# 1NC---Doubles---Harvard

## OFF

### 1NC---T

#### Anticompetitive business practices are actions conducted by businesses

Ivy Wigmore No Date. Content Editor on WhatIs.com, the IT encyclopedia engine behind TechTarget’s large network of technology media websites. “DEFINITION anti-competitive practice.” https://whatis.techtarget.com/definition/anti-competitive-practice

An anti-competitive practice is an action conducted by one or more businesses to make it difficult or impossible for other companies to enter or succeed in their market. The market distortion resulting from anti-competitive practices can result in higher prices, poorer service and a stifling of innovation, among other effects. As such, anti-competitive practices are illegal in most countries and are prohibited under antitrust law in the United States.

#### Prohibitions are any proscribed conduct in antitrust.

Margaret V. Sachs 01. Robert Cotten Alston Professor of Law, University of Georgia School of Law. A.B. 1973, Harvard University; J.D. 1977, Harvard Law School. “Harmonizing Civil and Criminal Enforcement of Federal Regulatory Statutes: The Case of The Securities Exchange Act Of 1934”. https://www.illinoislawreview.org/wp-content/uploads/2001/06/Sachs.pdf

Many federal regulatory statutes are hybrid statutes—their prohibitions1 are enforceable in criminal actions as well as in private or govern- mental civil actions (or both).2 Leading examples include the Sherman Antitrust Act,3 the Clean Water Act,4 the Truth in Lending Act,5 the False Claims Act,6 the Racketeer Influenced Corrupt Organizations Act,7 the Federal Food, Drug and Cosmetic Act,8 and the Securities Exchange Act of 1934.9 Hybrid statutes present an important question that has divided courts but received virtually no attention from legal scholars—can the same prohibition mean different things in different enforcement contexts?10

---FOOTNOTE 1 STARTS---

1. For purposes of this article, the term “prohibition” refers to the part of the statute that identifies proscribed conduct. The plaintiff must prove that the defendant engaged in this conduct in order to establish a prima facie case.

---FOOTNOTE 1 ENDS---

#### Violation---Limiting barriers to antitrust suits doesn’t change if conduct is prohibited.

#### Vote neg on predictable limits and ground---infinite adjudication standards without differences in outcome moot topic disads and create unpredictable process advantages.

### 1NC---Cap K

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Capitalism drives extinction and structural violence.

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

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

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

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

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

#### Vote neg for anti-capitalist commons---collectives should refuse commitments to competitive principle and the straitjacket of what’s “realistic.”

Nick Rose 21. 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, territories and DC Attorney generals should substantially increase its prohibitions on anticompetitive business practices by the private sector that preclude litigants from effectively vindicating their statutory causes of action in antitrust suits.

### 1NC---Delegation CP

#### Text: The United States federal government should delegate antitrust rulemaking authority to a new expert agency. The agency should begin notice-and-comment rulemaking to increase its prohibitions on anticompetitive business practices by the private sector that preclude litigants from effectively vindicating their statutory causes of action in antitrust suits.

#### Solves the case, engages notice and comment

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

A. The Agency Solution

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

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

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

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

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

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

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

CONCLUSION

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

#### Democracy solves war

Christopher Kutz 16. PhD UC Berkeley, JD Yale, Professor, Boalt Hall School of Law @ UC Berkeley, Visiting Professor at Columbia and Stanford law schools, as well as at Sciences Po University. “Introduction: War, Politics, Democracy,” in On War and Democracy, 1.

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

### 1NC---Politics DA

#### Infrastructure will pass but continued “good faith” negotiations over the social spending bill are key

Burgess Everett et. Al 10/27, Burgess Everett is the co-congressional bureau chief for POLITICO, specializing in the Senate since 2013, Heather Caygle is a Congress reporter for POLITICO, Sarah Ferris covers the House for POLITICO’s Congress team, focusing on the Democratic caucus, “Liberal frustration imperils quick Dem social spending deal”, <https://www.politico.com/news/2021/10/27/top-dems-social-spending-deal-manchin-sinema-517332>, October 27th, 2021

Manchin argued that "good faith" negotiations about a forthcoming climate and social spending bill are enough to unstick the Senate’s infrastructure bill. Sinema said she's "doing great, making progress."

“The president has made that very clear: He wants to move forward. And we owe it to the president to move forward, take a vote on the infrastructure bill,” Manchin told reporters on Wednesday morning. “He believes 100 percent of nothing is nothing.”

Where are Democrats in the tax hike fight?

Manchin explained that when a deal is cut, Biden will “go over to the House, and he’ll basically explain to the House: ‘I have a framework, but there's still an awful lot of work to be done,’” Manchin said.

Speaker Nancy Pelosi told House Democrats on Wednesday morning that her party is “in pretty good shape.” Even so, Pelosi continues to face an intense push-pull from liberals — who want to see a full social spending bill before voting on the Senate's bipartisan infrastructure deal — and moderates who want to get the infrastructure vote finally set, as soon as possible.

“It’s lamb eat lamb. There is no bad decision. We have to choose,” Pelosi told her members, according to a source familiar with her remarks. Senate Democrats say it’s highly unlikely bill text will be totally finalized this week, however.

Progressives have also blanched at Sinema’s efforts to avoid raising tax rates and Manchin’s move to cut the bill's top line. Those moves have prompted a deal on a corporate minimum tax and tenuous negotiations on a billionaires tax, as well as potential cuts to plans for Medicare expansion, Medicaid expansion and paid leave. Efforts to lower drug prices through Medicare negotiations are headed toward a more limited approach, Democrats said.

By midday Wednesday, the billionaire tax was out of the mix, according to multiple sources familiar with the talks. Manchin said the tax on billionaire’s assets is “convoluted” and instead pitched a “patriotic” 15 percent tax on wealthy people. He said he did not want to target a certain class of people through the tax code.

His comments complicated negotiations, some Democrats said.

"I continue to be optimistic that on the spending side, there are pathways toward closing the remaining gaps," said Sen. Chris Coons (D-Del.). "But I recognize that Sen. Manchin's just made a comment that made some of the revenue side" more complex.

With the billionaires tax out, Democrats are now taking another look at a surtax on people making more than $5 million a year that the House Ways and Means Committee passed last month.

Manchin also continued to throw cold water on health care proposals, which Sanders said was not negotiable and “must” be in the bill. His colleague, Sen. Raphael Warnock (D-Ga.), said he’d spoken to Manchin and is “encouraged” that Democrats can find a way to cover Georgians and other Americans who live in states that have not expanded Medicaid but would otherwise be eligible.

Democrats are more confident about climate subsidies and universal pre-K making it into in the package, along with an extension of the Child Tax Credit. But it all comes down to where Manchin and Sinema fall — and whether the rest of the party’s thin majorities go along with Biden's dealmaking. Chairmen of the Senate's climate-related committees met again on Wednesday afternoon, according to Democratic sources.

#### The plan trades-off

Peter C. Carstensen 21, Fred W. & Vi Miller Chair in Law Emeritus at the University of Wisconsin Law School, LL.B. from Yale Law School, MA in Economics from Yale University, “The “Ought” and “Is Likely” of Biden Antitrust”, Concurrences – Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities.

15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate!

16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Key to grid modernization AND cybersecurity

David Smith 21, Marketing Director at Grid Forward, VP of Creative Services for Publitek North America, “The Grid in the Infrastructure Package – What’s In, What’s Out, What’s Next,” Grid Forward, 8/19/21, https://gridforward.org/the-grid-in-the-infrastructure-package-whats-in-whats-out-whats-next/

By now you are well aware that the U.S. Senate has passed a mammoth $1.2T bill investing in infrastructure. You may even know that the energy investments were around $100B – a lot of funds no doubt. What you may not have been able to sparse out in the 2700 pages and various steps is exactly what’s in there and what isn’t. Even with funding of this level, there are aspects of the energy grid that made it in the package and some that did not.

What’s In the Bipartisan Package

Resiliency

Right off the top of the energy title are a few sections that invest $11B over the next five years to fund deployments that harden our grid to increasing disturbances and disruptions. In 2020 alone, over 20 $1B+ events occurred impacting our lives and communities deeply, so this is a starting point for proactive investment to address the downside of these events. Additional aspects in the package invest in wildfire mitigation efforts including treatment of forest and new commission for coordinated planning. Sen Wyden of Oregon called for funding of $50B in his Disaster Safe Power Grid Act for wildfire work alone, so while this funding is a great start it is not enough to meet the needs of the grid.

Hydrogen

Much talk in the industry surrounds the concept of longer duration storage and one solution may come in the form of a dramatic expansion of hydrogen capacity. The bipartisan bill places a big bet with research, demos, and regional hubs totaling upwards of $10B in this area. It’s not quite as big as the investments that Europe is making in the area but it would be an unprecedented infusion of funds into this space in No. America.

Nuclear

There has been wide coverage of the inclusion of nuclear support in the infrastructure package. Funds to help the few remaining resources in development in this capital intensive sector are somewhat significant, however, for the future of this industry, even an investment of over $9B for demos and projects (including smaller scale modular) may only make a moderate impact.

Carbon Capture

Another area that got a rather significant boost in this package is carbon capture, sequestration, storage and utilization. Between demos and other funding support this area receives about $12B. Finding effective ways to use and store carbon is certainly going to play a central role in our future, but hopefully, this will not be an uneconomic use of extending assets on our system.

What’s In There but Only Somewhat

Modernization

One of the central aspects of the 2008 ARRA stimulus related to energy was a program that funded grid advancements via the smart grid investment grant projects. One section of the bipartisan bill rekindles this program with $3B in funding. What constitutes a smart, modern grid to help develop necessary grid flexibility has advanced quite a lot in the last 13 years, so this program may be a bit limited in scope but has a good starting place. The needs for the grid to instrument expanded flexibility have also advanced, so while this offers critical investment, significant expansion will be necessary for the near term.

Electric Vehicles

Much has been noted about how the package will transform electrified transportation. Yes, there is $7.5B for charging infrastructure, and yes there is another $2.5B for electrified buses (other portions are for other clean transit). But in the overall scheme of what it will take to transition the transportation system, this is a rather minor commitment.

Is the bipartisan package a major investment in our grid? YES! Is this something that the House should take up and pass as soon as possible? YES!

Bryce Yonker, executive director, Grid Forward

Energy Storage

Any energy insiders know that one of the keys to a smoother transition of our energy system is a dramatic expansion of energy storage. This package indeed includes $3B for second use and recycling demos and another $3B for supply chain materials support. However, by way of accelerating deployments of grid storage, this package actually does quite little. Even in the promising area of longer duration demos it only allocates a minor $150M and another section calls for one demonstration project.

Buildings and Efficiency

The overall level of funding and support for efficiency and buildings was somewhat limited in the package. Sure, there was the nearly $500M for revolving loan fund and building codes, and $500M for efficiency and renewables on schools, $3.5B for weatherization funds, and some funds for states that could go to these areas, but it overall was a rather small level of support. The concept of the first resource being the one you don’t build – Amory Lovins now famous negawatt – needs to remain a central part of the grid we are making.

Transmission

Political talking points play up how much support the package has for building out transmission infrastructure. There is a section that identifies critical transmission corridors, but it does not fund them. There is another section that creates a new authority with the ability to offer loans up to $2.5B to support transmission programs with early commercial interest. But this package does not fund, for example, long high-voltage transmission projects or create significantly streamlined processes for these areas moving ahead. Rolling up sleeves to get into the details on permitting and siting on transmission will remain critical and didn’t seem to substantially move in this package.

Cybersecurity

It really has been shocking under investment in grid cyber hygiene and hardening over recent years from federal resources and that cyber funding has not been part of any major energy legislation for over a decade. This package does have $250M that will help small, mostly rural utilities with the cyber capabilities and another $350M that will go quite a way to support other cybersecurity programs, but this is not an area to under invest in and it seems it was under invested in the package.

What’s Not In The Package

Demand-Side Flexibility

Demand response and wider demand side management capabilities are essentially not funded in the bi-partisan package. One section encourages utility demand side management considerations, but no real funding goes to bringing demand side resources on the grid. With the potential of FERC 2222 to bring aggregated demand side and distributed resources into markets, much more widely available and adopted controllable devices, and other market developments necessitating the type of resource coming on the grid, this is a bit striking.

Building Automation

Support to ensure that buildings have higher level controls and capabilities to respond to grid signals was also not in the package. See comments in demand side and DER integration above and below.

Distributed Resource Integration

It’s not a future state, but a current need, in which aggregated edge resources can provide significant value to the grid. Turning distributed assets (solar, storage, EVs, thermostats, generators, hot water heaters, and much more) into a resource requires new technology, evolved models, new partnerships and more. Support to help this transition is essential. When well established values can be equitably dispersed to owners and all grid customers (and for the benefit of the system itself), we will have reached a new milestone in the evolution of our energy system – the grid has not reached this place yet and investing to get there is critical.

Analytics & Digital Infrastructure

Real-time grid telemetry to better understand and optimize the dynamics of the system was essentially not in the package and is also not present in most parts of the grid. What’s the saying ‘you can’t manage what you don’t measure?’ Are there exciting things you can do with the roughly 70% of advanced meters that are now deployed? Absolutely! But additional investments are required to apply a suite of capabilities, largely powered by the cloud, to the grid and it’s time that we take them off the shelf and use them.

Renewable Energy

Remember that part of the grid that actually creates the energy we need to run our economy? There are a handful of minor areas of investment in targeted deployments and demonstrations here and there offering a few hundred million dollars. But this package does not help fund the build-out of clean energy resources, nor the grid capabilities to help facilitate it. Economics of resources like wind and solar in many jurisdictions are just so cost-effective that their additions have largely won out over recent years, but if we want a lower carbon society we have to dramatically expand renewable resources. And, importantly, we must build a grid that ensures affordable, reliable power gets to people and businesses when they need it. It seems that the reconciliation package may have central aspects to helping support the further build-out of clean energy resources, but if the IPCC report that came out this week didn’t wake you up to the needs I’m not sure what else may.

What’s Next

The House looks like it will be coming back from recess early later this month to continue work on the infrastructure package. Details of the reconciliation package may be together by mid-September. Early outlines show that of the $198B in energy, the clean energy spending may be a significant portion there and in the $67B for the environment, the clean energy accelerator may be a central feature there.

There are rumblings of the reconciliation package having aspects such as:

More significant support for electrified transportation

Tax and other incentives for storage, transmission and other grid infrastructure

Deeper support for efficiency, connected building and related areas

In Summary: Pass This Package

Is the bipartisan package a major investment in our grid? YES! Is this something that the House should take up and pass as soon as possible? YES! Would another $200B (or more) for energy and grid in a reconciliation package help move the functionality of our system ahead? YES! Should the reconciliation package take areas of grid modernization and flexibility further? ABSOLUTELY. Should the bi-partisan package wait and risk not coming across the line as the reconciliation package comes together? We say no, but understand that there are significant political dynamics in play. If the bi-partisan package falls through and so does the reconciliation package, support for the nation’s electric grid and the functionally we want (and really need) during the energy transition will be far below where it needs to be. It’s time that we dig into modernizing our energy system, let’s get this bill across the line and get to work.

#### Extinction

Benjamin Monarch 20, University of Kentucky College of Law, J.D. May 2015, LLM in Energy, Natural Resources, and Environmental Law and Policy from the University of Denver Sturm College of Law, Deputy District Attorney at Colorado Judicial Branch, and Term Member at the Council on Foreign Relations, “Black Start: The Risk of Grid Failure from a Cyber Attack and the Policies Needed to Prepare for It,” Journal of Energy & Natural Resources Law, vol. 38, no. 2, Routledge, 04/02/2020, pp. 131–160

In the industrial world, when a switch is flipped, we take for granted that it will produce light, boot a computer, illuminate a stadium or activate a power plant. We know, of course, that power losses can and do occur. Many of us have lit candles during a thunderstorm or brought out extra blankets when a blizzard takes down transmission lines. As of this writing, the most populated state in the United States, California, is experiencing rolling blackouts.1 Yet even in prolonged power outages, we expect that electricity will be restored and, consequently, life will return to normal. Perhaps we need ask, however, what if power cannot be restored in a timely manner? Concern is growing that in the not-too-distant future our electricity supply could be irreparably compromised by a cyber attack. The issue when considering a systemic grid failure of this nature is twofold: how did we reach a point where something so critical to routine life now presents an existential threat, and what can we do to mitigate the risk of a catastrophic grid attack?

This article posits that the emergence of cyber attacks on industrial control systems, as a means of war or criminal menace, have reached a level of sophistication capable of crippling those systems. This article argues that a new grid security policy paradigm is required to thwart catastrophic grid failure – a paradigm that recognises the inextricable link between commercial power generation and national security. In section 5, seven policy recommendations are outlined that may, in part, mitigate a future where grid attacks pose existential risk to nations and their citizenry. Those recommendations are: first, develop a comprehensive insurance programme to minimise the financial risk of grid disruption; second, train more cybersecurity professionals with particular expertise in industrial control systems; third, institute a federally mandated information-sharing programme that is centralised under United States Cyber Command; fourth, subsidise and/or incentivise cybersecurity protections for small to mid-size utilities; fifth, provide university grants for grid security research; sixth, integrate new technologies with an eye towards securing the grid; and, lastly, formulate clear rules of engagement for a military response to grid disruption.

The purpose of this article is to provide the reader with an introduction to this complex topic. It is the aim of the author to give orientation to this issue and its many branches in the hope that better understanding will animate further curiosity and, ultimately, positive action on the part of the reader. Although many skilled and earnest people work tirelessly to prevent a grid failure scenario, it is essential that more be added to their ranks each day. Advisors, engineers, regulators, private counsel to power generators, and many others who play roles in electric power production are crucial to this subject. So, while this article provides entrée to the topic of grid security, its long-term objective is to spur action by the entire energy-related community. In the end, no one is immune to consequences of grid failure and, therefore, everyone is responsible, in part, for promoting grid integrity.2 In this regard, lawyers who represent various actors in the energy sector are going to be faced with questions and potential legal risks of a magnitude that they have never experienced before.

1.2. Turning the power back on in a powerless world

‘Black start’, not to be confused with the term ‘blackout’, is the name given to the process of restoring an electric grid to operation without relying on the external electric power transmission network to recover from a total or partial shutdown.3 At first glance, this description is unremarkable, but it implies a disturbing catch-22 – how might one restore power if the entire external transmission network is compromised?

If an electric disruption occurs at a household level, some homes may be equipped with a modest gasoline generator to temporarily restore power. If a hospital loses power, it will almost invariably be resupplied by automatic, industrial-scale generators. These micro considerations hardly give anyone pause; they are hiccups on a stormy night or a snowy day. In other words, their ‘black start’ is a quick and effective process for restoring power. But what happens, at a macro level, when an electric grid supplying power to large portions of the United States goes black, or worse, what happens if all of the United States’ electric grids go down simultaneously?4 In that scenario, how might enough non-grid power be harnessed and transmitted to turn the United States’ lights back on? Moreover, how might such a catastrophe occur in the first place? Perhaps the more ominous question is not how, but whether or not we can survive such circumstances if they persist in the long term.

The United States electric grid (‘the grid’) is the ‘largest interconnected machine’ in the world.5 It consists of more than 7000 power plants, 55,000 substations, 160,000 miles of high-voltage transmission lines and millions of low-voltage distribution lines.6 The scale and complexity of the grid in the context of the modern digital world are beyond comprehension because within it are innumerable industrial control systems; incalculable connections to digital networks; millions, if not billions, of analogue or digital sensors; many thousands of human actors; and trillions of lines of programming code.7 Further complexifying the grid is that it is comprised of generations of technologies, stitched together in ways that are not inherently secure in a world of cyber threats.8 The vastness of the grid makes security of it challenging. Likewise, the vastness of the grid makes the opportunities for intrusion seemingly infinite.

By any measure, grid failure will unleash a parade of horrors. Stores would close, food scarcity would follow, communication would cease, garbage would pile up, planes would be grounded, clean water would become a luxury, service stations would yield no fuel, hospitals would eventually go dark, financial transactions would stop, and this is only the tip of the iceberg – in a prolonged grid failure social chaos would reign, once-eradicated diseases would re-emerge and, increasingly, hope of returning to a normal life would fade.9 The notion of complete grid failure, once relegated to science fiction comics or James Bond movies, is now not only possible but also one of the most pressing national security threats today.10

### 1NC---Japan DA

#### New antitrust is applied globally---offends allies---regs counterplan avoids it.

Herbert Hovenkamp 03. Ben V. & Dorothy Willie Professor of Law and History, University of Iowa. “Antitrust as Extraterritorial Regulatory Policy,” 48 Antitrust BULL. 629 (2003).

Today few of us are sympathetic with the view that the common law exists apart from and somehow transcends the jurisdiction of the courts that make it. Nevertheless, there is a powerful sense in which the rules of antitrust law are regarded as "natural," while explicitly regulatory rules are considered to be purely local, territorial, or political. This view is given considerable support by a powerful neoclassical economic model that views markets as natural, in the sense that they exist separate and apart from state policy making. 32

Within this model antitrust law is a kind of background umpire that does not make first instance choices about price, quantity, quality, new entry and the like, but that does limit the anticompetitive exercise of market power. Antitrust operates as a kind of "macro" version of contract law. The common law of contracts is designed to facilitate and protect the utility of individual private bargains; antitrust is designed to do much the same thing, but for markets as a whole. Under this conception a well defined set of antitrust principles always operates in the background, so to speak, permitting private bargaining to proceed without interference in the great majority of instances, but intervening when competitive processes go awry. Further, widespread agreement exists both inside and outside the United States on a set of core principles pertaining to such things as naked price fixing, market division agreements, and the like. Within this core, problems of extraterritoriality have largely been limited to the technical ones of devising appropriate jurisdictional rules and remedies.

In contrast, the power to regulate is different. Under the traditional view of regulation the power to set price, quantity, quality, or the right to enter a market emanates in the first instance from the government. Further, although there is widespread economic agreement on fundamental principles, regulatory design is much more specific to the sovereign-more likely to reflect the demographics, industrial or employment base, or politics of the particular state imposing the regulation.

For example, nearly all of the 50 states of the United States have an antitrust law. With relatively few exceptions, however, the substantive coverage of these antitrust laws is the same, and mimics federal law. Many states have court decisions or even legislative enactments stating that federal antitrust law should govern the interpretation of that particular state's antitrust law as well. 33 The result is that the coverage of state antitrust law is remarkably similar from one state to the next. But one can hardly say the same thing about each state's regulation of land use, power generation and distribution, taxicabs, liquor pricing, and the like. Whatever homogeneity regulatory theory might produce, the politics of regulation virtually guarantees jurisdiction-specific outcomes.

But homogeneity in antitrust policy also begins to break down when antitrust law moves beyond its fundamental neoclassical concern with cartels or well-defined exclusionary practices, and into areas where its role is more controversial or marginal. This is often the case when the antitrust laws are applied in recently deregulated markets. For example, a common antitrust problem that arises in deregulated industries falls under the general rubric of unilateral refusals to deal. In order to encourage competition, newly deregulated firms may be forced to share their facilities, information, intellectual property, or other assets with new rivals. Devising reasonable "nonregulatory" rules governing refusals to deal in such markets has always extended the antitrust laws to the margin of their competence.

Increasingly, American courts seem willing to apply antitrust law to markets regulated by foreign nations under circumstances where regulatory laws themselves would never reach. For example, neither Congress nor a state legislature would very likely attempt to regulate the customer service or information provision practices of a foreign national's telephone company. But both federal and state courts have done precisely that under the guise of antitrust enforcement.3 4

Antitrust policy makes this thinkable as a result of the confluence of two sets of doctrines. First is the expansive reach of our antitrust laws to practices that have a substantial effect on United States commerce. Second is the very narrow conception of comity that applies in antitrust cases.

As a general matter, comity concerns in the international conflict of laws requires the court to consider the competing interests of domestic and foreign sovereigns. 35 After a half century of debate over the meaning of comity in international Sherman Act adjudication, the Supreme Court gave the doctrine an extraordinarily narrow meaning in the Hartford Fire case.36 That case involved an alleged insurance boycott in which Lloyd's of London participated as reinsurer. Lloyd's conduct-agreeing with some United States insurers not to write reinsurance policies for other United States insurers who wanted to write policies with broader coverage-was neither forbidden nor compelled by British law. To the defendant's claim of comity the Supreme Court replied that the provisions of the Sherman Act governing jurisdiction over transactions in foreign commerce were mandatory. As a result, a federal court could not simply decline jurisdiction on the basis of some general balancing of interests. 37 Rather, "comity" permits a federal court to decline jurisdiction only when there was a "conflict" between the law of the foreign sovereign and United States law. Further, "conflict" was defined not under choice of law principles, but more absolutely, as occurring only when the foreign law compelled the conduct at issue. 38

Perhaps significantly, the activity of the London reinsurers was very likely reachable under United States antitrust law even under ordinary interest analysis principles. British law was found by the Supreme Court to be indifferent to what the London reinsurers were doing. Further, what they were doing was agreeing not to insure against liability for particular toxic pollution risks in the United States, and risk of liability is of course measured in relation to the physical environment and legal regime in which the injury occurs. 39 As a result, the London reinsurers were selling a product especially targeted for United States markets and allegedly participating in a boycott designed to keep broader coverage insurance policies out of that market.

But Hartford Fire's definition of comity is significantly problematic under deregulation. To the extent a foreign sovereign deregulates a public utility or common carrier, that firm enjoys greater discretion to make its own decisions. As a result, considerations of comity may no longer preclude a Sherman Act suit. What makes this especially problematic is the way that the Sherman Act has been used in the United States as a kind of replacement for the regulatory agency. Under comprehensive agency regulation a filed tariff plus regulatory oversight would have governed numerous acts by regulated firms, including pricing, entry into new markets, interconnection obligations and other duties to deal.40 Government relaxation of regulatory restrictions has given firms some discretion over these things but in the process has substituted the antitrust courts as governmental supervisor. In some situations this causes little difficulty because regulation may have been misapplied to a competitively structured industry to begin with.41 In other situations, such as long-distance telecommunication, a competitive environment has developed because of changes in technology, and topto-bottom price and product regulation is no longer necessary.42

But in a third class of situations the application of the antitrust laws is much more "regulatory" and more difficult to defend. These are the cases where unilateral conduct of the kind that was historically supervised by the regulatory agency now comes under antitrust jurisdiction. For example, under the essential facility doctrine a federal court of general jurisdiction may be asked to apply antitrust law to determine the scope of a formerly regulated firm's duty to interconnect with rivals. The circuit courts have applied the doctrine frequently in the telecommunications industry,43 but also to railroads" and natural gas pipelines.4 5 Problematically, supervising interconnection requirements involves the court in highly technical questions about the scope of the duty to deal and perhaps even about the price at which the deal must be made. In these cases we have not really "deregulated" at all; rather, we have simply substituted regulation by a government agency for regulation by a court, often through the highly inefficient and uncertain process of a jury trial. To do that in a purely domestic situation is ill-advised enough, but to do it abroad by taking advantage of the expansive jurisdictional reach of the Sherman Act is completely unjustified.

IV. Extraterritorial antitrust and foreign deregulation

As expansive as the regulatory power asserted by the United States sometimes becomes, it does not generally interfere directly into foreign governments' regulation of their own highly regulated industries. But to a large extent modem antitrust has inherited the regulatory attitude expressed by the Western Union decision discussed above. For several reasons, the idea that the United States Antitrust laws are jurisdictionally exceptional can produce overreaching that is offensive to foreign prerogatives. First, the United States antitrust laws are extremely general and make no distinction between ordinary competitive firms and public utilities or common carriers; the same rules purport to apply to all business firms. Second, the jurisdictional language of the antitrust laws is both mandatory and general to the same extent-that is, the "affecting foreign commerce" language of the basic Sherman Act and the export commerce language of the Foreign Trade Antitrust Improvement Act 6 do not distinguish between regulated and ordinary competitive firms. And third, the limiting doctrines of international law-namely Act of State, foreign sovereign compulsion, foreign sovereign immunity, and comity-do not distinguish among types of firms or types of antitrust complaints. They apply equally to both price fixing, which is at the core of antitrust concern, and to the essential facility doctrine, which lies at or outside its margin.

#### Ends the Japan economic alliance---they respond with diplomatic protest to new extraterritorial antitrust.

Takaaki Kojima 02. Fellow, Weatherhead Center for International Affairs, 2001-2002. “International Conflicts over the Extraterritorial Application of Competition Law in a Borderless Economy”. https://datascience.iq.harvard.edu/files/fellows/files/kojima.pdf

We are witnessing increasingly widespread and penetrating economic globalization today. As a result of trade liberalization, import restrictions or regulations on trade and investment have decreased substantially, and trans-border business activities face less barrier. At the same time, the role of trans-border business activities, especially those by so-called multinational or global enterprises, have become increasingly important and even dominant in some sectors.

As far as the territorial scope of business activities are concerned, state borders are more or less diminishing to become almost borderless; as for legal regimes, however, sovereign states retain in principle exclusive jurisdiction over their territories and nationals under international law. Business activities are regulated by the domestic laws of sovereign states or by international agreements concluded among sovereign states. The pertinent question is how to coordinate “borderless” business activities within the existing legal regimes governed by sovereign states. In the field of trade law, the measures of each state are restricted by international agreements, in particular under the GATT/WTO regime. In the field of competition law, such an international regime is lacking and the domestic laws of each state regulate private restraints of trade in the relevant markets.

Serious jurisdictional conflicts have transpired in the last several decades between the United States and other states over the so-called extraterritorial application of U.S. antitrust laws on anticompetitive conducts abroad. This problem has also caused diplomatic frictions between the United States and other states, as it concerns state sovereignty. In this essay, the author will review the historical development of international conflicts caused by the extraterritorial application of competition law and attempt to examine the options available to circumvent or solve these conflicts. The main focus will be U.S. antitrust law and its relation with other jurisdictions, mainly the European Union and Japan, considering the grave implications to competition law and policy as well as to the world economy. 2

II. Extraterritorial Application of U.S. Antitrust Laws

Problems concerning the extraterritorial application of U.S. antitrust laws have been discussed in many publications. Of the U.S. antitrust laws, the Sherman Act applies to “commerce … with foreign nations ” (Section 1) without qualifying provisions concerning its territorial scope as “within the United States” (Section 2) or “in any section of the country” (Section 3) as specified in the Clayton Act. In the past, U.S. courts interpreting the Sherman Act of 1890 and other antitrust laws commonly followed the traditional territorial principle with regard to its jurisdictional reach. In the American Banana case (213 U.S. 347 (1909)), where all the acts complained of were committed outside the territory of the United States, including the defendant’s alleged inducements of the Costa Rican government to monopolize the banana trade, the U.S. Supreme Court dismissed the complaint on the ground, inter alia, that acts committed outside of the United States are not governed by the Sherman Act. In this case, the territorial principle in the classic sense was applied.

In later decisions such as the American Tobacco case (221 U.S. 106 (1911)) and the Sisal case (274 U.S. 268 (1927)), jurisdiction was exercised over the defendants on the ground that although the agreements in question were concluded by foreigners outside the United States, jurisdiction was limited to what was performed and intended to be performed within the territory of the United States. In these cases, the territorial principle was applied more flexibly, but it has been observed that this application cannot be argued other than as a sensible and reasonable deployment of the objective territorial theory. 3

An entirely different approach was taken in the Alcoa case (148 F.2d. 416 (1944)), in which foreign companies outside the United States had concluded the agreements. The Court of Appeal for the Second Circuit held it settled law that any State may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders. It went on further to state that the agreements, although made abroad, were unlawful if they were intended to affect imports and did affect them.

This theory of the intended effect (the effects doctrine) elaborated in the Alcoa case was criticized by many as an excess of jurisdiction under public international law. For instance, R.Y. Jennings noted that “in this new guise it apparently comprehends the exercise of jurisdiction over agreements made abroad, by foreigners with foreigners provided only that the agreement was intended to have repercussions upon American imports or exports,” 4 while F.A. Mann argued that “the type of effect within the meaning of the Alcoa ruling has nothing in common with the effect which by virtue of established principles of international jurisdiction confers that right of regulation.” 5 Neverthele ss, since the Alcoa case, U.S. courts have continued to follow the new jurisdictional formula of the effects doctrine.

In response to excessive application of U.S. antitrust laws, especially with respect to courts’ orders to produce documents such as subpoena duces tecum located abroad, a considerable number of states have issued diplomatic protests. Australia, France, the United Kingdom, the Netherlands, and New Zealand have even enacted blocking legislation. 6 The protesting states maintain that taking evidence abroad, including an order to produce documents, is an exercise of extraterritorial enforcement of jurisdiction that, under international law, requires the consent of the state where the evidence is located. The United Kingdom has been one of the strongest opponents to U.S. claims of extraterritorial jurisdiction. The U.K. government stated for instance that “HM Government considers that in the present state of international law there is no basis for the extension of one country’s antitrust jurisdiction to activities outside of that country of the foreign national.” 7 The Protection of Trading Interest law was enacted in 1980, which provides to extensively thwart the extraterritorial application of U.S. antitrust laws. The U.K. government invoked the provisions in the Laker Airways case (1983 W.L.R. 413) in 1983.

Having faced the antagonistic reactions of other states, U.S. courts began to show some restraint in assuming extraterritorial jurisdiction. In the Timberlane case (549 F.2d. 9 th Cir. (1976)), the court concluded that it had jurisdiction over alleged anticompetitive conducts in Honduras but refrained from asserting extraterritorial jurisdiction after having applied three tests: first, whether the challenged conduct had had some effect on the commerce of the United States; second, whether the conduct in question imposed a burden on U.S. commerce; and third, whether the complaint’s interests of and links to the United States were sufficiently strong vis-à-vis those of other nations to justify an assertion of extraterritorial authority. The Foreign Trade Antitrust Improvements Act enacted in 1976 applies to foreign conduct that has a direct, substantial and reasonably foreseeable effect on U.S. commerce, The U.S. enforcement agencies, the Department of Justice (DOJ) and the Federal Trade Commission (FTC), have adopted this jurisdictional rule of reason formula since the Enforcement Guidelines for International Operations of 1988. However, divergent views exist as to whether the third test of balancing the interests of other states is a rule of international law or just a comity. 8 Furthermore, not all U.S. courts have consistently applied the test of balancing interests. 9

In 1993, the Supreme Court decision in the Hartford Fire Insurance case (113 S. Ct. 2891 (1993)) reaffirmed the effects doctrine, stating that the Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States. The Court then took a restrictive view on the test of balancing interests, stating that the only substantial question is whether there is a true conflict between domestic and foreign law, and held that no such conflict seemed to exist because British law did not require defendants to act in a manner prohibited by U.S. law. 10

Japan maintains the territorial principle and rejects the effects doctrine, stating that the effects doctrine cannot be regarded as an established rule of international law. In the view of the Government of Japan, the extraterritorial application of U.S. domestic laws (including U.S. antitrust laws) based on the effects doctrine is not allowed under general international law. 11 In the Nippon Paper case, where a Japanese company was prosecuted under the Sherman Act, the Japanese government submitted a brief of amicus curiae where it stated, inter alia, that the extraterritorial application of the Sherman Act to a conduct of a Japanese company engaged in business in Japan is unlawful under international law. 12 Nonetheless, the U.S. Supreme Court affirmed the Court of Appeal decision, which assumed the extraterritorial application of the Sherman Act to a criminal case for the first time (118 S. Ct. 685 (1998)).

