# Doc---BCRR---Round 2

# 1NC

## Offcase

### 1NC

Regs CP

#### The United States federal government should substantially increase restrictions on business practices that would be judicially dismissed under the Bell Atlantic Corp. v. Twombly ‘plausibility pleading’ standard and business practices that collude to hire migrant agricultural labor anti through non-antitrust regulations.

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

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

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

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

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

### 1NC

#### Text: The United States federal government should allow relevant agencies to sue to enjoin practices by the private sector that would be judicially dismissed under the Bell Atlantic Corp. v. Twombly ‘plausibility pleading’ standard, and that collude to hire migrant agricultural labor.

#### The CP PICs out of private enforcement, an inevitable element of antitrust liability under the core antitrust laws---public enforcement is sufficient

Eric McCarthy et al. ‘7. GC & Chief Legal Officer of Womble Bond Dickinson (US) LLP, with Allyson Maltas, Matteo Bay and Javier Ruiz-Calzado. “Litigation culture versus enforcement culture A comparison of US and EU plaintiff recovery actions in antitrust cases.” <https://www.lw.com/upload/pubContent/_pdf/pub1675_1.pdf>

In comparison, in the European Union, private enforcement actions are rare and play less of a role than public enforcement in the fight against anti-competitive behaviour. Several obstacles hinder actions for damages in member state national courts, including a plaintiff’s limited access to evidence, the unavailability of class actions and the potential that the plaintiff may have to pay the defendants’ costs if the plaintiff loses the case. To address these obstacles and the great diversity of damages actions among the member states, the European Commission recently published a green paper on Damages Actions for Breach of the EC Antitrust Rules.3 The green paper examines those aspects of EU litigation practice that have led to a pronounced underdevelopment of private damages actions in the EU. Since its publication in December 2005, the green paper has sparked significant debate within the international antitrust community about the role of private enforcement of EC Treaty competition law and about damages actions in particular. The general expectation is that private damages actions will emerge (albeit slowly) in the European Union. This article compares the state of plaintiff recovery actions in antitrust cases in the US with that of the EU and explores why the United States is more litigious than the EU.

Private antitrust damages actions in the US

Rightly or wrongly, the United States has earned the reputation of having a ‘litigation culture’ that permeates its entire legal system.4 If that is true, it certainly earned its stripes this past year in the area of antitrust litigation. Although the number of civil cases filed in the United States dropped by 10 per cent from 2004 to 2005, the number of antitrust civil filings, almost all of which were initiated by private plaintiffs, rose by 8.8 per cent.5 In the first six months of 2006, the number of antitrust class actions doubled over the same period in 2005.6 Some experts speculate that “[h]ard-charging regulators, a more aggressive plaintiffs[’] bar, and the implementation of [CAFA]” may contribute to the increase in antitrust litigation.7 But in all likelihood, the explanation is far more elementary. As discussed in greater detail below, the pot of treble damages available to plaintiffs in the United States, as well as pro-plaintiff discovery and procedural rules, make private damages extremely easy and attractive to pursue.

The treble damages remedy

In 1914, the US Congress passed the Clayton Act, codified at 15 USC sections 12-27. Section 4 of the Act extends the Sherman Act’s prohibitions on anti-competitive behaviour and, most notably, allows “any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws” to sue for and “recover threefold the damages by him sustained”.8 Treble damages were designed to deter illegal conduct, deprive antitrust violators of the “fruits of their illegal activities” and provide compensation to victims of wrongdoing.9

The Clayton Act’s treble damages provision is not without its critics.10 Many practitioners and policy makers contend that trebling damages creates too great an incentive for plaintiffs to sue. Additionally, they argue, treble damages actions can result in a windfall to plaintiffs. Furthermore, some believe that large fines and the potential for criminal penalties create just as much of a deterrent against violations, without the need for treble damages.11 Nonetheless, the ability of a US private plaintiff to recover treble damages is so sacred and well protected that earlier this year the First Circuit held in Kristian v Comcast Corp12 that, although Comcast could contract with its subscribers to arbitrate antitrust claims, the arbitration agreements could not bar treble damages because “the award of treble damages under the federal antitrust statutes cannot be waived”.13

Although exceptions to the treble damages provision remain few and far between, congress enacted the Criminal Penalty Enhancement and Reform Act (CPERA) in June 2004. CPERA eliminates the treble damages remedy for corporations that qualify for amnesty under the Department of Justice’s Amnesty Programme.14 Under CPERA, a corporation must report its own anti-competitive behaviour to the DoJ and enter into the Corporate Leniency Programme.15 If a private plaintiff sues the corporation for the same behaviour, the civil court may assess single damages against the participating corporation, but only if the judge in the civil action determines that the corporate defendant is cooperating with the civil claimant by providing a full account of the conduct, furnishing all potentially relevant documents, and securing testimony, depositions and interviews from employees.16

Discovery and evidence

Plaintiffs enjoy broad discovery rights in the United States under the Federal Rules of Civil Procedure. These rules provide significant incentives for plaintiffs to file damages suits, even if they have very little factual bases for the underlying claims. At the outset of a case, the parties are obliged to make certain disclosures to one another, including the name of each individual “likely to have discoverable information” and a description by category and location of all documents in the party’s possession or control that it may use to support its claims or defences.17 Thereafter, during the fact-finding or discovery period, plaintiffs may seek a defendant’s business documents through written requests18 as well as answers to questions through written interrogatories.19 Plaintiffs may also ask questions of a defendant’s employees (regardless of seniority), who must sit for depositions and testify under oath.20 Moreover, plaintiffs may seek documents and testimony from non-parties with relative ease.21

Armed with such easy access to a defendant’s or non-party’s documents and employees, plaintiffs with limited evidentiary bases for their lawsuits may be inclined to sue and go on ‘fishing expeditions’ to discover facts to support their case.

Contingent fees

Plaintiffs that file antitrust damages actions in the United States routinely do so on a contingent fee basis. Under such an arrangement with counsel, the plaintiff client does not pay any fees to his or her attorney unless and until the plaintiff collects damages either by settling with the defendant or prevailing at trial. Typically, plaintiffs’ attorneys demand 33 per cent of the recovery as the fee.22 The result is a win for both client and attorney. The fee arrangements allow plaintiffs with limited funds the freedom to pursue their lawsuits without having to fund the litigation along the way. The plaintiffs’ attorney, on the other hand, is attracted to the prospect of treble damages, and thus a larger fee, and therefore is willing to front the litigation costs in the hopes of earning a sizeable fee at the conclusion of the suit.

Class actions

Class actions are the procedural device that enable one or more plaintiff members of a proposed class to sue on behalf of all similarly situated members of the same proposed class.23 Courts in the US have recognised that class actions can be appropriate mechanisms for promoting private enforcement of the antitrust laws.24 In this way, large numbers of potential claimants can prosecute their claims in a cost-efficient manner.25 The objective of any class action lawyer is to get the class certified. To do so, the court must find that the proposed class is “so numerous that joinder of all members is impracticable”, that there are “questions of law or fact common to the class”, that the “claims or defenses of the representative parties are typical of the claims or defenses of the class” and that the proposed class representatives “will fairly and adequately protect the interests of the class”.26 In addition, in most antitrust cases, the court must determine that the “questions of law or fact common to the members of the class predominate over any questions affecting only individual members” and that “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”27 Under rule 23, proposed class members are afforded the opportunity to decline to join or to ‘opt out’ of the class. But if the class is certified, all class members who do not affirmatively opt out are bound by the decision in the case and cannot pursue their claims individually. Class actions remain a popular means among plaintiffs’ lawyers to litigate antitrust conspiracy claims because they are regularly certified.

State indirect purchaser actions

In Illinois Brick Co v Illinois,28 the US Supreme Court held that, in order to maintain a claim for damages under section 4 of the Clayton Act, a plaintiff must have purchased the product in question directly from the alleged defendant-antitrust violator. The landmark decision thus precludes plaintiffs in a federal court from seeking alleged damages that were ‘passed through’ from the defendant down the chain of distribution in the form of overcharges. In direct response to Illinois Brick, many US state legislatures passed antitrust statutes that permit indirect consumers (ie, below the direct purchaser in the distribution chain) to sue the alleged violator. Today, 29 states permit such suits, or, alternatively, allow the state attorney general to pursue antitrust claims on behalf of indirect consumers.29 In these ‘Illinois Brick repealer’ states, as they are known, defendants face the real prospect of defending against lawsuits that mirror direct purchaser lawsuits pending against them in a federal court.

Huge jury verdicts and settlements

One natural result of the ease with which plaintiffs can pursue treble damages actions in the United States is huge jury verdicts in private antitrust cases. In Conwood v US Tobacco, the plaintiff manufacturer of moist smokeless tobacco (snuff) sued a competitor, the manufacturer of Copenhagen and Skoal, for unlawful monopolisation in violation of section 2 of the Sherman Act, among other claims.30

The jury awarded plaintiffs approximately US$350 million in damages, which, when trebled, resulted in an award that exceeded US$1 billion. The award is thought to be the largest antitrust jury verdict ever recorded.31

Additionally, the several aspects of US litigation highlighted above are a catalyst to settlement. Even before discovery begins, some defendants, confronted with the promise of invasive and expensive discovery, will choose to settle with plaintiffs in order to spare their employees from intrusive discovery and to save on exorbitant legal fees. Plaintiffs routinely extract large settlements from defendants after gaining access to corporate documents and information that, although not dispositive of any wrongdoing, are damaging or embarrassing enough to justify settlement. Similarly, class actions may contribute to settlement of private damages actions because, if certified, defendants do not want to risk losing at trial and therefore pay treble damages. The same is true for state indirect purchaser actions. Defendants often settle these suits in order to avoid duplicative litigation costs.32 Settlement is also preferable for many defendants in this situation who rightly fear the application of collateral estoppel if they are adjudicated liable in even one state.33

The ultimate risk of large jury verdicts inspire settlements even if the defendants litigate the cases for years and at great expense. In 1998, in In re NASDAQ Market-Makers Antitrust Litigation, MDL Docket No. 1023, plaintiffs settled with 37 defendants for a total of US$1.027 billion.34 And in 2003, on the eve of trial, defendant Visa USA settled with plaintiffs in In re Visa Check/Mastermoney Antitrust Litigation, 297 F Supp 2d 503, 506-508 (EDNY 2003) for approximately US$2 billion. Two days later, defendant MasterCard settled for approximately US$1 billion. The combined US$3.05 billion settlement has been described as “the largest antitrust settlement ever”.35 Private damages actions in the EU

In stark contrast to the United States, private damages actions in the EU are few in number and have never played much of an antitrust enforcement role. Although the European Court of Justice (ECJ) in 2001 explicitly recognised a right to damages for breaches of EC competition law,36 plaintiffs have pursued very few damages claims for violations of competition rules. According to a 2004 study (the Ashurst Study), private damages actions based on the violation of either EU or national antitrust rules are in a state of “total underdevelopment” due to various obstacles in bringing such lawsuits.37

To address these obstacles, the EC recently published a green paper, in which the Commission has sparked significant discussion on the present and future role of private enforcement in the EU. This section explores that role.

EU antitrust laws and enforcement

In the EU, there are two levels of antitrust laws and enforcement. The Commission enforces EU antitrust rules at the EU level, which is limited to public enforcement. At the member state level, however, national antitrust authorities and national courts apply both EU and national antitrust laws. Member states permit private enforcement, including damages actions, through national courts.38 Within this two-tiered system, national antitrust authorities and national courts may apply both EU and national antitrust laws, though substantively there is often little difference between the two.

Articles 81 and 82 of the European Community Treaty govern antitrust enforcement. The ECJ long ago decided that these provisions create rights for private parties that national courts must safeguard.39 In Courage v Crehan, the ECJ held that these rights include the right to damages,40 and recently it clarified that such a right includes compensation not only for actual loss, but also for loss of profit plus interest.41 Moreover, with the adoption of Regulation 1/2003,42 the Council of the European Union ‘modernised’ antitrust enforcement by including new procedural rules for the application of articles 81 and 82. In particular, by devoting specific provisions to national courts, the EU legislative branch has recognised the fundamental role that national courts play in the private enforcement of EU antitrust law for the first time since the inception of EU antitrust enforcement in the early 1960s.

The green paper

These developments, however, have not been sufficient to ensure an effective system of private antitrust enforcement, particularly damages actions, throughout 25 jurisdictions with very different legal traditions and markedly diverse substantive and procedural rules. According to the Ashurst Study, to date there have been only 28 successful private actions for damages for violations of the antitrust laws in the EU.43 More often than not, only single large companies that allege anti-competitive behaviour by dominant competitors have pursued private damages actions. For these well-financed plaintiffs, the damages that they seek are large enough to offset the trouble and costs of private litigation before a national court.

In light of the obstacles to private enforcement in the EU, the Commission published its green paper in 2005 to facilitate damages actions, enhance the overall effectiveness of antitrust enforcement and, ultimately, increase compliance with antitrust laws. In response to criticism from those practitioners who fear the adoption of a USstyle system that could lead to ‘excessive litigation’, the Commission has stated that the objective is that of building “an enforcement culture, not a litigation culture”, in which private enforcement would complement public enforcement.44 For each obstacle to damages actions, the green paper proposes several solutions, although the Commission has not yet indicated how it intends to implement any of these solutions (eg, by means of an EU Directive harmonising certain aspects of national law, or thorough ‘soft law’ such as Commission guidelines).

Amount of damages

Treble damages are not available in the EU. It is also not likely that they will be any time soon; the Commission notes that the US treble damages system can lead to “unmeritorious or vexatious litigation”.45 Instead, compensation is limited to the harm suffered, without the possibility of obtaining punitive or exemplary damages. Plaintiffs may thus usually recover only the loss actually incurred, as well as, in some countries, the loss of profits.46 The Ashurst Study, however, revealed that this system of limited recovery provides disincentives to private litigation.47 To provide balance, the Commission proposes to maintain the rule of single damages, while contemplating the possibility of awarding double damages in cartel actions.48 On this issue, it recognises that the addition of double damages will require the implementation of appropriate measures to avoid jeopardising the effectiveness of leniency programmes (eg, successful immunity applicants would be exposed to single damage recovery only).49

#### Private suits decimate investment

Makan Delrahim 20. JD, former Assistant Attorney General for the Antitrust Division of the United States Department of Justice, 9/18/20. “Assistant Attorney General Makan Delrahim Delivers Remarks at IAM’s Patent Licensing Conference in San Francisco.” <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-iam-s-patent-licensing>

More fundamentally, recognizing a Section 2 cause of action for violations of a FRAND commitment would create an unacceptable risk of “false positive” condemnations of pro-competitive conduct by licensees. The prospect of antitrust liability and treble damages for breaching a potentially vague FRAND term—or allegedly “misrepresenting” one’s intentions to offer some FRAND rate—threatens to chill incentives for innovators to develop new technologies that fuel dynamic competition.

Where contract law remedies exist to remedy and deter breaches of a FRAND commitment, the additional deterrence that Sherman Act remedies offer could deter lawful, pro-competitive conduct—that is, research and development by innovators who make careful cost-benefit calculations as to how much to invest in technologies that may not pay off. Demanding a high price for one’s patented technology is permissible, and expected, conduct in a free market negotiation. A Section 2 cause of action would skew the patent licensing bargain away from the bargaining outcome that a free market dictates.

In particular, where the parties have a subjective disagreement over the meaning of an incomplete contract term, a Section 2 remedy threatens the patent holder with the risk of enormously costly litigation and a possible treble damages award. Bargaining in the shadow of litigation, a patent holder would be wary that a high license demand could be penalized by a significant damages award, whereas a prospective licensee’s low-ball offer would do no such thing. Such a remedy would bestow any putative licensee with disproportionate negotiating power. In turn, the cost-benefit calculation for innovators would change and the prospect of additional dynamic competition likely would decline.

#### The kills economic recovery

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

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

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

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

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

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

#### Decline cascades and goes nuclear

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

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

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

INTRODUCTION

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

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

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

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

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

METHODOLOGY

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

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

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

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

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

ECONOMY

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

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

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

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

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

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

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

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

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

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

ENVIRONMENTAL

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

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

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

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

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

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

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

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

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

GEOPOLITICAL

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

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

### 1NC

T-Prohibit

#### 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.

### 1NC

Cap K

#### Antitrust is a psyop used to pacify the working class and map competition onto subjectivity

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

I. Neoliberal Reason

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

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

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

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

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

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

II. From Keynesian State Capitalism to Neoliberal Deregulation

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

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

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

#### Capitalist tech developments cause extinction---degrowth solves

Salvador Pueyo 18. 8 Department of Evolutionary Biology, Ecology, and Environmental Sciences, Universitat de Barcelona. 10/01/2018. “Growth, Degrowth, and the Challenge of Artificial Superintelligence.” Journal of Cleaner Production, vol. 197, pp. 1731–1736.

The challenges of sustainability and of superintelligence are not independent. The changing 84 fluxes of energy, matter, and information can be interpreted as different faces of a general acceleration2 85 . More directly, it is argued below that superintelligence would deeply affect 86 production technologies and also economic decisions, and could in turn be affected by the 87 socioeconomic and ecological context in which it develops. Along the lines of Pueyo (2014, p. 88 3454), this paper presents an approach that integrates these topics. It employs insights from a 89 variety of sources, such as ecological theory and several schools of economic theory. 90 The next section presents a thought experiment, in which superintelligence emerges after the 91 technical aspects of goal alignment have been resolved, and this occurs specifically in a neoliberal 92 scenario. Neoliberalism is a major force shaping current policies on a global level, which urges 93 governments to assume as their main role the creation and support of capitalist markets, and to 94 avoid interfering in their functioning (Mirowski, 2009). Neoliberal policies stand in sharp contrast 95 to degrowth views: the first are largely rationalized as a way to enhance efficiency and production 96 (Plehwe, 2009), and represent the maximum expression of capitalist values. 97 The thought experiment illustrates how superintelligence perfectly aligned with capitalist 98 markets could have very undesirable consequences for humanity and the whole biosphere. It also 99 suggests that there is little reason to expect that the wealthiest and most powerful people would be 100 exempt from these consequences, which, as argued below, gives reason for hope. Section 3 raises 101 the possibility of a broad social consensus to respond to this challenge along the lines of degrowth, 102 thus tackling major technological, environmental, and social problems simultaneously. The 103 uncertainty involved in these scenarios is vast, but, if a non-negligible probability is assigned to 104 these two futures, little room is left for either complacency or resignation. 105 106 2. Thought experiment: Superintelligence in a neoliberal scenario 107 108 Neoliberalism is creating a very special breeding ground for superintelligence, because it strives 109 to reduce the role of human agency in collective affairs. The neoliberal pioneer Friedrich Hayek 110 argued that the spontaneous order of markets was preferable over conscious plans, because markets, 111 he thought, have more capacity than humans to process information (Mirowski, 2009). Neoliberal 112 policies are actively transferring decisions to markets (Mirowski, 2009), while firms' automated 113 decision systems become an integral part of the market's information processing machinery 114 (Davenport and Harris, 2005). Neoliberal globalization is locking governments in the role of mere 115 players competing in the global market (Swank, 2016). Furthermore, automated governance is a 116 foundational tenet of neoliberal ideology (Plehwe, 2009, p. 23). 117 In the neoliberal scenario, most technological development can be expected to take place either in the context of firms or in support of firms3 118 . A number of institutionalist (Galbraith, 1985), post119 Keynesian (Lavoie, 2014; and references therein) and evolutionary (Metcalfe, 2008) economists 120 concur that, in capitalist markets, firms tend to maximize their growth rates (this principle is related 121 but not identical to the neoclassical assumption that firms maximize profits; Lavoie, 2014). Growth 122 maximization might be interpreted as expressing the goals of people in key positions, but, from an 123 evolutionary perspective, it is thought to result from a mechanism akin to natural selection 124 (Metcalfe, 2008). The first interpretation is insufficient if we accept that: (1) in big corporations, the 125 managerial bureaucracy is a coherent social-psychological system with motives and preferences of 126 its own (Gordon, 1968, p. 639; for an insider view, see Nace, 2005, pp. 1-10), (2) this system is 127 becoming techno-social-psychological with the progressive incorporation of decision-making 128 algorithms and the increasing opacity of such algorithms (Danaher, 2016), and (3) human mentality 129 and goals are partly shaped by firms themselves (Galbraith, 1985). 130 The type of AI best suited to participate in firms' decisions in this context is described in a 131 recent review in Science: AI researchers aim to construct a synthetic homo economicus, the 132 mythical perfectly rational agent of neoclassical economics. We review progress toward creating 133 this new species of machine, machina economicus (Parkes and Wellman, 2015, p. 267; a more 134 orthodox denomination would be Machina oeconomica). 135 Firm growth is thought to rely critically on retained earnings (Galbraith, 1985; Lavoie, 2014, p. 136 134-141). Therefore, economic selection can be generally expected to favor firms in which these are greater. The aggregate retained earnings4 137 RE of all firms in an economy can be expressed as: 138 RE=FE(R,L,K)-w⋅L-(i+δ)⋅K-g. (1) 139 Bold symbols represent vectors (to indicate multidimensionality). F is an aggregate production 140 function, relying on inputs of various types of natural resources R, labor L and capital K (including intelligent machines), and being affected by environmental factors5 141 E; w are wages, i are returns to 142 capital (dividends, interests) paid to households, δ is depreciation and g are the net taxes paid to 143 governments. 144 Increases in retained earnings face constraints, such as trade-offs among different parameters of 145 Eq. 1. The present thought experiment explores the consequences of economic selection in a 146 scenario in which two sets of constraints are nearly absent: sociopolitical constraints on market 147 dynamics are averted by a neoliberal institutional setting, while technical constraints are overcome 148 by asymptotically advanced technology (with extreme AI allowing for extreme technological 149 development also in other fields). The environmental and the social implications are discussed in 150 turn. Note that this scenario is not defined by some contingent choice of AIs' goals by their 151 programmers: The goals of maximizing each firm's growth and retained earnings are assumed to 152 emerge from the collective dynamics of large sets of entities subject to capitalistic rules of 153 interaction and, therefore, to economic selection.

