book “Superintelligence: Paths, Dangers, Strategies,” he said. In his book 'Superintelligence: Paths, dangers, strategies,' Nick Bostrom – a professor of philosophy at Oxford University – argues that if machine brains surpass humans in intelligence, they could eventually replace us as the dominant species on earth. “As the fate of the gorillas now depends more on us humans than on the gorillas themselves,” Bostrom writes, “so the fate of our species then would come to depend on the actions of the machine superintelligence.” After reading Bostrom's book, Musk warned that the threat posed by AI could be greater than nuclear weapons. He donated $10 million to the Future of Life Institute in January, a global research program aimed at keeping AI beneficial to humanity.

### Advantage 1 Solvency---2NC

#### 2. Red innovation solves.

Vanessa Bee 20 Senior Litigation Counsel at the Consumer Financial Protection Bureau with a JD from Harvard Law. Would We Have Already Had a COVID-19 Vaccine Under Socialism? No Publication. 4-20-2020. https://inthesetimes.com/features/covid-19-coronavirus-vaccine-capitalism-socialism-innovation.html

SHARING IS CARING—AND ABSOLUTELY NECESSARY CityLab reports that, in response to the pandemic and the scarcity of official information, “a group of coders, analysts, scientists, journalists and others are working to follow coronavirus testing across the country through an open-sourced database called the COVID Tracking Project.” Open-source communities have existed since the 1980s and have contributed to a range of innovations, from the creation of the internet to cheaper prosthetics and better disaster management systems. Typically, these online open-source collectives are made up of unpaid volunteers who contribute code and features meant to be used freely. A 2006 study from the University of Illinois set out to understand why coders would donate hours of their personal time to open-source projects. Researchers found that some enjoyed the freedom and creativity of managing their own work and disliked the hierarchical communities that claimed exclusive control over projects. Other coders said they had withheld their labor from more privatized projects because seeing their contributions redirected to private hands sapped both creativity and motivation. The European Organization for Nuclear Research in Switzerland, known as CERN, has long adhered to an “open-source” philosophy, the belief that “the recipients of technology should have access to all its building blocks … to study it, modify it and redistribute it to others.” This communal ethic has helped support incredibly innovative projects. CERN operates a massive particle physics laboratory; its Large Hadron Collider (LHC) particle accelerator runs 17 miles underground and relies on collaboration networks developed through the open-source cloud system OpenStack. The LHC discovered the Higgs boson particle in 2012, earning a Nobel Prize for physicists Peter Higgs and François Englert. Two years after the Higgs boson discovery, CERN made data from its LHC experiments free to the public through an open data portal, which CERN then-Director General Rolf-Dieter Heuer hoped would “support and inspire the global research community, including students and citizen scientists.” Some of the most innovative companies in America are now open-sourcing certain projects. On the heels of four years of lawsuits over a number of smartphone patents in 2014, for instance, Apple and Google announced they would settle out of court and “work together” on patent reform. The next year, Microsoft and Google co-founded the open-source Alliance for Open Media. A number of other companies came on board, including Apple, Amazon, Intel, Cisco, Facebook, Mozilla and Netflix. Its goal was to improve video compression technology, which had been held hostage by two patent holders charging millions in licensing fees. Netflix reported the new, open-source, royalty-free video technology improved its compression efficiency by 20%. Rather than causing the imagination to stagnate, the Alliance for Open Media’s adoption of socialist principles benefited all involved—the larger media industry and their consumers alike. Of course, as Google demonstrated when it recently fired five employees involved in union organizing, the corporations involved are not challenging the economic status quo—they benefit from the precarity of work and go to great lengths to protect their bottom line. It is also highly likely that, aside from open-source advocates like Mozilla, most members of the Alliance for Open Media joined because it was economically advantageous. Intel’s director of strategy and planning, for example, explained his company believed the open-source project would “lower delivery costs across consumer and business devices as well as the cloud’s video delivery infrastructure.” Without the likely economic benefit, it is difficult to say whether the Alliance for Open Media would have ever formed—and it is precisely because of this uncertainty that a more dramatic shift to a socialist economy is necessary to maximize new innovation. Those in power stand to benefit from sowing fear around socialism, but the rest of us would be better off in a society reorganized around democracy, equality, solidarity, autonomy and collective ownership. That shift would mean more publicly funded medical research and cheaper drugs reaching those in need faster. It would mean more fearless development, unimpeded by expensive shareholder lawsuits and patent disputes. It would mean life-saving drugs like Truvada being available for all, rather than all who can afford them, and widespread economic security through the kind of safety net that empowers anyone to explore their talents, rather than just the children of the welloff. It would mean labor rights that allow workers to shape their working conditions and turn workplaces into places where ideas can thrive. It would mean an expansion of the open-source philosophy to promote free knowledge and perspectives, with collective ownership of the discoveries fueled by collective investment. It would mean an unwavering commitment to the funding of public institutions and projects, without a constant eye toward financial return. And perhaps paramount in our minds in this moment: It would mean developing a vaccine against a disease as dangerous as COVID-19—before it could become a global pandemic. 