#### Economic alliance is key to Indo-Pacific cyber security---only coop allows them to leverage technology.

Patrick M. Cronin 4/15/21. Asia-Pacific Security Chair @ Hudson. "U.S.-Japan Alliance in Full Bloom". https://www.hudson.org/research/16835-u-s-japan-alliance-in-full-bloom

Even if seldom mentioned by name, China is the unmistakable fulcrum around which alliance policy on all issues turns. Competition with China is primarily economic and technological, but these issues often spill over into security and human rights.

Economically, a rebounding U.S. economy and Japan will collaborate to strengthen the resilience of vital supply chains. Semiconductor chips are essential for all electronics, and Suga and Biden are determined to ensure their availability. Equally, the U.S. and Japan have an opportunity to leverage their two-year-old digital trade agreement to help negotiate a multilateral accord and establish high international standards for finance and commerce in the cyber age.

As a dominant player in semiconductor manufacturing and a member of APEC and the World Trade Organization, Taiwanshould play a part in both supply chain security and digital trading standards. Indeed, bolstering Taiwan’s place in the global economy of other democracies is a far better means of thwarting Beijing’s intimidation strategy against Taiwan than just sailing near the Taiwan Strait with an aircraft carrier.

The commanding heights of the 21st century economy center on technology. So, while the United States and Japan retain a strong interest in economic cooperation with China, those relations become considerably sharper over leading-edge technologies such as 5G telecommunications, artificial intelligence and quantum computing. Biden and Suga should showcase their commitment, not against China, but in favor of technological innovation and secure connectivity.

An excellent way for the alliance to demonstrate a commitment to practical technology cooperation would be to work together to expand investment in 5G Open Radio Access Networks (ORAN). Given the concerns surrounding allowing China to dominate fifth-generation telecommunications infrastructure, the United States and Japan need to scale up a cloud-based software alternative. The good news is that Japan’s Rakuten is already a leader in demonstrating ORAN’s feasibility, and there is bipartisan support in Congress for increasing U.S. investment in modular 5G.

The alliance also requires deeper cooperation on cybersecurity. Of five issues highlighted at the recent 2 + 2 meeting between U.S. and Japan defense and foreign ministers, cyberspace was the most traditional national security issue. Japan is inching closer toward becoming a de facto sixth member of the Five Eyes intelligence-sharing arrangement, and the Biden administration should encourage that trajectory. A stronger digital alliance can, in turn, advance cyber resilience throughout the Indo-Pacific region.

#### Extinction---Indo-Pak nuclear war.

Ahyousha Khan 20. "Research Associate" at Islamabad Based Think-tank "Strategic Vision Institute". "Artificial Intelligence without Cyber Resilience in South Asia". South Asia Journal. 7-16-2020. http://southasiajournal.net/artificial-intelligence-without-cyber-resilience-in-south-asia/

With increased dependence on information technology and rapid digitization of systems, term cybersecurity gained momentum. However, these systems not only need to be securitized but they should be resilient against the threats. Cyber resilience is the ability of the system to operate during an attack and achieve a minimum level of operationalization while responding to an attack. It also enables the system to develop a back-up system that works in case of attack. Cyber resilience is a step forward from cybersecurity because it not only ensures the security of the system, but also identifies the threats to it and then proposes the system that could work amidst such attacks. Most military systems are resilient against kinetic attacks because resilience and survivability go hand in hand. But, with modernizations in the military, it is necessary that the state’s cyber networks which are working on artificial intelligence must be resilient against kinetic and non-kinetic attack.

Today states are in a race to use the AI in their military systems to achieve maximum military gains and denying their adversary the same. The situation is not so different in South Asia where two nuclear rivals of the region are paving the way towards the use of artificial intelligence for military purposes. India has developed the Center for Artificial Intelligence and Robotics (CAIR) in DRDO, with the aim to develop AI within the military systems to improve geographical information system technology, decision support systems, and object detection and mapping. Moreover, companies like Bharat Electronics Limited (BEL) are already in the process of developing and incorporating AI into military equipment. This includes an AI-enabled patrol robot developed by BEL built in the hope to be utilized by the Indian military. Moreover, in 2019 India’s Gen. Bipin Rawat said adversary in the north is spending a huge amount on AI and cyber warfare, so we cannot be left behind in this race. It is mostly projected by the Indian policymakers and many international scholars that India is facing adversaries at two fronts (China-Pakistan), to justify India’s military expenditure and modernization. However, recently, events like Galwan Valley clash evidently exposed that India’s military capabilities are mostly against Pakistan. Moreover, South Asia’s security dynamics are heavily characterized by the action-reaction chain. To avoid the security dilemma vis-à-vis India, Pakistan would also invest in AI. At the moment Pakistan has also started working towards achieving expertise in AI. In 2019 President of Pakistan launched PIAIC with a focus on the development of skills in AI to strengthen economy and defence systems. Moreover, there are centers like the National Center of Artificial Intelligence and the Department of Robotics and Intelligent Machine Learning in NUST, which are working to improve AI-based knowledge in Pakistan. Besides that Pakistan recently launched a program named “Digital Pakistan” to increase access and connectivity, digital infrastructure, e-government, digital killing, and training and introduce innovation and entrepreneurship.

There are many studies done on the implications of AI on nuclear deterrence and strategic stability in South Asia. These studies highlight that due to prevalent asymmetry in the conventional military build-up, the introduction of AI into military technology would worsen the already fragile deterrence stability of the region. This assumption is based on the argument that due to AI in reconnaissance systems, high-level intelligence collection would affect the survivability of nuclear weapons, which is based on diversification and concealment. However, AI would also enable both states to have more response options in a short time with the help of decision-making tools in case of a crisis, especially in aerial battles.

Moreover, both states are moving towards the massive digitalization of their military systems and society without building cyber-resilient systems. Resilience can be built against vulnerabilities like human factors, massive speed of the systems, protection, and storage of data and advanced persistent threats (ATPs). Artificial intelligence-based systems must be incorporated in societies and militaries along with mechanisms to strengthen the cybersecurity systems. A front runner in AI like the US has also expressed concerns over the need for modern equipment to operate on “internet-like networks” and subsequently increased vulnerabilities due to their applicability. Therefore, military modernization can happen effectively through cyber resiliency in military systems, network processes, and cyber architecture. A cyber-resilient system would enable the state to develop a system that would remain functional during a phishing attack. Steps like cyber deception, agility, and clone defense could increase resilience in the existing systems. This is important to understand in already lacking strategic stability, military systems based on artificial intelligence would be an ideal target of AI advanced persistent threats in South Asia.

Therefore, as the process of digitalization is increasing in the Pakistan-India equation, it is also becoming very important that both states should develop resilience in their cyber systems so that the technologies could give them an advantage rather than becoming a security peril for them.

## Class Action

### Fails---1NC

#### Repetitive arbitration actions solves---civil action isn’t key.

#### Newton is about a 2011 Court ruling---the last 10 years thump.

#### Class action lawsuits can’t deter cartelization---empirics go our way.

Zygimantas Juska 17. Doctor of Law, Leiden University. The Effectiveness of Private Enforcement and Class Actions to Secure Antitrust Enforcement. The Antitrust Bulletin. 2017. 62(3): 629

A. Low Deterrence Value The core element of the class action lawsuit is the seeking of class certification. Due to the defendants’ aggressive defense, antitrust class actions may reach the certification stage and be denied on the basis of failing to meet the requirements under Rule 23. Most importantly, the courts utilize strict evidentiary standards for the class certification in antitrust cases. In the In Re Hydrogen Peroxide Antitrust Litigation, 179 the 3rd Circuit established that the class certification requires “rigorous analysis” of factual and legal evidence.180 This examination extends to assessing the testimony of both defendant’s and plaintiffs’ experts.181 In addition, the standards for meeting the requirements under Rule 23 must be met by a “preponderance” of evidence, rather than by a mere “threshold showing.”182 Therefore, there is a high chance that defendants may succeed in opposing the class certification. In such case, the class action rule serves no use. As mentioned before, if a court certifies a class action, the large majority of class action lawsuits are settled; very few certified class actions proceed to trial. Consequently, treble damages are typically removed from the negotiation process and, after all, defendants admit no liability for having violated antitrust laws. From this issue flows another concern: that the private attorney general mechanism is not the right tool to facilitate deterrence. Lawyers make huge investments in antitrust cases and are thus the ones who decide when and whether to settle the case.183 The individual damages caused by antitrust wrongdoers are typically very small, so few if any class members have an incentive to monitor the settlement negotiations. As a consequence, defendants are satisfied to “buy off” the attorney in exchange for a favorable settlement agreement.184 The opposite may also be true: the class counsel may coerce defendants to go into settlements out of fear, regardless of whether the claim has merit or not.185 Thus, the settled class action lawsuits undercut the deterrence of class litigation. From a cartel perspective, a majority of class actions follow successful government actions.186 Consequently, private attorneys use the efforts of public enforcers for their own benefit, for example, by reducing their own costs in expensive fact discovery proceedings.187 According to this view, private actions are unable to cure public shortcomings like, for example, a low detection rate. Another critical argument is that corporate managers (who should be foremost affected) are not deterred by private litigation. First, the time period between the beginnings of anticompetitive behavior until the judgment is considered the important deterrence criteria against corporate managers. In a typical antitrust case, the period may last from at least five years to more than ten years.188 It is highly unlikely that corporate managers and midlevel executives will still hold their positions at the time of the judgment.189 In case of settlement cases, the early deterrent impact is also improbable, because, even if the day of judgment is speeded up, the average time from the planning of anticompetitive conduct to any settlement payout is still more than five years.190 Second, corporate managers are unlikely to internalize the wrongdoing immediately after launching the antitrust claim. As mentioned before, empirical studies showed that government antitrust actions reduce the share value by 6% on average, and filling a private lawsuit by around 0.6%. 191 Thus, “[a] half-percent drop in market capitalization” is highly unlikely to cause negative impacts on corporate managers.192

### AT: Slow Growth

#### Covid thumps---long term slow growth

#### No impact to slow growth.

Fettweis 17 – Dr. Christopher J. Fettweis, Associate Professor of Political Science at Tulane University, PhD in Government and Politics from the University of Maryland, “Unipolarity, Hegemony, and the New Peace”, Security Studies, Vol. 26, No. 3, p. 434-442 [language modified]

Others are more skeptical of institutions’ potential to shape behavior, and believe instead that stability is dependent upon the active application of the hegemon’s military power.51

The second version of the hegemonic-stability explanation is based upon a different view of human nature than is the liberal, one less sanguine about the potential for voluntary cooperation. Actors respond to concrete incentives, according to this outlook, and will ignore rules or law if transgressions are not punished. The would-be hegemon must enforce stability, therefore, not merely establish it. Policing metaphors are common in this literature, with the United States playing the role of sheriff or globocop charged with keeping the peace.52

[FOOTNOTE]

52 Richard N. Haass, The Reluctant Sheriff: The United States after the Cold War (New York: Council on Foreign Relations Press, 1997); Colin S. Gray, The Sheriff: America's Defense of the New World Order (Lexington: University Press of Kentucky, 2004).

View all notes

[END FOOTNOTE]

Take away the police, or damage their credibility, and instability would soon return. “The present world order,” according to Robert Kagan, “is as fragile as it is unique,” and would collapse without sustained US efforts.53 “In many instances,” add Lawrence Kaplan and William Kristol, “all that stands between civility and genocide, order and mayhem, is American power.”54 Though this argument is commonly associated with neoconservatism55—and will be referred to as the neoconservative explanation from here on in—it is also accepted by a number of scholars and observers generally considered outside of that ideological approach.56

The two versions are united on this point: it is not unipolarity in general that accounts for the New Peace, but American unipolarity in particular. US hegemony is essentially benevolent, according to both liberals and neoconservatives. The United States has constructed an order that takes the interests of other states into account, which decreases revisionist impulses. At the very least, it is nonthreatening, and does not generate the kind of balancing behavior that might be expected to bring it to an end.57 In the liberal version, the order constructed by the United States is beneficial to all its members, who have a stake in its maintenance. Adherents of the more muscular version, whether neoconservative or not, assume that the default position of smaller states in a unipolar system is to bandwagon with the center.58 No one seems to suggest that there is an irenic structural logic of unipolarity independent of US behavior. The question is therefore not so much about the connection between unipolarity and the New Peace as much as it is whether US behavior, in one form or another, has brought it about.

Hegemonic stability is in some ways more theoretically elegant than the other possible explanations for the New Peace. For one thing, it does not suffer from questions regarding its causal direction. While it may be reasonable to suggest that peace produced the expansion of democracy and/or economic development rather than the other way around, peace did not produce unipolarity. In fact, if the United States is indeed supplying the global public good of security, it might be able to take credit for a number of these positive trends. Not just peace but democracy, economic stability, and development all might be beneficial side effects of unipolarity. 59 “A world without U.S. primacy,” argued Samuel P. Huntington, “would be a world with more violence and disorder and less democracy and economic growth.”60

There is a great deal at stake here, for both scholarship and practice. If hegemony is responsible for the New Peace, then its peaceful trends are unlikely to last much beyond the unipolar moment. The other proposed explanations described above are essentially irreversible: nuclear weapons cannot be uninvented, and no defense against their use is ever going to be completely foolproof; the pace of globalization and economic interdependence shows no sign of slowing; democracy seems to be firmly embedded in the cultural fabric of many of the places it currently exists, and may well be in the process of spreading to the few places where it does not. The UN, while oft criticized, shows no signs of disappearing. And finally, history contains precious few examples of the return of institutions deemed by society to be outmoded, barbaric, and/or futile.61 In other words, liberal normative evolution is typically unidirectional. Few would argue, for instance, that either slavery or dueling is likely to reappear in this century; illiberal normative recidivism is exceptionally rare.62 If the neoconservatives are correct and US hard power is primarily responsible for the New Peace, however, then it cannot be expected to last long after US hegemonic decline, or adjustment in its grand strategy toward retrenchment. If liberal internationalists are right and the New Peace is largely a product of the world order that the United States has forged, then it may have a bit more staying power beyond unipolarity, but not necessarily much.

Determining the relationship between hegemony and the New Peace has importance that goes beyond the academy. Whether or not decline is on the immediate horizon, unipolarity is unlikely to last forever. If the New Peace is essentially an American creation, that post-unipolar future is likely to be quite a bit more violent than the present.

Evidence for and against Pax Americana

Since the world had never experienced system-wide unipolarity prior to the end of the Cold War, judgments about its relative stability and likely duration are necessarily speculative.63 Extrapolations can be made from regional unipolar systems, like the Roman Mediterranean, but definitive system-wide statements cannot be made from one case. Still, if US power were primarily responsible for the New Peace, one would expect that it would leave some clues about its effects. This section reviews three kinds of evidence regarding Pax Americana in order to determine whether an empirical relationship can be said to exist between various kinds of US activity and global stability.

Conflict and Hegemony by Region

Even the most ardent supporters of the hegemonic-stability explanation do not contend that US influence extends equally to all corners of the globe. The United States has concentrated its policing in what George Kennan used to call “strong points,” or the most important parts of the world: Western Europe, the Pacific Rim, and Persian Gulf.64 By doing so, Washington may well have contributed more to great power peace than the overall global decline in warfare. If the former phenomenon contributed to the latter, by essentially providing a behavioral model for weaker states to emulate, then perhaps this lends some support to the hegemonic- stability case.65 During the Cold War, the United States played referee to a few intra-West squabbles, especially between Greece and Turkey, and provided Hobbesian reassurance to Germany’s nervous neighbors. Other, equally plausible explanations exist for stability in the first world, including the presence of a common enemy, democracy, economic interdependence, general war aversion, etc. The looming presence of the leviathan is certainly among these plausible explanations, but only inside the US sphere of influence. Bipolarity was bad for the nonaligned world, where Soviet and Western intervention routinely exacerbated local conflicts. Unipolarity has generally been much better, but whether or not this was due to US action is again unclear.

Overall US interest in the affairs of the Global South has dropped markedly since the end of the Cold War, as has the level of violence in almost all regions. There is less US intervention in the political and military affairs of Latin America compared to any time in the twentieth century, for instance, and also less conflict. Warfare in Africa is at an all-time low, as is relative US interest outside of counterterrorism and security assistance.66 Regional peace and stability exist where there is US active intervention, as well as where there is not. No direct relationship seems to exist across regions.

If intervention can be considered a function of direct and indirect activity, of both political and military action, a regional picture might look like what is outlined in Table 1.

These assessments of conflict are by necessity relative, because there has not been a “high” level of conflict in any region outside the Middle East during the period of the New Peace. Putting aside for the moment that important caveat, some points become clear. The great powers of the world are clustered in the upper right quadrant, where US intervention has been high, but conflict levels low. US intervention is imperfectly correlated with stability, however. Indeed, it is conceivable that the relatively high level of US interest and activity has made the security situation in the Persian Gulf and broader Middle East worse. In recent years, substantial hard power investments (Somalia, Afghanistan, Iraq), moderate intervention (Libya), and reliance on diplomacy (Syria) have been equally ineffective in stabilizing states torn by conflict. While it is possible that the region is essentially unpacifiable and no amount of police work would bring peace to its people, it remains hard to make the case that the US presence has improved matters. In this “strong point,” at least, US hegemony has failed to bring peace.

In much of the rest of the world, the United States has not been especially eager to enforce any particular rules. Even rather incontrovertible evidence of genocide has not been enough to inspire action. Washington’s intervention choices have at best been erratic; Libya and Kosovo brought about action, but much more blood flowed uninterrupted in Rwanda, Darfur, Congo, Sri Lanka, and Syria. The US record of peacemaking is not exactly a long uninterrupted string of successes. During the turn-of-the-century conventional war between Ethiopia and Eritrea, a highlevel US delegation containing former and future National Security Advisors (Anthony Lake and Susan Rice) made a half-dozen trips to the region, but was unable to prevent either the outbreak or recurrence of the conflict. Lake and his team shuttled back and forth between the capitals with some frequency, and President Clinton made repeated phone calls to the leaders of the respective countries, offering to hold peace talks in the United States, all to no avail.67 The war ended in late 2000 when Ethiopia essentially won, and it controls the disputed territory to this day.

The Horn of Africa is hardly the only region where states are free to fight one another today without fear of serious US involvement. Since they are choosing not to do so with increasing frequency, something else is probably affecting their calculations. Stability exists even in those places where the potential for intervention by the sheriff is minimal. Hegemonic stability can only take credit for influencing those decisions that would have ended in war without the presence, whether physical or psychological, of the United States. It seems hard to make the case that the relative peace that has descended on so many regions is primarily due to the kind of heavy hand of the neoconservative leviathan, or its lighter, more liberal cousin. Something else appears to be at work.

Conflict and US Military Spending

How does one measure polarity? Power is traditionally considered to be some combination of military and economic strength, but despite scores of efforts, no widely accepted formula exists. Perhaps overall military spending might be thought of as a proxy for hard power capabilities; perhaps too the amount of money the United States devotes to hard power is a reflection of the strength of the unipole. When compared to conflict levels, however, there is no obvious correlation, and certainly not the kind of negative relationship between US spending and conflict that many hegemonic stability theorists would expect to see.

During the 1990s, the United States cut back on defense by about 25 percent, spending $100 billion less in real terms in 1998 that it did in 1990.68 To those believers in the neoconservative version of hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace,” argued Kristol and Kagan at the time.69 The world grew dramatically more peaceful while the United States cut its forces, however, and stayed just as peaceful while spending rebounded after the 9/11 terrorist attacks. The incidence and magnitude of global conflict declined while the military budget was cut under President Clinton, in other words, and kept declining (though more slowly, since levels were already low) as the Bush administration ramped it back up. Overall US military spending has varied during the period of the New Peace from a low in constant dollars of less than $400 billion to a high of more than $700 billion, but war does not seem to have noticed. The same nonrelationship exists between other potential proxy measurements for hegemony and conflict: there does not seem to be much connection between warfare and fluctuations in US GDP, alliance commitments, and forward military presence. There was very little fighting in Europe when there were 300,000 US troops stationed there, for example, and that has not changed as the number of Americans dwindled by 90 percent. Overall, there does not seem to be much correlation between US actions and systemic stability. Nothing the United States actually does seems to matter to the New Peace.

It is possible that absolute military spending might not be as important to explain the phenomenon as relative. Although Washington cut back on spending during the 1990s, its relative advantage never wavered. The United States has accounted for between 35 and 41 percent of global military spending every year since the collapse of the Soviet Union.70 The perception of relative US power might be the decisive factor in decisions made in other capitals. One cannot rule out the possibility that it is the perception of US power—and its willingness to use it—that keeps the peace. In other words, perhaps it is the grand strategy of the United States, rather than its absolute capability, that is decisive in maintaining stability. It is that to which we now turn.

Conflict and US Grand Strategy

The perception of US power, and the strength of its hegemony, is to some degree a function of grand strategy. If indeed US strategic choices are responsible for the New Peace, then variation in those choices ought to have consequences for the level of international conflict. A restrained United States is much less likely to play the role of sheriff than one following a more activist approach. Were the unipole to follow such a path, hegemonic-stability theorists warn, disaster would follow. Former National Security Advisor Zbigniew Brzezinski spoke for many when he warned that “outright chaos” could be expected to follow a loss of hegemony, including a string of quite specific issues, including new or renewed attempts to build regional empires (by China, Turkey, Russia, and Brazil) and the collapse of the US relationship with Mexico, as emboldened nationalists south of the border reassert 150-year-old territorial claims. Overall, without US dominance, today’s relatively peaceful world would turn “violent and bloodthirsty.”71 Niall Ferguson foresees a post-hegemonic “Dark Age” in which “plunderers and pirates” target the big coastal cities like New York and Rotterdam, terrorists attack cruise liners and aircraft carriers alike, and the “wretchedly poor citizens” of Latin America are unable to resist the Protestantism brought to them by US evangelicals. Following the multiple (regional, fortunately) nuclear wars and plagues, the few remaining airlines would be forced to suspend service to all but the very richest cities.72 These are somewhat extreme versions of a

central assumption of all hegemonic-stability theorists: a restrained United States would be accompanied by utter disaster. The “present danger” of which Kristol, Kagan, and their fellow travelers warn is that the United States “will shrink its responsibilities and—in a fit of absentmindedness, or parsimony, or indifference— allow the international order that it created and sustains to collapse.”73 Liberals fear restraint as well, and also warn that a militarized version of primacy would be counterproductive in the long run. Although they believe that the rule-based order established by United States is more durable than the relatively fragile order discussed by the neoconservatives, liberals argue that Washington can undermine its creation over time through thoughtless unilateral actions that violate those rules. Many predicted that the invasion of Iraq and its general contempt for international institutions and law would call the legitimacy of the order into question. G. John Ikenberry worried that Bush’s “geostrategic wrecking ball” would lead to a more hostile, divided, and dangerous world.74 Thus while all hegemonicstability theorists expect a rise of chaos during a restrained presidency, liberals also have grave concerns regarding primacy.

Overall, if either version is correct and global stability is provided by US hegemony, then maintaining that stability through a grand strategy based on either primacy (to neoconservatives) or “deep engagement” (to liberals) is clearly a wise choice.75 If, however, US actions are only tangentially related to the outbreak of the New Peace, or if any of the other proposed explanations are decisive, then the United States can retrench without fear of negative consequences. The grand strategy of the United States is therefore crucial to beliefs in hegemonic stability. Although few observers would agree on the details, most would probably acknowledge that post-Cold War grand strategies of American presidents have differed in some important ways. The four administrations are reasonable representations of the four ideal types outlined by Barry R. Posen and Andrew L. Ross in 1996.76 Under George H. W. Bush, the United States followed the path of “selective engagement,” which is sometimes referred to as “balance-of-power realism”; Bill Clinton’s grand strategy looks a great deal like what Posen and Ross call “cooperative security,” and others call “liberal internationalism”; George W. Bush, especially in his first term, forged a strategy that was as close to “primacy” as any president is likely to get; and Barack Obama, despite some early flirtation with liberalism, has followed a restrained realist path, which Posen and Ross label “neo-isolationism” but its proponents refer to as “strategic restraint.”77 In no case did the various anticipated disorders materialize. As Table 2 demonstrates, armed conflict levels fell steadily, irrespective of the grand strategic path Washington chose.

Neither the primacy of George W. Bush nor the restraint of Barack Obama had much effect on the level of global violence. Despite continued warnings (and the high-profile mess in Syria), the world has not experienced an increase in violence while the United States chose uninvolvement. If the grand strategy of the United States is responsible for the New Peace, it is leaving no trace in the evidence. Perhaps we should not expect a correlation to show up in this kind of analysis. While US behavior might have varied in the margins during this period, nether its relative advantage over its nearest rivals nor its commitments waivered in any important way. However, it is surely worth noting that if trends opposite to those discussed in the previous two sections had unfolded, if other states had reacted differently to fluctuations in either US military spending or grand strategy, then surely hegemonic stability theorists would argue that their expectations had been fulfilled. Many liberals were on the lookout for chaos while George W. Bush was in the White House, just as neoconservatives have been quick to identify apparent worldwide catastrophe under President Obama.78 If increases in violence would have been evidence for the wisdom of hegemonic strategies, then logical consistency demands that the lack thereof should at least pose a problem.

As it stands, the only evidence we have regarding the relationship between US power and international stability suggests that the two are unrelated. The rest of the world appears quite capable and willing to operate effectively without the presence of a global police~~man~~. Those who think otherwise have precious little empirical support upon which to build their case. Hegemonic stability is a belief, in other words, rather than an established fact, and as such deserves a different kind of examination.

#### ‘Slow growth’ is inevitable AND is proof of a strong economy.

Dietrich Vollrath 20, Professor of economics at the University of Houston, "Slow economic growth is a sign of success," USAPP, 02/22/2020, https://blogs.lse.ac.uk/usappblog/2020/02/22/slow-economic-growth-is-a-sign-of-success/.

We’re accustomed to looking at the growth rate of GDP to evaluate the health of our economy. Which is why the recent slowdown in growth appears so troubling. In the US, GDP growth for 2019 was 2.3%, meaning it has been nineteen years since growth hit 4%, and nearly as long since it touched 3%. For the UK the story is similar, as it has been fifteen years since growth hit 3%. In the Eurozone as a whole, growth last came close to 4% in 2000. These slowdowns across developed economies predates the financial crisis, and leads to natural questions: what went wrong with the economy, and how do we fix it?

But the slowdown we’re observing isn’t something we can fix – or that we would want to fix – because the slowdown was never a consequence of things that went wrong. Instead, as I show my new book, the slowdown is a consequence of things that went right.

From a simple accounting perspective, there are two main factors behind slower growth: the fall in fertility during the 20th century, and the shift of our expenditures away from goods and towards services. And both of those explanations can be traced back to economic success.

The fall in fertility had a significant impact on economic growth for decades, particularly in the US. The baby boom generated a one-time wave of human capital that hit the economy during the middle of the 20th century. As those new workers hit the workforce, the proportion of workers to population rose substantially, as evidenced by the fall in the youth dependency ratio between 1960 and 1980 (see Figure 1). Combined with the relatively high educational attainment of the baby boomers compared to prior generations, this provided a substantial boost to the growth rate, increasing it around 1.25 percentage points in 1990 compared to immediately after World War II.

Chart, line chart

Description automatically generated

As that wave of human capital receded, so did the growth rate. Starting in the early 2000s, the old age dependency ratio started to rise (see Figure 1) the inevitable consequence of the drop in youth dependency back in the 1960s and 1970s. As workers aged out of the workforce – and continue to do so – this dragged down the growth rate of the aggregate economy. That 1.25 percentage point boost during the 20th century disappeared in the 21st, explaining most of the slowdown in the US.

But why should we see these demographic shifts as a success? The drop in fertility after the baby boom which explains the shifts was driven by several successes. Expanded access to college education pushed back the age at which people were willing to marry. The opening up of many professions to women, along with growth in overall wages, meant that it made sense for many women to delay marriage. Finally, advances in contraceptive technology meant it was possible for women to take advantage of the new educational and professional opportunities that arose. The growth slowdown today is a consequence of family decisions made decades ago in response to rising living standards and the expansion of women’s rights.

The second source of the slowdown, the shift from goods towards services, was also driven by success. In the past one hundred years we became incredibly efficient at producing goods like clothes, food, furniture, and computers. The consequence was a steady reduction in the price of those goods relative to services. We could have used that reduction to buy even more goods than we did, but instead we took advantage of the savings to purchase more services like education, healthcare, and travel. Therefore the composition of our expenditures shifted away from goods and towards services (see Figure 2). We still consume more goods than before; it is just that they got so cheap that their share of our total expenditure fell relative to services.

Chart, line chart

Description automatically generated

This had a consequence for overall economic growth, however. Productivity growth in services is lower than for goods. That wasn’t a failure of services in the last few years. It appears to be an inherent quality noted by economist William Baumol in the 1960s. If a restaurant — a service — tried to operate with half their normal staff, you’d complain about the slow service and lack of attention. In comparison, if a manufacturer produced a laptop – a good – with half as much labour, you’d never know. This makes productivity growth harder for services than for goods. As we shifted expenditures towards services, aggregate productivity growth was thus bound to fall. Between the middle of the 20th century and today, that probably shaved another 0.2 to 0.25 percentage points off of the growth rate. But note that this only happened because of the productivity growth we experienced in the first place, a success.

Relative to the successes in the demographic shifts and spending shifts, the usual suspects are not capable of explaining the growth slowdown. Tax rates fell right as the slowdown started, and evidence from across states and industries shows that, if anything, more regulation was associated with faster growth, not slower. Trade with China exploded in the last twenty years, but evidence suggests that this had little effect on growth for the economy as a whole, even though individual regions and industries saw booms or busts. Economy-wide measures of the mark-up of price over cost rose, but it turns out that this didn’t lower growth. The shift of activity to high mark-up industries kept economic growth rates from falling even further than they did, as it meant we produced more valuable products.

If you’re still uncertain that the growth slowdown is a consequence of success, ask yourself what you’d give up to bring growth back to 4%. We could destroy half of all our goods: cars, couches, TVs, laptops, houses, trampolines, and so on. That would lead to a massive shift of spending towards goods as we scrambled to replace everything, and we’d see a jump in productivity growth. Alternatively, we could roll back contraceptive rights and women’s participation in the workforce in the hopes of starting a new baby boom. Wait twenty years and we’d have another surge of human capital into the economy. Would either of those be worth it just to see growth hit 4% again, perhaps not until 2040? Assuming the answer is “no”, that tells us the growth slowdown happened because of things that went right, things we would not sacrifice.

#### Liberal order is resilient

Sullivan 18 (Jake - Senior Fellow at the Carnegie Endowment for International Peace, “The World After Trump,” *Foreign Affairs*, Vol. 97, Issue 2, Historical Reference Center)

But the existing order is more resilient than this assessment suggests. There is no doubt that Trump represents a meaningful threat to the health of both American democracy and the international system. And there is a nonnegligible risk that he could drag the country into a constitutional CRISIS, or the world into a crippling trade war or even an all-out nuclear war. Yet despite these risks, rumors of the international order's demise have been greatly exaggerated. The system is built to last through significant shifts in global politics and economics and strong enough to survive a term of President Trump. This more optimistic view is offered not as comfort but as a call to action. The present moment demands resolve and affirmative thinking from the foreign policy community about how to sustain and reinforce the international order, not just lamentations about Trump's destructiveness or resignation about the order's fate. No one knows for certain how things will turn out. But fatalism will become a self-fulfilling prophecy. The order can endure only if its defenders step up. It may be durable, but it also needs an update to account for new realities and new challenges. Between fatalism and complacency lies urgency. Champions of the order must start working now to protect its key elements, to build a new consensus at home and abroad about needed adjustments, and to set the stage for a better approach, before it's too late. A RESILIENT ORDER In a world where the major trends seem to spell chaos, it is fair to place the burden of proof on those who claim that the current order can continue. Yet well before Trump, it had already demonstrated its capacity to adapt to changes in the nature and distribution of power. Three basic factors account for such resilience—and demonstrate why the emphasis now should be on protecting and improving the order rather than planning for the aftermath of its demise. First, most of the world remains invested in major aspects of the order and still counts on the United States to operate at its center. The passing of U.S. dominance need not mean the end of U.S. leadership. That is, the United States may not be able to direct outcomes from a position of preeminent economic, political, and military influence, but it can still mobilize cooperation on shared challenges and shape consensus on key rules. In the years ahead, although Washington will not be the only destination for countries seeking capital, resources, or influence, it will remain the most important agenda-setter. Some context is important. The U.S.- led order was built at a unique moment, at the end of World War II. Europe's and Asia's erstwhile great powers were reduced to rubble, and a combination of dominance abroad and shared economic prosperity at home allowed the United States to serve as the architect and guarantor of a new order fashioned in its own image. It had not just the material power to shape rules and drive outcomes but also a model many other countries wanted to emulate. It used the opportunity to build an order that benefited itself as well as others, with clear advantages for populations at home and abroad. As the international relations scholar G. John Ikenberry has put it in this magazine, the resulting system was "hard to overturn and easy to join." The end of the Cold War and the fall of the Soviet Union served to reinforce and extend American preeminence. This precise state of affairs was never going to last forever. Other powers would eventually rise, and the basic bargain would one day need to be revisited. That day has arrived, and the question now is, do other countries want a fundamentally different bargain or simply some adjustments? A comprehensive 2016 rand analysis found that few powers display an appetite for dismantling the international order or transforming it into something unrecognizable. And while Trump's election has forced countries to contemplate a world without a central role for the United States, many still view the president as an aberration and not a new American normal, especially given that the United States has bounced back before. Even China has concluded that it largely benefits from the order's continued operation. Around the time of Trump's inauguration, breathless reports interpreted Chinese President Xi Jinping's comments on an open international economy and climate change as indicators that China planned to somehow take over for the United States. But what Xi was really signaling was that China does not want near-term radical change in the global system, even as it seeks to gain more influence by taking advantage of the vacuum left by Trump. And to the extent that Beijing has set out to construct its own parallel institutions, particularly when it comes to trade and investment, thus far these institutions largely supplement the existing order rather than threatening to supplant it. Other emerging powers chafe at certain features of the order, and some seek a more prominent place in institutions such as the un Security Council. Yet rhetorical flourishes aside, they, like China, talk in terms of reform rather than replacement—and their continued participation sends a similar message. For example, leaders of the major emerging powers eagerly accepted U.S. President Barack Obama's invitation to join the first Nuclear Security Summit, in 2010; less eagerly but still willingly, they joined the global sanctions regime against Iran's nuclear program. Richard Fontaine and Daniel Kliman of the Center for a New American Security quote a Brazilian official who captured a broader sentiment among emerging powers: "Brazil wants to expand its room in the house, not tear the house down." And indeed, Brazil has taken on a leading role in defending important aspects of the order, such as the multi stakeholder system for Internet governance. Emerging powers' quest for a greater voice in regional and global institutions is not a repudiation of the order but evidence that they see increasing their participation as preferable to going a different way. FROM DOMINANCE TO LEADERSHIP The second factor accounting for the order's resilience is that the United States has managed the transition from dominance to leadership more effectively than most appreciate. Over the past decade, U.S. diplomacy has facilitated a shift from formal, legal, top-down institutions to more practical, functional, and regional approaches to managing transnational issues—"coalitions of the willing" (in the real, non-Iraq-war sense of the term). This shift has not only expanded the prospects for shared problem solving; it has also made the rules-based order less rigid, and therefore more lasting.