#### Vote neg for anti-capitalist commons---collectives should refuse commitments to the competitive principle

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

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

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

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

### 1NC

States CP

#### The 50 states and all relevant subnational entities should substantially increase prohibitions on:

#### Anticompetitive business practices that would be judicially dismissed under the Bell Atlantic Corp. v. Twombly ‘plausibility pleading’ standard, and

#### Anticompetitive business practices that collude to hire migrant agricultural labor.

### 1NC

Forecasting CP

#### The United States should only allow the continuation of business practices that would be admitted under the Atlantic Corp. v. Twombly ‘plausibility pleading’ standard and business practices that collude to hire migrant agricultural labor under antitrust law only when a team of the Good Judgment Project’s “super-forecasters” has determined that the activity reduces the numerical probability of business practices that would be judicially dismissed under the Bell Atlantic Corp. v. Twombly ‘plausibility pleading’ standard and business practices that collude to hire migrant agricultural labor from an unacceptably high level.

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

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

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

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

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

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

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

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

B. Periodic Assessments of the Antitrust Laws Are Advisable

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

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

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

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

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

Information, risk and uncertainty

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

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

Economic and socio-psychological constraints

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

Individual differences

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

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

J. Peter Scoblic and Philip E. Tetlock 20. J. Peter Scoblic is Co-Founder of Event Horizon Strategies, a Senior Fellow in the International Security Program at New America, and a Fellow at Harvard’s Kennedy School. Philip E. Tetlock is Leonore Annenberg University Professor at the University of Pennsylvania, Co-Founder of Good Judgment, and a co-author of Superforecasting: The Art and Science of Prediction. “A Better Crystal Ball The Right Way to Think About the Future”. https://www.foreignaffairs.com/articles/united-states/2020-10-13/better-crystal-ball

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

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

## Migrant Labor Adv

#### Labor monopsony is a myth.

Robert D. Atkinson 21, President of the Information Technology & Innovation Foundation, founding member of the Polaris Council who advices the U.S. Government Accountability Office’s Science, Technology Assessment, and Analytics team, Ph.D. in City and Regional Planning from the University of North Carolina, Chapel Hill, “The Myth of Local Labor Market Monopsony,” Information Technology & Innovation Foundation, 05-07-2021, https://itif.org/publications/2021/05/07/myth-local-labor-market-monopsony

Many economists and advocates, particularly progressives, have raised concerns in the past decade about the fact that wages have increased slower than productivity. Notwithstanding the fact that this divergence is overstated, it is true that raising wages is important.

The problem is that, rather than keep the focus on real solutions, such as raising taxes on wealthy individuals, increasing the minimum wage, promoting greater unionization, and spurring faster productivity growth, progressives proffer a dark narrative in which monopoly is the villain lurking in the background. If only we could break up big companies, they argue, all other economic problems would be easier to solve.

To prove that the U.S. economy is being crushed by rapacious monopolies they constantly repeat a host of claims: Price markups have increased, labor’s share of income has decreased, corporate profits are up, new firm start-ups are down, and the overall trend toward monopoly has grown. These are, by and large, false.

Yet, in their ongoing quest to find a monopolist under every bed, progressives have latched onto the notion of labor market monopsony. In other words, they claim that in too many local labor market, workers have only a few choices of firms to work for, and this enables firms to squeeze wages.

The most commonly cited scholarly work on the topic is from liberal economists Jose Azar, Ioana Marinescu, and Marshall I. Steinbaum. Indeed, their work has become the de facto view on the issue, with government officials, the media, and others citing it as scripture.

While Azar, Marinescu, and Steinbaum have published a number of articles on the topic, all of their work uses a similar methodology. They analyze local labor markets in the United States by comparing job openings and salaries using online job tools.

They looked at a combination of U.S. commuting zones and 200 six-digit occupational codes to assess the state of more than 117,000 specific labor markets in 2016. They found that 60 percent of markets were highly concentrated, while another 11 percent were moderately concentrated.

At first glance, it would appear they are on to something and that antitrust officials better get on the ball. But on closer inspection, while it helps advance the “monopoly crisis” narrative, it is actually much ado about nothing.

The reality is that most of the labor markets with high levels of employer concentration are rural and small-town areas with few employers overall. As they wrote, “Commuting zones around large cities have lower levels of labor market concentration than smaller cities or rural areas.” Ioana Marinescu explains, “This may contribute to explaining why wages are higher in urban areas.”

As any regional economist knows, wages are lower in rural Wisconsin than in Manhattan, not because there are more employers in Manhattan than in rural Wisconsin, but because it costs more to do business in Manhattan than it does in rural Wisconsin. For example, the cost of living in Dyersburg, TN (a community of about 18,000 people), is almost 25 percent lower than it is in Fort Lauderdale, FL, and home prices are 46 percent lower. So, you can be sure that workers in Dyersburg are paid lower wages than workers are paid in Fort Lauderdale.

A second problem with this line of work is that it assumes monopoly is the problem and antitrust enforcement is the solution. But imagine there is a “paper mill monopsony” in a small town in upstate Wisconsin. How exactly is antitrust supposed to solve that problem? Force the company to divide its mill in two, so each division can compete for the workers?

A third problem is that firms in smaller labor markets are generally smaller than firms in larger ones because of economies of scale. The markets are not as big. And as my colleague Michael Lind and I showed in Big Is Beautiful: Debunking the Myth of Small Business, on average, workers earn more in large establishments than they do in small ones.

A fourth problem is that these studies assume workers have only one skill and can only work in one occupation. This may be true for some professionals, like insurance adjustors, but it is less true for many other occupations. Someone who is looking for a job as a cashier can also look for a job as restaurant server. This is why one academic study of the issue concluded: “The prior literature has focused on industry and occupation concentration and likely overstates the degree of monopsony power, since worker skills are substitutable across different firms, occupations and industries.”

A related problem is that in at least one article that Azar, Marinescu, and Steinbaum have published, they looked at a small number of more specialized occupations, such as farm equipment repair, legal secretaries, mobile heavy equipment mechanics, industrial engineers, railcar repairers, tractor-trailer drivers, and insurance underwriters. This is likely why they found that in the average market there are only 2.3 recruiting employers at any time. Of course there are not likely to be very many firms in the same labor market employing railcar repairers. This is why the authors not surprisingly found high levels of concentration for railcar repairers. Clearly, the Justice Department needs to break up “Big Farm Equipment Repair.”

In fact, many workers can and do apply for jobs in more than one occupation. Moreover, as one study noted, “there is evidence of publication bias in parts of the literature, which results in negative estimates of supply elasticities receiving lower probability of being reported.” In other words, findings of monopsony are more likely to get published.

But, not deterred by these issues, the authors march on to their predetermined policy recommendations: more antitrust enforcement and breaking up existing companies. Besides the fact that labor monopsony is largely a non-existent problem and one that, to the extent it exists, stems from the inherent nature of small labor markets, breaking up companies would have little impact. The issue is not firms, but establishments. If two paper companies merge but retain their existing factories, and none of those factories are in the same labor market, then there is no increase in local labor market monopsony.

If progressives really want to fix the supposed problem of monopsony in small towns, they should breakup Big Small Towns! Force everyone to live in big cities. Then workers would be able to enjoy living in expensive apartment buildings or houses in the exurbs with 90-minute commutes. But, by God, they will at least not be subject to corporate monopsony!

#### They don’t solve poor working conditions---people aren’t enabled to demand better conditions post-plan because there’s no clear enforcement mechanism.

#### No evidence that the plan enables people to sue!

#### Food insecurity doesn’t cause conflict–reject their bad studies.

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

6. Conclusions and Way Forward

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

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

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

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

#### New standards get bogged down in courts.

Wright et al. 19, Joshua D. Wright, former Commissioner of the Federal Trade Commission, Ph.D. in Economics from the University of California, Los Angeles; Elyse Dorsey, Adjunct Professor at the Antonin Scalia Law School at George Mason University, Deputy Chair of the Antitrust & Consumer Protection Working Group at the Regulatory Transparency Project, J.D. from the Antonin Scalia Law School at George Mason University; Jonathan Klick, Professor of Law at the University of Pennsylvania Carey Law School, J.D. from the Antonin Scalia Law School at George Mason University; Jan M. Rybnicek, Adjunct Professor and Senior Fellow at the Global Antitrust Institute at the Antonin Scalia Law School at George Mason University, J.D. from the Antonin Scalia Law School at George Mason University, “REQUIEM FOR A PARADOX: The Dubious Rise and Inevitable Fall of Hipster Antitrust,” Arizona State Law Journal, Vol. 51, Spring 2019, accessed via Lexis

Replacing the well-established consumer welfare standard would necessarily require courts to trade off some amount of consumer welfare for some other set of values, thereby throwing open the door to uncertainty and to exploitative behavior. As has been discussed above, decades of debate and case law has worked to refine the precise contours of the consumer welfare standard and to bring consensus about the types of evidence that are indicative of harm to competition and consumers. 273 The consumer welfare standard employs a variety of economic tools to evaluate the effect transactions and business practices may have on consumers in the form of increased prices, reduced output, reduced innovation. By using current economic theory and empirical evidence as the starting point for creating liability rules and subsequently conducting an evidence-based inquiry into the welfare effects of a particular practice, the consumer welfare model offers a tractable method for weighing procompetitive and anticompetitive effects.

If consumer welfare were to be replaced by some other set of values, the result explicitly would be for courts and enforcers to elevate other factors above consumer welfare and to reach different conclusions about liability. Under a "public interest" or "citizen interest" approach, a transaction that would reduce prices to consumer, increase output, or spur innovation may be prohibited under the antitrust laws for failing to satisfy any number of other vague factors, including failing to leave some arbitrary number of competing firms in the market despite the clear presence of competition or create a more efficient albeit consolidated supply chain. Even more dramatically, a new standard also may result in a transaction that increases prices, reduces output, or stifles innovation to not necessarily run afoul of the antitrust laws if a court concludes that such consumer harm can be tolerated to satisfy other aspects of the multidimensional standard, such as income equality. In light of these very real concerns, a subjective, multiprong antitrust standard untethered from economics offers nothing beyond speculative benefits. Accordingly, it would be imprudent to abandon the consumer welfare standard.

[\*365] The same is true of proposals by some Hipster Antitrust advocates who seek not to implement a new public or citizen interest standard, but rather wish to see the Antitrust Agencies and courts return to the DOJ's 1968 Horizontal Merger Guidelines and a focus on market structure and concentration. These critics of the consumer welfare standard argue that modern antitrust has become far too complicated and, as a result, defendants all too frequently are capable of avoiding liability. To increase the probability of success under the antitrust law, they argue for a return to the days where an eight percent combined market share was sufficient grounds on which to block a transaction. Although this new structuralist approach has the benefit of clarity that the multi-dimensional public and citizen welfare tests lack, it is no better a replacement for the consumer welfare standard because it sacrifices accuracy for administrative simplicity. Although the economic foundation of the structuralist approach of the premodern era were robust, it has since been debunked and today no longer is treated credibly by industrial organization economics. Therefore, although replacing the consumer welfare standard with the 1968 structuralist approach may yield faster answers that are more frequently favorable to plaintiffs, the probability that those antitrust outcomes are in line with the actual competitive realities of whatever market is being examined is low.

#### They don’t solve undocumented workers---people can’t sue without documentation.

#### No CCP legitimacy internal link---their evidence is only about soybeans---no ev that the plan implicates soybean farms! and they can get soybeans somewhere else

## Twombly Adv

no AI IL

#### The FTC won’t significantly expand the scope of antitrust because it’s politically cautious

Megan Browdie 21, Jacqueline Grise, and Howard Morse, Partners at Cooley, Washington, DC, “Biden/Harris Expected to Double Down on Antitrust Enforcement: No “Trump Card” in the Deck”, Concurrences: Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

38. Current leadership at the agencies appear to agree with the Republicans’ more cautious approach. For example, Chairman Joe Simons, while having touted himself as “responsible for overseeing the re-invigoration of the FTC’s non-merger enforcement program” during his tenure as director of the FTC Bureau of Competition under Bush, has pushed back on these “expanded” theories of antitrust harm. For example, he argued in January 2020 that “U.S. antitrust laws are sufficiently robust to handle competition problems as they arise. Over the years, antitrust laws have proven to be very flexible and resilient in enabling enforcers to challenge conduct that harms competition in a broad range of markets. These laws have proved themselves effective even as the economy evolved with technological progress.” [42]

39. Given this disagreement, and that the Democrats, at best, will have a very thin majority in the Senate, we anticipate some modest modifications to the antitrust laws but expect serious pushback to substantial overhauls of the system or laws.

#### The plan destroys FTC credibility

William E. Kovacic 20, Professor at the George Mason University School of Law, JD from Columbia University, BA from Princeton University, “Keeping Score: Improving the Positive Foundations for Antitrust Policy”, University of Pennsylvania Journal of Business Law, Volume 23, Issue 1, 23 U. Pa. J. Bus. L. 49, Lexis

THE POLITICAL ASSAULT ON THE FTC

From the late 1960s through the 1970s, the FTC pursued an extraordinarily ambitious agenda of competition and consumer protection matters. Significant antitrust litigation included challenges to dominant firm misconduct and collective dominance, distribution practices, horizontal restraints, and facilitating practices. Many matters involved powerful economic interests, and in a number of cases the Commission sought structural relief in the form of divestitures or the compulsory licensing of [\*75] intellectual property. In 1974, the agency also initiated a program that required certain large firms to provide "line-of-business" data concerning a range of performance indicators.

In the same period, the Commission used a mix of litigation and rulemaking to transform its consumer protection agenda. Through policy guidance and litigation, the agency introduced its advertising substantiation program that required firms to have support for factual claims made in their advertisements. The Commission initiated over twenty-five rulemaking proceedings and promulgated final rules involving a broad collection of product and service sectors.

As a group, the FTC's competition and consumer protection initiatives aroused fierce opposition from the affected firms and industries, which contested the agency's actions in court and before Congress. The complaints of industry resonated with a large, powerful bipartisan coalition of legislators who criticized the Commission's activism, proposed various measures to curb the agency's authority, and ultimately adopted a number of restrictions in The Federal Trade Commission Improvements Act of 1980 [\*76] (FTC Improvements Act). In 1980, bitter opposition to elements of the FTC's competition and consumer protection programs led Congress to allow the FTC's funding to lapse, forcing the agency to temporarily cease operations. Perhaps emboldened by the weak political support the Commission enjoyed before 1981, when the Democrats controlled the White House and both chambers of Congress, the Reagan administration briefly resumed the assault on the agency's funding. In January 1981, David Stockman, Ronald Reagan's first Director of the Office of Management and Budget (OMB), launched a short-lived effort to eliminate funding for the FTC's competition policy program.

The congressional and executive branch officials who criticized the FTC in this period advanced two positive claims to justify recommendations for withdrawing authority or funding for the Commission. One claim was that the agency's choice of competition and consumer protection programs had contradicted congressional guidance about how the FTC should use its authority and resources. Many legislators complained that the agency had disregarded the legislature's preferences and used its powers in ways that Congress never contemplated to fall within the FTC's remit. As Congress considered bills in 1979 to limit the Commission's powers, Congressman [\*77] William Frenzel captured the prevailing legislative mood:

It is bad enough to be counterproductive and therefore highly inflationary, but the FTC compounds its sins by generally ignoring the intent of our laws, and writing its own laws whenever the whimsey strikes it . . .

Ignoring Congress can be a virtue, but the FTC's excessive nose-thumbing at the legislative branch has become legend. In short, the FTC has made itself into virulent political and economic pestilence, insulated from the people and their representatives, and accountable to no influence except its own caprice.

The Commission, Frenzel concluded, was "a rogue agency gone insane."

The accusation of Commission disobedience figured prominently in Senate deliberations on the 1980 FTC Improvements Act. In less flamboyant but still pointed terms, the chief Senate sponsors of the FTC Improvements Act said restrictions were necessary to curb the agency's unauthorized adventurism. Senator Howard Cannon explained: "The real reason that we have proposed this legislation for the FTC is because the Commission appeared to be fully prepared to push its statutory authority to the very brink and beyond. Good judgment and wisdom had been replaced with an arrogance that seemed unparalleled among independent regulatory agencies."

The accusation of disregard for congressional will soon echoed in statements by high level officials in the newly arrived Reagan administration. OMB Director Stockman recited a variant of this theme in an appearance before a House of Representatives Committee early in 1981 to address his proposal to eliminate funding for the agency's competition mission. Stockman said, " . . . in recent years the FTC has served the public interest very poorly, in major part because it has sought to expand its power and influence beyond that envisioned by Congress."

Beyond generalized claims of institutional disobedience, the accusation of disregard for congressional will was invoked to justify proposals to impose restrictions on specific FTC initiatives. For example, in the fall of [\*78] 1979, the Senate Commerce Committee held hearings on a proposal by Senator Howell Heflin to eliminate the FTC's power to order divestiture or other forms of structural relief in non-merger cases. This was a shot across the bow of the FTC's pending "shared monopoly" cases involving the breakfast cereal and petroleum refining sectors, where the FTC had requested structural relief (divestitures and, in the cereal case, compulsory trademark licensing) to restore competition. Congress did not adopt the Helfin proposal, but the idea of eliminating or restricting the FTC's power to seek divestiture remained a serious threat to the agency. Roughly a year after the Commerce Committee hearings on the Heflin amendment, on the day before the balloting in the 1980 presidential elections, Vice-President Walter Mondale appeared at a campaign rally in Battle Creek, Michigan (the headquarters of the Kellogg Company). The Vice-President assured his audience that, if he and President Jimmy Carter were reelected, the Carter administration would seek legislation to ban the FTC from obtaining divestiture in the breakfast cereal shared monopolization case.