### Advantage 2 Solvency—2NC

#### Only nationalized tech under a planning economy solves.

Xiang 18 [Feng. Professor of law at Tsinghua University and one of China’s most prominent legal scholars. Opinion: AI will spell the end of capitalism. Washington Post. 5-3-2018. <https://www.washingtonpost.com/news/theworldpost/wp/2018/05/03/end-of-capitalism/> ]

BEIJING — The most momentous challenge facing socio-economic systems today is the arrival of artificial intelligence. If AI remains under the control of market forces, it will inexorably result in a super-rich oligopoly of data billionaires who reap the wealth created by robots that displace human labor, leaving massive unemployment in their wake.

But China’s socialist market economy could provide a solution to this. If AI rationally allocates resources through big data analysis, and if robust feedback loops can supplant the imperfections of “the invisible hand” while fairly sharing the vast wealth it creates, a planned economy that actually works could at last be achievable.

The more AI advances into a general-purpose technology that permeates every corner of life, the less sense it makes to allow it to remain in private hands that serve the interests of the few instead of the many. More than anything else, the inevitability of mass unemployment and the demand for universal welfare will drive the idea of socializing or nationalizing AI.

Marx’s dictum, “From each according to their abilities, to each according to their needs,” needs an update for the 21st century: “From the inability of an AI economy to provide jobs and a living wage for all, to each according to their needs.”

Even at this early stage, the idea that digital capitalism will somehow make social welfare a priority has already proven to be a fairytale. The billionaires of Google and Apple, who have been depositing company profits in offshore havens to avoid taxation, are hardly paragons of social responsibility. The ongoing scandal around Facebook’s business model, which puts profitability above responsible citizenship, is yet another example of how in digital capitalism, private companies only look after their own interests at the expense of the rest of society.

One can readily see where this is all headed once technological unemployment accelerates. “Our responsibility is to our shareholders,” the robot owners will say. “We are not an employment agency or a charity.”

These companies have been able to get away with their social irresponsibility because the legal system and its loopholes in the West are geared to protect private property above all else. Of course, in China, we have big privately owned Internet companies like Alibaba and Tencent. But unlike in the West, they are monitored by the state and do not regard themselves as above or beyond social control.

It is the very pervasiveness of AI that will spell the end of market dominance. The market may reasonably if unequally function if industry creates employment opportunities for most people. But when industry only produces joblessness, as robots take over more and more, there is no good alternative but for the state to step in. As AI invades economic and social life, all private law-related issues will soon become public ones. More and more, regulation of private companies will become a necessity to maintain some semblance of stability in societies roiled by constant innovation.

I consider this historical process a step closer to a planned market economy. Laissez-faire capitalism as we have known it can lead nowhere but to a dictatorship of AI oligarchs who gather rents because the intellectual property they own rules over the means of production. On a global scale, it is easy to envision this unleashed digital capitalism leading to a battle between robots for market share that will surely end as disastrously as the imperialist wars did in an earlier era.

For the sake of social well-being and security, individuals and private companies should not be allowed to possess any exclusive cutting-edge technology or core AI platforms. Like nuclear and biochemical weapons, as long as they exist, nothing other than a strong and stable state can ensure society’s safety. If we don’t nationalize AI, we could sink into a dystopia reminiscent of the early misery of industrialization, with its satanic mills and street urchins scrounging for a crust of bread.

The dream of communism is the elimination of wage labor. If AI is bound to serve society instead of private capitalists, it promises to do so by freeing an overwhelming majority from such drudgery while creating wealth to sustain all.

If the state controls the market, instead of digital capitalism controlling the state, true communist aspirations will be achievable. And because AI increasingly enables the management of complex systems by processing massive amounts of information through intensive feedback loops, it presents, for the first time, a real alternative to the market signals that have long justified laissez-faire ideology — and all the ills that go with it.