### AT: Chemicals

#### Multiple factors ensure chemical industry resiliency

Outlook ‘12; Economic world economic review, “Economic Outlook — Economic Outlook No.2-2012” http://www.mydigitalpublication.com/display\_article.php?id=1058343

Rebound in the US Benefiting from the impact of the last two massive public budget support plans for industry, the American chemical industry was also helped in 2011 by favourable dollar/euro exchange rate and by the restored health of the Auto sector, one of its leading user industries.While construction, the chemical industry’s second major customer, has not yet genuinely recovered, its decline has at least halted, stabilising demand at levels which are manageable in the end for its chemical suppliers. The willingness of American politicians to support a forced march to US economic growth offers a reassuring outlook for activity in the sector in 2012. Additional factors include relatively stable oil prices, the good health of the inorganic chemical sector – notably fertilisers – and the improved financial structure of actors in the industry after their restructuring efforts implemented during the 2008- 2009 crisis. On top of this, there are the prospects of the juicy but more distant benefits of innovations in green chemistry.

## Private Antitrust

### Private Action Fails

#### private enforcement fails---barriers to enforcement and class label

AAI 21. American Antitrust Institute. “The Critical Role of Private Antitrust Enforcement in the United States.” *American Antitrust Institute*. August 4th, 2021. 7.

Finally, the falloff in private dollar settlements since about 2017-2018, even despite the few large settlements within that period, is potentially troubling. As discussed, private enforcement serves an important function in stepping into the void left by inadequate federal enforcement. But rising standards for showing collusion in private price fixing cases are problematic. For example, federal courts have been steadily increasing the burden on plaintiffs pleading antitrust conspiracies to establish that the defendants’ conduct results from collusion and not from un-coordinated, but consciously parallel, conduct among competitors. This has, ironically, meant that it is more difficult for plaintiffs to successfully allege collusion where industries are highly concentrated, because where there are only a few competitors, competitors do not need to actually collude in order to achieve supracompetitive prices.

Other factors also increase the burden on private plaintiffs in bringing and litigating Section 1 cases, as explained in AAI’s May 7, 2020 commentary, “When COVID-19 is the Symptom and Not the Disease: Consolidation, Competition, and Breakdowns in Food Supply Chains.”22 These include: obtaining class certification, which has become increasingly difficult over the last several decades and presents a considerable barrier to private antitrust litigation, and identifying which consumers were harmed and by what amount. Additional barriers include the primacy of the government’s “interest” in overlapping private suits, which can ultimately aid private plaintiffs, but can significantly impair the ability of private plaintiffs to effectively litigate their claims.

### AT: Bioterror/Disease

#### Healthcare fails

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One of the most depressing things about this pandemic is that, as an American who had little faith in our leadership or system to significantly mitigate this looming disaster, I looked to countries with far more competent leadership and more centralized and robust health systems than ours to be beacons in the night of this pandemic, especially for democratic countries to beam in this true trial not just for humanity, but Western democracy, which has been teetering of late. I saw a few slivers of light for effective coronavirus programs so far—South Korea especially above all but also Israel, Germany, plucky Ireland, and, at least through the present and perhaps still to be, Japan—but, overwhelmingly, I saw darkness where I expected light in Europe from technocratic establishments and national health systems that (mostly) did not have buffoons in charge or the gaping holes of America’s health system that this pandemic has displayed all-too glaringly. Italy, Spain, and France are obvious disasters, along with the Netherlands and the UK (whose Prime Minister, Boris Johnson, led the way with poor choices both personally and as a leader and found himself hospitalized in an intensive care unit; and just look at this thread delving into differences between the UK and Ireland). Even Sweden seems like it could be an example of bad-practice: like the other mentioned countries, it did not take proper precautions for long after it should have. Some of these countries are regular fountains of inspiration for Americans who expect more from their government, but these nations failed here along with us to varying degrees. In the absence of traditional U.S. global-level leadership, then, there essentially was no global leadership.

Much of the developing world has yet to be hard hit, but there is great potential for the tolls there to be devastating. The terrible government response in Brazil–exemplified by the country’s president, Jair Bolsonaro—seems to be setting up a tidal wave of infections, which were recently likely twelve times higher than officially reported numbers. In Ecuador, a country with little ability to conduct proper testing to determine the full extent of the virus, the death toll recently seemed to be fifteen times higher than what officials there had been able to determine. If the coronavirus spreads intensely in Africa, the prospects there are also looking quite grim. In many poorer nations around the world, social distancing is a privilege and a luxury that for a great many is impossible (not even getting into the situation of earlier-discussed refugees). And already terrible social and economic conditions in many developing nations are only being made exponentially worse by COVID-19, meaning that hunger is now going to be a much larger problem globally, rising to affect 265 million people after factoring in coronavirus, nearly doubling the pre-pandemic figures. Other sad realities coronavirus will exponentially inflate include, but are hardly limited to, domestic abuse, human trafficking, and suicide. The threat to the developing world is only exacerbated by the recent inexcusable, despicable, “incredibly stupid,” and needless U.S. announcement that it will halt funding for the World Health Organization (WHO) in the midst of a global pandemic, a decision that for many in the world’s poorest nations that sorely lack vital resources amounts to a death sentence if that funding is not replaced soon from elsewhere; as if that was not enough, the Trump Administration is seeking to do long-term damage to the WHO beyond just defunding it.

Despite plenty of poor responses globally, that top national leadership in America seems to have stood out in failing miserably is not in serious dispute for anyone attempting objectivity. This was even obvious fairly early, before most American were concerned, with top government officials warning the president repeatedly in January and February about the extraordinary nature of the coronavirus threat and bringing it to the attention of the White House’s National Security Council even earlier. Others outside the current Administration also sounded the alarm early, including former Vice President Joe Biden—the now-clear Democratic presidential nominee-to-be set to challenge the incumbent president for the White House—who even wrote an op-ed published on January 27 warning of the seriousness of the coronavirus threat and how ill-prepared we were to confront it. As Richard Haas, President of the Council on Foreign Relations, made painfully clear, “putting off the decision to go on the offensive against COVID-19–treating a war of necessity as a war of choice–has proved extraordinarily costly in terms of lives lost and economic destruction.” In a pandemic in which timing has perhaps been the most important factor or at least as important as any, our leaders at the top sat passively—even stubbornly—and refused to look at the rising viral tsunami heading in our direction, let alone acknowledge it as the hundred-year plague it was.

Even the military has been seriously affected, one notable example being the Navy having to semi-abandon one of our aircraft carriers in mid-deployment, another being that recruitment has been hampered.

And while books could be and articles already have been written that demonstrate America’s failure clearly even for the most fanatically partisan supporters of the current leadership, here will be shared just this excellent, highly informative, regularly updated chart from The Financial Times that shows the U.S. is, literally, the worst at “flattening the curve” (the main format has been changed but there is an interactive version of the below chart here that lets you set up your own comparisons):

[Chart omitted]

That phrase “flattening the curve” (or “bending the curve” as a precursor) was only understood by a handful of people a few months ago but is now well-known coronavirus-era lingo for taking collective action to limit the spread and death-toll of the virus, to lower the height of the curve (bend it) over and then keep it from increasing (flattening it) so that our medical systems can better care for those infected (with bending again all the way down after flattening as the endgame). Clearly, our American curve stands out in the above chart as both the most stridently upward-trending arc and the arc that took the longest to be pulled down relative to other nations grappling with serious coronavirus outbreaks over a similar timeframe. Case/infection-counts are highly problematic for a variety of reasons, but the deaths statistic is far clearer as to its weight, meaning, and finality, the above chart highlighting quite well that statistic and how well countries are at slowing deaths (even if globally across the board there is a serious problem of unintentional undercounting and underattributing deaths from coronavirus, tracking deaths is still far less ambiguous than tracking overall cases/infections).

So, relatively speaking, despite massive daily disinformation to the contrary, the U.S seems to have done the worst job of flattening the curve of coronavirus deaths out of countries with significant levels of infection that have experienced fighting coronavirus for a similar amount of time, and this would seem to be the case even for allowing for countries like China (from which this pandemic originated) and Russia, which are virtually certainly deliberately underreporting their coronavirus case numbers and deaths and also allowing for serious questions about developing countries with poor means of tracking the virus, as discussed earlier. And while the U.S. is hardly the worst in terms of deaths per capita, the above chart shows with the available data that it is still the worst of any country with a major outbreak at slowing the level of death (and preventive measures like lockdowns seem collectively to be a much more important variable than population size or density, anyway).

And the chart just takes into account the deaths we know about; there are “almost certainly” Americans dying from coronavirus not being counted as coronavirus-related deaths because of testing issues, reporting issues, and other shortcomings, with this hardly being the situation only in the U.S.

In the U.S. in particular, the lack of testing has emerged as one of the premier failings regarding coronavirus, making our sense of how many are truly infected by (and, to a lesser extent, dying from) the virus woefully incomplete and greatly hampering our ability to accurately model the spread of the virus. And this, in turn, makes it very difficult for leaders to plan ahead beyond the short-term. Especially because of our lack of testing—one of the most crucial aspects of coronavirus response—we are essentially on a ship at night in heavy fog, trying to see what obstacles lie ahead and how to avoid them but unable to see far in front because of that fog and unable to have any solid sense of when the fog will lift or if or when it will return. Under those conditions, crashing into an iceberg and sinking is far more likely. A military counterinsurgency analogy is also apt, as not having enough testing is like trying to neuter an insurgency without having intelligence or enough regular patrols to get a lay of the land before, say, sending a major convoy through enemy territory: with few pieces of intelligence and fewer teams gathering intelligence, the chances the enemy can launch a successful ambush on that convoy when it is sent out are far greater than if you had a much larger number of troops getting much more intelligence on the enemy territory. Intelligence helps to lift the fog of war, then, while testing helps to lift the fog of pandemics.

Considering a detailed, highly-credibly report from last year ranked America, by relatively far, as the best-prepared nation in the world for a pandemic, the failure in U.S. leadership is even more stunningly spectacular and inexcusable; it is like losing a race in which you started ahead of everyone or if you were, say, someone who inherited millions and were already working in a lucrative field (maybe real estate in Manhattan in the 1980s) and then still managed to go bankrupt six times.

In the words of Max Brooks from an interview from late March:

I think that we have been disastrously slow and disorganized from day one. I think the notion that we were caught unaware of this pandemic is just an onion of layered lies. That is not true at all. We have been preparing for this since the 1918 influenza pandemic. No excuse…The knowledge was out. We knew. We did not prepare. This is on us.

…All of this panic could have been prevented if the federal government had done what it was supposed to do before the crisis became a crisis. Because the way to stop panic is with knowledge, and if the president had been working since January to get the organs of government ready for this, we as citizens could have been calmed down knowing that the people that we trust to protect us are doing that.

A friend of mine, Ellen Adair (an actress who played a top senator’s chief of staff in Homeland in its previous season while that universe’s America was facing nontraditional, asymmetric threats similar to the types we are currently facing from Russia), pointed out a specific article from a few years back that saw all too much of this coming: writing in the summer of 2018 for The Atlantic, Ed Yong terrifyingly accurately predicts not only America’s general unpreparedness for a pandemic, but why this current administration would be particularly ill-suited for handling one (his late March, 2020, predictions for how this will end—made when the U.S. outbreak was starting to really pick up steam and yet was still a fraction as bad as it is now—should also be of interest). While the entire piece from before COVID-19 even existed feels exceedingly current and sickeningly prescient, I felt particular chills reading these words:

Perhaps most important, the U.S. is prone to the same forgetfulness and shortsightedness that befall all nations, rich and poor—and the myopia has worsened considerably in recent years. Public-health programs are low on money; hospitals are stretched perilously thin; crucial funding is being slashed. And while we tend to think of science when we think of pandemic response, the worse the situation, the more the defense depends on political leadership.

…Preparing for a pandemic ultimately boils down to real people and tangible things: A busy doctor who raises an eyebrow when a patient presents with an unfamiliar fever. A nurse who takes a travel history. A hospital wing in which patients can be isolated. A warehouse where protective masks are stockpiled. A factory that churns out vaccines. A line on a budget. A vote in Congress. “It’s like a chain—one weak link and the whole thing falls apart,” says Anthony Fauci, the director of the National Institute of Allergy and Infectious Diseases. “You need no weak links.”

Right now, we look bad, and the idea of the U.S. leading the world when it cannot lead itself anymore is indeed going to be problematic for many who used to be comfortable with U.S. leadership or, at least, tacitly accepted it. That does not mean there will be a new world order overnight, but it sure will be harder for not just millions, but likely hundreds of millions or even billions of people to see the U.S. as a leader after our failures with this virus are literally broadcast every day for global public consumption.

Of course, there is plenty of blame to go around in America, from governors’ mansions to various media outlets, from our very own American culture to ourselves, from individual institutions to local leaders. One standout in that last group is the Wisconsin Assembly Speaker telling people during the recent controversially-held dangerous April 7th elections in his state to go outside and vote after he himself worked to stop both extending absentee voting and delaying the election despite the pandemic, saying this to Wisconsinites this while wearing what seems to be a hospital-quality mask, gloves, and gown set. Dysfunction and division is not just present at the federal level and between states and the federal government, then, but within states, between governors and mayors or others all throughout the country: in South Dakota, there is even a dispute between the governor and Sioux tribal authorities.

But in dire emergencies like this, the national leaders set the tone for the nation as a whole, with many others farther down the totem pole taking their cues from national leadership, none more so than the top national leader, be it a president, prime minister, or king. And this is the way it should be. When we were attacked at Pearl Harbor all the way back in 1941, we did not have dozens of regional, state, city, county, and town war policies operating independently from one another: we had a coordinated national effort, and fighting deadly national and global pandemics should be no different. In the 1940s, we were able to triumph in our finest national hour even as were caught off-guard. That clearly has not happened with coronavirus, and our “collective” “national” response can be said to be anything but a single one with unity of purpose.

In stunning displays of hubris and lack of preparation, Napoleon in 1812 and Hitler in 1941 famously sent their armies towards Russia in June, months away from the famed Russian winter, with no winter clothing. Now we can similarly say that, in 2020, the American President allowed our medical first-line responders to face off against coronavirus without nearly enough proper protective gear despite having weeks and months to take proper action to equip them.

We could have approached this coronavirus threat with the mentality of the Starks in Game of Thrones, whose mantra is “winter is coming”: be prepared, get ready, unite, take this threat very seriously, take nothing for granted. Instead, (spoilers for the show/books in this sentence) our leaders were more like Queen Cersei Lannister in the final seasons: warned repeatedly and with a zombie-wight coming at her face-to-face, she still did not prioritize dealing with the Army of the Dead and, instead, took the crisis as an opportunity to advance her personal and political interests, to settle scores and amass power for herself.

Wherever blame should or should not be placed, this novel (new) coronavirus has brought the world to its knees. Socially and economically, a huge portion of global activity has come to screeching halt or, at least, a vastly reduced intensity. Something this sudden on a global scale is new for humanity, and we have no idea even when this pandemic will really end (other than an increasing understanding that the end will probably not be soon), if it will end, how soon other waves will come or how bad those waves will be (they may be worse). The virus’s national and overall global spread even seems to be increasing several months into the pandemic, not decreasing. We do not know how many people will die (today, there will be over 350,000 worldwide and over 100,000 in the U.S. for just the recorded COVID-19 deaths), except that earlier rosier predictions are now clearly way off the mark. People are deeply fearful of a deeply uncertain future and what the world will look like after this virus leaves its initial mark. Thus, this novel coronavirus is not only engendering a sense of fear throughout the human race, but also terror.

But the true terror is to come.

2.) A FAR MORE WORRISOME FUTURE

Despite the examples listed earlier in my brief biowarfare and bioterrorism survey and other acts not included therein, both biological warfare and bioterrorism have been exceedingly rare in history.

One obvious reason for this is that it is hard to ensure that such weapons only infect the enemy and not also the people attempting to do the infecting and their compatriots (Japanese forces, for example, incurred thousands of casualties from their own bioweapons use in China). In other words, bioagents are so dangerous that they have mostly been felt to be too dangerous to use, especially on a larger scale.

The idea that is supposed to give us comfort is that, in theory, it is not rational to use such weapons. Yet the country with the largest bioweapons program in history—the Soviet Union—was regarded as insecure, famously concerned with self-preservation and constrained by rational realpolitik as a result, making it fairly predictable. Sure, the Soviets did not use these weapons, but they still put smallpox in ICBMS and worked to create disease even worse than Mother Nature has been able to create.

Rather than us being able to trust in some solid proof of human rationality—the concept of which, as an overall rule, is highly debatable at best—then, I feel the non-use of biological weapons (similar to the situation with nuclear weapons after 1945) is less a natural product of human wisdom or design but, instead, is a product of the small-N problem, that dilemma of comparative studies and of politics in general: that there is such a small number of relevant actors with bioweapons capabilities that we cannot draw rock-solid proof from those weapons’ non-use that this is non-use some sort of “natural” outcome. In short, we have likely just “lucked out” biological (and nuclear) weapons have not been used because only a handful of governments have had serious capabilities and the technology was advanced enough to the degree that it was hard to have anyone other than governments and specialized scientists develop them, and of these small samples, only a handful of those had the will to actually pursue these weapons, with an even far smaller number pursuing their use.

As any basic statistics primer would tell you, though, the more actors that develop such capabilities, the greater the chance that such capabilities will eventually be used, with that probability increasing being a mathematical certainty.

And therein lies one of the major current problems. For, even before now, technology had advanced in recent years to a degree that has made it far easier for governments, organizations, and individuals to research, produce, and deploy these weapons: the internet has made the information on how to do all that more available than ever before; logistics technology have made the ability to obtain and transport necessary materials easier than ever before; and advances in medical science and technology have opened up bioengineering and made creating biolabs easier, by far, than ever before.

So that “small-N (number)” reality an ally in perpetuating the non-use of bioweapons, that bulwark that so few people had access or ability when it came to what was needed to operationalize bioweapons, has been dramatically weakened in recent years as the breadth of actors with the ability to research, develop, and deploy bioweapons has grown exponentially in recent years with the latest remarkable advBances of human civilization.

The math, then, has changed: that probability that the small-N problem kept so low is now dramatically higher.

Even putting aside the small-N problem being a more likely explanation for general non-use of bioweapons up through the present than our own supposed rationality—even if we accept, in principle, that it is our rationality that is to be credited for the lack of biowarfare and bioterrorism and could take comfort in that—the future still looks comparatively bleak. And the reason for that is because, relative to the rest of the modern era, we ae seeing an explosion in those swelling the ranks of apocalyptic-minded groups of religiously-motivated violent extremists. Indeed, our era has seen a sharp increase in the number of terrorists willing to sacrifice themselves, their people, and countless innocent civilians in pursuit of their apocalyptic goals. Such terrorists are possessed with end-times-oriented mindsets that are hell-bent on accelerating the arrival of the apocalypse, with ISIS as the flagship movement.

If we add to that equation the possibility of governments using newer science—especially genetic engineering and advanced vaccination programs—to perfect a way to immunize their own militaries and people against a weapon they could then feel safe to deploy against others and therefore confident to weaponize and develop, then the threat of bioweapons being used against America and others is only increasing by yet another factor. If you think this sounds too much like science fiction, recall how a mass biological test on the part of the U.S. government infected the whole San Francisco metropolitan area in 1950 and how the public never learned about it until 1976. In other words, if another government wanted to immunize its population against something pretty nasty without drawing attention to that nasty something, there are more than a few ways to immunize people without people even knowing they are being immunized (slipping in with other standard immunizations, perhaps adding into the water or food supply, manufacturing a controlled “outbreak” that would give cover for a mass immunization, etc.), especially for a government motivated enough to carry out and plan years in advance a biological first strike with a deadly bioweapon.

But there are other technological multipliers that have yet to have their potential impact be anywhere near realized that make the future look even less comforting. Technology has just recently been advancing, and is continuing to advance, rapidly in such a way that it is only going to exponentially increase the number of actors able to carry out biological attacks, and that is even in addition to the exponential increase that has already occurred recently. And perhaps the foremost reason for this coming exponential growth in potential biothreats and actors is a new genetic engineering technique known as CRISPR—Clustered Regularly Interspersed Short Palindromic Repeats—that makes it far easier and cheaper to create bioweapons than ever before.

To put this into perspective, some CRISPR kits were selling for under $150 even in 2017. A United Nations panel even characterized this CRISPR threat as do-it-yourself bioweapons creation (“DIY biological labs”). One post from a leading bioresearch and development company that has led on, and sells, CISPR tools and material ended by noting CRISPR’s “usefulness for genome locus-specific recruitment of proteins will likely only be limited by our imagination.” And if we recall that Dream of Scipio quote from the introduction about how man is worse than beast because beasts are constrained by their lack of imagination but men are not, well, that is where this gets truly terrifying. Indeed, the alarm has been soundly rung by many an expert on the soon-to-be-clear and present danger of this CRISPR technology’s ability to empower those with the most malevolent of imaginations. We are, then, being presented with a brave new world of bioterrorism.

Thus, the guardrails—supposed or real—that may have offered protection from the use of bioweapons before are simply not as strong as they used to be. Even if we accept human rationality as a bulwark, some of the biggest increases in terrorism involve suicide attackers and those embracing apocalyptic theology hoping to bring about a final world-ending confrontation, comforted by an ideology that tells them if they die as martyrs fighting for their cause they will ascend to heaven with a special spot waiting for them, with a degree of terrorists and terrorist groups concerned less with temporal self-preservation than at any other time in the modern era. And whatever their motives, the modern world has not only already made bioweapons more accessible than ever to them, but will also dramatically expand this greater accessibility with the newest CRISPR technology that will itself spread rapidly. Thus, we have both terrorists increasingly less worried about doing damage to themselves and a far greater number of actors that will be dabbling in bioweapons.

I had earlier discussed Max Boot’s lesson on technology at the end of his book on guerrilla warfare, Invisible Armies (“technology has been less important in guerrilla war than in conventional war”), but I left out the second part of his lesson’s heading, “but that may be changing,” to save it for here. He does not mean the usefulness of technology on our end, either; he is talking about a change in favor of terrorists:

The role of weapons in this type of war [i.e. unconventional] could grow in the future if insurgents get their hands on chemical, biological, or especially nuclear weapons. A small terrorist cell the size of a platoon might then have more killing capacity than the entire army of a nonnuclear state like Brazil or Egypt. That is a sobering thought. It suggests that in the future low-intensity conflict could pose even greater problems for the world’s leading powers than it has in the past. And, as we have seen, the problems of the past were substantial and varied.

And the type of weapons which are seeing the most rapid advancement in technology and ease of access are not chemical or nuclear, but biological.

In fact, as Karl Johnson, one veteran of fighting Ebola outbreaks, mentioned over a quarter-century ago:

It’s only a matter of months—years, at most—before people nail down the genes for virulence and airborne transmission in influenza, Ebola, Lassa, you name it. And then any crackpot with a few thousand dollars’ worth of equipment and a college biology education under his belt could manufacture bugs that would make Ebola look like a walk around the park.

For Max Brooks, “Johnson’s prediction is right around the corner. With a little dark-web information and some secondhand lab equipment, anyone will soon be able to generate do-it-yourself blights in a basement lab and then release them back into the general population.”

Brooks echoes the earlier sentiments expressed herein that public policy attention given to threats posed by nuclear weapons are overemphasized relative those given to biological weapons. As Brooks writes in Foreign Policy:

Genetic manipulation is the most dangerous threat humanity has ever faced because it allows anyone to spin straw into lethal gold. Unlike the hypothetical nuclear terrorist whom we’ve spent untold fortunes preparing for but who can’t act without acquiring precious, rare, and heavily guarded fissile material, the biohacker will be able to harvest germs from anywhere. And unlike the nuclear terrorist, who gets only one shot at destruction, the biohacker’s bomb can copy itself over and over again.

If we look at the present and the future, then, without a doubt, terrorists and governments that have been and are pursuing the research and development of arsenals of bioweapons will only be doing so under even more favorable conditions to their goals as the future unfolds, including the near-future. For these biowarrior wannabes, they are seeing what just something superflu/superpneumonia-ish like this coronavirus can do and are thinking of the damage and havoc they can wreak with far worse diseases. And not only them but those who were on the fence about or reluctant to consider pursuing bioweapons programs will be seriously thinking that now. Because the logical conclusion anyone contemplating biowarfare would draw from our current pandemic is that if coronavirus can do what it is doing now to America and the world, a deliberate, competent bioattack at a certain level could destroy the world as we know it. We must realize that, to the degree that we are unsettled and shaken by looking at the state of our nation, our enemies are emboldened and more confident in their ability to do us harm.

Just imagine a brand new virus engineered to kill thirty percent—let alone fifty or seventy-five percent—of victims and that incapacitates most of the rest, one that spreads like wildfire, for which we have no immunity and no cure, which could cripple nations in days (not weeks), wiping out some people in key leadership positions along with millions of others, and incapacitating for days or weeks even those that survive. Imagine the people unleashing such a disease are religious terrorists with apocalyptic death-wishes (plenty of those) or military officials from a government that has developed a secret immunity that only they and their countrymen have. Imagine, while we are [down] ~~crippled~~, our enemy then offers the immunity it to allies or potentially new allies in the moment of crises, allowing it to destroy the nations as we know them that it deems enemies, remaking a world order with our successful enemy at the top. Even staunch allies of ours would be tempted to fold in the face of a weapon for which the only defense comes with joining the new order.

Think about the decades to come, in a world far more crowded where living space will literally be an issue, imagine an invasion by troops immune to the virus; with our leaders, government, and society—including the military—largely wiped out or crippled by the disease, how would an effective resistance—military or medical—to a simultaneous military and viral invasion be able to be mounted in the face of an organized enemy largely escaping the effects of such a disease? And if the enemy offers immunity for a disease for which we have no cure and have no hope of dealing with medically in time in exchange for surrender, if the choice is between surrender and death, what happens to us and America as we know it? The sixteenth-century Spanish conquistadors did not plan to use the smallpox virus as a biological weapon to mostly wipe out the mighty armies of the Aztecs and the Incas and bring their societies to their knees with it in the span of a blink of a historical eye, but smallpox obliged anyway, and the Spanish wiped those Empires easily from the face of the earth as a result. The same devastating effects with the right cocktail of virus can happen today.

One case study shows how a just single person can easily cause over a dozen new coronavirus infections; imagine how few infected people would be required to mass-transmit a far worse virus like the hypothetical engineered one described a few paragraphs above.

Now consider that out current coronavirus has already weakened and damaged democracy in some places —including in the U.S.—pushed it to the brink in others, and, at least in the case of Hungary, seems to have destroyed it. And that does not even get to authoritarians and the authoritarian-leaning, for whom the virus has been an excellent excuse to crack down on freedoms.

The simple truth is, we are not prepared even for a naturally occurring pandemic like coronavirus, let alone a worse one than coronavirus, let alone even more so bioagents designed to as a weapon by our human enemies to kill us and crush our society.

How we appear now matters to our enemies, and not only was the U.S. caught off-guard, its overall response has exposed our weaknesses to the world (and hopefully ourselves). Whether we learn from this experience and patch up our weaknesses before the next major threat—natural or man-made or a sick combination of both—remains to be seen.

#### No acquisition NOR impact---numerous technical and logistical barriers.

Marc-Michael Blum & Peter Neumann 20, Former Head of Laboratory at the Organisation for the Prohibition of Chemical Weapons; Professor of Security Studies at King’s College London, and served as Director of its International Centre for the Study of Radicalisation, "Corona and Bioterrorism: How Serious Is the Threat?" War on the Rocks, 06/22/2020, https://warontherocks.com/2020/06/corona-and-bioterrorism-how-serious-is-the-threat/.

The novel coronavirus pandemic has put the threat of bioterrorism back in the spotlight. White supremacist chat rooms are teeming with talk about “biological warfare.” ISIL even called the virus “one of Allah’s soldiers” because of its devastating effect on Western countries. According to a recent memo by the U.S. Department of Homeland Security, terrorists are “[making] bioterrorism a popular topic among themselves.” Both the United Nations and the Council of Europe have warned of bioterrorist attacks.

How serious is the threat? There is a long history of terrorists being fascinated by biological weapons, but it is also one of failures. For the vast majority, the technical challenges associated with weaponizing biological agents have proven insurmountable. The only reason this could change is if terrorists were to receive support from a state. Rather than panic about terrorists engaging in biological warfare, governments should be vigilant, secure their own facilities, and focus on strengthening international diplomacy.

A History of Failures

Biological warfare, which uses organisms and pathogens to cause disease, is nearly as old as war itself. The first known use of biological agents as a weapon dates back to 600 B.C., when an ancient Greek leader poisoned his enemies’ water supply. Throughout the Middle Ages, especially during the time of the Black Death, it was common to hurl infected corpses into besieged cities. And during the two world wars, all major powers maintained biological weapons programs (although only Japan used them in combat).

Among terrorists, however, the use of biological weapons has been rarer, although groups from nearly all ideological persuasions have contemplated it. Recent examples include a plot to contaminate Chicago’s water supply in the 1970s; food poisoning by a religious cult in Oregon in the 1980s; and the stockpiling of ricin by members of the Minnesota Patriot Council during the 1990s. No one died in any of these instances.

The same is true for the biological warfare programs of al-Qaeda and the Islamic State group. Both groups have sought to buy, steal, or develop biological agents. For al-Qaeda, this seems to have been a priority in the 1990s, when its program was overseen by (then) deputy leader Ayman al-Zawahiri, a trained physician. With the Islamic State, evidence dates back to 2014, when Iraqi forces discovered thousands of files related to biological warfare on a detainee’s laptop.

Yet none of these efforts succeeded. The only al-Qaeda plot in which bioterrorism featured prominently — the so-called “ricin plot” in England in 2002 — was interrupted at such an early stage that none of the toxin had actually been produced. The Islamic State’s most serious attempt, in 2017, involved a small amount of ricin, whose only fatality was the hamster on which it was tested. Of the tens of thousands of people that jihadists have murdered, not a single one has died from biological agents.

It may be no accident that the most lethal bioterrorist attack in recent decades was perpetrated by a scientist and government employee. In late 2001, the offices of several U.S. senators and news organizations received so-called “anthrax letters,” which killed five people and injured 17. Following years of investigation, the FBI identified the sender as Bruce Ivins, a PhD microbiologist and senior researcher at the U.S. Army’s Medical Research Institute of Infectious Diseases. Unlike the others, he was no amateur or hoaxer, but a trained expert with years of experience and full access to the world’s largest repository of lethal biological agents.

Technical Challenges

Ivins’ case helps to explain why so many would-be bioterrorists have failed. At a technical level, launching a sophisticated, large-scale bioterrorist attack involves a toxin or a pathogen — generally a bacterium or a virus — which needs to be isolated and disseminated. But this is more difficult than it seems. As well as advanced training in biology or chemistry, isolating the agent requires significant experience. It also has to be done in a safe, contained environment, to stop it from spreading within the terrorist group. Contrary to what al-Qaeda said in one of its online magazines, you can’t just make a (biological) weapon “in the kitchen of your mom!”

In addition, there is the challenge of dissemination. Unless the agent is super-contagious, a powerful biological attack relies on a large number of initial infections in perfect conditions. In the case of the bacterium anthrax, for example, only spores of a particular size are likely to be effective in certain kinds of weather. State-sponsored programs often needed years of testing and experimentation to understand how their weapons could be used. Though not impossible, it is unlikely that terrorist groups possess the resources, stable environment, and patience to do likewise.

Doomsday Scenarios

Even if terrorists somehow succeeded, it is nearly inconceivable that the resulting “weapon” would be as powerful as the recent coronavirus, SARS-CoV-2. One of its uniquely devastating features has been that people are infectious while experiencing no symptoms. As it spread across the globe, there was no treatment, no vaccine, an incomplete understanding of its pathological modes of action, and no easy, cheap and widely available testing. It was the viral equivalent of a “zero-day exploit” — a cyber-attack that happens before any patch is available.

None of the viruses on the U.S. Centers for Disease Control and Prevention’s list of the most dangerous biological agents could be easily “weaponized” or would have the same, devastating effects as SARS-CoV-2. Pathogenic viruses such as smallpox, Ebola, Marburg, and Lassa are extremely hard to find, isolate, and spread. Botulinum and ricin are dangerous toxins, but not contagious, while Tularemia cannot be transmitted from human to human. The plague is, of course, capable of causing pandemics, but most countries are nowadays well prepared for this particular virus, and will be able to limit — and cope with — localized outbreaks.

This leaves only anthrax, a soil bacterium which is relatively easy to obtain. Even so, isolating a highly pathogenic strain is difficult. More importantly, anthrax is not contagious, and while its spores are durable and affected areas can be hard to de-contaminate, it is unable to spread on its own.

Regarding SARS-CoV-2, it is important to distinguish between the possibility that the virus occurred naturally and escaped from a laboratory, and the idea that it was engineered for maximum infectiousness and deliberately released. The first remains a possibility, although other explanations are equally — if not more — plausible, while the second has been debunked by a comprehensive examination in the journal Nature Medicine, which concluded that SARS-CoV-2 was “not a laboratory construct or a purposefully manipulated virus.”

The chances that terrorists would be capable of engineering a virus such as SARS-CoV-2 without access to a state’s resources are virtually zero. If anything, the possibility of a lab escape — however remote — highlights the importance of biosafety. While governments have paid much attention to laboratories with the highest biosafety level (level 4), work on bat-born coronaviruses is regularly performed at lower levels (level 3, and even level 2), and should instead be subject to similar safety requirements.

In sum, small-scale attacks using anthrax or other agents may be possible, but the risk of a highly advanced, weaponized pathogen that spreads among large populations — a terrorist-initiated biological doomsday — is very low. The only exception, of course, is if terrorists received support from a state, acted as its proxies, or were able to draw on its resources — as in Ivins’ case.