A second, related claim was that the FTC had abandoned any adherence to sound administrative practice and descended into utterly irrational decision making. The agency was not merely disobedient ("rogue") but [\*79] crazy ("insane"), as well. Here, again, Congressman Frenzel pungently made the point. The FTC, Frenzel said, "is a king-sized cancer on our economy. It has undoubtedly added more unnecessary costs on American consumers who it is charged with protecting, than any other half dozen agencies combined." David Stockman's initial broadside against the Commission in February 1981 echoed this sentiment. In a newspaper interview, Stockman said the FTC "is a passel of ideologues who are hostile to the business system, to the free enterprise system, and who sit down there and invent theories that justify more meddling and interference in the economy."

The accusation of disobedience and the diagnosis of insanity fit poorly, or at least awkwardly, with the positive record of the FTC's activities in the 1970s. As discussed immediately below, the rogue agency story clashes with the many instances, especially between 1969 and 1976, in which congressional committees and key legislators directed the agency to carry out an aggressive, innovative enforcement program against major commercial interests. In 1969, numerous legislators endorsed the view of two external studies that the FTC had used its authority timidly and ineffectively. Leading members of Congress demanded that the agency [\*80] transform its competition and consumer programs or face extinction. Congress described the content of the desired transformation in several ways. At a high level, oversight committees and individual legislators called for a dramatic boost in the agency's appetite to undertake ambitious, risky projects--to replace a cautious, risk-avoiding decision calculus with a bold philosophy that erred in favor of intervention and used the agency's elastic powers innovatively. Congress's admonition to be aggressive and use power expansively emerged again and again in confirmation proceedings and routine oversight hearings. During hearings in 1970 to confirm Caspar Weinberger to be the Commission's new chair, Senator Warren Magnuson, Chairman of the Senate Commerce Committee, told the nominee to "maintain the right kind of morale by recruiting strongly and expanding . . . Trade Commission programs in order to perform the job well." In setting out this charge, Magnuson seemed to recognize that the FTC would have to be steadfast in resisting backlash--including from Congress--that would emerge as the FTC went about "expanding" its programs. The Commerce Committee Chairman said Congress was calling on the FTC to perform "tasks that require a great deal of attention and a great deal of fortitude not to respond to any pressures that come from any place."

Weinberger's successor, Miles W. Kirkpatrick, received similar, and even more explicit congressional guidance, to apply the Commission's powers broadly and aggressively. In 1969, Kirkpatrick had chaired a blueribbon American Bar Association panel whose report recommended the FTC implement an ambitious antitrust agenda that involved significant doctrinal, operational, and political risks. In his appearances as FTC chair before [\*81] congressional committees, Kirkpatrick often heard legislators applaud the risk-preferring approach of the ABA study. In Kirkpatrick's first appearance before the Commission's Senate Appropriations subcommittee in 1971, the Subcommittee Chairman, Senator Gale McGee, provided the following guidance:

I think this is one of the Federal commissions that has a much larger responsibility and capability than sometimes it has been willing to live up to for reasons of congressional sniping at it in some respects or pressures put on it through the industry and the like.

Too often it has been either shy or bashful. . . . That is why we were having a rather closer look at your requests just in the hopes of encouraging you, if anything, to make mistakes, but I think the mistakes you are to make ought to be mistakes in doing and trying rather than playing safe in not doing.

I believe that is the most serious mistake of all . . . you are not faulted for making mistakes. You may be for making it twice in a row, for not learning properly but, we would rather you make a mistake innovating, trying something new, rather than playing so cautiously that you never make a mistake. . . .

In his appearance before the same subcommittee a year later, Senator McGee observed with approval that Kirkpatrick had "responded to the criticism . . . by both Mr. [Ralph] Nader and the American Bar Association by moving aggressively against some of the major industries in the United States." Recognizing that the approach he described could elicit opposition from affected business interests, McGee promised that he and his colleagues would exercise best efforts to watch the agency's back: "[I]f you step on toes you are going to catch flak for it, but I hope we will be able to push this even more aggressively by backing you more completely with the kind of help that I think you require." McGee closed the proceedings with [\*82] militant instructions:

"Stay with it and flex your muscles, clinch your fists, sharpen your claws, and go to it. We think this is desperately important in the interest of the Congress, whose creature you are, and the consumer whose faith and substantive capabilities in surviving hang very heavily upon what you succeed in doing."

Kirkpatrick served as the FTC's chair for just over twenty-nine months. The Commission's new chair, Lewis Engman, received the same policy guidance that Congress had provided Weinberger and Kirkpatrick. At Engman's confirmation hearing before the Senate Commerce Committee early in 1973, Senator Frank Moss observed:

Under . . . Weinberger and Kirkpatrick, the Commission has taken on new life beginning with the search for strong and imaginative, rigorous developers and enforcers of the law and reaching out with innovative programs to restore competition and to make consumer sovereignty more than chamber of commerce rhetoric.

With evident approval, Moss recounted how the FTC had "stretched its powers to provide a credible countervailing public force to the enormous economic and political power of huge corporate conglomerates which today dominate American enterprise." The members of the Senate Commerce Committee, Moss concluded, "consider it one of our solemn duties to protect the Commission from economic and political forces which would deflect it from its regulatory zeal." Member after member of the Commerce Committee echoed Moss's message to Engman. Senator Ted Stevens, an Alaska Republican, told the nominee, "I am really hopeful that . . . you will become a real zealot in terms of consumer affairs and some of these big business people will complain to us that you are going too far. That would be the day, as far as I am concerned."

The FTC got the message. The words and actions of Weinberger, Kirkpatrick, Engman, and other FTC leaders in this period reflected a preference for boldness, aggressiveness, innovation, and zeal. In a letter to Senator Edward Kennedy in July 1970, Weinberger reported that the FTC was trying "to make the most of that other resource given to us by Congress [\*83] -- our statutory powers." Weinberger said the Commission had "encouraged the staff to make recommendations to us which will probe the frontiers of our statutes," had made progress in "[p]robling the outer limits" and "exploring the frontiers" of the agency's authority, and had shown it "is receptive to novel and imaginative provisions in orders seeking to remedy unlawful practices." In a speech to a professional association in 1971, Kirkpatrick reported that the Commission was "moving into 'high gear' in the task of preserving and promoting competition in the American economy." He said he and his fellow board members "fully intend to be in the vanguard of exploration of the new frontiers of antitrust law."

By mid-1974, the FTC had launched several significant cases involving monopolization and collective dominance, including pathbreaking shared monopolization cases against the breakfast cereal and petroleum refining industries. With these matters underway, Engman in 1974 appeared at a congressional hearing of the Joint Economic Committee and received criticism that the FTC had been insufficiently active in challenging monopolies. The Joint Committee's chairman, Senator William Proxmire, told Engman "the FTC, like a number of other regulatory agencies seems to concern itself with minor infractions of the law, and to spend much of its time on cases of small consequence." Perhaps astonished to hear that cases to break up the nation's leading breakfast cereal manufacturers and petroleum refiners involved minor infractions or matters of small consequence, Engman replied, "The Federal Trade Commission today is very aggressive. . . . We have seen a total turnaround in terms of the types of matters which are being addressed by the Bureau of Competition."

[\*84] Beyond general policy exhortations to exercise power boldly and to err on the side of intervention, of doing too much rather than too little, Congress in the early to mid-1970s instructed the Commission to focus attention on specific commercial sectors and competitive problems within them. In the face of severe fuel shortages and price spikes for petroleum products in the early 1970s, numerous legislators demanded that the FTC conduct investigations and challenge the conduct of large, integrated petroleum companies. Many insisted that the FTC use its competition mandate to force integrated refiners to deal on equitable terms with independent refiners and distributors. The Commission's decision to file the Exxon shared monopoly case, which sought extensive horizontal and vertical divestiture remedies, can be explained as a response to these demands. In the same period, Congress applied strong pressure upon the FTC to examine and correct what it believed to be serious structural obstacles to effective competition in the food manufacturing industry. Here, also, the agency's decision to prosecute the shared monopolization case against the country's leading producers of ready-to-eat breakfast cereals can be seen as a response to this concern and faithful to the congressional prescription that the FTC use novel, innovative approaches to cure competitive problems. In these and other matters, the Commission explored the frontiers of its powers in the development of new cases.

When one aligns the guidance of Congress in the early to mid-1970s about the appropriate content of FTC policy making with the FTC's activity in the decade, it is apparent that the critique of the agency as disobedient to legislative will is a fiction, or at least badly misleading. A more accurate positive depiction of events in the 1970s is that the Commission faithfully followed legislative instructions given from 1970 up through the mid-1970s about the appropriate philosophy and means of enforcement, and that, as the decade came to a close, Congress changed its mind about what the FTC [\*85] should do and how it should do it. As described below in Section IV.D., that change in legislative temperament and the response by Congress to industry backlash against the FTC's program have important implications for how the FTC plans programs and selects projects in the future. Accurate positive analysis reveals that the agency was not disobedient to Congress but was inattentive to the operation of a political feedback loop that exposes Congress to industry pressure once the FTC implements programs that involve significant economic stakes and endanger powerful commercial interests.

Nor does a careful study of the positive record of the 1970s show that the FTC policy making was "insane." Measured by its contributions to institution-building, the Commission did many things that epitomize good public administration. It carried out important organizational and personnel reforms that upgraded its operations and personnel. As explained more fully below, the agency also improved its mechanisms for setting priorities and selecting projects to achieve them and strengthened investments in policy research and development (including a program to evaluate the effects of completed cases). The FTC successfully carried out new regulatory duties entrusted by Congress in the 1970s; most notable was the implementation of the premerger notification mechanism that Congress created in the Hart-Scott-Rodino Antitrust Improvements Act of 1976. In all of these areas, the Commission of the 1970s made enduring enhancements to the institution and set important foundations for successful programs that followed in the next forty years. An insane agency could not have done so.

[\*86] Another focal point for attention in assessing the FTC's performance in the 1970s was the quality of its substantive agenda. Was the FTC's substantive program in the 1970s "insane"? Many Commission competition and consumer protection initiatives in the 1970s encountered grave problems. FTC efforts to execute the bold, innovative, risk-preferring program that Congress had called for earlier in the decade generated a number of serious project failures. Insanity, on the part of individual leaders or the institution as a whole, does not explain the failures. These outcomes have more prosaic causes whose understanding is important to the future formulation of competition policy. Chief among the FTC's flaws were a lack of historical awareness about the political hazards associated with undertaking an agenda of bold, innovative cases against powerful commercial interests; inadequate appreciation for the demands of bringing large numbers of difficult cases and promulgating ambitious trade regulation rules would impose on the agency's improving but uneven human capital; and underestimation of the change in the center of gravity of economic learning that supports the operation of the U.S. antitrust system. As described below, many of these failings are rooted in weaknesses in the FTC's knowledge in the 1970s of the positive record of its past enforcement experience.

B. The Inadequate and Misdirected Enforcement Activity Narrative

Like the hyperactivity narrative described above, the inadequate activity narrative relies heavily on enforcement data to support the view that the federal antitrust agencies have brought too few cases overall and, when filing cases, have focused resources on the wrong types of matters.

Implicit or explicit assumptions about the level of enforcement activity have provided a central foundation in the modern era for broad normative claims of poor system performance. One collection of inadequacy critiques attacks federal enforcement program of the Reagan administration -- a period characterized by what one journalist described as an "almost total abandonment of antitrust policy." In 1987, in discussing Reagan-era [\*87] federal antitrust enforcement, Professor Robert Pitofsky said the DOJ and the FTC had produced "the most lenient antitrust enforcement program in fifty years." Professor Milton Handler remarked that in the Reagan era "a policy of nonenforcement has set in, much to the distress of those who believe that without antitrust the free market cannot remain free." Professors Lawrence Sullivan and Wolfgang Fikentscher observed, in addressing the treatment of civil nonmerger matters, "enforcement ceased."

A second body of commentary assails the work of the federal agencies in the George W. Bush administration. For example, in 2008, during his campaign to gain the Democratic Party's nomination for the presidency, Barack Obama said the George W. Bush administration "has what may be the weakest record of antitrust enforcement of any administration in the last half-century." The Obama statement did not compare activity levels across all administrations over the 50-year-long comparison period, but the statement suggested that the general claim was based on variations in activity over time.

A third version of the inadequacy narrative marks the beginning of the decline of effective enforcement at the outset of the George W. Bush administration and extending through the present.

A fourth variant writes off the entire period from roughly 1980 onward as an antitrust catastrophe. After noting that for most of the 20th century "antitrust enforcement waxed or waned depending on the administration in office," Professor Robert Reich recently wrote that "after 1980 it all but [\*88] disappeared." He added that Presidents Bill Clinton and Barack Obama "allowed antitrust enforcement to ossify, enabling large corporations to grow far larger and major industries to become more concentrated."

Presented below are categories of arguments that rely upon specific assertions about the positive record of modern antitrust enforcement. These arguments make positive claims regarding either the amount of activity, the reasons for observed behavior, or both.

GENERAL CRITICISMS OF ANTITRUST ENFORCEMENT: BORK, REAGAN, AND THE DESTRUCTION OF U.S. COMPETITION POLICY

Many commentators have offered explanations for why federal antitrust enforcement became inadequate after the late 1970s. One major positive explanation is that the modern Chicago School of antitrust analysis, grounded largely in the writings of Robert Bork, inspired a severe retrenchment of enforcement at the DOJ and the FTC and led the federal courts to narrow antitrust doctrine since the late 1970s. A major focus of this discussion of the causes for changes in enforcement involves rules governing the treatment of dominant firms.

A second cause offered to explain a redirection of enforcement is the ascent to the presidency of Ronald Reagan and his appointment of permissive leadership to the DOJ and the FTC. The Reagan administration [\*89] is said to have inherited a generally well-functioning antitrust enforcement system and run it into the ground.

The Chicago School, Bork-centric, and Reagan-centric explanations for policy change can be misleading due to mischaracterizations of what took place and their tendency to omit other forces that had helped narrow the scope of antitrust enforcement. Bork and the Chicago School unmistakably have exerted a significant impact upon modern antitrust policy, but the retrenchment of antitrust enforcement in some areas cannot accurately be attributed to them entirely or, for a number of important developments, even principally. Many proponents of the inadequacy narrative make little or no mention of the role of modern Harvard School scholars, such as Philip Areeda and Donald Turner, in leading courts and enforcement agencies to move the antitrust system toward a less interventionist stance.

Areeda and Turner encouraged courts to forego reliance on noneconomic goals in deciding antitrust cases. The two Harvard scholars also advocated the adoption of stricter procedural and doctrinal screens to counteract what they perceived to be flaws in the U.S. system of private rights of action. The inadequacy narrative often overlooks the influence of the modern Harvard School and thus misses how much the permissiveness of modern antitrust policy reflects the Harvard School's concern that private rights of action over-deter legitimate business conduct by dominant firms. [\*90] This yields a faulty positive diagnosis of the forces that have reduced the reach of the U.S. antitrust regime. As noted below, understanding how the institution-grounded limitations proposed by the modern Harvard School have imposed greater demands on plaintiffs has important implications for government plaintiffs seeking to devise a strategy to reclaim doctrinal ground lost since the 1970s.

Similar imprecision and omission characterize the portrayal of the Reagan administration as the force that swung antitrust policy away from a sensible interventionist equilibrium and gave it a durably noninterventionist orientation. Some elements of the Reagan-centric narrative turn events 180 degrees around from their positive roots. More significant, the narrative does not address how badly the Congress and the White House had damaged the FTC's stature and operations before Ronald Reagan took office in late January 1981. By the end of 1980, the Commission had been shoved into the equivalent of political bankruptcy by a Congress and a White House under the control of the Democratic Party.

By treating the 1980 presidential election as the cause of an abrupt change in federal antitrust enforcement policy, the Reagan-centric inadequacy narrative fails to grasp the significance of the political assault, led by Democrats, against the FTC in the late 1970s. Recognition of how the FTC's relationship with Congress changed over the course of the 1970s forces one to confront the question of why an agency that enjoyed powerful congressional support through much of the decade came to grief so quickly. The episode has a sobering cautionary lesson for contemporary policy making: it demonstrates how quickly congressional attitudes can change once powerful business interests affected by FTC actions bring their [\*91] resources to bear upon Congress, and how turnover in the legislature can erode vital political support. An accurate positive account of the 1970s suggests that an agency should strive to complete its cases and rulemaking initiatives as expeditiously as possible, lest long lags between the start and conclusion of matters expose the agency to debilitating political backlash. This policy making prescription becomes apparent only by forming an accurate picture of what happened to the FTC in the 1970s.

CHICAGO-SCHOOL INSPIRED FOCUS ON PRICE EFFECTS

Critics of modern FTC and DOJ law enforcement often state that the federal agencies focus entirely on price and output effects in selecting and prosecuting cases. This tunnel-visioned approach is said to ignore important considerations involving the harmful effects of business behavior on quality and innovation.

In 2019, in a newspaper op-ed, Rana Fordoohar, a journalist who covers the tech sector, stated: "But monopoly policy in America is currently driven by "Chicago School" thinking, which espouses the idea that as long as consumers aren't paying too much for a good or service, all is well." In August 2020, Joshua Brustein, a business journalist, said: "For decades, antitrust enforcers have centered on the consumer welfare standard, which defined price increases as the only valid focus of antitrust action."

Like the portrayal of activity levels, these positive descriptions of the policy concerns that have guided FTC and DOJ law enforcement are faulty. The claim that the federal antitrust agencies since the late 1970s have focused solely upon price and output effects overlooks the many important instances in which innovation and other quality-related effects were paramount in FTC and DOJ decisions to challenge mergers and bring nonmerger cases. Among other areas from the 1980s to the present, the DOJ and the FTC have emphasized innovation effects in analyzing competitive effects in deals involving defense contractors and transactions [\*92] in the health care sector.

[FOOTNOTE] See, e.g., Joint Statement of the Department of Justice and the Federal Trade Commission on Preserving Competition in the Defense Industry (Apr. 12, 2016) ("In the defense industry, the Agencies are especially focused on ensuring that defense mergers will not adversely affect short- and long-term innovation crucial to our national security. . . ."); Daniel L. Rubinfeld & John Haven, Innovation and Antitrust Enforcement, in DYNAMIC COMPETITION AND PUBLIC POLICY 65 (Jerry Ellig ed., 2001) (discussing DOJ emphasis on innovation-related effects in antitrust enforcement, including the Department's challenge to Lockheed Martin's effort to purchase Northrop Grumman in the late 1990s); William E. Kovacic, Competition Policy Retrospective: The Formation of the United Launch Alliance and the Ascent of SpaceX, 27 GEO. MASON L. REV. 863, 867-68, 899-900 (2020) [hereinafter Competition Policy Retrospective] (discussing centrality of innovation issues in modern antitrust analysis of aerospace and defense mergers). [END FOOTNOTE]

INADEQUATE ENFORCEMENT AGAINST DOMINANT FIRM MISCONDUCT

A recurring critique of modern U.S. federal enforcement is the failure of the DOJ and the FTC to police dominant firm misconduct. In 2002, Professor Robert Pitofsky wrote that "during the Reagan years, there was no enforcement whatsoever" against attempts to monopolize and monopolization. At a conference in 2009, Professor Harvey Goldschmid observed that during the George W. Bush presidency "there has been no enforcement" of Section 2 of the Sherman Act.

In a wide-ranging attack upon federal antitrust enforcement since the 1970s, Jonathan Tepper and Denise Hearn concluded:

The evidence confirms the death of antitrust. When surveying merger challenges, [Professor Gustavo] Grullon found that enforcement of Section 2 of the Sherman Act fell from an average of 15.7 cases per year from 1970-1999 to less than 3 over the period 2000-2014. . . . The recent failure to enforce antitrust is horrifying, considering how industries have become more concentrated every year.