### Alt---2NC

#### 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.”

#### 2. Our alt solves all of their “transition bad” arguments---our alt isn’t economic collapse.

Jason Hickel 20. He holds a bachelor's degree in anthropology from Wheaton College. Received his PhD in anthropology from the University of Virginia in August 2011. Taught at the London School of Economics from 2011 to 2017, where he held a Leverhulme Early Career Fellowship. He is currently senior lecturer in anthropology at Goldsmiths, University of London and a Visiting Senior Fellow at the International Inequalities Institute at the London School of Economics. “A RESPONSE TO MCAFEE: NO, THE "ENVIRONMENTAL KUZNETS CURVE" WON'T SAVE US.” <https://www.jasonhickel.org/blog/2020/10/9/response-to-mcafee>.

We can either deny this evidence, or we can face up to it. Facing up to it means rethinking the extent to which we should pursue GDP growth. Now, this is where the good news comes in. McAfee says he wants to achieve “longer, healthier lives”, improving human well-being and flourishing. That’s the goal. And here too, we agree (that’s two goals we share). But for some reason McAfee assumes that in order to do this, even high-income nations, regardless of how rich they have already become, need to keep growing their GDP, exponentially, with no identifiable end point. This is an unexamined assumption; he provides no evidence for this claim.

I get it – I used to hold this assumption too. Most people do. But the good news is that it’s not true. At least 30 years of research in ecological economics has made it clear that high-income nations don’t need to keep growing in order to improve people’s lives. They can do it right now, without any additional growth at all, simply by sharing income, resources and opportunities more fairly and investing in universal public goods. These are the interventions that matter. That’s how Spain beats the USA in life expectancy by a solid five years, and outperforms the USA on virtually every social indicator, with half of the USA’s GDP per capita. The notion that the US needs to keep growing its GDP in order to improve social outcomes is simply not supported by evidence.

By the way, we need to keep the inequality problem in mind here. According to the World Inequality Database, the richest 5% capture 46% of total global GDP. That means that nearly half of all the resources we use, and half of all the emissions we emit, is done in order to make rich people richer. In what world does this make any ecological sense? And yet McAfee has never engaged with this question.

Once we realize that we don’t need growth in order to accomplish our social goals, this makes it much easier to reduce resource and energy use, accomplish a rapid transition to renewables, and bring our economy back into balance with the living world. We should see this as liberating. And this vision is not anti-tech. On the contrary, the point is to prevent our technological gains (efficiency improvements, renewable energy, etc) from being swamped by scale effect of growth (ever-rising resource and energy demand), so that they can deliver the benefits we want them to.

Now, to McAfee’s final point: “but that would be a recession!”. And recessions, as we all know, are terrible: people lose their jobs and homes, poverty and inequality goes up, etc. Nobody wants this; and here too McAfee and I agree (that’s three). Here’s what we need to grasp, however: recessions are what happen when growth-dependent economies fail to grow; it’s a disaster. This is where degrowth comes in - to solve precisely this problem. Degrowth calls for a different kind of economy altogether: one that doesn’t require growth in the first place; one where we can reduce resource and energy use while specifically preventing unemployment and reducing inequality. The idea is to allocate resources and energy more rationally, and more democratically, to enable everyone to live flourishing lives in balance with the ecosystems we depend on.

Instead of engaging with this literature, McAfee tries to dismiss degrowth as a recession. To be frank, this is a lazy, bad faith argument. We have different words for these phenomena because, as I explain here, they are, in every respect, fundamentally different things. You can only miss this fact if you’re not reading, or if you’re intentionally seeking to mislead; either way, it is irresponsible. So, while I welcome McAfee’s engagement, this kind of claim is not helpful, and does not advance our collective understanding. My appeal to McAfee: let’s try to get beyond this sort of thing and engage more honestly with the empirical and theoretical work that has been done, so we can have more meaningful conversations. If we are going to realise our shared goals, we can and must do better.

#### Buch Hansen votes neg.

Max Koch & Hubert Buch-Hansen 20. Max Koch is a Professor in the School of Social Work at Lund University. Visiting Scholar / Guest Professor at Universidad Complutense de Madrid, Erasmus University Rotterdam, Glasgow University, *Programa de Economía del Trabajo (*Santiago de Chile), Lund University (prior to my current employment), GESIS - Leibniz Institute of the Social Sciences in Cologne, University of Edinburgh and at the Institute for Advanced Sustainability Studies in Potsdam. Buch Hansen is a Professor of Business at the Copenhagen School of Business. “In search of a political economy of the postgrowth era.” August 25, 2020. DOI: 10.1080/14747731.2020.1807837

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.

# 1NR

## 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.

#### 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.

### 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.

### 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.