#### Disease can’t cause extinction.

Dr. Toby Ord 20, Senior Research Fellow in Philosophy at Oxford University, DPhil in Philosophy from the University of Oxford, The Precipice: Existential Risk and the Future of Humanity, Hachette Books, Kindle Edition, p. 124-126

Are we safe now from events like this? Or are we more vulnerable? Could a pandemic threaten humanity’s future?10

The Black Death was not the only biological disaster to scar human history. It was not even the only great bubonic plague. In 541 CE the Plague of Justinian struck the Byzantine Empire. Over three years it took the lives of roughly 3 percent of the world’s people.11

When Europeans reached the Americas in 1492, the two populations exposed each other to completely novel diseases. Over thousands of years each population had built up resistance to their own set of diseases, but were extremely susceptible to the others. The American peoples got by far the worse end of exchange, through diseases such as measles, influenza and especially smallpox.

During the next hundred years a combination of invasion and disease took an immense toll—one whose scale may never be known, due to great uncertainty about the size of the pre-existing population. We can’t rule out the loss of more than 90 percent of the population of the Americas during that century, though the number could also be much lower.12 And it is very difficult to tease out how much of this should be attributed to war and occupation, rather than disease. As a rough upper bound, the Columbian exchange may have killed as many as 10 percent of the world’s people.13

Centuries later, the world had become so interconnected that a truly global pandemic was possible. Near the end of the First World War, a devastating strain of influenza (known as the 1918 flu or Spanish Flu) spread to six continents, and even remote Pacific islands. At least a third of the world’s population were infected and 3 to 6 percent were killed.14 This death toll outstripped that of the First World War, and possibly both World Wars combined.

Yet even events like these fall short of being a threat to humanity’s longterm potential.15

[FOONOTE]

In addition to this historical evidence, there are some deeper biological observations and theories suggesting that pathogens are unlikely to lead to the extinction of their hosts. These include the empirical anti-correlation between infectiousness and lethality, the extreme rarity of diseases that kill more than 75% of those infected, the observed tendency of pandemics to become less virulent as they progress and the theory of optimal virulence. However, there is no watertight case against pathogens leading to the extinction of their hosts.

[END FOOTNOTE]

In the great bubonic plagues we saw civilization in the affected areas falter, but recover. The regional 25 to 50 percent death rate was not enough to precipitate a continent-wide collapse of civilization. It changed the relative fortunes of empires, and may have altered the course of history substantially, but if anything, it gives us reason to believe that human civilization is likely to make it through future events with similar death rates, even if they were global in scale.

The 1918 flu pandemic was remarkable in having very little apparent effect on the world’s development despite its global reach. It looks like it was lost in the wake of the First World War, which despite a smaller death toll, seems to have had a much larger effect on the course of history.16

It is less clear what lesson to draw from the Columbian exchange due to our lack of good records and its mix of causes. Pandemics were clearly a part of what led to a regional collapse of civilization, but we don’t know whether this would have occurred had it not been for the accompanying violence and imperial rule. The strongest case against existential risk from natural pandemics is the fossil record argument from Chapter 3. Extinction risk from natural causes above 0.1 percent per century is incompatible with the evidence of how long humanity and similar species have lasted. But this argument only works where the risk to humanity now is similar or lower than the longterm levels. For most risks this is clearly true, but not for pandemics. We have done many things to exacerbate the risk: some that could make pandemics more likely to occur, and some that could increase their damage. Thus even “natural” pandemics should be seen as a partly anthropogenic risk.

### AT: Tech Misinformation

#### It’s limited and easily defeated

Philip Ewing 20; Citing Keir Giles, a Russia specialist with the Conflict Studies Research Centre in the United Kingdom and Tim Hwang, director of the Harvard-MIT Ethics and Governance of AI Initiative; 5/7/20; “Why Fake Video, Audio May Not Be As Powerful In Spreading Disinformation As Feared”; NPR; https://www.npr.org/2020/05/07/851689645/why-fake-video-audio-may-not-be-as-powerful-in-spreading-disinformation-as-feare

Sophisticated fake media hasn't emerged as a factor in the disinformation wars in the ways once feared — and two specialists say it may have missed its moment. Deceptive video and audio recordings, often nicknamed “deepfakes,” have been the subject of sustained attention by legislators and technologists, but so far have not been employed to decisive effect, said two panelists at a video conference convened on Wednesday by NATO. One speaker borrowed Sherlock Holmes' reasoning about the significance of something that didn't happen. “We've already passed the stage at which they would have been most effective,” said Keir Giles, a Russia specialist with the Conflict Studies Research Centre in the United Kingdom. “They're the dog that never barked.” The perils of deepfakes in political interference have been discussed too often and many people have become too familiar with them, Giles said during the online discussion, hosted by NATO's Strategic Communications Centre of Excellence. Following all the reports and revelations about election interference in the West since 2016, citizens know too much to be hoodwinked in the way a fake video might once have fooled large numbers of people, he argued: “They no longer have the power to shock.” Tim Hwang, director of the Harvard-MIT Ethics and Governance of AI Initiative, agreed that deepfakes haven't proven as dangerous as once feared, although for different reasons. Hwang argued that users of “active measures” (efforts to sow misinformation and influence public opinion) can be much more effective with cheaper, simpler and just as devious types of fakes — mis-captioning a photo or turning it into a meme, for example. Influence specialists working for Russia and other governments also imitate Americans on Facebook, for another example, worming their way into real Americans' political activities to amplify disagreements or, in some cases, try to persuade people not to vote. Other researchers have suggested this work continues on social networks and has become more difficult to detect. Defense is stronger than attack Hwang also observed that the more deepfakes are made, the better machine learning becomes at detecting them. A very sophisticated, real-looking fake video might still be effective in a political context, he acknowledged — and at a cost to create of around $10,000, it would be easily within the means of a government's active measures specialists. But the risks of attempting a major disruption with such a video may outweigh an adversary's desire to use one. People may be too media literate, as Giles argued, and the technology to detect a fake may mean it can be deflated too swiftly to have an effect, as Hwang said. “I tend to be skeptical these will have a large-scale impact over time,” he said. One technology boss told NPR in an interview last year that years' worth of work on corporate fraud protection systems has given an edge to detecting fake media.” This is not a static field. Obviously, on our end we've performed all sorts of great advances over this year in advancing our technology, but these synthetic voices are advancing at a rapid pace,” said Brett Beranek, head of security business for the technology firm Nuance. “So we need to keep up.” Beranek described how systems developed to detect telephone fraudsters could be applied to verify the speech in a fake clip of video or audio. Corporate clients that rely on telephone voice systems must be wary about people attempting to pose as others with artificial or disguised voices. Beranek's company sells a product that helps to detect them, and that countermeasure also works well in detecting fake audio or video. Machines using neural networks can detect known types of synthetic voices. Nuance also says it can analyze a recording of a real, known voice — say, that of a politician — and then contrast its characteristics against a suspicious recording. Although the world of cybersecurity is often described as one in which attackers generally have an edge over defenders, Beranek said he thought the inverse was true in terms of this kind of fraud detection.” For the technology today, the defense side is significantly ahead of the attack side,” he said. Shaping the battlefield Hwang and Giles acknowledged in the NATO video conference that deepfakes likely will proliferate and become lower in cost to create, perhaps becoming simple enough to make with a smartphone app. One prospective response is the creation of more of what Hwang called “radioactive data” — material earmarked in advance so that it might make a fake easier to detect. If images of a political figure were so tagged beforehand, they could be spotted quickly if they were incorporated by computers into a deceptive video. Also, the sheer popularity of new fakes, if that is what happens, might make them less valuable as a disinformation weapon. More people could become more familiar with them, as well as being detectable by automated systems — plus they may also have no popular medium on which to spread. Big social media platforms already have declared affirmatively that they'll take down deceptive fakes, Hwang observed. “That might make it more difficult for a scenario in which a politically charged fake video goes viral just before Election Day. “Although it might get easier and easier to create deepfakes, a lot of the places where they might spread most effectively, your Facebooks and Twitters of the world, are getting a lot more aggressive about taking them down,” Hwang said. That won't stop them, but it might mean they'll be relegated to sites with too few users to have a major effect, he said. “They'll percolate in these more shady areas.

# 2NC---Doubles---Harvard

## 2NC---Capitalism K

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

#### Any combination poisons the alt.

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

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

#### \*1. Boom & Bust cycles make cartelization, slow growth, and devastated innovation in the chemical sector inevitable.

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.

#### 6. \*We also have a link to their method---class action lawsuits fail. Judicial redress is the worst remedy to antitrust. Justices are corporate activists that defang anti-oligarchy efforts through court sanctioned union busting and violence.

Joseph Fishkin 21. Marrs McLean Professor in Law at the University of Texas, Austin. Courts And Constitutional Political Economy. 7-24-21. <https://lpeproject.org/blog/courts-and-constitutional-political-economy/> //shree

For most of American history, all sides in most major fights about the nation’s political economy agreed about one thing: the questions they were fighting about were constitutional in nature. In other words, they were fighting about constitutional political economy. This point is central to a book project that Willy Forbath and I have been working on for a few years, The Anti-Oligarchy Constitution: Reconstructing the Economic Foundations of American Democracy (forthcoming January 2022). We tell a story about rival visions of constitutional political economy stretching back to the Founding Era and how advocates of these visions fought out their differences both through politics and in court at different moments in American history. We are especially interested in what we call the “democracy of opportunity” tradition, which runs from the founding through the New Deal, whose (varied) advocates contended, by and large, that the Constitution required that we enact laws to disperse economic and political power, rather than letting it get concentrated in too few hands. We also explore various rival traditions, from the distinctive constitutional political economy arguments of the defenders of slavery to the anti-redistributive constitutional political economy arguments that crystallized a century ago into what we now call Lochnerism.

You’ll notice I said “through politics and in court.” A central theme of the book is that for most of American history there has not been much separation (if any) between the constitutional political economy arguments advocates make in the courtroom, in the legislative hearing room, at a protest rally, or on the stump as candidates for office. And yet there does seem to be a noticeable pattern, which is my topic in this blog post. For advocates of the democracy of opportunity tradition—the tradition holding that the Constitution required (among other things) crushing the landed Southern oligarchy of the Slave Power; breaking up the trusts and monopolies; taxing the incomes of the rich; distributing land, education, and opportunity to ordinary Americans; and enforcing workers’ rights to organize and strike—courts have generally been the least hospitable of the three branches of government.

The pattern is pretty striking. Painting with a bit of a broad brush—this is a blog post—it seems fair to say that American courts have, much more often than not, taken a particular side in fights about constitutional political economy. Courts have taken the side of holding that the Constitution protects the rights of aristocracy and oligarchy to maintain their outsized economic and political power. Many Americans have argued that the Constitution requires just the opposite, but they have found a more receptive audience, on the whole, in the democratically elected branches than in the courts. Over the course of American history, the elected branches have built a considerably more open and democratic political economy than the courts generally have wanted to allow. Today, as courts eviscerate voting rights and campaign finance laws, and take whacks at public employee unions and social safety net programs such as the Affordable Care Act, this particular alignment of the branches of government is with us again. But why? Why this alignment, so much more often than the reverse?

The pattern began in earnest with Reconstruction. To the Radical Republicans, it was obvious that racial inclusion was impossible without destroying the planter oligarchy and building a mass, multi-racial middle class in the South. As Thaddeus Stevens put it, “The whole fabric of southern society must be changed . . . [i]f the South is ever to be made a safe republic.” There can be no “republican institutions . . . in a mingled community of nabobs and serfs.” But as violent white supremacists undid Reconstruction, the Court abetted them by finding ways to eviscerate the Reconstruction Amendments, striking down key parts of the core civil rights statutes that Congress had enacted to enforce the Amendments. The Court’s gutting of those statutes left Black citizens unprotected from most discrimination, disenfranchisement, and even massacre by white terrorist mobs. However, the same Court was receptive to claims that the Reconstruction Amendments protected corporations and their freedom from various forms of government regulation.

The Supreme Court during this period—which was a long period, spanning much of the late nineteenth and early twentieth centuries—managed to surprise almost everyone by striking down an income tax on the highest earners as unconstitutional (a decision eventually overturned by constitutional amendment). Frequently, federal courts, including the Supreme Court, found ways to weaken the antitrust laws that Congress enacted. Courts attacked efforts to organize labor unions with sweeping injunctions, court-sanctioned state violence, and jail terms aimed at protecting employers’ rights to an uninterrupted flow of non-union workers. (These are just a few highlights; there are many more in the book.) When you read some of these decisions today, they barely read like what we recognize as law—the class politics is so raw and right on the surface. But the views of those judges were predictable. The early-twentieth-century Republican Party that dominated American politics and judicial appointments in that era was the party of big business; the federal courts were stacked with elite lawyers from the emerging corporate bar, whose jobs before they joined the bench mostly involved serving the railroads and the trusts and their owners, the oligarchs of the Gilded Age. It would have been surprising if these judges had not been activists bent on finding ways to thwart the democratic branches’ efforts to rein in oligarchy.

So what about when American politics turned? After President Franklin Roosevelt’s dramatic confrontation with the Lochner Court, the Court retreated and upheld the New Deal, ushering in a new constitutional regime. The Court reconceived its role, especially after World War II, as the nation’s protector of civil liberties and, eventually, civil rights. The Court upheld many laws parallel to the ones it had struck down after Reconstruction, such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965. But that was the most important thing it did in its brief period of mid-20th-century liberalism: step out of the way. The Warren Court has a reputation for activism, and many of its decisions—Brown v. Board of Education, the criminal procedure revolution, one-person-one-vote—were indeed activist holdings. But when it came to economic inequality, the Warren Court was operating during the period of American history when inequality was at its most muted (the “great compression”). Restraining oligarchy, or building up the middle class as a bulwark of Republican government, was not on the Court’s docket. Some observers expected the Court to do more—to enlist the Constitution in the War on Poverty, set constitutional minimum welfare guarantees, or equalize school funding—but in the end, it didn’t. And then the Court took a long right turn, and now we are once again in a Gilded Age, with the Court playing the familiar role it played a century before, as the branch where efforts to build a democracy of opportunity can most readily expect to be crushed.

There is a lot of contingency in American history, perhaps especially when it comes to courts. But it seems to me non-coincidental that the Court has so consistently been the least dangerous branch to aristocrats and oligarchs and their efforts to concentrate economic and political power. The simplest reason is this: efforts to restrain concentrations of private power—whether it’s the landed aristocrats Jefferson worried about at the founding, their Slave Power successors, or the monopolist robber barons of the Gilded Age—require the exercise of public power in the form of legislation. There are supporting roles to be played here by executives executing legislation and by courts interpreting it. But fundamentally, courts are not equipped to initiate or lead the work—the constitutionally necessary work—of laws like the Sherman Antitrust Act, the National Labor Relations Act, the Social Security Act, the Civil Rights Act, the Voting Rights Act, or the Affordable Care Act (to name a few!). Courts can interpret these statutes in ways that further the statutes’ goals, or courts can try to thwart them. But courts are not equipped to move first or take the lead in advancing these statutes’ goals. On the other hand, courts are better equipped to recognize the anti-redistributive, so-called libertarian claims of property, contract, and so on that some of these statutes might be viewed as threatening. Those claims are of a form that we still teach in the first year of law school: an individual claimant, standing on old common law-ish rights, against the redistributive machinations of the progressive state.

### 2NC---AT: Utopian Fiat

#### 2. Critique is prior---we must challenge neoliberal mindsets and constrictions on knowledge production before considering the role of policies. Decolonization of the mind is a prerequisite to developing alternatives

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

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

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

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

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

### 2NC---AT: Space Col

#### Only benefits 1%, ensures genocide and war

Haskins 18 [Caroline, Technology reporter with a degree form NYU. “The Racist Language of Space Exploration”. 8/14/2018. The Outline, https://theoutline.com/post/5809/the-racist-language-of-space-exploration?zd=1&zi=wyjhxu6o ]

On Thursday, Vice President Mike Pence, head of the National Space Council, outlined plans for creating the “Space Force” that President Donald Trump envisions as a space-dedicated military branch, complete with space warfighters and weapons, by the year 2020. Back in June, Trump explained the Space Force by using the language of Plessy v. Ferguson, the 1896 Supreme Court decision which ruled that racial segregation was constitutional, giving states and municipalities the authority to enact Jim Crow laws. "We are going to have the Air Force and we are going to have the Space Force, separate but equal, it is going to be something so important,” Trump said. He just as easily could have said, “The Space Force will be a branch of the military, like the Air Force,” but he did not. Trump is far from the first or only person to use the language of colonization to make a pro-space venture argument. Elon Musk famously describes his plans for a Martian settlement as a “colony,” and a long lineage of space pundits, politicians, and thinkers invoke the history of colonizers and colonization in order to frame the future of humanity in space. During a July 25 hearing of the Subcommittee on Space, Science, and Competitiveness titled “Destination Mars – Putting American Boots on the Surface of the Red Planet,” subcommittee head, Texas Sen. Ted Cruz said that he believes that the first trillionaire on earth will make their money from space exploration. Is it possible to ethically explore space? Listen to Caroline Haskins discuss the possibilities on The Outline World Dispatch. “I don’t know who it will be, and I don’t know what they will discover, or what they will accomplish,” Cruz said. “But I think it is every bit as vast and promising a frontier as the New World was some centuries ago.” “You could argue that the effort to colonize space is likely to involve new forms of inequality: shifts in tax revenues and administrative priorities devoted to that,” said Michael Ralph, a professor of anthropology at NYU. “As opposed to [supporting] other social institutions that benefit people like health care, education, infrastructure.” Earning money in space is an exciting prospect for a far-right, pro-business, anti-regulation politician like Cruz, and he explicitly associated it with European countries having colonized the Americas. Starting in the late 1400s, Great Britain, Spain, and Portugal funded missions to the Americas in order to gather natural resources that would power up their economies. By stealing the land that made this resource extraction possible, colonizers used genocide, enslavement, biological weaponry, and warfare and that resulted in the deaths of tens of millions of indigenous people living in the “New World.” The concept of race, and therefore racism, was invented as a way of justifying their violence and legitimizing a hierarchy of race-divided labor. Based off of what we know right now, the Moon and Mars are devoid of life, so this colonizing language is not actually putting other beings at risk. But, there is the risk that the same racist mythology used to justify violence and inequality on earth — such as the use of frontier, “cowboy” mythology to condone and promote the murder and displacement of indigenous people in the American West — will be used to justify missions to space. In a future where humans potentially do live on non-earth planets, that same racist mythology would carry through to who is allowed to exist on, and benefit from, extraterrestrial spaces. On Earth, and in the United States specifically, the ideal of a merit-based society has been used to justify race-blind hiring policies that fail to account for, say, the implicit bias against black or Asian-sounding names, or the legacy of segregation, which continues to make children of color more vulnerable to attending underfunded schools. Narratives of “law and order” have also been used to justify racial profiling and harsher prison sentences for people of color than for white people who commit the same crimes. Not nearly enough work has been done here on Earth to ensure that these structural inequalities wouldn’t carry through. “Those narratives do carry specific implications about how people living on other worlds might be structured,” Lucianne Walkowicz, the current Chair of Astrobiology at the Library of Congress, told The Outline. Walkowicz organized the Decolonizing Mars Conference that took place on June 27 as well as a public follow-up event planned for September, to discuss how colonial language is shaping our potential future in space. “Space is not just built for nothing, it’s built for people.” When we think about humanity’s potential to exist on other planets, it’s important to consider who won’t have access to space, in part due to a total lack of concern over these issues by people who are able to access it. Amazon CEO Jeff Bezos intends to make space a place for the rich to use for adventure leisure, and SpaceX/Tesla founder Elon Musk has proposed that a Martian “colony” can save a selection of humanity from the collapse of civilization in some World War III scenario. Granted, right now, these are just words from billionaires who want to excite the public about their business ventures. But they suggest that if the economically and socially vulnerable are priced out of a life-saving journey from Earth, it is a justifiable loss. “All of these things that are said off the cuff [by billionaires] have some implications that are concrete and count some people in, and some people out,” Walkowicz said. Part of that concern is fueled by the fact that Cruz and Pence have presented the path to settling space as one that will be privately funded, but lead by the U.S. government. In the Destination Mars subcommittee meeting, Cruz said, “At the end of the day, the commercial sector is going to be able to invest billions more in dollars in getting this job [of getting to Mars] done.” In his Thursday remarks regarding the Space Force, Pence also implied that celestial territories would be treated as private property (even though owning private property in space is explicitly illegal per the Outer Space Treaty, which the U.S. and dozens of other nations signed in 1967). “While other nations increasingly possess the capability to operate in space, not all of them share our commitment to freedom, to private property, and the rule of law,” Pence said. “So as we continue to carry American leadership in space, so also will we carry America’s commitment to freedom into this new frontier.” This approach to public-private partnerships directly mirrors colonist practices. For instance, the British East India Company violently colonized parts of India on behalf of the company, but over time, ownership of the stolen land shifted to Great Britain. While these risks feel a part of a far away future, in the present, idealizing colonization as a positive, replicable aspect of American history speaks to an unsettling indifference from leaders about the violent history of colonization. And by referencing historical events that victimized people of color, leaders paint a vision of the future in which people of color continue to be excluded, Walkowicz said that the social and economic legacy of colonization is ignored. By using narratives of adventurism and heroics, white Americans were able to convince other white Americans that they were not only entitled to steal and conquest land and persons, but that it was their destiny. Ralph said to The Outline that this mythology remains central to the way Americans conceptualize their history and culture. “Colonization is portrayed as a heroic conquest,” Ralph said. “These practices are framed as central to American identity, essential to governance, politics, and all major social institution. But not depicted as a colonizing that is one caused by violence, displacement, dispossession.” Even when people aren’t explicitly referring to settlements in space as “colonies,” they still use the rhetoric of colonizing the New World and the American frontier, which erases the stories of and violence against the people of color who lived and ranched in the region. But how did this language start being used in the first place? Presidents have also used frontierism and colonialism to get white citizens behind their agenda. When President John F. Kennedy announced his intention to bring Americans to the Moon in 1962, he paraphrased one of the earliest colonists on the North American continent. “William Bradford, speaking in 1630 of the founding of the Plymouth Bay Colony, said that all great and honorable actions are accompanied with great difficulties, and both must be enterprised and overcome with answerable courage,” Kennedy said. Bradford was the governor of the Plymouth Bay Colony at the time of the Pequot War. In an overnight attack, British colonizers massacred four hundred soldiers, non-soldiers, and children. Bradford later described the act of genocide as a Christian victory. “...victory seemed a sweet sacrifice, and they gave the prays therof to God,” Bradford wrote, “who had wrought so wonderfully for them, thus to inclose their enemies in their hands, and give them so speedy a victory over so proud and insulting an enemy.” Although Kennedy did not characterize his vision for the Moon as creating a “colony” specifically, the association he wanted to create is clear: The Moon is the next version of the New World, the next frontier for American conquest. In his speech, Kennedy continues that men like Bradford teach us that “man, in his quest for knowledge and progress, is determined and cannot be deterred.” However, if “man” is a stand-in for “white colonizers,” “knowledge and progress” unabashedly brushes over the lives of indigenous persons and people of color that were lost in their quest to “explore.” It’s a profusely sanitized version of reality. “It’s fascinating that a term like ‘colonizing’ can be seen in neutral terms when it can’t exist without violence and dispossession,” Ralph said. It can’t exist without violence to establish a political hierarchy. Every colonial project is about managing populations, subjugating people, extracting resources.” But Kennedy was not the first person to use of colonizing language in the context of space. John Wilkins, one of the first people who ever theorized about humanity’s future in space, wrote “A Discourse Concerning a New World and Another Planet” back in 1638, where he argued that the Moon will be a place for human habitation in the future. Although it was a piece of science fiction theorization at the time, Wilkins justified his argument by saying that God created the Earth and stars for people to use in his honor. Colonizers are adventurers, Wilkins argues, whose ideals are worth replicating on other planets. “The invention of some other means for our convenience to the Moon cannot seem more incredible to us, than this did at first to them, to be discouraged in our hopes of the like success,” Wilkins wrote, admitting that any mission to the moon would be far in the future. “We have not now any [Sir Francis] Drake, or Columbus, to undertake this voyage, or any Daedalus to invent a convenience through the air.” Sir Francis Drake was a slave-trader, and of course, Christopher Columbus is responsible for the genocide of almost 3 million people on the island of Hispaniola (now the Dominican Republic and Haiti). As space travel has become more technologically feasible, science-fiction writers have speculated about how a space society would actually function. Arthur C. Clarke envisioned that “colonial” would be a dirty word in space in his 1954 book Earthflight: “And to do [enter Solar politics], one had to go to Earth; as in the days of the Caesars, there was no alternative. Those who believed otherwise or pretended to — risked being tagged with the dreaded word ‘colonial.’” For Clarke, colonialism was equated with privilege in a space society, not because of racism and violence on Earth. Later in the novel, Clarke doesn’t hesitate to compare travelling between planets, and the nobility of doing so, with British colonizers travelling between continents in earlier centuries. Adilifu Nama, a professor of African American Studies at Loyola Marymount University who has written about the representation of race in science fiction, said that science fiction movies and books during the 1950s and 1960s often included narratives of invasion from alien lifeforms directly alongside conceptualizations of existing in other worlds. These anxious science fiction narratives became popular during the Civil Rights Movement. “We had [an] invasion emerging [during the Civil Rights Movement] of black folks invading these once pristine white spaces: with public transportation, public schools, and eventually particular neighbourhoods and black folks having access to better, more upscale neighbourhoods,” Nama said. “So there is also this invasion society around racial purity, and the tensions of science fiction can be read not only as Cold War anxieties, but racial anxieties about the other.” Ralph said to The Outline that the Space Race of the 1950s and 60s shouldn’t be seen as purely a nationalist competition between the U.S. and Soviet Union: it was also a distraction from the Civil Rights Movement. “A lot of what we think of as the Space Race was the US and Russia competing as rivals for supremacy in space back in the 1950s, but also that movement was about civil rights and the struggle for justice for Americans,” Ralph said. “In a way, you could argue that space exploration has historically been used to shift public attention away from the struggle of social justice.” According to Walkowicz, that people dip into the violent, racist history of colonialism and gloss over their language using a sense of adventure provided by the American frontier is no coincidence. “The people for whom the American frontier myth were constructed, who were primarily white men, also now have the narrative of space,“ Walkowicz said. “And because tech is so incredibly non-diverse, and has been so slow to change even in those small ways in which it has, I think a lot of those narratives go unquestioned.” The people with the power to make a future in space possible, such as Trump, Pence, and Cruz, or the money to actually get us there, like Elon Musk and Jeff Bezos, are the same people who have and will always benefit from systemic racism and the potential economic glory from new economic ventures. Ralph noted that prioritizing space travel undermines funding for sustainable forms of energy like wind and solar, and efficient ways to construct affordable houses and schools. It also has direct economic implications for the people who rely on any number of federally-funded social programs in the U.S. “In Trump’s America, we have a lot of conservatives and even libertarians insisting there’s too much government spending on social programs, and yet Trump wants to use our federal funds to reinvigorate our space programs,” Ralph said. “Just like in the 1950s and 60s, [Trump] is using space exploration to cultivate nationalist sentiment and arguably shift questions away from questions of social justice and questions of inequality.”

#### Fails – no tech, OST ban, no infinite resources in space

Marx 20. Paris Marx is a socialist writer and host of the left-wing tech podcast Tech Won't Save Us. They have a Master’s degree in Geography from McGill University, and write for NBC News, CBC News, Jacobin, Tribune, OneZero, Passage, and many others. “Billionaire Space Colonialism Is a Dead End”. Tribune. 12/22/2020. https://tribunemag.co.uk/2020/12/billionaire-space-colonialism-is-a-dead-end-for-humanity

The world is in the grips of a global pandemic that has altered the daily lives of billions and killed more than 1.7 million people. You might think that that would refocus our attentions on ensuring the health and wellness of people around the globe, but as billionaires’ fortunes have soared, some of their number have kept their focus trained on the stars. On 9 December, SpaceX launched its Starship SN8, a prototype of the spaceship it hopes will one day perform regular trips between Earth and Mars. The test flight ended in flames, but that didn’t stop space enthusiasts from declaring it a success — an important milestone in CEO Elon Musk’s ultimate plan to colonise the red planet. Earlier in the month, after receiving the Axel Springer Award in Berlin (since border restrictions don’t stop billionaires), Musk explained that he expected SpaceX to send a spacecraft to Mars in 2022, followed by humans in 2024 or 2026. Those timelines should be taken with a large pinch of salt, given Musk previously said he planned to send an unmanned spacecraft to Mars in 2018, but that doesn’t mean there aren’t bigger problems for this vision of humanity’s future. The Sci-Fi Space Fantasy Many of the space capitalists who champion space colonisation do so because they were inspired by science fiction. There are countless creatives who inform their visions, but one whose work is frequently cited is author Kim Stanley Robinson, who has published several well-researched novels that imagine various scenarios for human life in space. After all that research into the science of space travel and settlement, though, Robinson has little time for the colonisation visions being advanced by billionaires like Musk and Amazon CEO Jeff Bezos. In 2016, he compared Musk’s plan for Mars colonisation to ‘the 1920s science-fiction cliché of the boy who builds a rocket to the moon in his back yard.’ More recently, in a conversation with Jacobin, he declared that the capitalist visions for space colonisation ‘are fantasies, and billionaire fantasy trips are not going anywhere.’ He called asteroid and Helium-3 mining ‘bullshit’, and even acknowledged his own role when explaining ‘There is no profit in space. It’s just a fantasy of our culture right now, because everybody’s been convinced by science fiction writers, and they’re not paying attention to the numbers game.’ But that fantasy hasn’t only gripped billionaires who have effectively unlimited money to throw after their passion projects. Governments increasingly buy in, too, thereby constructing a barrier to addressing the bigger challenges that humanity actually faces in this moment. State-Monopoly Capitalism in Space On 30 May, while the pandemic was raging and Black Lives Matter protesters were marching in streets around the United States, President Donald Trump joined Elon Musk in Florida to celebrate a dual milestone: one, the first time astronauts had been launched from US soil since NASA stopped using its Space Shuttle; and two, the first time a private company had launched a crewed spacecraft. As Trump declared that ‘a new age of American ambition has now begun’, he further fused Musk’s vision for space exploration to his white nationalist movement to ‘Make America Great Again’, and to the larger effort of projecting American power in an increasingly multipolar world. Even before Trump started the Space Force and signed an executive order to promote space mining, President Barack Obama had begun the process of privatising space exploration and adopting the vision for an American trip to Mars — and it’s sure to continue under President Joe Biden. These moves must be placed in their historical contexts. As Dr. Gabrielle Cornish explained in the Washington Post, the Cold War space race was justified by its presentation as ‘a utopian dream to domestic, civilian audiences, framing it through art, music and pop culture as a romantic escape or glorious future’; the real goal was the projection of military and economic power by competing countries. We see this pattern repeated today. The billionaires driving the modern space race sell it as essential to the future of humanity, either to maintain capitalist ‘growth and dynamism’ or to give humanity a second home in the event of climate apocalypse. The latter is a suggestion that Robinson considers ‘wrong, in both a practical and a moral sense’, because ‘it’s very likely that we require the conditions here on earth for our long-term health’. Indeed, if humans actually lived on Mars they’d probably get cancer. It doesn’t really matter, though, because these justifications only exist to obscure the real incentives behind these projects: increasing American power beyond our home planet, extending capitalist property relations to other celestial bodies, and enabling US corporations to exploit extraterrestrial resources for the mutual benefit of those capitalists and the state — assuming the economics even work. Salon senior editor Keith Spencer compared the ambitions of SpaceX to the history of the East India Company, which ruled colonised areas for the benefit of its shareholders, and in this way it could also be seen as another example of the state-monopoly capitalism observed by Tribune’s Grace Blakeley. These private space companies, despite being funded in part through billionaires’ fortunes, are still highly dependent on public subsidies and contracts – which is why getting the state to buy into their vision is so important. There might not be people to colonise in space, but the consequences go beyond capitalist enclosure. Since 1967, the Outer Space Treaty has recognised that space is a global commons, where ‘national appropriation by claim of sovereignty, by means of use or occupation, or by any other means’ is prohibited. Haris Durani explained in the Nation that while this agreement is often seen as a compromise between the United States and Soviet Union, it’s better to understand it as a product of decolonisation which sought to ensure that ‘all states would collectively govern extraterritorial domains’, instead of allowing major powers to deplete resources because of their technological superiority. The spirit of that agreement is already being breached by the efforts of powerful states to create a legal foundation for the plunder of space resources. Instead of powerful countries enclosing these resources for the benefit of their people, though—which would be bad enough—present trajectory suggests that the riches will be captured by billionaires, whose wealth allows them to ignore the problems of the rest of humanity while directing vast attention and resources away from much more pressing issues. Refocusing on Real Problems Between the climate crisis, various accelerating social crises, and the ongoing pandemic, humanity faces immense challenges that must be tackled in the coming decade. State power will be required to direct resources into building a sustainable economy, reconstructing the crumbling social infrastructure, and ensuring a good standard of living for all — but billionaires have no stake in any of those projects. Space colonisation will do nothing to address these crises, regardless of the promises of billionaires and luxury communists alike. When they talk about how asteroid mining will bring great wealth to be shared with all or to power the green technologies that are heralded as climate solutions free of sacrifice for Western consumers, they’re simply distracting us from the difficult work that must be done if we’re to truly address the social and environmental challenges of our time. We already know that emissions need to be cut in half by 2030. That means our societies need to be radically overhauled long before asteroid mining becomes feasible — if it ever does. Green capitalists like Musk are happy to sell us a false future of electric cars and solar-powered suburbia that allow them to profit in the short-term because they can simply seal themselves off from the rest of the population when the effects of a warming climate accelerate. The capitalist logic of infinite growth that’s driving the desire for space colonisation is the same one that’s created the very problems we so desperately need to solve in the first place, and doubling down on it would be a terrible mistake. We should be particularly wary of aligning ourselves with a coalition that includes billionaires and right-wing politicians who make explicit comparisons to past colonisation projects, too: Ted Cruz, for example, has promoted space as ‘as vast and promising a frontier as the New World was some centuries ago’. That’s not to say that humanity should turn away from the stars. We should continue funding space science, but the expansion of capitalism into space and the exploitation of extraterrestrial resources do not serve those goals. Justifying space colonisation through the need for a second planet is a self-fulfilling prophecy created by people who have little regard for the lives and wellbeing of the global working class — as the pandemic has demonstrated. Capitalism is driving billionaires toward space as it drives the rest of us toward extinction. They must be stopped before it is too late.