In May 2018, Senator Richard Blumenthal and Professor Tim Wu [\*93] authored an op-ed piece that recited similar statistics: "Enforcement of the antimonopoly laws has fallen: Between 1970 and 1999, the United States brought about 15 monopoly cases each year; between 2000 and 2014, that number went down to just three."

Each of these statements about the amount of federal enforcement activity is incorrect. The Reagan antitrust agencies did not bring many cases involving attempted monopolization or monopolization, but the number exceeded what Professor Pitofsky called "no enforcement whatsoever". The number of FTC attempted monopolization and monopolization cases initiated from 2001 through 2008 exceeded what Professor Goldschmid called "no enforcement." From 1970 through 1999, federal enforcement of Section 2 of the Sherman Act and the enforcement of Section 5 of the FTC Act to challenge collective dominance or single-firm exclusionary conduct did not exceed four cases per year - a notably lower rate of activity than the number of cases per year reported by Senator Blumenthal and Professor Wu ("about 15 cases each year") and the number for the same period reported by Jonathan Tepper and Denise Hearn (15.7 cases per year).

[\*94] INADEQUATE MERGER ENFORCEMENT

Inadequacy narratives frequently use categorical statements about activity levels to demonstrate weaknesses in federal merger enforcement. In a discussion of Reagan administration antitrust policy, Professor Eleanor Fox observed that "U.S. federal merger enforcement ground to a halt." In the 2010 edition of their antitrust casebook, Professor Robert Pitofsky, Professor Harvey Goldschmid, and Judge Diane Wood observed that there was "no enforcement at all against vertical or conglomerate mergers during the Bush Administration." In a recent book discussing U.S. antitrust policy, Professor Tim Wu observed that the DOJ in the George W. Bush administration "did not block any major mergers."

The factual claims contained in these assessments are incorrect. Federal merger enforcement during the Reagan administration did not grind to a halt. The George W. Bush Administration did not challenge large numbers of vertical mergers, but the number was greater than the "no enforcement at all" amount claimed by Professor Pitofsky, Professor [\*95] Goldschmid, and Judge Wood. During the Bush administration, the DOJ sued and blocked mergers involving General Dynamics/Newport News Shipbuilding (nuclear submarine design and production) and United Airlines/US Airways (airline transportation services). Given the significance of the merging parties and the importance of the economic sectors at issue, competition law experts, in responding to Professor Wu, likely would score these proposed transactions as "major" mergers.

C. How Narratives Predicated Upon Mistaken Positive Assumptions Distort Understanding About the Functioning of the U.S. Antitrust Regime

Should the competition policy community of academics, advocacy groups, government officials, and practitioners care about these and other inaccurate depictions of federal enforcement activity? Indeed, they should. There is a danger that the fractured positive accounts of past activity will be taken as true and inform the debate about the future of competition policy. There is a fast-expanding literature that contends, as Professor Daniel Crane puts it, that "antitrust enforcement has drifted toward near-oblivion, with potentially dire consequences for our economy, and society more generally." The portrayal of inert federal agencies as abandoning a sensible earlier custom of robust enforcement is a particularly important pillar of modern calls for sweeping reform.

Failure to Learn from Earlier Enforcement Activities. A major hazard of the inadequacy narratives and their dismal depiction of modern antitrust policy is that they impede the learning by which an antitrust agency improves over time. If it is assumed as a fact that the federal antitrust enforcement [\*96] policy was devoid of useful activity for the past forty years or longer, then there is no point in looking for positive accomplishments. A listener who accepts as true the claim that nothing happened, or that what happened was the work of an insane agency, reasonably might conclude that there is nothing worth emulating from the earlier period.

There is a serious cost to embracing the excessive activity narrative or the inadequate activity narrative as resting on sound positive foundations. By writing off the relevant eras as a wasteland, one ignores noteworthy policy developments that modern analysts can use to guide policy going forward. Merger enforcement provides an example. If federal merger enforcement actually ground to a halt between 1981 and 1988, there would be no merger challenges to study. Yet the federal enforcers blocked a number of deals in this period and, in some instances, the government gained favorable judicial decisions that provide clues about how to formulate successful challenges in the future.

Perhaps the most notable of the government's merger litigation victories in the 1980s was the FTC's successful challenge to Hospital Corp.'s effort to acquire Hospital Affiliates International, Inc. and Health Care Corp. The Commission argued that the acquisitions would reduce competition by enabling the surviving firms to coordinate behavior more effectively with regard to pricing and other terms of service. The 117-page opinion for the Commission by Commissioner Terry Calvani is a textbook model of superb opinion-writing, what the Seventh Circuit called a "model of lucidity." Commissioner Calvani carefully set out the arguments of complaint counsel and the defendants, reviewed the precedent and literature regarding the coordinated effects theory of harm, and displayed [\*97] the type of erudition and expertise that is offered as a justification for entrusting antitrust adjudication to an expert administrative body.

Every commissioner who is assigned to write an opinion for the FTC should feel an obligation to read the Calvani Hospital Corp. decision to see the quality of analysis and style of presentation that can impress a court of appeals favorably. Rather than dismiss the period since 1980 as a barren era in federal enforcement, the advocates for a major expansion of intervention should assemble an accurate positive record of every decision and every initiative that can help them achieve their ends.

In the face of a demanding judiciary, the FTC will need every advantage it can obtain, including footholds provided by enforcement measures undertaken from the early 1980s forward. If proponents of fundamental change treat the past forty years as an empty space in antitrust policy, they will walk past precedents and practices that would advance their cause. If one assumes that timidity bordering on cowardice gripped the federal agencies after 1999, there is likewise no point in considering how the FTC in the 2010s achieved considerable success in three consecutive trips to the Supreme Court in antitrust cases - the first time the Commission had won three straight cases before the high court since the 1960s - or bothering to understand what mix of strategy and advocacy (and, perhaps, luck) made it possible.

The analysis of innovation issues provides another example of how an accurate grasp of the positive record can help build a new program. Consider the claim, noted above, that the federal agencies brought no vertical merger cases between 2001 and 2008. An observer who embraced this view is likely to overlook the FTC's decision to block the proposed merger of Cytyc and Digene. The Commission's analysis of this transaction teaches a lot about how to analyze innovation markets that reach back to the earliest stages of an R&D pipeline.

Adherence to the view that modern antitrust policy has ignored [\*98] innovation effects in merger analysis and in nonmerger cases likewise will miss important sources of insight. The experience of the two federal agencies since the early 1980s in reviewing aerospace and defense industry mergers illuminates how to analyze innovation issues and formulate successful merger challenges in dynamic, high technology sectors. The federal government's analysis of these transactions has been representative of a larger awareness that innovation concerns should be decisive, or at least equal in importance to price effects, in a significant number of merger reviews and nonmerger matters.

Diagnosing the Obstacles to Litigation Success and Overcoming Them. A second and closely related reason to resist faulty positive accounts of past experience is that they obscure the path to possible litigation success in single-firm monopolization cases. In the FTC's unsuccessful Rambus case, the U.S. Court of Appeals for the District of Columbia relied heavily on a Supreme Court decision ( NYNEX Corp. v. Discon, Inc. ) that was premised in part on concerns about overdeterrence that might arise from private treble-damage law suits. The FTC might have argued to the D.C. Circuit that the Commission, as a federal government agency, was a responsible steward of the public trust and need not be bound by doctrines designed to confine private litigants. Future attempts to use litigation to condemn dominant firm conduct, and extend the reach of antitrust oversight, might emphasize the distinctive role of public enforcement and, perhaps, resort more extensively to the FTC's administrative adjudication process.

In other words, seeing more clearly the foundations of defendant-friendly doctrine indicates what litigation strategy (i.e., premised on the distinctive role of the public prosecutor and the special capacity of the FTC's administrative process) promises the greatest prospects for success in what is today a daunting judicial environment. To use litigation to expand the zone of potential intervention, the Commission will need to study and build [\*99] upon litigation successes such as McWane, Inc. v. FTC, where the Commission prevailed on a monopolization theory of liability before a court of appeals that has not always been a favorable forum for the review of Commission antitrust cases. If one assumes, as some commentators suggest, that the federal agencies brought no monopolization cases in the past twenty years, then one is unlikely to look for or study McWane - to recognize the doctrinal footholds it provides for future cases, to analyze how the agency assembled a convincing factual record, and, more generally, to see how the agency can replicate the success in the future.

Setting a Common Foundation for Debate About Future Antitrust Enforcement. A third reason to remedy the uncertain grasp of the past is its importance to the modern debates about the proper direction for the U.S. antitrust system. Without a common understanding of what actually happened in the past, how can policy makers and commentators make sound normative judgments about what the U.S. enforcement agencies should do in the future? Professor Douglas Melamed recently has posited that the contestants in the modern debate about antitrust policy often talk past each other and do not engage on questions crucial to deciding whether and how much to modify current antitrust policy, or to create new competition policy instruments and institutions. It is doubtful that what Professor Melamed calls two largely disconnected "conversations" can be joined up without a better common understanding of what actually has taken place. In so many ways, accurate comprehension of what happened is the essential foundation for the processes of interpretation (What explains the behavior in question? What is its significance?), evaluation (Was the behavior good or bad?), and refinement (What should we do next time?).

Think of it in terms of teaching a class. Suppose the bases for the grade in the course are (a) regular attendance in class, (b) contributions to class discussion, and (c) performance on an end-of-term examination. Before we determine the quality of the student's work and assign a grade, we need first to agree about whether the student showed up for class, spoke in class, and turned in an exam. Modern discourse about U.S. competition law indicates a lack of agreement on equivalents of these basic predicates for a normative assessment of the performance of the antitrust enforcement system.

Appreciating How Institutional Arrangements Shape Substantive [\*100] Outcomes. Both of the inadequacy narratives described above lapse into describing the U.S. antitrust system as regularly succumbing to irrational (or, as Representative Frenzel put it, insane) swings in behavior, from wild overreaching in the 1970s and in earlier periods of antitrust history to excessive restraint from the late 1970s to the present. In their positive description of why events transpired as they did, the inadequacy narratives focus heavily on the role of agency leadership and personality. For example, the excessive enforcement narrative portrays federal enforcement officials in the 1960s as possessed by a deranged opposition to mergers and depicts Michael Pertschuk, the FTC's chairman from 1977-1981, as a singularly malevolent force who drove the agency off the rails. The inadequate enforcement narrative damns William Baxter, who chaired the DOJ Antitrust Division from 1981 through 1983, and James C. Miller III, who chaired the FTC from 1981 to 1984, as irrational extremists with no fidelity to norms that promote sound policy making.

The abilities and instincts of individual leaders are undoubtedly important to the success of a competition authority. Yet the personality-driven explanation for agency behavior overlooks the role that institutional arrangements have played in shaping outcomes - for example, by moderating policy impulses of some leaders and creating structures and mechanisms (such as a program of ex post evaluation of agency decisions) that improve policy making regardless of who is in charge. The single-minded focus on personalities also obscures the extent to which various institutional arrangements played central roles in the agency's achievement of successful policy outcomes. In short, one loses the ability to develop a [\*101] better sense of what accounts for policy successes and failures. Replacing a supposed pariah with a presumed miracle worker may not improve the status quo by much if deep-seated institutional weaknesses are major sources of observed policy failures.

#### Or its resilient

William E. Kovacic 16, Visiting Professor at King's College London and the Global Competition Professor of Law and Policy at George Washington University Law School, and Marianela Lopez-Galdos, Legal Consultant with the Inter-American Development Bank and the Director of the Global Competition Law Benchmarking Project at the Competition Law Center of the George Washington University Law School, “Explaining Variation in the Implementation of New Regimes”, Law and Contemporary Problems, 79 Law & Contemp. Prob. 85, Lexis

For the most part, an older, better-established, and more experienced agency is more likely to be in a stronger position to respond to such blows and recover. This is because: (a) a better-established and more experienced agency has had more time to build a career staff that provides continuity and stability over time and is able to carry out the work of the agency despite significant disruptions in leadership; 92 and (b) such an agency probably has accumulated reputational capital that it can "spend" in the time of a crisis to maintain its standing in the eyes of external audiences. 93 [FOOTNOTE] 93 See William E. Kovacic & Marc Winerman, The Federal Trade Commission as an Independent Agency: Autonomy, Legitimacy, and Effectiveness, 100 Iowa L. Rev. 2085, 2106-07 (2015) (discussing how competition agencies accumulate and spend political capital). [FOOTNOTE] A relatively newer agency, by contrast, may be more vulnerable to being swept aside or permanently diminished because it has not had the opportunity to build a staff of sufficient depth and experience or to build a reputation that can sustain it in difficult times.

#### FTC doesn’t solve AI regulation---they’ve got other priorities now like big tech.

#### Pharma innovation is strong now.

Tanja Dowe 10/5/21.CEO of Debiopharm Innovation Fund, the strategic investment arm of the Swiss pharmaceutical company Debiopharm. “The ‘patient of the future’ is driving radical innovation in healthcare.” https://pharmaphorum.com/patients/future-patient-radical-innovation-healthcare-debiopharm/

Digital data collection, utilisation of real-word data and patient-centric thinking will all contribute to the rapid development of a new healthcare landscape, says Debiopharm Innovation Fund’s Tanja Dowe.

In recent years, we have seen thinking shift from focusing on a disease’s treatment to seriously considering the wider potential for its prevention, enabled by dramatic advances in data science and supported by a pressing need to reduce healthcare costs.

Leaps forward in both digital tools and widespread collection of medical and health data have provided many opportunities for the healthcare industry to adapt and change. The advent of COVID-19 has been a great testing environment for these technologies where, for example, the adoption of telemedicine was no longer an option but an urgent need to plug the gap in face-to-face medical care.

The healthcare industry is also changing as its ‘customers’ move from ‘boomer’ patients to digital natives. These individuals no longer accept the patient role of past generations. They want to be involved, proactive contributors to their own health, with access to their own health information.

This was also one of the key messages from the recent Healthcare Automation and Digitalization Congress (AUTOMA+) 2021, at which I led a round-table discussion on the ‘prevention versus treatment’.

The traditional patient role is rapidly changing

The world over, a dramatic shift is occurring in the characteristics of the typical patient. The time of individuals relying entirely on face-to-face interaction with their doctors is long past. In its place, a new persona has emerged. The ‘patient of the future’ demands control of their own healthcare – they are proactive individuals who follow their own health status with one of the almost 400 wearable devices on the market already today, and receive personalised health improvement advice through an app. They want personalised care all across the medical care pathway as well.

We can start to understand how we, in the healthcare industry, must respond to this seismic shift by looking initially at what is driving the transformation and, in particular, at three key factors.

Firstly, there is an ever-present need to reduce healthcare costs. This was a priority for healthcare services pre-COVID and is even more critical now in order to manage the huge burden of disease as we start to re-open the world. Prevention and treatment services for non-communicable diseases (NCDs) alone have been severely disrupted since the pandemic began, and the World Health Organization predicts a long-term upsurge in deaths from NCDs in the months and years that follow. Without finding a way to make healthcare more cost-efficient, the outcomes for patients are likely to fall sharply.

Secondly, there has been an unprecedented technological drive in the last decade, accelerated by increased medical data, advances in artificial intelligence (AI) and an abundance (and increased consumerisation) of digital tools, sparked by growing market appeal – as seen with the popularisation of health apps and digital monitoring systems, for example.

#### Competition doesn’t uniformly drive innovation---results in fewer patents---the effects are nuanced

Richard T. Thakor and Andrew W. Lo 21. “Competition and R&D Financing: Evidence from the Biopharmaceutical Industry.” Forthcoming, Journal of Financial and Quantitative Analysis. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3754494

As a final set of analyses, we delve deeper into the effects of competition on innovation, exploring whether the increased R&D investment and other effects that we have documented lead to higher innovative output, as measured by the number of patents. We find that, despite the increase in R&D investment stemming from an exogenous shock to competition, firms produce relatively fewer patents. However, we also find that the market value of these patents increases following the increase in competition, using the firm-level innovation value measure of Kogan, Papanikolaou, Seru, and Stoffman (2017). This suggests that, faced with greater competition, firms specialize and focus on producing “targeted” or “impactful” innovations in order to differentiate themselves, rather than on simply increasing the number of total innovations.7 This is novel evidence that the effect of competition on innovative output is nuanced, that increased spending on R&D in response to increased competition leads to fewer, but more valuable, innovations.

#### Absolutely no chance of extinction from disease

Adalja 16 [Amesh Adalja, infectious disease physician at the University of Pittsburgh] “Why Hasn't Disease Wiped out the Human Race?” June 17, 2016 (http://www.theatlantic.com/health/archive/2016/06/infectious-diseases-extinction/487514/) - MZhu

But when people ask me if I’m worried about infectious diseases, they’re often not asking about the threat to human lives; they’re asking about the threat to human life. With each outbreak of a headline-grabbing emerging infectious disease comes a fear of extinction itself. The fear envisions a large proportion of humans succumbing to infection, leaving no survivors or so few that the species can’t be sustained. I’m not afraid of this apocalyptic scenario, but I do understand the impulse. Worry about the end is a quintessentially human trait. Thankfully, so is our resilience. For most of mankind’s history, infectious diseases were the existential threat to humanity—and for good reason. They were quite successful at killing people: The 6th century’s Plague of Justinian knocked out an estimated 17 percent of the world’s population; the 14th century Black Death decimated a third of Europe; the 1918 influenza pandemic killed 5 percent of the world; malaria is estimated to have killed half of all humans who have ever lived. Any yet, of course, humanity continued to flourish. Our species’ recent explosion in lifespan is almost exclusively the result of the control of infectious diseases through sanitation, vaccination, and antimicrobial therapies. Only in the modern era, in which many infectious diseases have been tamed in the industrial world, do people have the luxury of death from cancer, heart disease, or stroke in the 8th decade of life. Childhoods are free from watching siblings and friends die from outbreaks of typhoid, scarlet fever, smallpox, measles, and the like. So what would it take for a disease to wipe out humanity now? In Michael Crichton’s The Andromeda Strain, the canonical book in the disease-outbreak genre, an alien microbe threatens the human race with extinction, and humanity’s best minds are marshaled to combat the enemy organism. Fortunately, outside of fiction, there’s no reason to expect alien pathogens to wage war on the human race any time soon, and my analysis suggests that any real-life domestic microbe reaching an extinction level of threat probably is just as unlikely. Any apocalyptic pathogen would need to possess a very special combination of two attributes. First, it would have to be so unfamiliar that no existing therapy or vaccine could be applied to it. Second, it would need to have a high and surreptitious transmissibility before symptoms occur. The first is essential because any microbe from a known class of pathogens would, by definition, have family members that could serve as models for containment and countermeasures. The second would allow the hypothetical disease to spread without being detected by even the most astute clinicians. The three infectious diseases most likely to be considered extinction-level threats in the world today—influenza, HIV, and Ebola—don’t meet these two requirements. Influenza, for instance, despite its well-established ability to kill on a large scale, its contagiousness, and its unrivaled ability to shift and drift away from our vaccines, is still what I would call a “known unknown.” While there are many mysteries about how new flu strains emerge, from at least the time of Hippocrates, humans have been attuned to its risk. And in the modern era, a full-fledged industry of influenza preparedness exists, with effective vaccine strategies and antiviral therapies. HIV, which has killed 39 million people over several decades, is similarly limited due to several factors. Most importantly, HIV’s dependency on blood and body fluid for transmission (similar to Ebola) requires intimate human-to-human contact, which limits contagion. Highly potent antiviral therapy allows most people to live normally with the disease, and a substantial group of the population has genetic mutations that render them impervious to infection in the first place. Lastly, simple prevention strategies such as needle exchange for injection drug users and barrier contraceptives—when available—can curtail transmission risk. Ebola, for many of the same reasons as HIV as well as several others, also falls short of the mark. This is especially due to the fact that it spreads almost exclusively through people with easily recognizable symptoms, plus the taming of its once unfathomable 90 percent mortality rate by simple supportive care. Beyond those three, every other known disease falls short of what seems required to wipe out humans—which is, of course, why we’re still here. And it’s not that diseases are ineffective. On the contrary, diseases’ failure to knock us out is a testament to just how resilient humans are. Part of our evolutionary heritage is our immune system, one of the most complex on the planet, even without the benefit of vaccines or the helping hand of antimicrobial drugs. This system, when viewed at a species level, can adapt to almost any enemy imaginable. Coupled to genetic variations amongst humans—which open up the possibility for a range of advantages, from imperviousness to infection to a tendency for mild symptoms—this adaptability ensures that almost any infectious disease onslaught will leave a large proportion of the population alive to rebuild, in contrast to the fictional Hollywood versions. While the immune system’s role can never be understated, an even more powerful protector is the faculty of consciousness. Humans are not the most prolific, quickly evolving, or strongest organisms on the planet, but as Aristotle identified, humans are the rational animals—and it is this fundamental distinguishing characteristic that allows humans to form abstractions, think in principles, and plan long-range. These capacities, in turn, allow humans to modify, alter, and improve themselves and their environments. Consciousness equips us, at an individual and a species level, to make nature safe for the species through such technological marvels as antibiotics, antivirals, vaccines, and sanitation. When humans began to focus their minds on the problems posed by infectious disease, human life ceased being nasty, brutish, and short. In many ways, human consciousness became infectious diseases’ worthiest adversary.

#### FTC’s increasing enforcement in privacy now

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

# 2NC

## Cap K

#### 3. Challenging neoliberal mindsets precedes policies---key to alternate visions for global politics

Mathieu Hilgers 13. Laboratory for Contemporary Anthropology, Université Libre de Bruxelles, and Centre for Urban and Community Research, Goldsmiths, University of London, [“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.

#### 4. Invert your standard for solvency---“feasibility” concerns are propaganda

McCarraher 19 [Eugene; 11/12/19; 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, 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.

#### 4. Focus on ‘particularity’ shreds alt solvency

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.

#### Antitrust can’t solve---answers Lane

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

#### 5. The rhetoric of preserving competition cements neoliberalism

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Turns case---the drive to make companies competitive incents international expansion to escape enforcement

Enfu & Baolin 21 [Cheng Enfu and Lu Baolin. President of the World Association for Political Economy, and Chief Professor at the University of Chinese Academy of Social Sciences. Monthly Review. Monthly Review. 5-1-2021. https://monthlyreview.org/2021/05/01/five-characteristics-of-neoimperialism/]

The Spatial Expansion of the Capital-Labor Relation: Global Value Chains and the Global Labor Arbitrage

Through mechanisms that include outsourcing, setting up subsidiaries, and establishing strategic alliances, multinationals integrate more and more countries and companies into the global production networks they dominate. The reason why capital accumulation can be achieved on this global scale is the existence of a large, low-cost global workforce. According to data from the International Labor Organization, the world’s total workforce grew from 1.9 to 3.1 billion between 1980 and 2007. Of these people, 73 percent were from developing countries, with China and India accounting for 40 percent.21 Multinational corporations are all organized entities, while the global workforce finds it exceedingly difficult to unite effectively and defend its rights. Because of the existence of the global reserve army of labor, capital can use the strategy of divide and conquer to discipline wage workers. Over decades, monopoly capital has shifted the production sectors of developed-world economies to the countries of the Global South, compelling workforces in different areas of the globe to compete with one another for basic living incomes. Through this process, multinationals are able to extort huge imperialist rents from the world’s workers.22 In addition, these giant corporations are well able to lobby and pressure the governments of developing countries to formulate policies that benefit the flow of capital and investment. Trying to secure GDP growth by inducing international capital to invest and set up factories, many developing country governments not only ignore the protection of social welfare and labor rights, but also guarantee various preferential measures such as tax concessions and credit support. The globalization of production has thus enabled the developed capitalist countries to exploit the less developed world in a more “civil” fashion under the slogan of fair trade. In order to launch their modernization, developing countries often have little choice but to accept the capital offered by the imperialists—along with the conditions and encumbrances that go with it.

#### 1. Working conditions---cap makes inequality and stripping of labor rights structurally inevitable

Edward Webster 21. Distinguished Research Professor, Southern Centre for Inequality Studies, University of the Witwatersrand. The coronavirus pandemic has revealed capitalism’s greatest weakness. Quartz. 6-2-2021. https://qz.com/africa/2016030/the-coronavirus-pandemic-has-revealed-where-capitalism-fails/

Under certain circumstances, far-reaching peaceful reform has been possible. Why then has the coronavirus pandemic deepened inequality rather than reduced it? Goldin attributes this paradoxical outcome to four decades of neoliberal thinking. I agree with his critique of neoliberalism. But he doesn’t give sufficient attention to power, particularly the concentration of economic power. This book, nevertheless, offers important opportunities for the elites of the world and ordinary citizens to explore ways of reducing inequality. The case for a rethink of capitalism Inequality, Goldin suggests had been rising in both Europe and the US since the 1980s. He argues that this is: …mainly due to the tide of liberalization that was ushered in when Margaret Thatcher in Britain and Ronald Reagan in the US initiated a race to the bottom in taxation, attacks on trade unions, and a weakening of competition policy, which all allowed for the growing concentration and strength of employers. What is needed, Goldin believes, is a fundamental rethinking of capitalism. Big government and the activist state is back, he says. The pandemic has led to a counter-revolution. Conservative governments now go beyond even arguments put forward by the economist Maynard Keynes in the 1930s that governments needed to spend their way out of the Great Depression. Unless inequality is reduced, he warns, populism and protectionism will become dominant. The tragedy is that the policies implemented by these populist leaders benefit the few not the many, thereby deepening and entrenching inequality. For Goldin this global trajectory of populism is not inevitable. He believes that it is human actions and leaders that shape societies, not simply events. The chapter Reducing inequality is full of sensible proposals designed to reduce inequality. Among these are: the closure of tax havens and loopholes, the introduction of wealth taxes on the assets of the top 1% earners, higher inheritance taxes on the transfer of wealth of the top 1 per cent, and progressive income taxes that exempt the lowest earners and then rise steeply for the highest earners. Goldin discusses how five biggest American tech companies—Facebook, Amazon, Apple, Netflix, and Google—dominate the stock markets. He cites the fact that the $28 trillion attributed to these companies is five times greater than all the physical assets owned by all the other 500 companies in the Standard and Poor’s stock index. Jeff Bezos, the founder of Amazon, saw his wealth almost double. This makes him the first person in history to be worth more than $200 billion. Meanwhile, the wealth of Elon Musk, the founder of Tesla, increased by more than $160 billion during the pandemic, to $184 billion. What needs to be done Goldin draws on Nobel prize winner, Amartya Sen, who sees inequality as the function of the distribution of capabilities. From this perspective, inequality is above all about inequality of opportunities available to people to lead fulfilling lives. Central to this is education, gender, and human rights. Sen is far removed from orthodox neoliberalism. He adopts human well being, rather than mere growth, as the goal of development. But his approach to development is grounded in pragmatic neoliberalism. His message is clear: people in developing countries should adopt free markets, strictly delimit the role of the state, promote liberal democratic institutions , ensure the provision of basic education and healthcare and welcome open discussion of issues. I disagree with Goldin when it comes to drawing on Sen. This is because I am skeptical of Sen’s faith in free markets, free speech and reasoned social progress. He abstracts freedom from power relations and focuses on individual actors. But inequality is primarily a power relation. Sen gives a false promise to the poor and excluded. He does not challenge the concentration of economic power, centered on global and national markets. Instead he takes them for granted. A “rethinking of capitalism” requires that our primary focus should be on the distribution of economic power (rather than the unequal distribution of capabilities) as the potential leading causal factor driving inequality.

#### A. 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.

#### B. Profit motive net increases new disease---empirics

Broughton 20. [Alan, Active Member of the Organic Agriculture Association and is a co-author of Sustainable Agriculture vs Corporate Greed. Capitalist greed and biodiversity loss is spawning new deadly diseases. Green Left. 05-16-2020. https://www.greenleft.org.au/content/capitalist-greed-and-biodiversity-loss-spawning-new-deadly-diseases]

Diseases such as COVID-19 have been predicted by various disease ecologists.

In Spillover: Animal Infections and the Next Human Pandemic, David Quammen wrote in 2012 about the likelihood of virulent infectious diseases because of urban sprawl, pesticides and international trade, which has altered ecosystems and damaged biodiversity, letting loose the viruses that were once confined to wildlife.

Dr Peter Daszak, a contributor to the World Health Organization Register of Priority Diseases, called it Disease X in 2018, well before COVID-19 broke out.

The number of new infectious diseases has tripled each decade since the 1980s: there have been at least 300 in the past 50 years, 72% of which originated in wildlife.

Ebola arrived via a chimpanzee that was caught and consumed in Gabon; it killed 90% of infected people. It is suspected to have been passed on to chimpanzees from bats, forced to inhabit the same ecosystems and compete for the same food sources by deforestation.

Middle East Respiratory Syndrome (MERS) passed from bats to camels and then to the camel handlers. Hendra virus came from fruit bats, urbanised because of loss of habitat, and was passed on to horses and people.

Kyasanur Forest Disease in India spread from monkeys to humans via ticks as monkeys invaded human territory when theirs was lost through deforestation.

Nipah virus in Malaysia spread from fruit bats driven from the forest by clearing on to mango trees, into pigs via bat droppings and saliva, and then on to the farmers. HIV-AIDS, Zika, Severe acute respiratory syndrome (SARS), bird flu and West Nile viruses all came from wild animals.

COVID-19 is likely to have passed by bats to another animal, possibly a pangolin, then on to humans trading in wild animals.

Disrupted ecosytems

David Quammen said: “We cut the trees, we kill the animals or cage them and send them to markets. We disrupt ecosystems, and we shake loose viruses from their natural hosts. When that happens, they need a new host. Often, we are it.”

As Joachim Spangenberg from the Sustainable Europe Research Institute wrote: “We are creating this situation, not the animals”.

Ending the trade in wildlife sounds like a simple solution but suppression could drive it underground where hygiene is likely to be worse. Many people are dependent on the trade for their income and sustenance.

The issues of poverty, unemployment and food insecurity need to be addressed at the same time. Simply blaming bush meat, which has been consumed since the start of human history, does not address the key issue — biodiversity loss.

The extent tropical forests has been halved in the past century. When animals at the top of the food chain disappear, those at the bottom, such as rats and mice that normally carry more pathogens, take up the space.

Habitat loss forces animals and their diseases to go elsewhere. Species in degraded ecosystems carry more disease.

Natural animal habitats are being destroyed for monocultural agricultural production by corporations — soy, corn and palm oil — and for logging, mining, roads and urbanisation. The consequences of this practice are not factored into the extracted profits.

Climate change

Climate change is another factor. As climatic zones are altered wildlife migrates to new areas and interacts with species it never did before, passing on its diseases.

COVID-19 has a low mortality rate — about 1% — but is highly infectious.

The Ebola mortality rate is 90%, but infection does not spread easily. A new disease with the mortality rate of Ebola and the infection rate of COVID-19, or the flu, would be far more devastating than either alone.

If the world continues to allow the unrestricted greed of profit to destroy the world’s natural and agricultural ecosystems, such an outcome becomes more likely. We live in a world where profits are privatised, but the ecological consequences are paid for by everybody.

Indian agroecologist Vandana Shiva says that the profit motive separates humans from the ecosystems that life, including us, depends on: “As forests are destroyed, as our farms become industrial monocultures to produce toxic, nutritionally empty commodities, and our diets become degraded through industrial processing with synthetic chemicals and genetic engineering in labs, we become connected through disease.”

COVID-19 was predicted, and inevitable, because of how nature is treated. As well as treating the epidemic, and preparing for the next one, we have to address the root cause, restoring the broken link between humans and the environment.

#### 3. China---makes war structurally inevitable

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

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

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

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

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

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

(Mark Zuckerberg, Feb 16, 2020)

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

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

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

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

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

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

5 Final remarks

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

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

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

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

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

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

#### 4. Food---waste, supply chain disruptions, pandemics

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]

If the accelerating biophysical and social contradictions of the capitalist food system were substantively manifesting a decade ago, the advent of the COVID-19 pandemic has brought them into sharp relief.64 Where-ever one turns, the pandemic and the responses to it reveal a fragile food system enmeshed in crisis. From extraordinary levels of food waste caused by supply chain disruptions, to sharply rising levels of food insecurity, to widespread injury and death resulting from exposure to the pandemic amongst highly exploited food system workers, to the origins of the virus itself linked in part to the global grain-livestock and factory farming complex, COVID-19 is a ‘wake-up call for the food system.’65-75 More broadly, the negligence with which governments in Europe, Britain and the United States handled the pandemic, leading to high rates of infection and death that would have been preventable had public health, rather than economic activity, been prioritised, led the British Medical Journal to accuse those in charge of ‘social murder.’76 It is important to note that while the burden of suffering in 2020 fell disproportionately on low-income sectors and people of colour, with as many as 500 million more people falling into poverty, the world’s billionaires experienced a bonanza year, with their collective wealth increasing by nearly $4 trillion.77

Having laid bare the cause of our social and ecological malady – capitalism in its cancer stage - the question becomes: what is to be done?

#### 1. Market crash---speculation

Nick Beams 21. Member of the International Editorial Board of the World Socialist Web Site and former longtime national secretary of the Socialist Equality Party in Australia. "Rampant Wall Street speculation: The fever chart of a terminally diseased system." World Socialist Web Site. 5-6-2021. https://www.wsws.org/en/articles/2021/05/07/pers-m07.html

Over the past year, the global financial system, above all Wall Street, has been in the grip of a speculative mania, the like of which has never been seen before in economic history. Two questions therefore immediately arise: how has this situation come about and what are its implications?

In March 2020, as the COVID-19 pandemic began to make its effects felt and workers undertook wildcat strikes and walkouts to demand health measures to protect their lives and those of their families, the financial markets plunged.

Wall Street was concerned that any effective health measures to contain the spread of the pandemic would result in a collapse in the bloated price of financial assets, above all stocks, that had been boosted by the trillions of dollars poured into the financial system by the US Federal Reserve and other central banks following the crash of 2008.

The US government and the Fed rode once again to the rescue of Wall Street. The Trump administration organised a multi-billion-dollar bailout of the corporations under the CARES Act while the Fed stepped in to provide trillions of dollars of support for all areas of the financial system, including for the first time the purchase of stocks.

Since then, on the back of this $4 trillion intervention and rising, as the Fed continues to purchase financial assets at the rate of more than $1.4 trillion a year, the world has seen an unprecedented orgy of financial speculation.

Wall Street’s main stock index, the S&P 500, has risen by some 88 percent since its March 2020 lows, reaching record highs on multiple occasions throughout the past year. Margin debt, used to finance the speculation in shares, has reached record levels, and the yield on the lowest-rated corporate junk bonds—barely one step away from default—has fallen to historic lows.

But the most egregious expression of the speculation has been the rise of the cryptocurrency market. Over the past year the most prominent cryptocurrency, Bitcoin, has risen by 600 percent, rising from about $7,000 per bitcoin to $54,000, reaching a high of $65,000 in the middle of last month.

Last month Coinbase, a trading exchange for cryptocurrencies, launched itself on Wall Street with a floatation that put its market value at $85 billion, compared to its valuation of $8 billion in 2018, exceeding that of some of the world’s major banks and the valuation of the NASDAQ exchange on which it was launched.

However, in recent days, even the level of bitcoin speculation has been put in the shade by another cryptocurrency, Dogecoin.

It was created in 2013 as a joke. Whereas the promoters of Bitcoin insist that it has some intrinsic value because it may be used to organise financial transactions without the intervention of a bank or some other third party via a blockchain ledger system, no such claims are made for Dogecoin.

Despite being worthless, Dogecoin has risen in price 11,000 percent this year alone. This week its market value reached $87 billion compared to $315 million a year ago. And as one cryptocurrency enjoys a rapid rise, speculators start a search for the next “big thing.”

The Dogecoin phenomenon is not an isolated event. It seems to be an expression of what could be described as a new operating principle in the world of speculation—the more worthless the so-called asset, the higher its price.

A little sandwich shop in Paulsboro, New Jersey, with sales of just $13,976, has made financial news after it was revealed that its parent company, Hometown International, achieved a market valuation of $100 million last month. Two of its biggest shareholders are Duke and Vanderbilt universities.

The rise of Dogecoin also reveals the high-level intervention of hedge funds and other financial institutions seeking to take advantage of its price momentum.

Then there is the case of non-fungible tokens (NFTs). These are images of pieces of art, a sports photo, or even a tweet—the first ever tweet issued by Twitter founder Jack Dorsey was sold as an NFT for $2.9 million—that are stored on a blockchain ledger. They are like a collector’s item but are not stored physically but digitally.

The class dynamics of this speculative orgy, fuelled by the endless supply of virtually free money by the Fed, are revealed in the escalation of the wealth of the world’s billionaires.

In the last year, as COVID-19 brought untold pain, suffering and economic distress for billions of the world’s people, the combined wealth of the global billionaires rose by 60 percent, from $8 trillion to $13.1 trillion. The number of billionaires rose by 660 to 2,775—the highest rate of increase and the largest number ever.

In the US, Amazon CEO Jeff Bezos and Tesla CEO Elon Musk have wealth of $177 billion and $151 billion respectively.

The speculative frenzy has extended into the broader economy. The prices of major industrial commodities, such as steel, lumber, copper, and soybeans, which feed into inflation for workers and consumers, are rapidly rising.

But the financial authorities, having created this frenzy by the endless outflow of cheap money since the crash of 2008 and the near collapse of March 2020, are caught in a trap of their own making. They fear that any move to try to bring it under control, with even a slight tightening of the financial spigots, will set off a financial crisis.

The extreme nervousness over such an outcome was revealed earlier this week when US Treasury Secretary Janet Yellen, a former Fed chief, raised the prospect that the central bank may have to tighten interest rates at some point. Almost immediately, fearing market reaction, she walked back the comment saying she was neither advocating nor predicting a rise in rates.

The incident has cast a revealing light on one of the most significant developments in the US—the open advocacy of unionisation of the workforce by the Biden administration.

Last month in an executive order, Biden created a “White House Task Force on Worker Organizing and Empowerment” which includes as members Yellen, Defense Secretary Lloyd Austin and Homeland Security Secretary Alejandro Mayorkas. The “empowerment” of government-sponsored unions takes place under the direction of cabinet officials responsible for military operations, economic policy and domestic repression.

The administration is fearful that the pent-up anger in the working class over the pandemic and the enrichment of the financial oligarchy at the expense of hundreds of thousands of lives, will be further fuelled by the escalation of inflation, leading to an uncontrolled eruption of the class struggle that will come into headlong conflict with the institutions of the capitalist state.

In times past, the Fed would have moved to contain such an upsurge by lifting interest rates and inducing a recession. But that road is now fraught with danger because even a relatively small increase threatens to bring down the speculative financial house of cards.

Hence the Biden administration has moved to set up a state-sponsored industrial police force, based on the trade unions, to carry out an organised suppression of the working class in the interests of finance capital.

The rampant speculation of the past year and the accelerated siphoning of wealth to the upper levels of society amid death and economic devastation must be the occasion for the drawing up by the working class of a balance sheet of the experiences through which it has passed.

There is no prospect for reform of the present capitalist socio-economic order towards meeting social need—the illusion peddled by the Democrats and their ardent supporters in the pseudo-left organisations. The past year has demonstrated that everything in society—including the very right to life itself—is subordinated to the insatiable demands of finance capital.

The present speculative bubble, like all others before it, is destined to burst. The financial oligarchs have already prepared their exit plans and golden parachutes as they have done in the past. The working class, however, has no escape. The collapse will bring an even greater economic disaster on top of what has already taken place.

The only viable, realistic solution to the terminal disease that has gripped the capitalist socio-economic order is the fight for a socialist program to wrest the commanding heights of the economy and its financial system out of the hands of the present-day ruling class and begin the economic reconstruction of society to meet social needs.