#### Causes space war – extinction

Kovik 20 [Marko. PhD Senior Researcher and Expert Group Coordinator at The Swiss Academies of Arts and Sciences. “Risks of Space Colonization”. July,2020. https://osf.io/preprints/socarxiv/hj4f2/]

We do not currently know whether intelligence, biological or artificial, exists beyond Earth, but it is not implausible to assume so. Coming into contact with as well as refraining from seeking contact with extraterrestrial intelligence poses risks, as I discuss in section 4. In addition to these risks, extraterrestrial intelligence also poses a conflict risk: If an extraterrestrial intelligence has moral values that are sufficiently different form humankind’s, the intelligence could de facto react to humankind and other forms of intelligence with hostility. At first glance, the prospect of a hostile extraterrestrial intelligence, be it biological or artificial, might seem far fetched. Isn’t some baseline of altruistic moral behavior to be expected of any kind of intelligence? We might intuitively associate intelligence with prosocial behavior of one kind or the other, but from an evolutionary perspective, greater intelligence is not necessarily correlated with prosocial and altruistic behavior towards other species [44]. Intelligence is the generalized capability for achieving goals, regardless of moral underpinnings and considerations. After all, that is why artificial intelligence as superintelligence is an existential risk today: Superintelligence is a threat precisely because it is much more intelligent than humans but lacks any inherent sense of human preferences and moral values. Hostile extraterrestrial intelligence is a serious risk even if such intelligence is exceedingly rare in the universe. The mere possibility of hostile intelligence could result in something like a “Dark Forest” [45] game theoretic configuration. If benevolent biological or artificial intelligence is aware of the possibility of hostile alien intelligence, the best course of action is silence (If there might be hostile alien intelligence, best not to be noticed.). In addition, preventative action could also be a rational choice: If an alien intelligence — such as our human civilization — is being observed gradually expanding beyond our home planet, a risk averse intelligence, even one that is benevolent in principle, might find it prudent to eliminate that civilization; be it because the civilization in question might become hostile or because it might, through folly or ineptitude, draw unwanted attention to oneself. The mere possibility of fundamtenally hostile intelligence could, in that sense, be enough to fuel a silent astronomical war.

#### Causes disease – zeroes humans.

Drake 18 [Nadia, science journalist with an A.B. in biology, psychology and a Ph.D. in genetics and development from Cornell. “Will Mars missions make humans sick? Here's what we know.”. National Geographic. 12/3/2018. https://www.nationalgeographic.com/science/article/will-mars-missions-make-humans-sick-bacteria-diseases-space]

No one wants to risk a contagion in space. Returning home can be tricky, medical supplies are limited, crews cannot treat every complication that might arise, and a single infected astronaut could jeopardize an entire mission. That’s especially true for any future human missions to Mars, in which an astronaut with the sniffles would be at least 33 million miles from the nearest commercial pharmacy. And while astronauts headed into space already take a ton of precautions to reduce the risk of illness, what happens if we get to the red planet and find a whole new source of infections? No one knows whether Mars harbors microbial life today. But if the planet is inhabited by more than mere robots, those creatures could be very well be single-celled organisms tucked underground, where they’d be sheltered from harsh radiation and possibly thriving near buried geothermal systems that provide water, nutrients, and energy. The problem is that people might also want to tap into the planet’s subterranean resources, which could expose them to potential Martian germs. And based on studies of earthly microbes, there are worrying signs that some bacteria behave especially weirdly in space. Understanding how these host-pathogen reactions change during spaceflight is crucial for long-duration voyages, like the months to years it would take to complete a human mission to Mars. “We better figure out what the microbes are doing in response to the spaceflight environment before you just send humans up there for long-term flight,” says Cheryl Nickerson of Arizona State University. Infection detection In the 1960s and ‘70s, at least two Apollo missions were affected by sick crew members. In 1968, Apollo 7 commander Wally Schirra came down with a head cold 15 hours after launch. He promptly shared it with his increasingly cranky and irritated crewmates and fueled what’s been described as “a mini-mutiny.” Later, before the infamous Apollo 13 mission launched in 1970, at least one scheduled crew member was replaced because of measles exposure. Then, during flight, a urinary tract infection bloomed in crew member Fred Haise, went painfully untreated, and progressed to a longer-term kidney infection. To reduce the risk of off-world illnesses today, space agencies first quarantine their astronauts. Current NASA guidelines dictate that seven days before launch, astronauts enter a facility where contact is limited to approved family members and support personnel. In practice, that may still add up to between 40 and 50 people, says astronaut Samantha Cristoforetti, who has been quarantined at the Baikonur Cosmodrome in Kazakhstan. “Many people are with us in quarantine,” she says. “We interact with other people occasionally—we should avoid physical contact, and they wear surgical masks.” During that period, doctors routinely assess astronauts and their contacts for symptoms of infection, such as fever or a sore throat. “While it may not sound very exciting, we’re concerned about everyday infectious diseases such as the common cold or influenza, because these are the most prevalent pathogens,” Robert Mulcahy, a physician at NASA’s Johnson Space Center, writes in an email. “We would not want something like a cold to impair the flight crew’s performance during critical operations such as launch and docking.” Similar procedures apply to astronauts headed into space via Russia’s Soyuz capsule, which launches from Kazakhstan. But Mulcahy and his colleagues are currently working on updating NASA’s quarantine requirements, which are presented in what’s known as the agency’s Health Stabilization Plan, to support commercial crew and future NASA missions launching from the United States. Proposed edits include increasing the quarantine period from seven to 14 days, increasing the restrictions on direct contact between astronauts and guests, and requiring additional vaccinations for non-astronaut personnel working in the facility. “We’ve seen a resurgence of vaccine-preventable diseases such as measles in the general U.S. population,” Mulcahy says, “so it is important to ensure a low risk of exposure to these conditions in the quarantine period.” Feeling the strain Protecting astronauts from preflight disease exposure is one thing, but what about the microorganisms that ultimately do hitch a ride into space, whether inside or outside of a human? For decades, scientists have been studying how humans and microbes respond to microgravity, which might also be relevant to the lower gravity experienced on Mars. While the exact mechanisms governing those responses are not yet fully understood, observations suggest that spaceflight alters the ongoing arms race between infectious microbes and immune systems, potentially tipping the scales in favor of infection. Being in lower gravity can weaken the human immune system and make us more susceptible to disease, according to this research. At the same time, microgravity also appears to change how microbes respond to stresses, in some cases boosting their disease-causing potential and their resistance to countermeasures. Dozens of studies, conducted both in space and in simulated microgravity on Earth, suggested that spaceflight affects how some bacteria respond to their environmental. “It was actually quite surprising to see a change in virulence for a microorganism in spaceflight,” Nickerson says. Her lab has demonstrated that a particular strain of Salmonella Typhimurium, which is responsible for nasty food-borne illnesses in humans, becomes more virulent after spending time in microgravity. In 2006, they sent Salmonella into orbit aboard the space shuttle Atlantis. While Nickerson and her team grew cultures on Earth, astronauts grew Salmonella in space. When the shuttle returned to Earth, Nickerson infected mice with Salmonella that had stayed on Earth and Salmonella that went into orbit. The result? Spaceflight had increased Salmonella’s virulence, helping it kill mice faster and at lower doses. But, Nickerson is careful to note, the effect was transient. “This was a short-duration experiment,” she says. “This was not a permanent, heritable change. The bacteria were simply adapting to their environment, and when you take them out of that environment, they change how they’re adapting. … That’s what bacteria do for a living, that’s what they do when they infect us anywhere.” Further work revealed that microgravity mimics an environmental signal that Salmonella normally encounter—namely, a decrease in the amount of force generated by liquids moving over the cells’ surface, which signals to the cells that it is time to begin infection. On Earth, that relative calm might occur in a nice, protected pocket of lung or intestine, but in space, it’s basically everywhere. “No one had shown that before,” Nickerson says. “No one had thought about a physical force changing the virulence or pathogenicity of an organism.” But so far, Salmonella is the only microbe in which a spaceflight-induced increase in virulence has been demonstrated in a live animal. But numerous other studies have suggested that spaceflight changes microbial growth, size, metabolism, antimicrobial resistance, and other characteristics. These experiments, done both in space and in simulated microgravity, tested well-known microbes such as E. coli, Yersinia pestis (the culprit behind plague), Streptococcus mutans, Staphylococcus aureus, Bacillus subtilis, and Candida albicans, the fungus responsible for yeast infections. Some of these studies suggest that other microbes might become virulent in microgravity, while others point to the opposite or no response. “Multiple experiments over the past 50 years have indicated unique microbial responses when microorganisms are cultured during spaceflight, including changes in growth kinetics, antibiotic resistance, and biofilm formation,” reports NASA’s Mark Ott. Biofilms, notably, can present major problems both for human health and environmental systems. These conglomerates of microbes latch onto surfaces and grow synergistically, forming complex layered structures that can boost the bugs’ resistance to immune defenses and environmental insults. As a result, they are notoriously difficult to treat inside humans and are responsible for clogging and degrading crucial space station infrastructure. “The majority of bacteria in nature exist in surface-associated microbial communities,” Rensselaer Polytechnic Institute’s Cynthia Collins and colleagues wrote in a recent paper. “Abundant biofilms were found in the Russian Mir space station and were responsible for increased corrosion and a blocked water purification system.” In 2011, Collins and her colleagues sent Pseudomonas aeruginosa—the microbe responsible for astronaut Fred Haise’s inflight discomfort—into space aboard the space shuttle Atlantis. There, Pseudomonas readily grew into biofilms that were thicker and more massive than their Earth-based counterparts and they exhibited what scientists described as “a column-and-canopy structure that has not been observed on Earth.” Based on other studies, not only are bacteria growing in space, but changes in their growth and behavior might be making the microbes more difficult to kill. E.coli, in particular, has shown a pronounced increase in antibiotic resistance while in orbit, a result derived from an experiment performed in 1982 aboard the Soviet space station Salyut 7. More recently, astronauts Terry Virts and Jeff Williams swabbed eight surfaces inside the International Space Station—including the dining table, crew quarters, and the waste and hygiene compartment—and sent the swabs back to Earth for culturing. “The ISS is not a sterile environment,” Mulcahy says. “The astronauts perform regular cleaning, just like you would at home.” When a group based at the Jet Propulsion Laboratory grew microorganisms from those cultures and sequenced their genes, they found that many of the cultures, including nine pathogenic organisms, exhibited resistance to multiple antibiotics, including penicillin. Sequencing also revealed the potential for resistance to additional antibiotics, although that has not yet been experimentally verified, nor has spaceflight been proven to be the culprit in boosting resistance. Still, even if modern Mars is barren and lifeless after all, keeping any future human habitations clean will be key, as will understanding the best ways to battle earthly germs that might flourish in microgravity. “Can you figure out everything in advance? No, we don’t know the vast majority of why pathogens cause disease down here on Earth,” Nickerson says. “But it’s incredibly important. Microbes rule our world; we’re just playing in it.”

### 2NC---AT: Sustainability---2AC Piper

#### Ag collapse---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, 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) Mineral cycles---that’s Allinson---copper, lithium, and manganese hit bottlenecks.

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

Endless growth will generate minerals scarcity within decades The EV transition is, in short, a massive industrial project. Electrification of roads and rail will require upgraded smart grids, complex routes connected to high power lines, and regular battery-swap stations. The paper explores several scenarios to explore how such a transition would take place. In a continuing GDP growth scenario, the authors note that the economy begins to stagnate “due to peak oil limits at around 2025-2040,” but GDP is able to continue growing thanks to the EV transition. This shows that the reduction in liquid fuels in transportation can play a powerful role in avoiding “energy shortages in the economy as a whole.” But then the economy hits the limits of mineral and material production to sustain this electric transition—in just three decades. And this is even with high levels of minerals recycling. By 2050, in this scenario, the EV transition will “require higher amounts of copper, lithium and manganese than current reserves. For the cases of copper and manganese the depletion is mainly due to the demand from the rest of the economy,” but most lithium demand “is for EV batteries,” and this alone “depletes its estimated global reserves.” Mineral depletion takes place even with “a very high increase in recycling rates” in a continuing GDP growth scenario. In one such scenario, the authors apply what they consider to be realistic upper level recycling rates of 57 percent, 30 percent and 74 percent to copper, lithium and manganese respectively. These are based on extremely optimistic projections of recycling capabilities relative to their costs. But still they find that even these high recycling rates wouldn’t prevent depletion of all current estimated reserves by 2050. The conclusion corroborates findings of other studies, estimating an expected bottleneck for lithium by 2042-2045 and for manganese by 2038-2050. Actual bottlenecks could come even earlier because existing studies—including the MEDEAS model—don’t account for material requirements needed for internal wiring, the EV motor, EV chargers, building and maintaining the grid to connect and charge EV batteries, the catenaries to electrify the railways, as well as inherent difficulties in recycling metals.

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

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

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

#### Decoupling---Absolute decoupling is necessary but scale up is impossible.

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The principle of reducing energy and resource use represents a safer and more ecologically coherent approach to climate mitigation. But because the LED and other low-demand scenarios developed with Integrated Assessment Models presuppose continued GDP growth, they can only achieve these reductions by assuming a dramatic absolute decoupling of global GDP from energy and resources. In the LED scenario, for example, improvements in annual energy intensity (energy consumption per unit of GDP) increase from 1.5% per year (the average from 2010 to 2020) to a staggering 5.2% per year during the next decade. Similar assumptions feature in other high-decoupling scenarios reviewed by the IPCC[17](https://www.nature.com/articles/s41560-021-00884-9#ref-CR17). Several studies have raised questions about the feasibility of achieving absolute decoupling on the scale required by these scenarios. Empirical evidence demonstrates a strong relationship between GDP and energy use[18](https://www.nature.com/articles/s41560-021-00884-9#ref-CR18). Relative decoupling has been occurring for most countries, particularly high-income countries, but we must be mindful of the extent to which the latter is an effect of the geographical disjuncture between where production takes place and where GDP is captured. At regional and global levels, there is no evidence of absolute decoupling[18](https://www.nature.com/articles/s41560-021-00884-9#ref-CR18), and modelled projections indicate that with existing growth trajectories, absolute reductions in energy use are unlikely to be achieved[19](https://www.nature.com/articles/s41560-021-00884-9#ref-CR19). One possible reason for this is that in a growth-oriented system, productivity improvements are leveraged to expand production and consumption[20](https://www.nature.com/articles/s41560-021-00884-9#ref-CR20), often leading to large rebound effects that are not accounted for in existing scenarios[17](https://www.nature.com/articles/s41560-021-00884-9#ref-CR17),[21](https://www.nature.com/articles/s41560-021-00884-9#ref-CR21). These conclusions hold despite a significant shift to services and digitalization over the past decades. In fact, tertiarization in industrialized countries[22](https://www.nature.com/articles/s41560-021-00884-9#ref-CR22), as well as the efficiency improvements achieved through digitalization[23](https://www.nature.com/articles/s41560-021-00884-9#ref-CR23), have led to increases in energy use and CO2 emissions. The same is true when it comes to resource use. The empirical record demonstrates a strong relationship between GDP and material footprint[18](https://www.nature.com/articles/s41560-021-00884-9#ref-CR18), and modelled scenarios show that under growth-as-usual conditions absolute reductions in resource use are unlikely to be achieved at a global level even with dramatic efficiency improvements, in large part because of rebound effects[3](https://www.nature.com/articles/s41560-021-00884-9#ref-CR3). The post-growth alternative Given these uncertainties, it is possible that existing approaches may fail to deliver the mitigation that is required to achieve the Paris climate targets. It makes sense therefore to consider alternative post-growth scenarios that would reduce the pressure to rely so heavily on negative emissions and absolute decoupling. Towards this end, we can build on the core insights of the low-demand scenarios, accepting that significant reductions of energy and resource use are necessary in order to make rapid decarbonization feasible, while pursuing sufficiency-oriented policies in addition to efficiency improvements to get there.

#### CCS and Carbon Pricing---Leaks cause extinction.

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

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

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

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

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

### 2NC---AT: Class Action Solves

#### 1)Link debate disproves

#### 2)Only the Alt solves environmental collapse.

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**Where to Focus** Most of the sustainability effort at Timberland went into measuring and improving areas where the company had some control. For example, it put solar arrays on some of its buildings, installed LED light bulbs in its offices and retail stores, and limited workers’ hours in contractor factories. Other companies that have made sincere attempts to improve their social and environmental performance have generally behaved similarly: They’ve focused on what systems thinkers call *parameters*—dials that can be turned up and down to change performance without altering the structure of the larger system. However, researchers have found that those parameters are rarely sources of real impact. The late Donella Meadows, the primary author of The Limits to Growth and a distinguished professor of system dynamics at Dartmouth, analyzed 12 types of intervention that would affect system performance and concluded that parameters are the least powerful. Probably 99% of efforts go to parameters, she wrote, “but there is not a lot of leverage in them.” High-leverage interventions that would move the needle are largely outside the control of individual corporations. Such interventions wouldn’t be popular in the corporate world because they require changes in the rules governing companies’ behavior, a repricing of resources to address market failures, and a reorientation of how public assets are allocated and how power is distributed. Unfortunately, Sustainability Inc.’s focus on measurement and reporting—and the underlying premise that market-based change would be sufficient—has likely helped to delay these much-needed structural transformations. So has misplaced faith in overhyped approaches such as “creating shared value” and “the circular economy”; these are touted as win-win, pain-free solutions, but supporters invoke case studies, not empirical research, as evidence. In her speech at COP25, in 2019, the climate-change activist Greta Thunberg astutely noted, “The biggest danger is not inaction. The real danger is when politicians and CEOs are making it look like real action is happening when in fact almost nothing is being done, apart from clever accounting and creative PR.” This is not to say that investors and companies can’t make a difference. Corporate commitments to science-based goals are one promising path to improvement. It is good news that companies such as Apple and Microsoft are committing to net-zero trajectories, including for their scope 3 emissions, on a timeline that’s consistent with the planetary boundaries framework. Just recently BMW announced that its suppliers’ carbon footprints will be a key factor in procurement decisions going forward, and Climate TRACE, a coalition funded partly by Google, is developing a satellite-based tool to measure all emissions, including scope 3, in real time. These are welcome advances. But if we are to bend the global emissions curve downward and address growing environmental and social challenges effectively, a more aggressive approach is needed. The following suggestions are places to begin. **Measure less, better.** The current plethora of authorities and frameworks for ESG measurement is unwieldy, confusing, and burdensome for companies. It’s encouraging that five of the leading standard setters and measurement bodies—including GRI and the Sustainability Accounting Standards Board—are collaborating to streamline and harmonize standards for reporting. The European Commission and the International Financial Reporting Standards Foundation are undertaking other efforts to improve reporting practices. My hope is that what emerges will include a commitment to a transparent application of rigorous science-based targets in line with nature’s limits. No matter what standard ultimately prevails, sustainability reports must be mandated and audited by an empowered referee. **“The real danger is when politicians and CEOs are making it look like real action is happening when in fact almost nothing is being done.” Mobilize.** Vested interests and system inertia have been formidable obstacles to progress. Attempts to self-regulate have delivered incremental gains that have been subsumed by business as usual and the unyielding pressure to grow. However, with mounting evidence that climate change is harmful and accelerating, grassroots global movements for action—such as the Sunrise Movement and 350.org—are making what the civil rights hero John Lewis called “good trouble.” **Spend government funds on the right things.** According to the IMF, global subsidies for fossil fuels topped $5 trillion in 2017. In the United States, tens of billions of dollars have gone to subsidies for biofuels, including ethanol. This makes no sense. We are using taxpayer money to subsidize energy sources that accelerate future environmental damage. Imagine if governments instead invested those resources in R&D for carbon capture, incentives for retrofitting buildings, or infrastructure to spur faster growth in renewable energy. Change the system. Executives and investors operate in keeping with the rules and incentives of the system. If their behavior is to change, the rules that governments set and enforce also need to change. More specifically, as a partial list, corporations should be prevented from co-opting the regulatory apparatus; carbon emissions should be capped or taxed to account for their social costs; the agriculture industry should be incentivized to transition from spewing carbon to sequestering it; and lawmakers should ban the building of new thermal coal plants as a source of primary energy. In addition, as Meadows pointed out when discussing leverage points for system intervention, our mindsets, and assumptions about how the world works are potential sources of profound impact. A sustainable system will ultimately require a paradigm shift from the prevailing goal of wealth creation to one of well-being, and a shift in focus away from GDP and toward something akin to the OECD’s Better Life Index. Commitments to concepts such as regenerative agriculture, reuse, and collective value represent first steps in the right direction. **. . .** After two decades of trying, it should be clear that the market alone will not address worsening social and environmental challenges. The British economist Sir Paul Collier summed up the situation well when he said that capitalism “doesn’t work on autopilot. Periodically throughout its 250-year history, capitalism has derailed. And when that happens, it’s been up to public policy to get it back on the rails—public policy and the efforts of private citizens, of firms and families.” Ultimately, corporations exist within a broader system. The obsession with shareholder primacy has served executives and investors well, but it has left younger generations with a staggering bill. This past-due invoice includes environmental degradation, biodiversity loss, income inequality, and climate change. Going forward, stability and prosperity require that executive leaders advocate for structural changes that enable them to focus beyond the next quarter’s numbers. After all, like the members of Sustainability Inc., they, too, want to pass on a better world than the one they inherited.

### 2NC---AT: No Climate

#### Yes warming---studies go neg.

Rebecca Green 6-1-21. Rebecca Green is a writer for the Socialist Alternative. Who Can Solve the Climate Crisis?," Socialist Alternative, https://www.socialistalternative.org/2021/06/01/who-can-solve-the-climate-crisis/

In an article titled [“Understanding the Challenges of Avoiding a Ghastly Future,”](https://www.frontiersin.org/articles/10.3389/fcosc.2020.615419/full) 17 climate scientists from around the globe state that, “The scale of the threats to the biosphere and all its lifeforms—including humanity—is in fact so great that it is difficult to grasp for even well-informed experts.” Yes we’ve heard about increasing global temperatures, but these scientists lay out the much longer list of symptoms that will come as a result of unmitigated climate disaster: mass species extinction, unprecedented migration, more pandemics, extreme weather, and food, water, and land shortages. These compounded crises are on the horizon if we do not fight for a top-to-bottom overhaul of society and an end to the for-profit economic system of capitalism. Under a subhead “Political Impotence” these scientists detail the contradictory reality of a rapidly worsening climate situation and the increasing clash of national interests that, if left intact, dooms the type of international collaboration necessary to avert full-scale climate disaster. The situation is so bad that it has forced a section of the global ruling class to act. The World Economic Forum’s 2020 conference was [dubbed](https://time.com/5771889/davos-climate-change/) by *Time* a “Climate Conference,” Biden released his climate-driven infrastructure proposals, and corporations have pledged to cut emissions. All of this can be glimmers of hope to some. But the pace of change that’s possible on the basis of a competitive, free-market economy, even one that has resolved to fight climate change, is far too slow. We need a socialist transformation of society on a green basis, which will only be achieved by a genuine revolt of the global working class. **State of the Climate** Having already surpassed an increase of 1.0° C above pre-industrial global temperatures, we are on track to reach 1.5° C between 2030 and 2052. Even if the emissions reduction goals of the much hailed Paris Climate Agreement were met (which they are not almost anywhere) we would reach 2.6-3.1° C of warming by 2100. According to the international scientific community, anything above 1.5° C would be catastrophic. CO2, methane, and nitrogen levels (three long-lived greenhouse gases that cause warming) all [started to dramatically increase in 1750](https://www.acs.org/content/acs/en/climatescience/greenhousegases/industrialrevolution.html) with the rise of the coal-fueled industrial revolution and the rise of British capitalism. Imperialism spread these fossil-fuel-burning, resource-extracting, and industry-building methods around the globe. Today, electricity and heat production are the biggest source of emissions leading to a warming planet ([25% globally](https://www.epa.gov/ghgemissions/global-greenhouse-gas-emissions-data)), followed by agriculture, forestry, and other land use (24%), and then industry at 21%. Since 1992, CO2 emissions from energy and industry have [increased by 60%](https://www.iea.org/reports/net-zero-by-2050). From 1990 to 2005 emissions from agriculture [increased by 17%](https://www.ipcc.ch/site/assets/uploads/2018/02/ar4-wg3-chapter8-1.pdf). The bulk of these greenhouse gas emissions from the rise of capitalism to today have [come directly from corporations](https://www.theguardian.com/sustainable-business/2017/jul/10/100-fossil-fuel-companies-investors-responsible-71-global-emissions-cdp-study-climate-change). Scientists have warned that we have [either reached or surpassed](https://www.cbsnews.com/news/climate-change-tipping-points-amazon-rainforest-antarctic-ice-gulf-stream/) a number of climate tipping points, which are a “point of no return” in the climate system that mean unavoidable and dramatic consequences. The conversion of the Amazon rainforest into a savannah, the melting of the West Antarctic ice sheet, and the complete collapse of the Gulf Stream are all decisively underway, meaning a collapse of biodiversity, huge dumps of carbon and methane into the atmosphere, extreme sea level rise, and uncontrollable weather. Climate-related extreme weather disasters [jumped by 83%](https://e360.yale.edu/digest/extreme-weather-events-have-increased-significantly-in-the-last-20-years#:~:text=There%20has%20been%20a%20%E2%80%9Cstaggering,report%20from%20the%20United%20Nations.&text=Much%20of%20this%20increase%2C%20the,be%20attributed%20to%20climate%20change.) globally in the last 20 years, killing 1.23 million people. Major floods have doubled and severe storms have increased by 40%. Last year saw the worst wildfire season in the West on record and the Southeast broke the record of number of tropical storms and hurricanes. This will only get exponentially worse. Right now, the West Coast is experiencing its [worst drought in 1,200 years](https://www.usatoday.com/story/news/nation/2020/04/16/drought-worst-western-megadrought-here-study-says/5145929002/). Lack of rainfall and snowpack (frozen reservoirs that release water during spring and summer) are spelling what could be the worst fire season yet, with two fires each in California, Arizona, and New Mexico already this season. With a warming climate and worsening droughts, extreme water shortages will be [“nearly ubiquitous”](https://www.nytimes.com/interactive/2020/09/15/magazine/climate-crisis-migration-america.html) west of Missouri by 2040 according to projections from the federal government. The Ogallala Aquifer, which supplies nearly a third of the country’s irrigation groundwater and supports [one sixth of the world’s grain production](http://duwaterlawreview.com/crisis-on-the-high-plains-the-loss-of-americas-largest-aquifer-the-ogallala/), could be gone by the end of the century. In response to droughts, New Mexican officials have directed farmers who rely on water from the Rio Grande and other rivers to [avoid planting crops](https://www.krqe.com/news/new-mexico/extreme-drought-pushes-local-farmers-to-get-creative-to-water-crops/) unless absolutely necessary. Floods, drought, storms, fire, and global warming pose a dramatic threat to our homes, our communities, and our water and food supply. A half-billion people around the world already live in places that are turning into desert because of destructive agricultural practices and a warming climate that will eliminate the potential for anything to grow. [One billion people](https://sciencepolicyreview.org/2020/08/coral-reefs-are-critical-for-our-food-supply-tourism-and-ocean-health-we-can-protect-them-from-climate-change/) globally rely on coral reefs for food, which now face extinction from warming oceans. Sea level rise, caused by melting ice at the poles will cause extreme flooding, eliminating coastal land for food production and displacing entire communities. By 2060, an estimated [13 million](https://www.nytimes.com/interactive/2020/09/15/magazine/climate-crisis-migration-america.html) people in the U.S. will be forced to move away from submerged coastlines, which would represent the largest internal migration in American history. In 2019, weather-related hazards forced 24.9 million people across 140 countries to move. Estimates suggest there will be anywhere from [200 million](https://reliefweb.int/report/world/cost-doing-nothing-humanitarian-price-climate-change-and-how-it-can-be-avoided) to [1 billion](https://www.frontiersin.org/articles/10.3389/fcosc.2020.615419/full) environmental migrants by 2050 when you factor in permanent food and water shortages. This means, in the worst case scenario, one in seven people globally will be forced to move because of climate change in the next 30 years. Already in the U.S. a historic surge at the southern border has largely been driven by devastating hurricanes and prolonged droughts in El Salvador and Honduras. Massive migration will further strain dwindling resources. As one example, by 2100 it is possible that Atlanta, GA [could receive a quarter million new residents](https://www.nytimes.com/interactive/2020/09/15/magazine/climate-crisis-migration-america.html) from sea-level rise displacement alone. But Atlanta may very well lose its water supply by then to drought and face worsening heat-driven wildfires. And if all this wasn’t bad enough, increasingly dense cities in many countries and strained public services from forced climate migration threaten worse outcomes for future disease outbreaks. Scientists are already [warning of more deadly pandemics to come](https://internationalsocialist.net/en/2021/03/coronvirus), largely linked to deforestation and a loss of biodiversity. One of the most terrifying and underreported realities is that it is “scientifically undeniable” that we are already on the path of a [sixth major extinction](https://www.frontiersin.org/articles/10.3389/fcosc.2020.615419/full). One million (out of 7-10 million) species are at threat of immediate extinction, 40% of plants are endangered, and insects (including pollinators who help us grow food) are disappearing rapidly. An extinction event on this scale will have profoundly destabilizing and complex consequences on global ecosystems. It will contribute to more warming, worse food shortages, poorer water and air quality, more frequent and intense flooding and fires, and compromised human health. **The Cost of the Climate Crisis** All of these horrifying consequences of the unrestricted use of fossil fuels have been known to scientists, politicians, and CEOs for decades. But as scientists really started to ring the alarm bells in the early 80s, deregulation of industry and global expansion under the neoliberal era took carbon emissions to record highs. Capitalism’s virtually unrestricted pillage of the natural world in the interest of profits has gone so far that it now threatens its own economic and political security. Capitalism has never factored environmental impact into its profit-making formula. This despite the fact that all of its wealth comes from the raw resources of the earth, and the work done to them by workers. According to a recent UN report, if any company did have to pay the cost of their environmental damage, not one of them would actually be profitable. We’ve been operating under a severe climate deficit for centuries, but our economic and political system has blatantly ignored this fact because living sustainably is fundamentally contradictory to capitalism’s constant need to expand, cut costs, and maximize profits. In the last 20 years, an estimated [$2.97 trillion](https://e360.yale.edu/digest/extreme-weather-events-have-increased-significantly-in-the-last-20-years#:~:text=There%20has%20been%20a%20%E2%80%9Cstaggering,report%20from%20the%20United%20Nations.&text=Much%20of%20this%20increase%2C%20the,be%20attributed%20to%20climate%20change.) in global economic losses have come as the result of climate-related extreme weather events. In the most extreme climate warming scenarios, the U.S. alone could lose [$520 billion](https://news.climate.columbia.edu/2019/06/20/climate-change-economy-impacts/) a year from climate change damages. Food and water shortages, destroyed infrastructure, worse and more widespread human illness and instability, the collapse of tourism economies, and more will be extraordinarily expensive. The International Energy Agency (IEA), which informs climate policy globally and has historically encouraged the use of fossil fuels, issued a [shocking report](https://www.iea.org/reports/net-zero-by-2050) this month that sets the goal of reaching net zero carbon emissions by 2050. They say that this means halting sales of new internal combustion engine passenger cars by 2035, phasing out all coal and oil plants by 2040, and halting any new investment in oil or natural gas this year. This means a massive scaling up of renewable energy technologies, and the creation of new ones. To illustrate the gargantuan shift this would require, they explain that for solar power, it would be the equivalent of “installing the world’s current largest solar park roughly every day.” This will also mean tripling investments in clean energy worldwide by 2030 to about $4 trillion. Unfortunately, the IEA has been complicit in perpetuating a global economy whose foundations are fossil fuels, so how do we turn this freight train around? **International Response** Joe Biden hosted a climate summit in April that brought together world leaders, almost all of whom belong to countries who have failed their completely inadequate Paris Climate Agreement promises, but who engaged in showboating discussions about the climate crisis nonetheless. Chinese President Xi Jinping attended the summit, where he doubled down on his previous commitment to reach peak emissions before 2030 and [carbon neutrality by 2060](https://www.bbc.com/news/science-environment-54256826). But shortly after, Chinese minister Wang Yi [issued a statement saying](https://www.nytimes.com/2021/04/23/climate/biden-climate-summit.html) “If the United States no longer interferes in China’s internal affairs, then we can have even smoother cooperation that can bring more benefits to both countries and the rest of the world.” Essentially, China’s cooperation with Biden on the climate is contingent on broader relations between the two countries, which are deteriorating due to [inter-imperialist rivalry](https://www.socialistalternative.org/2021/05/08/biden-and-xi-escalate-us-china-conflict/). In order to meet Xi Jinping’s carbon neutrality pledge, China will need to invest $21 trillion to remove carbon from its energy system by 2060. In order to meet this goal, there has been a rapid expansion of Chinese “green finance.” Over the past five years, China’s “green finance” sector has become the [second largest in the world](https://www.scmp.com/news/china/politics/article/3128167/what-green-finance-and-why-it-important-chinas-carbon-neutral) after the U.S. Climate could well become a key battleground in the two countries’ battle for global dominance. Biden has proposed a $2.25 trillion infrastructure package in the U.S., which promises money to update and weatherize infrastructure, transition away from gas-powered cars, and ramp up research and development of renewable energy technologies among other things. In his speech unveiling the plan, Biden [mentioned China six times](https://www.wsj.com/articles/china-looms-large-in-biden-infrastructure-plan-11617631234), and explicitly framed it as an attempt to build up U.S. manufacturing and the economy to undermine growing Chinese economic influence. The Chinese economic model includes a very high level of state intervention into the economy. This has given the Chinese ruling class a certain advantage in scaling up key sectors. Seeing this, Biden is suggesting a level of state intervention into the economy not seen in decades in the U.S. This is accepted by a section of big business itself who recognize that it’s the only [option](https://time.com/5771889/davos-climate-change/) given the scale of the crisis. So what about other countries at the summit? For poorer countries who have been devastated by COVID-triggered economic crises and continue to face outbreaks because of wealthy countries’ vaccine hoarding (see page 11), trillion dollar climate spending packages are simply not an option. Biden’s infrastructure package will barely scratch the surface of what is necessary to address the climate crisis in the U.S., which historically is the number one emitter of greenhouse gases. And Biden’s pledge of [$2.5 billion for overseas climate finance](https://www.theguardian.com/environment/2021/apr/22/poorer-nations-raise-concerns-over-climate-aid-ahead-of-white-house-summit) is as insulting as his pledge to send [20 million vaccine doses](https://www.nytimes.com/2021/05/17/us/politics/biden-coronavirus-vaccine.html) abroad. Poor countries, many of whom have economies that are [completely dependent on dirty energy](https://qz.com/1970294/economies-reliant-on-oil-will-lose-trillions-to-climate-action/#:~:text=Small%20nations%20such%20as%20South,18%25)%20are%20also%20vulnerable.) (like Nigeria, Venezuela and Iraq), were promised [$100 billion a year](https://www.theguardian.com/environment/2021/apr/22/poorer-nations-raise-concerns-over-climate-aid-ahead-of-white-house-summit) in climate finance starting in 2020, but this is yet another Paris agreement promise left unmet. Leaving poor countries that are saddled with debt due to the legacy of imperialism and colonization to fend for themselves on the climate (or the pandemic) is the murderous logic of capitalism’s reliance on the nation state. An “America first” approach to the climate is doomed to fail and will only fuel mass migration and leave millions of poor and working people from the Global South seeking refuge at the doorstep of advanced capitalist countries. **The Ruling Class’ Divided Response** Even Biden’s very limited infrastructure package faces huge challenges ahead. Democrats will have to be fully united (meaning winning over centrist Democrat Joe Manchin, who represents the second-largest coal producing state of West Virginia) and use a special process called budget reconciliation to pass the package in its full form. Republicans, especially those representing fossil-fuel-dependent states like Texas, have already signalled strong opposition. The growing price tag of the climate crisis is driving divisions in the ruling class about what to do, as evidenced by the emerging debate around Biden’s infrastructure package. Many banks who have invested heavily in major polluters for decades will act as fetters on a transition to sustainability because abandoning these investments would represent a big loss on their balance sheet. However, even among the titans of finance capital, there is a growing recognition that climate change carries tremendous fiscal risks. BlackRock, the world’s biggest asset manager, has suggested that climate change will lead to a “fundamental reshaping of finance.” In a similar vein, corporations like Amazon, Coca-Cola, and Microsoft have begun to pledge carbon neutrality in the coming decades. For these companies, disastrous climate scenarios pose the biggest threat to their medium and longer-term profits, meaning they’re willing to invest up front now. For Biden, the threat of losing the cold war with China and seeing the further weakening of U.S. imperialism globally has forced him to act as well. In June 2020, Goldman Sachs announced that spending on renewable power would soon overtake oil and gas drilling, and that clean energy provided a [$16 trillion investment opportunity through 2030](https://www.wsj.com/articles/china-looms-large-in-biden-infrastructure-plan-11617631234). They pointed to the growing cost of fossil fuel development (which will increase if fossil fuel subsidies are removed as proposed in Biden’s infrastructure plan), which could lead to higher oil and gas prices and spur more investment in renewables. It is possible that we do see politicians and big business interests make a shift towards renewable energy to avoid full climate collapse, and to get in on a growing market. We should of course hold our applause for the companies and politicians who have waited until it was clear they would lose money to do anything at all, and we shouldn’t hold our breath that any of it will be enough anyways. **What Next?** What is concretely needed to address this crisis is a global plan to completely rebuild energy grids that rely 100% on renewables in the next decade; ending new production of gas-run cars, scaling up electric vehicle production and massively expanding public transit; developing renewable fuel alternatives for planes, trains, and cargo ships and completely phasing out fossil fuel dependence; retrofitting, weatherizing, and building new green housing