#### 2. Tech management

**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.

#### 4. Warming

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

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

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

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

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

#### 1. Ag collapse---it’s short-term

Allinson et al ‘21 [Jamie Allinson is Senior Lecturer in Politics and International Relations at Edinburgh University and author of The Age of Counter-revolution. China Miéville is the author of a number of highly acclaimed and prize-winning novels including October: The History of the Russian Revolution. Richard Seymour is the author of numerous works of non-fiction, His writing appears in the New York Times, London Review of Books, Guardian, Prospect, Jacobin. Rosie Warren is an Editor at Verso and the Editor-in-Chief of Salvage. All are writing for the Salvage Collective. “The Tragedy of the Worker: Toward the Proletarocene.” Chapter 1: M-C-M’ and the Death Cult. July 2021. Verso EBook. ISBN: 9781839762963 //shree]

The Triassic-Permian ‘great dying’ was a megaphase change taking place through pulses lasting for tens of thousands of years, separated by interludes of hundreds of thousands of years, if not millions. The current mass extinction event is a megaphase change taking place in microphase time.

Mass extinction is punctuated by the production of what the environmentalist Jonathan Lymbery calls ‘dead zones’: the conversion of wild ecosystems into dead monocultures. In Sumatra, these dead zones are made by burning rainforest and, amid the stench of death, planting palm crop. The palm oil is used in foods and household items, while the nut is used in animal feed. It is secured with barbed wire, and treated with poison, to prevent the crop from being eaten. Surviving animal life, and surrounding human communities, are pushed to the edges, to the brink of extinction. Agricultural workers are abused, underpaid, even enslaved. This is an example of what Moore would call ‘cheap food’, where the ‘value composition’ of the goods, the amount of waged labour necessary to produce each item is ‘below the systemwide average for all commodities’. In this case, a ‘cheap nature’ is produced by a distinctly capitalist form of territorialisation, wherein forestry is converted through deforestation into palm monoculture, while ‘cheap labour’ is secured partly through the dispossession of neighbouring human communities. More calories with less socially-necessary labour-time is cheap food.

Cheap is not, of course, the same thing as efficient. Food production is, alongside fuel, a fulcrum of the capitalist organisation of work-energetics. It is one that, as with fossil fuels, wastes an incredible amount of the energy it extracts. According to the FAO (Food and Agriculture Organization of the United Nations), 30 per cent of cereals grown for human and animal consumption are wasted, along with almost half of all root crops, fruits and vegetables. To conclude from this grotesque squander that a ‘more efficient’ capitalism would ‘solve the problem’ of ‘the environment’ would be to fail to understand waste, capitalism and ecology: that the first is intrinsic to the second; that the second, whatever the degree to which it is inflected by the first, is inimical to the third.

Capitalism also directly undermines its own productivity, precisely through its industrially-produced biospheric destruction. According to the UN, for example, there are at most sixty harvests remaining before the world’s soils are too exhausted to feed the planet. This edaphic impoverishment is a product, not a byproduct. It is the predictable, and long-predicted, consequence of intensive agriculture, over-grazing and the destruction of natural features (such as trees) that prevent erosion. Likewise, the death-drop of insect biomass, the decline of pollinating bees, are hastened by the extensive use of pesticides and fertilisers. Capitalist food production can only evade the problem – a problem, in its terms, of accumulation – either by establishing new ‘cheap natures’ through such means as deforestation, or by extracting rent from competitor producers through such means as intellectual property rights. For instance, since 1994’s notorious TRIPS agreement (Trade-Related Aspects of Intellectual Property Rights), through the rules of UPOV (Union for the Protection of New Plant Varieties), particularly the notorious UPOV 1991, and in the face of local fightbacks from Guatemala to Ghana, the World Trade Organisation has enforced property agreements outlawing the saving of seeds from one season to the next, thus sharply raising costs for farmers producing 70 per cent of the global food supply.

#### 2. Carbon bubble and peak oil

Rifkin ‘19 [Jeremy, Honorary Doctorate in Economics at Hasselt University. Recipient of the 13th annual German Sustainability Award in December 2020. BS in Economics at UPenn – Wharton School. Founder of People’s Bicentennial Commission. The Green New Deal: Why the Fossil Fuel Civilization Will Collapse By 2028, and the Bold Economic Plan to Save Life on Earth. St Martin’s Press. P7-8. Google Book. //shree]

The Carbon Tracker Initiative, a London-based think tank serving the energy industry, reports that the steep decline in the price of generating solar and wind energy “will inevitably lead to trillions of dollars of stranded assets across the corporate sector and hit petro-states that fail to reinvent themselves,” while “putting trillions at risk for unsavvy investors oblivious to the speed of the unfolding energy transition.”19 “Stranded assets” are all the fossil fuels that will remain in the ground because of falling demand as well as the abandonment of pipelines, ocean platforms, storage facilities, energy generation plants, backup power plants, petrochemical processing facilities, and industries tightly coupled to the fossil fuel culture.

Behind the scenes, a seismic struggle is taking place as four of the principal sectors responsible for global warming—the Information and Communications Technology (ICT)/telecommunications sector, the power and electric utility sector, the mobility and logistics sector, and the buildings sector—are beginning to decouple from the fossil fuel industry in favor of adopting the cheaper new green energies. The result is that within the fossil fuel industry, “around $100 trillion of assets could be ‘carbon stranded.’”20

The carbon bubble is the largest economic bubble in history. And studies and reports over the past twenty-four months—from within the global financial community, the insurance sector, global trade organizations, national governments, and many of the leading consulting agencies in the energy industry, the transportation sector, and the real estate sector—suggest that the imminent collapse of the fossil fuel industrial civilization could occur sometime between 2023 and 2030, as key sectors decouple from fossil fuels and rely on ever-cheaper solar, wind, and other renewable energies and accompanying zero-carbon technologies.21 The United States, currently the leading oil-producing nation, will be caught in the crosshairs between the plummeting price of solar and wind and the fallout from peak oil demand and accumulating stranded assets in the oil industry.22

#### 3. Resources---they’re finite and no substitutes

Jackson and Webster, 16—Professor of Sustainable Development and director of the Centre for the Understanding of Sustainable Prosperity at the University of Surrey AND former policy analyst at Carbon Brief, masters from University College London in conservation and a degree in biology (Tim and Robin, “LIMITS REVISITED,” <http://limits2growth.org.uk/wp-content/uploads/2016/04/Jackson-and-Webster-2016-Limits-Revisited.pdf>)

What does this all mean for the future of our economy? In the standard run scenario, natural resources (for example oil, iron and chromium) become harder and harder to obtain. The diversion of more and more capital to extracting them leaves less for investment in industry, leading to industrial decline starting in about 2015. Around 2030, the world population peaks and begins to decrease as the death rate is driven upwards by lack of food and health services.21

The similarity between Limits to Growth’s standard run and the patterns observed over the last forty years doesn’t necessarily mean that the same trends will continue into the future. Some researchers argue that it’s possible, however. Author of the University of Melbourne studies, Dr Graham Turner, asked in 2014 whether global collapse could be “imminent”. Turner explicitly linked the global financial crisis, high commodity prices and the Limits to Growth projections.22

Another set of studies has modelled the availability of over 40 essential materials using an updated and expanded version of the Limits to Growth model. Based on US Geological Survey data, the authors analysed changing patterns of resource extraction. Using earlier work, which suggests there is a time delay of about 40 years between ‘peak discovery’ and ‘peak production’ across a wide range of different minerals, the authors aim to forecast when ‘peak production’ might arrive.

The work, led by Harald Sverdrup from the University of Lund in Sweden and Vala Ragnarsdottír from the University of Iceland, concluded that most of the resources they studied had either already reached peak production or will do so within the next 50 years.23 Phosphorous - which is critical to fertilising soil and sustaining agriculture - has already peaked, and will start declining around 2030- 2040, they said. Coal production will peak in around 2015-20 and ‘peak energy’ around the same period. From that point on, they concluded, “we will no longer be able to take natural-resource fuelled global GDP growth for granted’.24

A book published by the Club of Rome in 2014 also examined the future availability of a wide variety of mined resources, including chromium, copper, tin, lithium, coal oil and gas. The book included specialist contributions from experts across a wide range of fields. It concluded that the rate of production of many mineral commodities is already on the verge of decline.25

These analyses are understandably controversial. In a technologically optimistic world, it is often assumed that enough food, water energy and minerals will be available for the foreseeable future, with the only problems being those of distribution.26 Neo-classical economists also argue that when one resource runs out it can be substituted for another. But this is also controversial. In the case of some key elements (phosphorus is an example), there are no known substitutes.27

#### 4. Boom and bust

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

When Things Fall Apart

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 3. Their ev concedes that it’s a pipe dream

Shi-Ling 2AC Hsu 21, D'Alemberte Professor of Law at the Florida State University College of Law, Sept 2021, Capitalism and the Environment, Cambridge University Press, p. 50-52

2.8 CHOOSING CAPITALISM TO SAVE THE ENVIRONMENT: LARGE-SCALE DEPLOYMENT Finally, a third reason that capitalism is suited to the job of environmental restoration and protection is its ability to undertake and complete projects at very large scales. In keeping with a major thesis of this book, construction at very large scales should give us a little pause, because of the propensity of capital to metastasize into a source of political resistance to change. But some global problems, especially climate change, may require very large-scale enterprises. For example, because greenhouse gas emissions may already have passed a threshold for catastrophic climate change, technology is almost certainly needed to chemically capture carbon dioxide from ambient air. But carbon dioxide is only about 0.15% of ambient air by molecular weight, and a tremendous amount of ambient air must be processed just to capture a small amount of carbon dioxide. This technology has often been referred to as "direct air capture," or "carbon removal." Given that inherent limitation, direct air capture technology must be deployed at vast scales in order to make any appreciable difference in greenhouse gas concentrations. There is certainly no guarantee that direct air capture will be a silver bullet. But if it is to be an effectual item on a menu of survival techniques, it will more assuredly be accomplished under the incentives of a capitalist economy. Capitalism might also help with the looming crisis of climate change by helping to ensure the supply of vital life staples such as food, water, and other basic needs in future shortages caused by climate-change. In a climate-changed future, there is the distinct possibility that supplies of vital life staples may run short, possibly for long periods of time. Droughts are projected to last longer, with water supplies and growing conditions increasingly precarious. Capitalist enterprise could, first of all, provide the impetus to finally reform a dizzying multitude of price distortions that plague water supply and agriculture worldwide. Second, capitalist enterprise can undertake scale production of some emergent technologies that might alleviate shortages. Desalination technology can convert salty seawater into drinkable freshwater.54 A number of environmental and economic issues need to be solved to deploy these technologies at large scales, but in a crisis, solutions will be more likely to present themselves. A technology that is already being adopted to produce food is the modernized version of old-fashioned greenhouses. The tiny country of the Netherlands, with its 17 million people crowded onto 13,000 square miles, is the second largest food exporter in the world,55 exporting fully three-quarters that of the United States in 2017.56 The secret to Dutch agriculture is its climate-controlled, low-energy green-houses that project solar panel-powered artificial sunlight around the clock. Dutch greenhouses produce lettuce at ten times the yield57 and tomatoes at fifteen times the yield outdoors in the United States58 while using less than one-thirteenth the amount of water,59 very little in the way of synthetic pesticides and, of course, very little fertilizer given its advanced composting techniques. Sustained shortages in a climate-changed future might require that a capitalist take hold of greenhouse growing and expand production to feed the masses that might otherwise revolt. 2.9 CHOOSE CAPITALISM Clearly, the job in front of humankind is enormous, complex, and many-faceted. The best hope is to be able to identify certain human impacts that are clearly harmful to the global environment, and to disincentivize them. Getting back to notions of institutions in capitalism, what is crucial is aligning the right incentives with profit-making activity. What capitalism does so well — beyond human comprehension — is coordinate activity and send broad signals about scarcity. Information about a wide variety of environmental phenomena is extremely difficult to collect and process. If a set of environmental taxes can help establish a network of environ-mental prices, then an unfathomably large and complex machinery will have been set in motion in the right direction. Also, because of the need for new scientific solutions to this daunting list of problems, new science and technology is desperately needed. Capitalism is tried and true in terms of producing innovation. Again drawing upon the study of institutions, it is not so much that individuals need a profit-motive in order to tinker, but the prospect of profit-making has to be present in order for institutions, including corporations, to devote resources, attention, and energy towards the development of solutions to environmental problems. Corporations can and should demonstrate social responsibility by attempting to mitigate their impacts on the global environment, but a much more conscious push for new knowledge, new techniques, and new solutions are needed. Finally, the scale of needed change is profound. Huge networks of infrastructure centered upon a fossil fuel-centered economy must somehow be replaced or adapted to new ways of generating, transmitting, consuming, and storing energy. A global system of feeding seven billion humans (and counting), unsustainable on its face, must be morphed into something else that can fill that huge role. About a billion and a half cars and trucks in the world must, over time, be swapped out for vehicles that must be dramatically different. This is a daunting to-do list, but look a bit more carefully among the gloomy news. Elon Musk, a freewheeling, pot-smoking entrepreneur shows signs of breaking into not one, but two industries dominated by behemoths with political power. Thanks to California emissions standards, automobile manufacturers have developed cars that emit a fraction of what they did less than a generation ago. Hybrid electric vehicles have thoroughly penetrated an American market that powerful American politicians had tried to cordon off for American manufacturers only. At least two companies have developed meat substitutes that are now widely judged to be indistinguishable from meat, and have established product outposts in the ancient power centers of fast food, McDonald's and Burger King. The tiny country of the Netherlands, about half the size of West Virginia, exports almost as much food as the United States, able to ship fresh produce all the way to Africa. At bottom, all of these accomplishments and thousands more are and were capitalist in nature. While they collectively repre-sent a trifle of what still needs to be accomplished, they were also undertaken without the correct incentives in place, and thus also represent the tremendous promise of capitalism.

**Solves adv 1---“food commons” model solves AND profit motive can’t---radical reimagination of the food system is key**

ANDREW **Smolski 17**. Writer based in Texas. His work regularly appears in CounterPunch, March. “Capital’s Hunger in Abundance.” https://jacobinmag.com/2017/03/food-production-hunger-waste-agriculture-commodity-capitalism

The United Nations Food and Agriculture Organization estimates that global food production is more than adequate to feed the world. For instance, 2,577 million tons of cereal were forecasted to be produced in 2016, with 13 million tons leftover after demand is met.

Worldwide we already produce over two thousand kilocalories (kcal) per person on average, the minimum level of energy humans require according to USDA dietary guidelines. Still, with all this production, 780 million people are living with chronic hunger, many of them living in rural areas dependent upon agriculture for their livelihoods.

The United Nations states that this horrific paradox is in part the result of “food wastage.” Estimates are that around one-third of food is lost or wasted, and food waste researchers consider this an underestimate of the problem. Hypothetically, if that waste were eliminated, that would add another eighty-five million tons of cereal.

The problem is pervasive. As Lisa Johnson, a horticulturalist at North Carolina State University focusing on food waste, points out, “[food waste] happens the entire way [along the supply chain] . . . as soon as the food is generated,” there is waste. At restaurants, in the fields, with distributors, at grocery stores, and at home, waste is massive. The FAO argues that “even if just one-fourth of the food currently lost or wasted globally could be saved, it would be enough to feed 870 million hungry people in the world.”

The FAO doesn’t offer a social explanation for why food waste occurs. Instead, it looks for technological fixes and market-based solutions. At bottom, that means seeking out how to best measure the problem of waste, finding better harvesting techniques, increase incentives and reduce risk to grow fruits and vegetables, more advanced packaging and better transport to prevent spoiling, and a public education campaign that gets consumers to understand that even if a tomato doesn’t look aesthetically pleasing, it can still be edible.

These solutions leave intact the profit motive undergirding our food system and the obviously oligopolistic concentration of power over commodity chains, making everyone dependent on unelected corporations for their sustenance. It addresses food waste from the standpoint of economic efficiency, but never the standpoint of equality.

Technology can resolve a lot of issues faced by agriculture, but it doesn’t address why producers would decide to leave food in the field rather than bring it to market, or why distributors would rather throw out food than deliver it to those in need. Both are absurd acts if your goal is to feed people. But that is not the goal of capitalist food production. Capitalist production is animated by an insatiable drive to profit and accumulate.

The UN and the FAO ignore the fact that our food system maintains a structural contradiction. Capitalist incentives lead to overproduction of food that is never delivered, and no one is under any obligation to utilize such a surplus and abundance for eradicating hunger. Once we understand this contradiction, we can see the capitalist food system as one of an absurd abundance.

Food, a Ridiculous Commodity

Let’s begin, as Marx did, with a commodity. A commodity is produced for its exchange value — its price. A capitalist uses money to make a commodity to sell to get more money. From this simple chain, numerous economic reasons arise for farmers to not harvest everything grown.

Food that isn’t commodified has no value for a capitalist, despite its biological value to a hungry person. The specific use value of food for that person is of no consequence. The farmer who has no use for such food, of course, is not being malicious — just responding to competitive market pressures.

Johnson, the horticulturalist, reports that as price fluctuates over the course of the growing season, farmers pick less crops. At the beginning of the season, the price for fruits and vegetables is higher than at the end. So as the season progresses, more and more produce is left in the field. Farmers recognize the effect of price — they are economic optimizers in a capitalist market. They leave more and more produce out of the supply chain in an effort to inflate the food’s price. Farmers are controlling supply to affect the price, regardless of the demand.

In his book Concentration and Power in the Food System: Who Controls What We Eat?, Philip H. Howard explains it succinctly: “Demand for agricultural products is inelastic, and producing more has the effect of reducing prices.”

Further, because it has such a low exchange value at the point of production, farmers will leave unmarketable food in the field. Lisa describes how “in the buying and selling of fruits and vegetables, often it’s cosmetics that is important; size, shape, the color, all that.” The consumer plays a role in what is a commodified piece of fruit and what gets tossed in the trash, which then leads distributors to standardize the fruits and vegetables they buy, incentivizing the farmer further to leave certain products in the field.

Farmers aren’t going to want to send a truck of vegetables, a transportation cost, to a distributor that will return them if they aren’t up to their aesthetic standards. It isn’t about whether a tomato or a sweet potato is edible, but whether it can be sold at a price that makes a profit.

Beyond the producers and consumers is a further layer of government policy that increases perverse incentives in the food system. All food researchers I have spoken with elaborated on how current market incentives lead to increased production of “junk” food inputs, like corn for high fructose corn syrup, at the expense of more nutritious crops.

Of all crops grown, only 2 percent are fruits and vegetables. Johnson describes a startling reality: “If we all went and bought fruits and vegetables today, there wouldn’t be enough for everybody.”

This is due in part because crop insurance and other subsidies are nonexistent for growers of fruits and vegetables. As Marion Nestle points out in Food Politics: How the Food Industry Influences Nutrition and Health, “from a nutritional standpoint, higher sugar prices might be a disincentive to consuming soft drinks, desserts, and candy, but from a financial standpoint, the policy is highly desirable.” In the 1990s, just one sugarcane operation representing one-third of Florida’s sugarcane production was receiving $60 million in subsidies, while a comparable fruits and vegetables operation would get almost nothing, a trend that continues through the present.

The absurdity really becomes apparent when we understand, as Barnard described, that “we produce 3,700 calories of food per person per day in this country and we can’t eat all of that.” And while we produce that much, much of it is junk food that is unhealthy, with “USDA stats showing around 50 percent of the food we are throwing out in this country being either added fats or added sugars.” Overproduction is the norm of the system, because capitalists would rather eat some added cost by producing too much than miss a sale.

So, all in all, we aren’t feeding the hungry, we aren’t growing nutritious food, but we are increasing the value added, thus making food a good commodity. Barnard correctly surmises that “there is just a contradiction between a growth-based model and a product that you can only consume in a finite time.”

MARKED

Thus, the argument that capitalist markets are efficient only works if by “efficient” we mean one thing: making profit in highly oligarchic markets.

And so food is treated as a commodity, and the moment it no longer has exchange value becomes waste. At that moment, as it loses all exchange value, it becomes what Barnard calls an ex-commodity.

An Ex-Commodity

Barnard clarifies when the capitalist food system considers food a commodity or not; all food that isn’t sold is waste. Not because it is inedible, but because it wasn’t exchanged in a market. He says this makes edible food in a dumpster an ex-commodity.

A commodity is just a matter of social relationships. Food can be for exchange or for use. This means, of course, food can be something other than a commodity; it can have a goal other than producing profit. If our goal was to feed people as opposed to profit, what would that entail? At bottom, it would mean changing food from a commodity into a right.

Certain movements have arisen to deal with food waste and to work towards the ideal of food as a right. Some of these, like gleaning, address the matter through what Jacob Rutz, an agroecologist at North Carolina State University focusing on food security, explains as individual self-fulfillment. While recouping food as ex-commodities, the act is focused on voluntary events with no criticism or discussion of why food is left in the field. Further, it makes invisible all of the labor that passed through the fields, turning their backbreaking work into a charitable activity.

For Rutz, gleaning misinterprets the personal as political, which he argues is really that “all actions have these political repercussions” outside of the individual “in the social structure.” To clarify his point, he offered a distinction between two types of mobilizing around food waste. The difference was between a Christian group that was collecting food to be thrown out by grocery stores and sharing it with students and the homeless, and a much more radical idea of “sharing, and intentional Christian communities, which were basically communist” — for example, the Community of the Franciscan Way’s farm house in North Carolina. In these intentional communities, food is actually grown and self-reliance enables the community to reproduce itself.

Following in this more radical direction has also been freeganism and Food Not Bombs, direct action strategies concerned with anticapitalist food justice. Freeganism involves the act of reclaiming edible food waste as an act of political critique, demonstrating how capitalist value does not equate to social or biological value. Reclaimed as an ex-commodity, food can return to its use value of satisfying people’s hunger.

For Barnard’s activism and research, he participated in activist tours teaching people where to dumpster dive, to understand the scale of food “ex-commodities,” and to stand appalled at the grotesque contradiction. Freeganism produced a peripheral economy that largely eschewed exchanging money but subsidized itself on the excess of an overly productive capitalist system.

Food Not Bombs works similarly, as a visual example of mutual aid demonstrating alternatives. It is a transnational, decentralized organization where people get together and share vegan food with homeless and non-homeless alike. Sometimes this is reclaimed food, other times it is food people have purchased and prepared to share, and even food they’ve grown themselves. The purpose is to engage in mutual aid and address the priorities of a society that builds bombs and not shelter, that maims but does not feed.

All around the world, from Tijuana to Manila to Houston, these chapters operate. At times they fight ordinances criminalizing survival, such as banning direct distribution of food to the homeless, and other times they play a role in protest and organizing. Currently, co-founder Keith McHenry is building an educational farm to continue this work and connect more directly with constructing alternative forms of production.

All of these actions are meaningful, and maintain a bulwark against an absurd system. But while these models provide spaces for mutual aid and demonstrating the fundamental absurdity of the system, they do not create long-term alternatives for producing food as a right as opposed to a commodity. This would require a radical reimagining of the food system.

Currently, the food sovereignty movement, led by La Via Campesina and other organizations, propose to integrate the ideas of mutual aid and autonomy in the development of alternative modes of production able to supplant the current capitalist food system. In their Declaration of Nyeleni, they describe the universal right to food: “All peoples, nations and states are able to determine their own food producing systems and policies that provide every one of us with good quality, adequate, affordable, healthy, and culturally appropriate food.” At bottom, this entails people taking back ownership over food systems, actually managing farms themselves or communally, for the betterment of all.

Actions like Food Not Bombs and freeganism carry forward the kernel of this idea, the establishment of a food commons, but have yet to propose large-scale alternatives able to supplant the current, massive capitalist food system (though activists involved in those struggles will be key to any future construction of sustainable, just alternatives).

#### 1. History

Walt 20. [Stephen, Robert and Renée Belfer professor of international relations at Harvard University and a columnist for Foreign Policy. Will a Global Depression Trigger Another World War?. Foreign Policy. 5-13-2020. https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/]

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”

Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

#### 2. Alt solves

Kallis et al 18 [Giorgos. ICTA, Autonomous University of Barcelona. Vasilis Kostakis. ICREA. Steffen Lange. Ragnar Nurkse School of Innovation and Governance and Berkman Klein Center for Internet & Society, Harvard University. Barbara Muraca. Institute for Ecological Economy Research. Susan Paulson. College of Liberal Arts, Oregon State University. Matthias Schmelzer. Center for Latin American Studies. Research On Degrowth. Annual Review of Environment and Resources. 2018. 43. 298-299]

Although literature explicitly addressing degrowth economics is young (65), economists have long raised similar questions. Classical economists considered the concept of a stationary state, where economic growth eventually and unintentionally ends, be it due to limits to the division of labor (Smith) or a confined supply of land (Ricardo). Whereas Smith and Ricardo painted a dark picture of the stationary state in contexts with high levels of economic inequality, Mill argued that distributional policies could lead to a high degree of social welfare (66). Economists may share politicians’ obsession with growth, but there is nothing in neoclassical models to suggest that zero or negative growth is incompatible with full employment or economic stability. In recent years, several authors have investigated no-growth economies in the context of established macroeconomic theories. From a neoclassical supply-side perspective, Irmen (67) shows that market economies do not always generate growth, nor do they need growth to function. Lange (68) tests several models and shows that the major condition for stable degrowth is a decline in the supply of production factors—labor and/or natural resources—and a reduction of working hours (51). Heikkinen (69) and Bilancini & D’Alessandro (70) develop neoclassical models in which decreases in labor supply lead to stable degrowth with increasing social welfare, as consumption losses are overcompensated by more free time, allowing enjoyment of nonmaterial relational goods. In Keynesian models, the primary condition for an end of growth is constant aggregate demand. Fontana & Sawyer (71) emphasize the role of investments: If firms invest less, wage income stabilizes and growth is low. Exploring conditions for a stable steady-state, Lange (68) examines the economic circle the other way around: The central condition for zero growth is nonincreasing demand by households and government, which leads to low levels of investment by firms. In this model, nongrowing economies have zero net investments and savings and a constant sum of consumption and government spending. Lack of growth does not mean lack of change. Zero change in net investments may entail increased investments in one sector (e.g., renewable energies), compensated by disinvestment in another (e.g., coal). Fontana & Sawyer (71) show that with government deficit, private savings can still be positive. High levels of employment can be achieved in nongrowing economies by reducing average working hours, shifting employment toward labor intensive sectors, and/or redirecting technological change to increase resource rather than labor productivity (68).

#### 1. Resources

Wills et al 20 [Wills. Professor of History, Brooklyn College, CUNY. Joseph Entin, Professor of American Studies, Brooklyn College, CUNY. Richard Ohmann, Professor Emeritus of English, Wesleyan University. “’Resist, Rethink, and Restructure’: Teaching About Capitalism, War, and Empire in a Time of COVID-19.” *Radical Teacher* (117): 5-6. DOI: 10.5195/rt.2020.792]

Moreover, endless spending on war has had dire consequences for those living within the United States and its territories. With monopoly capitalists, systems integrators, and military-intelligence contractors exercising undue influence over both federal and state spending, the United States has created international chaos and a “Homeland Security Bubble” on the verge of collapse. With the Bush administration gutting the Federal Emergency Management Agency (FEMA) and increasing its military-surveillance-prison budget year-after-year, the world has watched in horror as the United States fails to protect people within its own borders, beginning with Hurricane Katrina and thereafter showing its inability to meet the challenges of the next in a series of climate disasters. As the ongoing deregulation of the financial services sector continued during the first decade of the 21st century, George W. Bush also called upon Americans to mortgage their futures on consumption as a patriotic duty. When combined with risky financial instruments, and billion-dollar markets opened up for small- and medium-sized “Homeland Security” providers in North America, Internet and other forms of consumption also created the context for a real-estate bubble that collapsed in 2006 and ushered in the Great Recession of 2008. To make U.S. war-making less visible as the Obama administration focused on restoring an economy teetering on the brink of another depression, drone strikes became more common even if spending on the military declined from a then-high of $824 billion in 2008 to $621 in 2016.9

Over the past twenty years, the response to every crisis, at both the federal as well as state and local levels, has consistently centered on funding for war, policing, and surveillance, tax cuts for the ultra-wealthy, and austerity programs that have eviscerated budgets for public health, transportation, education, and other social-essential services. The Trump administration has merely made things much, much worse: “re-branding” the United States from a mythological nation of immigrants who welcome all-comers to a walled society intolerant of anyone other than those who are white, fomenting what Americans have described under right-wing dictatorships as “death squads” (white nationalists, the police, the military, second amendment revisionists, and others) to engage in an all-out war against black and brown people, and advancing a more rabid doctrine of private property rights at the expense of Americans, the undocumented, the global population, and other “barriers” to expansion as the country plunges more deeply into the authoritarian state Trump and his enablers fetish, no matter the cost. The 25 May 2020 public lynching of George Floyd by members of the Minneapolis Police Department is symptomatic of a much longer history, one we desperately need to unpack, not only for those who already understand that this nation needs structural change, but also for those who still refuse to come to terms with the United States’ catastrophic trajectory.

Drawing on his 20-year experience in studying, writing, and teaching about war, Vine provides a thoughtful and comprehensive list of suggestions about how we might more effectively engage people from a variety of backgrounds, respecting those we meet in the classroom where we find them, then gently guiding them through the mythology, misinformation, and mystification of the post-9/11 rationale for militarization, and on to alternative visions of the future. In addition to the many proposals and resources he offers, Vine suggests that we need to show how much wars have cost, and the trade-offs of war spending, including comparisons of military spending versus spending on universal free education and the eradication of student debt. He additionally cautions that we need to focus on the system rather than the soldier, making capitalism, settler-colonialism, Native Americans and indigenous communities, people of color, U.S. territories and overseas colonies and military bases, and the human toll of war and empire visible in ways that expose militarization as neither natural nor inevitable no matter the time period. Employing intersectionality more broadly also allows us to make displacement, racism, sexism, and hypermasculinity more visible, along with the militarization of policing in communities of color and poor neighborhoods, along the U.S.-Mexican border, and within white supremacist militia movements. At the same time, it offers the opportunity to connect these phenomena to dissent and anti-war, civil rights, and other social movements focused on “climate justice, universal health care, labor, racial justice, gender equality, and LGBTQI+ rights.” Doing so will have the added benefit of countering the historical amnesia and clouds of forgetfulness that have infused education in the United States.

Much of this work can be done, Vine suggests, by assigning research projects focused on investigating the long arm of institutions involved in the military-industrial-academic-prison-surveillance complex, and by turning classrooms into “war clinics,” ones that take people out of the classroom to work with various groups, including but not limited to Code Pink, the Costs of War Project, the Institute for Policy Studies, veterans groups, and anti-recruitment/war/military base movements. We would also suggest that readers of Radical Teacher delve into Vine’s latest book—The United States of War: A Global History of America’s Conflicts, from Columbus to the Islamic State (University of California Press, 2020)—along with Daniel Immerwahr’s How to Hide an Empire: A Short History of the United States (Vintage, 2020), both excellent primers about how the United States—along with the global capital markets, multinational corporations, and international organizations it has long dominated—has deepened the integration of an increasingly globalized military-industrial-intelligence complex.

All of this might seem like a heavy lift, but as we know from our own experiences on campus and beyond it, those who embrace capitalism as an article of faith do not necessarily know what it means or implies. Once defined and unpacked, however, capitalism’s profit motive, insatiable appetite for expansion, and internal contradictions make clearer the ways in which inhabitants of the United States, particularly since World War II, have slowly but surely acquiesced to the “privatization and militarization of everything,” to the belief that the nation’s imperial ambitions are for the greater good of humanity, that the benefits and conveniences of surveillance technologies developed for the military (the computer, the Internet, GPS tracking, drones, and so on) outweigh the costs; that is, until they learn about the provenance of the U.S. command economy, examine the numbers, and realize that they can never again unsee the bedeviling trade-offs they have unwittingly sanctioned: warmaking for profit versus healthcare and education; resource extraction versus environmental protections; surveillance versus convenience; and the snare and delusion that technologies can solve our larger political, social, and economic problems versus actually tackling them through structural change. As sociologist Vincent Mosco observed after the dot.com bubble burst at the turn of the 21st century, “Myth is not a gloss on reality; it embodies its own reality. These views are especially difficult for people to swallow as the chorus grows for the view that we are entering a new age, a time so significant that it merits the conclusion that we have entered ‘the end of history.’” But he also asserted that such myths fail “to consider the potential for a profound contradiction between the idea of a liberal democracy and the growing control of the world’s political economy by the concentrated power of its largest businesses.”10 As the rest of the essays in this volume make clear, we may live in the present, but we carry our histories with us; and therefore need to confront those histories, make them more visible, if we hope to change course.

As a complement to Vine’s piece, William J. Astore shares his decades-long experiences as a retired lieutenant colonel, professor of history, academic administrator, author of books on Vietnam and the aerospace industry, and regular contributor to various publications, including TomDispatch.com, CounterPunch, and Truthout. His “Militarism and Education in America” makes another vital pedagogical intervention. Astore emphasizes the need for critical thinking about and resistance to what he describes as the “soft militarism” of American society, including but hardly limited to the commodification of an education “infused with militarism,” and a popular culture of films, literature, and performative acts that celebrate war and spectacular feats of violence. He also unveils many of the other ways in which the military influences education, including the hiring of retired generals and admirals to run universities “even though they have no experience in education,” military fly-overs at football games and other militaristic displays and celebrations, ROTC recruiting at high schools and on college campuses, funding to universities that push them to become “feeders to the military-industrial complex and the wider intelligence community,” pension plans heavily invested in military expansion, and every other act that sells education as a commodity “for private gain rather than a process of learning for the public good.” Among the antidotes he recommends, Astore suggests antiwar comic/graphic books that can reach wider audiences, “impact maps” that show the military suppliers who have entered states in which campus communities live, research into the “revolving door” between senior military officers and major defense contractors, and collaborative projects with organizations such as Veterans for Peace and About Face: Veterans Against the War.

As the rest of the essays in this volume make clear, we may live in the present, but we carry our histories with us; and therefore need to confront those histories, make them more visible, if we hope to change course.

#### 2. Asymmetry

Levy & Thompson 10 (Jack S & William R; Levy is Board of Governors' Professor of Political Science at Rutgers University, former president of the International Studies Association, Affiliate at the Saltzman Institute of War and Peace Studies at Columbia University; Thompson is Distinguished Professor and the Donald A. Rogers Professor of Political Science at Indiana University; 2010; “The Dyadic Interactions of States”; *Causes of War*; pp. 72-75, published by Wiley-Blackwell)

Realist and rationalist critiques Realists, who share the economic nationalism and statist orientation of the old mercantilists, criticize the liberal economic theory of peace on a number of grounds. First of all, they argue (as do some non-realists) that even if it were true that trade has a pacifying effect, the magnitude of the impact of trade on decisions for war and peace is small relative tothat of military and diplomatic considerations (Buzan, 1984 ; Levy, 1989b ). Realists, like mercantilists, argue that states are motivated primarily by power and that economic opportunity costs of war are minor in the context of the long-term struggle for power. Were the Western liberal democracies seriously concerned about the short-term loss of trade when they made decisions to go to war against the hegemonic threats posed by Germany in 1914 and again in 1939? Realists also argue that trade and other forms of economic interdependence can actually increase the level of militarized conflict rather than reduce it (Barbieri, 2002 ). As Rousseau (cited in Hoffmann, 1963 :319) argued, “…interdependence breeds not accommodation and harmony, but suspicion and incompatibility. ”Among other things, interdependence creates increased opportunities for conflict. The greater the interdependence between states, the greater the number of things to argue about. In addition, whereas liberals argue that economic interdependence creates mutual dependence and incentives to avoid war, realists argue that interdependence may also be asymmetrical. Each is dependent on the other, but the degree of dependence is uneven. The less dependent party may be tempted to use economic coercion to exploit the adversary’s vulnerabilities and influence its behavior relating to security as well as economic issues. 32 These can lead to retaliatory actions, conflict spirals, and war. 33

#### 3. 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

## T-Prohibit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 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.

#### 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

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

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

#### 3. Subsets. Prohibiting a subset is a reg, NOT antitrust

Mary Newcomer Williams 3, senior associate at the law firm of Covington & Burling in Washington, D.C., practices in the communications area, representing primarily telecommunications and new media clients in a broad range of matters before federal and state regulatory agencies, Congress and the courts, “Comparative Analysis of Telecommunications Regulations: Pitfalls and Opportunities,” Federal Communications Law Journal, Vol. 56, Iss. 1, , https://www.repository.law.indiana.edu/fclj/vol56/iss1/7

I. INTRODUCTION

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

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

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

## Migrant Labor Adv

#### Won’t go nuclear --- food conflicts are localized and don’t draw in external actors.

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

Violent conflict and political instability cannot be equated easily. The form of conflict relates to how we evaluate political stability. With reference to a particular territory of the state, it seems logical that where violent (ethnic) clashes occur or armed rebels operate, there is local political instability. Yet, usually political instability is interpreted at the country-level, in terms of the central state (e.g. ‘the failed state’). Remote rural conflicts do not necessarily lead to the evaluation that a state is politically unstable, not even civil war if it is contained to a certain region and the conflict is not very active (see also The Polity IV manual, Marshall, Gurr & Jaggers, 2013). The Casamance in Senegal, for example, still hosts a rebellion of the local population, but the conflict simmers and does not lead to an instable evaluation of the country itself5 . When rebels are relatively successful and able to threaten the central government, there is clear political instability, however.

#### The poorest are insulated from global markets.

Paarlberg 8—Professor of political science at Wellesley College [Robert, “It's not the price that causes hunger,” *New York Times*, 22 Apr, <http://www.nytimes.com/2008/04/22/opinion/22iht-edpaarlberg.1.12230340.html>, accessed 12 Nov 2016]

It is certainly a troubling instance of price instability in international commodity markets, leading to social unrest among urban food­buyers. But we must be careful not to equate high crop prices with hunger around the world. Most of the world's hungry people do not use international food markets, and most of those who use these markets are not hungry

International food markets, like international markets for everything else, are used primarily by the prosperous and secure, not the poor and vulnerable. In world corn markets, the biggest importer by far is Japan. Next comes the European Union. Next comes South Korea. Citizens in these countries are not underfed

In the poor countries of Asia, rice is the most important staple, yet most Asian countries import very little rice. As recently as March, India was keeping imported rice out of the country by imposing a 70 percent duty.

Data on the actual incidence of malnutrition reveal that the regions of the world where people are most hungry, in South Asia and Sub­Saharan Africa, are those that depend least on imports from the world market. Hunger is caused in these countries not by high international food prices, but by local conditions, especially rural poverty linked to low productivity in farming.

When international prices are go up, the disposable income of some importdependent urban dwellers is squeezed. But most of the actual hunger takes place in the villages and in the countryside, and it persists even when international prices are low.

#### They’re super slow

Daniel A. Crane 10, Frederick Paul Furth Sr. Professor of Law, Michigan Law, “Optimizing Private Antitrust Enforcement,” 63 Vand. L. Rev. 675

Given all of the above factors, it is implausible that the threat of future private litigation does much to deter anticompetitive behavior. The author's own experience in a private antitrust case is illustrative. By the time the case settled during an appeal, it had been nine years since the lawsuit was filed and fifteen years since the alleged misconduct began. Only a handful of personnel who were with the company during the relevant events were still employed by the firm at the time of settlement. Since the underlying conduct occurred, the company had witnessed multiple generations of senior management come and go. The company's capital structure had changed multiple times, too. First, it was part of a corporate conglomerate, then it was spun off as an independent, publicly traded company, then it was acquired by another conglomerate, and shortly afterwards it was taken private. The managers and shareholders who had reaped the gains from any unlawful conduct-assuming that there was any-had long since moved on.