and infrastructure to withstand extreme weather and accommodate climate refugees; reforesting the planet and overhauling our food system top-to-bottom, full scale replacing of mass monocrop agriculture with local, organic alternatives; and investing to historic proportions in yet-undiscovered technologies that can help deal with the crisis of water contamination and shortages, infectious disease, coral reef and pollinator population collapse, and so much more. Despite a shift in the ruling class’ approach, it will inevitably be too slow because of the logic of capitalism. Inter-imperialist rivalries mean countries will work separately to develop and then hoard climate technology, instead of collaborating to most rapidly produce and share out the best innovations. Poor countries will be left behind. Corporations will continue to invest their profits in the financial markets as opposed to expanding their productive capacity in the direction needed by humanity. Fossil fuel interests, the agricultural industry, other major polluters, and their loyal politicians will work to block a transition to a sustainable future with ferocity. While we’re seeing increased state intervention globally, the levels required to mitigate all of these bottlenecks and speed the process up enough to put us on track is extraordinarily unlikely. That is why we need to take things into our own hands. Mass climate protests have clearly put this issue onto the agenda, and we need a dramatic ramping up of this movement. School strikes should be coordinated and planned as soon as schools open again in the fall, and should be ongoing with a plan to involve more students, teachers, and staff. The youth-led movement also urgently needs to link up with the broader working class. In the short term this could look like striking students appealing to local unions to join them for demonstrations and days of action. This will crucially need to include workers in polluting industries. [Ten million people globally](https://thehill.com/opinion/energy-environment/494427-fossil-fuels-save-the-workers-kill-the-industry) work directly for the fossil fuel industry, and many more rely indirectly on these and other highly polluting jobs. To build a powerful movement with political and economic power, demands for the environment need to be linked with demands to retrain these workers in new, sustainable fields with no loss of pay or benefits and a guarantee of high wages and union recognition. This type of organizing could win crucial victories for expanding renewable energy, reforestation, and general resource protection. This would help buy time. Fundamentally though, these battles will need to be waged again and again on a mass scale to address the many complex dynamics of the climate crisis caused by a system that is based on the exploitation of workers and the earth. What is actually necessary for a long-term solution to climate disaster is a complete restructuring of a society on a socialist basis. This can only be won by the global working class asserting itself in a mighty struggle against the capitalist system. Mitigating the climate crisis on the time frame necessary requires an end to a for-profit system and its replacement with a democratically planned economy run by the working class itself. This means bringing the energy industry, the transport sector, key sections of manufacturing and finance fully into public ownership. On this basis, millions could be put to work helping rebuild a green economy, the accumulated wealth of polluting industries could be reallocated to green and socially productive projects, scientific innovation would be unleashed as global collaboration would replace nationalist competition, and instead of profits for a few, all economic activity would be geared towards meeting global human need, including averting the climate crisis. In this society, economic decisions would necessarily include environmental and social impact. On the basis of a truly democratically-run economy, we could make rapid decisions about the resources of society and put the full weight of the global working class behind stopping the climate crisis in its tracks. Winning this society will require the biggest ever united struggle of the global working class against capitalism. While the size of this task is mammoth, the future of humanity depends on it.

### 2NC---AT: Alt Fails

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

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

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

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

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

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

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

#### 5. State power will back off. Desperation for public legitimacy and support fueled by social protests has left politicians open to concede market failures.

Silke Helfrich & David Bollier 19. Helfrich studied romance languages and pedagogy at the Karl-Marx-University in Leipzig, served as head of Heinrich Böll Foundation Thuringia and head of the regional office of Heinrich Böll Foundation for Central America, Cuba and Mexico. Bollier worked in policy advocacy with a Member of Congress, the auto safety regulatory agency, and public-interest organizations, and co-founded Public Knowledge, a Washington advocacy organization for the public’s stake in the Internet, telecom and copyright policy.“ Free, Fair, and Alive : The Insurgent Power of the Commons” July 2019.

Revamping State Power to Support Commoning We have outlined a general stance towards the state in moving forward, but we have not burrowed into the deeper questions: In what specific ways can state power itself be altered to support commoning? What openings in law and bureaucratic behavior, or in politics and local action, might be exploited to secure stable beachheads for commoning? The first priority is to convince state institutions to back off. Recall Elinor Ostrom’s wisdom in her seventh design principle for successful commons. She asserted that state authorities must recognize the right of commoners to govern themselves.42 External governmental authorities must not challenge the right of the users of common resources (or “appropriators,” in Ostrom’s language) to devise their own rules and governance regimes. This is our starting point and a minimal requirement. We could derive a principle of noninterference from it. The state must get out of the way so that commoners can engage in the value-generating activities that only they can do. Given the realities, however, commons may find that they need legal recognition to grow and flourish. In instances where state institutions regard sharing as a crime — e.g., seed sharing, software collaborations, information sharing — commoning must be decriminalized. This is part of normalizing commons and acknowledging that the moral and political legitimacy of commoning exists prior to and independent of modern states.43 Consider how state power has been used to let investors form corporations and limit their liability, ostensibly because such organizational forms serve the public good. Monarchs and, later, legislatures saw corporations as a way to encourage activities that the state itself could not or did not want to undertake. Early ventures such as the investor-owned British East India Company, for example, developed colonial trade regimes, extracted natural resources, exploited cheap labor, and built railroads and waterways. Why shouldn’t state power also recognize the immense value generated by commoners by granting their institutions legal standing? Such recognition will not come easily, of course. Political leaders and bureaucrats who bow down before the standard economic narrative have trouble seeing other modes of value. Moreover, some state institutions themselves are designed to depend on market revenues. For example, the European Patent Office — an interstate governance body that grants patents under the European Patent Convention — is designed to finance most of its one billion euro budget by collecting fees from patent applicants. Since the more patents it grants, the more money it collects, the Patent Office has a strong incentive to make more scientific and technical knowledge proprietary. While it is understandable to charge patent holders for services provided — and not, say, the general taxpayer — this mechanism is a disincentive to support a world in which we Share Knowledge Generously. Such a societal ideal tends to be regarded as aberrant, if not faintly ridiculous. So are any ambitions to achieve social harmony and intergenerational continuity and protect cultural heritage. As for the potential contributions that subsistence communities and nomadic tribes make to eco-sensitive choices, many moderns continue to depict them as primitive, uncivilized, and hopelessly backward.44 Thus, we are imprisoned within a progress narrative validated and reproduced by state institutions. We are told the economy must grow (to fulfill targets contrived by corporations) so that we can compete successfully on the global market. World leaders urge us not to fall behind. Being outpaced in technological innovation is considered by the business and political communities to be the worst fate of all. One innovation after another — driverless cars, synthetic biology, nanotechnology — is pushed through regulatory procedures, at times with too little time to consider the full societal costs and benefits. All this makes it difficult for people to embrace a shift to the commons. Moreover, guardians of state power understandably think: why should the state cede any authority to nonmarket, decentralized activities or provide funding support to things that have no market value? It would only enrage elites and disrupt internal political arrangements. In addition, letting people withdraw from the circuitry of the market/state system will only embolden the yearning for self-determination, goes the thinking … and that could be dangerous. It would only encourage unregulated activity, amateur experimentation, and perhaps demands for greater autonomy. The guardians of state power may understandably fear that if people decommodify their everyday lives and wean themselves away from dependencies on market/state systems, it will reduce the state’s moral standing, political authority, and tax revenues. Thus the challenge: if the commons is going to evolve as an alternative matrix of governance and provisioning, it must somehow overcome a deep-seated skepticism about commoning among many bureaucrats, politicians, and governments. This does not mean that no workarounds are possible. As stated earlier, the state is not a monolithic institution. State decision makers, despite their zeal in defending their authority, could find it advantageous to authorize and support commoning under the right circumstances. At the local level, this means: allocating land for community gardens and co-housing; facilitating the formation of community land banks and trusts; encouraging local agriculture and food systems; using open source software in public administration; providing free community Wi-Fi everywhere; using open educational resources (OER) in classrooms; providing space and support for timebanks, repair cafés, hackerspaces, and much more. This is not a quixotic agenda. Those who wield state power are mindful of the need for public support and legitimacy. Many politicians, feeling the heat from fierce social protests against extractivism and the international trade regime, are looking for credible ways to escape the iron cage of neoliberal capitalism. Some political leaders are willing to concede the failures of the market/progress narrative to address climate breakdown, inequality, poverty, and hunger; but on the other hand, they are also fearful of breaking from dogmas about free markets and national identity. Around the world, many authoritarians have seized upon the many failures of the market/state system to promote various forms of nationalism. Although a complicated and varied process, much of this political trend is fueled by a search for meaning, purpose, and belonging that the market/state is incapable of fulfilling. The political left and center, meanwhile, cling to conventional vehicles for change: new laws, policies, programs, and procedural reform. While sometimes significant, these approaches generally are carried out in distant state venues (courts, legislatures, government agencies) and fail to engage people personally. In the end, many liberals and social democrats remain tethered to the dominant narrative of progress and show little interest in bottom-up empowerment or social transformation. The cultural dimensions of commons-based initiatives such as agroecology, community land trusts, platform cooperatives, and cosmo-local production, are generally ignored or seen as too small and inconsequential to be taken seriously. Businesses, for their part, generally see them as threats to their market share and profits.

## 2NC---Private Antitrust Advantage

### 2NC---Private Action Fails

#### 2---Private enforcement is a worthless deterrent.

Crane 10, Professor of Law at the University of Michigan Law School. (Daniel A., Optimizing Private Antitrust Enforcement, 63 Vanderbilt Law Review 673, pg. 695, Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol63/iss3/2>)

It is unlikely, however, that the mere filing of a private antitrust suit brings about severe consequences for a defendant firm's managers. Unlike securities lawsuits, which may impair shareholder confidence in the integrity of insiders, antitrust lawsuits may instead communicate that company managers are acting aggressively to expand market share and increase profitability. This is especially true in the case of private antitrust lawsuits, which many shareholders may rightly regard as signaling that rival firms are merely disaffected by aggressive, but ultimately lawful, competition. While empirical work suggests that the filing of an antitrust action by the Department of Justice or Federal Trade Commission has an immediate and significant negative effect on a defendant firm's share price, the filing of a private antitrust lawsuit has only about a tenth of the effect of a public suit. Empirical studies have found that defendants lost, on average, 6 percent of their share value upon the filing of a government antitrust lawsuit,98 but only about 0.6 percent of their share value upon the filing of a private lawsuit.99 A half-percent drop in market capitalization is unlikely to engender ruinous consequences to most managers, particularly if the gains from the challenged behavior were large.

#### 3---Private suits don’t deter anyone.

Crane 10, Professor of Law at the University of Michigan Law School. (Daniel A., Optimizing Private Antitrust Enforcement, 63 Vanderbilt Law Review 673, pg. 691-694, Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol63/iss3/2>)

In order to evaluate this deterrence claim, one must ascertain who is being deterred. The primary class of relevant decisionmakers is corporate managers, although one must also consider the possibility that vigilant shareholders will rein in managers who fail to respond to antitrust incentives. With respect to these managers, the argument that private antitrust litigation provides effective deterrence is increasingly undermined. Two converging trends—the increasing length of antitrust proceedings and the increasing shortness of managerial tenure—make it likely that corporate managers severely discount the threat of future litigation damages. First, the time gap between the planning of antitrust violation (which is presumably the moment at which deterrence should take root) and antitrust judgment day is growing

longer. While current statistics on the duration of antitrust litigation are not readily available, it is possible to make reasonable assumptions based on the available data. For the last decade, the average disposition time for all civil cases in the federal system has been steady at between eight and nine months. The average time from filing of the case to trial has steadily increased from around 18.5 months in 199681 to 24.6 months in 2007.82 This suggests that early disposition of cases, whether due to motions to dismiss or early settlement practice, has declined somewhat but that cases going all the way to trial take much longer than before because of the increasing complexity of modern litigation and the increasing burden of discovery.83 The Georgetown study of private antitrust litigation conducted in the early 1980s found that antitrust cases take, on average, about three times longer than other federal cases from initiation of the lawsuit to disposition.84 While this ratio has likely not remained constant—the average private antitrust lawsuit today takes over six years to disposition—the average antitrust suit almost certainly lasts several years. In 2007, there were 378 federal antitrust cases that had been pending for over three years, an immense number considering that there were only a thousand new antitrust filings and that many cases are quickly disposed of on motions to dismiss.85 The time from filing to trial tells only part of the story. The average interval from the filing of a notice of appeal to final disposition is now over a year for all federal cases. 86 The average interval for antitrust cases is likely even longer due to their monetary significance and complexity. Certiorari petitions to the Supreme Court typically add another year to the delay, during which the appellate court's mandate and the corresponding obligation to pay the judgment are stayed.87 Moreover, the misconduct at issue usually begins at least a year or two—and often many years—before the complaint is even filed. Hence, in the average private antitrust case, the time from the beginning of an anticompetitive scheme until judgment day is at least five years and may be closer to ten years or more. The relevant time intervals in two recent private antitrust cases, in which the plaintiffs won substantial damages awards at trial and had them affirmed on appeal, are instructive. In LePage's Inc. v. 3M, the allegedly anticompetitive bundled rebates were put in place in 1992; LePage's filed suit in 1997 but did not prevail until 2004, when the Supreme Court denied certiorari.88 In Conwood Co. v. U.S. Tobacco Co., the plan to eliminate Conwood was hatched in 1990, Conwood sued in 1998, and the Supreme Court denied certiorari in 2003.89 In both cases, the time between the decision to engage in the challenged conduct and the end of the legal process was well over a decade. This time lag should be paired with the fact that the managers who put into place anticompetitive schemes are increasingly unlikely to be around to internalize their effects at judgment day. During the 1980s, the turnover rate among senior managers in large corporations was just above ten percent. 90 By all accounts, the turnover rate increased significantly—perhaps even doubling—in the 1990s and 2000s as various capital market factors accentuated shareholder demand for short-term performance. 91 Today, the average CEO holds her job for about six years. 92 Mid-level executives, such as divisional managers, typically hold their jobs for an even shorter period, perhaps less than four years. 93 Thus, most of the executives responsible for an antitrust violation will no longer be with the firm by the time a damages award is entered against the company. High managerial turnover rates might not thwart the deterrence objective if managers were to internalize some of the detrimental effects of antitrust judgments rendered after they leave the defendant firm. In particular, managers might incur a reputational cost in lost future employment opportunities or take a prestige hit in the business community by virtue of their past roles in a later-adjudicated antitrust violation. 94 But there is scant evidence suggesting that individual managers' reputations are much affected by antitrust judgments against their former employers. Individual managers are not often named as co-defendants in private antitrust cases and usually do not appear in any public pronouncement of liability. Liability in complex antitrust cases seldom turns on the culpability of a single manager, but rather on a cluster of managerial decisions over time, making it difficult to pinpoint blame.95 Relatedly, judicial opinions in private antitrust cases often omit the names of individual managers, instead referring to the acts of an impersonal corporation or "the defendant." For example, in the much-publicized LePage's Inc. v. 3M case, neither the district court nor the Third Circuit opinion referred to a single 3M executive by name. 96 In most cases, an outsider to the litigation would find it difficult to impose a reputational sanction against any present or former firm manager. In light of these facts, it is difficult to see how the threat of a future damages judgment disciplines managerial decision-making. When managers plan conduct that brings immediate large profits but only potential liability at some future date, the extent to which the future liability deters them from choosing immediate profits is a function of their implicit discount rate for the potential damages award. The longer the perceived time until judgment day, the more likely it is that managers will discount the threat of damages. If managers believe that they are unlikely to be employed by the firm at the distant judgment day, they will tend to disregard the threat of future liability altogether.

#### 4---They certainly don’t deter shareholders

Crane 10, Professor of Law at the University of Michigan Law School. (Daniel A., Optimizing Private Antitrust Enforcement, 63 Vanderbilt Law Review 673, pg. 696-697, Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol63/iss3/2>)

If managers cannot be expected to respond reliably to the threat of distant and unpredictable liability judgments against their firms, how about shareholders? Two related factors suggest that shareholders do not have strong incentives or capabilities either. First, the kind of industrial behavior that gives rise to antitrust claims creates the prospect of substantial long-run costs if an antitrust challenge is successful, but offers significant short-run profits in the meantime. From an outsider's perspective, it is very hard to evaluate the risk that firm behavior will produce eventual antitrust liability. Whether conduct of the kind adjudged under antitrust's rule of reason and monopolization law's amorphous standards is likely to result in antitrust liability is difficult for antitrust experts to predict, let alone the average institutional investor. 102 It is unlikely that many shareholders will try to curb behavior that increases a firm's market share and profits but that might eventually lead to antitrust liability. Even assuming that a large institutional investor with access to corporate insiders were aware that conduct was risky from an antitrust perspective, it still often would be a rational strategy to approve tacitly the risky conduct, hold the stock for a few years while its value increases, and then sell before an antitrust suit commences. The initial filing of the private lawsuit does relatively little damage to the issuer's share price, so savvy shareholders will have plenty of time to reap their profits and then exit.

#### 5---Private enforcement---too uncertain

Joshua Davis and Robert Lande 13. Associate Dean for Academic Affairs and Professor of Law, University of San Francisco School of Law. Member of the Advisory Board of the American Antitrust Institute; and Venable Professor of Law, University of Baltimore School of Law, and Director, American Antitrust Institute. “Article: Defying Conventional Wisdom: the Case for Private Antitrust Enforcement.” Georgia Law Review 48: 31-33.

iii. Risk Aversion: Private v. DOJ. Another interesting conclusion is suggested by private plaintiffs pursuing litigation independently of public litigation and prosecuting claims under [\*32] the rule of reason rather than just under a per se standard. Private plaintiffs may not be as averse to risk as government litigators. 130 Again, a comparison to the DOJ is illustrative.

In our original comparison of private enforcement and DOJ enforcement, we noted that the DOJ appears to succeed in a very high proportion of its cases. 131 From 2000 to 2009, it won anywhere from thirty-one to sixty-seven antitrust cases and lost four in one year and from zero to two cases in all other years. 132 In its worst year, it prevailed over 90% of the time. 133

We do not know the rate at which private plaintiffs are successful. 134 But almost certainly they prevail at a much lower rate. This conclusion is suggested by the willingness of private plaintiffs to pursue cases other than following a government filing. It is even more powerfully suggested by their pursuit of rule of reason cases. The rule of reason entails a high degree of uncertainty that can readily result in a successful defense. 135 This proposition is confirmed by Michael Carrier's work, which identifies 221 rule of reason cases between 1999 and 2009 in which a court entered final judgments against plaintiffs (and only one in which a court entered final judgment in favor of a plaintiff). 136 Moreover, any plausible model based on expected value would indicate that plaintiffs would pursue claims with a lower chance of success than the DOJ appears to require. This evidence and analysis suggests that private plaintiffs bring riskier claims than government actors, helping to ensure some deterrence effects when behavior is anticompetitive but will not necessarily result in successful prosecution of a claim.

[\*33] 6. Overall Deterrence Effects: A Study. The evidence discussed above is suggestive, but it does not provide a systematic analysis of the deterrence effects of private enforcement. We know of only one such systematic effort, co-authored by one of us. It analyzes seventy-five cartels, assessing the total sanctions that were imposed on the wrongdoers and the total profits they appeared to reap from their illegal conduct. 137 The article also gathers evidence and theory on the rate at which illegal antitrust conspiracies are discovered and successfully prosecuted. 138 The ultimate conclusion of this analysis is that the total sanctions-- public and private--from antitrust enforcement are insufficient for optimal deterrence. 139 In terms of expected value, illegal antitrust conspiracies remain a profitable endeavor--which explains their persistence. 140 Indeed, based on the seventy-five cases, the overall level of sanctions would have to increase at least threefold--and perhaps by as much as ten times--to achieve optimal deterrence. 141 Of course, this analysis applies only to cartel cases and not to other forms of anticompetitive conduct. 142 But as the only effort of its kind, it provides valuable evidence that private enforcement does not result in excessive deterrence effects.

#### 6---It fails

DOJ. "Chapter 5 Where Trade and Competition Intersect." Department of Justice Advisory Committee. https://library.unt.edu/gpo/icpac/chapter5.htm

To aid its inquiry into the utility of private litigation as a means of enhancing market access, the Advisory Committee invited the Section of Antitrust Law of the American Bar Association to prepare a submission discussing this issue. The resulting paper noted that the total number of private antitrust cases had declined dramatically from 1978 to 1998.(162) The paper also pointed out that private antitrust litigation against export restraints faces many of the same difficulties as governmental enforcement.(163) Obstacles to obtaining jurisdiction, gathering evidence and developing effective remedies all exist in private export restraint litigation.

Besides the hurdles inherent in litigation, whether public or private, tackling foreign-based restraints that bar access or sales through private antitrust litigation poses additional problems. First, while the U.S. Department of Justice considers principles of comity before considering whether to bring an enforcement action, private parties are not bound by such strictures. U.S. law gives little guidance to governments and international business executives where U.S. competition policy comes into direct conflict with the competition policy of foreign governments.(164) Thus, the Advisory Committee believes that significant improvements should be sought in the process and standards by which competing interests are balanced for comity purposes or otherwise. Moreover, federal, state and local judges hearing private disputes that raise claims or defenses based on considerations of governmental policy should invite concerned governments at an early stage in the litigation to submit their views, which commonly takes the form of amicus curiae submission.

Second, the previously dormant application of the doctrine of forum non conveniens in antitrust litigation may be revived. This doctrine applies when another forum has superior contacts with the subject matter of the litigation and is better able to conduct the litigation.(165) Until recently, few nations had competition law systems sophisticated enough to offer litigants antitrust remedies and many nations opposed private rights of action. Thus, U.S. courts were unwilling to use the doctrine to dismiss transnational antitrust cases.(166) Recently, however, a U.S. court applied the doctrine to dismiss a private antitrust claim. In Capital Currency Exchange, N.V. v. National Westminster Bank PLC, the court ruled that the English courts, which are bound to enforce competition provisions of the Treaty of Rome, provided for a more convenient alternative forum to resolve a private antitrust dispute because the conduct was alleged to have taken place in England and most witnesses and documents were located there.(167) As other nations develop more sophisticated competition law structures, the doctrine of forum non conveniens may play a greater role in private international antitrust litigation.

### AT: Healthcare

#### Current perceptions outweigh future capabilities.

Dr. Anastasia Filippidou 20, Lecturer in conflict resolution and counterterrorism at the Centre for International Security and Resilience, at Cranfield University, “Deterring Violent Extremism and Terrorism,” in Deterrence: Concepts and Approaches for Current and Emerging Threats, Advanced Sciences and Technologies for Security Applications, pg. 104, 2020, Springer.

Deterrence by punishment is more reactive than proactive. Punishment or threat of punishment only forms part of deterrence. For instance, incentives and rewards can also persuade and lead to the change of an opponent’s behaviour. It is worth considering the alternative to the threat, and what the deterring state’s offer is in the case where terrorist groups abide by the threat and refrain from the undesired behaviour. Both, governments and violent extremists have a range of objectives with varied value attributed to these objectives. If the preference orderings of terrorists and governments are precisely opposite, the effectiveness of deterrence is limited, while common ground between the two can enhance the chances of deterrence. An implication of this is that developing deterrence measures and policies requires an in depth knowledge and understanding of not just what they want, but also why, and to what extent and in what way, that is as an end or a means. In this way a state can identify intent, purpose, and commitment in addition to the aims and objectives of violent extremists. In sum, this approach should expose the tangibles and intangibles elements of the conflict and of the terrorist group. Different elements have different impact on deterring violent extremists. An additional complexity in successful deterrence is that there are both quantifiable elements, such as access to resources, money, and number of members, as well as non-quantifiable elements, like quality of membership, motivation, commitment that has to be taken into account when deciding a deterrence measure. It is not sufficient for deterrers to just have the capability to deter, they will also have to demonstrate commitment to deter. As this later relies on perception, it would be very difficult to alter this opinion. A basic finding of cognitive psychology, is that images change only slowly, and are maintained in the face of discrepant information, argues Jervis (1982/83: 9). This implies that trying to change a reputation of low resolve will be especially costly, concludes Jervis (1982/83: 9).

### AT: Bioterror Impact---2NC

#### Existing constraints prevent acquisition.

Lasha Giorgidze & James K. Wither 19, Chemical, Biological, Radiological, Nuclear and Explosives Special Officer at INTERPOL, has coordinated numerous multi-agency law enforcement operations targeting the illicit movement of CBRNE materials; Professor of National Security Studies at the George C. Marshall European Center for Security Studies in Garmisch-Partenkirchen, Germany, “Horror or Hype: The Challenge of Chemical, Biological, Radiological, and Nuclear Terrorism,” George C. Marshall Center for Security Studies, Occasional Paper Series, No. 32, December 2019, https://www.marshallcenter.org/en/publications/occasional-papers/horror-or-hype

Constraints

Various theories have attempted to explain why terrorists have not successfully mounted a major CBRN attack. One explanation is that state policies to thwart such attacks have so far been successful. Individual states and the international community have made strenuous efforts to impede terrorists’ abilities to communicate, fundraise, and coordinate activities, thus diminishing their opportunities for success.

Another argument is that terrorist groups are satisfied with the impact they can achieve through conventional means and tactics, such as firearms, knives, automobiles, or improvised explosive devices (IEDs), and therefore have little interest in pursuing weaponized CBRN. During 2018, the media reported 1,329 IED incidents. As a result, 3,159 security force personnel and 2,833 civilians were killed. Total casualties numbered 12,525.59 While conventional weapons remain effective, there is arguably little incentive for terrorists groups to tackle the significant challenges required to acquire, weaponize, and deliver CBRN.

Certain terrorist groups may be unwilling to commit mass casualty attacks. The LTTE’s use of chemical weapons was constrained by the negative response from their constituents. Terrorists may be concerned that the use of CBRN weapons could actually deter fundraising and recruitment rather than encourage it. These factors may indicate that only a limited number of terrorist groups would be willing to use CBRN, even if they had the capability.60

Terrorists thus far appear to lack the ability to develop and deploy CBRN weapons of truly mass impact. Certainly, there are numerous hurdles that terrorist groups have to overcome to carry out a large-scale attack using CBRN weapons. Regardless of weapon category, the development of CBRN weapons of mass effect requires significant expertise and resources. Diverse knowledge and skill sets are needed to acquire the necessary agent, to produce an agent of sufficient quantity and quality, and to store, transport, and disseminate it. Along with technical expertise, a CBRN weapons program needs significant funding as well as a secure manufacturing location. Some terrorist organizations, including al Qaeda, Aum Shinrikyo, and IS, have demonstrated the ability to obtain the necessary funding and security to develop limited CBRN capabilities. However, it is a challenge for groups to maintain security for an extended period without interference or detection. Due to fears of a government raid, Aum Shinrikyo had to dismantle its CBRN programs several times, thus hindering progress in weapons production.61

There are also weapon-specific constraints. For example, chemicals such as hydrogen cyanide, sarin, and their precursors are highly corrosive and require storage in highly controlled environments. Due to their corrosive nature, the agents will immediately begin to eat away at rubber seals and the container itself, making leaks inevitable.62 Because of these constraints, if terrorist groups developed chemical agents, they would likely have to deploy them immediately and most probably within close geographic proximity to the location of their manufacture.

There are also a number of complications for terrorists seeking to manufacture biological agents. These include but are not limited to obtaining the correct microorganism, procuring the right equipment, avoiding contamination, and ensuring virulence during weaponization.63 To achieve mass casualties by using biological agents, a terrorist also needs to transport or smuggle an agent to the target without compromising the pathogenicity and virulence of the microbe.64

In the case of radiological materials, a terrorist will need to overcome challenges related to safe handling and have the knowledge to identify the correct amounts and types of explosives for dispersal over a targeted area. A terrorist would also need to have the skills to fabricate the required physical form of the radioactive source to ensure effective dispersal of the material.65

#### Won’t get close to extinction.

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

Recent developments in biotechnology may, however, give people the capability to design pathogens which overcome this trade-off. Some gain-of-function research has demonstrated the feasibility of altering pathogens to create strains with dangerous new features, such as vaccine-resistant smallpox40 and human-transmissible avian flu,41 with the potential to kill millions or even billions of people. For an engineered pathogen to derail humanity’s long-term future, it would probably have to have extremely high fatality rates or destroy reproductive capability (so that it killed or prevented reproduction by all or nearly all of its victims), be extremely infectious (so that it had global reach), and have delayed onset of symptoms (so that we would fail to notice the problem and mount a response in time).42 Making such a pathogen would be close to impossible at present. However, the cost of the technology is falling rapidly,43 and adequate expertise and modern laboratories are becoming more available. Consequently, states and perhaps even terrorist groups could eventually gain the capacity to create pathogens which could deliberately or accidentally cause an existential catastrophe.

### AT: AI/Misinformation

#### Algorithmic Dystopia fears are overblown

Rainie 17 – Director of internet and technology research at Pew Research Center, quoting various leading AI experts. Lee Rainie and Janna Anderson, Theme 2: Good things lie ahead in Code-Dependent: Pros and Cons of the Algorithm Age, Pew Research Center, 2017, <https://www.pewresearch.org/internet/2017/02/08/theme-2-good-things-lie-ahead/>

Some respondents who predicted a mostly positive future said algorithms are unfairly criticized, noting they outperform human capabilities, accomplish great feats and can always be improved. An anonymous professor who works at New York University said algorithm-based systems are a requirement of our times and mostly work out for the best. “Automated filtering and management of information and decisions is a move forced on us by complexity,” he wrote. “False positives and false negatives will remain a problem, but they will be edge cases.” An anonymous chief scientist wrote, “Whenever algorithms replace illogical human decision-making, the result is likely to be an improvement.” And an anonymous principal consultant at a top consulting firm wrote, “Fear of algorithms is ridiculously overblown. Algorithms don’t have to be perfect, they just have to be better than people.”