#### Businesses settle than continue as usual

Eric McCarthy 7, GC & Chief Legal Officer of Womble Bond Dickinson (US) LLP, Allyson Maltas, Matteo Bay and Javier Ruiz-Calzado, “Litigation Culture Versus Enforcement Culture A Comparison of US and EU Plaintiff Recovery Actions in Antitrust Cases,” <https://www.lw.com/upload/pubContent/_pdf/pub1675_1.pdf>

Additionally, the several aspects of US litigation highlighted above are a catalyst to settlement. Even before discovery begins, some defendants, confronted with the promise of invasive and expensive discovery, will choose to settle with plaintiffs in order to spare their employees from intrusive discovery and to save on exorbitant legal fees. Plaintiffs routinely extract large settlements from defendants after gaining access to corporate documents and information that, although not dispositive of any wrongdoing, are damaging or embarrassing enough to justify settlement. Similarly, class actions may contribute to settlement of private damages actions because, if certified, defendants do not want to risk losing at trial and therefore pay treble damages. The same is true for state indirect purchaser actions. Defendants often settle these suits in order to avoid duplicative litigation costs.32 Settlement is also preferable for many defendants in this situation who rightly fear the application of collateral estoppel if they are adjudicated liable in even one state.33

#### Private suits have a ‘toxic cocktail’ of legal effects that only sow uncertainty and chaos

John Briggs 18, Partner in the Law Firm of Axinn, Veltrop & Harkrider, and Co-Chair of the firm’s Antitrust and Competition Group, Managing Partner of the firm's Washington, DC office, and Adjunct Professor of International Competition Law at The George Washington University Law School. Former Chair of the American Bar Association's Section of Antitrust Law, Deq., “Re-Designing the American Antitrust Machine Part I: Treble Damages, Contribution and Claim Reduction,” <http://awa2018.concurrences.com/IMG/pdf/re-designing_the_american_antitrust_machine.pdf>

Other regimes, most notably the Chinese, the United Kingdom and the Europeans (through the European Commission) have spent years3 studying these matters and have tended to come to relatively clear points of view that are not consistent with the American approach, which itself was the product of a very different time when the Sherman Act was a misdemeanor, the maximum fine was $5,000, no funds were budgeted for enforcement of the antitrust laws and public enforcement was toothless in various ways and focusing often in fact on labor unions as unlawful combinations. 4 Since the advent of this century, most of the world’s governments have addressed the matters above and more. In doing so, they have fled from many of the most familiar features of the American antitrust machine. Indeed, when the European Commission was deeply focused on encouraging private actions, many of the papers and speeches expressed a desire to create a viable damages remedy without the “excesses” of the American system5 and without the “toxic cocktail”6 of procedural benefits that flow to the claimants, and perhaps often to an even greater extent, their lawyers. The principal elements of this “toxic cocktail” seem to refer to many features of the American legal system, but especially:

The mandatory award of one-way attorneys’ fees for plaintiffs, but not for prevailing defendants, which is wholly inconsistent with the applicable rule in most all other countries. The wide open, expensive and extraterritorial documentary and deposition discovery available in cases brought in the courts of the United States, but not generally elsewhere; along with the openness of US courts to exercise vast extraterritorial jurisdictional discovery against foreign persons and companies even before any jurisdiction is established.7

The existence of joint and several liability without any right of contribution or meaningful claim reduction.

The fact that federal clearance of transactions or conduct does not preempt or preclude any or all of the individual states, or any individual, from attacking those transactions or conduct that have been approved or cleared at the federal level.

The policy chaos that has ensued in the wake of the Supreme Court’s decision in Illinois Brick, 8 which generated state legislative or judicial repealers such that indirect purchaser actions prohibited under the Sherman Act are nonetheless available under the laws of more than half of the states and are pursued in federal courts alongside the direct purchaser claims by virtue of diversity jurisdiction.9

Whether taken wholly together, in small clusters, or even individually, these uniquely American procedural features of our competition system have a powerful impact on the companies everywhere and also on the economy of the United States. The wealth transfers generated by this system are enormous. One result is that the lawyers have come to have a truly outsized role in the American economy, a role unlike and far grander than the role they play outside the United States. The purpose of this modest paper is to put some focus upon those features of private damage litigation that seem to be an essential component of any rethinking of American antitrust and competition law and policy. This paper will address these issues at a relatively high policy level while bearing in mind the far larger context set forth in these introductory pages.

#### nuclear weapons stabilize the periphery by raising the costs of war – means any war only features low-level escalation

Vrolyk 19 (John Vrolyk is a Master of Public Affairs student at the Woodrow Wilson School at Princeton University and a reserve Marine infantry officer. His previous experience includes a fellowship as a military legislative aide during the 2019 National Defense Authorization Act, deployments to Northern Syria and Australia, and three years advising large companies on mergers and acquisitions. War on the Rocks, 12/18/19. <https://warontherocks.com/2019/12/insurgency-not-war-is-chinas-most-likely-course-of-action/>)tjf

The problem is not that the defense strategy prioritizes interstate strategic competition over terrorism. It correctly identifies China as the overriding strategic challenge for American interests. The problem is that the Pentagon is failing to make the critical distinction between preparing to win in traditional, conventional great-power conflict versus in great power competition. Competing with China might include a great-power war in the Western Pacific — but it’s almost certainly going to consist of fighting proxy wars and insurgencies around the globe where American and Chinese interests clash. High-Intensity Conventional Maneuver War Is Out A great-power conflict today would involve high-intensity combat that would make World War II pale in comparison. Great-power competition, on the other hand, is likely to involve a new era of messy global entanglements, ranging from economic rivalry to intelligence operations to full-on proxy warfare and insurgency campaigns focused on the world’s most critical lines of communication. To borrow the language of my Marine instructors at The Basic School, great-power war is the enemy’s most dangerous course of action, but low-intensity conflict driven by great-power competition is the enemy’s most likely course of action. By single-mindedly preparing for the most dangerous course of action, especially in ways reliant on capabilities the nation simply no longer possesses, the Pentagon is failing to prepare for the wars America’s soldiers and marines are most likely to actually fight. Even if a U.S.-China war did not lead directly to nuclear annihilation, it would be unimaginably destructive. The emergence of new technologies — ubiquitous surveillance, anti-access/area denial systems, hypersonics, and cyber — has dramatically enhanced the destructive power of even conventional warfare. In this environment, conventional weapons are approaching a level of destructiveness that triggers the logic of mutual assured destruction — to say nothing of the possibility of mutual assured economic destruction. Furthermore, in this environment, hypersonic missiles, infrastructure-targeting cyber capabilities, or militarized quantum-based AIs are more likely to be decisive than infantry divisions. This doesn’t mean that the Pentagon should ignore the age-old wisdom — quoted in the defense strategy — that “the surest way to prevent war is to be prepared to win one.” That’s why the United States is making massive investments in these domains, as well as emergent fields. Deterrence based on maintaining supremacy in the decisive forms of combat is existential — and should be prioritized appropriately. At the same time, however, the Pentagon is actively reorienting large-scale conventional forces toward the deterrence mission (see: my summer exercise) — even though their very access to the conflict theater, let alone ability to be sustained once there — is severely curtailed. An incapable or incredible deterrent is worse than ineffective; it actually helps China by consuming precious resources preparing for a type of warfare that neither side has any intention of fighting. Great Power Competition Will Trigger a Renewal of Low-Intensity Conflict Despite the emergence of great-power competition, the United States will never fight a great-power war in the traditional large-scale maneuver force-on-force way. A direct confrontation at the high end triggers the mutual assured destruction constraint. At the lower end, emerging technologies all but preclude the possibility of large conventional forces reaching the conflict theater, let alone achieving mass once there. These dynamics make direct force-on-force war unattractive to both parties. Instead, a period of renewed great-power competition will be characterized by an increased incidence of civil war and insurgency. This pattern has historical antecedents going back to the Greeks. Thucydides described this dynamic in the Peloponnesian War, noting that the Athens-Sparta rivalry triggered civil wars across Greece since “with an alliance always at the command of either faction for the hurt of their adversaries and their own corresponding advantage, opportunities for bringing in the foreigner were never wanting to the revolutionary parties.” The Great Game period of Britain-Russia competition led primarily to proxy wars and intelligence intrigue, with the brief and indecisive exception of the Crimean War. The Cold War is the most recent and relevant example — and led to a period when great-power involvement led to the emergence of insurgency as the primary mode of intrastate war. Great-power competition with China will likely follow this historical pattern, if it hasn’t begun to already. Patrick Cronin and Hunter Stires argue that China is already waging a “maritime insurgency” in the South China Sea. As China increases in relative strength and audacity, it will likely go beyond provocation to support proxies who directly threaten U.S. allies or partners, from the Philippines (aided by the Chinese-supplied 5G network) across all of Asia to the Sahel and sub-Saharan Africa. To frustrate U.S. goals, China might emulate Russia’s behavior in Syria (taking apparent delight in supporting anyone opposed to U.S. interests). While direct Chinese support for terrorists feels unlikely in the near-term, China could sell arms to separatist groups or bad actor regimes. In fact, China has a long history of doing exactly that — including supporting North Korea to keep the Kim regime on life support as a strategic buffer, supporting the genocidal Khmer Rouge to balance Vietnam, and propping up the Burmese military junta. The Pentagon Is Repeating its Post-Vietnam Abandonment of Low-Intensity Conflict If the United States is going to remain a global power, capable of projecting power and protecting its worldwide interests, its military should be capable of fighting and winning this sort of competition. However, as it did after Vietnam, the Pentagon is again developing a deep-seated cultural aversion to counter-insurgency and, by extension, all low-intensity conflict. This aversion has reached a point where two active-duty Army officers recently wrote, “counterinsurgency isn’t dead no matter how much the U.S. military may want it to be.” As a result, today the U.S. Army and Marine Corps are not preparing most soldiers and marines to adapt to low-intensity challenges. Instead, they appear to be prioritizing a troubling paradigm for great-power conflict that involves large-scale, concentrated, conventional operations that ignore the modern world’s ubiquitous surveillance systems, not to mention nuclear weapons, while simultaneously turning their backs on what low-intensity conflict competency we have been able to buy dearly over the past 18 years. Rather than take seriously the National Security Strategy’s guidance that U.S. security interests require “strengthening states where state weaknesses or failure would magnify threats to the American homeland,” the Pentagon appears to want to just duck the problem altogether. The National Defense Strategy conceives of the Pentagon’s role as “prioritiz[ing] requests for U.S. military equipment sales, accelerating foreign partner modernization and ability to integrate with U.S. forces.” By explicitly focusing on “train[ing] to high-end combat missions in our alliance, bilateral, and multinational exercises,” the defense strategy seems to sidestep the threat posed by state weakness or failure. Countries characterized by state weakness or facing the risk of failure almost by definition do not field militaries capable of training to integrate with the United States on high-end combat missions. Investing in the NATO partners and major treaty allies who can fight with us in high-end combat is important — but shouldn’t be confused with working to strengthen weak and at-risk partners. The de-prioritization of stability operations is further reflected in the evolution of the Pentagon’s implementing directive on the topic. The 2009 version of the Directive 3000.05 governing stability operations described stabilization as a “core U.S. military mission that the Department of Defense shall be prepared to conduct with proficiency equivalent to combat operations.” The 2018 update is silent on stabilization’s appropriate priority — if any — except to emphasize the Pentagon’s “supporting” (rather than lead) role. While civilian leadership is essential, this language effectively provides top cover for the military to ignore stabilization. This de-prioritization occurred despite the conclusion of a RAND study, commissioned by the Pentagon to inform the new guidance, that “the U.S. government must retain, recreate, or improve its ability to participate in stabilization.” The services have fallen in line with the department’s implied priorities. RAND reported that, as of 2016, the Army’s premier Joint Readiness Training Center exercises featured “no activities in any of the stability functions.” The Army’s new, dedicated advisory Security Force Assistance Brigades comprise six understrength battalions dedicated to filling an economy-of-force mission for “big Army.” Even their proponents acknowledge their primary purpose is to “free” the Army’s 56 conventional brigade combat teams “to focus on getting back to major combat operations as these tailored brigades partnered with conventional allied forces on everything from casualty care to logistics and basic patrolling.” The Marine Corps — the proud inheritors of a long tradition of excellence in low-intensity conflict, from the Banana Wars to the Combined Action Platoons — has instead in the new Commandant’s Planning Guidance dedicated itself to becoming a force “purpose-built to facilitate sea denial and assured access in support of the fleets” that very explicitly is a “single purpose-built future force” that accepts risk rather than “hedg[ing] or balanc[ing] our investments to account for those [other] contingencies.” Perhaps the essential tasks described above are implied within the commandant’s new guidance. If they are, how the Corps appears to be going about implementing the guidance — large-scale exercises in the desert reminiscent of Desert Storm — suggests the force has thus far failed to properly interpret them. In fact, a group of Marine authors made precisely this point in a recent War on the Rocks article, stating: The Commandant’s Planning Guidance has the potential to radically transform the Marine Corps into a naval expeditionary force that is prepared to operate inside actively-contested maritime spaces in support of fleet operations… Strangely absent from this new guidance, however, is a critical aspect of the Marine Corps – security cooperation and foreign security force advising. Friends now serving as marine instructors have confirmed that the once best-in-class small wars training has been completely excised from the service’s culminating battalion-level integrated training exercise. On the advisory side, the Corps’ counterparts to the Army Security Force Assistance Brigades only constitute two reserve companies — hardly a matched capability for the Corps’ Indo-Pacific mission set. There’s Nothing Impossible about Fighting Insurgencies The United States has before and can again achieve its strategic aims in these types of conflicts. While some counter-insurgency fights may well be unwinnable, the same is equally true of some conventional wars. That doesn’t and shouldn’t stop the U.S. military from preparing for them, especially when its pacing threat is committed to fighting in this way. China has already demonstrated an adept capacity to asymmetrically offset American military strength. If the U.S. military declares a type of war unwinnable and chooses not to train for it, China will continue to take note — and present the United States with exactly these sorts of fights. Despite the trauma of Vietnam, the U.S. historical record in low-intensity conflict belies the Pentagon’s aversion. A 2010 RAND study on 89 historical insurgencies reported that governments are slightly more likely to win than insurgents. In recent U.S. history, the United States has advised, supported, and conducted successful low-intensity campaigns, from the Philippines in the 1950s, to El Salvador in the late 1970s through early 1990s, to Afghanistan in the 1980s, and even the surge in Iraq in the mid-2000s. Organize and Prepare for the Low-Intensity Threat Now as then, however, winning in these messy low-intensity conflicts requires a balanced rather than single-minded strategy. The U.S. military can’t only invest in the high-end capabilities necessary to deter high-intensity great-power conflict. It has to simultaneously prepare its military — in conjunction with civilian agencies — to win on the difficult, complex battlefields characteristic of the low-intensity conflicts, proxy wars, and insurgencies to which they are most likely to deploy. The language we use is part of the problem. Describing the conflicts as high- and low-intensity seemingly implies that low-intensity conflict is a lesser included or “easier” version of high-intensity conflict. This myth is persistent and pernicious — the Counterinsurgency Field Manual notes that Western armies are prone to “falsely believe that armies trained to win large conventional wars are automatically prepared to win small, unconventional ones.” They’re not. On the contrary, the manual notes, capabilities for operational maneuver and massive firepower essential to “conventional success … may be of limited utility or even counterproductive in COIN operations.” Striking the appropriate balance will require the Pentagon to organize, devote resources and train to both distinct mission sets simultaneously. This effort will be an uphill battle because, as the field manual notes, the U.S. military has a strong “institutional inclination to wage conventional war against insurgents.” That said, over the past 18 years, the Army and Marine Corps have learned how to eat soup with a knife in counter-insurgencies. The Counterinsurgency Field Manual and the Small Wars Manual are evidence that experience’s costly lessons can be translated into doctrine. This doctrine can be and has been translated into training, whether for conventional forces in massive purpose-built “cities” in the California desert or for the special forces at Robin Sage at the JFK Special Warfare School. It’s possible for the Pentagon to retain and grow the capability to win these future low-intensity wars — but it takes concerted effort and institutional prioritization. There are real organizational and fiscal hurdles to training simultaneously for both low- and high-intensity conflict. On the organizational side, investments in the low-intensity combat multipliers of training, people, and soft skills do not create natural constituencies on the Hill the way large, expensive weapons systems do. Even more problematically, no service or servicemember wants to be relegated to the less-important fight (the Marine Corps was not thrilled at the Senate’s proposal in the 2019 National Defense Authorization Act to dedicate the force to low-intensity conflict). However, the organizational challenges are solvable. The Close Combat Lethality Task Force is an example of how the Pentagon can re-prioritize force lethality against the political clout of acquisitions-heavy programs. And if I’m right that low-intensity conflicts will be the most common form of actual combat, then the services, with appropriate branching and manning reforms, should have no problem getting their most promising officers to volunteer for dedicated units. The model ought to be Special Operations Command — which continues to attract the best talent despite its disproportional share of casualties and demanding operational tempo. Put simply, in the volunteer military today, the best people would rather deploy to operational missions than train to be a theoretical deterrent — as long as the military manning system can reward and retain them appropriately. Within fiscal constraints, investments entail tradeoffs, and next-generation weapons are not cheap. But paying for hypersonics out of the infantry small-wars training budget is the wrong tradeoff. Next-generation weapon systems should be paid for with budgets redirected from known ineffective (if politically popular) weapons platforms. We can afford to maintain the small but crucial investments in the close combat units which do the vast majority of the fighting and dying in low-intensity combat. It’s beyond both my expertise as a company-grade officer and the scope of this article to offer specific prescriptions for how we should train soldiers and marines to succeed on low-intensity battlefields. However, it may be helpful to offer some illustrations of possible approaches. Perhaps the Marine Corps’ preeminent exercise should evolve from focusing on battalion-level, combined-arms maneuver to emphasizing company- or even squad-sized units operating independently, embedded in partner or allied forces, operating in an environment where shaping loyalties and perception are as important as shaping fires. We might build simulated sprawling cities on San Clemente Island, encompassing both concentrated centers and urban shantytowns, to simulate littoral cities in the Indo-Pacific, and create scenarios in which the city, the sea supply routes, and the air are all contested by both insurgents and counter-insurgents alike. Yet maybe the U.S. military should use this opportunity to be even more bold in rethinking its conception of training more broadly. It could break the paradigm in which training happens on hermetically sealed bases in the continental United States and deployment happens “over there.” Instead of building simulation villages in California and hiring role players, why not fly a close combat platoon — by itself — to the Philippines for a continuously tactical, two-month-long foreign internal defense exercise against simulated China-backed insurgents. While the enemy has to be simulated, nothing else need be. The platoon can partner with the actual allied forces they would support in a crisis, work with, in, and around actual foreign communities that could be threatened by China-backed insurgents, and work through the actual friction of joint operations, language, and culture. It would be difficult, and a break from established practice — but if the military cannot independently distribute squads, platoons, or companies for exercises, how can it credibly claim to employ them in a distributed fashion in combat? The Next War Will Be Low-Intensity – And It’s One the U.S. Can Win Si vis pacem, para bellum. The U.S. National Security Strategy aims at peace, and on America’s terms. The U.S. military should therefore prepare for all the wars threatening that peace. Losing in a great-power high-intensity conflict (the enemy’s most dangerous course of action) is an existential threat for the nation. This is why the Pentagon maintains close to 7,000 nuclear weapons and is investing heavily in next-generation weapons, and is adapting doctrine and technology to credibly counter the pacing threat. These capabilities help deter the existential threats U.S. adversaries present.

## Twombly Adv