#### It’s limited and easily defeated

Philip Ewing 20; Citing Keir Giles, a Russia specialist with the Conflict Studies Research Centre in the United Kingdom and Tim Hwang, director of the Harvard-MIT Ethics and Governance of AI Initiative; 5/7/20; “Why Fake Video, Audio May Not Be As Powerful In Spreading Disinformation As Feared”; NPR; https://www.npr.org/2020/05/07/851689645/why-fake-video-audio-may-not-be-as-powerful-in-spreading-disinformation-as-feare

Sophisticated fake media hasn't emerged as a factor in the disinformation wars in the ways once feared — and two specialists say it may have missed its moment. Deceptive video and audio recordings, often nicknamed “deepfakes,” have been the subject of sustained attention by legislators and technologists, but so far have not been employed to decisive effect, said two panelists at a video conference convened on Wednesday by NATO. One speaker borrowed Sherlock Holmes' reasoning about the significance of something that didn't happen. “We've already passed the stage at which they would have been most effective,” said Keir Giles, a Russia specialist with the Conflict Studies Research Centre in the United Kingdom. “They're the dog that never barked.” The perils of deepfakes in political interference have been discussed too often and many people have become too familiar with them, Giles said during the online discussion, hosted by NATO's Strategic Communications Centre of Excellence. Following all the reports and revelations about election interference in the West since 2016, citizens know too much to be hoodwinked in the way a fake video might once have fooled large numbers of people, he argued: “They no longer have the power to shock.” Tim Hwang, director of the Harvard-MIT Ethics and Governance of AI Initiative, agreed that deepfakes haven't proven as dangerous as once feared, although for different reasons. Hwang argued that users of “active measures” (efforts to sow misinformation and influence public opinion) can be much more effective with cheaper, simpler and just as devious types of fakes — mis-captioning a photo or turning it into a meme, for example. Influence specialists working for Russia and other governments also imitate Americans on Facebook, for another example, worming their way into real Americans' political activities to amplify disagreements or, in some cases, try to persuade people not to vote. Other researchers have suggested this work continues on social networks and has become more difficult to detect. Defense is stronger than attack Hwang also observed that the more deepfakes are made, the better machine learning becomes at detecting them. A very sophisticated, real-looking fake video might still be effective in a political context, he acknowledged — and at a cost to create of around $10,000, it would be easily within the means of a government's active measures specialists. But the risks of attempting a major disruption with such a video may outweigh an adversary's desire to use one. People may be too media literate, as Giles argued, and the technology to detect a fake may mean it can be deflated too swiftly to have an effect, as Hwang said. “I tend to be skeptical these will have a large-scale impact over time,” he said. One technology boss told NPR in an interview last year that years' worth of work on corporate fraud protection systems has given an edge to detecting fake media.” This is not a static field. Obviously, on our end we've performed all sorts of great advances over this year in advancing our technology, but these synthetic voices are advancing at a rapid pace,” said Brett Beranek, head of security business for the technology firm Nuance. “So we need to keep up.” Beranek described how systems developed to detect telephone fraudsters could be applied to verify the speech in a fake clip of video or audio. Corporate clients that rely on telephone voice systems must be wary about people attempting to pose as others with artificial or disguised voices. Beranek's company sells a product that helps to detect them, and that countermeasure also works well in detecting fake audio or video. Machines using neural networks can detect known types of synthetic voices. Nuance also says it can analyze a recording of a real, known voice — say, that of a politician — and then contrast its characteristics against a suspicious recording. Although the world of cybersecurity is often described as one in which attackers generally have an edge over defenders, Beranek said he thought the inverse was true in terms of this kind of fraud detection.” For the technology today, the defense side is significantly ahead of the attack side,” he said. Shaping the battlefield Hwang and Giles acknowledged in the NATO video conference that deepfakes likely will proliferate and become lower in cost to create, perhaps becoming simple enough to make with a smartphone app. One prospective response is the creation of more of what Hwang called “radioactive data” — material earmarked in advance so that it might make a fake easier to detect. If images of a political figure were so tagged beforehand, they could be spotted quickly if they were incorporated by computers into a deceptive video. Also, the sheer popularity of new fakes, if that is what happens, might make them less valuable as a disinformation weapon. More people could become more familiar with them, as well as being detectable by automated systems — plus they may also have no popular medium on which to spread. Big social media platforms already have declared affirmatively that they'll take down deceptive fakes, Hwang observed. “That might make it more difficult for a scenario in which a politically charged fake video goes viral just before Election Day. “Although it might get easier and easier to create deepfakes, a lot of the places where they might spread most effectively, your Facebooks and Twitters of the world, are getting a lot more aggressive about taking them down,” Hwang said. That won't stop them, but it might mean they'll be relegated to sites with too few users to have a major effect, he said. “They'll percolate in these more shady areas.

# 1NR---Doubles---Harvard

## T

### AT: We Meet

Emory reads yellow

#### They change the “vindication doctrine” to make enforcement of arbitration clauses more difficult

Rubinoff ’20 [Matt; May 1; J.D. Candidate at Pennsylvania State University, Managing Editor; Arbitration Law Review, “Too Big to Arbitrate? Class Action Waivers, Adhesive Arbitration, and Their Effects on Antitrust Litigation,” vol. 12]

(d) The Post-Epic Systems World

The Epic Systems decision reignited an already tense debate on the status of class action waivers and mandatory arbitration clauses, and their possible detrimental effects on the working public.56 In the almost two years since the 2018 ruling, lower court decisions have just started to show the lasting impact of the Court’s unwavering support for enforcing adhesive arbitration clauses.57 Notably, the First, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuit Court of Appeals have already addressed the remnants of the Court’s decision in Epic Systems. 58 As expected, early case decisions show strong, continued judicial support for the enforcement of class action waivers, even when class action proceedings result in a valid award for plaintiffs.59 Though decidedly settled in the current judicial system, removal of access to class action remains a contentious issue in the debate around arbitration clauses, especially as it relates to existing federal antitrust laws.

III. The Antitrust Landscape in an Adhesive Arbitration World

(a) Land of the Free, Home of the Lawsuit

Much of the conversation around mandatory arbitration agreements and the inclusion of class action waivers has to do with the perceived fight between the strong and the weak.60 David versus Goliath; the little consumer or employee versus the large corporation. As the Supreme Court continues to support the enforceability of adhesive arbitration agreements, concerns as to the rights of workers and consumers come front and center in the debate.61

Historically, Americans have always loved lawsuits.62 Any one citizen’s access to the court system provides for a sense of individual power, freedom, and the innate ability to right a wrong. Recently, however, the frequency of class action lawsuits has trended downward.63 On the heels of Epic Systems, according to publicly available data, “2019 marked the first year in more than a decade that there were fewer federal class action lawsuits alleging unpaid wages, job discrimination, and mishandled retirement benefits.”64 Further, the Economic Policy Institute estimates that by 2024, around eighty-three percent of private sector workers, nearly ninety-five million people, will be forced to resolve disputes through adhesive arbitration agreements.65

Those in favor of adhesive arbitration agreements suggest that the pre-determined adjudication procedure brings “efficiency and economy to the marketplace for all its participants.”66 While it is true that arbitration allows for quicker processing and award determinations compared to lagging judicial procedures, the theory does not consider the elimination of access to the marketplace for some of those participants.67 Similar to discouraged workers no longer factoring into a society’s estimated unemployment rate, sometimes the elimination of previous market actors prevents us from seeing the forest for the trees. 68 Accordingly, this analogy is an apt comparison to the state of adhesive arbitration and its effects on antitrust laws and litigation.

(b) Mitsubishi and the Effective Vindication Doctrine

In 1985, the Supreme Court attempted to peacefully mediate the differences between the enforcement of arbitration laws and antitrust violations. In Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc. (“Mitsubishi”), the Court held that claims under American antitrust laws, as they relate to international agreements, may be submitted to arbitration so long as the agreement includes a valid arbitration clause.69 The Court reasoned that “so long as the prospective litigant effectively may vindicate its statutory cause of action in the arbitral forum, the statute will continue to serve both its remedial and deterrent function.”70 However, the Court also noted a plaintiff has the opportunity to show that the arbitral forum does not fully vindicate his or her rights, and upon that showing, a court may hold the arbitration agreement unenforceable and permit the plaintiff’s pursuit of the claim in federal court.71

Following Mitsubishi, this “effective vindication doctrine” provided an out for antitrust claimants who believed their cases were not suited for an arbitral forum, whether or not they signed a mandatory and adhesive agreement.72 Following this decision, for example, courts used the doctrine to invalidate class action waivers, as well as provisions that prevented an arbitrator from awarding the appropriate treble damages under an antitrust claim.73 For nearly three decades, courts struck a harmonious balance between enforcing arbitration agreements under the FAA and allowing valid antitrust claims to proceed in federal court when necessary or otherwise “vindicated.”74 This balance, however, ultimately tipped well in favor of arbitration enforceability in Italian Colors.

As described above, Italian Colors held in favor of enforceability of arbitration agreements under the FAA, and that the federal laws do not support the invalidation of a class arbitration waiver solely because the costs involved in the process exceed the total potential recovery. 75 The plaintiffs’ arguments included citing the effective vindication doctrine, claiming that the costs from mandatory individual arbitration proceedings, such as finding and preparing expert witness testimony, significantly prevented their rights to proper antitrust remedy in the form of class action adjudication.76

In dismissing these claims, the Court dismantled the credibility of the effective vindication doctrine, describing the doctrine as dictum. 77 Without this practical safeguard, scholars suggest the post-Italian Colors world leaves “potential antitrust defendants . . . more likely to use arbitration clauses to substantially reduce the probability of antitrust liability and the amount of damages recovered by successful antitrust plaintiffs.”78 Enforcing class action waivers in mandatory arbitration clauses prevents plaintiffs from accessing traditional antitrust litigation, and confers significant disadvantages to defendants. 79

Footnote 77:

77 See id. at 235 (“The ‘effective vindication’ exception to which respondents allude originated as dictum . . . where we expressed a willingness to invalidate . . . arbitration agreements that ‘operat[e] . . . as a prospective waiver of a party’s right to pursue statutory remedies’”)

End of footnote 77.

#### They reinterpret the effective vindication doctrine to allow more class action suits.

Loureiro ’19 [Raul; 2019; J.D. upon the year of publication from the University of Pennsylvania, writing under the guidance of Professor Stephen Burbank; University of Pennsylvania Journal of Business Law, “Ineffective Vindication of Antitrust Rights,” vol. 21]

Introduction

The policy of antitrust law in the United States is to increase consumer welfare, and this policy is undermined by the Supreme Court’s most recent interpretation of the principle of effective vindication. In this paper, I argue that a dynamic interpretation of the principle of effective vindication advances the policy goal of antitrust. Without a robust principle of effective vindication, it becomes far too easy for potential antitrust defendants to use arbitration agreements to shield themselves from antitrust liability. This is particularly problematic in the antitrust context given the large amount of enforcement that occurs through private suits.

The efficacy of the principle of effective vindication depends upon the interpretation of the principle as a dynamic concept. If a court is able to invalidate an arbitration agreement only under very narrow circumstances, then the principle’s purpose is undermined. The vitality of this doctrine is conditioned on the ability of a court to consider whether someone is functionally precluded from vindicating his federal statutory right regardless of whether an agreement precludes vindication on its face. The majority decision in the case of American Express Company v. Italian Colors Restaurant undermines the doctrine of effective vindication by conceptualizing the doctrine as static.1 This decision undermines the antitrust policy of maximizing consumer welfare by obstructing the private enforcement of antitrust rights.

I. The Principle of Effective Vindication

The Federal Arbitration Act 2 (FAA) made arbitration agreements “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 3 This language has been interpreted by the Court as creating a strong policy in favor of arbitration agreements.4 The savings clause of this provision indicates that an arbitration agreement can be invalidated on contract common law grounds.5 However, in AT&T Mobility LLC v. Concepcion, the Court held that a state policy against class waivers in arbitration agreements on the basis of unconscionability was invalid because “[s]tates cannot require a procedure that is inconsistent with the FAA, even if it is desirable for unrelated reasons.”6 This decision preempting state contract policy weakened the savings clause insofar as unconscionability is a reason, rooted in common law, for invalidating a contract.

Assuming that Concepcion reduces the ability of courts to invalidate arbitration agreements, the decision makes the federal policy in favor of arbitration much stronger. This decision left some uncertainty regarding the situations under which a court could invalidate an arbitration agreement that included a class action waiver.7 One possible answer is using the effective vindication principle to invalidate such agreements, which “might prove more like the eye of a needle through which claimants must pass to gain refuge from class action waivers” rather than an open floodgate for arbitration agreement invalidation. 8

The Court first articulated the effective vindication principle in Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., saying that the federal policy in favor of arbitration agreements applies “so long as the prospective litigant effectively may vindicate its statutory cause of action in the arbitral forum.”9 The Court was explicit: “By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum.”10 It stands to reason that under the principle of effective vindication an arbitration agreement would be invalidated if it resulted in a party forgoing its substantive rights.

II. The Italian Colors Case

The effective vindication principle was examined and all but rejected in Italian Colors. 11 In this case, the Court held that an arbitration clause that made a suit prohibitively expensive was valid under the effective vindication principle because, “the fact that it is not worth the expense involved in proving a statutory remedy does not constitute the elimination of the right to pursue that remedy.”12 This decision undermines the principle of effective vindication and limits its ability to be of any use by making a meaningless distinction.

The dispute in Italian Colors arose from an agreement between American Express and various merchants, which accept American Express cards as payment from their customers.13 The agreement in question contained an arbitration clause in which the merchants waived their right to bring suit as a class.14 Importantly, the agreement also foreclosed potential plaintiffs from “joinder or consolidation of claims, informal coordination among individual claimants, or amelioration of arbitral expenses.”15 The merchants claimed that American Express violated §1 of the Sherman Act16 by a tying arrangement between their charge cards and credit cards.17

Proving a violation of the antitrust laws is expensive because of the economic experts that have to be contracted to provide analysis of the market and the anticompetitive effects of the challenged behavior.18 In this case, “the cost of an expert analysis necessary to prove the antitrust claims would be at least several hundred thousand dollars, and might exceed $1 million, while the maximum recovery for an individual plaintiff would be $12,850, or $38,549 when trebled.”19 The key is that this assessment is in regards to an individual plaintiff. However, bringing the suit through some sort of joinder device would overcome the difficulty of prohibitive costs because the various plaintiffs would be able to share the cost of the proceedings.20

A. Narrowing Effective Vindication

The majority opinion in Italian Colors limits the principle of effective vindication through narrowing the circumstances under which the principle applies. The Court confirmed the existence of the principle, and notes that the principle “would certainly cover a provision in an arbitration agreement forbidding the assertion of certain statutory rights. And it would perhaps cover filing and administrative fees attached to arbitration that are so high as to make access to the forum impracticable.”21 The Court does not say in which situations—other than an agreement that forbids the right to pursue a statutory right—the principle will apply. 22 It is notable that the majority also qualifies the application of the principle in the situation of prohibitive court fees by saying that the principle “perhaps” applies in this situation. Although the Court indicates otherwise, it seems like it is only affirming the principle insofar as the arbitration clause explicitly forbids a potential plaintiff from making a claim for a given statutory right. It is difficult to see under what other circumstances the principle would apply when even prohibitive administrative fees are only “perhaps” covered.

The decision to narrow the effective vindication principle is defended in two ways, the first is through an appeal to pre-class action jurisprudence and the second is through a formalistic view of the principle. First, the opinion argues that antitrust suits existed before class action proceedings, and “the individual suit that was considered adequate to assure ‘effective vindication’ of a federal right before adoption of class-action procedures did not suddenly become ‘ineffective vindication’ upon their adoption.”23 But, this case was not only about the class action waiver, instead it had to do with all of the provisions in the agreement that prevented a claim from being economically feasible. 24 The class action waiver by itself does not render the vindication of this right ineffective, rather the result of ineffective vindication stems from the agreement as a whole.

It is because the Court looks narrowly at the agreement solely in terms of the class action waiver that it can make the argument based on the history of class action procedures. The dissent indicates the root of the majority’s argument: “To a hammer, everything looks like a nail. And to a Court bent on diminishing the usefulness of Rule 23, everything looks like a class action, ready to be dismantled.”25 In fact, the majority opinion does not address whether the provisions in the agreement that prevent fee shifting or sharing of the expert report have any impact on the matter.26 These provisions must be of great import to the case because had either of them not existed, the plaintiffs would have been able to proceed and vindicate their rights.27

The majority opinion fails to consider the bearing that the other provisions foreclosing economical adjudication have on the matter. Instead of seriously addressing these, the Court decided to assert that the other provisions were not important because they were not part of the holding in the court below.28 However, the second circuit decided the case based upon the notion that there was no way that the suit could be brought in a way that was economically rational. This rationale necessitates taking into account the provisions in the agreement that foreclosed other means of cost sharing.29 Therefore, the first defense for narrowing the effective vindication principle rests on a failure to take into account the entire agreement.

Moreover, the appeal to the pre-class action era ignores the fact that the cost of proving an antitrust claim has increased dramatically ever since the introduction of sophisticated economic analysis into antitrust doctrine. Not only is the cost of experts higher, but also the increased costs of discovery in the digital age militate toward a reconceptualization of the scope of the effective vindication principle.30 The cost of litigation and expert testimony in a modern antitrust case is another factor that the majority fails to consider in its first argument defending its position.

#### They make class action suits easier to win---this makes it easier to recover damages from illegal practices, but doesn’t MAKE any practices illegal!

AAI ’21 [American Antitrust Institute; August 4; Washington, D.C.-based non-profit education, research, and advocacy organization, citing research conducted by Professor John Davis at the University of San Francisco School of Law; American Antitrust Institute, “The Critical Role of Private Antitrust Enforcement in the United States,” <https://www.antitrustinstitute.org/wp-content/uploads/2021/08/Huntington-Report-FINAL-1.pdf>]

I. Introduction

With all of the attention currently focused on public enforcement and legislative reform of the antitrust laws, less attention is being paid to private enforcement.1 But Congress considered private antitrust enforcement indispensable for promoting competition. The judiciary has so recognized time and time again. In California v. American Stores Co., for example, the Supreme Court proclaimed, “Private enforcement of the [Clayton] Act was in no sense an afterthought; it was an integral part of the congressional plan for protecting competition.”2

Private enforcement is not a substitute for vigorous public enforcement. Both are necessary to foster competition. But private enforcement plays an important part, one that becomes more significant when public enforcement recedes.3 And, unlike public enforcers, private enforcers can obtain significant damages on behalf of the victims of antitrust violations.4 This serves as a crucial source of deterrence for illegal anticompetitive conduct and the primary means of compensating victims for harms suffered at the hands of cartelists and dominant firms.5 The importance of the antitrust class action, a major private enforcement device, is clear. The recently released 2020 Antitrust Annual Report: Class Action Filings in Federal Court (“2020 Report”)6 by Huntington National Bank and the University of San Francisco School of Law (“USF Law”) reflects that the cumulative total settlement amount recovered for victims in antitrust class actions from 2009-2020 was over $27 billion.7

Antitrust class actions recover damages from companies engaged in harmful, illegal conduct, such as price fixing and attempted monopolization, in markets for important and essential products and services. The most active defendants during the period, for example, included companies providing financial services, pharmaceuticals, automobile parts, and electronics parts. 8 In light of the vital role played by private antitrust enforcement, and the antitrust class action in particular, continued empirical analysis of trends in activity is essential. This analysis aids in understanding and evaluating proposals for reforming the antitrust laws in the U.S. and such proposals’ impact on private enforcement, the public-private partnership, and ultimately on competition and consumers.

II. Overview of the Commentary

The American Antitrust Institute (AAI)9 and Professor Joshua P. Davis at USF Law10 evaluated the 2020 Report with the goal of identifying its major implications for private enforcement in the U.S. The 2020 Report builds and expands on the 2019 Antitrust Annual Report: Class Action Filings in Federal Court (“2019 Report”)11, which assessed private enforcement activity from 2009-2019. Like the 2019 Report, the 2020 Report relies largely on data for private U.S. antitrust class actions available through Lex Machina, as well as supplemental data analysis.12 The 2020 Report extends the dataset to the eleven-year period covering 2009-2020, thus allowing for a deeper analysis of private enforcement trends and their implications. The analysis provided in this Commentary highlights the importance of private antitrust enforcement in the U.S. system and the particularly important role played by the antitrust class action.

III. Observations and Implications for Private Enforcement

The 2020 Report provides further evidence of a divergence between public and private enforcement trends. As public enforcement has waned, private filings have waxed, undermining the notion that class actions simply ride the coattails of public enforcement. On the contrary, the data suggest that as lax public enforcement fosters higher market concentration and invites bad behavior, private filings may compensate for underenforcement in an effort to address the resulting antitrust violations.

Looking beyond the number of enforcement actions filed and focusing on the results of the actions, the rich data reveal more nuance to this narrative. Despite increased private actions in the face of decreased public enforcement, the amount of money recovered from violators by both public and private enforcers has diminished. For public enforcers, this diminution is to be expected, as fewer cases have been brought. For private enforcers, though, the explanation likely lies with other trends, most notably the increasing headwinds faced by private enforcers due to heightened pleading and class certification standards. If these explanations are correct, the clear implication is that for private enforcement to fulfill its increasingly vital role as a complement and a backstop to public enforcement, these trends must be reversed.

A theme we noted in the 2019 Report, and that continues to feature in the 2020 Report, is the tremendous variability in the data on some measures related to settlement size. Aggregate settlement amounts over the period vary widely from year to year. By disaggregating the settlements by size, however, we are able to observe that settlements at different levels trend somewhat independently. Very large settlements, which are few in number, drive most of the variability in the aggregate data. But trends and anomalies in very small settlements cannot be entirely discounted, as they are the force behind one of the highest recovery years in the period, 2018.

Finally, building on analysis from our 2019 commentary, we take a deeper dive on attorneys’ fees and how they correspond to settlement amounts. Our findings reinforce the tentative conclusion from last year’s analysis that the so-called “megafund doctrine”—a dramatic decrease in attorneys fee percentages on settlements above a threshold of about $100 million—does not operate in federal antitrust cases in a significant way. Rather, decreases in the fee award percentage in antitrust cases are not discrete and drastic, but rather gradual, much like marginal tax rates in the United States. In what follows, we discuss each of the above observations in more detail and provide analysis of their implications for private enforcement, many of which suggest fertile areas for additional study.

A. The Relationship of Private to Public Enforcement: Riding on Coattails or Stepping into the Breach?

A long-running antitrust policy debate centers on the value that private enforcement adds to the antitrust enterprise as a whole. Critics of private actions maintain that private plaintiffs often follow an easy trail blazed by government enforcers, and that private enforcement therefore does not supplement worthwhile public actions as much as it should. Proponents of private actions have sought to debunk this claim with empirical evidence suggesting that many large and successful private antitrust cases often precede, or else expand the scope of relief sought in, any overlapping government actions.13

Data from the 2020 Report, together with future reports, may warrant a reexamination of this debate through a different lens. Apart from the question of the extent to which private enforcement serves as a useful complement to public enforcement, it may also be worth inquiring into the extent to which private enforcement serves as a substitute for public enforcement, particularly during periods of government forbearance.

As AAI noted in an independent report, “The State of Antitrust and Competition Policy in the U.S.,” several indicators had suggested a decline in government cartel enforcement at the midway point of the Trump Administration.14 Perhaps most notably, the average number of cartel investigations opened during the period from 2017-2018 was 80% lower than the annual average number of investigations opened over the previous three administrations (1993-2016). In addition, the average number of corporations fined by the Trump agencies in 2017 and 2018 fell by about 45% relative to the Obama Administration.

Notably, the 2020 Report shows that private federal consolidated antitrust filings rose significantly during each year of the Trump Administration. First, they increased from 74 in 2017 to 136 in 2018. But in 2019, they rose dramatically to a ten-year-high of 211. And, in 2020, that number was eclipsed, with 220 filings. In other words, a dramatic increase in private filings appears to have occurred immediately subsequent to a substantial decline in the opening of government cartel investigations and the number of corporations fined.

#### They change how the court must rule on class certifications. Again, nothing is prohibited.

Davis ’17 [Joshua and Robert Lande; 2017; Professor and Director of Center for Law and Ethics at the University of San Francisco; Venerable Professor of Law at the University of Baltimore, M.P.P. and J.D. from Harvard University; Scholar Works, “Restoring the Legitimacy of Private Antitrust Enforcement,” Ch. 6]

Before the Supreme Court's decision in Daubert v. Merrell Dow Pharm, Inc.,92 "admissibility challenges to the qualifications and methodologies of economic testimony in antitrust cases were rare."93 In recent years motions to exclude expert economic testimony in antitrust cases under Daubert and Federal Rule of Evidence 702 are the rule rather than the exception. Because expert testimony typically is essential for plaintiffs to establish the elements of their case (e.g., market definition), and a successful Daubert motion will usually lead to summary judgment for the defendants (while exclusion of defendants' expert will not be dispositive), "Daubert motions are almost exclusively defense tools used to attack plaintiff s case."94 One review of federal appeals court decisions involving Daubert between 2000 and 2006 shows that the admissibility rate of economists and accountants in those cases was .598.95 However, for the antitrust cases in the sample (11 of 87 cases), the admissibility rate was only .272, and all of the antitrust cases involved challenges to the plaintiffs' experts.96

Another study found that out of 412 Daubert challenges the authors were able to identify between 2000 and 2008 through the Daubert Tracker Website,97 73 occurred in antitrust cases—in other words, 18% of the challenges arose in antitrust cases, even though antitrust accounted for only 0.8% of cases filed during that period.98 Using a larger dataset, the authors analyzed a total of 113 challenges in antitrust cases from 2000 through 2011.99 21 of those challenges were against defense experts and 92 against plaintiffs' experts. The challenges of defense experts succeeded at a rate of 29% and the challenges of plaintiffs' experts succeeded at a rate of 41%. Moreover, the courts exclude none of the testimony of the defense experts in its entirety whereas they excluded 23% of the plaintiffs' experts' testimony in its entirety.

The asymmetric application of Daubert leads to adverse consequences. First, it raises plaintiffs' litigation costs, often unnecessarily, because most Daubert motions are denied.100 Not only do plaintiffs have to incur additional lawyers' time to defend against the inevitable Daubert motion, they have to spend more on experts, perhaps at an early stage, to ensure that expert reports withstand challenge. And it may be more difficult and expensive for plaintiffs to obtain qualified experts to testify than for

overwhelmingly to be a defense tool, complaint counsel has been very aggressive at the FTC in filing and pursuing its own motions directed at respondents' experts.").defendants to do so because economists fear that they will be "Dauberted" if they take on a case for plaintiffs, and their future employment prospects as an expert will be diminished. Indeed, rather than being used merely to exclude "junk economics," there is evidence that Daubert has sometimes been used to dismiss cases where the court has essentially disagreed with the expert's analysis, thus stigmatizing the economist and usurping the role of the jury.101

Particularly troubling is the recent trend of courts to apply Daubert at class certification. The Supreme Court has noted this issue in dicta without resolving it.102 Lower courts have conflicting views.103 Daubert would seem to be an awkward fit at class certification. First, the primary concern animating Daubert appears to have been the capability of a jury to assess scientific testimony.104 But the judge, not the jury, decides class certification. There is no need to worry that "befuddled juries will be confounded by absurd and irrational pseudoscientific assertions."105 Second, the Supreme Court has made clear that a court must assess expert testimony at class certification, to the extent it is relevant to the class certification standard.106 Any concerns about the reliability of the expert testimony would naturally be a part of that assessment. Defendants can raise those concerns in opposing class certification. There is no need for an additional round of briefing on the admissibility of expert testimony. Separate Daubert briefing adds unnecessarily to the cost of class litigation and to the burden on the courts. It also gives a strategic opportunity to defendants, who generally get two additional briefs (an opening brief and a reply on Daubert) to plaintiffs' one (an opposition) and often get the lastword on class certification even though the burden lies with plaintiffs to satisfy Rule 23. Plaintiffs can of course counter by filing their own Daubert motions, but that just further increases the cost and burden of litigation. It would be better to require defendants to include any concerns they have about plaintiffs' expert testimony in their briefs opposing class certification.

Preventing the misuse of Daubert should be of concern to the government, not only as a guardian of effective private enforcement, but also as a litigant in the federal courts and administrative proceedings.107 The DOJ and FTC should hold a joint workshop and issue a report detailing the effects of Daubert on private and public litigation. As part of that effort, the agencies should consider drafting guidelines for use by the federal courts in evaluating the reliability of economic testimony with respect to certain recurring issues, including market definition, market power, and conspiracy.108 The agencies should consider methods of discouraging wholesale Daubert challenges, including encouraging the use of Rule 11 sanctions for frivolous Daubert motions. Finally, the agencies should consider intervening as an amicus in appropriate cases to establish standards that would limit the misuse of Daubert.

E. Class Action Waivers in Arbitration and Illinois Brick Reform

In American Express Co. v. Italian Colors Restaurant, the Supreme Court made it very difficult to challenge predispute arbitration provisions that bar class actions.109 Few court will be able to set aside such provisions in the future. As a result, class action waivers in effect immunize many potential violators from private purchaser actions.110 Allowing waiver of class treatment is a particularly concerning in antitrust because of the Illinois Brick rule; as Professor Gilles notes, "The only people who can bring an antitrust class action in federal court [direct purchasers] are those on whom collective action waivers may most easily and directly be imposed."111

Meanwhile, the controversy over indirect purchaser damage suits under federal law has raged for almost 40 years. Since the Supreme Court's decision in Illinois Brick, indirect purchasers have been unable to recover damages under section 4 of the Clayton Act,112 while direct purchasers can recover the full amount of an overcharge under Hanover Shoe without allowing for any pass-on defense.113 Italian Colors creates new urgency to reconsider Illinois Brick so that private lawsuits can help deter antitrust violations. Private antitrust suits arguably have done more to discourage law-breaking than criminal enforcement by the DOJ.114 Given the essential role that class actions play in private antitrust enforcement,115 the combined effect of Italian Colors and Illinois Brick may be to decrease significantly the efficacy of U.S. antitrust laws.116

The next administration should work to overrule Italian Colors. But given the current political situation, that may not prove feasible. Instead, or in addition, the next best solution may be to reform Illinois Brick. If so, here are some principles to guide that challenging effort: (1) historical levels of antitrust deterrence should not be undermined; (2) consumers should be compensated for their harm to the extent practicable; (3) the calculation of potential damages to any class of purchasers should be reasonably predictable so as to provide clear incentives for private lawyers to take on cases; (4) administrative costs should be minimized to the extent this would not interfere with any of the other goals in this area; (5) procedural hurdles, particularly in the class certification process, should not undermine the effectiveness of direct or indirect purchaser actions; and (6) state attorneys general should retain the option of bringing parens patriae actions under state law in state court, without removal.117

F. Class Certification Standard

The Supreme Court has issued several recent opinions pertaining to the standard at class certification. Some of them threatened to undermine class actions and, with them, the efficacy of private antitrust enforcement.118 The upshot, however, is that the class certification standard has been clarified but not for the most part made more exacting. Wal-Mart Stores, Inc. v. Dukes119 held that courts may consider the merits of a class action to the extent they are relevant to determining whether plaintiffs have carried their burden to certify a class under Rule 23. Amgen Inc. v. Conn. Ret. Plans & Trust Funds120 clarified that the inquiry to into the merits is permissible "only to the extent" it bears on the Rule 23 standard121 and confirmed that the Rule 23 "grants no license to engage in free-ranging merits inquiries at the class certification stage."122 Comcast Corp. v. Behrend123 held that plaintiffs' theory of liability much match their theory regarding damages.124 Each of these decisions could have dealt a serious blow to antitrust class actions. In the end, none did. Yet, as in the past, the class action standard remains under siege.

One ominous case on the horizon is Bouaphakeo v. Tyson Foods. The Supreme Court has taken up the question of whether a class may be certified under Rule 23(b)(3) if it includes "members who were not injured and have no legal right to any damages."125 AAI successfully briefed this issue in In re Nexium Antitrust Litigation, in which the First Circuit recognized that "objections to certifying a class including uninjured members run counter to fundamental class action policies."126 Including uninjured members in a class need not increase a defendant's damages and does not raise due process issues, particularly not ones a defendant should have standing to raise.127 Indeed, awarding classwide damages in an antitrust case—including for a class that includes uninjured members—can minimize error costs, providing a more accurate measure of damages than would individual litigation.128

In the upcoming Term, the Court will also consider whether defendants can defeat class actions by "picking off" the proposed class representatives with an offer of complete relief for the representative's individual claim, even when the offer to settle is rejected. Campbell-Ewald Co. v. Gomez.129 Specifically, the Court will consider whether a class representative's claim is mooted by an offer of complete individual relief before the class is certified, an issue left open in Genesis Healthcare Corp. v. Symczyk.130 For the reasons stated in Justice Kagan's dissent for four justices in Genesis Healthcare, an unaccepted offer is a legal nullity that should not moot a class representative's claim, let alone the claims of the class.

The Supreme Court does not pose the only threat to class actions. Some lower courts have created a demanding "ascertainability" requirement not found in Rule 23. They have held not only that plaintiffs must offer a class definition based on objective criteria, but that an "administratively feasible" method must exist for identifying individual class members and ascertaining their class membership. The heightened ascertainability requirement poses a particular threat to consumer class actions,131 but it could place some antitrust class actions at risk as well. Indeed, it may be just another way to impose a requirement that all members of a proposed class suffer injury.

Further, some anti-class action groups are on a campaign to eliminate or curtail cy pres.132 The groups apparently recognize that eliminating or restricting cy pres can undermine consumer class actions seeking to recover small amounts of money. And some courts have been overly restrictive about the

use of cy pres as part of class settlements.133 The Chief Justice has expressed skepticism of cy pres as part of class settlements, noting "fundamental concerns surrounding the use of such remedies in class action litigation," and that in a "suitable case, this Court may need to clarify the limits on the use of such remedies."134

Not only the courts threaten the viability of class actions. The House is considering H.R. 1927, the "Fairness in Class Action Litigation Act," which would effectively eviscerate consumer, antitrust, employment, and civil rights class claims. The bill bars class certification unless proponents demonstrate, based on a "rigorous analysis," that each person in a class has suffered "the same type and scope of injury." This standard would be inconsistent with the letter and spirit of Rule 23. It would go beyond requiring harm to all class members, imposing an extreme and arbitrary standard that would prevent certification of many classes that would meet the requirements of the current Rule 23 and case law interpreting it.

At first, a recent interest in revising Rule 23 on the part of the Advisory Committee on Civil Rules also appeared to be a threat. However, the "conceptual sketches" provided by the Rule 23 subcommittee of the Advisory Committee on Civil Rules in April—a prelude to presenting draft amendments to the full committee at its Fall 2015 meeting—appear on the whole to be even-handed and reasonable, more likely to improve the functioning of Rule 23 than to damage it. The sketches address settlement approval criteria, settlement class certification, cy pres, objectors, Rule 68 offers and mootness, issue classes, and notice. Indeed, it is a sign of the reasonableness of the sketches that critics of class actions have sharply criticized them.135

The next administration should work to preserve class actions and, with them, private enforcement of the antitrust laws. It should submit amicus briefs in support of reasonable interpretations of Rule 23, particularly before the Supreme Court. And it should oppose legislation designed to prevent access to justice and to use procedural ploys to deprive consumers of their substantive legal rights.

G. Antitrust Injury

The "antitrust injury" doctrine requires a private plaintiff to prove that its alleged "injury is of the type the antitrust laws were intended to prevent, and that flows from that which makes defendants' acts unlawful."136 As a doctrine akin to proximate or "legal" cause in torts,137 it makes sense; injuries caused by an antitrust violation, but which are essentially fortuitous and not within the intended scope of the antitrust statute or rule, should not be compensable under section 4 of the Clayton Act. However, as one commentator has noted, the "term 'antitrust injury' is egregiously overused in a variety of contexts where it does not belong, to the confusion of the litigants and the court, not to mention future courts and litigants attempting to wrestle with erroneous precedent." 138 In particular, the doctrine has been misused by lower courts to dismiss cases at the pleading stage that should not have been dismissed or to avoid addressing the merits of claims.139

We urge the next administration to examine critically the expansive use of the antitrust injury doctrine by the lower courts and to participate as an amicus in appropriate cases to clarify the limited nature of the doctrine.

Last card is about judicial gatekeeping of class action suits. They adjust the standard of review in those cases---companies can still do the exact same things as before, they just might have more successful class action suits brought against them as a result.

Bartholomew ’14 [Christine; August; Assistant Professor of Skills, SUNY Buffalo; Cardozo Law Review, “Death by Daubert: The Continued Attack on Private Antitrust,” 35 Cardozo L. Rev. 2147, lexis]

Private antitrust class actions are under attack. Through the guise of judicial gatekeeping, courts have increasingly limited consumers' ability to seek recourse for anticompetitive conduct. 2 Antitrust cases were already on life support thanks to heightened pleading and evidentiary hurdles. 3 The final nail in the coffin may be a new judicial [\*2149] barrier: pre-class certification review of expert testimony under Federal Rule of Evidence 702, commonly called Daubert. 4 The Supreme Court seems determined to decide soon whether such an evaluation is mandatory. 5 For now, focusing on the cryptic phrase "we doubt that is so," from the Supreme Court's 2011 Wal-Mart Stores, Inc. v. Dukes decision, 6 lower courts are evaluating whether parties' proffered expert testimony is admissible before determining whether individual claims can be aggregated under Federal Rule of Civil Procedure 23 7 - a marked departure from prior practice.

On its face, such pre-certification review may not seem that problematic. Daubert challenges are intended to evaluate whether expert testimony is sufficiently reliable and relevant to justify admissibility. 8 In its most innocuous articulation, such a requirement prevents class certification from being based on potentially unreliable expert testimony. 9 In practice, however, premature Daubert review triggers real concerns for the future of antitrust. Certification is essential to consumer enforcement of antitrust laws, 10 and economist testimony plays a critical role in establishing the requirements for class certification. Individually, the stakes in antitrust suits filed on behalf of [\*2150] consumers are too minimal to support multi-year litigation. 11 As a result, consumer class actions are the dominant form of private antitrust enforcement in the United States. 12 Federal private antitrust cases exceed U.S. government actions (civil and criminal) by more than twenty-five to one. 13 But if a Daubert challenge under Rule 702 is used to reject economic testimony before class certification, plaintiffs are powerless to satisfy Rule 23.

By potentially rendering economic experts' testimony inadmissible, early Daubert review jeopardizes this primary form of antitrust enforcement. Such a requirement might be of less concern if it was applied in an evenhanded and consistent manner. But the preliminary evidence shows otherwise. Courts enjoy tremendous discretion in evaluating the admissibility of expert testimony. 14 This leeway allows some courts to apply a more relaxed standard while others morph the expert evaluation into an improperly stringent analysis that wrongly excludes sufficiently reliable testimony. Without such testimony, class certification is impossible. 15 There is no doubt that the discretionary nature of Daubert review disproportionately benefits antitrust defendants: a plaintiffs' expert in private antitrust cases is four times more likely to be excluded than a defendants' expert. 16

[\*2151] Apart from the private class actions threatened by early Daubert review, there are few mechanisms to curb anticompetitive acts covered by antitrust law, such as price fixing, bid rigging, and unlawful monopolistic conduct. Competitor lawsuits and government enforcement cannot fill the void. Competitors often have business-related reasons for hesitating to undertake litigation. Today's rival could be tomorrow's partner or essential supplier. 17 Hence, competitor antitrust suits form only a nominal portion of the antitrust ecosystem.

Government-side enforcement is an equally limited threat given the decline of such cases in the last quarter century. 18 Government enforcement ebbs and flows with an administration's politics 19 or ability to fund such efforts. 20 Consequently, at least ninety percent of antitrust enforcement is addressed through private actions. 21 While antitrust critics are quick to argue these private actions often just tag along with government enforcement, 22 this is more rhetoric than truth. More than half of antitrust violations are uncovered by private attorneys, not the government. 23 Further, the amount recovered in private cases is [\*2152] significantly higher than from criminal antitrust fines - thus making private action arguably a stronger deterrent. 24

Once one accepts the necessity of private antitrust enforcement, early Daubert review represents a potentially existential threat to antitrust law as a whole. This Article details the nature of that threat, maintaining that Daubert should not be a prerequisite for certification. Part I examines the machinery of Daubert review with a particular eye to its application in antitrust class actions. It documents the trend towards applying Rule 702 at class certification and describes the critical role of economist testimony in antitrust class actions. Part II discusses how early Daubert review invites improper judicial gatekeeping, which distorts each of the three part Rule 702 analysis. These problems are only compounded when Daubert is completed prior to a class certification determination. Part III refutes proponents' proffered reasons for early Daubert assessments, showing the rationales do not offset the requirement's harm to antitrust enforcement. Instead of strangling private antitrust cases in their infancy, Daubert should be confined to the later stages of litigation where its judicial gatekeeping function more appropriately applies.

**They don’t meet don’t meet our interpretation---the aff makes it easier for private litigants to sue in court in order to lessen the impact of arbitration agreements, but our argument is that the aff must actually prohibit an anticompetitive practice i.e. a merger, aquisiton, or noncompete agreement. It’s like having an aff that expands the Sherman act to prohibit gift giving because “it is anticompetitive” since it might dampen competition. The aff opens the floodgates to arbitrary interpretations of what might be deemed anticompetitive rather than what legally could be.**

**Our bar is it has to make them anticompetitive in the market, but arbitration is not the initial distortion of competition in the market since it is just a means to settle disputes**

#### Their ev points to a distinction

Lande ’16 [Robert; Spring 2016; Venable Professor of Law at the University of Baltimore School of Law, Director of the American Antitrust Institute; Antitrust, “Class Warfare: Why Antitrust Class Actions Are Essential for Compensation and Deterrence,” vol. 30]

Our recent empirical studies demonstrate five reasons why antitrust class action cases are essential: (1) class actions are virtually the only way for most victims of antitrust violations to receive compensation; (2) most successful class actions involve collusion that was anticompetitive; (3) class victims’ compensation has been modest, generally less than their damages; (4) class actions deter significant amounts of collusion and other anticompetitive behavior; and (5) anticompetitive collusion is underdeterred, a problem that would be exacerbated without class actions.

Recent court decisions undermine class action cases, thus preventing much effective and important antitrust enforcement.1

Class Actions Are Virtually the Only Way for Most Victims of Federal Antitrust Violations to Receive Compensation

The antitrust statutes provide that violations result in automatic treble damages for the victims.2 The legislative history 3 and case law indicate that compensation of victims is a goal, perhaps the dominant goal, of antitrust law’s damages remedy.4 Class actions play an essential role in ensuring that the treble damages remedy serves its intended function of “protecting consumers from overcharges resulting from price fixing.”5 As the Supreme Court noted, “[C]lass actions . . . may enhance the efficacy of private [antitrust] actions by permitting citizens to combine their limited resources to achieve a more powerful litigation posture.”6 Accordingly, “courts have repeatedly found antitrust claims to be particularly well suited for class actions . . . .”7

Without class actions, cartels and other antitrust violators that inflict widespread economic harm would have little to fear from the treble damages remedy. This is because, as a practical matter, class action cases are virtually the only way for most victims of anticompetitive behavior to receive compensation.8 A 2013 study that Professor Joshua Davis and I conducted documents the benefits of private enforcement by analyzing 60 of the largest recent successful private U.S. antitrust cases (defined as suits resolved since 1990 that recovered at least $50 million in cash for the victims9 ). These actions returned a total of $33.8–$35.8 billion in cash to victims of anticompetitive behavior.10 These figures do not include products, discounts, coupons, or the value of injunctive relief or precedent—only cash.11 Consequently, these totals significantly understate the actual benefits of this litigation to the victims involved. And, of course, this study covered only 60 suits (albeit 60 of the largest private recoveries) out of the many hundreds of private cases filed in the United States during this period.

Of these 60 large private cases, 49 were class action suits.12 These cases recovered a total of $19.4–$21.0 billion—the majority of the amount analyzed in our study.13 Since these were among the largest private actions ever filed, specific conclusions based upon these results may not generalize perfectly to all class action cases. They do suggest, however, that without class action cases, effective and significant victim compensation would be reduced dramatically.

Most Successful Class Actions Involve Collusion that Was Anticompetitive

Almost every private antitrust case that results in a remedy does so through a settlement,14 so the underlying merits of the plaintiffs’ claims usually have not been definitively assessed by a court or jury. Critics sometimes use this fact to support assertions that class actions usually are meritless, that plaintiffs often receive huge sums from cases not involving anticompetitive conduct, and that private antitrust actions often amount to legalized blackmail or extortion.15

Antitrust class actions arise in widely varied market and factual settings, and views about the merits of specific cases and the litigation risks involved vary as well. This makes it extremely difficult to draw objective conclusions about the merits of settlements.

Nevertheless, there are good reasons to believe that the vast majority of class action cases in the Davis/Lande study involved legitimate claims. Forty-one of the 49 class actions involved allegations of collusion,16 and the same conduct supporting the settlements gave rise to criminal penalties in 20 cases; to civil relief by the FTC or DOJ in 8 cases; to civil relief by a state or other governmental unit in 9 cases; to a trial that the defendants lost and that was not overturned on appeal in 7 cases; to a class being certified in 22 cases; and to plaintiffs surviving or prevailing at summary judgment in 12 cases.17 Overall, 44 of the 49 class action suits (90 percent) exhibited at least one of these forms of legal validation as to their merits. (The 5 actions that did not have at least one of these indicia settled too early for a substantive evaluation of their merits).18

These results are broadly consistent with a finding that Professor John Connor derived from an analysis of 130 private recoveries worldwide in international cartel cases for which he could obtain the necessary data.19 He found that of the 50 largest worldwide settlements, measured by their monetary recoveries in constant dollars, 49 had been filed against international cartels.20 Of these, 51 percent were follow-ups to successful DOJ prosecutions, and another 8 percent were filed after fines by the EC or other non-U.S. antitrust authorities.21 Using a different data set, Connor and I found that 36 of 71 (also 51 percent) successful U.S. class action recoveries followed successful DOJ criminal cases.22

This data does not prove that these or any other specific class action cases involved anticompetitive conduct. But critics who assert that most antitrust class actions are little more than legalized blackmail rely only on anecdotes, hypotheticals, and opinions (often of defendants in the cases), without support from studies, and with no reliable empirical evidence that the actions lack merit or that settlement amounts are excessive compared to the anticompetitive harm.23 To be fair, one should compare the above indicia of validity to the absence of any systematic evidence underpinning the critics’ charges.

#### OECD ev agrees with us, arbitration has an effect, not the actual practice tho

#### No new answers---cross ex just explained the card you were shit-scared to answer

### AT: We Meet Floor/Expand the Scope Solves

#### The sentence “bring me a dog by at least bringing a black animal,” demonstrates that prohibition is not a necessary condition for ALL expansion...A black bear or a black cat qualify as a “black animal” but not a dog.

William H. Hanson, “The Formal-Structural View of Logical Consequence: A Reply to Gila Sher”The Philosophical Review , Apr., 2002, Vol. 111, No. 2 (Apr., 2002), pp. 243-258, Duke University Press on behalf of Philosophical Review

3. Logic, the A Priori, and the Empirical The other major criticism I made in my 1997 of Sher's work was that FS violates the apriority criterion of my pretheoretic account of logical consequence. This is because under FS there are arguments we can know to be valid or invalid a posteriori but not a priori. As an example I gave an argument involving the quantifier 'Q\*', which I defined as behaving exactly like 'all' in models with domains of cardinality > n, but like 'at least one' in models with domains of cardinality < n, where the value of n is an integer we can know a posteriori but not a priori. (In my example n is the least number of whole seconds in which, up through the end of the twenty-first century, a human runs a mile.)9 The argument in question is: (Q\*x) (Dog(x) -- Black(x)) (Q\*x) Dog(x) .'. (Q\*x) Black(x) Since we know that n > 3, we know the argument is invalid, but we can't know this a priori. Yet 'Q\*' counts as a logical term according to FS, so FS violates my apriority criterion.10 [\*\*start footnote 10\*\* 10 That the operator expressed by 'Q\*' satisfies Sher's criterion for formal operators can be seen by consulting the account given in section 1 of how that criterion applies to unary quantifiers. Specifically, since for any two models with domains of the same car- dinality the operator expressed by 'Q\*' functions either as the operator expressed by 'all' in both models or as the operator expressed by 'at least one' in both, the operator expressed by 'Q\*' is formal for the same reasons these other two operator.\*\*end footnote 10\*\*] This violation should be of concern to Sher, since my criterion is drawn directly from Tarski, whose work is in many ways the foundation of hers. Tarski wrote: Certain considerations of an intuitive nature will form our starting-point. Consider any class K of sentences and a sentence X which follows from the sentences of this class. From an intuitive standpoint it can never happen that both the class K consists only of true sentences and the sentence X is false. Moreover, since we are concerned here with the concept of logical, i.e., formal, consequence, and thus with a relation which is to be uniquely determined by the form of the sentences between which it holds, this rela- tion cannot be influenced in any way by empirical knowledge, and in par- ticular by knowledge of the objects to which the sentence X or the sentences of the class K refer. The consequence relation cannot be affected by replacing the designations of the objects referred to in these sentences by the designations of any other objects. (1936, 414-15) In formulating my apriority criterion, I was influenced by this passage, especially by the last part of the penultimate sentence: "[the logical consequence] relation cannot be influenced in any way by empirical knowledge, and in particular by knowledge of the objects to which the sen- tence Xor the sentences of the class Krefer" (emphasis added). This is, of course, somewhat obscure. Still it sounds compatible with, and I think even suggests, the standard I adopted, namely, that knowledge of whether the logical consequence relation holds in any particular case is knowledge that can be had a priori, if at all. Logic has long been held to be free, in some fundamental way, of all things empirical, and I believe many logicians have thought that logic achieves this freedom by meeting this (or a similar) standard.

#### Separate items on a list must be distinct---anything else violates elementary cannons of construction

SCOTUS 79 United States Supreme Court. “Colautti v. Franklin”. No. 77-891. https://caselaw.findlaw.com/us-supreme-court/439/379.html

Section 5 (a) requires the physician to observe the prescribed standard of care if he determines "that the fetus is viable or if there is sufficient reason to believe that the fetus may be viable" (emphasis supplied). The syntax clearly implies that there are two distinct conditions under which the physician must conform to the standard of care. Appellants' argument that "may be viable" is synonymous with "viable" would make either the first or the second condition redundant or largely superfluous, in violation of the elementary canon of construction that a statute should be interpreted so as not to render one part inoperative. See United States v. Menasche, 348 U.S. 528, 538 -539 (1955).

### AT: Prohibiton

#### This ev is not conclusive---it’s saying there is no distinction between very particular regulations and prohibitions---not making a claim about the meaning of the words more broadly---and it concludes that the law they’re interpreting is a regulation but NOT A PROHIBITION!

Emory reads yellow

Hadley ’9 [John Vestal; December 16, 1909; Justice on the Supreme Court of Indiana; Westlaw, “McPherson v. State,” 174 Ind. 60]

Furthermore, the word “prohibition” is close akin to “regulate, restrict, and control.” Its use in the body of the act is of little significance. To forbid the sale of liquor by those who have no license; to deny the licensee the right to sell on certain days, between certain hours, in certain places, in certain quantities—is, to some extent at least, qualified prohibition. It is prevention, interdiction. Such laws, however, are unquestionably regulations and restrictions of the liquor traffic. They operate as a check, as a restraint, upon the sale, not in absolute inhibition, and are in the strictest sense regulations. They regulate by prohibiting the sale at certain times, and to certain persons, and \*613 in certain places. Besides, to say the law prohibits the citizen from selling without a license, or that the law prohibits the licensed seller from selling on Sunday, is etymologically correct. In fact, the word was employed in this sense by the Legislature in framing section 4 of the Nicholson law (section 8327, Burns' Ann. St. 1908), which provides that obstructions to the street view shall not be set up in the selling room “during such days and hours when the sale of such liquors is prohibited by law.” So it is not so much the primary meaning of the word as sense in which it is popularly understood as applied to the manufacture and sale of spirituous liquors that must control.

Following are a few definitions of “prohibition” as specifically applied:

“Interdiction of the liberty of making and of selling, or giving away, intoxicating liquors for other than medicinal, scientific and religious purposes.” Anderson's L. Dict.; Bouvier, L. Dict. (Rawle's Rev.).

“The forbidding by law of the manufacturing and sale of alcoholic liquors.” English's L. Dict.

“The forbidding by law of the sale of alcoholic liquors as a beverage.” Webster's Int. Dict.

“The forbidding by legislative enactment of the sale of alcoholic liquors for use as a beverage.” Standard Dict.

The term has even a wider sweep than this. A prohibitory law, to be classed as such, must, at the same instant, in the same way, become effective to interdict the sale of liquors throughout all parts of the jurisdiction of the lawmaking power. Welsh v. State, 126 Ind. 71, 77, 25 N. E. 883, 9 L. R. A. 664; Shea v. City of Muncie, 148 Ind. 14, 46 N. E. 138; Paul v. Gloucester County, 50 N. J. Law, 585, 15 Atl. 272, 1 L. R. A. 86.

It seems absurd, because rationally inconceivable, that under the operation of a general prohibitory statute enacted by the General Assembly sales as a beverage may indefinitely continue to be lawfully made in many counties of the state. It is also equally incomprehensible how a law may be absolutely prohibitory and in itself provide the means and terms under which sales may be continued or resumed in any or all counties of the state. We are unable to perceive any distinction between the prohibition which results from remonstrance under former laws, which has uniformly been held to be regulation, and the prohibition arising under the act in question, with the sole exception as to the duration of the term of restriction, depending upon petition and election at the expiration of each biannual period. We therefore conclude that the object and purpose of the act before us is regulation, and not prohibition, of the liquor traffic, and that the subject is fairly deducible from the title, and not in conflict with section 19, art. 4, of the Constitution. Isenhour v. State, 157 Ind. 524, 62 N. E. 40, 87 Am. St. Rep. 228; Gustavel v. State, 153 Ind. 613, 54 N. E. 123; Burget v. Merritt, 155 Ind. 143, 57 N. E. 714; Clarke v. Darr, 156 Ind. 692, 60 N. E. 688; Republic Iron, etc., Co. v. State, 160 Ind. 379, 66 N. E. 1005, 62 L. R. A. 136; Maule Coal Co. v. Partenheimer, 155 Ind. 100, 55 N. E. 751, 57 N. E. 710.

#### Their interp makes them a regulation, not a prohibition

Hiram E. Hadley 1909. Judge, McPherson v. State, 174 Ind. 60, Supreme Court of Indiana, December 1909, LexisNexis

In the majority opinion it is conceded "that there is a marked difference" between unqualified prohibition of the sale of intoxicating liquors and the regulation of such sale. It is said in the opinion that "to regulate, restrict and control the sale implies that the sale shall go on within the bounds of certain prescribed rules, restrictions or limitations." Citing Sweet v. City of Wabash (1872), 41 Ind. 7; Duckwall v. City of New Albany (1865), 25 Ind. 283; Loeb v. City of Attica (1882), 82 Ind. 175, 42 Am. Rep. 494.

"Prohibition," states the majority opinion, "as applied to the liquor traffic, implies putting a stop to its sale as a beverage; to end it fully, completely and indefinitely. So, if the purpose of the act in question is to authorize the exercise of unqualified prohibitory power, as usually understood by the term, the act is void because its subject is not expressed in the title." The court might properly have further said [\*\*\*45] that if the act under its provisions is not one to regulate the sale of intoxicating liquors it is void, for the reason that it does not meet or respond to the subject as expressed in its title.

The two are NOT THE SAME!

Frank K. Dunn ’29. JUDGE at ILLINOIS SUPREME COURT, 10/18/1929. Haggenjos v. City of Chicago, 168 N.E. 661 (Ill. 1929). https://www.courtlistener.com/opinion/3418329/haggenjos-v-city-of-chicago/

It is argued on behalf of the plaintiff in error that the power to regulate does not include the power to prohibit, and that if the owner of a motor vehicle may be restricted in its use in the conduct of his business only to such use as may be made of it while in motion, then the ordinance totally denies him the use of his property. It has been said often that the power to regulate does not include the power to prohibit; and this is true in the sense that mere regulation is not the same as absolute prohibition. Regulation \*Page 577 of business or action implies the continuance of such business or action, while prohibition implies its cessation. On the other hand, the power to regulate implies the power to prohibit except upon the observance of authorized regulation. The ordinance does not prohibit the standing of vehicles on all streets throughout the city or at all times, but only on some streets and at some times. There can be no doubt about the power of a municipality to control travel upon its streets. Such regulations, on account of the crowded condition of the streets, are a necessity for the safety and welfare of the public as well as the convenience of the travelers. (City ofChicago v. Marriotto, 332 Ill. 44.) Without a regulation of traffic and of parking vehicles the use of congested streets would become dangerous, if not impossible. Parked vehicles occupying both sides of the street constitute obstructions to travel and seriously reduce the capacity of the streets for use by ordinary street traffic in the usual way. The ordinance in question was passed to provide against the public inconvenience arising from such condition. It is clear that some regulation of the standing of vehicles on the streets was necessary for the safety, welfare and convenience of the public. It was the duty of the city council to determine what regulation was required for the public welfare, and the only limitation on the exercise of its power was that such exercise should be reasonable. The question for determination, therefore, is whether the prohibition of standing vehicles on the streets throughout this territory, whose dimensions are said to be eight blocks by nine, — that is, we may presume, more than a half mile in each direction, — during the whole of every business day, was reasonable or not.

#### There is a meaningful difference.

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.)

#### Common usage agrees.

Nathan Albright 14. Writer, 6/6/14. “The Difference Between Prohibition And Regulation.” https://edgeinducedcohesion.blog/2014/06/06/the-difference-between-prohibition-and-regulation/

In this problem, the efforts by God to regulate the moral conduct of His people and the efforts by human regimes to do the same are analogous in terms of their difficulty. In particular, we may class between two distinct types of efforts at influencing the conduct of people. One type of effort is prohibition, which is the banning of that conduct, and the other type of effort is regulation, which is a considerably more difficult task that seeks to place appropriate boundary markers around conduct which is proper within certain limitations but improper outside of those bounds. As might be imagined, prohibition is not a matter that takes a great deal of length of frequency of repetition to deal with, but rather regulation is a much more difficult matter, given the greater complexity of seeking to regulate conduct that is acceptable at some times and places and in some situations and not in others.

#### Prefer our interpretation---consistent throughout history.

Darrell V. McGraw Jr. ’81. JUDGE at WEST VIRGINIA SUPREME COURT. State ex rel. Skinner v. Dostert, 166 W. Va. 743, 755, 278 S.E.2d 624, 633, 1981 W. Va. LEXIS 599, \*23 (W. Va. April 3, 1981). Lexis.

Like mandamus, the definition of prohibition has changed little throughout history. Blackstone notes that:

Prohibition is a writ . . . directed to the judge and the parties of a suit in any inferior court, commanding them to cease from the prosecution thereof, upon a suggestion, that either the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance of some other court . . . or, if, in handling matters clearly within their cognizance, they they transgress the grounds prescribed to them by the laws of England; . . . in such cases also a prohibition will be awarded.

3 W. Blackstone, Commentaries\* 112.

The definition contained in one current reference source is substantially the same as Blackstone's. "The writ [prohibition] is commonly defined as one to prevent a tribunal possessing judicial or quasijudicial powers from exercising jurisdiction over matters not within its cognizance, or exceeding its jurisdiction in matters of which it has cognizance." 63 Am. Jur.2d Prohibition § 1 (1964).

## Class Action Advantage

### AT: Slow Growth Impact---Defense

#### “Slow growth” is a myth with no impact.

Leslie Shaffer 17, Senior Writer at CNBC, “Slow Economic Growth? Global Bank Asks, 'Who Cares?'”, CNBC, 8-24, https://www.cnbc.com/2017/08/24/calling-global-economic-growth-dangerously-slow-is-a-myth-dbs-says.html

The persistent belief that global economic growth is "dangerously slow" and fragile is just a myth, DBS said in a note on Thursday.

"If you're worried about slow growth today, get used to it. It's probably going to be slower five years from now and slower yet five years after that," David Carbon, chief economist at DBS, said in the note.

In the July update of its World Economic Outlook, the International Monetary Fund forecast global economic growth of 3.5 percent for 2017 and 3.6 percent for 2018, unchanged from its April outlook.

The IMF report urged countries to pursue structural reforms, such as commodity exporters diversifying their economies, amid concerns about "shocks" upsetting the apple cart.

But Carbon said economic growth wasn't in the danger zone when it's "looked at the way it should be: in per-capita terms," with slower gross domestic product growth due mainly to slower working-age population growth.

"Per person of working age, growth doesn't appear to have slowed at all since 1980," he said. "To the extent that slower growth results from slower population growth, the response should be: who cares? It's growth per person that matters — your income, my wage — not growth in the aggregate."

Carbon noted that the working-age population growth was falling much more rapidly than population growth overall.

He pointed to Japan, where the population as a whole fell by 0.2 percent in 2016, while the working age population fell five times more rapidly, by 1 percent each year.

Europe and the U.S. changes weren't quite as stark, but still showed the same pattern, Carbon said, noting a 0.1 to 0.2 percent decline in Europe's working-age population, while in the U.S. that group was growing at 0.4 percent a year, down from 1.2 percent a year a decade ago.

That translated into simple math suggesting much slower economic growth, he said.

"Since GDP growth is the sum of labor force growth (in simple terms, WAPG) and growth in output per-person (i.e., productivity growth), a one percent drop in working-age population growth brings an equivalent one percent drop in potential GDP growth," he said.

That meant the potential GDP growth in the U.S. was now less than 2 percent a year, down from 3 percent more than a decade ago, he said.

It also indicated that global economic growth was running at or above potential, Carbon said.

"Where's the crisis? Where's the danger? Why should governments pull out all the stops to raise it further? And would it do any good," he asked. "Odds are, it wouldn't."

Indeed, Carbon noted that while Japan's economy was widely considered a laggard, on a per-capita basis, it would become the world's best performer, alongside Germany, with growth twice that of the U.S. and France.

"Whether judged over eight years or 16 years, Japan and Germany are the global growth leaders. The U.S. is a distant third. And France has performed every bit as well as the U.S.," he said.

#### Primacy will survive slow growth.

Robert Kagan 12, Senior Fellow with the Project on International Order and Strategy in the Foreign Policy Program at Brookings Institution, “Rumours of America’s Demise are an Exaggeration”, National Post, 3-10, http://nationalpost.com/opinion/robert-kagan-rumours-of-americas-demise-are-an-exaggeration

Measuring changes in a nation’s relative power is a tricky business, but there are some basic indicators: the size and influence of its economy relative to that of other powers; the degree of military power compared with potential adversaries’; the degree of political influence it wields in the international system — all of which make up what the Chinese call “comprehensive national power.” And there is the matter of time. Judgments made based on only a few years’ evidence are problematic. A great power’s decline is the product of fundamental changes in the international distribution of various forms of power that usually occur over longer stretches of time. Great powers rarely decline suddenly. A war may bring them down, but even that is usually a symptom, and a culmination, of a longer process.

Some of the arguments for America’s relative decline these days would be more potent if they had not appeared only in the wake of the 2008 financial crisis. Just as one swallow does not make a spring, one recession, or even a severe economic crisis, need not mean the beginning of the end of a great power. The United States suffered deep and prolonged economic crises in the 1890s, the 1930s, and the 1970s. In each case, it rebounded in the following decade and actually ended up in a stronger position relative to other powers than before the crisis. The first decade of the 20th century, the 1940s, and the 1980s were all high points of American global power and influence.

Less than a decade ago, most observers spoke not of America’s decline but of its enduring primacy. In 2002, the historian Paul Kennedy, who in the late 1980s had written a much-discussed book on “the rise and fall of the great powers,” America included, declared that never in history had there been such a great “disparity of power” as between the United States and the rest of the world. John Ikenberry agreed that “no other great power” had held “such formidable advantages in military, economic, technological, cultural or political capabilities … The preeminence of American power” was “unprecedented.” In 2004, Fareed Zakaria described the United States as enjoying a “comprehensive uni-polarity” unlike anything seen since Rome. But a mere four years later, Zakaria was writing about the “post-American world”; and Kennedy, again, about the inevitability of American decline. Did the fundamentals of America’s relative power shift so dramatically in just a few short years? The answer is no.

Let’s start with the basic indicators. In economic terms, and even despite the current years of recession and slow growth, America’s position in the world has not changed. Its share of the world’s GDP has held remarkably steady, not only over the past decade, but over the past four decades. In 1969, the United States produced roughly a quarter of the world’s economic output. Today it still produces roughly a quarter, and it remains not only the largest but also the richest economy in the world.

People are rightly mesmerized by the rise of China, India and other Asian nations whose share of the global economy has been climbing steadily, but this has so far come almost entirely at the expense of Europe and Japan, which have had a declining share of the global economy. Optimists about China’s development predict that it will overtake the United States as the largest economy in the world sometime in the next two decades. This could mean that the United States will face an increasing challenge to its economic position in the future. The sheer size of an economy, however, is not by itself a good measure of overall power within the international system. If it were, then early-19th-century China, with what was then the world’s largest economy, would have been the predominant power instead of the prostrate victim of smaller European nations. Even if China does reach this pinnacle again — and Chinese leaders face significant obstacles to sustaining the country’s growth indefinitely — it will still remain far behind both the United States and Europe in terms of per capita GDP.

Military capacity matters, too, as early-19th-century China learned, and as Chinese leaders know today. As Yan Xuetong recently noted, “Military strength underpins hegemony.” Here the United States remains unmatched. It is far and away the most powerful nation the world has ever known, and there has been no decline in America’s relative military capacity — at least not yet. Americans currently spend roughly $600-billion a year on defence, more than the rest of the other great powers combined. They do so, moreover, while consuming around 4% of GDP annually, a higher percentage than the other great powers but in historical terms lower than the 10% of GDP that the United States spent on defence in the mid-1950s or the 7% it spent in the late 1980s.

The superior expenditures underestimate America’s actual superiority in military capability. American land and air forces are equipped with the most advanced weaponry, are the most experienced in actual combat and would defeat any competitor in a head-to-head battle. American naval power remains predominant in every region of the world.

By these military and economic measures, at least, the United States today is not remotely like Britain circa 1900, when that empire’s relative decline began to become apparent. It is more like Britain circa 1870, when the empire was at the height of its power. It is possible to imagine a time when this might no longer be the case, but that moment has not yet arrived.

But what about the “rise of the rest” — the increasing economic clout of nations like China, India, Brazil and Turkey? Doesn’t that cut into American power and influence?

The answer is: It depends. The fact that other nations in the world are enjoying periods of high growth does not mean that America’s position as the predominant power is declining, or even that “the rest” are catching up in terms of overall power and influence. Brazil’s share of global GDP was a little over 2% in 1990 and remains a little over 2% today. Turkey’s share was under 1% in 1990 and is still under 1% today. People, especially businesspeople, are naturally excited about these emerging markets, but just because a nation is an attractive investment opportunity does not mean it is also a rising great power. Wealth matters in international politics, but there is no simple correlation between economic growth and international influence. It is not clear that a richer India today, for instance, wields greater influence on the global stage than a poorer India did in the 1950s and 1960s under Nehru, when it was a leader of the Non-Aligned Movement, or that Turkey, for all the independence and flash of Prime Minister Recep Tayyip Erdogan, really wields more influence than it did a decade ago.

### Slow growth High

#### GDP rise and overall growth happening now.

Schneeweiss 2-12 – Zoe Schneeweiss is a writer @ Bloomberg Quint, “Charting the Global Economy: U.S. Growth Forecasts Upgraded”, Bloomberg Quint, 2-12-21, available online @ https://www.bloombergquint.com/global-economics/charting-the-global-economy-u-s-growth-forecasts-upgraded

(Bloomberg) -- Economists are ratcheting up their projections for U.S. growth this year as Congress moves closer to another large financial support package, while the recovery in much of Europe is expected to be more moderate.

Japan’s economy, meanwhile, is projected to have registered double-digit growth as 2020 drew to a close, fueled in part by export demand. While emergency guidelines point to a setback in the current quarter, a stronger fourth-quarter result suggests the nation will be better positioned soon after.

Here are some of the charts that appeared on Bloomberg this week on the latest developments in the global economy:

Expectations for gross domestic product growth increased for the current three-month period and every subsequent quarter through mid-2022 in the latest survey of economists by Bloomberg News. Economic growth this year is estimated to be the strongest since 1984.

The consumer price index is part of an intensifying debate in financial markets over the course of inflation. Despite the tame January figure, price pressures are set to firm in the months ahead.

The European economy will recover more slowly this year as the coronavirus keeps a tight grip on the region, with the outlook resting largely on a vaccination campaign that has so far stumbled.

European Central Bank President Christine Lagarde has presided over an unprecedented flood of monetary stimulus in the euro area and, as a consequence, conditions in financial markets have never been looser.

The U.K. economy grew at double the pace expected in the fourth quarter, showing signs of resilience to coronavirus restrictions at the end of a year that delivered the worst recession since 1709.

Asia

India’s admission of a record budget deficit is drawing praise from investors, who see it as baby steps to making data out of Asia’s third-largest economy less opaque and aiding its goal of becoming part of global bond indices.

Japan’s economy is estimated to have finished the pandemic year of 2020 with growth reaching double digits, a show of resilience that suggests the country could emerge from a damaging state of emergency this quarter on a less-shaky footing.

### AT: Chemicals

#### A laundry list of alt causes overwhelm

Swift, 12 -- American Chemistry Council chief economist and managing director

(Thomas, "What Will 2012 Bring?" 1-13-12, www.chemicalprocessing.com/articles/2012/what-will-2012-bring/?show=all, accessed 9-22-12, mss)

A two-speed manufacturing sector, with about one-half of industries soft and others doing well, has emerged. The boom in oil and **gas** is creating opportunities both on the demand side (e.g., for pipe and oilfield machinery) and the supply side (e.g., for chemicals, fertilizers and direct iron reduction). There's strength in light vehicles and aircraft as well as in industries involved with business investment (iron and steel, foundries, computers, etc.), and a recovery in construction materials. Elsewhere, structural issues are **sapping dynamism** in a number of industries (textiles, paper, printing, etc.). Forward momentum **depends** up**on** demand for consumer goods, which ultimately drives factory output. However, weakening foreign demand (chemicals are early on in supply chain and exports to Europe have **evaporated**) presents challenges for the manufacturing sectors. Balance sheets are strong and lower raw material costs have benefited manufacturers.

Nonetheless, an uncertain business and regulatory environment is constraining business optimism — and hiring. Light vehicles represent an important market for chemicals (nearly $3,000 per vehicle), and production has experienced temporary disruptions from the disaster in Japan. US light vehicle sales should rise to 13.5 million units in 2012 as pent-up demand fosters growth. Sales will improve even further during 2013, exceeding 14.5 million units then. However, housing, the other large consumer of chemicals (over $15,000 per start), faces ongoing challenges. New homebuilding remains depressed as foreclosures continue to flood inventories. Only a minor gain in housing starts should occur in 2012 and the recovery in this sector will be quite slow. Housing activity should begin to stir in 2013. It remains well below the previous peak of 2.07 million units in 2005 and below the long-term underlying demand of 1.5 million units per year as suggested by demographics and replacement needs. Unfortunately, today's massive housing inventory will delay a full recovery until later this decade.